

SB 26

SENATE FINANCE COMMITTEE REPORT

DATE: 3/14/91

FURTHER:

DATE TURNED INTO OFFICE: 5-13-91

The Finance Committee considered SENATE BILL NO. 26

"An Act relating to loans under the Commercial Fishing Loan Act and to limited entry permits pledged as security for those loans; and providing for an effective date."

and recommended:

replace with _____ CS SB26 (FW)
 or adopt _____ CS _____

same title
 new title
 technical title change (HB only)

attached amendment(s)
 _____ letter of intent adopted

do pass

do not pass

no recommendation

individual recommendations

further referral to _____

ATTACHES NEW FISCAL NOTE(S):
Dept/Date:

fiscal note(s) _____

zero fiscal note(s) _____

appropriation-no fiscal note

APPROVES PREVIOUS:
Dept/Date:

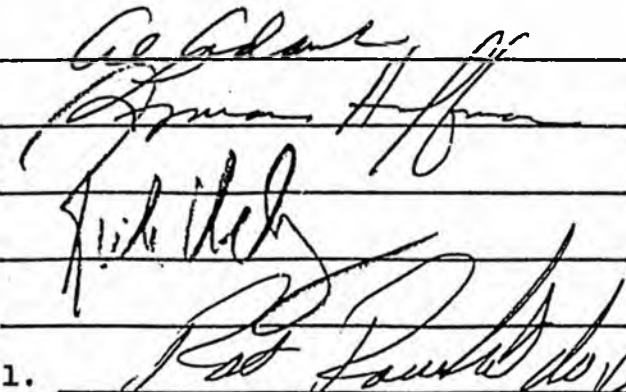
fiscal note(s) _____

zero fiscal note(s) _____

Dec 2-7-91

SIGNING DO PASS:

OTHER RECOMMENDATIONS:



1. _____ 2. _____

Co-Chairs: Signatures and Recommendations

FISCAL NOTE

No. 1

Bill Version: SB 26

(S) Publish Date: 3/14/91

STATE OF ALASKA
1991 LEGISLATIVE SESSION

Revision Date: 1/21/91 Department Affected: Commerce & Economic Dev.

Title: An Act relating to loans under the Commercial Fishing Loan Act BRU: Investments

Sponsor: Zharoff Component: _____

Requestor: Labor & Commerce COMPONENT SERIAL NO.

--	--	--	--

Expenditures/Revenues: (Thousands of Dollars)

OPERATING	FY 92	FY 93	FY 94	FY 95	FY 96	FY 97
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0	0	0	0	0	0

Changes in SSB 26 (h.c.) have no fiscal impact. This fiscal note is appropriate.

CAPITAL	0	0	0	0	0	0
---------	---	---	---	---	---	---

REVENUE	0	0	0	0	0	0
---------	---	---	---	---	---	---

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL	0	0	0	0	0	0

POSITIONS:

FULL-TIME	0	0	0	0	0	0
PART-TIME						
TEMPORARY						

Estimate of current year impact: _____

ANALYSIS: (Attach a separate page if necessary.)

Prepared By: Martin J. Richard, Director Phone: 465-2510

Division: Investments Date: 2/7/91

Approved by Commissioner: Glenn A. Olds

Agency: Department of Commerce & Economic Development Date: _____

Distribution (by preparer, Requestor, OMB, & Impacted Agency(ies).)

Rev 10/90
GW/dg18863D/020791:

Changes in SSB 26 (h.c.) have no fiscal impact. This fiscal note is appropriate.

Page 1 of 1

5-13-91 WR
date Comptroller (initials)

CS FOR SENATE BILL NO. 26 (FINANCE)
 IN THE LEGISLATURE OF THE STATE OF ALASKA
 SEVENTEENTH LEGISLATURE - FIRST SESSION

BY THE SENATE FINANCE COMMITTEE

Offered:

Referred:

Sponsor(s): SENATOR ZHAROFF

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to loans under the Commercial Fishing Loan Act and to limited entry
 2 permits pledged as security for those loans; and providing for an effective date."

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

4 * Section 1. AS 16.10.335(a) is amended to read:

5 (a) If the debtor defaults upon a note for which a limited entry permit has been pledged
 6 as security under AS 16.10.333 or 16.10.338, the commissioner shall provide the debtor, by both
 7 certified and first class mail sent to the debtor's last known address on file with the
 8 commissioner, with a notice of default that includes

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

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

12 (3) the amount of the debtor's outstanding principal and interest
 13 [ARREARAGES] as of the date of the default notice, the total amount remaining on the note
 14 less unearned interest, and the amount of daily interest;

1 (4) a statement that the debtor may, within 15 days after the postmark date of the
2 notice, request a hearing to submit evidence showing the debtor has not defaulted;

3 (5) a statement that the note may be reinstated if it is brought current within 120
4 [60] days after the postmark date of the notice;

5 (6) a statement that, under AS 16.10.310(a)(4), the debtor may reinstate the
6 note by submitting to the commissioner a plan of repayment if the commissioner accepts
7 the debtor's plan of repayment [NOTE MAY BE PAID IN FULL LESS UNEARNED
8 INTEREST WITHIN 120 DAYS AFTER THE POSTMARK DATE OF THE NOTICE];

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

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

15 * Sec. 2. AS 16.10.335(d) is repealed and reenacted to read:

16 (d) If requested by the debtor, the commissioner may waive any of the time limits in (a)
17 of this section for a period not to exceed 60 days if

18 (1) the debtor demonstrates good cause for the waiver; and

19 (2) the commissioner sets out in writing the reasons for approving the waiver.

20 * Sec. 3. AS 16.10.335(e) is amended to read:

21 (e) Except as otherwise provided in (c) and (d) of this section, if the debtor fails [UPON
22 THE DEBTOR'S FAILURE] to reinstate or satisfy the note within the time specified in (a)(5)
23 [(a)(6)] of this section, the debtor's interest in the permit is terminated by operation of law
24 without further notice. [ANY ENTRY PERMIT CARDS ISSUED TO THE DEBTOR UNDER
25 THE PERMIT MUST BE CANCELLED IMMEDIATELY UPON RECEIPT BY THE
26 COMMISSION OF A CERTIFICATE OF TERMINATION CONTAINING A COPY OF THE
27 NOTICE REQUIRED BY (a) OF THIS SECTION ISSUED BY THE COMMISSIONER.]

28 * Sec. 4. AS 16.10.335 is amended by adding a new subsection to read:

29 (f) Notwithstanding (a) of this section, when a debtor files bankruptcy, the debtor's
30 interest in the limited entry permit is terminated by operation of law without further notice as of
31 the date that the automatic stay issued in the bankruptcy is no longer in effect, unless the debtor

1 has reaffirmed the debt.

2 * Sec. 5. AS 16.10.338 is amended by adding a new subsection to read:

3 (b) If a limited entry permit is pledged for security for a loan made under
4 AS 16.10.310(a)(1)(B) for the repair, restoration, upgrading, construction, or purchase of a vessel
5 and the borrower thereafter fails to make a payment or defaults, the commissioner shall, in
6 addition to the notice provided under AS 16.10.335(a), notify the borrower that subject to the
7 commissioner's acceptance the borrower may sell the vessel, apply the sales proceeds to the debt,
8 and renegotiate payment of the balance due on the loan to avoid the immediate loss of the limited
9 entry permit that has been pledged for security for the loan.

10 * Sec. 6. AS 16.10.350 is amended by adding a new subsection to read:

11 (b) The commissioner shall annually submit a report to the legislature detailing the
12 number and nature of reinstatements authorized by AS 16.10.335(a)(5).

13 * Sec. 7. AS 16.10 is amended by adding a new section to read:

14 Sec. 16.10.353. WAIVER OF CONFIDENTIALITY. (a) The commissioner may release
15 information about a borrower's loan to any individual when release of the information has been
16 authorized by the borrower.

17 (b) A person obtaining a loan under AS 16.10.300 - 16.10.370 after the effective date
18 of this Act may, by signing a form prepared for the purpose, designate the names of persons and
19 organizations to whom a copy of the notice required by AS 16.10.335 must be sent.

20 * Sec. 8. AS 16.43.960 is amended by adding a new subsection to read:

21 (j) The commission shall immediately cancel a limited entry permit card issued to a
22 debtor under a loan made under AS 16.10.300 - 16.10.370 when the commission receives a
23 certificate of loan termination containing a copy of the

24 (1) notice required by AS 16.10.335(a); or

25 (2) notice that, if the debtor has filed bankruptcy, the automatic stay issued is no
26 longer in effect and the debtor has not reaffirmed the debt.

27 * Sec. 9. This Act takes effect immediately under AS 01.10.070(c).

CSSB 26

Adopted
5-13-91

7-LS0017D.1
Chenoweth
03/18/91

A M E N D M E N T

OFFERED IN THE HOUSE

TO: CSSB 26(L&C)

Page 2, following line 14:

Insert a new bill section to read:

"* Sec. 2. AS 16.10.335(d) is repealed and reenacted to read:

(d) If requested by the debtor, the commissioner may waive any of the time limits in (a) of this section for a period not to exceed 60 days if

- (1) the debtor demonstrates good cause for the waiver; and
- (2) the commissioner sets out in writing the reasons for approving the waiver."

Renumber the following bill sections accordingly.



SENATOR FRED F. ZHAROFF

ALASKA STATE LEGISLATURE

P. O. BOX 405, KODIAK, ALASKA 99615 (907) 486-5259

DURING SESSION:

P. O. BOX V, JUNEAU, ALASKA 99811 (907) 465-3473 • 465-3474

DISTRICT N

ALASKA PENINSULA • ALEUTIAN CHAIN • BRISTOL BAY • KODIAK ISLAND • LAKE CLARK/LAKE ILIAMNA • PRIBILOF ISLANDS • SHUMAGIN ISLANDS

MEMORANDUM

TO: Senator Pat Pourchot
Co-Chairman
Senate Finance Committee

FROM: Senator Fred F. Zharoff

DATE: April 26, 1991

RE: Proposed amendment for CSSB 26 (L&C).

I wish to request that the Senate Finance Committee amend CS for Senate Bill 26 (L&C), when it is brought up for consideration, to include the attached language.

The amendment would insert a new Section 2 to replace the Section 2 that was deleted by the Senate Labor and Commerce Committee.

The original Section 2 read as follows:

(d) If requested by the debtor, the commissioner may waive any of the time limits in (a) of this section if the debtor shows good cause.

The purpose of the section was to give the commissioner of commerce the power to extend the deadlines on the repayment of loans if good cause could be demonstrated.

The Labor and Commerce Committee felt this section gave the commissioner of commerce too much discretion and amended the bill to remove it.

I believe, however, the section is one of the key elements of the legislation. Without it, SB 26 falls far short of solving the problem it was introduced to solve.

The statutes governing the Commercial Fishing Loan Program contain specific deadlines. Our research indicated that one change in the program that would help greatly -- specifically, for debtors who fall behind on their payments and then are able to straighten out their financial affairs -- would be to give the borrowers the ability to take their case to the commissioner. The commissioner could then waive the deadlines the borrower missed if the borrower could convince the commissioner that he could now meet his obligations.

CSSB 26 amendment - page 2

After discussing the matter with the maker of the motion to delete the original Section 2 -- Senator Rick Halford -- we developed language that solves both of our concerns.

The proposed amendment gives the commissioner the power to waive the time limits, but restricts the waiver to no more than 60 days, requires the debtor to demonstrate good cause, and requires the commissioner to make findings in writing.

The amendment is supported by the Department of Commerce and Economic Development.

I respectfully request your favorable consideration of the proposed amendment.



SENATOR FRED F. ZHAROFF
ALASKA STATE LEGISLATURE

P. O. BOX 405, KODIAK, ALASKA 99615 (907) 486-5259
DURING SESSION:
P. O. BOX V, JUNEAU, ALASKA 99811 • (907) 465-3473 • 465-3474

1

DISTRICT N

ALASKA PENINSULA • ALEUTIAN CHAIN • BRISTOL BAY • KODIAK ISLAND • LAKE CLARK/LAKE ILIAMNA • PRIBILOF ISLANDS • SHUMAGIN ISLANDS

SECTIONAL ANALYSIS

CS FOR SENATE BILL 26 (L&C)

"An Act relating to loans under the Commercial Fishing Loan Act and to limited entry permits pledged as security for those loans; and providing for an effective date."

SECTION 1

Amendment to 16.10.335(a).

(3) Clarifies existing language by changing "arrearages" to "the debtor's outstanding principal and interest".

(5) Provides debtors with the full 120 day period until repossession, rather than 60 days, to bring their loans current. Under current law, a debtor has 60 days to bring the loan current and 60 days to pay off the note in full before repossession proceedings against limited entry permits are initiated. The extension will help rural fishermen, in particular, who do not start trying to solve their loan problems until the 60 day time limit has passed.

(6) New paragraph. Provides the debtor with the option of submitting a new plan of repayment. The plan is subject to the commissioner's approval.

(7) Clarifies existing language.

SECTION 2

Amendment to 16.10.335(e).

Makes existing statute consistent with other amendments.

SECTION 3

Amendment to 16.10.335. New subsection (f).

(f) Eliminates the existing conflict between state statutes -- which require a demand to be issued in all cases -- and the superseding federal bankruptcy statutes which prohibit enforcement action -- such as issuing a demand -- after a debtor files bankruptcy.

SECTION 4

Amendment to 16.10.338. New subsection (b).

(b) In the case of a missed payment or default on a boat loan where a limited entry permit has been pledged as collateral, the commissioner of commerce shall notify the borrower that he has the option of selling the vessel and renegotiating the balance due. Selling the vessel is a possibility under present law, but official notification is needed in order to encourage people to do it. The department also does not now have the authority to renegotiate the remaining payments.

SECTION 5

Amendment to 16.10.350. New subsection (b).

(b) The commissioner is required to submit an annual report to the legislature about the number and nature of reinstatements authorized by this legislation.

SECTION 6

Amendment to 16.30. New section, 16.10.253. WAIVER OF CONFIDENTIALITY.

(a) Makes clear that information about a borrower's loan can be released at any time to any individual authorized by the borrower.

(b) Establishes a form on which the borrower can designate individuals (attorney, accountant, business consultant, trusted friend, etc.) and organizations (Native non-profit association, business development center, etc.) that will automatically receive copies of any default notice the Division of Investments mails out. This would enable individuals and organizations trusted by the borrower to find out when a loan is in trouble. They would then be able to assist the borrower in correcting the situation.

SECTION 7

Amendment to 16.43.960. New subsection (j).

Makes the Commercial Fisheries Entry Commission statutes in Title 16 consistent with the amendment in Section 4.

SECTION 8

Immediate effective date.



SENATOR FRED F. ZHAROFF
ALASKA STATE LEGISLATURE

P. O. BOX 405, KODIAK, ALASKA 99615 (907) 486-5259

DURING SESSION:


P. O. BOX V, JUNEAU, ALASKA 99811 • (907) 465-3473 • 465-3474

DISTRICT N

ALASKA PENINSULA • ALEUTIAN CHAIN • BRISTOL BAY • KODIAK ISLAND • LAKE CLARK/LAKE ILIAMNA • PRIBILOF ISLANDS • SHUMAGIN ISLANDS

MEMORANDUM

TO: Senator Pat Pourchot
Co-Chairman
Senate Finance Committee

FROM: Senator Fred F. Zharoff 

DATE: April 26, 1991

RE: CS For Senate Bill 26 - "An Act relating to loans under the Commercial Fishing Loan Act and to limited entry permits pledged as security for those loans; and providing for an effective date."

I respectfully request that CSSB 26 be scheduled for a hearing before the Senate Finance Committee at the committee's earliest convenience.

CSSB 26 has a zero fiscal note. The bill amends the statutes for the state's Commercial Fishing Loan Program, which is managed by the Division of Investments in the Department of Commerce and Economic Development. It changes some of the procedures in the program without creating additional cost.

The purpose of CSSB 26 is to solve some of the problems commercial fishermen have experienced with the program by allowing the division to respond to problem loans on a more flexible, case by case basis.

CSSB 26 approaches the problem from two directions. It provides more notice to borrowers about problem situations and the options available, and it allows the division to respond with more flexibility when a borrower cooperates in putting his financial affairs back in order.

CSSB 26 was crafted to protect the state's interests and to safeguard the solvency of the loan program. The bill was written in close cooperation with the Department of Commerce. The Division of Legislative Audit recommended this legislation in its 1988 audit of "Commercial Fisheries Loan Programs' Procedures".

I wish to propose either an amendment or committee substitute for CSSB 26 in the Senate Finance Committee. This is discussed in a separate memo.

SB 26: "An Act relating to loans under the Commercial Fishing Loan Act and to limited entry permits pledged as security for those loans; and providing for an effective date."

SB 26 makes a number of changes to the Commercial Fishing loan program, most dealing with limited entry permits and the foreclosure process. The department recognizes the important role that limited entry permits play in the economies of communities throughout the state and supports legislative efforts to provide additional flexibility to work with delinquent borrowers. Below are the major changes that this bill will make to the Commercial Fishing loan program. The parenthetical notations at the end of each provision reference the appropriate sections of SB 26.

1. The time period during which a delinquent borrower can bring a loan current after the postmark date of the default notice is increased from 60 to 120 days (Section 1).

This change allows additional time for delinquent borrowers to respond. Existing statute requires that the loan be paid in full after the 60th day.

2. A provision is added that allows the department to waive the 120-day time limit under AS 16.10.335(a) if the debtor shows good cause (Section 2).

The department strongly supports this provision because it will provide additional flexibility to work with delinquent borrowers that show good cause even in cases where the 120-day time limit has not been met. For example, if a borrower fails to contact us prior to the 120th day and later requests an extension or finds someone to assume the loan, the department would be able to work with the borrower to resolve the delinquency. This is not possible under existing statute. The department already has the ability to negotiate beyond the expiration of a demand notice for vessels, real estate, and gear and strongly supports the ability to do so for permits as well.

A Legislative Budget and Audit Committee Report dated March 14, 1988, suggested that a change such as this be considered by the Legislature.

3. A provision is added that addresses the situation where a borrower has pledged a limited entry permit for a loan that was used toward a vessel (Section 5). Subject to the commissioner's acceptance, the borrower may sell the vessel and renegotiate payment of the balance due on the loan without loss of the pledged permit.

The department supports this provision because it provides more flexibility to deal with delinquent borrowers who find themselves in the position of wanting to sell a vessel that is worth less than the outstanding loan balance.

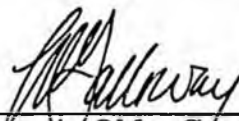
4. A provision is added to terminate a debtor's interest in a limited entry permit when a debtor has filed bankruptcy and the automatic stay is no longer in effect (Sections 4 and 8). This only applies in cases where the debtor has not reaffirmed the debt.

The department supports this provision as it eliminates the existing conflict between the state statutes which requires that a demand be issued in all cases and the superseding federal bankruptcy statutes which prohibit enforcement action, such as issuing a demand after a debtor has filed bankruptcy. Since the department appears before the bankruptcy court in numerous cases, it is advantageous to eliminate conflicts such as these whenever possible.

5. A provision is added which allows the department to release information about a borrower's loan when authorized by the borrower (Section 7). This section also allows a borrower to designate persons or organizations to whom a copy of any notice of default must be sent.

This provision codifies existing department policy.

In summary, the department recognizes the ripple effect that can take place when a limited entry permit is repossessed and has always considered repossession a last resort. The department, however, also has an obligation to protect the assets of the loan fund. The provisions contained in SB 26 will provide the department with additional flexibility in its collection efforts and will enable the department to strike a good balance between assisting borrowers who are experiencing difficulties while, at the same time, protecting the assets of the Commercial Fishing Revolving Loan Fund for future loans.



Glenn A. Olds, Commissioner

Date: 2/7/1991

BRISTOL BAY NATIVE CONVENTION
Resolution 86-22

- WHEREAS: commercial fishing within the Bristol Bay watershed has had poor harvest records for some of the Bristol Bay Fishermen; and
- WHEREAS: the 1986 projected harvest forecast for Bristol Bay is also low; and
- WHEREAS: fishermen from Bristol Bay have no other alternative source of income; and
- WHEREAS: many fishermen have obtained from the State of Alaska loans to purchase new boats and permits to enhance their fishing efforts; and
- WHEREAS: many fishermen put up their commercial fishing entry permit as collateral to obtain their state loans; and
- WHEREAS: many of these commercial fishing entry permits are now at risk due to poor salmon harvests; and
- WHEREAS: the State set up the loan program to help local fishermen become more self sufficient, efficient and competitive and not to take boats and permits from the local residents.

NOW THEREFORE BE IT RESOLVED that the Bristol Bay Native Convention and delegates assembled requests the State Loan Program and Governor of the State of Alaska see and implement ways so that local fishermen do not lose their boats and permits.

CERTIFICATION

I hereby certify that the foregoing is a full, true and correct copy of the resolution adopted by the delegates to the 1986 Bristol Bay Native Convention, February 23, 24, 25, & 26, Dillingham, Alaska, at which a quorum was present.

WITNESS My hand and seal this 26th day of February, 1986.

Phillip P. Johnson
Chairman, Bristol Bay Native Convention

WITNESSED:

D. Dally Am. Ch.
Chairperson, Resolutions Committee

Excerpt from:

"A Special Report on the Dept. of Commerce and Economic Development
Commercial Fisheries Loan Programs' Procedures", March 14, 1988.

5

PUBLIC POLICY CONSIDERATIONS

Though no conclusive evidence exists that correlates a reduction of permit flow out of rural areas with the degree of lenient lending practices, the Legislature may want to consider additional forms of subsidization specifically for those rural areas that have become economically distressed due to an outflow of fishing permits. Action such as HB 509 which increases the maximum loan terms on permit loans to 30 years should ease the debt service burden for those finding it difficult to afford purchasing a fishing permit.

It should be noted, however, that the inherent quality of state lending programs creates a two-edged sword. On the one hand, the fiduciary responsibility of protecting the public's assets must be maintained; while at the same time, the socioeconomic aspects of meeting the public need must be considered. Policy decisions are necessary to establish at what point an appropriate balance occurs. If legislative or executive policy is willing to accept a higher risk situation and deems that increased emphasis should be placed on the societal aspects, such direction needs to be expressed. As a result, however, increased delinquencies, foreclosures, and losses may occur.

Consideration may also be given to changing the Commercial Fishing Loan Act to require all repossessed permits be returned to CFEC, who in turn could make the permits available to persons who meet the standards for initial issuance (AS 16.43.250). Areas where commercial fishing provides the primary economic base which can be determined to be economically distressed could be so designated. Applicants residing within these areas who meet CFEC criteria could be chosen, perhaps on a lottery based system, to be given the right of first refusal on the purchase of an available limited entry permit. (Currently, the Commercial Fishing Loan Act requires CFRLP to offer CFEC a right of first refusal at a price equal to the amount outstanding on the foreclosed note plus any costs CFRLP directly incurred in administering the loan. This provision is related to the CFEC's inactive buy-back program under AS 16.43.310 which, in the opinion of the Attorney General, offends the constitutional prohibition against dedication of funds.)

*

Consideration may be given to amending the Commercial Fishing Loan Act (AS 16.10.335) to provide more flexibility to CFRLP in allowing borrowers in default who have pledged permits as security, greater opportunities to bring their loans current. Presently, the law establishes a definite timetable in foreclosing on defaulted loans of this nature. DCED feels they have less workout capability in these cases in order to avoid repossession of the permits.