

Original sponsor: Poland

Offered: 4/26/78
Referred: Rules

1 IN THE SENATE

BY THE FINANCE COMMITTEE

2 HOUSE CS FOR SENATE BILL NO. 184 (Finance) am H

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 TENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act amending the Commercial Fishing Loan Act; and
7 providing for an effective date."

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

9 * Section 1. AS 16.10.310(a)(1)(A) is amended to read:

10 (A) individual commercial fishermen who have been state
11 residents for a continuous period of five years immediately pre-
12 ceding the date of application for a loan under secs. 300 - 370 of
13 this chapter and have had a crewmember or commercial fishing li-
14 cense under AS 16.05.480 or a permit under ch. 43 of this title for
15 any one [THREE] of the past five years, and who actively part-
16 icipated in the fishery during that period, for the repair,
17 restoration or upgrading of existing vessels and gear, for the
18 purchase of entry permits and gear, and for the construction and
19 purchase of vessels; and

20 * Sec. 2. AS 16.10.310(a)(1) is amended by adding a new subparagraph to
21 read:

22 (C) corporations, partnerships, or joint ventures, 100
23 per cent of which are owned by individual commercial fishermen who
24 have been state residents for a continuous period of five years
25 immediately preceding the date of application for a loan under
26 secs. 300 - 370 of this chapter and have had a crewmember or com-
27 mercial fishing license under AS 16.05.480 or a permit under ch. 43
28 of this title for any three of the past five years, and who
29 actively participated in the fishery during that period, for the

1 repair, restoration or upgrading of existing vessels and gear, for
2 the purchase of gear, and for the construction and purchase of
3 vessels.

4 * Sec. 3. AS 16.10.320 is repealed and re-enacted to read:

5 Sec. 16.10.320. LIMITATIONS ON LOANS. (a) Except as provided in
6 (b), (c), (d), and (e) of this section, commercial fishing loans granted
7 under secs. 300 - 370 of this chapter

8 (1) may not exceed \$500,000;

9 (2) may not exceed a term of 15 years;

10 (3) may not bear interest exceeding seven per cent;

11 (4) shall be secured by a first priority lien and appropriate
12 security agreement; and

13 (5) may not exceed 75 per cent of the appraised value of the
14 collateral used to secure the loan.

15 (b) A lien in favor of the state is not required for loans guar-
16 anteed fully by the federal government under the Federal Ship Financing
17 Act of 1972 (46 U.S.C. secs. 1271-1279(b); 86 Stat. 909), as amended.
18 In the case of a security agreement given to secure a loan made under
19 secs. 300 - 370 of this chapter and covering a vessel documented under
20 the laws of the United States and so long as the Ship Mortgage Act of
21 1920 (46 U.S.C. secs. 911-984; 41 Stat. 1000), as amended, and the
22 Shipping Act of 1916 (46 U.S.C. secs. 801-842; 39 Stat. 728), as
23 amended, remain ambiguous with respect to whether or not a state or
24 state agency qualifies as a citizen of the United States for purposes of
25 those Acts, the first lien requirement of this section may be satisfied
26 by the recordation and endorsement of a first preferred ship mortgage
27 under the Ship Mortgage Act of 1920, and by perfection of a security
28 interest under the Uniform Commercial Code - Secured Transactions (AS
29 45.05.690 - 45.05.794), if the approval of the Secretary of Commerce is

1 obtained under 46 U.S.C. sec. 839 for the transfer to the department of
2 the interest in a vessel documented under the laws of the United States.
3 In the case of a security agreement given to secure a loan made under
4 secs. 300 - 370 of this chapter and covering a vessel documented under
5 the laws of the United States, the first lien requirement of this sec-
6 tion may also be satisfied by use of a trust deed and bond issue under
7 it, if the trustee is a citizen of the United States and obtains a first
8 preferred ship mortgage on the vessel under the Ship Mortgage Act of
9 1920, and the approval of the Secretary of Commerce is obtained under 46
10 U.S.C. secs. 839 and 961 for the transfer of the bond or bonds to the
11 department if the trustee is not a trustee approved by the Secretary of
12 Commerce under 46 U.S.C. secs. 808, 835 and 961.

13 (c) A commercial fishing loan for the construction of a new
14 fishing vessel or the purchase of an existing fishing vessel may be
15 secured by a second priority lien or mortgage which is subordinate to a
16 valid first priority lien or mortgage in favor of a private lending
17 institution if the total financing does not exceed 75 per cent of the
18 appraised value of the collateral used to secure the loan. A loan
19 granted under this subsection

20 (1) shall be to an obligor who has previously obtained a
21 commitment for a commercial fishing loan from a private lending insti-
22 tution;

23 (2) may not exceed \$1,000,000 or 35 per cent of the total
24 purchase price of the fishing vessel, whichever amount is less;

25 (3) may not exceed a term of 15 years;

26 (4) may not bear interest exceeding seven per cent, except
27 that loans granted under this subsection may bear interest at a rate not
28 to exceed eight per cent if the commissioner determines that an increase
29 in the interest rate is necessary for the security of the loan.

1 (d) Except as provided in (e) of this section, no more than one
2 commercial fishing loan may be made to a person for the purchase, con-
3 struction, repair or upgrading of a fishing vessel or its gear. A loan
4 to an associate of the borrower is considered to be a loan to the bor-
5 rower. For the purposes of this section, "associate of the borrower"
6 means

7 (1) a corporation or other organization of which the borrower
8 is an officer, director or partner, or is, directly or indirectly, the
9 beneficial owner of 10 per cent or more of any class of equity securi-
10 ties;

11 (2) a person who is, directly or indirectly, the beneficial
12 owner of 10 per cent or more of any class of equity securities of the
13 borrower;

14 (3) a trust or other estate in which the borrower has a sub-
15 stantial beneficial interest or as to which the borrower serves as
16 trustee or in a similar fiduciary capacity;

17 (4) a relative or spouse of the borrower or a relative of the
18 spouse, who has the same home as the borrower;

19 (5) a person directly or indirectly controlling, controlled
20 by, or under common control with, the borrower.

21 (e) Two or more individual commercial fishermen who each satisfy
22 the requirements specified in sec. 310(a)(1)(A) of this chapter may
23 jointly obtain a commercial fishing loan for the construction of a
24 fishing vessel or the purchase of an existing fishing vessel. Loans
25 granted under this subsection

26 (1) may not exceed the amount specified in (a)(1) of this
27 section multiplied by the number of qualified commercial fishermen
28 applying for the loan;

29 (2) may not exceed a term of 15 years;

1 (3) shall be secured by a first priority lien and appropriate
2 security agreement;

3 (4) may not bear interest exceeding seven per cent; and

4 (5) may not exceed 75 per cent of the appraised value of the
5 collateral used to secure the loan.

6 * Sec. 4. AS 16.10 is amended by adding new sections to read:

7 Sec. 16.10.333. LOANS FOR PURCHASE OF ALASKA LIMITED ENTRY PER-
8 MITS. (a) Loans under sec. 320(a) of this chapter may be made to an
9 individual commercial fisherman for the purchase of a limited entry
10 permit upon certification by the commission that the fisherman is a
11 person who qualifies as a transferee for the permit under ch. 43 of this
12 title and the regulations adopted by the commission.

13 (b) Upon approval by the commissioner, the permit to be purchased
14 may be pledged as security for a loan under (a) of this section, if

15 (1) the certificate for the pledged permit lists the commis-
16 sioner as the legal owner of the permit;

17 (2) the certificate for the pledged permit lists the debtor
18 as the equitable owner of the permit;

19 (3) all annual permit cards issued under the pledged permit
20 list the name of the debtor;

21 (4) all obligations and responsibilities of a permit owner
22 are assumed by the debtor;

23 (5) co-signers or other sureties for performance under the
24 note are not vested with any rights in the pledged permit and their
25 obligation is limited to satisfaction of the note and payment of costs
26 directly incurred by the department in administering the loan.

27 (c) The commissioner is not liable for any act or omission re-
28 sulting from permit ownership nor will that act or omission affect his
29 title to the permit or his rights under it.

1 (d) Upon satisfaction of the note by the debtor, the commissioner
2 shall certify to the commission that the note has been satisfied.

3 (e) Upon certification as provided in (d) of this section, the
4 commission shall amend the permit certificate to list the debtor as the
5 legal owner.

6 Sec. 16.10.335. DEFAULT AND FORECLOSURE. (a) If the debtor
7 defaults upon a note for which a limited entry permit has been pledged
8 as security under sec. 333 of this chapter, the commissioner shall
9 provide the debtor, by registered or certified mail sent to his last
10 known address on file with the commissioner, with a notice of default
11 which includes

12 (1) a description of the security given for the note includ-
13 ing the number assigned to the pledged permit by the commission;

14 (2) the date upon which the default occurred;

15 (3) the amount of arrearages as of the date of the notice,
16 the total amount remaining on the note less unearned interest, and the
17 amount of daily interest;

18 (4) a statement that the debtor may, within 15 days of the
19 postmark date of the notice, request a hearing at which he may submit
20 evidence showing he has not defaulted;

21 (5) a statement that the note may be reinstated if brought
22 current within 60 days from the postmark date of the notice;

23 (6) a statement that the note may be paid in full less un-
24 earned interest within 90 days from the postmark date of the notice;

25 (7) the place where reinstatement or payment in full may be
26 made; and

27 (8) a notice in at least 10-point bold type stating: "IM-
28 PORTANT: YOUR FAILURE TO REINSTATE OR PAY THIS NOTE IN FULL BY THE DATE
29 SPECIFIED WILL RESULT IN A FORFEITURE OF ALL RIGHTS TO THE PERMIT AND

1 THE POSSIBILITY OF LEGAL ACTION BEING INSTITUTED AGAINST YOU."

2 (b) Upon the debtor's failure to reinstate or satisfy the note
3 within the time specified in (a) of this section, his equitable interest
4 is terminated by operation of law without further notice. Any entry
5 permit cards issued to him under the permit shall be cancelled immedi-
6 ately upon receipt by the commission of a certificate of termination
7 containing a copy of the notice required by (a) of this section issued
8 by the commissioner.

9 Sec. 16.10.337. DEFICIENCIES AND TRANSFER OF ENTRY PERMITS AFTER
10 FORECLOSURE. (a) Upon a foreclosure on an entry permit as provided in
11 sec. 335 of this chapter, the commissioner shall offer the commission a
12 right of first refusal if the permit is subject to a buy-back program
13 under AS 16.43.290 - 16.43.330 at a price equal to the amount outstand-
14 ing on the note plus any costs the department directly incurred in
15 administering the loan.

16 (b) If the commission does not exercise its right of first refusal
17 within 30 days after it receives the offer, or if the permit is not
18 subject to a buy-back program under AS 16.43.290 - 16.43.330, the de-
19 partment shall promptly notify the debtor of this fact. The debtor has
20 30 days from the postmark date of the notice to nominate a person quali-
21 fied to assume the note. The person nominated must qualify under the
22 requirements of sec. 333(a) of this chapter. If qualified, he may
23 assume all rights and liabilities of the original debtor.

24 (c) If the debtor is unable to nominate a qualified person to
25 assume the note under (b) of this section, the permit must be made
26 available to a qualified person, chosen as provided in this section, who
27 must assume the note subject to all rights and liabilities of the ori-
28 ginal debtor. The commission shall provide the commissioner with a list
29 of persons chosen by lottery who qualify as transferees of entry permits

1 under ch. 43 of this title and regulations adopted by the commission and
2 who have met the residency and commercial fishing participation require-
3 ments of sec. 310(a) of this chapter. The commissioner then shall
4 determine, in order of presentation, any remaining qualifications. The
5 commissioner shall allow the first applicant meeting all qualifications
6 to assume the note.

7 (d) Nothing in this section affects the right of the commissioner
8 to institute legal action for a deficiency resulting from a default on a
9 note given under sec. 333 of this chapter. In addition to any defi-
10 ciency, the debtor is liable for the costs of administering the note and
11 for costs and attorney fees.

12 Sec. 16.10.339. REGULATIONS. The commission, with the approval of
13 the department, shall adopt regulations to implement secs. 333 - 337 of
14 this chapter.

15 Sec. 16.10.342. SPECIAL ACCOUNT ESTABLISHED. (a) There is estab-
16 lished as a special account within the commercial fishing revolving loan
17 fund the foreclosure expense account.

18 (b) The commissioner may credit the foreclosure expense account
19 with money earned as a result of an increased interest rate on a com-
20 mercial fishing loan granted under sec. 320(c) of this chapter.

21 (c) The commissioner may expend money credited to the foreclosure
22 expense account when necessary to protect the state's security interest
23 in collateral on loans granted under secs. 300 - 370 of this chapter or
24 to defray expenses incurred during foreclosure proceedings after a
25 default by an obligor.

26 * Sec. 5. AS 16.10.360 is amended by adding new paragraphs to read:

27 (3) "commission" means the Commercial Fisheries Entry Commis-
28 sion;

29 (4) "debtor" means an individual commercial fisherman who

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either initially contracts for a loan under secs. 333 - 337 of this chapter or assumes a loan as provided in those sections.

* Sec. 6. AS 16.43.150(g) is amended to read:

(g) Except as provided in AS 16.10.333 - 16.10.337, an [AN] entry permit may not be:

(1) pledged, mortgaged, leased, or encumbered in any way;

(2) transferred with any retained right of repossession or foreclosure; or

(3) attached, distrained, or sold on execution of judgment or under any other process or order of any court.

* Sec. 7. AS 16.43.170(a) is amended to read:

(a) Except as provided in AS 16.10.333 - 16.10.337, entry [ENTRY] permits and interim-use permits are transferable only through the commission as provided in this section and sec. 180 of this chapter and under regulations adopted by the commission.

* Sec. 8. This Act takes effect July 1, 1978.