

Original sponsor: Osterback and
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1 IN THE HOUSE

BY THE RESOURCES COMMITTEE

2 CS FOR HOUSE BILL NO. 763

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 TENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to commercial fishing and agricul-
7 ture."

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

9 * Section 1. FINDINGS. The legislature finds that

10 (1) certain fish species which thrive in the seas off the coast of
11 Alaska have long provided an abundant food source for foreign nations but
12 have been underutilized by Alaskan fishermen;

13 (2) there is a potential for these species to provide a new source
14 of revenue for Alaskan fishermen and for the state;

15 (3) Alaskan fishermen have not utilized these species to the
16 fullest extent possible because of adverse economic and marketing conditions
17 and the high cost of gear and equipment for harvesting;

18 (4) the 200-mile limit established by the Fisheries Management and
19 Conservation Act of 1976 offers an opportunity for Alaskan fishermen to
20 harvest these species free of the competition of foreign fishermen;

21 (5) the creation of sources of credit will enable Alaskan fisher-
22 men to avail themselves of the opportunities offered by the Fisheries Manage-
23 ment and Conservation Act of 1976 to the ultimate benefit of all Alaskans;

24 (6) access to regional institutions of the federal farm credit
25 system in conjunction with appropriate state agencies will provide the finan-
26 cial resources and specialized knowledge necessary for underutilized
27 fisheries development.

28 * Sec. 2. PURPOSES. The purposes of this Act are to

29 (1) provide sources of credit for Alaskan commercial fishermen and

1 farmers;

2 (2) encourage utilization of the fisheries off the coast of Alaska
3 that have been underutilized in the past by local fishermen;

4 (3) encourage harvesting, processing and marketing of under-
5 utilized fish species;

6 (4) encourage technological development in the harvesting and
7 processing of underutilized fish species;

8 (5) promote the more rapid development of agriculture.

9 * Sec. 3. AS 41 is amended by adding a new chapter to read:

10 CHAPTER 45. COMMERCIAL FISHING AND AGRICULTURE
11 COOPERATIVE DEVELOPMENT BANK.

12 Sec. 41.45.010. COMMERCIAL FISHING AND AGRICULTURE COOPERATIVE
13 DEVELOPMENT BANK. (a) There is established the Commercial Fishing and
14 Agriculture Cooperative Development Bank. The bank is a public corpora-
15 tion and government instrumentality in the Department of Commerce and
16 Economic Development but has a legal existence independent of and sepa-
17 rate from the state. The exercise by the bank of the powers conferred
18 by this chapter is considered an essential governmental function of the
19 state. Except as otherwise provided in this chapter, the bank is sub-
20 ject to the provisions of AS 10.15.005 - 10.15.600.

21 (b) For the purpose of the initial funding of the bank's opera-
22 tions, the board of directors shall issue nonvoting, preferred shares of
23 stock in the bank and shall determine the value of each share. The
24 State of Alaska, through appropriate agencies, shall purchase not less
25 than 60 per cent nor more than 80 per cent of the nonvoting, preferred
26 shares initially issued by the bank. Shares purchased by the state
27 shall be repurchased by the bank within 20 years after their purchase.
28 If the bank fails to repurchase the shares within 20 years, the commis-
29 sioner of commerce and economic development may dissolve the bank.

1 Sec. 41.45.020. BOARD OF DIRECTORS. The bank shall be managed by
2 a board of directors consisting of five members. Initial appointments
3 to the board shall be made by the governor. Thereafter, board members
4 shall be elected by the shareholders. The board members shall annually
5 elect a chairman from among themselves. The purpose of the board is to
6 manage the assets of the bank.

7 Sec. 41.45.030. ARTICLES OF INCORPORATION. Not later than
8 November 1, 1978, the board of directors shall file with the commis-
9 sioner of commerce and economic development articles of incorporation as
10 provided in AS 10.15.340 - 10.15.355 except that any filing fees shall
11 be waived.

12 Sec. 41.45.040. BYLAWS. The board of directors shall adopt the
13 initial bylaws of the bank. The power to alter, amend or repeal the by-
14 laws is vested in the board of directors. The bylaws may contain provi-
15 sions for the regulation and management of the affairs of the bank not
16 inconsistent with this chapter or other provisions of law.

17 Sec. 41.45.050. MEMBERSHIP MEETINGS. Upon filing the articles of
18 incorporation, the board of directors, with the assistance of the com-
19 missioner of commerce and economic development or his designee, may hold
20 public meetings throughout the state for the purpose of explaining to
21 members of the commercial fishing and farming industries the functions
22 of the bank and to encourage membership in the bank.

23 Sec. 41.45.060. MEMBERSHIP STOCK. (a) The board of directors
24 shall issue shares of membership stock in the bank in the amounts and
25 with the value determined by the board and stated in the articles of
26 incorporation.

27 (b) Loans made to shareholders of the bank under the provisions of
28 this chapter shall be in accordance with a schedule of maximum amounts
29 adopted by the board of directors based upon proportional ownership of

1 shares.

2 Sec. 41.45.070. EXECUTIVE DIRECTOR; STAFF. (a) The board of
3 directors may hire and determine the salary of an executive director.
4 The executive director shall be responsible for the ordinary business of
5 the bank.

6 (b) The executive director, with the approval of the board of
7 directors, may hire and determine the salary of staff reasonably neces-
8 sary for the efficient performance of the duties of the bank.

9 Sec. 41.45.080. EXEMPT STATUS. Employees of the bank are in the
10 exempt service under AS 39.25.

11 Sec. 41.45.090. TERM OF OFFICE. The members of the board shall be
12 appointed for terms of three years, and they may be reappointed. Terms
13 shall be staggered. Initial terms shall be two members serving for one
14 year, two members serving for two years, and one member serving for
15 three years.

16 Sec. 41.45.100. QUORUM. A majority of the members of the board
17 constitutes a quorum for the transaction of business and the exercise of
18 the powers and duties of the board.

19 Sec. 41.45.110. COMPENSATION OF BOARD MEMBERS. Members receive
20 \$250 per meeting day if they attend the meeting and are entitled to per
21 diem and travel allowances as provided by law for members of state
22 boards and commissions.

23 Sec. 41.45.120. BONDS OF THE BANK. (a) The bank may borrow money
24 and may issue bonds for that purpose, including but not limited to bonds
25 on which the principal and interest are payable,

26 (1) exclusively from the income and receipts or other money
27 derived from the project financed with the proceeds of the bonds;

28 (2) exclusively from the income and receipts or other money
29 derived from designated projects whether or not they are financed in

1 whole or in part with the proceeds of the bonds; or

2 (3) from its income and receipts or other assets generally,
3 or a designated part or parts of them.

4 (b) Bonds shall be authorized by resolution of the board of direc-
5 tors, and be dated and shall mature as the resolution may provide,
6 except that no bond may mature more than 30 years from the date of its
7 issue. Bonds shall bear interest at the rate or rates, be in the de-
8 nominations, be in the form, either coupon or registered, carry the
9 registration privileges, be executed in the manner, be payable in the
10 medium of payment, at the place or places, and be subject to the terms
11 of redemption which the resolution or a subsequent resolution may pro-
12 vide.

13 (c) All bonds, regardless of form or character, shall be nego-
14 tiable instruments for all the purposes of the Uniform Commercial Code.

15 (d) All bonds may be sold at public or private sale in the manner,
16 for the price or prices, and at the time or times which the board of
17 directors may determine.

18 (e) The superior court shall have jurisdiction to hear and deter-
19 mine suits, actions or proceedings relating to the bank, including
20 suits, actions or proceedings brought to foreclose or otherwise enforce
21 a mortgage, pledge, assignment or security of a holder of its bonds or
22 by a trustee for or other representative of the holders.

23 Sec. 41.45.130. TRUST INDENTURES AND TRUST AGREEMENTS. In the
24 discretion of the board of directors an issue of bonds may be secured by
25 a trust indenture or trust agreement between the bank and a corporate
26 trustee (which may be a trust company, bank, or national banking asso-
27 ciation, with corporate trust powers, located inside or outside the
28 state) or by a secured loan agreement or other instrument or under a
29 resolution giving powers to a corporate trustee by means of which the

1 bank may

2 (1) make and enter into any and all the covenants and agree-
3 ments with the trustee or the holders of the bonds which the board of
4 directors may determine to be necessary or desirable, including, without
5 limitation, covenants, provisions, limitations and agreements as to

6 (A) the application, investment, deposit, use and dis-
7 position of the proceeds of bonds of the bank or of money or other
8 property of the bank or in which it has an interest;

9 (B) the terms and conditions upon which additional bonds
10 of the bank may be issued;

11 (2) pledge, mortgage or assign money, leases, agreements,
12 property or other assets of the bank either presently in hand or to be
13 received in the future, or both; and

14 (3) provide for any other matters of like or different char-
15 acter which in any way affect the security or protection of the bonds.

16 Sec. 41.45.140. VALIDITY OF PLEDGE. It is the intention of the
17 legislature that a pledge made in respect of bonds shall be valid and
18 binding from the time the pledge is made; that the money or property so
19 pledged and thereafter received by the bank shall immediately be subject
20 to the lien of the pledge without physical delivery or further act; and
21 that the lien of the pledge shall be valid and binding as against all
22 parties having claims of any kind in tort, contract or otherwise against
23 the bank irrespective of whether the parties have notice. Neither the
24 resolution, trust agreement nor any other instrument by which a pledge
25 is created need be recorded or filed under the provisions of the Uniform
26 Commercial Code to be valid, binding or effective against the parties.

27 Sec. 41.45.150. NONLIABILITY ON BONDS. (a) Neither the members
28 of the board of directors, the executive director, staff, nor a person
29 executing the bonds is liable personally on the bonds or subject to

1 personal liability or accountability by reason of the issuance of the
2 bonds.

3 (b) The bonds issued by the bank may not constitute an indebted-
4 ness or other liability of the state or of a political subdivision of
5 the state, except the bank but shall be payable solely from the income
6 and receipts or other funds or property of the bank. The bank may not
7 pledge the faith or credit of the state or of a political subdivision of
8 the state, except the bank, to the payment of a bond, and the issuance
9 of a bond by the bank shall not directly or indirectly or contingently
10 obligate the state or a political subdivision of the state to apply
11 money from, or levy or pledge any form of taxation whatever to the
12 payment of the bond.

13 Sec. 41.45.160. PLEDGE OF THE STATE. The state pledges to and
14 agrees with the holders of the bonds issued under this chapter and with
15 the federal agency or regional institution of the federal farm credit
16 system which loans or contributes funds in respect of a project, that
17 the state will not limit or alter the rights and powers vested in the
18 bank by this chapter to fulfill the terms of any contract made by the
19 bank with the holders or federal agency or regional institution of the
20 federal farm credit system, or in any way impair the rights and remedies
21 of the holders until the bonds, together with interest on them, with
22 interest on unpaid installments of interest, and all costs and expenses
23 in connection with any action or proceeding by or on behalf of the
24 holders, are fully met and discharged. The bank is authorized to in-
25 clude this pledge and agreement of the state, insofar as it refers to
26 holders of bonds of the bank in a contract with the holders, and insofar
27 as it relates to a federal agency or regional institution of the federal
28 farm credit system, in a contract with a federal agency or regional
29 institution of the federal farm credit system.

1 Sec. 41.45.170. EXEMPTION FROM TAXATION. The real and personal
2 property of the bank and its assets, income and receipts are declared to
3 be property of a political subdivision of the state and shall be exempt
4 from all taxes and special assessments of the state or a political
5 subdivision of the state, including, without limitation, all boroughs,
6 cities, municipalities, school districts, public utility districts, and
7 other taxing units. All bonds of the bank are declared to be issued by
8 a political subdivision of the state, to be for an essential public and
9 governmental purpose, and to be a public instrumentality, and the bonds,
10 and the interest on them, the income from them, the transfer of the
11 bonds, and all assets, income and receipts pledged to pay or secure the
12 payment of the bonds, or interest on them, shall at all times be exempt
13 from taxation by or under the authority of the state, except for inheri-
14 tance and estate taxes and taxes on transfers by or in contemplation of
15 death.

16 Sec. 41.45.180. BONDS LEGAL INVESTMENTS FOR FIDUCIARIES. The
17 bonds of the bank are securities in which all public officers and bodies
18 of the state and all municipalities and municipal subdivisions, all
19 insurance companies and associations and other persons carrying on an
20 insurance business, all banks, bankers, trust companies, savings banks,
21 savings associations, including savings and loan associations and build-
22 ing and loan associations, investment companies and other persons carry-
23 ing on a banking business, all administrators, guardians, executors,
24 trustees and other fiduciaries, and all other persons who are now or may
25 hereafter be authorized to invest in bonds or other obligations of the
26 state, may properly and legally invest funds including capital in their
27 control or belonging to them. Notwithstanding any other provisions of
28 law, the bonds of the bank are also securities which may be deposited
29 with and may be received by all public officers and bodies of this state

1 and all municipalities and municipal subdivisions for any purpose for
2 which the deposit of bonds or other obligations of the state is now or
3 may hereafter be authorized.

4 Sec. 41.45.190. CONFLICTS OF INTEREST. No member of the board of
5 directors may vote on a transaction of the bank under this chapter if he
6 is a party to the transaction.

7 Sec. 41.45.200. REPORTS AND PUBLICATIONS. The board of directors
8 shall publish an annual report to the bank's shareholders. The report
9 shall be made available to the public and shall include financial state-
10 ments audited by independent outside auditors, a statement of the amount
11 of money received by the bank from each source during the period
12 covered, a statement of the bank's investments, a description of the
13 bank's investment activity during the period covered by the report, an
14 analysis of economic and other effects of investment decisions on the
15 state's commercial fishing and agriculture industries, and any other
16 information the board believes would be of interest to the governor, the
17 legislature and the public. The board may also publish such other
18 reports as it considers desirable to carry out its purposes.

19 Sec. 41.45.210. POWERS OF THE BANK. The bank may

20 (1) make variable rate or fixed rate loans to resident com-
21 mercial fishermen and farmers or to corporations, partnerships, or joint
22 ventures 51 per cent of which are owned by commercial fishermen or
23 farmers who are state residents if the recipient of the loan is a share-
24 holder of the bank;

25 (2) make and alter bylaws necessary or desirable to carry out
26 its corporate functions;

27 (3) establish amortization plans for repayment of loans,
28 which may include extensions for poor fishing or farming seasons;

29 (4) enter into agreements with regional institutions of the

1 federal farm credit system, private lending institutions, and other
2 state agencies or agencies of the federal government, to carry out the
3 purposes of this chapter;

4 (5) adopt, alter, and use a corporate seal;

5 (6) sue and be sued in the name of the bank;

6 (7) issue bonds to carry out any of its corporate purposes
7 and powers;

8 (8) sell, lease as lessor or lessee, exchange, donate, convey
9 or encumber in any manner by mortgage or by creation of any other se-
10 curity interest, real or personal property owned by it, or in which it
11 has an interest, when, in the judgment of the board of directors, the
12 action is in furtherance of its corporate purposes;

13 (9) incur secondary liability by guaranty or endorsement of
14 the obligations of another corporation or legal entity when, in the
15 judgment of the board of directors, the action is in furtherance of its
16 corporate purposes;

17 (10) make loans as provided in (1) of this section in partici-
18 pation with financial institutions, and establish and regulate the terms
19 of the loans;

20 (11) make contracts and execute instruments necessary or con-
21 venient in the exercise of its corporate powers;

22 (12) acquire by purchase, lease, bequest, devise, gift, the
23 satisfaction of debts, or the foreclosure of mortgages, and hold, main-
24 tain, use, operate, and convey real or personal property;

25 (13) borrow money and issue secured and unsecured evidence of
26 indebtedness for a corporate purpose or to fund, refund, pay, or dis-
27 charge outstanding obligations, and enter agreements and contracts
28 concerning these obligations;

29 (14) secure the payment of its obligations by pledge or mort-

1 gage or other lien on its contracts, revenues, income, or property;

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

4 (16) provide technical services to shareholders; for the pur-
5 poses of this paragraph, "technical services" includes services that
6 will enhance the ability of the shareholder to obtain financial assis-
7 tance from the bank;

8 (17) make loans, as provided in (1) of this section, secured
9 by liens subordinate to valid first liens and security agreements
10 granted to a private lending institution;

11 (18) participate with state departments and agencies in for-
12 mulating policy and in planning for the development of commercial
13 fishing and agriculture in the state;

14 (19) do what is necessary or desirable to carry out the cor-
15 porate purposes and powers expressed or implied in this chapter.

16 Sec. 41.45.220. TRANSITION. Upon the repurchase of all the non-
17 voting, preferred shares initially issued by the bank and purchased by
18 agencies of the state, the provisions of this chapter lapse and the bank
19 may proceed to operate as a private cooperative corporation under the
20 terms of its bylaws and subject to the provisions of AS 10.15.005 -
21 10.15.600.