

ALASKA LEGISLATURE SPECIAL COMMITTEE / SUBJECT FILE 8672
1344 SCOMM 50: HOUSE SPECIAL COMMITTEE ON STATE LOANS 1985-86

STATE OF ALASKA THE LEGISLATURE

LEGISLATIVE AFFAIRS AGENCY

POUCH Y STATE CAPITOL
JUNEAU, ALASKA 99811
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MEMORANDUM

May 1, 1985

SUBJECT: Sectional analysis of CSSB 78 (Finance)

TO: Representative John L. Sund
Chairman,
House Special Committee on State Loans

FROM: Keith B. Levy *KBL*
Legislative Counsel

You have requested a sectional analysis of CSSB 78 (Finance). The bill amends a number of state loan programs administered by the Department of Commerce and Economic Development and the Commercial Fishing and Agriculture Bank.

Section 1 amends the commercial fishing loan program (AS 16.10.310(a)) to allow loans for the repair and upgrading of vessels and gear and the purchase of entry permits. To qualify for a loan an individual must either not have other occupational opportunities available or must be dependent on commercial fishing for a livelihood as a traditional way of life. This section also allows assumption of a loan if the applicant has been a resident for two years and the assumption would be consistent with the purposes of the loan program. An applicant for assumption may not be disqualified solely because the applicant does not meet the existing eligibility requirements. Finally, section 1 allows DCED to prequalify loan applicants for limited entry permit loans and charge a fee not to exceed \$200 for prequalification.

Section 2 requires DCED to consider a commercial fisherman's income from all sources in determining the fisherman's ability to repay a loan.

Sections 3 and 4 make technical amendments to AS 16.310.315 and AS 16.10.320(a) to conform to other amendments made in the bill.

Section 5 provides that limits on the amount of loans in existing law apply to the total outstanding balance on the loans rather than the total amount of the initial loans. This section also repeals existing provisions under which loans to an associate of the borrower count towards the borrower's loan limits.

Section 6 amends AS 16.10.320(e) to allow two or more commercial fishermen to obtain a loan jointly under the same terms as individual loans.

Sections 7 and 8 make technical amendments to AS 16.10.320(i) and AS 16.10.333(a) to conform to other amendments in the bill.

Section 9 requires a borrower who uses a limited entry permit as security for a loan to maintain an address on file with the department where notice of default may be received by the borrower. If the department mails a notice of default to the borrower, receipt of the notice is presumed, but may be rebutted by the borrower. The department may waive the statutory time limits related to default if the borrower shows good cause and notifies the commissioner before the expiration of the time limit.

Section 10 amends AS 16.10.339 to provide that the department, not the Commercial Fisheries Entry Commission, must adopt regulations to implement the statutory provisions.

Section 11 gives DCED the power to dispose of property acquired through foreclosure of a fishing loan in a manner that serves the best interests of the state. The disposal may include amortization of payments over a period of years, but may not be by lease.

Sections 12 - 19, 21 - 31, and 33 create foreclosure expense accounts within certain loan funds. The accounts are created to protect the state's security interest in collateral on the loans and to pay the expenses of foreclosure on the loans. These sections also give DCED the power to dispose of property acquired through foreclosure of loans in a manner that serves the best interests of the state. These provisions apply to the fisheries enhancement revolving loan fund (secs. 12 and 13), the Alaska World War II veterans' revolving loan fund (secs. 14 and 15), the mining loan fund (secs. 16 and 17), the child care facility

Representative John L. Sund
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revolving loan fund (secs. 18 and 19), the bulk fuel revolving loan fund (secs. 21 and 22), the alternative energy revolving loan fund (secs. 23 and 24), the residential energy conservation fund (secs. 25 and 26), the tourism revolving loan fund (secs. 27 and 28), the small business revolving loan fund (secs. 29 and 30), and the historical district revolving loan fund (secs. 31 and 33).

Section 20 gives CFAB the power to make a loan to a person regardless of residency, if the loan is necessary to protect the value of property held by the bank as security for a loan that is in default.

Section 32 of the bill amends the historical district loan program to provide that to be eligible for a loan, a structure must be within a historical district and either identified as important in state or national history, or suitable for modification to conform to the period or motif of the surrounding buildings. Under existing law, a structure must meet all three of these requirements.

Section 34 repeals AS 16.10.310(b), 16.10.320(f) and 16.10.333(f), related to commercial fishing loans.

Section 35 provides for a July 1, 1985, effective date.

KBL:lmb
L4/083

To go on 195

May 10th

*Sec. 1.

(a) All right, title, and interest in loans of the type described in (b) of this section, and all right, title and interest in all mortgages, notes and other instruments of security made in connection with those loans, are transferred and appropriated to the fund (AS 45.93.010) of the Forest Products Business Loan Guarantee Program; provided however that payment of principal and interest from the said loans to the Forest Products Business Loan Guarantee Fund (AS 45.93.010) shall continue to be paid into the general fund until June 30, 1986, after which time payments into the Forest Products Business Loan Guarantee Fund shall commence. If the amount in unpaid principal of the loans exceeds \$25,000,000 on July 1, 1986, only loans and instruments of security totaling \$25,000,000 in unpaid principal are transferred and appropriated under this section.

(b) This section transfers and appropriates

(1) small business loans acquired or made under AS 45.95; and

(2) tourism loans acquired or made under AS 45.90.

*Sec. 2. The unexpended and unobligated portion of the appropriation made herein shall lapse into the general fund on June 30, 1987.

*Sec. 3. Money obligated hereunder for the purpose of guaranteeing the forest products business loan guarantee

fund shall be reappropriated to the general fund as the principal of the guaranteed loan is paid, in amounts equal to the percentage of the loan guarantee multiplied by the payments on the principal of the loan.

4. The Commissioner of Commerce and Economic Development may not ~~guarantee~~ obligate more funds than are in the forest products business loan guarantee fund.

To go on SB 78

May 10th

*Sec. _____. AS 45.94 is repealed.

*Sec. _____. AS 45 is amended by adding a new chapter to read:

Sec. 45.93.010. ESTABLISHMENT OF FOREST PRODUCTS BUSINESS LOAN GUARANTEE FUND. The forest products business loan guarantee fund is established in the Department of Commerce and Economic Development.

Sec. 45.93.020. FOREST PRODUCTS BUSINESS LOAN GUARANTEE PROGRAM. The department may use money in the fund to guarantee a loan to a forest products business for the purpose of financing the purchase of depreciable assets and roads that will maintain or increase employment in an existing forest products business, as provided in AS 45.93.050.

Sec. 45.93.030. POWERS AND DUTIES OF THE DEPARTMENT.

(a) The commissioner may

(1) designate agents and delegate powers necessary to implement this chapter;

(2) adopt regulations to implement this chapter;

(3) make and execute contracts and other instruments to implement this chapter;

(4) acquire real or personal property by purchase, transfer, or foreclosure when the acquisition is necessary to protect an interest in the fund.

(b) The commissioner shall require that a loan guaranteed by the fund be secured by adequate collateral, and that the net cash flow from the forest products business provides

adequate coverage for the debt service on the loan. The applicant shall provide an economic and financial feasibility analysis prepared by a firm acceptable to the department.

Sec. 45.93.040. INVESTMENT OF THE FUND. Money in the fund that is not being used for loan guarantees under this chapter shall be invested as provided for the investment of state treasury surplus under AS 37.10.070. Income from investment and interest on loans in the fund shall be transferred to the general fund.

Sec. 45.93.050

(a) The department may guarantee a loan under this chapter if

(1) the term of the loan does not exceed 10 years;

(2) the loan is commercially reasonable and secured by the real or personal property, inventory or accounts receivable of the forest products business, or by other collateral acceptable to the department;

(3) the loan is originated with and serviced by a state or federally chartered financial institution;

(4) the loan is made to a forest products business and

(A) a majority interest of the business is held by Alaska residents;

(B) the business maintains offices and operating facilities exclusively in the state unless the business is engaged in the export of forest products; and

(C) a majority of the employees of the business are residents of the state.

(5) the loan will increase or maintain production and employment in the forest products business and is for either depreciable assets which will enhance the value of the product sold by the borrower^{or} for a road or roads to be constructed by the borrower in connection with a timber sale.

(6) the portion of the loan not guaranteed by the state is held by the originating financial institution or another financial institution approved by the commissioner.

(b) The department may provide a guarantee from the fund for up to 80 percent of a loan for up to \$6,000,000 per borrower for depreciable assets which will enhance the value of the products sold by the borrower and for up to \$2,000,000 per borrower for road construction. The department shall not guarantee loans to refinance existing debt. At no time shall the department provide guarantees for loans aggregating more than \$31,250,000 of the principal amount. The department may not guarantee the payment of annual interest on the guaranteed portion of a loan.

(c) After a default by a borrower, the maximum liability of the fund for a loan guarantee under this chapter is equal to the amount then in default multiplied by a percentage equal to the guaranteed percentage of the loan. Payments received toward satisfaction of a default shall be allocated between the lender and the fund according to the guaranteed

percentage of the loan until the principal balance has been repaid.

(d) The department shall charge a user fee not to exceed one percent of the principal balance of the loan guarantee at the inception of the loan which is guaranteed under this chapter, *which shall be paid into the general fund.*

Sec. 45.93.055. DISPOSAL OF PROPERTY ACQUIRED BY DEFAULT OR FORECLOSURE. The department shall dispose of property acquired through default or foreclosure of a loan made under this chapter. Disposal shall be made in a manner that serves the best interests of the state, and may include the amortization of payments over a period of years.

Sec. 45.93.060. SPECIAL ACCOUNT ESTABLISHED.

(a) There is established as a special account within the forest products business guarantee loan fund the foreclosure expense account. This account is established as a reserve from fund equity.

(b) The commissioner may expend money credited to the foreclosure expense account when necessary to protect the state's security interest in collateral on loans made under AS 45.93.020 or to defray expenses incurred during foreclosure proceedings after a default by an obligor.

Sec. 45.93.070. DEFINITIONS. In this chapter

(1) "commissioner" means the commissioner of commerce and economic development;

(2) "department" means the Department of Commerce and

Economic Development;

(3) "forest products business" means a sole proprietorship, partnership, corporation or other business organization formed under the laws of the state for the purpose of harvesting or processing timber or other forest resources;

(4) "fund" means the forest products business loan guarantee fund;

(5) "depreciable asset" means a kiln, chipping facility, creosote or pressure plant, planer, equipment for precision sawyering, similiar equipment approved by the commissioner designed to enhance the value of timber prouducts for the Alaska, domestic and export markets, and related facilities.

HCS CSSB 78 (Finance)

FOREST PRODUCTS BUSINESS LOAN GUARANTEE PROGRAM

The proposal amends the existing Forest Products Business Loan Gurantee Program which was enacted to allow the employees of the Ketchikan Pulp Corporation to purchase an interest in the pulp mill owned by Louisiana Pacific Corporation. The employees have now decided not to purchase the mill; thus the program is of no further use.

In the meantime, the Governor's Timber Task Force was created with the mission of finding ways to improve the health of the timber industry in Southeast Alaska and to enhance the industry in the Railbelt Area. Only 5-10% of the 110 million board feet annual market for wood products in the Railbelt Area is provided by Alaska wood products. The Task Force estimates that up to 60% of that market could be captured by the Alaska industry if the quality of the products coming from Alaska's sawmills is improved. Pacific Rim purchasers have stated that they will buy more sawn products from Alaska if the quality of the products is improved. In each case the products must be: 1) precision sawn; 2) moisture stabilized; and 3) planed.

- This proposal would allow the guarantee of loans made for the purchase of "depreciable assets" and roads. "Depreciable assets" are defined to limit the loans guaranteed under the program to loans for planers, kilns, chippers, precision sawing equipment, and similiar equipment to improve the quality of the sawn products. The loans cannot be made to refinance debt or to purchase assets that could otherwise be financed (such as fork lifts, trucks and other more conventional equipment). In addition, loggers are helped by allowing guarantees to build roads in connection with a timber sale. In short, the loan gurantees are designed to upgrade the products produced by Alaska's saw mills.

There has been a strong effort made to assure that the loans made are commerically reasonable and unlikely to result in default. Under the program, as amended by this bill, the Department of Commerce and Economic Development would be able to guarantee loans for up to 80%, but not more than \$2 million per borrower for depreciable assets and \$1 million per borrower for road construction. Thus the banks will have a stake in making certain that only good loans are made. The Commissioner gets a second review of the likelihood of repayment when he or she decides whether to provide a guarantee. A 1% fee for the loan guarantee is required.

The following is a section-by-section description of the bill:

SECTION-BY-SECTION

Section 30. This section amends AS 45.94.020 to state that the purpose of the loan guarantee program is to finance depreciable assets and roads. The amendment drops out the provisions in the existing law dealing with the purchase of stock which were specifically for the Ketchikan Pulp Company situation.

Section 31. AS 45.94.030 outlines the powers and duties of the Department of Commerce and Economic Development and the Commissioner. A new subsection (c) has been added to prohibit the Department from making loan guarantees in excess of the unobligated cash in the fund.

AS 45.94.040 is repealed because it is unnecessary in the opinion of the Department of Commerce and Economic Development.

Section 32. This section amends AS 45.94.050(a) to include the requirement in subparagraph (a)(2) that the loan be commercially reasonable. It also requires that a controlling interest in the business be held by Alaska residents. Subparagraph (a)(1) requires that the business maintain its offices and operating facilities exclusively in the State unless it engages in the export of forest products. It also requires that a majority of employees of the business be residents of the State. A new subsection (5) is added requiring that the guarantee be limited to loans for depreciable assets or roads in connection with a timber sale and that the guaranteed loans maintain or increase production and employment in the forest products business in the State. A new subsection (6) requires that the portion of the loan not guaranteed by the State be held by a financial institution which meets the approval of the Commissioner.

Section 33. AS 45.94.050(b) is amended by this section to increase the guarantee from 50% to 80% but to limit that guarantee to \$2 million per borrower for depreciable assets and \$1 million per borrower for roads. The current law sets a \$30 million limit. The Department would not be permitted to guarantee loans to refinance debt or to pay interest on the guaranteed portion of the loan. The Department would in no case be able to make loan guarantees in excess of \$10,000,000. A new subsection (c) was added to state that the Department may not make loan guarantees in excess of funds available

Section 34. This section amends AS 45.94.050(c) to require that the ratio of the guarantee to the outstanding loan principal stay the same over the term of the loan. This means as the principal amount of the loan goes down so does the amount which the State has guaranteed. Any payment

received after default will be split between the State and the bank in proportion to the guaranteed portion of the loan guaranteed by each.

Section 35. This section adds a new subsection (d) to AS 45.94.050 which charges the borrower a fee not to exceed 1% of the principal balance of the loan guarantee at the inception of the loan. The purpose of subsection (d) is to provide the State a portion of the anticipated lower interest rate resulting from the guarantee.

Section 36. This section adds the standard provisions allowing the Department to dispose of property it acquires as a result of default and establishes a special account to protect the State's security in collateral on guaranteed loans.

In addition, "depreciable asset" is defined in the definition section of AS 45.94.060 to include a kiln, chipping facility, creosote or pressure plant, planer, or precision sawing equipment. This is to make certain the loans are used to further the purpose of the program which is to upgrade the quality of sawn products.

Finally, the program is transferred from the Department of Revenue to the Department of Commerce and Economic Development by changing the definitions in subsections (1) and (2) of AS 45.94.060(1) and (2).



Official Business

Alaska State Legislature

Senate

Committee on Labor & Commerce

Pouch V
State Capitol
Juneau, Alaska 99811

SB 78: Sectional Analysis

Section 1) Makes both technical and policy changes to the present Commercial Fisheries Loan Program. The first substantive change occurs on line 11 of page 2 which repeals subsection pertaining to loans made to "corporations, partnerships, and joint venturers". Section 3 would allow individual fisherman who qualify for loans under 16.10.310 (a) (1) (B) to obtain loans jointly "whether operating as a corporation, partnership, joint venture, or otherwise"

Section also provides statutory authority to permit assumption of loans and repeals language which required consultation between the Dept of F&G and the DCED for all commercial fishing loan regulations.

Also adds language which grants the commissioner authority to consider all sources of a fisherman's income when determining a fisherman's ability to repay a loan. Currently the commissioner has that authority only with respect to loans for entry permits.

Section 2) Deletes references to "corporations, partnerships, or joint ventures (16.10.310 (a) (1) (C))" consistent with that deletion in section 1).

Section 3) Changes the "Limitations on Loans" section and provides for extensions on the term of loans because of a poor fishing season or adverse market conditions.

Language is also added which changes the loan limits from a "total dollar amount" to a borrower to the total "balances outstanding" to a borrower.

Further, deletes language regarding loans to "associates of the borrower" as all loans will be made to individuals.

Section 4) Currently, the department is able to consider fishing and all other sources of income of an applicant who applies for an entry permit loan under 16.10.310 (a) (1) (A). This bill would extend that authority to "consider all sources of income" for Commercial Fishing Loans

Section 5) Changes the requirements of notification when a debtor defaults on a note which has a permit pledged as security for the note. The mailing notice of default is changed from registered and certified mail to certified and first class mail. Changes the "countdown" provisions for notice of default and adds an additional day for each notice.

Requires that when a permit is pledged to secure a loan the borrower must maintain a current mailing address on file with the Department. Further states that upon evidence of mailing, the receipt of the notice of default by the debtor will be "presumed". This presumption is rebuttable by presentation of evidence by the debtor that the notice was not received and proof of lack of receipt nullifies the notice.

Section also grants the commissioner authority to waive any of the time limits if the department receives a request from the borrower or his representative before the expiration of the time limit for which the waiver is sought.

Section 6) Deletes the provision that the Commercial Fisheries Entry Commission, with the approval of the Department, adopt regulations for the limited entry permit sections of this bill.

Section 7) Provides statutory authority for the department to dispose of property acquired after default or foreclosure of a Comm Fish Loan.

Section 8) Establishes a special "foreclosure" expense account within the fisheries enhancement revolving loan fund. The account is established as a reserve from fund equity and this section also allows the department to dispose of property acquired thru default.

Section 9) Establishes a special foreclosure account for the Alaska WW II veterans revolving loan fund, and allows the department to dispose of property acquired thru default.

Section 10) Establishes a special foreclosure account for the mining loan fund, and allows the department to dispose of property acquired thru default.

Section 11) Establishes a special foreclosure account for the childcare facility revolving loan fund, and allows the department to dispose of property acquired thru default.

Section 12) Establishes a special foreclosure account for the bulk fuel revolving loan fund, and allows the department to dispose of property acquired thru default. Also permits the department to adopt regs to implement this chapter.

Section 13) Establishes the special foreclosure account for the Alternative Energy Revolving Loan Fund, and allows the department to dispose of property acquired thru default.

Section 14) Establishes the special foreclosure account for the Residential Energy Conservation Fund, and allows the department to dispose of property acquired thru default. Also allows the department to adopt regs to implement this program.

Section 15) Establishes a special foreclosure account for the tourism revolving fund, and allows the department to dispose of property acquired thru default.

Section 16) Establishes a special foreclosure account for the small business revolving loan fund, and allows the department to dispose of property acquired thru default.

Section 17) Establishes a special foreclosure account for the historical district revolving loan fund.

Section 18) Makes grammatical changes and defines the scope of the historical district loan program.

Section 19) Provides the state with authority to dispose of property acquired thru default or foreclosure from the historical district loan program.

Section 20) July 1, 1985 effective date.

1 IN THE HOUSE

BY THE HEALTH, EDUCATION AND
SOCIAL SERVICES COMMITTEE

2 HOUSE BILL NO.

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FOURTEENTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act relating to the use of student loans to pay
7 child care expenses."

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

9 * Section 1. AS 14.43.120(a) is amended to read:

10 (a) Proceeds from scholarship loans may only be used for books,
11 tuition and required fees, child care expenses, and for room and
12 board, *however the maximum loan award may not exceed the cost of books,*
13 *tuition and required fees, and room and board.*

* Sec. 2. AS 14.43.640(d) is amended to read:

14 (d) Proceeds from a teacher scholarship loan may be used only
15 for undergraduate expenses of books, tuition, required fees, room and
16 board, child care expenses, and the transportation expense for two
17 round trips between the loan recipient's home and school, *however the*
18 *maximum loan award may not exceed the cost of books, tuition and*
19 *required fees, and room and board.*

Original sponsor: Rules/Governor

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IN THE SENATE

BY THE HOUSE SPECIAL
COMMITTEE ON STATE LOANS

HOUSE CS FOR CS FOR SENATE BILL NO. 78 (Loans)

IN THE LEGISLATURE OF THE STATE OF ALASKA

FOURTEENTH LEGISLATURE - FIRST SESSION

A BILL

For an Act entitled: "An Act making miscellaneous amendments to state loan programs; and providing for an effective date."

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

* Section 1. AS 16.10.310(a) is amended to read:

(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 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, if the individual [AN INDIVIDUAL WHO] has been a state resident for a continuous period of two years immediately preceding the date of application under AS 16.10.370, and either (WHEN

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

1 commercial fishing; or

2 (ii) is economically dependent on commercial
3 fishing for a livelihood and for whom commercial fishing has
4 been a traditional way of life [FOR THE INDIVIDUAL] in
5 Alaska [, FOR THE REPAIR, RESTORATION OR UPGRADING OF EXIST-
6 ING VESSELS AND GEAR, FOR THE PURCHASE OF ENTRY PERMITS AND
7 GEAR, AND FOR THE CONSTRUCTION AND PURCHASE OF VESSELS;

8 (C) CORPORATIONS, PARTNERSHIPS, OR JOINT VENTURES, 100
9 PERCENT OF WHICH ARE OWNED BY INDIVIDUAL COMMERCIAL FISHERMEN WHO
10 HAVE BEEN STATE RESIDENTS FOR A CONTINUOUS PERIOD OF TWO YEARS
11 IMMEDIATELY PRECEDING THE DATE OF APPLICATION FOR A LOAN UNDER
12 AS 16.10.310(a)(1)(B) AND HAVE HAD A CREWMEMBER OR COMMERCIAL
13 FISHING LICENSE UNDER AS 16.05.480 OR A PERMIT UNDER AS 16.43 FOR
14 THE YEAR IMMEDIATELY PRECEDING THE DATE OF APPLICATION AND ANY
15 OTHER TWO OF THE PAST FIVE YEARS, AND WHO ACTIVELY PARTICIPATED
16 IN THE FISHERY DURING THAT PERIOD, FOR THE REPAIR, RESTORATION OR
17 UPGRADING OF EXISTING VESSELS AND GEAR, FOR THE PURCHASE OF GEAR,
18 AND FOR THE CONSTRUCTION AND PURCHASE OF VESSELS];

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

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

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

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

28 (6) enter into agreements with other agencies or organiza-
29 tions to create an outreach program to make loans under AS 16.10.300 -

1 16.10.370 in rural areas of the state;

2 (7) allow an assumption of a loan if

3 (A) the applicant has been a state resident for a
4 continuous period of two years immediately preceding the date of
5 the request for an assumption; and

6 (B) approval of the assumption would be consistent
7 with the purposes of AS 16.10.300; an applicant for a loan
8 assumption may not be disqualified because the applicant does not
9 meet the loan eligibility requirements of (1) of this subsection;

10 (8) prequalify loan applicants for a limited entry permit
11 loan and charge a fee not to exceed \$200 for prequalification.

12 * Sec. 2. AS 16.10.310 is amended by adding a new subsection to read:

13 (c) In determining whether an individual commercial fisherman is
14 reasonably likely to be able to repay a loan made under AS 16.10.300 -
15 16.10.370, the commissioner shall consider the individual commercial
16 fisherman's income from commercial fishing and from all other sources.

17 * Sec. 3. AS 16.10.315 is amended to read:

18 Sec. 16.10.315. ALLOCATION OF LOANS. The department shall
19 allocate at least 10 percent of the money that is appropriated for a
20 state fiscal year to make loans under AS 16.10.310 for loans of
21 \$35,000 or less made under AS 16.10.310(a)(1)(B) [AND (C)]. An allo-
22 cation made under this section terminates on April 15 of the state
23 fiscal year for which the allocation is made.

24 * Sec. 4. AS 16.10.320(a) is amended to read:

25 (a) Except as permitted in (h) of this section a (A) loan
26 under AS 16.10.300 - 16.10.370 [16.10.310 - 16.10.370]

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

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

1 (3) must [SHALL] be secured by a first priority lien and
2 appropriate security agreement; and

3 (4) may not exceed 90 percent of the appraised value of the
4 collateral used to secure the loan[, EXCEPT THAT A LOAN GRANTED UNDER
5 AS 16.10.333 FOR THE PURCHASE OF AN ALASKA LIMITED ENTRY PERMIT MAY
6 NOT EXCEED AN AMOUNT DETERMINED IN ACCORDANCE WITH (f) OR (h) OF THIS
7 SECTION].

8 * Sec. 5. AS 16.10.320(d) is amended to read:

9 (d) The total of balances outstanding on loans [LOANS] made to a
10 borrower under AS 16.10.310(a)(1)(A) may not exceed [A TOTAL OF]
11 \$300,000. The total of balances outstanding on loans [LOANS] made to
12 a borrower under AS 16.10.310(a)(1)(B) [OR (C)] may not exceed [A
13 TOTAL OF] \$100,000. [A LOAN TO AN ASSOCIATE OF THE BORROWER IS CON-
14 sidered to be a loan to the borrower. FOR THE PURPOSES OF THIS SEC-
15 tion, "ASSOCIATE OF THE BORROWER" MEANS

16 (1) A CORPORATION OR OTHER ORGANIZATION OF WHICH THE BOR-
17 ROWER IS AN OFFICER, DIRECTOR OR PARTNER, OR IS, DIRECTLY OR INDI-
18 RECTLY, THE BENEFICIAL OWNER OF 10 PERCENT OR MORE ON ANY CLASS OF
19 EQUITY SECURITIES;

20 (2) A PERSON WHO IS, DIRECTLY OR INDIRECTLY, THE BENEFICIAL
21 OWNER OF 10 PERCENT OR MORE OF ANY CLASS OF EQUITY SECURITIES OF THE
22 BORROWER;

23 (3) A TRUST OR OTHER ESTATE IN WHICH THE BORROWER HAS A
24 SUBSTANTIAL BENEFICIAL INTEREST OR AS TO WHICH THE BORROWER SERVES AS
25 TRUSTEE OR IN A SIMILAR FIDUCIARY CAPACITY.]

26 * Sec. 6. AS 16.10.320(e) is amended to read:

27 (e) Two or more individual commercial fishermen who each satisfy
28 the requirements specified in AS 16.10.310(a)(1)(B) may jointly,
29 whether operating as a corporation, partnership, joint venture, or

1 otherwise, obtain a commercial fishing loan for the repair, restora-
2 tion, or upgrading of an existing vessel and gear, for the purchase of
3 gear, and for the construction [OF A FISHING VESSEL] or the purchase
4 of a [AN EXISTING] fishing vessel. Loans granted under this subsec-
5 tion

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;

10 (3) SHALL BE SECURED BY A FIRST PRIORITY LIEN AND APPRO-
11 PRIATE SECURITY AGREEMENT;

12 (4) MAY NOT BEAR INTEREST EXCEEDING 10-1/2 PERCENT;

13 AND

14 (5) MAY NOT EXCEED 90 PERCENT OF THE APPRAISED VALUE OF
15 THE COLLATERAL USED TO SECURE THE LOAN].

16 * Sec. 7. AS 16.10.320(i) is amended to read:

17 (i) If a loan is made to a borrower under AS 16.10.310(a)(1)(A),
18 a subsequent loan may not be made to the borrower [OR AN ASSOCIATE OF
19 THE BORROWER] under AS 16.10.310(a)(1)(B) [OR (C)]. If a loan is made
20 to a borrower under AS 16.10.310(a)(1)(B) [OR (C)], a subsequent loan
21 may be made to the borrower [OR AN ASSOCIATE OF THE BORROWER] under
22 AS 16.10.310(a)(1)(A) if the total of the balances outstanding on
23 loans received by the borrower [OR THE ASSOCIATE] under AS 16.10.310
24 does not exceed \$300,000.

25 * Sec. 8. AS 16.10.333(a) is amended to read:

26 (a) Loans under AS 16.10.310(a) [AS 16.10.320(a)] may be made to
27 an individual commercial fisherman for the purchase of a limited entry
28 permit upon certification by the commission that the fisherman is a
29 person who qualifies as a transferee for the permit under AS 16.43 and

1 the regulations adopted by the commission.

2 * Sec. 9. AS 16.10.335 is amended to read:

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

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

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

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

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

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

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

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

25 (8) a notice in at least 10-point bold type stating:
26 "IMPORTANT: YOUR FAILURE TO REINSTATE OR PAY THIS ~~NOTE~~ IN FULL BY THE
27 DATE SPECIFIED WILL RESULT IN A FORFEITURE OF ALL RIGHTS TO THE PERMIT
28 AND THE POSSIBILITY OF LEGAL ACTION BEING INSTITUTED AGAINST YOU."
29

(b) In each case of a limited entry permit being pledged as

1 security under AS 16.10.333 or 16.10.338, the debtor shall maintain on
2 file with the department an address where notice of default is to be
3 sent, if necessary, and where that notice will be timely received by
4 the debtor.

5 (c) Upon presentation of evidence of mailing in accordance with
6 (a) of this section, the receipt of the notice of default by the
7 debtor will be presumed for all purposes. This presumption is rebut-
8 table by presentation of evidence sufficient to demonstrate lack of
9 receipt of notice through no fault of the debtor. Upon presentation
10 of evidence sufficient to prove lack of receipt of notice through no
11 fault of the debtor, the notice is a nullity.

12 (d) Upon good cause shown, the commissioner may waive any of the
13 time limits in (a) of this section, if the department receives from
14 the debtor or the debtor's representative a request for the waiver
15 before the expiration of the time limit for which the waiver is
16 sought.

17 (e) Except as otherwise provided in (c) and (d) of this section,
18 upon [UPON] the debtor's failure to satisfy the note within the time
19 specified in (a)(6) of this section, the debtor's interest in the
20 permit is terminated by operation of law without further notice. Any
21 entry permit cards issued to the debtor under the permit must [SHALL]
22 be cancelled immediately upon receipt by the commission of a certifi-
23 cate of termination containing a copy of the notice required by (a) of
24 this section issued by the commissioner.

25 * Sec. 10. AS 16.10.339 is amended to read:

26 Sec. 16.10.339. REGULATIONS. The [COMMISSION WITH THE APPROVAL
27 OF THE] department [,] shall adopt regulations to implement AS 16.10.-
28 333 - 16.10.337.

29 * Sec. 11. AS 16.10 is amended by adding a new section to read:

1 Sec. 16.10.355. DISPOSAL OF PROPERTY ACQUIRED BY DEFAULT OR FORE-
2 CLOSURE. The department shall dispose of property acquired through
3 default or foreclosure of a loan made under AS 16.10.300 - 16.10.370
4 or former AS 16.10.650 - 16.10.720. Disposal shall be made in a
5 manner that serves the best interests of the state, and may include
6 the amortization of payments over a period of years, but may not be by
7 lease.

8
9 * Sec. 12. AS 16.10 is amended by adding a new section to read:

10 Sec. 16.10.507. SPECIAL ACCOUNT ESTABLISHED. (a) There is
11 established as a special account within the fisheries enhancement
12 revolving loan fund the foreclosure expense account. This account is
13 established as a reserve from fund equity.

14 (b) The commissioner may expend money credited to the foreclo-
15 sure expense account when necessary to protect the state's security
16 interest in collateral on loans made under AS 16.10.520 or to defray
17 expenses incurred during foreclosure proceedings after a default by an
18 obligor.

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

20 Sec. 16.10.555. DISPOSAL OF PROPERTY ACQUIRED BY DEFAULT OR
21 FORECLOSURE. The Department of Commerce and Economic Development
22 shall dispose of property acquired through default or foreclosure of a
23 loan made under AS 16.10.500 - 16.10.620. Disposal shall be made in a
24 manner that serves the best interests of the state, and may include
25 the amortization of payments over a period of years.

26 * Sec. 14. AS 26.15 is amended by adding a new section to read:

27 Sec. 26.15.085. DISPOSAL OF PROPERTY ACQUIRED BY DEFAULT OR
28 FORECLOSURE. The Department of Commerce and Economic Development
29 shall dispose of property acquired through default or foreclosure of a
loan made under this chapter. Disposal shall be made in a manner that

1 serves the best interests of the state, and may include the amortiza-
2 tion of payments over a period of years.

3 * Sec. 15. AS 26.15 is amended by adding a new section to read:

4 Sec. 26.15.095. SPECIAL ACCOUNT ESTABLISHED. (a) There is
5 established as a special account within the Alaska World War II veter-
6 ans' revolving fund the foreclosure expense account. This account is
7 established as a reserve from fund equity.

8 (b) The commissioner of commerce and economic development may
9 expend money credited to the foreclosure expense account when neces-
10 sary to protect the state's security interest in collateral on loans
11 made under AS 26.15.040 or to defray expenses incurred during fore-
12 closure proceedings after a default by an obligor.

13 * Sec. 16. AS 27.09 is amended by adding a new section to read:

14 Sec. 27.09.015. SPECIAL ACCOUNT ESTABLISHED. (a) There is
15 established as a special account within the mining loan fund the fore-
16 closure expense account. This account is established as a reserve
17 from fund equity.

18 (b) The commissioner of commerce and economic development may
19 expend money credited to the foreclosure expense account when neces-
20 sary to protect the state's security interest in collateral on loans
21 made under AS 27.09.010 or to defray expenses incurred during fore-
22 closure proceedings after a default by an obligor.

23 * Sec. 17. AS 27.09 is amended by adding a new section to read:

24 Sec. 27.09.055. DISPOSAL OF PROPERTY ACQUIRED BY DEFAULT OR
25 FORECLOSURE. The department shall dispose of property acquired
26 through default or foreclosure of a loan made under this chapter.
27 Disposal shall be made in a manner that serves the best interests of
28 the state, and may include the amortization of payments over a period
29 of years.

1
2 * Sec. 18. AS 44.33 is amended by adding a new section to read:

3 Sec. 44.33.242. SPECIAL ACCOUNT ESTABLISHED. (a) There is
4 established as a special account within the child care facility re-
5 volving loan fund the foreclosure expense account. This account is
6 established as a reserve from fund equity.

7 (b) The commissioner of commerce and economic development may
8 expend money credited to the foreclosure expense account when neces-
9 sary to protect the state's security interest in collateral on loans
10 made under AS 44.33.245 or to defray expenses incurred during fore-
11 closure proceedings after a default by an obligor.

12 * Sec. 19. AS 44.33 is amended by adding a new section to read:

13 Sec. 44.33.272. DISPOSAL OF PROPERTY ACQUIRED BY DEFAULT OR
14 FORECLOSURE. The department shall dispose of property acquired
15 through default or foreclosure of a loan made under AS 44.33.240 -
16 44.33.275. Disposal shall be made in a manner that serves the best
17 interests of the state, and may include the amortization of payments
18 over a period of years.

19 * Sec. 20. AS 44.81.210(a) is amended by adding a new paragraph to
20 read:

21 (23) make a loan to a person, regardless of residency, if
22 the board of directors of the bank determines that the loan is neces-
23 sary to preserve the value of property held by the bank as security
24 for a loan that was made under (a)(1) of this section and that is in
25 default.

26 * Sec. 21. AS 45.87 is amended by adding a new section to read:

27 Sec. 45.87.015. SPECIAL ACCOUNT ESTABLISHED. (a) There is
28 established as a special account within the bulk fuel revolving loan
29 fund the foreclosure expense account. This account is established as
a reserve from fund equity.

1 (b) The commissioner of commerce and economic development may
2 expend money credited to the foreclosure expense account when neces-
3 sary to protect the state's security interest in collateral on loans
4 made under this chapter or to defray expenses incurred during fore-
5 closure proceedings after a default by an obligor.

6 * Sec. 22. AS 45.87 is amended by adding new sections to read:

7 Sec. 45.87.040. DISPOSAL OF PROPERTY ACQUIRED BY DEFAULT OR
8 FORECLOSURE. The department shall dispose of property acquired
9 through default or foreclosure of a loan made under this chapter.
10 Disposal shall be made in a manner that serves the best interests of
11 the state, and may include the amortization of payments over a period
12 of years.

13 Sec. 45.87.060. REGULATIONS. The department shall adopt regu-
14 lations to implement this chapter.

15 * Sec. 23. AS 45.88 is amended by adding a new section to read:

16 Sec. 45.88.015. SPECIAL ACCOUNT ESTABLISHED. (a) There is
17 established, as a special account within the revolving loan fund
18 established under AS 45.88.010, the foreclosure expense account. This
19 account is established as a reserve from fund equity.

20 (b) The commissioner of commerce and economic development may
21 expend money credited to the foreclosure expense account when neces-
22 sary to protect the state's security interest in collateral on loans
23 made under AS 45.88.020 or to defray expenses incurred during fore-
24 closure proceedings after a default by an obligor.

25 * Sec. 24. AS 45.88 is amended by adding a new section to read:

26 Sec. 45.88.050. DISPOSAL OF PROPERTY ACQUIRED BY DEFAULT OR
27 FORECLOSURE. The Department of Commerce and Economic Development
28 shall dispose of property acquired through default or foreclosure of a
29 loan made under this chapter. Disposal shall be made in a manner that

1 serves the best interests of the state, and may include the amortiza-
2 tion of payments over a period of years.

3 * Sec. 25. AS 45.89 is amended by adding a new section to read:

4 Sec. 45.89.015. SPECIAL ACCOUNT ESTABLISHED. (a) There is
5 established as a special account within the residential energy conser-
6 vation fund the foreclosure expense account. This account is estab-
7 lished as a reserve from fund equity.

8 (b) The commissioner may expend money credited to the foreclo-
9 sure expense account when necessary to protect the state's security
10 interest in collateral on loans made under AS 45.89.030 or to defray
11 expenses incurred during foreclosure proceedings after a default by an
12 obligor.

13 * Sec. 26. AS 45.89 is amended by adding new sections to read:

14 Sec. 45.89.050. DISPOSAL OF PROPERTY ACQUIRED BY DEFAULT OR
15 FORECLOSURE. The department shall dispose of property acquired
16 through default or foreclosure of a loan made under this chapter.
17 Disposal shall be made in a manner that serves the best interests of
18 the state, and may include the amortization of payments over a period
19 of years.

20 Sec. 45.89.070. REGULATIONS. The department shall adopt regu-
21 lations to implement this chapter.

22 * Sec. 27. AS 45.90 is amended by adding a new section to read:

23 Sec. 45.90.015. SPECIAL ACCOUNT ESTABLISHED. (a) There is
24 established as a special account within the tourism revolving fund the
25 foreclosure expense account. This account is established as a reserve
26 from fund equity.

27 (b) The commissioner of commerce and economic development may
28 expend money credited to the foreclosure expense account when neces-
29 sary to protect the state's security interest in collateral on loans

1 partnership, corporation or other business organization formed under
2 the laws of the state for the purpose of harvesting or processing
3 timber or other forest resources;

4 (4) "fund" means the forest products business loan guaran-
5 tee fund.

6 * Sec. 34. AS 45.95 is amended by adding a new section to read:

7 Sec. 45.95.055. DISPOSAL OF PROPERTY ACQUIRED BY DEFAULT OR
8 FORECLOSURE. The Department of Commerce and Economic Development
9 shall dispose of property acquired through default or foreclosure of a
10 loan made under this chapter. Disposal shall be made in a manner that
11 serves the best interests of the state, and may include the amortiza-
12 tion of payments over a period of years.

13 * Sec. 35. AS 45.95 is amended by adding a new section to read:

14 Sec. 45.95.065. SPECIAL ACCOUNT ESTABLISHED. (a) There is
15 established as a special account within the small business revolving
16 loan fund the foreclosure expense account. This account is estab-
17 lished as a reserve from fund equity.

18 (b) The commissioner may expend money credited to the foreclo-
19 sure expense account when necessary to protect the state's security
20 interest in collateral on loans made under AS 45.95.020 or to defray
21 expenses incurred during foreclosure proceedings after a default by an
22 obligor.

23 * Sec. 36. AS 45.98 is amended by adding a new section to read:

24 Sec. 45.98.015. SPECIAL ACCOUNT ESTABLISHED. (a) There is
25 established as a special account within the historical district
26 revolving loan fund the foreclosure expense account. This account is
27 established as a reserve from fund equity.

28 (b) The commissioner of commerce and economic development may
29 expend money credited to the foreclosure expense account when

1 necessary to protect the state's security interest in collateral on
2 loans made under this chapter, or to defray expenses incurred during
3 foreclosure proceedings after a default by an obligor.

4 * Sec. 37. AS 45.98.020 is amended to read:

5 Sec. 45.98.020. HISTORICAL DISTRICT LOANS. Upon endorsement and
6 plan approval by a local historical district commission established
7 under AS 29.48.108 and the recommendation of a majority of the members
8 of the Historic Sites Advisory Committee, the Department of Commerce
9 and Economic Development may make loans to a person, firm, business or
10 municipality subject to applicable laws for the restoration, improve-
11 ment, rehabilitation, or maintenance of

12 (1) a structure which is [(1)] within the boundaries of a
13 historical district established under AS 29.48.110 and [;]

14 [(2)] identified as important in state or national history as
15 provided for in AS 29.48.110(b); or [AND]

16 (2) a [(3) ANOTHER] building or structure within a histor-
17 ical district, that is [AND] suitable for superficial modification so
18 that it can conform to the period or motif of the surrounding build-
19 ings or structures that are the reason for the area's designation as a
20 historical district.

21 * Sec. 38. AS 45.98 is amended by adding a new section to read:

22 Sec. 45.98.055. DISPOSAL OF PROPERTY ACQUIRED BY DEFAULT OR
23 FORECLOSURE. The Department of Commerce and Economic Development
24 shall dispose of property acquired through default or foreclosure of a
25 loan made under this chapter. Disposal shall be made in a manner that
26 serves the best interests of the state, and may include the amortiza-
27 tion of payments over a period of years.

28 * Sec. 39. AS 16.10.310(b), 16.10.320(f), and 16.10.330(f) are re-
29 pealed.

1 * Sec. 40. This Act takes effect July 1, 1985.
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DRAFT

MEMORANDUM

TO: John Hartle
FROM: Joe Darnell
RE: Forest Products Business Loan Guarantee Program
Amendments Bill
DATE: April 265, 1985

Pursuant to your request, the following is a description of the amendments we have proposed to the Forest Products Business Loan Guarantee Program.

The amendments being proposed essentially take the existing Forest Products Business Loan Guarantee Program which was enacted to provide employees of the Ketchikan Pulp Corporation with a loan guarantee fund to back up part of a loan to purchase an interest in the pulp mill owned by Louisiana Pacific Corporation in Ketchikan. Since passage of that act in 1984, Louisiana Pacific Corporation has decided to not sell the mill to its employees; thus the purpose of the program as enacted by the Legislature is outdated.

The changes made in the existing Forest Products Business Loan Guarantee Program are designed to convert that program from a one-purpose program to a general business loan guarantee program available to all Alaskan forest products businesses. The loans under this program are to be used for financing the purchase of equipment and facilities that will increase or maintain employment in a forest products business. The intent of the program as drafted is to make it available only to Alaska forest products businesses which are businesses organized for profit and which a majority of the employees of the business are residents of Alaska.

The program would be based on the existing \$25 million appropriation made last year from the rainy day account in the general fund to the Forest Products Business Loan Guarantee Fund. Under the program, as amended by this bill, the Department of Revenue may provide a guarantee from the fund for up to 80% of the loan, but it may not guarantee more than \$6 million per borrower. A ~~1/4 of 1%~~ 1% user fee for the loan guarantee is provided for in the bill. We recommend that the fee be increased to 1%.

The following is a section-by-section description of the bill as drafted for introduction by Representative Sund:

Section 1. It amends AS 45.94.020 to restate the purpose of the loan guarantee program as described above. The amendment drops out the provisions in the existing law dealing with the purchase of stock ~~and so forth~~ which were designed to deal specifically with the KPC situation.

AS 45.94.030 and .040 are left unchanged by the bill. Section .030 outlines the powers and duties of the department and the commissioner. Section .040 states income from investment of the fund is to go to the general fund.

Section 2. This section amends AS 45.94.050(a) to include the requirement in paragraph (2) of subsection (a) that the loan be commercially reasonable. It also requires that a controlling interest be held by Alaska residents. The Commissioner of Revenue is given discretion to waive this requirement. Section 2 also requires that the business maintain its offices and operating facilities exclusively in the state unless the business engages in export of forest products in which case offices and facilities overseas would be permitted. It also requires that a majority of employees of the business be residents of the state. This adopts one of the major objectives of the bill which is to develop employment in the forest timber industries in Alaska. The section further requires that the business be organized for profit. This points to the other major goal of the bill which is to provide a means for commercially viable timber operations to expand and flourish in the state. A subsection (5) is added which follows up on a purpose behind the legislation that the loan further the maintaining or increasing of production and employment in forest products businesses in the state. A new subsection (6) requires that the portion of the loan not guaranteed by the state be held by a financial institution which meets the approval of the Commissioner.

Section 3. AS 45.94.050(b) is amended by this section to increase the guarantee from 50% to 80% but to limit that guarantee to \$6 million per borrower from the \$30 million currently provided in the law. As with the existing statute, the Department of Revenue would not be permitted to guarantee the payment of annual interest on the guaranteed portion of the loan. This conforms with other loan programs in the state.

Section 4. This section amends AS 45.94.050 by adding a new subsection (a) to require the charging of a user fee by the Department of Revenue not to exceed 1/4 of 1% for loans guaranteed under this chapter. Section 4 makes a small change in AS 45.94.060 which is the definitions section. The change is to add

to the definition of forest products business that it be organized under the laws of the state. Again, this is to ensure that the business be an Alaska business.

Section 6. This section provides for an effective date immediately in accordance with AS 01.10.070(c). This is the standard effective date provision which provides that the actual effective time for enactment is the day after it is signed by the Governor or the day after the Governor's veto is overridden or on the day after expiration of the period allowed for gubernatorial action by Art. II, §17 of the Alaska Constitution.

jdd:1.5

BRISTOL BAY NATIVE ASSOCIATION

P.O. BOX 189
DILLINGHAM, ALASKA 99576
PHONE (907) 842-3257

May 1, 1985 ..

Representative Adelheid Harrmann
District 26
Alaska State Legislature
Pouch V (H.S. 3100)
Juneau, Alaska 99811

Dear Representative Harrmann:

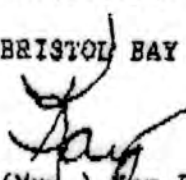
We understand you are going to introduce legislation to limit the amount of collateral required by the Department of Commerce and Economic Development for a commercial fishing loan.

This has been a concern of ours for some time also, that some individuals have been required to pledge their limited entry permits as additional collateral for a vessel loan. We understand that the state investment must be protected in the event of a default, but requiring collateral worth \$218,000.00 (assuming a vessel valued at \$100,000.00 and the latest State Bristol Bay Salmon Drift gillnet evaluation of \$118,000.00) for a \$90,000 vessel loan seems excessive. In many areas of rural Alaska a permit is the only negotiable collateral people own, but it is also the only means by which these people can support their families.

Therefore we support your efforts to set maximums on the amount of collateral the State requires for boat loans.

Sincerely,

BRISTOL BAY NATIVE ASSOCIATION


(Mrs.) May E. Larson
Executive Director

MEMORANDUM

TO: John Hartle

FROM: Joe Darnell

RE: Forest Products Business Loan Guarantee Program Bill
Hearing

DATE: April 26, 1985

The following is a list of possible witnesses for the Thursday afternoon hearing. Please let me know who you would like to see attend (or not attend) and we will contact them for you.

- Frank Roppel
- ✓ Steve Seley
- George Woodbury
- ✓ Ed Head
- Bob Loescher
- Jerry Larabee
- Mike Valentine
- Bud Stewart
- Joe Henri (Anchorage)
- George Krusz (ASCC)
- Someone from Kodiak
- Someone from Kuskowim area
- ✓ Greg Bell (from the Interior)
- ✓ Jim Bos (from the Interior)
- ✓ Steve Laroe (from the Interior)

jdd:1.7

AN ACT

Making a special appropriation to the forest products business loan guarantee fund; reappropriating money from the forest products business loan guarantee fund; and providing for an effective date.

Section 1. The sum of \$25,000,000 is appropriated from the reserve for emergency operating expenses account in the general fund (AS 37.05.159) to the forest products business loan guarantee fund (AS 45.94).

Sec. 2. Money from the appropriation made by sec. 1 of this Act that is allocated for the purpose of guaranteeing a forest products business loan is reappropriated to the emergency operating expenses account in the general fund (AS 37.05.159) as the principal of the guaranteed loan is paid, in amounts equal to the percentage of the loan guarantee multiplied by the payments on the principal of the loan.

Sec. 3. The unexpended and unobligated portion of the appropriation made by sec. 1 of this Act lapses into the emergency operating expenses account in the general fund (AS 37.05.159) on the earlier of the following dates:

- (1) one year from the effective date of this Act;
- (2) the date of a proclamation issued by the governor under AS 37.05.159(b)(1) requiring that money in excess of the balance in the emergency operating expenses account be used for operating expenses of the government; the lapse provisions of this paragraph apply only to the extent of the difference between the amount required by the governor's

Chapter 130

1 proclamation and the balance of the emergency operating expenses

2 * Sec. 4. This Act takes effect on the effective date of
3 establishes a forest products business loan guarantee program.

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DRAFT

IN THE HOUSE

BY _____

HOUSE BILL NO. ____

IN THE LEGISLATURE OF THE STATE OF ALASKA

FOURTEENTH LEGISLATURE - FIRST SESSION

A BILL

For an Act entitled: "An Act amending a special appropriation to the forest products business loan guarantee fund; and providing for an effective date."

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

*Section 1. Sections 2 and 3, Ch. 130, SLA 1984, are repealed.

*Section 2. This Act takes effect on the effective date of an Act that amends the forest products business loan guarantee program.

IN THE HOUSE

BY _____

HOUSE BILL NO. ____

IN THE LEGISLATURE OF THE STATE OF ALASKA

FOURTEENTH LEGISLATURE - FIRST SESSION

A BILL

For an Act entitled: "An Act amending the forest products business loan guarantee program; and providing for an effective date."

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

Section 1. AS 45.94 is amended to read:

Sec. 45.94.010. ESTABLISHMENT OF LOAN GUARANTEE PROGRAM. The forest products loan guarantee fund is established in the Department of Revenue.

Sec. 45.94.020. FOREST PRODUCTS BUSINESS LOAN GUARANTEE PROGRAM. The department may use money in the fund to guarantee a loan to a forest products business for the purpose of financing [THE PURCHASE OF 35 PERCENT OR MORE OF THE STOCK OR ASSETS OF A FOREST PRODUCTS BUSINESS BY, ON BEHALF OF OR FOR THE BENEFIT OF THE EMPLOYEES OF THAT BUSINESS,] the purchase of equipment and facilities which will increase employment in the production of a forest products business, as provided in AS 45.94.050.

Sec. 45.94.030. POWERS AND DUTIES OF THE DEPARTMENT.

(a) The commissioner may

(1) designate agents and delegate powers necessary to implement this chapter;

(2) adopt regulations to implement this chapter;

(3) make and execute contracts and other instruments to implement this chapter;

(4) acquire real or personal property by purchase, transfer, or foreclosure when the acquisition is necessary to protect an interest in the fund.

(d) The commissioner shall require that a loan guaranteed by the fund be made by a financial institution authorized to make such loans, that the loan be secured by adequate collateral, and that [THE] net cash flow from the forest products business provides adequate coverage for the debt service on the loan. The applicant shall provide an economic and financial feasibility analysis prepared by a firm acceptable to the department.

Sec. 45.94.040. INVESTMENT OF THE FUND. Money in the fund that is not being used for loan guarantees under this chapter shall be invested as provided for the investment of state treasury surplus under AS 37.10.070. [INCOME FROM INVESTMENT] Fees earned under AS 37.10.050(d) shall be transferred to the emergency operating expenses account of the general fund (AS 37.05.159).

Sec. 45.94.050. CONDITIONS OF LOAN GUARANTEES. (a) The department may guarantee a loan under this chapter if

(1) the term of the loan does not exceed 10 years;

(2) the loan is a commercially reasonable loan, secured by the real or personal property, inventory or accounts receivable of the forest products business, or by other collateral acceptable to the department;

(3) the loan is originated with and serviced by a state or federally chartered financial institution; [AND]

(4) the loan is made to [THE EMPLOYEES OF THE] a forest products business[, TO AN EMPLOYEE STOCK OWNERSHIP TRUST, OR TO ONE OR MORE CORPORATIONS OR OTHER BUSINESS ASSOCIATIONS OR ENTITIES IN WHICH THE CONTROLLING INTEREST IS HELD BY STATE RESIDENTS WHO ARE EMPLOYEES OF THE FOREST PRODUCTS BUSINESS.]; and which meets the following standards:

(A) a controlling interest is held by Alaska residents throughout the term of the loan, unless such requirement shall be waived by the Commissioner;

(B) maintain offices and operating facilities exclusively in this State and transacts business in this State, unless the business is engaged in the export of forest products;

(C) a majority of its employees are residents of Alaska; and

(D) the business is organized for profit.

(5) the loan will increase or maintain the production and employment of the forest products business; and

(6) The portion of the loan not guaranteed by the State shall be held by the originating financial institution throughout

the term of the loan or held by another financial institution approved by the Commissioner.

(b) The department may provide a guarantee from the fund of not more than 80 [FOR UP TO 50] percent of a loan, but may not guarantee [LESS THAN \$5,000,000 OR] more than \$6,000,000 [\$30,000,000] per borrower. The department [MAY] shall not guarantee the payment of annual interest on the guaranteed portion of a loan.

(c) [AFTER A] Upon default by a borrower, the maximum liability of the fund for a loan guarantee under this chapter is equal to the amount then in default multiplied by a percentage equal to the guaranteed percentage of the loan. Payments received toward satisfaction of a default shall be allocated between the lender and the fund according to the guaranteed percentage of the loan until the principal balance has been repaid.

(d) The department shall charge a commercially reasonable user fee for the loan which shall not exceed one-quarter of one percent and the proceeds from which shall be transferred to the emergency operating expenses account of the general fund (AS 37.05.159).

Sec. 45.94.060. DEFINITIONS. In this chapter

- (1) "commissioner" means the commissioner of revenue;
- (2) "department" means the Department of Revenue;

(3) "forest products business" means a sole proprietorship, partnership, corporation or other business organization [FORMED] incorporated under Alaska law for the purpose of harvesting or processing timber or other forest resources;

(4) "fund" means the forest products business loan guarantee fund.

Sec. 2. This Act takes effect immediately in accordance with AS 01.10.070(c).

WORK ORDER REQUEST FORM

N14 - 0965

KEYWORDS: loan funds/loans
forestry/forests
funds

ASSIGNED TO Levy

REQUEST FOR: BILL ☒ RESOLUTION ☐ RESEARCH ☐ OTHER ☐

SUBJECT Forest products business loan guarantees

REQUESTED FOR Rep. Sund BY John Hartle EXT. 4919

* DELIVER TO Rep. Sund TAKEN BY Barnes

INSTRUCTIONS, EXPLANATIONS Draft bill amending the forest products business loan
guarantee program.

OBTAIN

SPECIAL DRAFTING INSTRUCTIONS ATTACHED ☐

AUTHORIZED TO CONFER WITH _____

RETURN _____

_____ TO REQUESTER

APPROVED: BGC Director, Legal Services

REVIEWED _____

IN 03/25/85 DUE _____

TYPED - Draft _____ DATE _____

Final _____ DATE _____

PROOFED _____ DELIVERED _____

SPECIAL INSTRUCTIONS TO TYPIST/PROOFREADER

DRAFT ☒

FINAL ☐



Pouch Y, State Capitol
Juneau, Alaska 99811
(907) 465-3991

ALASKA STATE LEGISLATURE
HOUSE OF REPRESENTATIVES
RESEARCH AGENCY

April 25, 1983

MEMORANDUM

TO: Representative Rick Uehling

FROM: Jack Kreinheder *JK*
Research Staff

RE: Set Net Fisheries and Shore Fisheries Leases
Research Request 83-113

Bill Lovell of your staff asked us to provide information on set net fisheries and the shore fisheries leasing program administered by the Department of Natural Resources. This information was to include:

- the number of permit holders in each set net fishery;
- an explanation of the shore fish leasing program, including problems which have occurred with shore fish leases, and proposed changes to the regulations governing the program; and
- average sale prices for set net sites and leases.

Number of Permits

In 1982, there were a total of 4,178 limited entry permits issued for all set net fisheries in Alaska. This figure amounts to about 40 percent of the permits issued for all limited fisheries, including salmon and herring. Table 1 on the following page shows the distribution of set net permits throughout the state and the number and percentage of permits held by residents of Alaska.

The largest set net fisheries in terms of commercial landings are the Bristol Bay and Cook Inlet fisheries. These areas also have the largest number of shore fisheries leases. The only areas which have been opened by the Department of Natural Resources for shore fisheries leases are Bristol Bay, Cook Inlet and Kodiak. The last five fisheries in Table 1 are collectively known as the Arctic-Yukon-Kuskokwim fisheries. These fisheries generally combine commercial and subsistence harvests, and no shore fisheries leases have been issued there.

TABLE 1
 SALMON SET GILLNET PERMITS ISSUED IN 1982

Fishery	Total Number of Permits	Number of Permits Held by Alaska Residents	Percentage of Permits Held by Alaska Residents
Yakutat	164	145	88%
Prince William Sound	30	27	90%
Cook Inlet	744	693	93%
Kodiak	186	139	75%
Alaska Peninsula	109	97	89%
Bristol Bay	<u>916</u>	<u>708</u>	77%
Subtotal	2,149	1,809	84%
Upper Yukon	72	71	99%
Kuskokwim	831	829	99%
Kotzebue	219	216	99%
Lower Yukon	707	704	99%
Norton Sound	<u>200</u>	<u>199</u>	99%
Subtotal	<u>2,029</u>	<u>2,019</u>	99%
TOTAL	4,178	3,828	92%

House Research Agency 4/22/83
 Source: Commercial Fisheries Entry Commission

The Shore Fisheries Leasing Program

Shore fish leasing was established by regulation in 1964 (a copy of the regulations is attached). Minor revisions to the regulations were made in 1978. The program is administered by the Division of Land and Water Management in the Department of Natural Resources. In August 1982, the issuance of new leases was suspended pending revision of the program regulations.

Summary of Program¹

A shore fisheries lease is a lease of tidelands or submerged lands from the State for commercial fishing purposes, including clam digging and set netting for salmon and herring. The lease conveys only a "limited possessory right" in the site being leased. This means that the lease holder can only prevent other people from entering the lease site when he or she is fishing and when other people would interfere with the fishing operation. The main purpose of the lease is to establish the right to fish a particular site.

Shore fisheries leases are not required in order to engage in set net fishing, and most set net fishermen do not have these leases. About 600 leases have been issued, with another 300 applications on file. This compares to the 2,149 permits which have been issued for the main commercial set net fisheries.

When a fisherman applies for a lease, the division staff check land status, determines the tract boundaries, and issues instructions for a survey. Neighboring fishermen and the public are notified of the lease application. If no objections are received, the division issues the lease. If objections or competing claims to the same site occur, the director of the division bases his decision to award the lease on several factors, including:

- the length of time the applicant has been engaged in set netting;
- the proximity of past fishing sites to the land to be leased; and
- the fisherman's present ability to make effective use of the location (must be physically able to fish);

¹ Most of the information in this section was obtained from Tom Hawkins, Director of the Division of Land and Water Management. (Telephone 276-2653)

Under the present program, leases have a term of 10 years. In order to retain the lease, the lessee must pay an annual fee of \$60, install and maintain a site marker, fish the site at least every other year, and comply with the terms of the lease and Fish and Game regulations.

Problems Associated with Shore Fisheries Leasing

One of the biggest problems with the current shore fisheries leasing program is the backlog of lease applications. At the time applications were suspended in August 1982, there was a backlog of 353 lease applications. Because leases are not required, most lease applications are made because a site conflict has arisen. Therefore, most applications are protested and require extensive research to resolve. The division's budget included only one staff member to process these applications, and this staffer was able to complete only 50-60 leases per year. Thus, the 300 pending applications represent a six year wait for a shore fisheries lease, under the current budget level.

The shorelines on some beaches erode very quickly during storms and change from year to year. As a result, the area that is described in the lease may be submerged and unfishable because it is too far from the current beach. Also, it is very difficult to locate a lease site and resolve boundary disputes, because so little of the coast has been comprehensively surveyed. Although surveys are required for the leases, there are few reference points for surveyors to tie into.

There is much confusion among fishermen and others about the rights of a lease and the enforcement of its provisions. Some people are under the mistaken impression that the shore fishery lease gives them full possession of their site and that they can restrict access to or across the site. Some lessees also assume that they can legally set their nets anywhere on their site, as the lease provisions do not indicate otherwise. However, under ADF&G regulations, a lessee is fishing illegally if his or her nets are set closer than the minimum distance (600 feet in Cook Inlet) to a fishermen already fishing on adjacent unleased land.

Resolution of boundary disputes and "site jumping" is difficult. Officially, the State Troopers and Fish and Wildlife Protection Officers will not interfere in a dispute except with a court order. In practice, their responses vary from a "hands off" policy to direct mediation.

The problems cited above have been most severe for Bristol Bay, because shore fisheries leases have only recently become common there. In Cook Inlet, most of the current leases were approved by the late 1970s.

Proposed Changes to the Leasing Program

In response to the increasing backlog of lease applications and the other leasing problems cited above, the division decided to revise and streamline the shore fisheries leasing program. Applications and the issuance of new leases were suspended as of August 1982, while new regulations for the program were developed. Because of controversy over the new regulations and the change in administrations, the regulations are still in the draft stage and have not been officially proposed or adopted.

The most important changes which would be made by the draft regulations, if adopted, are the following:

- The term of the leases would be reduced from ten years to one year;
- The lessee would be required to personally fish the site for a certain number of fishing periods each year, rather than every other year as under the current program;
- The application and approval process would be simplified. Site surveys would no longer be required, and the applicant would be responsible for providing notice of his application to others. Leases would be issued if no objection is received within 120 days after the site is staked. The process for resolving competing site claims would remain the same as under the current regulations.
- An additional provision would be added specifying that no commercial fisheries activities on unleased lands may interfere with commercial fishing on a shore fishery lease site.

The division has circulated about 2,500 copies of the draft regulations to fishermen, managers and others for comment. There have been a number of comments, but in general, most fishermen who already have leases favor the existing leasing program, while those who would like to obtain a lease tend to prefer the new approach in the draft regulations. Some lease applicants who have already paid for a survey of their fishing sites are displeased that the survey requirement would be dropped under the new regulations.

Value of Set Net Sites

The value of set net sites ranges from nearly zero for the most marginal fishing sites to over \$115,000 for the best fishing areas. It was not

Representative Uehling
April 25, 1983
Page 6

possible to determine any fishery-wide average within the time available for this request. Also, the value of sites can fluctuate considerably depending on the strength of the fishery from year to year, just as permit values do. I spoke with two Cook Inlet set netters and an ADF&G biologist for the area to get a general idea of the range of site values in the Inlet.

As you are probably aware, the east shore of Cook Inlet is the most lucrative fishing location, particularly in the Kenai-Clam Gulch area. One fisherman I spoke with has been offered \$440,000 for three set net sites near Kenai, not including gear. Three entry permits were included in this price; the permits are currently valued at about \$15,000 each. Three sites near Clam Gulch were recently sold as a package for nearly \$400,000, again including permits, but no gear.

On the other end of the scale, another fishermen who was contacted paid about \$7,500 each for three sites on the west side of Cook Inlet. The valuation method used by fishermen in selling or buying sites differs, but often the average gross earnings over the last five years are used as the major factor.

I hope this information is useful. If you have any questions or would like additional research, please let us know.

JK

Attachments

CHAPTER 64. SHORE FISHERIES LEASING

Section

- 10. Short title
- 20. Participation in shore fishery
- 30. (Repealed)
- 40. Advisory committees
- 50. Tide and submerged land available for leasing
- 60. Permanent improvements disallowed
- 61. Staking and filing period
- 70. Size of lease tracts
- 80. Maximum number of net sites and lease tracts
- 90. Marking of sites and tracts
- 100. (Repealed)
- 110. (Repealed)
- 120. (Repealed)
- 130. (Repealed)
- 140. (Repealed)
- 150. (Repealed)
- 160. (Repealed)
- 170. (Repealed)
- 180. Reasonable utilization
- 190. (Repealed)
- 200. Closed area
- 210. (Repealed)
- 220. Hardship clause; waiver of rental
- 230. Qualifications of applicant
- 240. Trusteeship for minors
- 250. Appointment of trustee
- 260. Application
- 270. (Repealed)
- 280. Proof of application
- 290. (Repealed)
- 300. (Repealed)
- 301. Term of lease
- 310. (Repealed)
- 320. (Repealed)
- 330. Rights prior to leasing
- 340. (Repealed)
- 350. (Repealed)
- 360. (Repealed)
- 370. Annual rental
- 380. Receipt of annual rental
- 390. (Repealed)
- 391. Extension of lease
- 400. (Repealed)
- 410. Lease termination
- 420. (Repealed)
- 430. Assignment
- 440. Succession to applicant's interest
- 450. Protest

- 460. Appeal
- 470. Finality of decision
- 480. (Repealed)
- 490. Disputes of boundary line location
- 500. (Repealed)
- 510. (Repealed)
- 520. (Repealed)
- 530. (Repealed)
- 540. (Repealed)
- 550. (Repealed)
- 560. (Repealed)
- 565. Transition
- 570. Definitions

11 AAC 64.010. SHORT TITLE. This chapter applies to leasing tide and submerged lands of the state for the purpose of shore fisheries development. (Eff. 4/18/64, Reg. 16; am 3/30/85, Reg. 93)

Authority: AS 38.05.020
AS 38.05.082

11 AAC 64.020. PARTICIPATION IN SHORE FISHERY. No person is required to lease tide and submerged lands to participate in a shore fishery. However,

(1) upon written or verbal notification by a lessee holding a valid shore fishery lease issued under this chapter, a set gill netter shall remove any net or nets from the site or tract of the lessee if the lessee personally begins to commercially fish the lease site; and

(2) no set gill net may be set at less than the minimum distance established by Department of Fish and Game commercial finfish regulations set out in 5 AAC 03 — 5 AAC 39, from a net currently in use by a lessee holding a valid shore fishery lease issued under this chapter. (Eff. 4/18/64, Reg. 16; am 3/30/85, Reg. 93)

11 AAC 64.030. OWNERSHIP. Repealed 3/30/85.

11 AAC 64.040. ADVISORY COMMITTEES. The director will, in his or her discretion, accept recommendations from recognized associations or groups whose members are engaged in the practice of set gill net fishing, or establish an advisory group to recommend resolutions involving application conflicts or protests. (Eff.

4/18/64, Reg. 16; am 3/30/85, Reg. 93)

Authority: AS 38.05.020
AS 38.05.082

11 AAC 64.050. TIDE AND SUBMERGED LAND AVAILABLE FOR LEASING. The director will, in his or her discretion, classify for leasing, under 11 AAC 55, all unappropriated tide and submerged land where set gill net fishing is allowed by the Alaska Department of Fish and Game. After the director designates an area as open to leasing, the director will publicly invite lease applications for all or specific portions of the open areas. (Eff. 4/18/64, Reg. 16; am 3/30/85, Reg. 93)

Authority: AS 38.05.020
AS 38.05.082

11 AAC 64.060. PERMANENT IMPROVEMENTS DISALLOWED. No lessee may erect a permanent installation, building, structure, fixture, or facility upon a lease tract or site. (Eff. 4/18/64, Reg. 16; am 3/30/85, Reg. 93)

Authority: AS 38.05.020
AS 38.05.082

11 AAC 64.061. STAKING AND FILING PERIOD. An applicant may stake a set gill net site or tract, and may file an application for a shore fishery lease, annually from May 1 to September 1. The director will extend, close, suspend, or otherwise modify the period for staking and filing an application if the director determines in writing that it is in the best interests of the state to do so. (Eff. 3/30/85, Reg. 93)

Authority: AS 38.05.020
AS 38.05.082

11 AAC 64.070. SIZE OF LEASE TRACTS.

(a) If an applicant has more than one set gill net site, and the area between individual sites is not claimed by another person for set gill net purposes, the applicant may include all such set gill net sites in one lease tract if

(1) the maximum number of set gill net sites included in one tract does not exceed that number allowed by 11 AAC 64.080;

(2) the maximum distance between set gill net sites does not exceed twice the minimum distance, minus one foot, allowed between nets by Department of Fish and Game commercial

finfish regulations, set out in 5 AAC 03 – 5 AAC 39, for the local area, unless otherwise determined by the director;

(3) the maximum distance of the tract side line from the nearest set gill net site within the tract does not exceed one-half the distance allowed between set gill net sites by Department of Fish and Game Commercial Finfish regulations set out in 5 AAC 03 – 5 AAC 39; and

(4) the maximum distance between the seaward end line of a tract and the landward end line of an offshore tract is not greater than one-half the distance from the seaward end of the nearest set gill net as determined by Department of Fish and Game Commercial Finfish regulations set out in 5 AAC 03 – 5 AAC 39.

(b) In establishing the size and proper location of a tract, the director will, in his or her discretion, require the applicant to survey the tract. (Eff. 4/18/64, Reg. 16; am 3/30/85, Reg. 93)

Authority: AS 38.05.020
AS 38.05.082

11 AAC 64.080. MAXIMUM NUMBER OF NET SITES AND LEASE TRACTS. Except as provided otherwise in this section, the maximum number of sites allowed one applicant is that number established under Department of Fish and Game commercial finfish regulations set out in 5 AAC 03 – 5 AAC 39, except for Cook Inlet, where the maximum is three sites. The sites may be contained in one, two, or three tracts. In an area where, under established custom, the applicant has or currently uses the same set gill net and other gear for high and low water sites, the director will, in his or her discretion, lease additional set gill net sites, if the applicant submits proper justification. (Eff. 4/18/64, Reg. 16; am 3/30/85, Reg. 93)

Authority: AS 38.05.020
AS 38.05.082

11 AAC 64.090. STAKING OF SITES AND TRACTS. Before submitting an application under 11 AAC 64.260, an applicant must stake each tract by placing the stake at the net anchor point. The location stake must be at least three feet above ground level and must support a sign showing the applicant's name, mailing address, limited entry permit number, and date of staking. For a low water tract, the location stake

may be co-located with the high water stake. The sign on the low water stake must contain the information contained on the high water sign and must be labeled across the top as a low water site with the distance and bearing to the shoreward end of the net or net anchor point noted on the sign. (Eff. 4/18/64, Reg. 16; am 3/30/85, Reg. 93)

Authority: AS 38.05.020
AS 38.05.082

11 AAC 64.100. DISTANCE BETWEEN NET SITES. Repealed 3/30/85.

Authority: AS 38.05.020
AS 38.05.082

11 AAC 64.110. PUBLIC RIGHT-OF-WAY. Repealed 8/19/77.

11 AAC 64.120. MULTIPLE LAND USE. Repealed 8/19/77.

11 AAC 64.130. RESTRICTIONS AND RESERVATIONS. Repealed 8/19/77.

11 AAC 64.140. DAMAGES. Repealed 8/19/77.

11 AAC 64.150. MATERIALS. Repealed 8/19/77.

11 AAC 64.160. HERRING SPAWN COVENANT. Repealed 8/19/77.

11 AAC 64.170. WASTE AND INJURY TO LAND. Repealed 8/19/77.

11 AAC 64.180. REASONABLE UTILIZATION. (a) Except as otherwise provided by (b) of this section, reasonable utilization of a site or tract means personally fishing each site of each leased tract for at least four legal fishing periods during the commercial fishing season.

(b) The lessee may refrain from fishing upon any one or all leased tracts for one year, but not for two consecutive years. (Eff. 4/18/64, Reg. 16; am 3/30/85, Reg. 93)

Authority: AS 38.05.020
AS 38.05.082

11 AAC 64.190. FORFEITURE OF PART OR ALL OF LEASE TRACT. Repealed 3/30/85.

11 AAC 64.200. CLOSED AREA. The director will not issue a lease in an area closed to com-

mercial fishing by the Department of Fish and Game. The closure of an area by the Department of Fish and Game will not result in the termination of a lease for failure of reasonable utilization. The closure of an area will not extend the term of an issued lease. The lessee may, however, request an extension of a current valid lease as provided for under 11 AAC 64.391, if the area is reopened to commercial fishing. (Eff. 4/18/64, Reg. 16; am 3/30/85, Reg. 93)

11 AAC 64.210. CLOSURE OF AREA AFTER LEASE IS ISSUED. Repealed 3/30/85.

11 AAC 64.220. HARDSHIP CLAUSE: WAIVER OF RENTAL. The director will, in his or her discretion, waive the annual rental in the case of substantial injury, illness, call to military service, or legal closure of the fishery. An application for a waiver must be postmarked at least 30 days before the date the annual rental is due. (Eff. 4/18/64, Reg. 16; am 3/30/85, Reg. 93)

Authority: AS 38.05.020
AS 38.05.082

11 AAC 64.230. QUALIFICATIONS OF APPLICANT. An applicant for a lease is qualified if the applicant

(1) is a citizen of the United States and is at least 18 years of age; and

(2) holds a valid limited entry permit or interim-use salmon set net permit for the area within which a lease is requested. (Eff. 4/18/64, Reg. 16; am 3/30/85, Reg. 93)

Authority: AS 38.05.020
AS 38.05.082

11 AAC 64.240. TRUSTEESHIP FOR MINORS. The director will, in his or her discretion, issue a lease in trust for the benefit of a minor who is 10 years of age or older if the minor is otherwise qualified to lease under 11 AAC 64.230. The trust automatically terminates upon the date of the minor's 18th birthday. (Eff. 4/18/64, Reg. 16; am 3/30/85, Reg. 93)

Authority: AS 38.05.020
AS 38.05.082

11 AAC 64.250. APPOINTMENT OF TRUSTEE. A person who is qualified under the laws of Alaska to act as a trustee may apply for approval to act as a trustee for a shore fishery lease on behalf of a minor. The director will issue the lease in the name of an approved trustee, subject to other provisions of this chapter. The trustee does not acquire any rights in the leased area by virtue of this trusteeship. (Eff. 4/18/64, Reg. 16; am 3/30/85, Reg. 93)

Authority: AS 38.05.020
AS 38.05.082

11 AAC 64.260. APPLICATION. (a) An applicant shall file a shore fishery lease application with the department within 30 days after staking a shore fishery lease site. The filing date is determined by the postmark date of the application.

(b) A nonrefundable filing fee, as established by the department's approved fee schedule, must accompany each application.

(c) A shore fishery lease application must contain the following information:

(1) the applicant's name, mailing address, and birthdate;

(2) if the applicant is a minor, the name and mailing address of the trustee;

(3) the applicant's limited entry permit or interim-use salmon set net permit number;

(4) the date the site was staked;

(5) the number of seasons the applicant has commercially fished the site;

(6) the number of years the applicant has participated in a shore fishery;

(7) a description of the lease tract sufficient to locate the tract and sites on the ground and including the township, range, and protracted section in which the site is located, as well as the site's distance and bearing from the shoreward end of the net or net anchor point to a known fixed point, such as a permanent building, monument, or fixed natural feature;

(8) a U.S.G.S. map of not more than 1:63,360 scale showing the location of the site;

(9) a statement that the applicant intends to personally fish the site;

(10) a statement that the applicant has complied with the staking requirements of 11 AAC 64.090 and that the applicant is within legal net distances as established by Department of Fish and Game Commercial Finfish regulations set out in 5 AAC 04 - 5 AAC 39; and

(11) the names and addresses of adjacent right, left, shoreward and seaward set net neighbors; if any.

(d) Upon acceptance of a shore fishery lease application, the division will send the applicant further instructions for completing a shore fishery diagram.

(e) Within 90 days after receipt of the instructions, the applicant shall provide the division with a completed and signed shore fishery diagram.

(f) If an applicant is unable to comply with any of the instructions for completing the shore fishery diagram, the applicant shall submit a notarized affidavit attesting to the reason or the cause for failing to comply. The affidavit will be made part of the lease document.

(g) Failure to provide the information required by this section constitutes grounds for denying the shore fishery lease application. (Eff. 4/18/64, Reg. 16; am 3/30/85, Reg. 93)

Authority: AS 38.05.020
AS 38.05.082

11 AAC 64.270. MOST QUALIFIED APPLICANT. Repealed 8/19/77.

11 AAC 64.280. PROOF OF QUALIFICATION. In addition to the information submitted with the application, the director may request such additional proof of qualification as is deemed necessary to help effect an equitable assignment of the disputed area. Failure to comply with any request for proof of qualification or additional information shall be

reason for the disqualification of an applicant.
(Eff. 4/18/64, Reg. 16)

Authority: AS 38.05.020
AS 38.05.082

11 AAC 64.290. DETERMINATION BY LOT.
Repealed 8/19/77.

11 AAC 64.300. TERM OF LEASE. Repealed
8/19/77.

11 AAC 64.301. TERM OF LEASE. Upon the successful completion of all requirements of this chapter, and the resolution of any protest filed, the director will issue a lease for a period not to exceed 10 years. In determining the term of a lease, the director will consider the stability of the beach within the area, as well as any other applicable considerations or factors. (Eff. 3/30/85, Reg. 93)

Authority: AS 38.05.020
AS 38.05.082

11 AAC 64.310. NOTICE AND POSTING.
Repealed 8/19/77.

11 AAC 64.320. DEPOSITS. Repealed
8/19/77.

11 AAC 64.330. RIGHTS PRIOR TO LEASING. The filing of an application for a lease shall not in any way vest any right in the applicant to a lease. (Eff. 4/18/64, Reg. 16)

Authority: AS 38.05.020
AS 38.05.082

11 AAC 64.340. CONDITIONAL USE. Repealed 3/30/85.

11 AAC 64.350. ISSUANCE OF LEASE.
Repealed 3/30/85.

11 AAC 64.360. PROPER LOCATION BY THE LESSEE. Repealed 3/30/85.

11 AAC 64.370. ANNUAL RENTAL. Annual rental shall be an approved proportionate share of the cost of administration of the total of the shore fishery development leasing costs, as determined by the director and concurred in by the commissioner. Annual rental shall be paid in advance of April 15, unless otherwise approved by the director, and shall be prorated from the 15th day of the month in which issued to the

15th day of April of the following year. All leases shall stipulate that the annual rental shall be subject to adjustment by the director at five year intervals and such adjustment is to be based on the administration costs involved, and shall in no way reflect the value of the leasehold. (Eff. 4/18/64, Reg. 16)

Authority: AS 38.05.020
AS 38.05.082

11 AAC 64.380. RECEIPT OF ANNUAL RENTAL. The first year's rental shall be receipted on the lease; thereafter the director shall immediately issue receipts for all rents paid. (Eff. 4/18/64, Reg. 16)

Authority: AS 38.05.020
AS 38.05.082

11 AAC 64.390. RENEWAL OF LEASE.
Repealed 8/19/77.

11 AAC 64.391. EXTENSION OF LEASE. 90 days before the expiration of a valid lease, the lessee may request an extension of the lease. The director will, in his or her discretion, extend the lease for a period of up to 10 years if no changes in site or tract location have occurred, the beach has remained stable, the lease is in good standing with the department, the lessee remains qualified under 11 AAC 64.230, and no protest of the extension is received. A nonrefundable filing fee, as established by the department's approved fee schedule, must accompany a request for an extension. (Eff. 3/30/85, Reg. 93)

Authority: AS 38.05.020
AS 38.05.082

11 AAC 64.400. PREFERENCE TO LEASE.
Repealed 8/19/77.

11 AAC 64.410. LEASE TERMINATION. (a) The department will, in its discretion, terminate a lease if

(1) the lessee fails to pay the annual rental;

(2) the director determines that the site is not being used for the purpose for which the lease was issued;

(3) the lessee misrepresented facts or made an error with respect to a material fact in the shore fishery lease application;

(4) the lessee fails to properly locate his tract and sites or fails to properly situate in the tract when commercially fishing;

(5) the lessee fails to maintain a valid limited entry permit or interim-use salmon set net permit; or

(6) utilization of the tract or sites is not in accordance with 11 AAC 64.180;

(b) The director will notify a lessee in writing of the department's intention to terminate a lease under this section. The director will send the notice of termination to the last address provided to the department by the lessee. The notice is considered delivered when deposited in the mail.

(c) A lease termination is effective 30 days after the date of the notice, unless stayed by the commissioner in conjunction with an appeal filed by the lessee under 11 AAC 64.460. (Eff. 4/18/64, Reg. 16; am 3/30/85, Reg. 93)

Authority: AS 38.05.020
AS 38.05.082

11 AAC 64.420. NOTICE OF DEFAULT. Repealed 3/30/85.

11 AAC 64.430. ASSIGNMENT. A lessee may assign a lease to another if

(1) the lease rental payments are current;

(2) the assignee is qualified under 11 AAC 64.230 or 11 AAC 64.240 and holds a valid limited entry permit or interim-use salmon set net permit for the fishery;

(3) the assignee does not currently lease the maximum allowed sites for the fishery;

(4) approval of an assignment will not result in the assignee holding leases for more than the maximum allowable number of sites;

(5) the lessee and assignee complete the required assignment of lease form; and

(6) the director approves the assignment. (Eff. 4/18/64, Reg. 16; am 3/30/85, Reg. 93)

Authority: AS 38.05.020
AS 38.05.082

11 AAC 64.440. SUCCESSION TO APPLICANT'S INTEREST. A person who is legally assigned all rights to another person's lease application succeeds to all rights and privileges of the original lease applicant under this chapter if the assignee submits

(1) a notarized statement setting out the name of the lease applicant, the lease applicant's address of record, the location of the site or sites, the date of lease application acquisition, and the name and address of each of the adjacent site holders, if any; and

(2) a notarized statement by the lease applicant stating the length of time the lease applicant has personally operated the site or sites, and stating that the lease applicant has relinquished to the assignee all rights to and interest in the site or sites. (Eff. 4/18/64, Reg. 16; am 3/30/85, Reg. 93)

Authority: AS 38.05.020
AS 38.05.082

11 AAC 64.450. PROTEST. (a) A person may protest an application for or the location of a shore fishery lease site by mailing a statement of protest to the applicant and to the director. The protest may be filed from the time a site has been staked until the last date for filing a protest, as determined and published in writing by the department. The postmark date of the statement of protest constitutes the date of protest. If a protest is filed, the director will not issue a lease until resolution of the protest.

(b) A statement of protest must be in writing, must be signed by the protester, and must contain

(1) the protester's name and mailing address;

(2) the protester's limited entry permit number or interim-use salmon set net permit, if any;

(3) the applicant's name and address as shown on the staking sign;

(4) a brief statement of reasons why the protester believes that the lease site location is invalid or that the protester is more qualified to fish at the lease site; affidavits may be included to support the reasons set out in the statement; and

(5) a brief statement of the relief requested, which may be either denial of the lease site location, or a determination that the protester is more qualified to fish from the lease site and more entitled to lease the site than is the applicant.

(c) The applicant shall prepare a brief written response rebutting the protester's statement. The applicant shall mail the response to the protester and to the director within 30 days after receiving the statement of protest. Affidavits may be included to support the facts set out in the response.

(d) The director will base a decision resolving a protest on the criteria contained in AS 38.05.082 and on the protest, response, supporting affidavits, and hearing, if one is conducted. The decision constitutes the final departmental action unless it is appealed. (Eff. 4/18/64, Reg. 16: am 3/30/85, Reg. 93)

Authority: AS 38.05.020
AS 38.05.082

11 AAC 64.460. APPEAL. An action, order, or decision made by the director may be appealed to the commissioner. The appeal must

(1) be made in writing;

(2) be filed within 30 calendar days after notice of the director's action;

(3) specify the action or actions to be reviewed by the commissioner; and

(4) specify the grounds urged for the reversal or modification of the decision. (Eff. 4/18/84, Reg. 16: am 3/30/85, Reg. 93)

Authority: AS 38.05.020
AS 38.05.082

11 AAC 64.470. FINALITY OF DECISION. The commissioner will, within 45 calendar days after receipt of the appeal, render a final decision. This final decision is not a bar to any other remedy available to the appellant. (Eff. 4/18/64, Reg. 16: am 3/30/85, Reg. 93)

Authority: AS 38.05.020
AS 38.05.082

11 AAC 64.480. COMMISSIONER'S REJECTION. Repealed 3/30/85.

11 AAC 64.490. DISPUTES OF BOUNDARY LINE LOCATION. In a dispute concerning one or more leased tract locations, the protesting party may request that the director establish or reestablish, by survey, the boundary lines of the tract or tracts in question. The director will, in his or her discretion, require that a survey be performed to determine the location of the boundary lines in dispute. The party or parties at fault shall pay the cost of the entire survey. The department will, in its discretion, terminate the lease of the party or parties at fault if they do not pay the survey costs. (Eff. 4/18/64, Reg. 16: am 3/30/85, Reg. 93)

Authority: AS 38.05.020
AS 38.05.082

11 AAC 64.500. GENERAL PLAT REQUIREMENTS. Repealed 3/27/80.

11 AAC 64.510. PAPER PLAT PROCEDURE AND REQUIREMENTS. Repealed 3/27/80.

11 AAC 64.520. SURVEY REQUIREMENTS. Repealed 3/27/80.

11 AAC 64.530. PRELIMINARY PLAT REQUIREMENTS. Repealed 3/27/80.

11 AAC 64.540. SURVEY PROCEDURE. Repealed 3/27/80.

11 AAC 64.550. PROCEDURE ON FINAL PLAT. Repealed 3/27/80.

11 AAC 64.560. FINAL PLAT REQUIREMENTS. Repealed 3/27/80.

11 AAC 64.565. TRANSITION. Pending applications submitted under this chapter before March 30, 1985 will be adjudicated under the provisions of this chapter which are in effect after that date. The applicant will be notified of any additional requirements. (Eff. 3/30/85, Reg. 93)

Authority: AS 38.05.020
AS 38.05.082

11 AAC 64.570. DEFINITIONS. In these regulations, the following terms shall have the meaning indicated unless the context clearly requires a different meaning:

- (1) repealed 3/30/85;
- (2) "adjacent" means touching or lying in close proximity, as opposed to "contiguous" which requires a common boundary;
- (3) "boundary lines" means lines having a course and distance that enclose one tract;
- (4) repealed 3/30/85;
- (5) repealed 3/30/85;
- (6) "commercial fishing" means the taking, fishing for, or possession of fish, with the intent of disposing of them for profit, or by sale, barter, or in commercial channels;
- (7) "commercial fishing season" means the locally recognized commercial fishing season opened by field announcement by the Alaska Board of Fish and Game;
- (8) "commissioner" means the Commissioner of the Department of Natural Resources, State of Alaska;
- (9) "department" means the Department of Natural Resources, State of Alaska;
- (10) "director" means the Director of the Division of Lands;
- (11) "division" means the Division of Lands within the Department of Natural Resources;
- (12) "endline" means that boundary line of any lease tract that is parallel or nearly so with the shoreline;
- (13) repealed 3/30/85;
- (14) repealed 3/30/85;
- (15) "lease" means a surface lease for shore fisheries development issued or held pursuant to these regulations;
- (16) repealed 3/30/85;
- (17) repealed 3/30/85;
- (18) repealed 3/30/85;

(19) "monument" means a natural, physical, artificial, or record monument, as customarily used to appropriately define or mark an area;

(20) "neighbor" means an adjacent commercial fisherman who is to be designated as right or left side, or seaward or shoreward neighbor;

(21) "offshore" means those submerged lands lying seaward from the line of mean low tide;

(22) repealed 3/30/85;

(23) repealed 3/30/85;

(24) repealed 3/30/85;

(25) repealed 3/30/85;

(26) repealed 3/30/85;

(27) repealed 3/30/85;

(28) "site" means set net site, individual set net location, set net fishing site, and set gill net site;

(29) repealed 3/30/85;

(30) "tidelands" are those lands that are periodically covered by tidal waters between the elevation of mean high and mean low tides;

(31) "tract" means a parcel of tidelands leased under this chapter and may include one, two, or three set gill net sites;

(32) repealed 3/30/85;

(33) repealed 3/30/85;

(34) repealed 3/30/85;

(35) "party at fault" means the lessee or lessor who, following a dispute over tract or site boundaries or locations, is determined by the director to be in error;

(36) "permanent" means not capable of being readily dismantled or removed from a site or tract within the 24 hours after notification, without destroying the object dismantled or

removed or damaging the site or tract, and does not include set net anchors;

(37) "shore fishery diagram" means a graphic depiction of an applicant's or lessee's site which indicates the relationship of the site to local landmarks and adjacent or neighboring sites. (Eff. 4/18/64, Reg. 16; am 3/30/85, Reg. 93)

Authority: AS 38.05.020

AS 38.05.082

CHAPTER 65. PERSONAL USE CABIN PERMITS

Section

- 10. Applicability
- 20. Applications
- 30. Application fee
- 40. Renewals
- 50. Permit decision
- 60. Density within state game refuges and critical habitat areas
- 70. Conflicting applications
- 80. Ownership and removal
- 90. Conditions of permit
- 100. Appeals
- 110. Public use cabins
- 900. Definitions

11 AAC 65.010. APPLICABILITY. This chapter applies to the issuance of personal use cabin permits for unauthorized cabins placed on state land before August 1, 1984. Cabins built on state land after August 1, 1984 will not be authorized. A permit under this chapter does not convey an interest in state land or establish a preference right for the lease or purchase of state land. It is the express intent of this chapter to phase out the use of unauthorized cabins on state land, and where appropriate, convert them to public use. (Eff. 12/16/84, Reg. 92)

Authority: AS 38.04.035 AS 38.05.020
AS 38.04.900 AS 41.21.020

11 AAC 65.020. APPLICATIONS. (a) An application for a permit to use an existing cabin on state land must

(1) be received by the department during a 60-day application period established by the department and announced by public notice; the application period will be open for one time only by geographic location;

(2) be made on a form provided by the department;

(3) be complete and correct to the best of the applicant's knowledge;

(4) contain a description of the cabin and site;

(5) contain a description of the proposed use of the cabin and site;

(6) be signed and dated by the applicant or, in the case of a group of applicants, by the applicant's authorized agent.

(b) An application made under this section must include the following:

(1) a \$25 application fee;

(2) identification of the cabin site on a United States Geological Survey map at 1:63,360 scale (1" to 1 mile) or its equivalent;

(3) a photograph (print) of the cabin taken within the past year;

(4) documentation demonstrating historic use and occupancy;

(5) documentation of any prior investments in the cabin; and

(6) any other information required by the director. (Eff. 12/16/84, Reg. 92)

Authority: AS 38.04.035 AS 38.05.020
AS 38.04.900 AS 41.21.020

11 AAC 65.030. APPLICATION FEE. The application fee required by 11 AAC 65.020 is not refundable. However, if the department determines that an application made under this chapter should have been made under a different chapter, the application fee may be applied to an application made under another chapter. (Eff. 12/16/84, Reg. 62)

Authority: AS 38.04.035 AS 38.05.020
AS 38.04.900 AS 41.21.020

11 AAC 65.040. RENEWALS. (a) Application for renewal of a permit must be made in writing at least 90 days, but not more than 180 days, before the expiration of the permit.

(b) A permit will be renewed if the continued use complies with 11 AAC 65.050 – 11 AAC 65.900.

(c) A permit issued and renewed under this chapter is valid only during the lifetime of the original holder of that permit. (Eff. 12/16/84, Reg. 92)

Authority: AS 38.04.035 AS 38.05.020
AS 38.04.900 AS 41.21.020

Section

- 85. Term of lease
- 87. Forest Service permittees' leasing preference
- 90. Removal or reversion of improvements upon termination of leases
- 95. Subleases
- 97. Exemption from rental payments on

Section

- land leased by nonprofit organizations
- 98. Senior citizens exemption
- 102. Lessee preference
- 103. Rights of holder of security interest
- 105. Periodic rent adjustments

Cross references. — For reservation to which contracts for sale, lease or grant of state land and deeds to state land,

properties or interest to state land are subject, see AS 38.05.125.

Sec. 38.05.070. Generally. (a) Land, including tide, submerged or shoreland, to which the state holds title or to which it may become entitled, may be leased, except for the extraction of natural resources, in the manner provided in AS 38.05.070 — 38.05.105.

(b) The director, with the approval of the commissioner, shall determine the land to be leased and the limitations, conditions and terms of the lease. The director shall preserve reasonable and traditional access to state land and water. If the appraised value of the transaction is \$5,000 a year or less the director may negotiate a lease for a period not to exceed 10 years, and on the limitations, conditions and terms that the director considers are in the best interests of the state. A lease negotiated under this subsection is not eligible for a preference under AS 38.05.102.

(c) A lease may be issued for a period up to 55 years, if the commissioner determines it to be in the best interests of the state. The commissioner shall consider the useful life of any improvements proposed and approved under AS 38.05.075 in determining the term of the lease. If the commissioner determines that the land or a part of it which is the subject of a grazing lease is not being used for the purpose issued the lease may be declared void. (§ 1 art V ch 169 SLA 1959; am § 21 ch 113 SLA 1981; am §§ 27, 28 ch 152 SLA 1984)

Effect of amendments. — The 1981 amendment added the third sentence of subsection (b).

The 1984 amendment, in subsection (b), inserted the second sentence and, in the third sentence, substituted "\$5,000" for "\$250," "10" for "5," and "that the director" for "which he" and deleted "without advertisement" following "lease"; and, in subsection (c), substituted "the commissioner

determines it to be in the best interests of the state" for "it appears to be in the best interests of the state and if the commissioner approves" in the first sentence, inserted the second sentence, and deleted the former last sentence, which read "However, a nonrenewable lease for school lands may be issued for a period not to exceed 99 years."

NOTES TO DECISIONS

Adjudicatory provisions of the Alaska Administrative Procedure Act (AS 44.62) do not apply to the termination of grazing leases by the state division of lands. *McCarrey v. Commissioner of Natural Resources*, Sup. Ct. Op. No. 1088 (File No. 2075), 526 P.2d 1353 (1974).

There is no indication in subsection (c), or other provisions which apply to state grazing leases, that requires application of the procedures of the Administrative Procedure Act (AS 44.62). *McCarrey v. Commissioner of Natural Resources*, Sup. Ct. Op. No. 1088 (File No. 2075), 526 P.2d 1353 (1974).

But state must afford notice and hearing before termination. — While the adjudicatory provisions of the Administrative Procedure Act (AS 44.62) are not applicable, due process considerations lead to the conclusion that it is incumbent upon the state to afford notice and a hearing to ensure due process before a state grazing

lease may be terminated for noncompliance. *McCarrey v. Commissioner of Natural Resources*, Sup. Ct. Op. No. 1088 (File No. 2075), 526 P.2d 1353 (1974).

Terminating state grazing leases without affording the lessee notice and hearing would undermine both the policy evinced by Alaska Const., art. VIII, and the explicit due process guarantee provided by Alaska Const., art. I, § 7. *McCarrey v. Commissioner of Natural Resources*, Sup. Ct. Op. No. 1088 (File No. 2075), 526 P.2d 1353 (1974).

Procedure required by due process prior to termination of grazing lease. — See *McCarrey v. Commissioner of Natural Resources*, Sup. Ct. Op. No. 1088 (File No. 2075), 526 P.2d 1353 (1974).

Quoted in *Alyeska Ski Corp. v. Holdsworth*, Sup. Ct. Op. No. 406 (File No. 620), 426 P.2d 1006 (1967).

Collateral references. — 63 Am. Jur. 2d, Public Lands, §§ 108 to 116; 72 Am. Jur. 2d, States, Territories and Dependencies, §§ 66-70.

73A C.J.S., Public Lands, § 197; 81A C.J.S., States, § 150.

Sec. 38.05.075. Leasing procedures. (a) Except as provided in AS 38.05.087 and this section, leasing shall be made at public auction to the highest qualified bidder as determined by the commissioner. An aggrieved bidder may appeal to the commissioner within five days for a review of the determination. The leasing shall be conducted by the commissioner and the successful bidder shall deposit at the auction the first year's rental or that portion of it that the commissioner requires in accordance with the bid. The commissioner shall require qualified bidders to deposit a sum equal to any survey or appraisal costs reasonably incurred by another qualified bidder acting in accordance with the regulations of the commissioner. If a bidder making a deposit of survey or appraisal costs is determined by the commissioner to be the highest qualified bidder under this subsection, the deposit shall be paid to the unsuccessful bidder who incurred those costs. Any survey or appraisal costs reasonably incurred by a qualified bidder under the regulations of the commissioner or deposited under this subsection must be credited under the first and then subsequent years' rentals. All costs for survey and appraisal shall be approved in advance in writing by the commissioner. The commissioner shall immediately issue a receipt containing a description of the land or interest leased, the price bid, terms

of the lease, and the amount of any credit for survey and appraisal costs to the successful qualified bidder. If the receipt is not accepted in writing by the bidder under this subsection, the commissioner may offer the land for lease again under this subsection. A lease, on a form approved by the attorney general, shall be signed by the successful bidder and by the commissioner within 30 days after the auction.

(b) When a valid existing federal grazing lease is cancelled to allow state selection of the area under lease, the lessee of the land has the preference right to lease the land without competitive bidding for a term equal to that originally granted in the cancelled federal lease and upon terms as favorable to the lessee as those contained in the cancelled federal lease.

(c) The owner or lessee of land that fronts on tide or submerged land of the state is entitled to acquire a lease for the tide and submerged land without competitive bidding if the director determines that

(1) the lease of the tide or submerged land is necessary to facilitate water transportation of goods, services, or resources to or from the owned or leased upland or for another water-dependent purpose;

(2) the proposed use of the tide or submerged land is compatible with the classification of the land and with any applicable land use plan adopted under AS 38.04.065; and

(3) issuance of the lease to the tide or submerged land will not interfere with prior existing rights to the leased land.

(d) If the commissioner issues a lease under (c) of this section, the right of access to the tide and submerged land shall be nonexclusive in the lessee unless the commissioner grants the lessee the exclusive right to use the tide and submerged land.

(e) The commissioner may require prequalification of bidders for a lease to be issued under AS 38.05.070. If the commissioner determines to require prequalification, the procedures established by this section and the notice including pre-qualification requirements required to be given under AS 38.05.945 shall be completed within 75 days of the receipt of the first lease application unless the commissioner grants additional time for the completion of the procedures. Within the 75-day period or the additional time granted by the commissioner, the commissioner shall complete

(1) classification under AS 38.05.300;

(2) the procedures required by AS 38.05.035(e);

(3) any other action required by law for the disposal of the lease to a bidder except survey, appraisal, and the auction.

(f) The commissioner may issue a lease without competitive bidding at the approved, appraised market value of the land determined under AS 38.05.840 if, after completion of the procedures required by (e) of this section, the commissioner determines that there is only one qualified bidder. The commissioner may establish terms and conditions for entry to the land pending survey and appraisal of the land. The

commissioner shall issue the lease as soon as is practicable following the survey and appraisal of the land subject to the provisions of AS 38.05.035(e).

(g) Notice of an auction required under this section shall be made by certified mail to all prequalified bidders.

(h) A person aggrieved by a decision of the commissioner under this section may appeal to the commissioner within five days of the prequalification decision. The decision of the commissioner under this subsection or under AS 38.05.035(e) may be appealed to the superior court. (§ 2 art V ch 169 SLA 1959; am § 10 ch 61 SLA 1960; am § 3 ch 74 SLA 1961; am § 2 ch 26 SLA 1963; am § 1 ch 84 SLA 1965; am § 1 ch 106 SLA 1966; am §§ 29, 30 ch 152 SLA 1984)

Effect of amendments. — The 1984 amendment added subsections (b)-(h) and, in subsection (a), deleted the former third sentence, relating to when a valid existing

federal grazing lease was cancelled, inserted the fourth through seventh sentences, and rewrote the remaining language.

NOTES TO DECISIONS

Importance of land resources recognized by constitution. — Alaska Const., art. VIII, reflects the framers' recognition of the importance of Alaska's land resources and of the concomitant necessity for observance of legal safeguards in the disposal or leasing of state lands. *Alyeska Ski Corp. v. Holdsworth*, Sup. Ct. Op. No. 406 (File No. 620), 426 P.2d 1006 (1967).

Adherence to legal procedures concerning leasing of state lands. — This section, which accords an aggrieved bidder the right of an administrative appeal, is evidence of the legislature's awareness of the necessity that adherence to legal procedures concerning the leasing of state lands must be insured. *Alyeska Ski Corp. v. Holdsworth*, Sup. Ct. Op. No. 406 (File No. 620), 426 P.2d 1006 (1967).

Determinations subject to judicial review. — Determinations of the director of the division of lands and the commissioner of natural resources made under this section of the Alaska Land Act, and regulations promulgated thereunder, are subject to judicial review. This conclusion is reached in light of the text of Alaska Const., art. VIII, § 10, which prohibits leasing of state owned lands unless made pursuant to public notice and other limi-

tations imposed by law. *Alyeska Ski Corp. v. Holdsworth*, Sup. Ct. Op. No. 406 (File No. 620), 426 P.2d 1006 (1967).

The judicial review portions of the Administrative Procedure Act govern leasing procedures conducted by the division of lands under the Alaska Land Act. *Alyeska Ski Corp. v. Holdsworth*, Sup. Ct. Op. No. 406 (File No. 620), 426 P.2d 1006 (1967).

Aggrieved bidder has standing to obtain judicial review. — It is consonant with the intent of constitution and with legislative intent that an aggrieved bidder, under this section, have standing to obtain judicial review of alleged violations of his protected interest, as well as to vindicate the public interest in the lawful leasing of Alaska's lands. *Alyeska Ski Corp. v. Holdsworth*, Sup. Ct. Op. No. 406 (File No. 620), 426 P.2d 1006 (1967).

Extent of review available. — The provisions of this section pertaining to an aggrieved bidder's right of appeal do not manifest a clear intent that an administrative appeal was intended to be the full extent of review available to an aggrieved bidder. *Alyeska Ski Corp. v. Holdsworth*, Sup. Ct. Op. No. 406 (File No. 620), 426 P.2d 1006 (1967).

Sec. 38.05.076. Leases for pipeline purposes. [Repealed, § 31 ch 3 FSSLA 1973.]

Sec. 38.05.077. Classification and disposal of remote parcels. [Repealed, § 7 ch 103 SLA 1983. For current law see AS 38.09.]

Sec. 38.05.078. Purchase of land in a remote parcel. [Repealed, § 7 ch 103 SLA 1983. For current law see AS 38.09.]

Sec. 38.05.079. Remote cabin permit. (a) After September 1, 1980, the commissioner may issue a permit for the use of remote state land in a municipality for a cabin site if the land was classified for that purpose under former AS 38.05.047(a)(5)(B). After September 1, 1981, the commissioner may issue a permit for the use of remote state land outside a municipality for a cabin site if the land is classified for that purpose under the procedures required by AS 38.05.300 and 38.05.945.

(b) The fee for a remote cabin permit is \$100 a year. The commissioner shall establish regulations which specify the application procedures for and the terms and conditions of a remote cabin permit. A permit must be for a term of not less than 25 years, and may be assigned by the original permittee during the term of the permit.

(c) A remote cabin permit may be terminated by the commissioner before the expiration of the term of the permit if a permittee fails to use the land under permit in the manner required by the terms of the permit. After termination of a remote cabin permit, improvements or personal property on the land subject to the permit shall be managed in the same manner as required by AS 38.05.090.

(d) If land subject to a remote cabin permit is offered for sale or long-term lease, the commissioner shall first offer to sell or lease the land to the permittee or the assigns of the permittee. The land shall be sold for its fair market value. (§ 32 ch 85 SLA 1979; am § 98 ch 6 SLA 1984)

Effect of amendments. — The 1984 amendment made a series of technical and internal reference changes throughout subsection (a).

Sec. 38.05.080. Rejection of bids. Before the director signs the lease, the commissioner may reject all bids for leases when the best interest of the state justifies this action. (§ 2 art V ch 169 SLA 1959; am § 10 ch 61 SLA 1960; am § 3 ch 74 SLA 1961)

NOTES TO DECISIONS

Quoted in *Alyeska Ski Corp. v. Holdsworth*, Sup. Ct. Op. No. 406 (File No. 620), 426 P.2d 1006 (1967).

Sec. 38.05.082. Leases for shore fisheries development. (a) The director, with the approval of the commissioner, may lease tide and submerged land for fisheries development. Fisheries development

includes the utilization of shore gill nets or set nets for the taking of fish. Every lease issued under this section shall reserve to the public a right-of-way for access to navigable waters and other tide and submerged land.

(b) The director may classify land as subject to leases for fisheries development, and publicly invite applications for lease of the selected areas. Each application shall be accompanied by an affidavit to the effect that the applicant presently intends to personally utilize the leased area for fishing purposes the following season. If two or more applications are received for the same shore area, the director shall award the lease to the most qualified applicant. In determining the qualifications of applicants, the director shall consider the length of time during which the applicant has been engaged in set netting, the proximity of the past fishing sites of the applicant to the land to be leased, the present ability of the applicant to utilize the location to its maximum potential, and other factors relevant to the equitable assignment of the disputed area. If the director cannot determine a preference between conflicting applicants for the same lease site on the basis of qualifications, the director shall select between the applicants by lot. An aggrieved applicant may appeal to the commissioner within five days for a review of the director's determination.

(c) A lease for set net fishing may be issued for any period not exceeding 10 years. If the commissioner determines that the land is not being utilized for the purpose for which the lease is issued, the lease may be declared void. The director shall establish a reasonable rental for the lease, equal to the administrative costs involved in processing the leasehold applications.

(d) Subleasing and renewals of leases are governed by AS 38.05.095 and 38.05.102.

(e) The lease of submerged land conveys no interest in the water above the land or in the fish in the water. (§ 2 ch 93 SLA 1963; am § 99 ch 6 SLA 1984)

Effect of amendments. — The 1984 amendment changed the internal reference in subsection (d).

Opinions of attorney general. — This section, which authorizes shore fishery leases, does not create an exclusive right of fishery and therefore is not

unconstitutional under § 15, art. VIII, of the state constitution. 1983 Op. Att'y Gen. No. 03.

This section can be amended to limit the issuance of state tidelands leases for fisheries development to residents of Alaska. 1983 Op. Att'y Gen. No. 03.

Sec. 38.05.085. Term of lease. (a) The lease shall provide that

(1) for the initial 25-year period of the lease, the lessee shall pay the state a fixed base annual rent to be agreed upon by the parties in compliance with the provisions of this chapter;

(2) the fixed base annual rent to be paid by the lessee shall be readjusted when the initial 25-year period of the lease has expired and, thereafter, every 10 years; and

(3) the readjusted annual rent may not exceed 10 per cent of the value of the property as determined in (b) of this section or 50 per cent more than the amount paid each year during the initial period or the preceding 10-year period, whichever is lower.

(b) When it becomes necessary to determine the fair market value of property as required by (a) of this section, the director shall have the property appraised by a qualified appraiser. If the lessee disagrees with the appraisal obtained by the director, the lessee may appoint a qualified appraiser to make an appraisal of the property in question. If the two appraisers agree upon the fair market value, the determination is binding on the parties. In the event the two appraisers are unable to agree, they shall appoint a third qualified appraiser who shall then make an appraisal of the property in question. When the third appraisal is completed, the two of the three appraisals which are nearest each other in their determination of the fair market value shall be averaged and the resultant sum shall be the fair market value of the property in question and absolutely binding on the parties. All costs incurred in making the appraisals provided for in this subsection shall be borne by the state and the lessee equally.

(c) The lessee shall make advance payments of the annual rent or portion of it as the director, with the approval of the commissioner, may require.

(d) A preference right lessee of grazing or forest land may follow the payment schedule established in the cancelled federal lease or grazing permit if the lessee so desires.

(e) Notice of all actions by the department affecting the rights of a lease or lessee shall be given to the lessee.

(f) A violation of a provision of this chapter or of a term or provision of a lease subjects the lessee to appropriate legal action, including, but not limited to, a forfeiture of the lease.

(g) In this section,

(1) "annual rent" means the amount of rent paid annually determined by multiplying the fair market value by the rental rate computed at the time of the initial 25-year period of the lease or of each subsequent 10-year period of the lease;

(2) "qualified appraiser" means a senior member of the American Institute of Real Estate Appraisers, the Society of Real Estate Appraisers, a person meeting the requirements for certification as an appraiser II by the division of personnel, Department of Administration, or a person qualified according to regulations adopted by the commissioner under the Administrative Procedure Act (AS 44.62);

(3) "rental rate" means the rate, expressed as a percentage of fair market value, which a comparable class of privately owned property would bring in the open market with the same conditions of lease as offered by the state. (§ 3 art V ch 169 SLA 1959; § 11 ch 61 SLA 1960; § 4 ch 74 SLA 1961; am § 9 ch 138 SLA 1977; am §§ 8, 9 ch 182 SLA 1978)

Revisor's notes. — This section was reorganized in 1984 to place the defined terms in alphabetical order.

NOTES TO DECISIONS

Quoted in *Alyeska Ski Corp. v. Holdsworth*, Sup. Ct. Op. No. 406 (File No. 620), 426 P.2d 1006 (1967).

Sec. 38.05.087. Forest Service permittees' leasing preference.

(a) Before offering to the public any land for lease which is subject to a valid existing United States Forest Service permit in effect in a state-selected area on the day before the area was tentatively approved for patent to the state, the director shall offer the land for leasing to the permittee at not less than its fair appraised market value before offering it to the general public.

(b) When not in conflict with this section, the provisions of AS 38.05.070 — 38.05.105 apply to leases under this section. (§ 1 ch 26 SLA 1963; am § 3 ch 26 SLA 1979)

Sec. 38.05.090. Removal or reversion of improvements upon termination of leases. (a) Improvements owned by a lessee on state land shall, within 60 days after the termination of the lease, be removed by the lessee if removal will not cause injury or damage to the land. The director may extend the time for removing improvements in cases where hardship is proven. The retiring lessee or permittee may, with the consent of the director, sell improvements to the succeeding lessee or permittee.

(b) If improvements or chattels, or both, having an appraised value exceeding \$10,000 as determined by the director are not removed within the time allowed, the improvements or chattels or both shall, upon notice to the lessee, be sold at public sale under the direction of the director. The proceeds of sale inure to the lessee who placed the improvements or chattels on the land after paying to the state all rents due and expenses incurred in making the sale. If there are no other bidders at the sale, the director may bid in the name of the state. The bid money shall be taken from the fund to which the land belongs and the fund shall receive all money or other value subsequently derived from the sale or leasing of the improvements or chattels. The state acquires all the rights that any other purchaser could acquire by reason of the purchase.

(c) If improvements or chattels, or both, having an appraised value of \$10,000 or less, as determined by the director, are not removed within the time allowed, they revert to the state and absolute title vests in the state. The preference right lessees of grazing or forest land may follow the provisions for removal of improvements upon termination of the lease as authorized in the cancelled federal lease or permit.

(d) Improvements of the lessee which have become fixtures of the land shall be purchased by the subsequent purchaser or lessee of the land if the improvements were authorized in the former lease or by permit from the director. Upon the termination of a lease, and at additional times which may be necessary, the value of the authorized fixtures remaining on the land shall be set by agreement between the former lessee and the director or, if agreement cannot be reached, by an independent appraisal made at cost to the former lessee.

(e) A notice or offer by the state to sell or lease formerly leased land shall state

(1) the value of the authorized fixtures remaining on the land;

(2) that the purchaser or lessee will be required, as a condition of the sale or lease, to purchase the fixtures from the former lessee for an amount equal to the value specified. (§ 4 art V ch 169 SLA 1959; § 12 ch 61 SLA 1960; § 5 ch 74 SLA 1961; am § 1 ch 140 SLA 1966)

NOTES TO DECISIONS

Cited in *Swindel v. Kelly*, Sup. Ct. Op. No. 812 (File Nos. 1416, 1418), 499 P.2d 291 (1972).

Collateral references. — 63 Am. Jur. 2d, Public Lands, § 28.
73A C.J.S., Public Lands, § 25.

Sec. 38.05.095. Subleases. (a) Except as provided in (b) of this section, a lessee may sublease or assign the leased land or a portion of it if, after application to the director, the director issues a permit. The director may issue a permit upon a finding that it is in the best interests of the state to do so.

(b) A nonprofit organization that is exempted from paying rent on state land under AS 38.05.810 may not sublease or assign the land or a portion of it on which it has a lease. (§ 5 art V ch 169 SLA 1959; am § 10 ch 182 SLA 1978; am § 29 ch 113 SLA 1981)

Effect of amendments. — The 1981 amendment changed the statutory reference in subsection (b)."

Sec. 38.05.097. Exemption from rental payments on land leased by nonprofit organizations. (a) A nonprofit organization using state land leased by it under AS 38.05.070 — 38.05.105 and 38.05.810 for a youth encampment or similar recreational purpose is exempt from lease rental payments on that land. The nonprofit organization shall meet all other terms and conditions of the lease specified under AS 38.05.070 — 38.05.105 and 38.05.810.

(b) In this section, "nonprofit organization" means nonprofit corporations, associations, clubs, or societies organized and operated exclusively for charitable, religious, scientific, or educational purposes or for the promotion of social welfare and which have received an exemption from the payment of federal income tax.

(c) A nonprofit organization which satisfies the requirements of this section that is using land under a lease in effect before July 1, 1978 may convert its lease to a new lease with terms exempting it from the payment of rent by submitting a written request to the director. (§ 11 ch 182 SLA 1978; am § 30 ch 113 SLA 1981)

Effect of amendments. — The 1981 amendment added "and 38.05.315" (now 38.05.810) preceding "for a youth encampment" in the first sentence of subsection (a).

Sec. 38.05.098. Senior citizens exemption. (a) The real property occupied as a permanent place of abode by a resident 65 years of age or over and leased by that resident from the state in accordance with AS 38.05.070 — 38.05.105 is exempt from the payment of annual lease rent. Only one exemption may be granted for the same property, and, if two or more persons are eligible for an exemption for the same property the parties shall decide between or among themselves which shall receive the benefit of the exemption. An exemption may not be granted for a portion of the leased real property which is used for a purpose other than as the permanent place of abode of the leaseholder.

(b) An exemption may not be granted under this section unless a written application for the exemption on a form provided for by the commissioner is submitted. The leaseholder must submit the application not later than 60 days before the anniversary date of the lease, and shall file a separate application for each lease year for which the exemption is sought. If an application is submitted within the required time and is approved by the commissioner, the commissioner shall allow a rental exemption for the lease year commencing on the anniversary date. The commissioner may at any time require proof of the right to an exemption claimed under this section. (§ 32 ch 85 SLA 1979)

Revisor's notes. — In rewriting subsection (b) to remove personal pronouns, the phrase "in the form he considers necessary" was deleted from the last sentence. AS 38.05.020 gives the commissioner authority to prescribe the form and extent of proof required under this section.

Sec. 38.05.100. Renewal of lease. [Repealed, § 15 ch 257 SLA 1976.]

Sec. 38.05.102. Lessee preference. If land within a leasehold created under AS 38.05.070 — 38.05.105 is offered for sale or long-term lease at the termination of the existing leasehold, the director may, upon a finding that it is in the best interest of the state, allow the

holder in good standing of that leasehold to purchase or lease the land for its appraised fair market value at the time of the sale or long-term lease. (§ 2 ch 36 SLA 1976; am § 7 ch 257 SLA 1976; am § 31 ch 113 SLA 1981; am § 100 ch 6 SLA 1984)

Revisor's notes. — AS 38.05.102 was added by both sec. 2, ch. 36, SLA 1976, and sec. 7, ch. 257, SLA 1976. Since ch. 257 had a later effective date, and contained inconsistent provisions, it was treated as an amendment to the section enacted by ch. 36.

Effect of amendments. — The 1981 amendment substituted "its appraised fair market value at the time of the sale or

long-term lease" for "the amount of the high bid received at public auction" near the end of the section.

The 1984 amendment made technical and internal reference changes in the section.

Editor's notes. — AS 38.05.100, referred to at the beginning of the section, was repealed by § 15, ch. 257, SLA 1976.

Sec. 38.05.103. Rights of holder of security interest. (a) If there is a breach or default of a term of a lease or of the provisions of this chapter relating to a lease, the division shall provide written notice of the breach or default by personal service or by registered or certified mail to the lessee and to any holder of record having a security interest in the leased property. The notice shall also make demand upon the lessee to cure or remedy the breach or default within 60 days from the date of receipt of the notice and demand. If a lessee fails to cure or remedy the breach or default within 60 days, or within the additional time which the division may allow for good cause, the state may, subject to (b) of this section, exercise any right which it may have at law or as set out in the lease.

(b) If a lessee fails to cure or remedy a breach or default within the time allowed in (a) of this section, a holder of a security interest who has received notice under (a) of this section may cure or remedy the breach or default if the breach or default can be cured by the payment of money or, if this cannot be done, by performing or undertaking in writing to perform the terms, covenants, restrictions and conditions of the lease capable of performance by the holder. The holder shall act within 60 days from the date of receipt of notice under (a) of this section, or within an additional period as the director may allow for good cause. (§ 10 ch 138 SLA 1977)

Sec. 38.05.105. Periodic rent adjustments. (a) Each lease shall stipulate that at the conclusion of the initial 25-year period of the lease and at intervals of 10 years thereafter the annual rent payment is subject to adjustment. Charges or adjustments shall be based primarily on an adjusted fair market value. However, if the director determines that single-family residential development is the best use of the land, the reappraisal period may be lengthened or the readjustment waived in accordance with regulations adopted by the department. Before a waiver of rent adjustment is issued, the land shall have a current reappraisal. A waiver is valid only if single-family residential

development actually occurs. The regulations adopted under this section shall ensure that the state receives a fair return from the land.

(b) The provisions of AS 38.05.085(b) are applicable to reappraisals of leases required by this section, except that, in determining an adjusted market value,

(1) subject to the provisions of (c) of this section, changes in property value due to governmental actions, including zoning reclassifications, shall be included; and

(2) changes in property value due to private improvements made to the property or other privately owned or leased property since originally entering into the lease shall be excluded.

(c) Changes or adjustments of annual rent on land under lease and used for single-family residential purposes in an area zoned for commercial or other nonresidential uses shall be based on an adjusted fair market value determined by reference to the actual use of the property and not by reference to the other uses permissible under the zoning ordinance. (§ 7 art V ch 169 SLA 1959; am § 1 ch 44 SLA 1964; am § 8 ch 257 SLA 1976; am § 1 ch 267 SLA 1976; am § 11 ch 138 SLA 1977; am §§ 12, 13 ch 182 SLA 1978)

Revisor's notes. — AS 38.05.105(a) was amended by both § 8, ch. 257, SLA 1976, and § 1, ch. 267, SLA 1976. Since the two amendments appear to be inconsistent, and ch. 257 is superseded by ch. 267, only the later enactment has been given effect here.

NOTES TO DECISIONS

Applied in *Wessells v. State, Dep't of Hwys.*, Sup. Ct. Op. No. 1402 (File No. 2834), 562 P.2d 1042 (1977).

Quoted in *Alyeska Ski Corp. v. Holdsworth*, Sup. Ct. Op. No. 406 (File No. 620), 426 P.2d 1006 (1967).

Sec. 38.05.107. Compensation relating to easements or rights-of-way across state leases. [Repealed, § 1 ch 203 SLA 1975.]

Article 4. Disposal of Timber and Materials.

Section

- 110. Sale of timber and materials
- 115. Limitations and conditions of sale
- 118. Negotiated timber sales in areas of high unemployment
- 120. Disposal procedure

Sec. 38.05.110. Sale of timber and materials. The commissioner shall provide for cruises of timber and appraisals of other materials in or upon state land and shall assess the supply of and current markets for timber on and other materials in privately owned land in close proximity to state land to determine

(1) the timber and other materials that should be offered for sale, and

(2) the terms of sale of the timber or other materials. (§ 1 art VI ch 169 SLA 1959; am § 31 ch 152 SLA 1984)

Effect of amendments. — The 1984 amendment in the introductory language, substituted "commissioner" for "director" and "state land and shall assess the supply of and current markets for timber on and other materials in privately owned land in

close proximity to state land to determine" for "lands and transmit this data to the commissioner, together with his recommendations with respect to" and substituted "that" for "which" in paragraph (1).

NOTES TO DECISIONS

Cited in Southeast Alaska Conservation Council, Inc. v. State, Sup. Ct. Op. No.

2662 (File No. 5855), 665 P.2d 544 (1983).

Collateral references. — 63 Am. Jur. 2d, Public Lands, §§ 18, 19.

73A C.J.S., Public Lands, §§ 13 to 16.

Sec. 38.05.115. Limitations and conditions of sale. (a) The commissioner shall determine the timber and other materials to be sold, and the limitations, conditions and terms of sale. The limitations, conditions and terms shall include the utilization, development and maintenance of the sustained yield principle, subject to preference among other beneficial uses. The commissioner may negotiate sales of timber or materials without advertisement and on the limitations, conditions, and terms that are considered to be in the best interests of the state. However, not more than 500 M.B.M. or equivalent other measure of timber or more than 25,000 cubic yards of materials may be sold by nonadvertised, negotiated sale to the same purchaser within a one-year period.

(b) Negotiated sales not exceeding 50 M.B.M. or the equivalent other measure of timber or 2,500 cubic yards of materials are exempt from the provisions of AS 34.15.150.

(c) The limitations of this section are not applicable to timber which becomes state property under the provisions of AS 45.50.210 — 45.50.235. (§ 2 art VI ch 169 SLA 1959; am § 1 ch 66 SLA 1969; am § 9 ch 257 SLA 1976; am §§ 2, 3 ch 73 SLA 1978; am § 32 ch 152 SLA 1984)

Effect of amendments. — The 1984 amendment, in subsection (a), deleted "upon recommendation of the director" following "commissioner" in the first sentence and "subject to the approval of the

commissioner" at the end of the third sentence and substituted "commissioner" for "director" and "that are considered to be" for "which he considers are," also in the third sentence.

14-0965
Levy
3/29/85✓

1
2 IN THE HOUSE

BY SUND

3 HOUSE BILL NO.

4 IN THE LEGISLATURE OF THE STATE OF ALASKA

5 FOURTEENTH LEGISLATURE - FIRST SESSION

6 A BILL

7 For an Act entitled: "An Act relating to the forest products business loan
8 guarantee program; and providing for an effective
9 date."

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

11 * Section 1. AS 45.94.020 is amended to read:

12 Sec. 45.94.020. FOREST PRODUCTS BUSINESS LOAN GUARANTEE PROGRAM.

13 The department may use money in the fund to guarantee a loan to a
14 forest products business for the purpose of financing the purchase of
15 equipment and facilities that will increase employment in a forest
16 products business [35 PERCENT OR MORE OF THE STOCK OR ASSETS OF A
17 FOREST PRODUCTS BUSINESS BY, ON BEHALF OF, OR FOR THE BENEFIT OF THE
18 EMPLOYEES OF THAT BUSINESS], as provided in AS 45.94.050.

19 * Sec. 2. AS 45.94.050(a) is amended to read:

20 (a) The department may guarantee a loan under this chapter if

21 (1) the term of the loan does not exceed 10 years;

22 (2) the loan is commercially reasonable and secured by the
23 real or personal property, inventory or accounts receivable of the
24 forest products business, or by other collateral acceptable to the
25 department;

26 (3) the loan is originated with and serviced by a state or
27 federally chartered financial institution; [AND]

28 (4) the loan is made to a [THE EMPLOYEES OF THE] forest
29 products business and ~~1. [unclear]~~

(A) a controlling interest of the business is held by

(Majority)

1 Alaska ~~residents unless the commissioner waives this requirement;~~

2 (B) the business maintains offices and operating
3 facilities exclusively in the state unless the business is en-
4 gaged in the export of forest products;

5 (C) a majority of the employees of the business are
6 residents of the state; and

7 (D) the business is organized for profit;

8 (5) the loan will increase or maintain production and
9 employment in the forest products business; and

10 (6) the portion of the loan not guaranteed by the state is
11 held by the originating financial institution or another financial
12 institution approved by the commissioner [, TO AN EMPLOYEE STOCK
13 OWNERSHIP TRUST, OR TO ONE OR MORE CORPORATIONS OR OTHER BUSINESS
14 ASSOCIATIONS OR ENTITIES IN WHICH THE CONTROLLING INTEREST IS HELD BY
15 STATE RESIDENTS WHO ARE EMPLOYEES OF THE FOREST PRODUCTS BUSINESS].

16 * Sec. 3. AS 45.94.050(b) is amended to read:

17 (b) The department may provide a guarantee from the fund for up
18 to 80 [50] percent of a loan, but may not guarantee [LESS THAN
19 \$5,000,000 OR] more than \$6,000,000 [\$30,000,000] per borrower. The
20 department may not guarantee the payment of annual interest on the
21 guaranteed portion of a loan.

22 * Sec. 4. AS 45.94.050 is amended by adding a new subsection to read:

23 (d) The department shall charge a user fee not to exceed ~~one-~~
24 ~~quarter of~~ } one percent for a loan guarantee under this chapter.

25 * Sec. 5. AS 45.94.060 is amended to read:

26 Sec. 45.94.060. DEFINITIONS. In this chapter

27 (1) "commissioner" means the commissioner of revenue;

28 (2) "department" means the Department of Revenue;

29 (3) "forest products business" means a sole proprietorship,

1 partnership, corporation or other business organization formed under
2 the laws of the state for the purpose of harvesting or processing
3 timber or other forest resources;

4 (4) "fund" means the forest products business loan guaran-
5 tee fund.

6 * Sec. 6. This Act takes effect immediately in accordance with AS 01.-
7 10.070(c).
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Offered: 4/26/85
Referred: Rules

Original sponsor: Rules/Governor

1 IN THE SENATE

BY THE FINANCE COMMITTEE

2 CS FOR SENATE BILL NO. 78 (Finance)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FOURTEENTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act making miscellaneous amendments to state loan
7 programs; and 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 for the repair, restoration, or up-
21 grading of existing vessels and gear, for the purchase of entry
22 permits and gear, and for the construction and purchase of ves-
23 sels, if the individual [AN INDIVIDUAL WHO] has been a state
24 resident for a continuous period of two years immediately pre-
25 ceding the date of application for a loan under AS 16.10.300 -
26 16.10.370, and either [WHO]

27 (i) because of lack of training or lack of em-
28 ployment opportunities in the area of residence does not
29 have occupational opportunities available other than

1 commercial fishing; or

2 (ii) is economically dependent on commercial
3 fishing for a livelihood and for whom commercial fishing has
4 been a traditional way of life [FOR THE INDIVIDUAL] in
5 Alaska [, FOR THE REPAIR, RESTORATION OR UPGRADING OF EXIST-
6 ING VESSELS AND GEAR, FOR THE PURCHASE OF ENTRY PERMITS AND
7 GEAR, AND FOR THE CONSTRUCTION AND PURCHASE OF VESSELS;

8 (C) CORPORATIONS, PARTNERSHIPS, OR JOINT VENTURES, 100
9 PERCENT OF WHICH ARE OWNED BY INDIVIDUAL COMMERCIAL FISHERMEN WHO
10 HAVE BEEN STATE RESIDENTS FOR A CONTINUOUS PERIOD OF TWO YEARS
11 IMMEDIATELY PRECEDING THE DATE OF APPLICATION FOR A LOAN UNDER
12 AS 16.10.310(a)(1)(B) AND HAVE HAD A CREWMEMBER OR COMMERCIAL
13 FISHING LICENSE UNDER AS 16.05.480 OR A PERMIT UNDER AS 16.43 FOR
14 THE YEAR IMMEDIATELY PRECEDING THE DATE OF APPLICATION AND ANY
15 OTHER TWO OF THE PAST FIVE YEARS, AND WHO ACTIVELY PARTICIPATED
16 IN THE FISHERY DURING THAT PERIOD, FOR THE REPAIR, RESTORATION OR
17 UPGRADING OF EXISTING VESSELS AND GEAR, FOR THE PURCHASE OF GEAR,
18 AND FOR THE CONSTRUCTION AND PURCHASE OF VESSELS];

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

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

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

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

28 (6) enter into agreements with other agencies or organiza-
29 tions to create an outreach program to make loans under AS 16.10.300 -

1 16.10.370 in rural areas of the state;

2 (7) allow an assumption of a loan if

3 (A) the applicant has been a state resident for a
4 continuous period of two years immediately preceding the date of
5 the request for an assumption; and

6 (B) approval of the assumption would be consistent
7 with the purposes of AS 16.10.300; an applicant for a loan
8 assumption may not be disqualified because the applicant does not
9 meet the loan eligibility requirements of (1) of this subsection;

10 (8) prequalify loan applicants for a limited entry permit
11 loan and charge a fee not to exceed \$200 for prequalification.

12 * Sec. 2. AS 16.10.310 is amended by adding a new subsection to read:

13 (c) In determining whether an individual commercial fisherman is
14 reasonably likely to be able to repay a loan made under AS 16.10.300 -
15 16.10.370, the commissioner shall consider the individual commercial
16 fisherman's income from commercial fishing and from all other sources.

17 * Sec. 3. AS 16.10.315 is amended to read:

18 Sec. 16.10.315. ALLOCATION OF LOANS. The department shall
19 allocate at least 10 percent of the money that is appropriated for a
20 state fiscal year to make loans under AS 16.10.310 for loans of
21 \$35,000 or less made under AS 16.10.310(a)(1)(B) [AND (C)]. An allo-
22 cation made under this section terminates on April 15 of the state
23 fiscal year for which the allocation is made.

24 * Sec. 4. AS 16.10.320(a) is amended to read:

25 (a) Except as permitted in (b) of this section, a [A] loan
26 under AS 16.10.300 - 16.10.370 [16.10.310 - 16.10.370]

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

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

1 (3) must [SHALL] be secured by a first priority lien and
2 appropriate security agreement; and

3 (4) may not exceed 90 percent of the appraised value of the
4 collateral used to secure the loan[, EXCEPT THAT A LOAN GRANTED UNDER
5 AS 16.10.333 FOR THE PURCHASE OF AN ALASKA LIMITED ENTRY PERMIT MAY
6 NOT EXCEED AN AMOUNT DETERMINED IN ACCORDANCE WITH (f) OR (h) OF THIS
7 SECTION].

8 * Sec. 5. AS 16.10.320(d) is amended to read:

9 (d) The total of balances outstanding on loans [LOANS] made to a
10 borrower under AS 16.10.310(a)(1)(A) may not exceed [A TOTAL OF]
11 \$300,000. The total of balances outstanding on loans [LOANS] made to
12 a borrower under AS 16.10.310(a)(1)(B) [OR (C)] may not exceed [A
13 TOTAL OF] \$100,000. [A LOAN TO AN ASSOCIATE OF THE BORROWER IS CON-
14 sidered to be a loan to the borrower. FOR THE PURPOSES OF THIS SEC-
15 tion, "ASSOCIATE OF THE BORROWER" MEANS

16 (1) A CORPORATION OR OTHER ORGANIZATION OF WHICH THE BOR-
17 ROWER IS AN OFFICER, DIRECTOR OR PARTNER, OR IS, DIRECTLY OR INDI-
18 RECTLY, THE BENEFICIAL OWNER OF 10 PERCENT OR MORE ON ANY CLASS OF
19 EQUITY SECURITIES;

20 (2) A PERSON WHO IS, DIRECTLY OR INDIRECTLY, THE BENEFICIAL
21 OWNER OF 10 PERCENT OR MORE OF ANY CLASS OF EQUITY SECURITIES OF THE
22 BORROWER;

23 (3) A TRUST OR OTHER ESTATE IN WHICH THE BORROWER HAS A
24 SUBSTANTIAL BENEFICIAL INTEREST OR AS TO WHICH THE BORROWER SERVES AS
25 TRUSTEE OR IN A SIMILAR FIDUCIARY CAPACITY.]

26 * Sec. 6. AS 16.10.320(e) is amended to read:

27 (e) Two or more individual commercial fishermen who each satisfy
28 the requirements specified in AS 16.10.310(a)(1)(B) may jointly,
29 whether operating as a corporation, partnership, joint venture, or

1 otherwise, obtain a commercial fishing loan for the repair, restora-
2 tion, or upgrading of an existing vessel and gear, for the purchase of
3 gear, and for the construction [OF A FISHING VESSEL] or the purchase
4 of a [AN EXISTING] fishing vessel. Loans granted under this subsec-
5 tion

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;

10 (3) SHALL BE SECURED BY A FIRST PRIORITY LIEN AND APPRO-
11 PRIATE SECURITY AGREEMENT;

12 (4) MAY NOT BEAR INTEREST EXCEEDING 10-1/2 PERCENT;

13 AND

14 (5) MAY NOT EXCEED 90 PERCENT OF THE APPRAISED VALUE OF
15 THE COLLATERAL USED TO SECURE THE LOAN).

16 * Sec. 7. AS 16.10.320(1) is amended to read:

17 (1) If a loan is made to a borrower under AS 16.10.310(a)(1)(A),
18 a subsequent loan may not be made to the borrower [OR AN ASSOCIATE OF
19 THE BORROWER] under AS 16.10.310(a)(1)(B) [OR (C)]. If a loan is made
20 to a borrower under AS 16.10.310(a)(1)(B) [OR (C)], a subsequent loan
21 may be made to the borrower [OR AN ASSOCIATE OF THE BORROWER] under
22 AS 16.10.310(a)(1)(A) if the total of the balances outstanding on
23 loans received by the borrower [OR THE ASSOCIATE] under AS 16.10.310
24 does not exceed \$300,000.

25 * Sec. 8. AS 16.10.333(a) is amended to read:

26 (a) Loans under AS 16.10.310(a) [AS 16.10.320(a)] may be made to
27 an individual commercial fisherman for the purchase of a limited entry
28 permit upon certification by the commission that the fisherman is a
29 person who qualifies as a transferee for the permit under AS 16.43 and