

HB

573

STATE OF ALASKA

JAY S. HAMMOND, GOVERNOR

DEPARTMENT OF COMMERCE &
ECONOMIC DEVELOPMENT

OFFICE OF THE COMMISSIONER

POUCH D - JUNEAU 99811

January 25, 1978

The Honorable Alvin Osterback
Chairman
House Resources Committee
Alaska State Legislature
Juneau, Alaska 99811

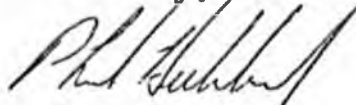
Dear Mr. Chairman:

Thank you for your letter of January 19 requesting our position on several bills which will be considered by your committee.

At this time, we will confine our comments to HB 581 (commercial fishing loans), as the other bills mentioned do not fall within our jurisdiction as presently written.

House Bill 581 will enable this department to make loans on limited entry permits and accept the permit as collateral. At the present time, we are receiving loan applications for permits. However, most fishermen do not have the collateral required to secure the loan. The proposed legislation will simplify this process. As evidenced by the fiscal note accompanying this bill at the time of introduction, we expect any fiscal impact to be minimal.

Yours truly,



H. Phillip Hubbard
Commissioner

cc: Pete Jeans, Director
Division of Business Loans

*Put in
files*

STATE OF ALASKA

JAY S. HAMMOND, GOVERNOR

COMMERCIAL FISHERIES ENTRY COMMISSION

POUCH KB - JUNEAU 99801

January 26, 1978

The Honorable Alvin Osterback
Chairman
House Resources Committee
Pouch V
Juneau, Alaska 99811

Dear Representative Osterback:

Re: Committee Substitute for HB 573

Sections 4 through 7 of CS for HB 573 were originally drafted with the concurrence of the Department of Commerce and the Commercial Fisheries Entry Commission as HB 581. As the substantive portions of 581 have been incorporated verbatim in CS for HB 573 sections 4 through 7, the Commission concurs with the Department of Commerce as to those specified sections of CS for HB 573 and endorses passage of these sections.

Sincerely,


John N Garner
Commissioner

THIS BILL RESOLUTION

has been prepared by the staff of the Legislative Affairs Agency in response to the request and at the direction of the sponsoring member or committee. The staff has attempted to place the document in proper legal and clerical form, subject to any special limitations or instructions of the requestor.

Any staff questions or comments as to legality, constitutionality, and form have been included in the memorandum addressed to the requestor and kept in the work file. If we may be of further assistance in this matter, please contact the Director of Legal Services or the Director of Research Services, as appropriate.

Delivered to requestor 1-30-78

LA-L 40

Original sponsors: Osterback and Snider

1 IN THE HOUSE

BY THE RESOURCES COMMITTEE

CS FOR HOUSE BILL NO. 573

IN THE LEGISLATURE OF THE STATE OF ALASKA

TENTH LEGISLATURE - SECOND SESSION

A BILL

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

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

* Section 1. AS 16.10.310(a)(1) is amended by adding a new subparagraph to read:

(C) corporations, partnerships, or joint ventures 51 per cent of which are owned by individual commercial fishermen who have been state residents for a continuous period of five years, and have had ~~a commercial fishing license~~ ^{any} for three years for the purchase, construction, repair or upgrading of fishing vessels or gear;

* Sec. 2. AS 16.10.320 is amended to read:

Sec. 16.10.320. LIMITATIONS ON LOANS. A commercial fishing loan may not exceed \$500,000 [\$150,000]. A loan may not run longer than 15 years or bear interest exceeding seven per cent, and it shall be secured by a first lien and appropriate security agreements, except that a lien in favor of the state is not required for loans guaranteed fully by the federal government under the Federal Ship Financing Act of 1972 (46 U.S.C. secs. 1271-1279b; 86 Stat. 909), as amended. In the case of a security agreement given to secure a loan made under secs. 300 - 370 of this chapter and covering a vessel documented under the laws of the United States and so long as the Ship Mortgage Act of 1920 (46 U.S.C. secs. 911-934; 41 Stat. 1000), as amended, and the Shipping Act of 1916 (46 U.S.C. secs 301-342; 39 Stat. 728), as amended, remain ambiguous with respect to whether or not a state or state agency qualifies as a

citizen of the United States for purposes of those Acts, the first lien requirement of this section may be satisfied by the recordation and endorsement of a first preferred ship mortgage under the Ship Mortgage Act of 1920, and by perfection of a security interest under the Uniform Commercial Code - Secured Transactions (AS 45.05.690 - 45.05.794), if the approval of the Secretary of Commerce is obtained under 46 U.S.C. sec. 839 for the transfer to the department of the interest in a vessel documented under the laws of the United States. In the case of a security agreement given to secure a loan made under secs. 300 - 370 of this chapter and covering a vessel documented under the laws of the United States, the first lien requirement of this section may also be satisfied by use of a trust deed and bond issue under it, if the trustee is a citizen of the United States and obtains a first preferred ship mortgage on the vessel under the Ship Mortgage Act of 1920, and the approval of the Secretary of Commerce is obtained under 46 U.S.C. secs. 839 and 961 for the transfer of the bond or bonds to the department if the trustee is not a trustee approved by the Secretary of Commerce under 46 U.S.C. secs. 808, 835 and 961. Loans may not exceed 75 per cent of the appraised value of the collateral used to secure the loan.

* Sec. 3. AS 16.10.320 is amended by adding a new subsection to read:

(b) No more than one commercial fishing loan may be made to any person for the purchase, construction, repair or upgrading of a fishing vessel or its gear. A loan to an associate of the borrower is considered to be a loan to the borrower. For the purposes of this section, "associate of the borrower" means

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

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

(3) a trust or other estate in which the borrower has a substantial beneficial interest or as to which the borrower serves as trustee or in a similar fiduciary capacity;

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

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

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

Sec. 16.10.333. LOANS FOR PURCHASE OF ALASKA LIMITED ENTRY PERMITS. (a) Loans under secs. 300 - 370 of this chapter may be made to an individual commercial fisherman for the purchase of a limited entry permit upon certification by the commission that the fisherman is a person who qualifies as a transferee for the permit under ch. 43 of this title and the regulations adopted by the commission.

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

(1) the certificate for the pledged permit lists the commissioner as the legal owner of the permit;

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

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

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

(5) co-signers or other sureties for performance under the note are not vested with any rights in the pledged permit and their

obligation is limited to satisfaction of the note and payment of costs directly incurred by the department in administering the loan.

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

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

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

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

(1) a description of the security given for the note including the number assigned to the pledged permit by the commission;

(2) the date upon which the default occurred;

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

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

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

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

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

3 (8) a notice in at least 10-point bold type stating: "IM-
4 PORTANT: YOUR FAILURE TO REINSTATE OR PAY THIS NOTE IN FULL BY THE DATE
5 SPECIFIED WILL RESULT IN A FORFEITURE OF ALL RIGHTS TO THE PERMIT AND
6 THE POSSIBILITY OF LEGAL ACTION BEING INSTITUTED AGAINST YOU."

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

14 Sec. 16.19.337. DEFICIENCIES AND TRANSFER OF ENTRY PERMITS AFTER
15 FORECLOSURE. (a) Upon a foreclosure on an entry permit as provided in
16 sec. 335 of this chapter, the commissioner shall offer the commission a
17 right of first refusal if the permit is subject to a buy-back program
18 under AS 16.43.290 - 16.43.330 at a price equal to the amount outstand-
19 ing on the note plus any costs the department directly incurred in
20 administering the loan.

21 (b) If the commission does not exercise its right of first refusal
22 within 30 days after it receives the offer, or if the permit is not
23 subject to a buy-back program under AS 16.43.290 - 16.43.330, the de-
24 partment shall promptly notify the debtor of this fact. The debtor has
25 30 days after receiving this notice to nominate a person qualified to
26 assume the note. The person nominated must qualify under the require-
ments of sec. 333(a) of this chapter. If qualified, he may assume all
rights and liabilities of the original debtor.

(c) If the debtor is unable to nominate a qualified person to

assume the note under (b) of this section, the permit must be made available to a qualified person, chosen as provided in this section, who must assume the note subject to all rights and liabilities of the original debtor. The commission shall provide the commissioner with a list of persons chosen by lottery who qualify as transferees of entry permits under ch. 43 of this title and regulations adopted by the commission and who have met the residency and commercial fishing participation requirements of sec. 310(a) of this chapter. The commissioner then shall determine, in order of presentation, any remaining qualifications. The commissioner shall allow the first applicant meeting all qualifications to assume the note.

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

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

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

(3) "commission" means the Commercial Fisheries Entry Commission;

(4) "debtor" means an individual commercial fisherman who 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 [A] 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. 130 of this chapter and under regulations adopted by the commission.

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

II. FISCAL DETAIL

Agency Affected Commerce & Economic Development

Program Category Affected Development

Budget Request Unit(s) Affected Division of Business Loans

EXPENDITURES (Thousands of Dollars)

	FY 77	FY 78	FY 79	FY 80	FY 81	FY 82
100 PERSONAL SERVICES			39.2	41.1	43.2	45.4
200 TRAVEL			Ø	Ø	Ø	Ø
300 CONTRACTUAL			10.0	10.5	11.0	11.6
400 COMMODITIES			1.0	1.0	1.1	1.1
500 EQUIPMENT			4.0	Ø	Ø	Ø
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC.						
TOTAL			54.2	52.6	55.3	58.1

FUNDING (Thousands of Dollars)

GENERAL FUND			54.2	52.6	55.3	58.1
FEDERAL FUNDS						
OTHER (Specify)						

POSITIONS

FULL TIME			2	2	2	2
PART TIME						
TEMPORARY						

III. ANALYSIS (See Fiscal Note Preparation Instructions, Section III)

The addition of two Loan Closers, one in Juneau and one in Anchorage, would free the Loan Examiners from handling these chores and would allow them more time to work on applications.

IV. DATE 1-23-78

PREPARED BY Pete Jeans, Director

AGENCY Business Loans

PHONE 2510

Original: Legislative Finance

cc: Budget and Management



PERSONAL SERVICES

Loan Closer I	Range 10	14,124	
Loan Closer II	Range 12	15,068	
		<u>39,192</u>	
FICA		1,826	
Health		1,972	
Benefits		<u>5,238</u>	
Total		39,193	39,193
Travel			0
Contractual - Revising Regulations and applications including printing			10,000
Commodities			1,000
Equipment			<u>4,000</u>
TOTAL			54.2

THE LEGISLATURE OF THE STATE OF ALASKA
TENTH LEGISLATURE

FISCAL NOTE

I. REQUEST

Bill/Resolution No. HB 573
 Title An Act amending the Commercial Fishing Loan Act
 Requested by _____ Date 1-17-78

II. FISCAL DETAIL

Agency Affected Commerce & Economic Development
 Program Category Affected Development
 Budget Request Unit(s) Affected Division of Business Loans

EXPENDITURES (Thousands of Dollars)

	FY 77	FY 78	FY 79	FY 80	FY 81	FY 82
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 COMMODITIES		NONE				
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC.						
TOTAL						

FUNDING (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER (Specify)						

POSITIONS

FULL TIME						
PART TIME						
TEMPORARY						

III. ANALYSIS (See Fiscal Note Preparation Instructions, Section III)

No fiscal impact.

IV. DATE 1-17-78 PREPARED BY *[Signature]*
 AGENCY Commerce & Economic Development
 PHONE 465-2570
 Original: Legislative Finance
 cc: Budget and Management
 Prime Sponsor (First Legislator Named)

STATE OF ALASKA
THE LEGISLATURE

POUCH Y - STATE CAPITOL
JUNEAU, ALASKA 99811
907-465-3800

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

January 18, 1978

SUBJECT: Commercial Fishing Loan Bills
(Work Order No. 4657)

TO: D.ann Nelson
House Resources Committee

FROM: Kenneth E. Vassar
Legislative Counsel *KEV*

You have requested a brief summary of the bills currently in the House Resources Committee which relate to the commercial fishing loan act. Those bills are HB 573, HB 574 and HB 581.

House Bill 573 would amend the commercial fishing loan act in two ways. First, it would allow the Department of Fish and Game to make loans to corporations, partnerships, or joint ventures. Under current law, the department may only make loans to individual fishermen. Second, it would allow loans made for the repair, restoration, or upgrading of existing vessels and gear or for the purchase of gear and the construction and purchase of fishing vessels to be secured by a second mortgage. Presently, the law requires a first mortgage as security for any commercial fishing loan.

House Bill 574 makes the following four changes in the present act:

- (1) it raises the maximum allowable loan from \$150,000 to \$300,000;
- (2) it increases the maximum term of a loan from 15 years to 20 years;
- (3) it lowers the interest charged from 7 percent to 5 percent;
- (4) it allows loans to be made for up to 90 percent of the appraised value of the collateral used to secure the loan; loans currently are limited to 75 percent.

Diann Nelson
Page 2
January 18, 1978

House Bill 581 adds sections to the loan act which would allow the department to make loans to individual commerical fishermen for the purchase of limited entry permits.

In summary, while each bill is related to the commercial fishing loan act, each addresses separate and independent issues. If I can provide any further assistance, please let me know.

KEV:jpd