Statutes and Regulations

Mining Loan Fund

October 2025

DEPARTMENT OF COMMERCE,
COMMUNITY, AND ECONOMIC DEVELOPMENT

DIVISION OF INVESTMENTS

Rev. 10/2025

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CHAPTER 9.
MINING LOAN FUND

Section

Sec. 27.09.010. Mining loan fund.
(a) There is established in the Department of Commerce, Community, and Economic Development the mining loan fund. The department may make loans from the fund to underwrite advanced mineral exploration, development, or mining in the state.

(b) The mining loan fund is a revolving fund consisting of appropriations made to the fund by the legislature, repayments of principal and interest, and any money chargeable to principal or interest that is collected through liquidation by foreclosure or other process on loans made from the fund. On June 30 of each fiscal year the unexpended and unobligated cash balance of the fund that is attributable to loans owned by the fund lapses into the general fund. Money in the fund may be used by the legislature to make appropriations for costs of administering the fund.

Sec. 27.09.015. Special account established.
(a) There is established as a special account within the mining loan fund the foreclosure expense account. This account is established as a reserve from fund equity.

(b) The commissioner of commerce, community, and economic development 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 27.09.010 or to defray expenses incurred during foreclosure proceedings after a default by an obligor.

Sec. 27.09.020. Eligibility.
(a) The department may make loans under this chapter to

(1) an individual who has at least five years of mining or prospecting experience in the state and who is a resident of the state;

(2) a partnership if at least half of the partners each have five years mining or prospecting experience in the state and at least half of the partners are residents of the state;

(3) a corporation that has at least five years of mining or prospecting experience in the state if at least 51 percent of its shares are held by residents of the state; and

(4) a corporation that does not meet the requirements of (3) of this section if at least 51 percent of its shares are held by persons having at least five years of mining or prospecting experience in the state and at least 51 percent of its shares are held by persons who are residents of the state.

(b) A person who has a past due child support obligation established by court order or by the child support services agency under AS 25.27.160 — 25.27.220 at the time of application is not eligible for a loan under this chapter.

Sec. 27.09.030. Operating plan.

(a) A person who requests a loan under AS 27.09.010 shall prepare an operating plan that describes the amount of the loan requested, the nature and location of the advanced mineral exploration, development, or mining for which the loan is requested, the equipment and other resources available to the person to implement the operating plan, and the economic feasibility of the plan. The person requesting a loan shall submit an operating plan to the department.

(b) Within 30 days after receipt of an operating plan under (a) of this section, the department shall review the operating plan and shall determine the economic feasibility of the advanced mineral exploration, development, or mining described in the operating plan. The department may extend the time for making its determination as to economic feasibility if an extension is necessary to obtain more information under (c) of this section.

(c) The department may require a person who has submitted an operating plan to provide additional information on the proposed advanced mineral exploration, development, or mining if the information is necessary for a determination of economic feasibility under (b) of this section.

(d) If the department determines that an operating plan is economically feasible, the department shall provide the person who submitted the plan with a written statement of economic feasibility.

(e) The department may enter into contracts for the services of experts in advanced mineral exploration, development, or mining to perform the functions described in (b) — (d) of this section.

(f) Information acquired under this section is confidential and may not be disclosed except to the person who supplied the information or except by order of the court.

Sec. 27.09.040. Loan terms.

(a) A loan granted under this chapter

(1) may not exceed $5,000,000;

(2) may not exceed a term of 15 years;

(3) may not bear interest exceeding 10 percent; and

(4) may not exceed 75 percent of the appraised value of the collateral used to secure the loan.

(b) A loan may not be made under this chapter if it would result in an outstanding debt of the borrower to the fund in excess of $5,000,000.

(c) A loan made under this chapter shall be secured by

(1) a first priority lien or mortgage; or

(2) a second priority lien or mortgage that is subordinate to a valid first priority lien or mortgage if the total of the financing by the lender making the first mortgage and by the loan made under this chapter does not exceed 75 percent of the appraised value of the collateral used to secure the loan.

(d) Unless the loan under this chapter was made to underwrite placer mining activities, repayment of the loan principal shall begin not later than one year after the date mineral production begins or five years from the date the loan is made, whichever is sooner. For loans made under this chapter to underwrite placer mining activities, the department may not require repayment of principal to begin before the end of the second placer mining season after the loan is made. The accrual of interest on a loan made under this chapter begins when the loan is made, and the accrued interest shall be repaid on an annual basis, or repayment may be on a monthly or quarterly basis if the department and the borrower so agree. In this subsection, “placer mining season” means the time during a consecutive 12-month period when placer mining activities may be conducted by virtue of the thawed and fluid condition of the streams and rivers in the mining area.

(e) [Repealed, § 72 ch 113 SLA 1982.]

Sec. 27.09.045. Refinancing.
The department may refinance a loan under this chapter by making a loan to pay outstanding mining debts. When an original loan is to be refinanced, the department may not refinance more than 49 percent of the amount of the original loan. The terms in AS 27.09.040 apply to mining debts refinanced under this section.

Sec. 27.09.050. Regulations.
The department may adopt regulations necessary to carry out the provisions of this chapter, including regulations to establish reasonable fees for services provided. Regulations adopted under this section shall be prepared after consultation with the Department of Natural Resources or after consultation with a person who, in the opinion of the commissioner of commerce, community, and economic development or a designee, has broad experience in and is highly qualified in advanced mineral exploration, development, and mining.

Sec. 27.09.055. 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. 27.09.060. Definitions.
In this chapter,

(1) "advanced mineral exploration" means the investigation of a known mineral deposit to gain knowledge of its size, shape, and value, and to determine whether it is feasible for mining, by the use of geophysical surveys, boreholes, pits, or underground workings;

(2) "date of mineral production" means the date on which the first shipment of products from mining operations is made;

(3) "department" means the Department of Commerce, Community, and Economic Development;

(4) "development" means the preparation of a proven mineral deposit for mining;

(5) "fund" means the mining loan fund;

(6) "mining" means the extraction of ore and the preparation of a mineral product for market.

CHAPTER 87
MINING LOANS

Section

3 AAC 87.010. Application process.
(a) To apply for an assumption of a mining loan, an applicant shall file with the department
(1) a completed application for a mining loan assumption, on a form provided by the department;
(2) an individual financial statement from the applicant and from each person owning 10 percent or more of the mining firm, on a form provided by the department;
(3) a business financial statement, on a form provided by the department;
(4) an actual statement of profit and loss, on a form provided by the department;
(5) a projected statement of profit and loss on a form provided by the department;
(6) a personal resume from the applicant, the business manager, and each person owning 10 percent or more of the mining firm, on a form provided by the department;
(7) a mining resume from the applicant;
(8) a signed credit authorization, on a form provided by the department;
(9) signed copies of the applicant's federal income tax returns for the preceding three years, including returns for each member of a partnership or other association;
(10) an earnest money agreement explaining all terms and conditions of the transaction with signatures by all parties;
(11) a $100 nonrefundable application fee; and
(12) any other information that might be helpful to the applicant in qualifying for an assumption, as requested by the department.
(b) The department will, in its discretion, process an application for an assumption without the information described in (a) of this section, if the department determines that the department can make an informed lending decision without access to the information.

Authority: AS 27.09.020 AS 27.09.050

3 AAC 87.015. Examination.
(a) The materials described in 3 AAC 87.010 will be processed and evaluated by a loan officer. The loan officer will evaluate the applicant's financial and credit history, operating plan, ability to repay, and proposed collateral.
(b) On the basis of the evaluation, the loan officer will either inactivate the application, due to lack of information required under 3 AAC 87.010, or recommend proposed action on the loan request to the appropriate loan committee; however, the recommendation of a loan officer is not binding on a loan committee.

Authority: AS 27.09.050

3 AAC 87.020. Loan committee.
(a) A loan committee consists of one or more persons appointed by the director to act on a request for an assumption.
(b) A loan committee may approve, deny, or modify and approve a request for an assumption, or may table a loan request subject to obtaining additional information.
(c) A loan committee may impose reasonable conditions on the approval of an assumption, including
(1) additional collateral to secure the loan;
(2) additional guarantors; and
(3) subordination of prior lienholders' rights to the interests of the state.
(d) A loan committee shall consider an applicant's financial and credit record, ability to repay, operating plan, and proposed collateral. A loan committee may consider the recommendations of the loan officer assigned to process the application, and any other relevant information.
(e) Repealed 8/10/97.
(f) If a request for an assumption is denied or significantly modified by a loan committee, the loan committee shall provide the applicant with a statement of the reasons for the action and the information relied on.
(g) A material misstatement or omission of fact made by an applicant constitutes grounds for denial of a request for an assumption.

Authority: AS 27.09.040 AS 27.09.050

3 AAC 87.030. Residency eligibility.
Repealed.

3 AAC 87.035. Experience eligibility.
Repealed.

3 AAC 87.040. Financial and credit record.
(a) The department will, in its discretion, consider the following factors in evaluating an applicant's financial and credit record:
(1) existing and prior debts;
(2) credit reports obtained from creditors and private credit reporting services;
(3) prior loan history with the department;
(4) timeliness in making payments on loans and other debts;
(5) bankruptcies;
(6) existence of tax liens;
(7) judgments and foreclosures; and
(8) financial and credit reputation.
(b) Information establishing unacceptable credit will be more heavily weighed by the department if it has occurred in recent years.

Authority: AS 27.09.020 AS 27.09.050

3 AAC 87.045. Ability to repay.
The department will, in its discretion, consider the following factors in evaluating an applicant's ability to repay a proposed assumption:
(1) income history, including present income;
(2) prospects for future income;
(3) assets and their liquidity;
(4) liabilities;
(5) reasonableness of projected profit and loss statement; and
(6) other relevant experience.

Authority: AS 27.09.020 AS 27.09.050

3 AAC 87.050. Collateral.
Repealed.

3 AAC 87.055. Lending practices.
Repealed.

3 AAC 87.065. Disbursement of loan money.
Repealed.

3 AAC 87.070. Supervision of loans.
If the loan is in default, the department will, in its discretion, require a borrower to furnish annual financial statements consisting of a balance sheet, profit and loss statement, source and application of all money received and a schedule of change of owner's equity. The department will, in its discretion, require an audit or audits to determine whether the borrower has complied with the provisions of the loan, and conduct periodic inspection of collateral securing repayment of the loan.

Authority: AS 27.09.020 AS 27.09.050

3 AAC 87.075. Costs.
(a) All expenses incurred by the department in processing an application must be paid by the applicant. These expenses include the cost of title reports and insurance, recording fees, appraisals, surveys, travel, and other direct costs.
(b) An assumption fee of one percent of the loan balance is due from the borrower when all applicable provisions of this chapter have been met.
(c) A late fee not to exceed five percent of the payment amount will, in the department's discretion, be charged to a borrower for each loan payment that is more than 15 days past due.
(d) An extension fee not to exceed $100 will, in the department's discretion, be charged to a borrower to process a loan extension.

Authority: AS 27.09.050

3 AAC 87.080. Assumptions.
(a) A request to assume the obligations and benefits of a loan made under AS 27.09 and this chapter will be processed in the same manner as a loan request.
(b) A loan committee may permit an assumption if the applicant is a good financial risk and the security of the state's investment is preserved.
(c) Wraparound financing that includes a loan made under AS 27.09 and this chapter is prohibited, and constitutes a default on the loan.

Authority: AS 27.09.050

3 AAC 87.081. Closing an assumption.
An assumption agreement will be considered by the department to be closed when
(1) all required signatures have been obtained and the assumption agreement has been properly recorded;
(2) all requirements of the loan committee have been met; and
(3) the borrower is in compliance with all provisions of the loan documents, including insurance requirements and this chapter.

Authority: AS 27.09.050

3 AAC 87.082. Modifications.
(a) A request for a modification to a loan made under AS 27.09 and this chapter will be processed in the same manner as a loan application. The department will, in its discretion, require one or more of the items specified in 3 AAC 87.010.
(b) A loan committee may permit a loan modification only if the security of the state and its investment is preserved.

Authority: AS 27.09.020 AS 27.09.050

3 AAC 87.085. Reconsideration of an assumption request.

(a) If an assumption of a loan request is denied, inactivated, or significantly modified by the department, an applicant may file a written request for reconsideration within 30 days after receipt of notice of the department's decision.

(b) The department will, in its discretion, reconsider a request upon a showing by the applicant that

(1) there has been a substantial change in the circumstances leading to the department's decision;

(2) additional relevant information can be provided to the department that was not initially available; or

(3) administrative errors were made by the department.

Authority: AS 27.09.020 AS 27.09.050

3 AAC 87.090. Confidentiality of loan information.

(a) The following information is not confidential and is available for public inspection upon request:

(1) a document that is already a public record including deeds of trust, financing statements, warranty deeds, bills of sale, mortgages, liens, and vehicle titles;

(2) general information regarding loans, including the original loan amount, loan terms, personal guarantees, and disbursement and repayment schedules;

(3) insurance matters, including title insurance policies and correspondence with insurance companies or borrowers regarding losses, accident reports, and nonpayment of premiums; and

(4) foreclosure and default proceedings.

(b) The following information is confidential and is not subject to public disclosure:

(1) personal and financial information, including income tax returns, financial statements, business income statements, pro forma profit and loss statements, credit information obtained directly from banks and other creditors, and reports obtained from consumer reporting agencies;

(2) loan committee memoranda and minutes containing information relating to creditworthiness of the applicant;

(3) the payment history on a loan, unless the loan is in default; and

(4) information regarding the applicant's operating plan required under AS 27.09.030.

(c) Information not described in (a) or (b) of this section may be subject to public disclosure. Requests for disclosure must be made, and will be determined, in accordance with 2 AAC 96. On receipt of a request for disclosure, the department will notify the loan applicant and other persons with a privacy interest in the request, to permit them to present reasons why the requested information should not be disclosed.

Authority: Ak Const. Art. I AS 27.09.030
AS 27.09.050 AS 40.25.110 AS 40.25.120

3 AAC 87.900. Definitions.

Unless the context requires otherwise, in this chapter

(1) repealed 8/10/97;

(2) "default" includes a violation of any provision of AS 27.09, this chapter, or the loan documents, failure to make the necessary payment within 15 days after it is due, or failure to maintain the insurance required by the department;

(3) "department" means the Department of Commerce, Community, and Economic Development;

(4) "mining" means the extraction of ore and preparation of a mineral product for market;

(5) "residency" means, in the case of an individual, physical presence in Alaska with the intent to remain indefinitely and make a home in the state;

(6) "wraparound financing" means a contract that includes the balance due on an existing debt and an additional amount to cover the difference between the selling price and the existing debt; and

(7) "director" means the director of the division assigned economic development functions or its successor agency in the department.

Authority: AS 27.09.050