Introduced: 2/8/71
Referred: Resources and Finance

IN THE HOUSE BY MOSES

HOUSE BILL NO. 156

IN THE LEGISLATURE OF THE STATE OF ALASKA

SEVENTH LEGISLATURE - FIRST SESSION

A BILL

For an Act entitled: "An Act creating an Alaska State Fishery Development Corporation."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

* Section 1. PURPOSE. The purpose of this Act is to create an instrumentality of the state to develop, stimulate, and advance the business prosperity and economic welfare of Alaska and its citizens. This shall be accomplished by providing critically needed development loans to encourage and assist the wholesome development of new fishing activities in Alaska and to rehabilitate and expand existing fishing operations. By providing development loans to the fishing industry the economic stability of the state will be strengthened, the employment opportunities of its citizens enlarged, and their standard of living and general welfare enhanced.

* Sec. 2. AS 44 is amended by adding a new chapter to read:

CHAPTER 58. ALASKA STATE FISHERY DEVELOPMENT CORPORATION.

ARTICLE 1. CREATION AND ORGANIZATION.

Sec. 44.58.010. ALASKA STATE FISHERY DEVELOPMENT CORPORATION. The Alaska State Fishery Development Corporation is a public corporation of the state. The corporation is an instrumentality of the state within the Department of Commerce, but has a legal existence independent of and separate from the state.

Sec. 44.58.020. GOVERNING BODY. The corporation's board of directors shall conduct the business of the corporation.

Sec. 44.58.030. APPOINTMENT AND COMPOSITION OF BOARD. (a) The board consists of the commissioners of commerce and fish and game and

six residents of the state with one member each from Southeastern Alaska Prince William Sound, Cook Inlet, Kodiak, Aleutian Islands and Bristol Bay. Members of the board are appointed by the governor and serve at his pleasure. Membership on the board is on a nonpartisan basis.

(b) The appointment of members to the board must be confirmed by the legislature meeting in joint session. A member may act and receive compensation from his appointment until his confirmation or rejection by the legislature.

(c) A public employee is not eligible for appointment to the board.

Sec. 44.58.040. TERM OF OFFICE. The term of office for an appointed member of the board is three years. The term of office expires on February 1 of each year. Upon initial appointment, two members serve for one year, two members serve for two years, and two members serve for three years. A member appointed by the governor to fill a vacancy serves for the unexpired term of the member he succeeds.

Sec. 44.58.050. CONFLICT OF INTERESTS. Upon appointment and during his term of office, a board member shall declare privately in writing to the governor and the board any financial or business interest he has which might conflict with the public nature of his membership on the board. If there is a serious conflict, the board may ask him to abstain from decisions resulting in a conflict or to resign from the board. A loan or contract of the corporation which is otherwise valid is not invalid because of a personal interest of a board member in it if the interest is declared and the board member abstains from decisions pertaining to the loan or contract.

Sec. 44.58.060. OFFICERS. At the first regular meeting of every odd-numbered year, the board shall meet and elect from among its members a president, a vice president, a secretary, and a treasurer. The

president also serves as chairman of the board. The vice president shall preside in the absence of the president.

Sec. 44.58.070. COMPENSATION AND EXPENSES. Members of the board receive no salary, but are entitled to per diem and travel expenses authorized by law for other boards.

Sec. 44.58.080. LEGAL ADVISER. The attorney general is the legal counsel for the corporation. He shall advise the corporation in legal matters and represent it in suits.

Sec. 44.58.090. PUBLIC BOARD MEETINGS. The meetings of the board are public except meetings to discuss and pass on loan applications.

Sec. 44.58.100. QUORUM AND NOTICE OF MEETINGS. Five members, which may include the commissioner of commerce or commissioner of fish and game, constitute a quorum for the transaction of business unless the bylaws require a larger number, except that notice of a meeting of the board must be given to each member.

Sec. 44.58.110. MINUTES OF MEETINGS. The board shall keep minutes of each meeting and send a certified copy to the governor.

Sec. 44.58.120. EXECUTIVE VICE PRESIDENT. The board may employ an executive vice president to manage the corporation. He must be professionally trained and experienced in the performance of his duties. His selection is subject to the approval of the governor. The executive vice president may not have any financial or business interest that might conflict with the management of the corporation in the best public interest. The board may delegate powers and duties to the executive vice president.

Sec. 44.58.130. EMPLOYEES' BONDS. The corporation shall bond its employees. The amount of a bond is determined by the board.

ARTICLE 2. POWERS AND DUTIES.

Sec. 44.58.140. POWERS. (a) The corporation may

(1) exist continuously as a corporation;

(2) adopt a seal;

(3) adopt bylaws and regulations governing the business of the corporation;

(4) sue and be sued;

(5) appoint officers, employees, trustees for certificate holders, and agents, and prescribe their powers and duties;

(6) make contracts and execute instruments necessary or convenient in the exercise of its corporate powers;

(7) make loans in participation with financial institutions, and establish and regulate the terms of the loans;

(8) acquire by purchase, lease, bequest, devise, gift, the satisfaction of debts, or the foreclosure of mortgages, and hold, maintain, use, operate, and convey real or personal property;

(9) borrow money and issue secured and unsecured evidence of indebtedness for a corporate purpose or fund, refund, pay, or discharge outstanding obligations, and enter agreements and contracts concerning these obligations;

(10) secure the payment of its obligations by pledge or mortgage or other lien on its contracts, revenues, income, or property, except that it may not incur secondary liability by guaranty or endorsement of the obligations of another corporation or legal entity, except endorsement of checks, bank drafts, or other commercial paper in the ordinary course of business;

(11) accept grants on loans from and contract with the federal government, the state, or its political subdivisions, and to that end comply with the provisions of federal, state, or local programs when necessary;

(12) lease, alienate, and dispose of property;

(13) acquire, hold, and dispose of stocks, memberships, contracts, bonds, or other interests in another corporation or legal entity, and exercise the powers or rights in connection with these interests which are provided in contracts or agreements and which are allowed by law concerning the satisfaction of debts;

(14) do what is necessary to carry out the powers granted by this chapter or other acts of the Alaska legislature, or the laws and regulations of the federal government.

(b) The corporation may not pledge the credit or the taxing power of the state or its political subdivisions. The state and its political subdivisions are not liable for the debts of the corporation.

Sec. 44.58.150. ANNUAL REPORT AND PUBLIC RECORDS. (a) Before December 1 of each year, the board shall submit to the governor and the legislature a comprehensive report describing the operations, fiscal transactions, financial condition, and future plans of the board. The governor may prescribe the form of the report.

(b) The board shall maintain the following records which shall be available to the public:

(1) the names of the business concerns to whom contracts are let and for whom financing is arranged by the corporation;

(2) the nature of the business;

(3) the amount involved.

Sec. 44.58.160. ANNUAL AUDITS. (a) The board shall have its financial records audited annually. The legislative auditor shall conduct the annual audit. If an audit conducted by a certified public accountant is satisfactory in the judgment of the legislative auditor, it may be accepted instead of the state audit. The legislative auditor may prescribe the form and content of the financial records of the board and may have access to these records at any time.

(b) The state bank examiner shall examine the records of the corporation at least annually.

Sec. 44.58.170. LOAN ADVISORY COMMITTEES. The board may establish loan advisory committees in the different regions of the state. Members of these committees serve without compensation or per diem. Each committee shall make recommendations to the board and advise it generally.

Sec. 44.58.180. LOCATION OF OFFICES. The principal office of the corporation is at the state capital. The board may establish offices at other locations in the state.

Sec. 44.58.190. INITIAL CAPITAL. Appropriations and loans from the state general fund necessary for the initial operation of the corporation are authorized.

Sec. 44.58.200. DEBENTURE CERTIFICATES. (a) The corporation may issue three classes of negotiable debenture certificates as provided by this section.

(b) "Class A certificates" shall be issued as evidence of indebtedness of the corporation either through private or public sales. The maximum principal amount of class A certificates that may be sold is $5,000,000. Class A certificates are backed by the full resources and credit of the corporation, and take priority in the payment of principal and interest to class B and C certificates. Class A certificates shall be sold at a price which results in an effective interest rate over the life of the certificates of not more than five per cent a year and upon other terms set by the board, except that the class A certificate outstanding at any time may not exceed five times the principal amount of class B certificates outstanding.

(c) "Class B certificates" shall be issued as evidence of indebtedness of the corporation either through private or public sales.

The maximum principal amount of class B certificates that may be sold is $1,000,000. Class B certificates are backed by the full resources and credit of the corporation and take priority in the payment of principal and interest to class C certificates. Class B certificates shall be sold at a price which results in an effective interest rate over the life of the certificates of not more than six per cent a year and upon other terms set by the board.

(d) "Class C certificates" shall be accepted by a borrower of funds from the corporation at the time of a development loan instead of cash in an amount equal to five per cent of the loan. Class C certificates mature not later than the outstanding class B certificates mature. The board determines the rate of interest earned by class C certificates. The corporation shall deposit the funds represented by the class C certificates in a time deposit account. The funds represented by class C certificates are a reserve for loan losses. The funds shall not be drawn unless the corporation first exhausts the reserve funds provided by secs. 260 and 270 of this chapter. Class C certificates shall not be issued when corporate money is invested in accordance with secs. 290 and 320 of this chapter.

Sec. 44.58.210. LEGAL OPINION. The corporation shall provide a legal opinion from a recognized private source concerning class A and B certificates.

Sec. 44.58.220. AVAILABILITY OF ANNUAL REPORT. The annual report of the corporation shall be made available without cost to a certificate holder.

Sec. 44.58.230. CERTIFICATES AS LEGAL INVESTMENTS. The certificates of the corporation are legal investments and may be accepted as security for all fiduciary, trust, and public funds of the state and its political subdivisions.

Sec. 44.58.240. COMMENCEMENT OF LOAN ACTIVITIES. The corporation may not commence its loan activities until it has received at least $1,500,000 from the sale of class A and B certificates. Before the receipt of this $1,500,000, funds received from the sale of class A and B certificates shall be held in trust.

Sec. 44.58.250. GENERAL FUND. The corporation shall maintain a general fund. Income received from loans and investments, and advances or loans from the state shall be credited to the fund. Expenses of the corporation, including interest payments on class A, B, and C certificates, and repayments of advances or loans from the state shall be charged to this fund.

Sec. 44.58.260. PRINCIPAL RESERVE FUND. The corporation shall maintain a principal reserve fund. The board shall determine the amounts, sources and application of principal reserve funds to the amortization of class A and B certificates. No sinking or amortization fund may be created for class B certificates until an amount equal to the total principal amount of the three largest annual maturities on the class A certificates is set aside to secure the payment of class A certificates. Surplus money may be transferred to the development loan fund.

Sec. 44.58.270. LOAN LOSS RESERVE FUND. The corporation shall maintain a loan loss reserve fund. Each year the board shall credit a sum equal to one-fourth per cent of all outstanding loans to the fund. Loan losses shall be charged to the loan loss reserve fund. If a loan loss charged to the fund is recovered, it shall be credited to the loan loss reserve fund. Money in the general fund exceeding the estimated expenses of the following fiscal year shall be transferred to the loan loss reserve fund.

Sec. 44.58.280. DEVELOPMENT LOAN FUND. The corporation shall

maintain a development loan fund. Money not required by other funds shall be credited to the development loan fund. Loans by the corporation shall be charged to the development loan fund.

Sec. 44.58.290. INVESTMENTS BY CORPORATION. (a) The corporation shall place money held in the reserve funds in one or more of the following: deposits in banks or trust companies having their principal places of business in the state; or obligations of the United States, the state, or its political subdivisions if the obligations are secured by the general taxing power of the obligor.

(b) The corporation may place the proceeds from the sale of class A and B certificates and money held in the development loan fund in one or more of the following: deposits in banks or trust companies having their principal places of business in the United States; or obligations of the United States, the state, or its political subdivisions. However, the board shall, when it is possible and financially sound, make deposits in banks and trust companies having their principal places of business in the state.

Sec. 44.58.300. TAX EXEMPTION. Because the purpose of the corporation, as an instrumentality of the state, is to benefit the people of Alaska by increasing their commerce, prosperity, and general well-being, the corporation is exempt from all taxes and assessments in the state. Debenture certificates issued by the corporation, their transfer, and their income are exempt from taxes and assessments.

Sec. 44.58.310. CORPORATE LENDING. (a) The corporation may accept applications for development loans and extend credit on the basis of no greater than 90 per cent participation by the corporation and no less than 10 per cent participation by a bank.

(b) The corporation and the participating bank shall share the same ratable interest in the collateral securing a loan.

Sec. 44.58.320. SHORT-TERM LOANS. The corporation may participate with banks in existing, short-term, development loans with its surplus funds on the same basis as provided in sec. 310 of this chapter. The intention of this section is to permit the corporation to use funds not immediately necessary for long-term development loan purposes and to receive income to meet its financial obligations.

Sec. 44.58.330. CORPORATION'S INTEREST. The rate of interest charged for the corporation's share of a development loan shall be determined by the board, except that it may not be greater than the legal contract rate of interest as set by state law. The corporation may also charge reasonable loan commitment fees.

Sec. 44.58.340. BANK'S RATE OF INTEREST. The participating bank shall fix the rate of interest charged by it. However, the rate of interest may not exceed the legal contract rate of interest prescribed by law.

Sec. 44.58.350. MAXIMUM TERM OF LOAN. The maximum term of a development loan is 20 years. However, a loan may not mature later than the final maturity date of the class A and B certificates outstanding at the time of the loan.

Sec. 44.58.360. APPLICATION FOR LOAN. Development loans must be applied for and presented to the corporation for approval through the participating bank.

Sec. 44.58.370. BANK'S FEES. (a) The participating bank shall administer the loans and may charge the borrower a reasonable loan fee for this service.

(b) The corporation shall enter into a servicing agreement with a participating bank. The servicing agreement may provide a participating bank with a fee equal to one-quarter of one per cent interest on the corporation's share of the loan.

Sec. 44.58.380. MAXIMUM AMOUNT OF INDIVIDUAL LOANS. The corporation may not have more than 10 per cent of the principal amount of outstanding class A and B certificates or $750,000, whichever is less, outstanding at one time to any one borrower. The borrowing of individuals who hold a controlling interest in a borrowing company is added to the debt of the company to determine this limitation.

Sec. 44.58.390. GENERAL LIMITATIONS ON LOANS. (a) In making development loans, the board shall consider the proposed collateral, the integrity and the management ability of the borrower, and the borrower's past and prospective earnings.

(b) Before approving a development loan, the board shall consider the purpose of the loan. The board may make only loans that are economically advantageous to the state and the general public welfare.

(c) The board may make a development loan to a responsible borrower only if other credit is not readily available on reasonable terms. Before granting a development loan, the board shall determine, so far as it is reasonably possible, that the first opportunity to grant the loan is given to banking or financial institutions in the state.

Sec. 44.58.400. REGULATIONS FOR LOANS. The board may adopt regulations for loan policy and procedure, except that a regulation may not conflict with an indenture agreement or a provision of this chapter.

Sec. 44.58.410. ADDITIONAL SECURITIES. The legislature may amend this chapter to permit the corporation to issue additional series of securities, except that additional securities may not rely on assets accumulated in connection with the issuance of a previous series of securities, unless the reserves provided by agreements, this chapter, or legislation have been met.

Sec. 44.58.420. DISSOLUTION. After payment in full of its debentures and other obligations or after depositing in a trust sufficient money to secure the payment of its obligations, the board may dissolve the corporation by the majority vote of its directors. Dissolution is not effective until the legislature confirms it. The effective date of dissolution is the date the legislature confirms the dissolution or a date determined by the legislature at the time of confirmation. Assets remaining after satisfaction of liabilities and obligations of the corporation shall be deposited to the credit of the general fund of the state.

Sec. 44.58.430. DEFINITIONS. In this chapter

(1) "corporation" means the Alaska State Fishery Development Corporation;

(2) "state" means the State of Alaska;

(3) "board" means the board of directors of the corporation.