

S B

496

Version Passed

Original sponsor: Rules/Governor

What L+C added is in  
yellow —

BY THE LABOR AND  
COMMERCE COMMITTEE

1 IN THE SENATE

2 CS FOR SENATE BILL NO. 496 (L&C)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 THIRTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to commercial fishing loans; 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) is amended to read:

10 (a) The department may

11 (1) make loans to

12 (A) individual commercial fishermen who have been  
13 state residents for a continuous period of two years immediately  
14 preceding the date of application for a loan under AS 16.10.300 -  
15 16.10.370 and have had a crewmember or commercial fishing license  
16 under AS 16.05.480 or a permit under AS 16.43 for the year imme-  
17 diately preceding the date of application and any other two of  
18 the past five years, and who actively participated in the fishery  
19 during those periods, for the purchase of entry permits;

20 (B) an individual who has been a state resident for a  
21 continuous period of two years immediately preceding the date of  
22 application for a loan under AS 16.10.300 - 16.10.370, who (i)  
23 because of lack of training or lack of employment opportunities  
24 in the area of residence does not have occupational opportunities  
25 available other than commercial fishing; or (ii) is economically  
26 dependent on commercial fishing for a livelihood and for whom  
27 commercial fishing has been a traditional way of life for the  
28 individual in Alaska; [,] for the repair, restoration or upgrad-  
29 ing of existing vessels and gear, for the purchase of entry

1 permits and gear, and for the construction and purchase of ves-  
2 sels;

3 (C) corporations, partnerships, or joint ventures, 100  
4 percent of which are owned by individual commercial fishermen who  
5 have been state residents for a continuous period of two years  
6 immediately preceding the date of application for a loan under  
7 AS 16.10.310(a)(1)(B) and have had a crewmember or commercial  
8 fishing license under AS 16.05.480 or a permit under AS 16.43 for  
9 the year immediately preceding the date of application and any  
10 other two of the past five years, and who actively participated  
11 in the fishery during that period, for the repair, restoration or  
12 upgrading of existing vessels and gear, for the purchase of gear,  
13 and for the construction and purchase of vessels;

14 (2) designate agents and delegate its powers to them as  
15 necessary;

16 (3) adopt regulations necessary to carry out its functions;

17 (4) establish amortization plans for repayment of loans,  
18 which may include extensions for poor fishing seasons or for adverse  
19 market conditions for Alaskan products;

20 (5) enter into agreements with private lending institu-  
21 tions, other state agencies, or agencies of the federal government, to  
22 carry out the purposes of AS 16.10.300 - 16.10.370;

23 (6) enter into agreements with other agencies or organiza-  
24 tions to create an outreach program to make loans under AS 16.10.300 -  
25 16.10.370 in rural areas of the state;

26 (7) allow an assumption of a loan if the applicant has been  
27 a state resident for a continuous period of two years immediatcly  
28 preceding the date of the request for an assumption.

29 \* Sec. 2. AS 16.10.320(a) is amended to read:

1 (a) A loan under AS 16.10.310 - 16.10.370

2 (1) may not exceed a term of 15 years, except for exten-  
3 sions granted under AS 16.10.310(a)(4);

4 (2) may not bear interest exceeding 10-1/2 percent;

5 (3) shall be secured by a first priority lien and appropri-  
6 ate security agreement; and

7 (4) may not exceed 90 percent of the appraised value of the  
8 collateral used to secure the loan, except that a loan granted under  
9 AS 16.10.333 for the purchase of an Alaska limited entry permit may  
10 not exceed an amount determined in accordance with (f) or (h) of this  
11 section.

12 \* Sec. 3. AS 16.10.320(d) is amended to read:

13 (d) The total of balances outstanding on loans [LOANS] made to a  
14 borrower under AS 16.10.310(a)(1)(A) may not exceed [A TOTAL OF]  
15 \$300,000. Loans made to a borrower under AS 16.10.310(a)(1)(B) or (C)  
16 may not exceed a total of \$100,000. A loan to an associate of the  
17 borrower is considered to be a loan to the borrower. For the purposes  
18 of this section, "associate of the borrower" means

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

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

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

29 \* Sec. 4. AS 16.10.320(e) is amended to read:

1 (e) Two or more individual commercial fishermen who each satisfy  
2 the requirements specified in AS 16.10.310(a)(1)(B) may jointly obtain  
3 a commercial fishing loan for the construction of a fishing vessel or  
4 the purchase of an existing fishing vessel. Loans granted under this  
5 subsection

6 (1) may not exceed the amount specified in (d) of this  
7 section multiplied by the number of qualified commercial fishermen  
8 applying for the loan;

9 (2) may not exceed a term of 15 years, except for exten-  
10 sions granted under AS 16.10.310(a)(4);

11 (3) shall be secured by a first priority lien and appropri-  
12 ate security agreement;

13 (4) may not bear interest exceeding 10-1/2 percent; and

14 (5) may not exceed 90 percent of the appraised value of the  
15 collateral used to secure the loan.

16 \* Sec. 5. AS 16.10.335 is amended to read:

17 Sec. 16.10.335. FAULT AND FORECLOSURE. (a) If the debtor  
18 defaults upon a note for which a limited entry permit has been pledged  
19 as security under AS 16.10.333 or [UNDER AS] 16.10.338, the commis-  
20 sioner shall provide the debtor, by both [REGISTERED OR] certified and  
21 first class mail sent to the debtor's last known address on file with  
22 the commissioner, with a notice of default that [WHICH] includes

23 (1) a description of the security given for the note in-  
24 cluding the number assigned to the pledged permit by the commission;

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

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

29 (4) a statement that the debtor may, within 15 days after

1 [OF] t<sup>2</sup> postmark date of the notice, request a hearing to submit  
2 evidence showing the debtor has not defaulted;

3 (5) a statement that the note may be reinstated if brought  
4 current within 60 days after [FROM] the postmark date of the notice;

5 (6) a statement that the note may be paid in full less  
6 unearned interest within 120 days after [FROM] the postmark date of  
7 the notice;

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

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

14 (b) In each case of a limited entry permit being pledged as  
15 security under AS 16.10.333 or 16.10.338, the debtor shall maintain on  
16 file with the department an address where notice of default is to be  
17 sent, if necessary, and where that notice will be timely received by  
18 the debtor.

19 (c) Upon presentation of evidence of mailing in accordance with  
20 (a) of this section, the receipt of the notice of default by the  
21 debtor will be presumed for all purposes. This presumption is re-  
22 buttable by presentation of evidence sufficient to demonstrate lack of  
23 receipt of notice through no fault of the debtor. Upon presentation  
24 of evidence sufficient to prove lack of receipt of notice through no  
25 fault of the debtor, the notice is a nullity.

26 (d) Upon good cause shown, the commissioner may waive any of the  
27 time limits in (a) of this section, if the department receives from  
28 the debtor or the debtor's representative a request for the waiver  
29 before the expiration of the time limit for which the waiver is

1 sought.

2 (e) Except as otherwise provided in (c) and (d) of this section,  
3 upon [UPON] the debtor's failure to satisfy the note within the time  
4 specified in (a)(6) of this section, the debtor's interest in the  
5 permit is terminated by operation of law without further notice. Any  
6 entry permit cards issued to the debtor under the permit shall be  
7 cancelled immediately upon receipt by the commission of a certificate  
8 of termination containing a copy of the notice required by (a) of this  
9 section issued by the commissioner.

10 \* Sec. 6. AS 16.10 is amended by adding a new section to read:

11 Sec. 16.10.336. DISPOSAL OF PROPERTY ACQUIRED BY DEFAULT OR  
12 FORECLOSURE. The department shall dispose of property acquired  
13 through default or foreclosure of a loan made under AS 16.10.300 -  
14 16.10.370. Disposal shall be made in a manner that serves the best  
15 interests of the state and may include the amortization of payments  
16 over a period of years, but may not be by lease.

17 \* Sec. 7. This Act takes effect immediately in accordance with AS 01.-  
18 10.070(c).  
19  
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21  
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STATE OF ALASKA 1984 LEGISLATIVE SESSION  
FISCAL NOTE

Revision Date: \_\_\_\_\_

REQUEST

Bill/Resolution No.: CSSB 416 (L&C)  
Title: An Act relating to Commercial Fishing Loans

Sponsor: Senate Labor & Commerce  
Requestor: Labor & Commerce Committee  
Date of Request: \_\_\_\_\_

FISCAL DETAIL

Agency Affected: Commerce & Economic Development  
Program Category Affected: Development

BRU, Program or Subprogram(s) Affected: Investments

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 84	FY 85	FY 86	FY 87	FY 88	FY 89
100 PERSONAL SERVICES		157.8	157.8	157.8	157.8	157.8
200 TRAVEL		7.9	7.9	7.9	7.9	7.9
300 CONTRACTUAL		12.3	12.0	12.0	12.0	12.0
400 SUPPLIES		1.2	1.2	1.2	1.2	1.2
500 EQUIPMENT		17.4				
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS						
800 MISCELLANEOUS						
TOTAL OPERATING		196.6	178.9	178.9	178.9	178.9

CAPITAL						
---------	--	--	--	--	--	--

REVENUE						
---------	--	--	--	--	--	--

FUNDING: (Thousands of Dollars)

GENERAL FUND		196.6	178.9	178.9	178.9	178.9
FEDERAL FUNDS						
OTHER						
TOTAL		196.6	178.9	178.9	178.9	178.9

POSITIONS:

FULL-TIME		4.0	4.0	4.0	4.0	4.0
PART-TIME						
TEMPORARY						

SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

ANALYSIS: Attach a separate page for analysis

Prepared By: Paul B. Arnold, Director  
Division: Investments

Phone: 465-2510

Date: 3/29/84

Approved by Commissioner: Richard A. Lyon  
Agency: Commerce and Economic Development

Date: 3/31/84

Distribution (by Agency preparing fiscal note):

Legislative Finance  
Legislative Sponsor  
Requestor  
Office of Management and Budget  
Impacted Agency(ies)

12/1/83

FISCAL NOTE ANALYSIS  
CSSB 496 (L&C)

100 Line

Processing of an additional 600 applications for assumptions and approval of 400 of those applications per year will create a marked increase in the workload of the division's Anchorage and Juneau regional offices. Two additional loan examiners and two loan closers would be required to handle the increased load and would be spread between the two regional offices. One time expenses would be incurred for equipment.

Consideration of these applications would also require significantly more meetings of the department's loan committees. This fiscal note assumes that this additional burden would be absorbed.

300 Line \$.3

Approval of this measure would require modification and reprinting of the existing loan application packet.

1.	POSITION TITLE Loan Examiner II		RANGE/STEP 17A	BARG. UNIT G			
2.	TYPE OF POSITION PFT	STAFF MONTHS 12		LOCATION Juneau			
3.							
4.	TYPE OF EXPENDITURE		AMOUNT				
	1	2	3				
	PERSONAL SERVICES						
5.	Salary	35,580					
6.	Benefits	10,719					
7.							
8.							
9.	TOTAL PERSONAL SERVICES	01	46,299				
10.	Travel	02	3,950				
11.	Contractual	03	3,000				
12.	Commodities	04	300				
13.	Equipment	05	4,555				
14.	Other						
15.	TOTAL COST		58,104				
ESTIMATES FOR OTHER LINE ITEMS ASSUME THAT THE NEW EMPLOYEE REQUIRED FOR THIS NEW LOAN PROGRAM WILL REQUIRE SUPPORT AT LEVELS SIMILAR TO THAT ACTUALLY BEING INCURRED BY THE DIVISION ON OTHER LOAN PROGRAMS.							
<u>Travel:</u> To inspect collateral, interview applicants, and inform public on program.							
<u>Contractual:</u> Space Rental: \$3,000 \$2.50 sq./ft. x 100 sq./ft. x 12 months RSA to Department of Administration							
<u>Commodities:</u> General supplies.							
<u>Equipment:</u> Calculator \$ 365 Microfiche Reader 300 Workstation 3,890 \$4,555							
	RECEIPT CODE	FUNDING SOURCE					
16.		Federal Receipts	1002				
17.		G.F. Match	1003				
18.		General Funds	1004	58,104			
19.		I-A Receipts	1005				
20.		Program Receipts	1028				
21.		Other					
FOR B&M USE ONLY							
4A KEY NUMBER _____							

Estimates for other line items assume that the new employee required for this new loan program will require support at levels similar to that actually being incurred by the division on other loan programs.

Travel: To inspect collateral, interview applicants, and inform public on program.

Contractual: Space Rental: \$3,000  
\$2.50 sq./ft. x 100 sq./ft. x 12 months RSA to Department of Administration

Commodities: General supplies.

Equipment: Calculator \$ 365  
Microfiche Reader 300  
Workstation 3,890  
\$4,555

**REQUEST FOR  
NEW POSITION**

AGENCY Commerce & Economic Development

PROGRAM Development

BRU Investments

COMPONENT \_\_\_\_\_

Page 1 of 4  
Date 3/29/84



CSSB 496 (L&C)

1.	POSITION TITLE Loan Examiner II		RANGE/STEP 17A	BARG. UNIT G			
2.	TYPE OF POSITION PFT	STAFF MONTHS 12		LOCATION Anchorage			
3.							
4.	TYPE OF EXPENDITURE		AMOUNT				
	1	2	3				
	PERSONAL SERVICES						
5.	Salary	35,580					
6.	Benefits	10,719					
7.							
8.							
9.	TOTAL PERSONAL SERVICES	01	46,299				
10.	Travel	02	3,950				
11.	Contractual	03	3,000				
12.	Commodities	04	300				
13.	Equipment	05	4,555				
14.	Other						
15.	TOTAL COST		58,104				
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<u>Travel:</u> To inspect collateral, interview applicants, and inform public on program.							
<u>Contractual:</u> Space Rental: \$3,000 \$2.50 sq./ft. x 100 sq./ft. x 12 months RSA to Department of Administration							
<u>Commodities:</u> General supplies.							
<u>Equipment:</u> Calculator \$ 365 Microfiche Reader 300 Workstation 3,890 \$4,555							
	RECEIPT CODE	FUNDING SOURCE					
16.		Federal Receipts	1002				
17.		G.F. Match	1003				
18.		General Funds	1004	58,104			
19.		I-A Receipts	1005				
20.		Program Receipts	1028				
21.		Other					
FOR B&M USE ONLY							
4A KEY NUMBER _____							

**REQUEST FOR  
NEW POSITION**

AGENCY Commerce & Economic Development  
 PROGRAM Development  
 BRU Investments  
 COMPONENT \_\_\_\_\_

Page 2 of 4  
 Date 3/29/84



CSSB 496 (I&C)

1.	POSITION TITLE Loan Closer II		RANGE/STEP 12A	BARG. UNIT GGU			
2.	TYPE OF POSITION PFT	STAFF MONTHS 12		LOCATION Juneau			
3.							
4.	TYPE OF EXPENDITURE		AMOUNT				
	1	2	3				
	PERSONAL SERVICES						
5.	Salary	24,396					
6.	Benefits	8,208					
7.							
8.							
9.	TOTAL PERSONAL SERVICES	01	32,604				
10.	Travel	02	-0-				
11.	Contractual	03	3,000				
12.	Commodities	04	300				
13.	Equipment	05	4,130				
14.	Other						
15.	TOTAL COST		40,034				
RECEIPT CODE                      FUNDING SOURCE							
16.		Federal Receipts	1002				
17.		G.F. Match	1003				
18.		General Funds	1004	40,034			
19.		I-A Receipts	1005				
20.		Program Receipts	1028				
21.		Other					
FOR B&M USE ONLY							
4A KEY NUMBER _____							

Estimates for other line items assume that the new employee required for this new loan program will require support at levels similar to that actually being incurred by the \_\_\_\_\_ on other loan programs.

Contractual: Space \_\_\_\_\_ \$3,000  
 \$2.50 \_\_\_\_\_ 100 sq./ft. x 12  
 months \_\_\_\_\_ Department of Administration

Commodities: General supplies.

Equipment: Calculator \$ 365  
 Typewriter 1,369  
 Workstation 2,396  
 \$4,130

**REQUEST FOR  
NEW POSITION**

AGENCY Commerce & Economic Development

PROGRAM Development

BRI Investments

COMPONENT \_\_\_\_\_

Page 3 of 4  
 Date 3/29/84



CSSB 496 (L&C)

1.	POSITION TITLE Loan Closer II		RANGE/STEP 12A	BARC. UNIT GGU			
2.	TYPE OF POSITION PFT	STAFF MONTHS 12		LOCATION Anchorage			
3.							
4.	TYPE OF EXPENDITURE		AMOUNT				
	1	2	3				
	PERSONAL SERVICES						
5.	Salary	24,396					
6.	Benefits	8,208					
7.							
8.							
9.	TOTAL PERSONAL SERVICES	01	32,604				
10.	Travel	02	-0-				
11.	Contractual	03	3,000				
12.	Commodities	04	300				
13.	Equipment	05	4,130				
14.	Other						
15.	TOTAL COST		40,034				
	CEIPT CODE	FUNDING SOURCE					
16.		Federal Receipts	1002				
17.		G.F. Match	1003				
18.		General Funds	1004	40,034			
19.		I-A Receipts	1005				
20.		Program Receipts	1028				
21.		Other					
FOR B&M USE ONLY							
4A KEY NUMBER _____							

Estimates for other line items assume that the new employee required for this new loan program will require support at level; similar to that actually being incurred by the division on other loan programs.

Contractual: Space Rental: \$3,000  
\$2.50 sq./ft. x 100 sq./ft. x 12 months RSA to Department of Administration

Commodities: General supplies.

Equipment: Calculator \$ 365  
Typewriter 1,369  
Workstation 2,396  
\$4,130

**REQUEST FOR  
NEW POSITION**

AGENCY Commerce & Economic Development

PROGRAM Development

BRU Investments

COMPONENT \_\_\_\_\_

Page 4 of 4

Date 3/21/84

CSSB 496 (L&C)

**Sec. 16.10.300. Declaration of policy.** It is the policy of the state, under AS 16.10.300 — 16.10.370, to promote the rehabilitation of the state's fisheries, the development of a predominantly resident fishery, and the continued maintenance of commercial fishing gear and vessels throughout the state by means of long-term low interest loans. (§ 1 ch 134 SLA 1972; am § 1 ch 54 SLA 1973; am § 1 ch 128 SLA 1975)

**Sec. 16.10.310. Powers of the department.** (a) The department may

(1) make loans to

(A) individual commercial fishermen who have been state residents for a continuous period of two years immediately preceding the date of application for a loan under AS 16.10.300 — 16.10.370 and have had a crewmember or commercial fishing license under AS 16.05.480 or a permit under AS 16.43 for the year immediately preceding the date of application and any other two of the past five years, and who actively participated in the fishery during those periods, for the purchase of entry permits;

(B) an individual who has been a state resident for a continuous period of two years immediately preceding the date of application for a loan under AS 16.10.300 — 16.10.370, who

(i) because of lack of training or lack of employment opportunities in the area of residence does not have occupational opportunities available other than commercial fishing; or

(ii) is economically dependent on commercial fishing for a livelihood and for whom commercial fishing has been a traditional way of life for the individual in Alaska, for the repair, restoration or upgrading of existing vessels and gear, for the purchase of entry permits and gear, and for the construction and purchase of vessels;

(C) corporations, partnerships, or joint ventures, 100 percent of which are owned by individual commercial fishermen who have been state residents for a continuous period of two years immediately preceding the date of application for a loan under AS 16.10.310(a)(1)(B) and have had a crewmember or commercial fishing license under AS 16.05.480 or a permit under AS 16.43 for the year immediately preceding the date of application and any other two of the past five years, and who actively participated in the fishery during that period, for the repair, restoration or upgrading of existing vessels and gear, for the purchase of gear, and for the construction and purchase of vessels;

(2) designate agents and delegate its powers to them as necessary;

(3) adopt regulations necessary to carry out its functions;

(4) establish amortization plans for repayment of loans, which may include extensions for poor fishing seasons or for adverse market conditions for Alaskan products;

*Refers to extending beyond 15 yrs - pg 3+4*

(5) enter into agreements with private lending institutions, other state agencies, or agencies of the federal government, to carry out the purposes of AS 16.10.300 — 16.10.370;

(6) enter into agreements with other agencies or organizations to create an outreach program to make loans under AS 16.10.300 — 16.10.370 in rural areas of the state.

(b) The department shall consult with the Department of Fish and Game on regulations and procedures established under this chapter. (§ 1 ch 134 SLA 1972; am § 3 ch 54 SLA 1973; am § 3 ch 128 SLA 1975; am § 1 ch 154 SLA 1977; am § 3 ch 83 SLA 1978; am §§ 2 — 7 ch 72 SLA 1979; am § 7 ch 113 SLA 1982; am § 1 ch 7 SLA 1983)

**Effect of amendments.** — The 1979 amendment substituted "one of the past five years" for "three of the past five years" in paragraph (1)(C) of subsection (a).

The 1982 amendment in subsection (a), deleted "for the repair, restoration or upgrading of existing vessels and gear" following "during that period" and "and gear, and for the construction and purchase of vessels; and" following "purchase of entry permit" in subparagraph (1)(A), added present subparagraph (1)(B), substituted "AS 16.10.310(a)(1)(B)" for "AS 16.10.300 — 16.10.370" in subparagraph (1)(C), deleted "rules and" preceding "regulations" in paragraph (3), added "or for adverse market conditions for Alaskan products" to the end of paragraph (4), and added paragraph (6).

**Effect of amendments.** — The 1983 amendment in (a)(1)(A) substituted "two years" for "five years", substituted "the year immediately preceding the date of application and any other two of the past five years" for "any one of the past five years" and made a conforming tense change; in (a)(1)(B), in the introductory language substituted "two years" for "five years" and in (ii) inserted "for whom" preceding "commercial fishing;" and in (a)(1)(C) substituted "two years" for "five years" and substituted "the year immediately preceding the date of application and any other two of the past five years" for "any one of the past five years."

**Editor's notes.** — Section 71, ch. 106, SLA 1980 provides that after July 1, 1981, "no further loans may be made under AS 16.10.310 and 16.10.320(a) except for loans authorized under AS 16.10.333 pursuant to AS 16.10.310 and 16.10.320(a)."

Section 64, ch. 113, SLA 1982, provides: "A borrower who receives a loan before the effective date of this Act [June 25, 1982] under AS 16.10.650 — 16.10.720 [now repealed] may receive a loan under

(1) AS 16.10.310(a)(1)(A) after the effective date of this Act if the total of the loans received by the borrower under AS 16.10.650 — 16.10.720 and AS 16.10.310(a)(1)(A) does not exceed \$300,000;

(2) AS 16.10.310(a)(1)(B) or (C) if the total of the loans received by the borrower under AS 16.10.650 — 16.10.720 and AS 16.10.310(a)(1)(B) or (C) does not exceed \$100,000."

Section 65 of ch. 113, provides: "A borrower who receives a loan under AS 16.10.310 before the effective date of this Act [June 25, 1982] may receive a loan under

(1) AS 16.10.310(a)(1)(B) or (C) after the effective date of this Act if the total of the loans received by the borrower under AS 16.10.310 before the effective date of this Act and AS 16.10.310(a)(1)(B) or (C) after the effective date of this Act does not exceed \$100,000;

(2) AS 16.10.310(a)(1)(A) after the effective date of this Act if the total of the loans received under AS 16.10.310 before the effective date of this Act and AS 16.10.310(a)(1)(A) after the effective date of this Act does not exceed \$300,000."

Section 66 of ch. 113 provides: "Notwithstanding AS 16.10.320(i) and secs. 64 and 65 of this Act the total of all loans that a borrower receives under (1) AS 16.10.650 — 16.10.720; (2) AS 16.10.310 before the effective date of this Act [June 25, 1982]; and (3) AS 16.10.310 after the effective date of this Act, may not exceed \$300,000."

Section 67 of ch. 113 provides: "In secs. 64-66 of this Act a loan to an associate of a borrower is considered to be a loan to the borrower. In this section 'associate of a borrower' has the same meaning set out under AS 16.10.320(d)."

**Opinions of attorney general.** — Five-year residency requirements pro-



STATE OF ALASKA  
OFFICE OF THE GOVERNOR  
JUNEAU

February 13, 1984

The Honorable Jalmar Kerttula  
Alaska State Senate  
Pouch V  
Juneau, AK 99811

Dear Senator Kerttula:

Under the authority of art. III, sec. 18, of the Alaska Constitution, I am transmitting a bill relating to the default provisions of the commercial fishing loan program. This bill will permit the Department of Commerce and Economic Development to take a more flexible approach in dealing with persons who are technically in default on their commercial fishing loans in specific cases where the forfeiture of an individual's commercial fishing permit is neither desirable nor advantageous to the state. The bill also makes some minor clarifications, such as changing "of" to "after" in AS 16.10.335(a)(4) and changing "from" to "after" in AS 16.10.335(a)(5) and (6).

The bill is designed to deal with two specific cases. First, if a commercial fisherman is able to show that he or she never received notice of default under the loan, that person would be able to present evidence to the department that he or she failed to receive the notice, and the department would then dismiss the default proceedings. Second, if an individual fisherman contacts the department to state that he or she is unable, for financial or other reasons, to make payment in accordance with the default statute, but does not wish to sacrifice his permit and truly wants to cooperate with the department, the department would be able to negotiate with the individual in order to attempt to work out some alternative satisfactory to both the fisherman and the state.

GOVERNOR'S SUMMARY

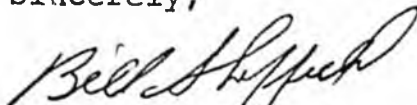
The amendment to AS 16.10.335(a) requires the notice of default, sent by the Department of Commerce and Economic Development to the debtor, to be sent by both certified and first class mail, rather than by just registered or certified mail. This in fact conforms with present practice, and past history indicates that many individuals receive first class mail while refusing to accept registered or certified mail. The proposed change, therefore, in comparison to current statutory requirements, will increase the probability that the debtor will receive the default notice. The new language in AS 16.10.335(b) requires each fisherman to keep a current address on file with the department.

New AS 16.10.335(c) provides that if the department follows the procedures of (a) of that section, the department, and, after that, the courts, will presume that the debtor received the default notice, and it will be the debtor's responsibility to prove otherwise. Absent evidence that the debtor did not receive the notice, the department would still be able to continue with its default proceedings. However, if such evidence is presented, the default proceedings could be terminated.

New AS 16.10.335(d) gives the department the right to waive the time limits provided in AS 16.10.335(a) (15 days to request a hearing, 60 days to bring the note current, and 120 days to pay the note in full), if a request for a waiver is made by the debtor to the department before the expiration of the relevant time limit. Thus, if an individual calls the department on day 59 and asks that he be given an extension in which to bring his note current, the department would have the discretion to grant this extension. On the other hand, if someone contacts the department on day 121 and requests an extension, no waiver would be possible (assuming that there is no evidence that the debtor failed to receive the notice). This avoids the potential problem of numerous unwarranted requests, and also allows the department to proceed with default proceedings without the risk that its actions will be overturned later.

This bill will allow fisherman who have defaulted on their loans to avoid forfeiture of their commercial fishing permits if exceptional circumstances warrant their retention of the permit. I urge your support of, and prompt action on, this measure.

Sincerely,

A handwritten signature in cursive script, appearing to read "Bill Sheffield".

Bill Sheffield  
Governor

STATE OF ALASKA 1984 LEGISLATIVE SESSION  
FISCAL NOTE

Revision Date: 12/13/83

REQUEST  
Bill/Resolution No.: \_\_\_\_\_  
Title: An Act relating to the CF  
Loan Fund  
Sponsor: Rules  
Requestor: Governor  
Date of Request: \_\_\_\_\_

FISCAL DETAIL  
Agency Affected: Commerce & Econ. Development  
Program Category Affected: Economic Development  
BRU, Program or Subprogram(s) Affected:  
Accounting and Collections

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 84	FY 85	FY 86	FY 87	FY 88	FY 89
OPERATING						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 SUPPLIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS						
800 MISCELLANEOUS						
TOTAL OPERATING	0	0	0	0	0	0

CAPITAL						
---------	--	--	--	--	--	--

REVENUE						
---------	--	--	--	--	--	--

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

No fiscal impact.

ANALYSIS: Attach a separate page for analysis

Prepared By: Margaret I. Hamley *MH* Phone: 465-2555  
Division: Accounting and Collections *PK* Date: 12-13-83  
Approved by Commissioner: Richard A. Lyall *RL* Date: 1/3/84  
Agency: Commerce and Economic Development

Distribution (by Agency preparing fiscal note):

- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)

12/1/83

FISCAL NOTE

STATE OF ALASKA 1984 LEGISLATIVE SESSION  
FISCAL NOTE

Revision Date: March 27, 1984

REQUEST

Bill/Resolution No.: CSSB 496  
 Title: An Act relating to the  
CF loan fund  
 Sponsor: \_\_\_\_\_  
 Requestor: \_\_\_\_\_  
 Date of Request: \_\_\_\_\_

FISCAL DETAIL

Agency Affected: Commerce & Economic Development  
 Program Category Affected: \_\_\_\_\_  
Economic Development  
 BRU, Program or Subprogram(s) Affected: \_\_\_\_\_  
Accounting & Collections BRU  
DP BRU

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 84	FY 85	FY 86	FY 87	FY 88	FY 89
OPERATING						
100 PERSONAL SERVICES		61.6	64.7	67.9	71.3	79.9
200 TRAVEL		.0	.0	.0	.0	.0
300 CONTRACTUAL		7.0	7.3	8.6	11.2	14.7
400 SUPPLIES		1.2	1.4	1.6	1.8	2.0
500 EQUIPMENT		7.8	.0	.0	.0	.0
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS						
800 MISCELLANEOUS						
TOTAL OPERATING		77.6	73.4	78.1	84.3	96.6
CAPITAL						
REVENUE		395.0	445.0	495.0	545.0	595.0

FUNDING: (Thousands of Dollars)

GENERAL FUND		77.6	73.4	78.1	84.3	96.6
FEDERAL FUNDS						
OTHER						
TOTAL		77.6	73.4	78.1	84.3	96.6

POSITIONS:

FULL-TIME		2.0	2.0	2.0	2.0	2.0
PART-TIME						
TEMPORARY						

SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

General Funds: earnings from CF loan fund.

ANALYSIS: Attach a separate page for analysis

Prepared By: Margaret I. Hanley, Director Phone: 465-2555  
 Division: Accounting & Collections Date: 3-27-84  
 Approved by Commissioner: Richard A. Lyon Date: 3/28/84  
 Agency: Commerce and Economic Development

Distribution (by Agency preparing fiscal note):

Legislative Finance  
 Legislative Sponsor  
 Requestor  
 Office of Management and Budget  
 Impacted Agency(ies)

12/1/83

FISCAL NOTE CSSB 496

EXPENDITURE ANALYSIS

It is absolutely essential that this fiscal note remain intact if the portion of CSSB 496 relating to assumptions becomes law, due to the impact that will have upon our workload. (It would be impossible to administer this statute without these minimal additional resources.)

Because of the complexity of commercial fishing loans relative to the other 11 loan programs this division administers, allowing assumptions will impact our records management workload dramatically. Currently, C.F. filing is three times heavier than that for our other loan programs. (This division manages loan files for all three regional Division of Investments' offices, as well as our own division.) One additional records position, who will also be required to assist with increased phone calls and increased insurance workload, is the absolute minimum the division will require in the Daily Operations Section.

One Accounting Technician II is also requested, as an absolute minimum, in the Customer Service/Subsidiary Ledger Section. This position is needed in order to respond to requests for C.F. account information generated by Division of Investments (relating to assumptions), as well as to correctly process C.F. assumptions within the subsidiary accounting system. Approximately 10% of this position's time will be spent processing refinancing of repossessed collateral through the subsidiary system.

EXPENDITURE DETAIL

PERSONAL SERVICES

	<u>FY '85</u>	
Accounting Technician II (Range 14A) (Subsidiary Ledger/Customer Service Assumption and Repo Accounting)	Salary	\$27,000
	Benefits	8,100
Clerk IV (Range 09B) Records Management/Filing Insurance/Phones	Salary	\$20,400
	Benefits	<u>6,120</u>
TOTAL 100		\$61,620

CONTRACTUAL

Data Processing Chargeback	\$ 1,100
Long Distance	200
Postage	100
Printing	500
Space Expense	<u>5,100</u>
TOTAL 300	\$ 7,000

COMMODITIES

Payment Coupon Forms	\$ 700	
Microfiche Supplies	<u>500</u>	
TOTAL 400		\$ 1,200

EQUIPMENT

Calculator 2 @ \$300/ea	\$ 600	
Microfiche Reader 2 @ \$300/ea	600	
Workstation 2 @ \$2,800/ea	5,600	
Telephones 2 @ \$500	<u>1,000</u>	
TOTAL		\$7,800

FISCAL NOTE CSSB 496

REVENUE ANALYSIS

1. Assumes an estimated 600 applicants and 400 approvals of assumptions per year, with an average assumed balance of \$67,500:
  - a. Nonrefundable application fee  $\$125 \times 600 = \$75,000/\text{year}$
  - b. Assumption fee (one-time) of 1% of the assumed balance  
 $\$67,500 \times .01 \times 400 = \$270,000/\text{year}$
2. Assumes 50% recovery of losses on commercial fishing loans due to ability to finance and reamortize repossessed vessels and other collateral.
  - a. Example: Loss of \$590.7 in FY '84  
 $\$590,700 \times .50 = \$295,350$   
 Reamortized over 10 years at 10.5% (est.) = \$49,105/year for 10 years.
  - b. Using this example, this analysis assumes an increase in cash flow of \$50,000 per year in loss recovery.

<u>Loss/Revenue</u> <u>Year/Year</u>	<u>FY '85</u>	<u>FY '86</u>	<u>FY '87</u>	<u>FY '88</u>	<u>FY '89</u>
FY '84	50.0	50.0	50.0	50.0	50.0
FY '85		50.0	50.0	50.0	50.0
FY '86			50.0	50.0	50.0
FY '87				50.0	50.0
FY '88					50.0
Assumption Application Fees	75.0	75.0	75.0	75.0	75.0
Assumption fees	<u>270.0</u>	<u>270.0</u>	<u>270.0</u>	<u>270.0</u>	<u>270.0</u>
Total Est. Revenue	\$395.0	\$445.0	\$495.0	\$545.0	\$595.0

STATE OF ALASKA 1984 LEGISLATIVE SESSION  
FISCAL NOTE

Revision Date: \_\_\_\_\_

REQUEST

Bill/Resolution No.: CSSB 496 (L&C)  
 Title: An Act relating to Commercial Fishing Loans  
 Sponsor: Senate Labor & Commerce  
 Requestor: Labor & Commerce Committee  
 Date of Request: \_\_\_\_\_

FISCAL DETAIL

Agency Affected: Commerce & Economic Development  
 Program Category Affected: Development  
 BRU, Program or Subprogram(s) Affected: Investments

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 84	FY 85	FY 86	FY 87	FY 88	FY 89
OPERATING						
100 PERSONAL SERVICES		157.8	157.8	157.8	157.8	157.8
200 TRAVEL		7.9	7.9	7.9	7.9	7.9
300 CONTRACTUAL		12.3	12.0	12.0	12.0	12.0
400 SUPPLIES		1.2	1.2	1.2	1.2	1.2
500 EQUIPMENT		17.4				
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS						
800 MISCELLANEOUS						
TOTAL OPERATING		196.6	178.9	178.9	178.9	178.9

CAPITAL						
---------	--	--	--	--	--	--

REVENUE						
---------	--	--	--	--	--	--

FUNDING: (Thousands of Dollars)

GENERAL FUND		196.6	178.9	178.9	178.9	178.9
FEDERAL FUNDS						
OTHER						
TOTAL		196.6	178.9	178.9	178.9	178.9

POSITIONS:

FULL-TIME		4.0	4.0	4.0	4.0	4.0
PART-TIME						
TEMPORARY						

SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

ANALYSIS: Attach a separate page for analysis

Prepared By: Paul B. Arnoldt, Director

Phone: 465-2510

Division: Investments

Date: 3/29/84

Approved by Commissioner: Richard A. Lyon

Date: \_\_\_\_\_

Agency: Commerce and Economic Development

Distribution (by Agency preparing fiscal note):

Legislative Finance  
 Legislative Sponsor  
 Requestor  
 Office of Management and Budget  
 Impacted Agency(ies)

12/1/83

FISCAL NOTE ANALYSIS  
CSSB 496 (L&C)

100 Line

Processing of an additional 600 applications for assumptions and approval of 400 of those applications per year will create a marked increase in the workload of the division's Anchorage and Juneau regional offices. Two additional loan examiners and two loan closers would be required to handle the increased load and would be spread between the two regional offices. One time expenses would be incurred for equipment.

Consideration of these applications would also require significantly more meetings of the department's loan committees. This fiscal note assumes that this additional burden would be absorbed.

300 Line \$.3

Approval of this measure would require modification and reprinting of the existing loan application packet.

1.	POSITION TITLE Loan Examiner II		RANGE/STEP 17A	BARG. UNIT G	
2.	TYPE OF POSITION PFT	STAFF MONTHS 12		LOCATION Juneau	
3.					
4.	TYPE OF EXPENDITURE		AMOUNT		
	1	2	3		
	PERSONAL SERVICES				
5.	Salary	35,580			
6.	Benefits	10,719			
7.					
8.					
9.	TOTAL PERSONAL SERVICES	01	46,299		
10.	Travel	02	3,950		
11.	Contractual	03	3,000		
12.	Commodities	04	300		
13.	Equipment	05	4,555		
14.	Other				
15.	TOTAL COST		58,104		
ESTIMATES FOR OTHER LINE ITEMS					
16.	RECEIPT CODE	FUNDING SOURCE			
17.		Federal Receipts 1002			
18.		G.F. Match 1003			
19.		General Funds 1004		58,104	
20.		I-A Receipts 1005			
21.		Program Receipts 1028			
		Other			
FOR B&M USE ONLY					
4A KEY NUMBER _____					

Estimates for other line items assume that the new employee required for this new loan program will require support at levels similar to that actually being incurred by the division on other loan programs.

Travel: To inspect collateral, interview applicants, and inform public on program.

Contractual: Space Rental: \$3,000  
\$2.50 sq./ft. x 100 sq./ft. x 12 months RSA to Department of Administration

Commodities: General supplies.

Equipment: Calculator \$ 365  
Microfiche Reader 300  
Workstation 3,890  
\$4,555

**REQUEST FOR  
NEW POSITION**

AGENCY Commerce & Economic Development  
PROGRAM Development  
BRU Investments  
COMPONENT \_\_\_\_\_

Page 1 of 4  
Date 3/29/84



CSSB 496 (L&C)

1.	POSITION TITLE Loan Examiner II		RANGE/STEP 17A	BARG. UNIT G	
2.	TYPE OF POSITION PFT	STAFF MONTHS 12		LOCATION Anchorage	
3.					
4.	TYPE OF EXPENDITURE		AMOUNT		
	1	2	3		
	PERSONAL SERVICES				
5.	Salary	35,580			
6.	Benefits	10,719			
7.					
8.					
9.	TOTAL PERSONAL SERVICES	01	46,299		
10.	Travel	02	3,950		
11.	Contractual	03	3,000		
12.	Commodities	04	300		
13.	Equipment	05	4,555		
14.	Other				
15.	TOTAL COST		58,104		
ESTIMATES FOR OTHER LINE ITEMS					
<p>Estimates for other line items assume that the new employee required for this new loan program will require support at levels similar to that actually being incurred by the division on other loan programs.</p> <p><u>Travel:</u> To inspect collateral, interview applicants, and inform public on program.</p> <p><u>Contractual:</u> Space Rental: \$3,000 \$2.50 sq./ft. x 100 sq./ft. x 12 months RSA to Department of Administration</p> <p><u>Commodities:</u> General supplies.</p> <p><u>Equipment:</u> Calculator \$ 365 Microfiche Reader 300 Workstation 3,890 \$4,555</p>					
FUNDING SOURCE					
16.	RECEIPT CODE	FUNDING SOURCE			
17.		Federal Receipts 1002			
18.		G.F. Match 1003			
19.		General Funds 1004	58,104		
20.		I-A Receipts 1005			
21.		Program Receipts 1028			
		Other			
FOR B&M USE ONLY					
4A KEY NUMBER _____					

**REQUEST FOR  
NEW POSITION**

AGENCY Commerce & Economic Development

PROGRAM Development

BRII Investments

COMPONENT \_\_\_\_\_

Page 2 of 4  
Date 3/29/84

CSSB 496 (L&C)



1.	POSITION TITLE Loan Closer II		RANGE/STEP 12A	BARG. UNIT GGU			
2.	TYPE OF POSITION PFT	STAFF MONTHS 12		LOCATION Anchorage			
3.							
4.	TYPE OF EXPENDITURE		AMOUNT				
	1	2	3				
	PERSONAL SERVICES						
5.	Salary	24,396					
6.	Benefits	8,208					
7.							
8.							
9.	TOTAL PERSONAL SERVICES	01	32,604				
10.	Travel	02	-0-				
11.	Contractual	03	3,000				
12.	Commodities	04	300				
13.	Equipment	05	4,130				
14.	Other						
15.	TOTAL COST		40,034				
	RECEIPT CODE	FUNDING SOURCE					
16.		Federal Receipts 1002					
17.		G.F. Match 1003					
18.		General Funds 1004		40,034			
19.		I-A Receipts 1005					
20.		Program Receipts 1028					
21.		Other					
FOR B&M USE ONLY 4A KEY NUMBER _____							

Estimates for other line items assume that the new employee required for this new loan program will require support at levels similar to that actually being incurred by the division on other loan programs.

Contractual: Space Rental: \$3,000  
\$2.50 sq./ft. x 100 sq./ft. x 12 months RSA to Department of Administration

Commodities: General supplies.

Equipment: Calculator \$ 365  
Typewriter 1,369  
Workstation 2,396  
\$4,130

**REQUEST FOR  
NEW POSITION**

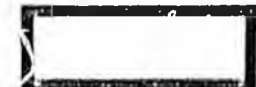
AGENCY Commerce & Economic Development

PROGRAM Development

BRU Investments

COMPONENT \_\_\_\_\_

Page 4 of 4  
Date 3/6/84



CSSB 496 (L&C)

SB 496 TITLE & SPONSOR SUMMARY 16:45 6/04/84 PAGE 1 OF 3

RENDED TITLE: CSSB 496(FIN)

ACT RELATING TO LOANS FOR COMMERCIAL FISHING AND AGRICULTURE;  
AND PROVIDING FOR AN EFFECTIVE DATE

GENERAL DOLLARS: \$274,200 (F. NOTE)

PRIME SPONSOR: SENATE RULES COMMITTEE.

OTHER DOLLARS: \$0

CO-SPONSORS:

CURRENT STATUS: 5/25/84 IN (H) RULES

SB 496 SENATE ACTION 16:45 6/04/84 PAGE 2 OF 3

DATE SEQ PAGE LEGISLATIVE ACTION

DATE	SEQ	PAGE	LEGISLATIVE ACTION
12/14/84	01	2074	FIRST READING -- COMMITTEE REPORTS
12/14/84	02	2074	F/NOTE EQUALS ZERO
12/14/84	03	2075	GOV TRANSMITTAL LETTER
14/02/84	04	2584	L&C -- CS02, NR02
14/02/84	05	2584	L&C LETTER OF INTENT
14/02/84	06	2584	L&C F/NOTES SEN SUPPL 469
15/03/84	07	2906	FIN -- CS05
15/03/84	08	3223	RLS -- FIN CS04, OTHER04 TAKEN UP IMMEDIATELY
5/23/84	09	3226	SECOND READING
5/23/84	10	3227	FIN CS ADOPTED BY UNAN CONSENT
5/23/84	11	3227	ADVANCED TO 3RD READING BY UNAN CONSENT
5/23/84	12	3227	THIRD READING
5/23/84	13	3227	PASSED BY DIV 16-01-03
5/23/84	14	3227	EFFECTIVE DATE VOTE SAME AS PASSAGE
5/23/84	15	3227	L&C LETTER OF INTENT ADOPTED UNAN
***	**	**	*** *** ***

SB 496 HOUSE ACTION 16:45 6/04/84 PAGE 3 OF 3

DATE SEQ PAGE LEGISLATIVE ACTION

DATE	SEQ	PAGE	LEGISLATIVE ACTION
5/24/84	16	3999	FIRST READING -- COMMITTEE REPORTS
5/24/84	17	4023	MOVED FROM LOAN TO FIN BY UNAN CONSENT
5/25/84	18	4063	FIN -- CS06, NR01 RULES
***	**	**	*** *** ***



OFFICIAL BUSINESS

ALASKA STATE LEGISLATURE - SENATE  
COMMITTEE ON LABOR AND COMMERCE

SENATOR RICHARD I. ELIASON  
CHAIRMAN

POUCH V • JUNEAU, ALASKA 99811  
(907) 465-3844

LETTER OF INTENT

SB 496

It is the intent of the Legislature that the Department of Commerce and Economic Development, in considering applications for loan assumptions under the commercial fish loan program, shall be authorized to utilize maximum flexibility in dealing with loan assumption requests with the understanding that the credit worthiness of the applicant shall be of paramount importance in the decision making process. It is also the intent of the Legislature that the original borrower's obligations under the loan agreement shall be extinguished whenever the applicant for assumption has demonstrated his/her credit worthiness to the satisfaction of the Department.

Adopted- Proposed by Dept. of Commerce

COMMITTEE REPORT  
SENATE

FURTHER:

FINANC.

114784

Date 3/29/79

Mr. President

The Committee on LABOR AND COMMERCE considered SB 496

commercial fishing loan fund; add.

and (a majority of the committee) (the committee) reports it back with the following recommendations:

- do pass
- do pass with attached amendment(s)
- replace with/or adopt CS for SB 496
- new title
- same title and recommends 1/100
- and attached a "LETTER OF INTENT"  NEW FISCAL NOTE
- reports it back without recommendation
- recommends referral to \_\_\_\_\_ Committee

MEMBERS SIGNING  
DO PASS

MEMBERS HAVING  
OTHER RECOMMENDATIONS

\_\_\_\_\_

Robert Bentley

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Johnnie Hill

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

W. L. ...

Chairman

\_\_\_\_\_

Do ...

Chairman recommendation











OFFICIAL BUSINESS

# ALASKA STATE LEGISLATURE - SENATE

## COMMITTEE ON LABOR AND COMMERCE

SENATOR RICHARD I. ELIASON  
CHAIRMAN

POUCH V • JUNEAU, ALASKA 99811  
(907) 465-3844

### LETTER OF INTENT

SB 496

It is the intent of the Legislature that the Department of Commerce and Economic Development, in considering applications for loan assumptions under the commercial fish loan program, shall be authorized to utilize both the statutory eligibility criteria existing at the time of the assumption application as well as the eligibility criteria that existed at the time that the loan was originally made. By this intent, the Legislature is expressing its desire to maximize the flexibility of the Department in dealing with loan assumption requests with the understanding that the credit worthiness of the applicant shall be of paramount importance in the decision making process. It is also the intent of the Legislature that the original borrower's obligations under the loan agreement shall be extinguished whenever the applicant for assumption has demonstrated his/her credit worthiness to the satisfaction of the Department.

Proposed by UFA - not adopted

# STATE OF ALASKA

**DEPARTMENT OF COMMERCE &  
ECONOMIC DEVELOPMENT**  
DIVISION OF INVESTMENTS

BILL SHEFFIELD, GOVERNOR

POUCH D  
JUNEAU, ALASKA 99811  
PHONE: (907) 465-2510

March 9, 1984

The Honorable Robert Mulcahy  
Alaska State Senate  
Pouch V  
Juneau, Alaska 99811

Dear Senator Mulcahy:

I have discussed your proposed amendment to SB 496 with Bill Hall. If I correctly understand the thrust of this amendment, then I believe existing statutes already provide the relief you intend.

Under AS 16.10.310(a)(1)(B)(i), an individual who has been a State resident for a continuous period of two years, and who "because of lack of training or lack of employment opportunities in the area of residence does not have occupational opportunities available other than commercial fishing" may apply for a permit, boat or gear loan.

The confusion may center around whether or not the applicant must be a commercial fisherman to be eligible for a loan. The applicant does not have to be a commercial fisherman, but does have to meet the eligibility criteria stated above. I hope this clarification addresses your concerns.

I would like to mention that following a brief discussion with legal counsel, it seems that granting loans on a geographical basis within Alaska begs for challenge on the question of residency.

If you would like to discuss this further, please call me at 465-2510.

Sincerely,



Paul B. Arnoldt  
Director

PBA/mst5/8  
030984a  
cc: Regional Loan Managers  
Bill Hall

Hein  
3/7/84  
(Misc)

A M E N D M E N T

Offered in the SENATE

By Mulcahy

TO:

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

(D) individuals, or to corporations, partnerships, or joint ventures, 100 percent of which are owned by individuals, for the repair, restoration or upgrading of existing vessels and gear, for the purchase of entry permits for fisheries in the drainage system of the Yukon and Kuskokwim Rivers, for the purchase of gear, and for the construction and purchase of vessels, if the individuals

(i) have been state residents for a continuous period of two years immediately preceding the date of application for a loan under AS 16.10.300 - 16.10.370; and

(ii) have documented active participation in a fishery in the drainage system of the Yukon and Kuskokwim Rivers on a subsistence basis for the year immediately preceding the date of application and any other two of the past five years;

\* Sec. 2. This Act takes effect immediately in accordance with AS 01.-10.070(c)."

# Alaska State Legislature

Advisory Council Members  
Senator Kerttula, Chairman  
Senator Bennett  
Senator Fahrenkamp  
Senator Vic Fischer



Pouch V  
State Capitol  
Juneau, Alaska 99811  
Phone: (907) 465-3114

## SENATE ADVISORY COUNCIL

### MEMORANDUM

TO: Senator Eliason

FROM: Bill Hall  
Senior Advisor

DATE: March 18, 1984

RE: Amendments to SB496: An Act relating to the commercial fishing loan fund; and providing for an effective date.

Three amendments to SB496 have been proposed and are attached to this memo. Each amendment is the result of discussions that took place at the March 13 meeting of the Senate Labor and Commerce Committee as well as subsequent discussions with Department of Commerce and Economic Development personnel. The major thrust of these amendments is to give DCED more authority in managing their existing loan portfolio. The amendments have therefore been written to permit a broad range of authority within the specific areas so as to give DCED the maximum flexibility in dealing with problems that it may encounter. More precise procedures can be defined in regulations should it be necessary. Also, additional guidance to the administration of the program can be provided by a legislative letter of intent (see attached recommendation).

#### Amendment to Clarify Loan Extension Authority

This amendment is intended to give the Department of Commerce and Economic Development the authority to grant extensions to loans beyond the present statutory limit of 15 years. The amendment does not permit the terms of new loans to exceed 15 years.

#### Assumptions

This amendment is intended to give the DCED the statutory authority to allow loan assumptions and redefine the residency requirement for loan assumptions to ensure constitutionality.

Disposal of Property

This amendment is intended to give DCED the authority to finance the sale of property acquired through default or foreclosure.

PROPOSED AMENDMENT TO SB 496  
Submitted by UFA

Sec.3. AS 16.10.320 is amended to read:

Sec. 16.10.320 Limitations on Loans. (a) A loan under AS 16.10.310-16.10.370 (1) may not exceed a term of 15 years provided however that the department may extend the term of an existing loan which is in default or in danger of default if it determines that such action serves to fulfill the policy defined in AS 16.10.300 and is in the best interest of the state;

(e)(?) may not exceed a term of 15 years provided however that the department may extend the term of an existing loan which is in default or in danger of default if it determines that such action serves to fulfill the policy defined in AS 16.10.300 and is in the best interests of the state;

END OF AMENDMENT

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AS 16.10.300. Declaration of policy. It is the policy of the state, under AS 16.10.300-16.10.370, to promote the rehabilitation of the state's fisheries, the development of a predominately resident fishery, and the continued maintenance of commercial fishing gear and vessels throughout the state by means of long-term low interest loans.

ASSUMPTIONS

PROPOSED AMENDMENT TO SB496 SUBMITTED BY UFA

AS 16.10.310(a) is amended by adding a new paragraph to read:

(7) allow an assumption of a loan if

(A) the applicant can establish Alaskan residency for a continuous period of two years immediately preceding the date of the request for an assumption;

(B) the state's ability to recover its investment will be significantly enhanced; and

(C) approval of the assumption will promote the rehabilitation of the state's fisheries, the development of a predominately resident fishery, and the continued maintenance of commercial fishing gear and vessels throughout the state.

STATEMENT ON PREQUALIFICATION

SUBMITTED BY UFA

We believe that there is a need to permit Alaskan residents to pre-qualify for entry permit loans so that they may be in a more competitive position with non-residents who are competing with them in the entry permit market place.

We have been informed by a number of our members that they have either lost the opportunity to purchase permits or have had to purchase permits at an unreasonably high price because they could not produce the purchase price in a timely manner.

We are aware that the Department believes that a system of prequalification or the acceptance and processing of loan applications that do not include entry permit purchase agreements will substantially increase their work load. We do not agree. Few, if any, people will take the time necessary to fill out a loan application if they are not serious about a purchase. Also, the Department is not prohibited from charging an application fee for applications that do not contain a purchase agreement. The fee could be set at a level that would discourage frivolous applications and would cover the Department's processing costs, and it could be refundable if the loan is finally made.

The Limited Entry Commission has stated that an increasing number of permits are leaving the State. This proposal, if adopted, could contribute significantly to a reversal of this alarming trend.

THIS AMENDMENT WAS DEVELOPED BY THE  
DIVISION OF INVESTMENTS

AS 16.10.310 (a) is amended by adding a new paragraph to read:

- (7) allow an assumption of a loan if
- (A) the applicant can establish Alaskan residency for a continuous period of two years immediately preceding the date of the request for an assumption;
  - (B) the original loan was executed at least 30 months prior to the date of the proposed assumption;
  - (C) the loan is in foreclosure for failure to satisfy the note within 60 days of the postmark date of the default notice required under AS 16.10.335(a);
  - (D) the state's ability to recover its investment will be significantly enhanced; and
  - (E) approval of the assumption will clearly contribute to the development of the state's fisheries;

Sec. 16.10. \_\_\_\_ . DISPOSAL OF PROPERTY. (a) The department may dispose of property acquired through default or foreclosure.

Disposal may be made by;

- (1) sale, competitive or negotiated;
- (2) lease;
- (3) destruction; or
- (4) in any other manner considered to be in the best interests of the State.

(b) Property will be offered for sale or lease to the general public. Notice will be given by one or more of the following methods:

- (1) publication in a newspaper;
- (2) radio spot announcements;
- (3) sending notices by mail to all known interested persons.

(c) The department may provide financing from the Commercial Fishing Revolving Loan fund for purchase of property to be disposed under subsection (a) if

- (1) the applicant can establish Alaskan residency for a continuous period of two years immediately preceding the date of the request for financing;
- (2) the state's ability to recover its investment will be significantly enhanced; and
- (3) the transaction will clearly contribute to the development of the state's fisheries.

Sec. 26.15. \_\_\_\_\_. DISPOSAL OF PROPERTY. (a) The commissioner of commerce and economic development may dispose of property acquired through default or foreclosure. Disposal may be made by;

- (1) sale, competitive or negotiated;
- (2) lease;
- (3) destruction; or
- (4) in any other manner considered to be in the best interests of the State.

(b) Property will be offered for sale or lease to the general public. Notice will be given by one or more of the following methods:

- (1) publication in a newspaper;
- (2) radio spot announcements;
- (3) sending notices by mail to all known interested persons.

(c) The commissioner of commerce and economic development may provide financing from the Alaska World War II veterans' revolving fund for purchase of property to be disposed under subsection (a) if

(1) the applicant can establish Alaskan residency for a continuous period of two years immediately preceding the date of the request for financing; and

(2) the state's ability to recover its investment will be significantly enhanced.

# Alaska State Legislature

Advisory Council Members  
Senator Kerttula, Chairman  
Senator Bennett  
Senator Fahrenkamp  
Senator Vic Fischer



Pouch V  
State Capitol  
Juneau, Alaska 99811  
Phone: (907) 465-3114

## SENATE ADVISORY COUNCIL

### MEMORANDUM

TO: Senator Eliason

FROM: Bill Hall *as!*  
Senior Advisor

DATE: March 12, 1984

RE: Proposed Amendments to SB496: "An Act Relating to the Commercial Fishing Loan Fund; and Providing for an Effective Date"

At the March 6 meeting of the Senate Labor and Commerce Committee, Mr. Phil Daniels of the United Fishermen of Alaska submitted an amendment to SB496 which would provide authorization for commercial fishing loan extensions beyond fifteen years. I was requested to research the amendment and prepare this memo for you and your Committee.

In my discussions with Mr. Daniels of UFA, Mr. Arnold, Director of the Division of Investments, and Mrs. Hamley, Director of Accounting and Collections, it became apparent that there are additional problems with the Commercial Fishing Loan Program that should be brought to your attention. This memo will therefore include a brief discussion of these problems as well as the analysis that you requested.

Four problems have been identified. They are: (1) the need to expand the authority of the Department of Commerce and Economic Development (DCED) to permit loan extensions beyond a term of 15 years; (2) the need to expand the authority of DCED to permit loan assumptions; (3) the need of entry permit loan applicants to accelerate the loan processing procedure so as to give them a competitive position in the entry permit market place; and (4) the need to provide a means by which the State can finance the sale of repossessed vessels.

#### LOAN EXTENSION AUTHORITY

At the present time, State statutes restrict the term of all commercial fishing loans to 15 years. The UFA in the proposed amendment is not proposing that the initial term of a loan should be more than 15 years.

Rather, they are proposing that the Department be given the authority to extend an existing loan term beyond 15 years if it can be demonstrated that such action will enhance the viability of the loan and prevent it from going into default. Mr. Daniels of UFA stated his concern that because of depressed salmon markets and depleted shellfish resources many fishermen may encounter financial difficulties over the next several years. He proposed this amendment in an effort to give the State maximum flexibility in working with borrowers who have such problems.

Other means of addressing borrower's problems, such as rewriting a loan, have very limited applicability because of the substantial statutory changes that have been made to the loan program over the years. This is because the department's policy requires that in order to qualify for a rewrite a borrower must meet the criteria of the loan program as they exist today. Most borrowers who qualify for loans under programs that no longer exist cannot meet these new criteria.

The language in the attached amendment was discussed with Mr. Arnold, Mrs. Hamley and Mr. Bush of the Attorney General's office. They are in agreement that it accomplishes the intended purpose.

#### LOAN ASSUMPTION AUTHORITY

According to an attorney general's opinion dated July 29, 1983, DCED should not allow loan assumptions unless the assumption applicant can qualify as a borrower under the loan program criteria as it exists today. This means that many loans, because of their original purpose or amounts, are not assumable. The Department has therefore established a policy of allowing assumptions only if it is in the best interest of the State.

The United Fishermen of Alaska have questioned why the State should not allow a fishermen's loan to be assumed if it is in the best interest of the fisherman. Such an act would be consistent with the original purposes of the loan program they argue, and would not increase the liability of the State over what it is at the present time. They believe that during a time when members of the seafood industry need all the help that they can get, they should not be denied the opportunity of having their loans assumed by qualified applicants. Such an opportunity could prevent them from suffering significant financial losses.

There is also a subsidiary issue involved in the question of assumptions. That is: The expressed preference of some DCED officials to allow assumptions only at the prevailing interest rate. Attorneys advise that if the interest rate were changed in an assumption then it would not technically be an assumption. UFA has stated its preference for allowing assumptions at the original interest rate of the loan claiming that such an act would not increase the cost to the State over what it is now, and that it could be of great significance to the fisherman borrower.

#### PROVISION FOR PREQUALIFIER

The UFA also referred to a problem identified in the Fisheries Policy Task Force Report regarding the ability of Alaskan residents to compete in the market place for the purchase of limited entry permits. It appears that because of substantial time delays in obtaining financing from the State, Alaskan residents have been at a disadvantage with non-resident fishermen in the competition for the purchase of entry permits. Non-residents with financing in hand are better able to purchase permits because they can commit to a purchase and complete it in a relatively short period of time. The Task Force Report recommended a system for prequalifying applicants, or for accepting and processing loan applications that do not include purchase agreements.

DCED officials have stated that such a program would drastically increase their work load and would be virtually unmanageable. Their suggestion for solving this problem is to decrease the time required to process and act on a loan application.

#### FINANCING OF REPOSSESSED VESSELS

Because of the depressed state of Alaska's seafood industry, as previously indicated, the State has been experiencing an increasing default and foreclosure rate. This has resulted in the State acquiring ownership of a number of fishing vessels for which there is no financing available to those persons who are interested in purchasing the vessels. The State is therefore unable to divest itself of these unwanted assets. If the losses to the State are to be minimized, then some means must be created to allow the State to finance the sale of the vessels that it has obtained through foreclosure.

As an indication of this problem's magnitude, Director Hamley of the Division of Accounting and Collections has stated that the delinquency rate on commercial fishing loans for 1983/84 is presently 17.1%. This compares to a rate of 8-10% last year. Also, the value of collateral (particularly fishing boats) used to secure many loans is eroding. Director Hamley reported that the State has recovered only 20-25¢ on the dollar on the last three vessels foreclosure sales.

PROPOSED AMENDMENT TO SB 496  
Submitted by UFA

Sec.3. AS 16.10.320 is amended to read:

Sec. 16.10.320 Limitations on Loans. (a) A loan under AS 16.10.310-16.10.370 (1) may not exceed a term of 15 years provided however that the department may extend the term of an existing loan which is in default or in danger of default if it determines that such action serves to fulfill the policy defined in AS 16.10.300 and is in the best interest of the state;

(e)(2) may not exceed a term of 15 years provided however that the department may extend the term of an existing loan which is in default or in danger of default if it determines that such action serves to fulfill the policy defined in AS 16.10.300 and is in the best interests of the state;

END OF AMENDMENT

---

AS 16.10.300. Declaration of policy. It is the policy of the state, under AS 16.10.300-16.10.370, to promote the rehabilitation of the state's fisheries, the development of a predominately resident fishery, and the continued maintenance of commercial fishing gear and vessels throughout the state by means of long-term low interest loans.

Changes Recommended by Legal Services

PROPOSED AMENDMENT TO SB 496

Sec.3. AS 16.10.320 is amended to read:

Sec. 16.10.320 Limitations on Loans. (a) A Loan under AS 16.10.310-16.10.370 (1) may not exceed a term of 15 years except for extensions granted under AS 16.10.310(a)(4).

A handwritten mark, possibly a signature or initials, consisting of several overlapping, curved lines.

ASSUMPTIONS

AS 16.10.310(a) is amended by adding a new paragraph to read:

- (7) allow an assumption of a loan if the applicant can establish Alaskan residency for a continuous period of two years immediately preceding the date of the request for an assumption.

AS 16.10 is amended by adding a new section to read:

Sec. 16.10\_\_\_\_. DISPOSAL OF PROPERTY. The department may dispose of property acquired through default or foreclosure. Disposal may be made in any manner which is in the best interests of the state including amortizing payments over a period of years, provided however that the state shall not retain ownership of the property.

Changes Recommended by Legal Services

AS 16.10 is amended by adding a new section to read:

Sec. 16.10.336. DISPOSAL OF PROPERTY. The department shall dispose, other than by lease, of property acquired through default or foreclosure of a loan under AS 16.10.300-370. Disposal may be made in any manner that serves the best interests of the state including amortization of payments over a period of years.

SUGGESTED INTENT LANGUAGE

SB 496

It is the intent of the Legislature that the Department of Commerce and Economic Development, in considering applications for loan assumptions under the commercial fish loan program, shall be authorized to utilize both the statutory eligibility criteria existing at the time of the assumption application as well as the eligibility criteria that existed at the time that the loan was originally made. By this intent, the Legislature is expressing its desire to maximize the flexibility of the Department in dealing with loan assumption requests with the understanding that the credit worthiness of the applicant shall be of paramount importance in the decision making process. It is also the intent of the Legislature that the original borrower's obligations under the loan agreement shall be extinguished whenever the applicant for assumption has demonstrated his credit worthiness to the satisfaction of the Department.

# MEMORANDUM

State of Alaska

TO: Honorable Richard A. Lyon  
Commissioner  
Department of Commerce  
& Economic Development

DATE: July 29, 1983

FILE NO: 366-670-83

TELEPHONE NO: 465-3600

FROM: Norman C. Gorsuch  
Attorney General

SUBJECT: Assumption of  
Loans

*Martha A. Fox*

By: Martha A. Fox  
Assistant Attorney General  
Commercial-Juneau

You have requested advice concerning the assumption of various loans administered by the division of investments in the Department of Commerce. Your questions are broad in scope and accordingly our answers are general in nature. You will note that we recommend adoption of regulations concerning assumption for individual loan programs. Specific questions regarding particular loan programs can best be addressed at that time.

1. Your first question is whether the division has the authority to allow assumption of loans under the small business, commercial fishery, tourism, alternative energy, residential energy conservation, child care, fisheries enhancement, historical district, mining and bulk fuel loan programs.

Private lending institutions generally have discretion, in the absence of any federal or state requirements, to decide whether or not to allow an assumption of a loan. Their decisions are usually premised on the need to prevent impairment of the lender's security, and on a need to loan at an interest rate commensurate with their own cost of money and servicing of the loan. However, the loan programs in question here are state loan programs funded by state money and established to serve public purposes, usually at an interest rate lower than the prevailing rate. It cannot be automatically assumed that the same general rules and procedures which private institutions follow also apply to state programs.

The question of assumption simply is not addressed in the statutes establishing the state loan programs, and there do not appear to be any cases directly on point either in this state or in other states. With few exceptions, these loan programs

neither specifically permit nor prohibit assumption. In the absence of express permission or prohibition, the question is whether the Department of Commerce has sufficient authority under each loan program to permit assumptions.

A governmental agency may generally exercise those implied powers reasonably necessary for efficient administration of powers expressly granted by statute. Adams County Golf Inc. v. Colorado Dept. of Rev., 610 P.2d 97 (Colo. 1980); Stackler v. Department of Motor Vehicles, 164 Cal. Rptr. 203 (Cal. App. 1980). Under most of the loan programs, the department is authorized to make loans for specific purposes and to require security for the loans provided. Necessarily implicit in this express delegation of authority is the authority and the duty to ensure that the purposes of the loan programs are met and to preserve the security interest of the state and the financial integrity of the loan programs.

Based upon these express and implicit powers, we conclude that assumption may be allowed by the division where it would serve the policies and purposes of the loan program. If assumption is allowed, the department must, of course, ensure that the person assuming the loan is a good financial risk and that the security of the state is preserved in the course of the assumption.

For each loan program the department has the discretion to decide whether to allow assumption. If the department decides to allow assumptions it should adopt regulations defining the situations in which assumption will be allowed. For example, the department could decide to allow assumption whenever it appears that assumption will not impair the security of the state. Alternatively, the department could decide to allow assumption only when it appears necessary to protect the state's investment. Either option is within the general implied powers discussed above. As a policy of the department which affects the public, the department's decision must be adopted as a regulation. AS 44.-62.640(a)(2). Kenai Peninsula Fisherman's Coop. v. State of Alaska, 628 P.2d 897 (Alaska 1981).

If the department decides to allow assumptions in a particular loan program, the department must then decide what criteria to use to determine eligibility for assumption. This is discussed below.

2. What criteria should be used to determine whether an applicant for assumption of a loan qualifies?

Because the loan statutes are not explicit on the question of assumption, they also do not address criteria for assumption. Clearly, the criteria must be sufficient to meet the policies and purposes of the loan programs. They must also be sufficient to protect the financial integrity of the loan program.

Determination of what these criteria are is properly left to the department. However, when deciding whether to use the statutory standards for eligibility for a loan in existence at the time the loan was made or standards currently in effect to determine eligibility of an applicant for assumption, we recommend that, where practical, you use standards currently in effect. While the applicant is seeking to assume a loan which was originally made based upon prior standards, the department has the authority to permit or deny that assumption and it is reasonable to require the applicant to meet current statutory requirements for the use of state loan funds. Use of current standards would also better fulfill the most recent legislative intent for the loan program as expressed in the statutes as amended.

An example of why current standards should generally be used can be found in those loan programs with residency requirements. Amendments to residency requirements have generally been made in response to questions concerning the constitutionality of the length of those requirements. Use of the old standards would only perpetuate a requirement of questionable constitutionality.

Where the loan program is inactive or has been repealed, statutory standards in existence just prior to suspension of the program should be used if assumption is permitted. The fact that a loan program has been repealed can also be used by the department as a consideration in deciding whether, or under what circumstances, to allow assumption.

Again, the criteria for assumption applicable to a particular loan program must be established by regulation.

3. Is an assumption considered a loan for the purpose of determining an applicant's maximum dollar limit?

Yes. By assuming the loan, the person assuming takes over the use of state loan funds and, for this reason, maximum loan limits include assumed loans. This conclusion is based on the premise that a maximum loan limit is established to enable a large number of people to make use of a limited amount of funds. Where a person assumes a loan, that person makes use of the loan

funds and the loan limit should therefore be applied.

The example you use in connection with this question is really a question about the proper interpretation of the loan limit in AS 16.10.320(d). In your example a borrower has used a \$180,000 commercial fishing loan to purchase a vessel. He makes regular payments on the loan. Years later the vessel sinks and the loan is paid off with insurance proceeds. The borrower then wishes to either assume an existing fishing loan or apply for a new loan to purchase another vessel. Do the loan limits in AS 16.10.320(d) apply?

Current AS 16.10.320(d) (am § 9, ch. 113, SLA 1982) states in part:

Loans made to a borrower under AS 16.10.310(a)(1)-(A) may not exceed a total of \$300,000. Loans made to a borrower under AS 16.10.310(a)(1)(B) or (C) may not exceed a total of \$100,000. A loan to an associate of the borrower is considered to be a loan to the borrower.

A literal reading of this language leads to the conclusion that, subject to other statutory provisions, an individual borrower is entitled to a maximum of \$100,000 in total loans under AS 16.10.-310(a)(1)(B) or (C).

Under this literal reading, the borrower used up his total loan limit with the first loan and is not eligible for another loan, either new or assumed. This interpretation raises questions concerning the equities of literal application of the statute. In past memoranda from this office concerning interpretation of various amendments to the commercial fisheries loan limitations statute, we have taken the approach that a more liberal construction of the loan limitation would more effectively carry out the intended purpose of the legislation. (See e.g. 1982, Inf. Op. Att'y Gen. (Aug.16), concerning the commercial fishing loan program; 1978 Inf. Op. Att'y Gen. (Nov.9, J-66-258-79), concerning refinancing of commercial fishing loans).

The purpose of the commercial fisheries loan program is to promote the development of the fisheries industry and allow the purchase and continued maintenance of vessels and gear. AS 16.10.300. When a fisherman has lost his vessel to fire it would obviously frustrate the purposes of the loan program to prevent him from obtaining a loan for a new vessel, particularly where, as in your example, insurance proceeds have paid off the prior loan. This reasoning applies equally to the situation where the

vessel is destroyed right after the loan closes. Therefore, allowing the borrower to assume a loan or take out a new loan under these circumstances would be reasonable.

4. How is the borrower's maximum limit affected by assumption of the loan by another party?

As a general rule, assumption of the loan by another party will reduce the original borrower's total loans accordingly even though the borrower is not released from the original loan. In your example, the original borrower would therefore be eligible for the new \$50,000 loan.

This conclusion is based on the same reasoning set out in our memorandum of May 23, 1983 concerning assumption of veteran's loans. While the specific purpose of the loan limitations is not entirely clear from the loan statutes or the legislative history, we believe it is reasonable to assume that the limitations were intended, at least in part, to make limited amounts of money available to large pools of applicants. Concern with the financial stability of an applicant, while it may be a consideration in setting loan limits, is more specifically addressed by the eligibility and security requirements of a given loan program than by a fixed limitation figure.

Given this purpose, it is the person who has the use of the loan funds to whom the loan limit applies. If assumption of a loan is permitted the amount of the loan assumed is applied to the assumer's loan limit and the amount applied to the original borrower is reduced. The fact that the original borrower is not released from the loan obligation does not affect this conclusion because the assumer is primarily liable and must present adequate security. The ability to use the loan funds, rather than security for the loan, is the prime consideration in applying the loan limitations.

5. Does the division have the authority to allow assumption of a loan which is in foreclosure? What criteria must such an assumption meet?

For the reasons discussed above in question #1, the division has authority to permit assumptions. This reasoning is equally applicable to the situation where a loan is in foreclosure. The same criteria and considerations discussed above apply.

The one exception to this conclusion is the commercial fisheries loan program. New amendments to AS 16.10.337(b) (§ 5, ch. 7, SLA 1983) make it clear that a commercial fisheries loan

Commissioner Richard A. Lyon  
Department of Commerce &  
Economic Development  
Our File No. 366-670-83

July 29, 1983  
Page 6

which is in foreclosure may not be assumed. If the Commercial Fisheries Entry Commission does not exercise its right of first refusal of the permit, or if the permit is not subject to a buy back program, the department must advertise the permit and sell it. Proceeds of the sale are used to pay off the loan.

Please contact us if you need assistance or advice during the drafting of regulations for these loan programs.

MAF/mt

cc: Paul B. Arnoldt, Director  
Division of Investments  
Department of Commerce &  
Economic Development

Bertram Wagnon  
Deputy Commissioner  
Department of Commerce &  
Economic Development

DATE: November 9, 1978

ATTN: Pete Jeans, Director  
Division of Business Loans<sup>FILE NO:</sup>

TELEPHONE NO:

FROM: AVRUM M. GROSS  
ATTORNEY GENERAL

SUBJECT: Refinancing Commercial  
Fishing Loans -- Chapter  
83, SLA 1978  
Our File: J-66-258-79

By: *Joseph K. Donohue*  
Joseph K. Donohue  
Assistant Attorney General

In 1978 the Alaska Legislature increased the loan limitations under the Commercial Fishing Loan Act, AS 16.10.300 et seq. from \$100,000 to \$500,000 per loan. You have requested our advice as to whether borrowers under the old loan limitation could reapply for additional funds under the new limitation in light of the language contained in AS 16.10.320(d) which provides that "no more than one commercial loan may be made to a person for the purchase, construction, repair or upgrading of a fishing vessel or gear." In addition, you inquire as to whether such loans must be treated as refinancing arrangements and thus subject to the 50% limitation on the use of loan proceeds for refinancing contained in 3 AAC 80.020(b) or whether the increase in the loan amount could be treated as an amendment to the existing loan.

It is the opinion of this department that neither refinancing nor amendment of an existing loan would be precluded by the one loan per person limitation appearing in the 1978 amendments to AS 16.10.320. Furthermore, it is our view that where the application contemplates retirement of an existing loan previously made to the applicant pursuant to the Commercial Fishing Loan Act, then the arrangement must be viewed as refinancing subject to the 50% rule embodied in 3 AAC 80.020(b).

The language of AS 16.10.320(d), §3, ch. 83 SLA 1978, has already been the subject of two previous opinions of this department. That section provides in relevant part:

Except as provided in (e) of this section [relating to joint loans obtained by two or more individual fishermen], no more than one commercial fishing loan may be made to a person for the purchase, construction, repairing 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. . . .

In an opinion issued on July 31, 1978, to Pete Jeans, Director of Division of Business Loans, this department interpreted that language as precluding a person who had previously received a loan under the act and who had paid that loan off from ever receiving a second loan from the department. In a subsequent opinion dated August 16, 1978, addressed to H. Phillip Hubbard, Commissioner of Commerce and Economic Development, this department overruled that literal interpretation of the new language in favor of a more liberal construction which it was felt would more effectively carry out the intended purpose of the legislation. The Commercial Fishing Loan Act is designed to help fishermen purchase new vessels and equipment, upgrade their existing equipment and generally move up in the fisheries. This normal progression requires that fishermen who payoff their loans on smaller, older vessels be able to obtain new and larger loans to finance larger and more modern vessels. Thus the maintenance and development of a modern and successful fishing fleet would be frustrated if such loans were to be viewed as a once in a lifetime opportunity.

This department adheres to this latter interpretation and thus we conclude that the said language merely requires that at any one point in time there be no more than one loan issued by the department to any one individual fisherman (with certain exceptions as provided in §320(e)). Neither refinancing of existing obligations nor amendment of those obligations to effect an increase in the principal of the debt along with concomitant increases in collateral and repayment obligations would be prohibited by the 1973 amendment.

You have also requested our opinion concerning whether these applications for additional funds under the new loan limitation must be considered refinancing arrangements and thus subject to 3 AAC 80.020(b). That section provides:

No more than 50% of the loan proceeds  
may be used to refinance existing debts.

This department suggests that the answer, in large part, depends on the nature of the loan request. In certain cases, it will necessarily require a retirement of the original loan and thus should be considered refinancing. For example, a fisherman with an outstanding loan of \$100,000 who applies for a new loan of \$500,000 under the 1978 loan limitation must contemplate the retirement of the previous obligation. In addition, application of the proceeds of the additional loan to payoff existing obligations running to third-party creditors would obviously have to be treated as a refinancing. Finally, any attempt to effect a downward adjustment of the interest applicable to the original loan or to extend the payback period past the 15 year maximum term would have to be construed as refinancing. See 3 AAC

80.030 and AS 16.10.320(a)(2) as amended.

It is understood that certain of the loan applications could be accommodated by merely amending the existing loan to provide for an increase in the principal debt as of the date of the amendment, and adjusting the payment schedule to provide for complete repayment within the time remaining under the 15 year period originally allowed. In addition, proper collateral could be provided to secure the increased principal. Thus, a fisherman who in 1975 borrowed \$100,000 under this program to be repaid at 7% over a 15 year period and who in 1978 wishes to borrow another \$25,000 for repairs to that vessel might borrow said amount by amending the original loan agreement to provide for repayment of the new total amount during the remaining 12 years of the loan term. Under this construction, most loan requests which seek substantial increases in the loan principal and which contemplate a new 15 year period for repayment would have to be treated as refinancing agreements.

It is our understanding that the 50% limitation on the use of the loan proceeds for refinancing was the regulatory response to the opinion of this department issued on August 1, 1974, to Emmett Wilson, Commissioner of the Department of Commerce. That opinion suggested that the purpose of the Commercial Fishing Loan Act, AS 16.10.300 et seq., was to encourage purchase of new equipment, and to upgrade the existing equipment and gear in the fishery of the State. It was felt that use of the proceeds to refinance existing commercial loans at the new lower interest rate offered by the state program was beyond the purpose and intent of AS 16.10.310(a)(1). Here it could be argued however that refinancing of existing state loans for the purpose of obtaining a substantial increase in loan amount to be used towards the purchase of a new vessel or new gear is an appropriate use of the loan proceeds as envisioned by the enacting legislation. Thus, the department may wish to promulgate an amendment to 3 AAC 80.020(b) to provide for an exception for those fishermen who wish to utilize the opportunity inherent in the new \$500,000 loan limitation and obtain a substantially larger loan whose proceeds would be dedicated for one of the purposes set out in AS 16.10.310(a)(1).

JKD:m11