

Introduced: 4/23/80  
Referred: Finance

BY THE RULES COMMITTEE  
BY REQUEST

1 IN THE HOUSE

2 HOUSE BILL NO. 1024

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 ELEVENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act establishing a fishermen's mortgage and note  
7 program."

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

9 \* Section 1. FINDINGS AND PURPOSE. (a) The legislature finds

10 (1) the limitation of entry into the state fisheries required  
11 under AS 16.43 has resulted in substantial difficulty for many Alaskans in  
12 obtaining the necessary financing to enter the fisheries;

13 (2) entry permits, issued under AS 16.43, are transferable, and  
14 legislative studies have revealed a flow of the entry permits out of and away  
15 from the small, rural Alaska communities;

16 (3) the flow of entry permits out of and away from the small,  
17 rural communities undermines a major economic base of many of the communities;

18 (4) many small, rural Alaska communities have no alternative  
19 economic base to supply jobs and income to their residents;

20 (5) reliance on fisheries has traditionally and culturally been a  
21 way of life in many of these communities.

22 (b) It is the purpose of this Act to

23 (1) alleviate the difficulty in obtaining financing referred to  
24 in (a)(1) of this section; and

25 (2) alleviate the problems described in (a)(2) - (4) of this  
26 section by assisting fishermen in those small, rural communities, as well as  
27 fishermen throughout the state, to obtain the financing necessary to enter  
28 the state's fisheries and to rebuild the economies of the areas in which they  
29 live, thereby assisting in the preservation of a traditional way of life as

1 set out in (a)(5) of this section.

2 \* Sec. 2. AS 16.10 is amended by adding new sections to read:

3 ARTICLE 10. FISHERMEN'S MORTGAGE AND NOTE PROGRAM.

4 Sec. 16.10.650. FISHERMEN'S REVOLVING MORTGAGE AND NOTE FUND.

5 There is established in the Department of Commerce and Economic Develop-  
6 ment the fishermen's mortgage and note fund. The commissioner of com-  
7 merce and economic development shall administer the fund.

8 Sec. 16.10.660. POWERS AND DUTIES OF COMMISSIONER. (a) The  
9 commissioner may

10 (1) adopt regulations in accordance with the Administrative  
11 Procedure Act (AS 44.62), to implement AS 16.10.650 - 16.10.720;

12 (2) make and execute agreements, contracts, and other instru-  
13 ments necessary or convenient in the exercise of his powers and functions  
14 under AS 16.10.650 - 16.10.720, including contracts with any person,  
15 firm, corporation, governmental agency or other entity;

16 (3) procure insurance against a loss in connection with the  
17 operation of the fund;

18 (4) purchase notes and mortgages securing loans in accordance  
19 with (b) of this section;

20 (5) acquire real or personal property, or an interest in real  
21 or personal property, by purchase, transfer or foreclosure, when the  
22 acquisition is necessary or appropriate to protect a mortgage or note in  
23 which the fund has an interest; sell, transfer and convey that property  
24 to a buyer; and, if the sale, transfer or conveyance cannot be effected  
25 with reasonable promptness or at a reasonable price, rent or lease the  
26 property to a tenant pending the sale, transfer or conveyance;

27 (6) do all acts necessary, convenient or desirable to carry  
28 out the powers expressly granted or necessarily implied in AS 16.10.650 -  
29 16.10.720.

1 (b) In accordance with AS 16.10.670 - 16.10.720, the commissioner  
2 shall use the money in the fund to purchase mortgages and notes received  
3 by private financial institutions to secure loans described in AS 16.10.-  
4 670 - 16.10.720.

5 Sec. 16.10.670. LOAN PURPOSES. (a) Subject to (d) of this sec-  
6 tion, the commissioner may purchase a mortgage or note under AS 16.10.-  
7 660(b) if it secures a loan made to an individual for the following  
8 purposes:

- 9 (1) the repair, restoration or upgrading of an existing  
10 vessel or of gear;  
11 (2) the purchase of an entry permit;  
12 (3) the purchase of gear;  
13 (4) the construction and purchase of a vessel; or  
14 (5) the refinancing of outstanding loans of the borrower made  
15 for the purposes described in (1) - (4) of this subsection.

16 (b) The costs arising under a contract for the construction of a  
17 vessel between the time the contract is made and the time the vessel is  
18 documented are costs of construction and purchase under (a)(4) of this  
19 section;

20 (c) If the borrower enters into a contract for the purchase of a  
21 vessel and has also entered into a contract to sell his present vessel  
22 but has not received payment under the contract of sale, then the costs  
23 arising under the contract for the purchase of a vessel between the time  
24 the contract for the purchase of a vessel is entered into and the time  
25 the borrower will receive payment under the contract of sale are costs  
26 of construction and purchase under (a)(4) of this section.

27 (d) At least 51 percent of a loan described in (a) of this section  
28 shall be made for the purposes described in (a)(1) - (4) of this section  
29 and not more than 49 percent of the loan may be made for the purpose

1 described in (a)(5) of this section.

2 Sec. 16.10.680. ELIGIBILITY FOR LOANS. (a) The commissioner may  
3 purchase a mortgage or note under AS 16.10.660(b) if it secures a loan  
4 to an individual who meets one of the requirements of (b) of this section  
5 and who

6 (1) has been a resident of Alaska for at least five years;

7 (2) does not qualify for a loan for the purposes described in  
8 AS 16.10.670 under a state or federal loan program; and

9 (3) demonstrates to the satisfaction of the private financial  
10 institution which made the loan that he is reasonably likely to succeed  
11 as a commercial fisherman and to be able to repay the loan.

12 (b) In addition to the requirements of (a)(1) - (3) of this sec-  
13 tion, the commissioner may purchase a mortgage or note under AS 16.10.-  
14 660(b) only if it secures a loan to an individual who demonstrated to  
15 the satisfaction of the private financial institution which made the  
16 loan that

17 (1) because of his lack of training or the lack of employment  
18 opportunities in the area in which he resides, he does not have occupa-  
19 tional opportunities available to him other than commercial fishing; or

20 (2) he is economically dependent on commercial fishing for a  
21 livelihood and commercial fishing is a cultural and traditional way of  
22 life for him.

23 (c) The commissioner may not purchase a mortgage or note from a  
24 private financial institution under AS 16.10.660(b) if ownership of a  
25 fishing vessel is a prerequisite to obtaining a loan from the private  
26 financial institution for the purchase of an entry permit or is con-  
27 sidered by the private financial institution in determining the eligi-  
28 bility of an applicant for a loan for the purchase of an entry permit.

29 (d) The commissioner may not purchase a mortgage or note from a

1 private financial institution under AS 16.10.660(b) if the private  
2 financial institution requires an applicant for a loan for the purposes  
3 described in AS 16.10.670 to have a credit history.

4 (e) In determining whether the applicant is reasonably likely to  
5 be able to repay the loan under (a)(3) of this section, the private  
6 financial institution shall take into consideration the applicant's  
7 income from commercial fishing and from other sources.

8 Sec. 16.10.690. LOAN TERMS. (a) Except as provided in (c) of  
9 this section, the commissioner may not purchase a mortgage or note under  
10 AS 16.10.660(b) if it secures a loan which

11 (1) exceeds \$300,000;

12 (2) bears interest exceeding nine and one-half percent; or

13 (3) is not secured by a first priority lien and appropriate  
14 security agreement.

15 (b) The commissioner may not purchase a mortgage or note under  
16 AS 16.10.660(b) if it secures a loan which results in an outstanding  
17 debt of the borrower in excess of \$500,000. For purposes of this sub-  
18 section a loan to an associate of the borrower is considered to be a  
19 loan to the borrower. For the purposes of this subsection, "associate  
20 of the borrower" means

21 (1) a corporation or other organization of which the borrower  
22 is an officer, director or partner, or is, directly or indirectly, the  
23 beneficial owner of 10 percent or more of any class of equity securi-  
24 ties;

25 (2) a person who is, directly or indirectly, the beneficial  
26 owner of 10 percent or more of any class of equity securities of the  
27 borrower;

28 (3) a trust or other estate in which the borrower has a  
29 substantial beneficial interest or as to which the borrower serves as

1 trustee or in a similar fiduciary capacity.

2 (c) The commissioner may purchase a mortgage or note under AS 16.-  
3 10.660(b) if it secures a loan made to two or more individuals jointly  
4 who each satisfy the requirements specified in AS 16.10.680 for the  
5 construction of a fishing vessel or the purchase of an existing fishing  
6 vessel. A loan secured by a mortgage or note purchased under this  
7 subsection

8 (1) may not exceed the amount specified in (a)(1) of this  
9 section multiplied by the number of eligible individuals applying for  
10 the loan;

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

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

14 (4) may not bear interest exceeding nine and one-half per-  
15 cent.

16 (d) The commissioner may purchase a mortgage or note under AS 16.-  
17 10.660(b) if the terms of the loan secured by the mortgage or note allow  
18 for repayment of the loan in accordance with

19 (1) a schedule for repayment which provides for monthly  
20 amortized principal and interest payments; or

21 (2) an agreement based on a percentage of the borrower's  
22 gross income from fishing activities; however, an agreement under this  
23 paragraph shall provide that the monthly payment under the agreement may  
24 not be less than 50 percent of the monthly payment which would be due  
25 under the schedule prescribed in (1) of this subsection.

26 (e) The commissioner may purchase under AS 16.10.660(b) a mortgage  
27 or note secured by real or personal property of the borrower or of a  
28 person acting as the borrower's guarantor under AS 16.10.700.

29 (f) The commissioner may not purchase a mortgage or note under

1 AS 16.10.660(b) if the loan it secures exceeds 90 percent of the ap-  
2 praised value of the collateral used to secure the loan, except as  
3 provided in (g) of this section.

4 (g) The commissioner may purchase a note under AS 16.10.660(b) for  
5 a loan of up to 100 percent of the appraised value of the collateral  
6 used to secure the loan if

- 7 (1) the loan is made for the purchase of an entry permit; and  
8 (2) the borrower demonstrates to the satisfaction of the  
9 private financial institution which makes the loan that he has at least  
10 three years of experience as a commercial fisherman in the fishery to  
11 which the entry permit applies; as used in this paragraph, "three years  
12 of experience as a commercial fisherman in the fishery" means that for  
13 an accumulated total of three fishing seasons in the same fishery the  
14 person has actively participated in the commercial harvest of fish under  
15 the direction of a limited entry permit holder.

16 Sec. 16.10.700. GUARANTORS. A person may act as guarantor for a  
17 borrower whose mortgage or note is purchased by the commissioner under  
18 AS 16.10.660(b) if the borrower has insufficient collateral to secure a  
19 loan for the purposes described in AS 16.10.670(a). The loan agreement  
20 shall specifically describe the property of the guarantor to be used as  
21 collateral by the borrower and shall be signed by the guarantor and the  
22 borrower. The department shall provide the guarantor with a copy of all  
23 notices sent to the borrower by the department. If the loan is for the  
24 purchase of an entry permit, the guaranty by the guarantor may not  
25 constitute a lien, mortgage, or encumbrance on or pledge of the entry  
26 permit.

27 Sec. 16.10.710. PREQUALIFICATION FOR LOANS. (a) The commissioner  
28 may not purchase mortgages and notes from a private financial institu-  
29 tion under AS 16.10.660(b) unless the private financial institution

1 (1) agrees to accept an application for a loan for the pur-  
2 chase of an entry permit notwithstanding the fact that the applicant has  
3 not at the time of submitting the application located an entry permit to  
4 purchase; and

5 (2) agrees to comply with the procedure for handling the  
6 application described in (b) and (c) of this section.

7 (b) The private financial institution shall process loan applica-  
8 tions received under this section to determine the eligibility of an  
9 applicant for a loan for the purchase of an entry permit and shall  
10 notify the applicant of its determination.

11 (c) If the private financial institution determines that an appli-  
12 cant is eligible for a loan for the purchase of an entry permit, the  
13 private financial institution shall retain the application until the  
14 applicant locates an entry permit to purchase and informs the private  
15 financial institution of his decision to proceed with the loan applica-  
16 tion to purchase the entry permit. However, the private financial  
17 institution is not required to retain the application more than six  
18 months after it has been submitted. If the applicant locates an entry  
19 permit to purchase and elects to proceed with his loan application, he  
20 shall complete any parts of the application which were previously uncom-  
21 pleted because of the lack of an entry permit to purchase, and bring the  
22 application up to date so that the information in the application is  
23 current at the time of the loan. The private financial institution  
24 shall then proceed with the processing of the application.

25 Sec. 16.10.720. DEFINITIONS. In AS 16.10.650 - 16.10.720,

26 (1) "department" means the Department of Commerce and Eco-  
27 nomic Development;

28 (2) "fund" means the fishermen's mortgage and note fund.  
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