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26

SENATE LABOR & COMMERCE COMMITTEE
BILL FILE

BILL NUMBER: SB 26

BILL TITLE: FISH LOANS / LIMITED PENTM

SPONSOR: ZHAROFF

RECEIVED: 1/21/91

WRITTEN REQUEST TO SCHEDULE: DATE 2/20 FROM SEN ZHAROFF

SECTIONAL ANALYSIS RECEIVED: DATE 2/21 FROM MICHAEL FORD

FISCAL NOTE REQUESTED: DATE 2/8 FROM _____

FISCAL NOTE RECEIVED: DATE 2/8 FROM DR OUDS

FISCAL NOTE CS REQUESTED: DATE _____ FROM _____

FISCAL NOTE CS RECEIVED: DATE _____ FROM _____

FISCAL NOTE CS REQUESTED: DATE _____ FROM _____

FISCAL NOTE CS RECEIVED: DATE _____ FROM _____

FISCAL NOTE CS REQUESTED: DATE _____ FROM _____

FISCAL NOTE CS RECEIVED: DATE _____ FROM _____

FIVE DAY NOTICE GIVEN:

COMMITTEES OF REFERRAL: FIRST: L & C SECOND: FIN THIRD: _____

DATE

COMMITTEE ACTION

3/13

DELETED SEC 2

HEARING NOTIFICATION LIST

- | | |
|------------|-----------|
| 1. SPONSOR | 6. _____ |
| 2. AGENCY | 7. _____ |
| 3. _____ | 8. _____ |
| 4. _____ | 9. _____ |
| 5. _____ | 10. _____ |

FISCAL NOTE

STATE OF ALASKA
1991 LEGISLATIVE SESSION

BILL NO. SB 26

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.

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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

CAPITAL	0	0	0	0	0	0
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REVENUE	0	0	0	0	0	0
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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): Legislative Finance, Legislative Sponsor, Requestor, OMB, & Impacted Agency(ies).



SENATOR FRED F. ZHAROFF
ALASKA STATE LEGISLATURE

P. O. BOX 405, KODIAK, ALASKA 99815 (907) 486-5259
DURING SESSION:

P. O. BOX V, JUNEAU, ALASKA 99811 • (907) 485-3473 • 485-3474

DISTRICT N

ALASKA PENINSULA • ALEUTIAN CHAIN • BRISTOL BAY • KODIAK ISLAND • LAKE CLARK/LAKE ILLIAMNA • PIIILOF ISLANDS • SHUMAGIN ISLANDS

MEMORANDUM

TO: Senator Drue Pearce
Chair
Labor and Commerce Committee

FROM: Senator Fred F. Zharoff

DATE: February 19, 1991

RE: 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 SB 26 be scheduled for a hearing before the Labor and Commerce Committee at the committee's earliest convenience.

SB 26 amends the state's Commercial Fishing Loan Program, which is managed by the Division of Investments in the Department of Commerce and Economic Development.

SB 26 solves 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. By allowing the Division of Investments to have more flexibility -- in the form of less rigid deadlines and more notification to borrowers -- the state will provide Alaska fishermen who fall behind in their payments an opportunity to put their financial affairs back in order.

SB 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 such legislation in its 1988 audit of "Commercial Fisheries Loan Programs' Procedures".

The following backup information is attached:

1. Sectional analysis.
2. Department of Commerce position paper and fiscal note.
3. Resolution from the Bristol Bay Native Convention.

4. Excerpt from the Division of Legislative Audit's "Special Report on the Department of Commerce and Economic Development Commercial Fisheries Loan Programs' Procedures", released March 14, 1988.
5. Commercial Fishing Loan Act statutes.



SENATOR FRED F. ZHAROFF
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DISTRICT N

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

SECTIONAL ANALYSIS

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."

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 120 days, rather than the current 60 days, to bring their loans current. This gives the debtors an opportunity to bring their loans current up until the day the limited entry permit is repossessed. 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. 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 are initiated.

(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

Repeal and reenact 16.10.335(d).

Allows the commissioner of the Department of Commerce and Economic Development to waive any of the time limits in the previous section for good cause. Good cause is left to the discretion of the commissioner.

SECTION 3

Amendment to 16.10.335(e).

Makes existing statute consistent with other amendments.

SECTION 4

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 5

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 6

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 7

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 8

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 9

Immediate effective date.

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.

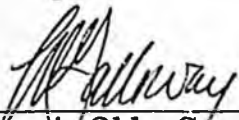
4. A provision is added to terminate a debtor's interest in a limited entry permit when a debtor has filed bankruptcy and the automatic stay is no longer in effect (Sections 4 and 8). This only applies in cases where the debtor has not reaffirmed the debt.

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.

 *Spec. Asst. to the Comm*

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.

John P. Johnson
Chairman, Bristol Bay Native Convention

WITNESSED:

H. Dally Smith
Chairperson, Resolutions Committee

Excerpt from:

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

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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.