

SENATE BILL NO. 160

IN THE LEGISLATURE OF THE STATE OF ALASKA
THIRTY-SECOND LEGISLATURE - SECOND SESSION

BY SENATOR STEDMAN

Introduced: 1/18/22

Referred: Labor and Commerce, Finance

A BILL

FOR AN ACT ENTITLED

1 **"An Act providing a premium tax credit for flood insurance; relating to flood**
2 **insurance; relating to property insurance; establishing the Alaska Flood Authority and**
3 **the Alaska flood insurance fund; and providing for an effective date."**

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

5 * **Section 1.** AS 21.09.210 is amended by adding a new subsection to read:

6 (q) A qualified insurer is entitled to a premium tax credit under
7 AS 21.60.200(e).

8 * **Sec. 2.** AS 21.39.030(a) is amended to read:

9 (a) Rates, including loss costs under AS 21.39.043 or any other provision of
10 law, shall be made in accordance with the following provisions:

11 (1) rates may [SHALL] not be excessive, inadequate, or unfairly
12 discriminatory;

13 (2) consideration shall be given to past and prospective loss experience
14 inside and outside this state; to the conflagration and catastrophe hazards; to a

1 reasonable margin for underwriting profit and contingencies; to dividends, savings, or
 2 unabsorbed premium deposits allowed or returned by insurers to their policyholders,
 3 members, or subscribers; to past and prospective expenses both countrywide and those
 4 specially applicable to this state; and to all other relevant factors inside and outside
 5 this state;

6 (3) the systems of expense provisions included in the rates for use by
 7 an insurer or group of insurers may differ from those of other insurers or **groups**
 8 [GROUP] of insurers to reflect the requirements of the operating methods of the
 9 insurer or group of insurers with respect to any kind of insurance, or with respect to a
 10 subdivision or combination thereof for which subdivision or combination separate
 11 expense provisions are applicable;

12 (4) risks may be grouped by classifications for the establishment of
 13 rates and minimum premiums; classification rates may be modified to produce rates
 14 for individual risks in accordance with rating plans that establish standards for
 15 measuring variations in hazards or expense provisions, or both; the standards may
 16 measure any differences among risks that can be demonstrated to have a probable
 17 effect **on** [UPON] losses or expenses;

18 (5) in the case of fire insurance rates, consideration may be given to
 19 the experience of the fire insurance business during a period of not more than the most
 20 recent five-year period for which experience is available;

21 (6) when there is an established program to inspect new and existing
 22 dwellings and the program has been certified by the director as likely to reduce the
 23 incidence of fires in inspected dwellings, then in any rate plan used in this state,
 24 dwellings that have been found by the inspection to meet the standards established by
 25 the program shall have credits applied to the rate in amounts approved by the director;

26 **(7) in the case of flood insurance rates, primary consideration shall**
 27 **be given to actual historical flood and damage data on the real and personal**
 28 **property proposed to be insured.**

29 * **Sec. 3.** AS 21.39.030(c) is amended to read:

30 (c) In this section,

31 **(1)** "dwelling" means a residential structure containing not more than

1 four family living units;

2 **(2) "flood" means a general and temporary condition of partial or**
 3 **complete inundation of normally dry land area from**

4 **(A) overflow of inland or tidal water;**

5 **(B) unusual and rapid accumulation or runoff of surface**
 6 **water from any source; or**

7 **(C) mudflow.**

8 * **Sec. 4.** AS 21.60 is amended by adding new sections to read:

9 **Article 2. Alaska Flood Authority.**

10 **Sec. 21.60.100. Creation; membership; information from members.** The
 11 Alaska Flood Authority is created to increase the availability of flood insurance in the
 12 state. The authority is a nonprofit incorporated legal entity. The membership of the
 13 authority consists of all insurers licensed to transact property insurance business in the
 14 state. As a condition of transacting property insurance business in the state, a member
 15 shall

16 (1) maintain membership in the authority;

17 (2) submit reports and provide information required by the board or the
 18 director to implement AS 21.60.100 - 21.60.300.

19 **Sec. 21.60.110. Board; organization; report.** (a) The board of the authority
 20 consists of

21 (1) three members, selected by authority members, who represent
 22 insurers licensed to transact property insurance business in the state, subject to
 23 approval by the director;

24 (2) two members, selected by the director, who represent consumers of
 25 property insurance required by the federal government to obtain flood insurance in a
 26 special flood hazard area;

27 (3) one member, selected by the director, who represents the private
 28 banking and mortgage industry in the state; and

29 (4) one member, selected by the director, who represents the Alaska
 30 Housing Finance Corporation.

31 (b) The director is a nonvoting ex officio member of the board. In approving

1 members of the board under (a)(1) of this section, the director shall consider, among
2 other things, whether all types of authority members are fairly represented.

3 (c) A member of the board serves for a term of three years and may be
4 reappointed to an unlimited number of terms. The term of a board member shall
5 continue until a successor is appointed.

6 (d) At authority meetings, an authority member is entitled to one vote in
7 person or by proxy. At board meetings, a board member is entitled to one vote in
8 person or by proxy.

9 (e) The authority may reimburse a member of the board for expenses incurred
10 as a result of board activities but may not otherwise compensate a member of the
11 board for services. The costs of conducting meetings of the authority and the board are
12 the responsibility of the members of the authority.

13 (f) On or before September 1 of each year, the board shall prepare a report
14 reviewing the operations of the previous year and deliver the report to the state's
15 congressional delegation, the governor, the senate secretary, and the chief clerk of the
16 house of representatives and notify the legislature that the report is available. In the
17 report, the board shall

18 (1) analyze the effectiveness of the operations of the authority and
19 insurance program under AS 21.60.100 - 21.60.300;

20 (2) evaluate the benefits of the insurance program under AS 21.60.100
21 - 21.60.300 as compared to 42 U.S.C. 4001 - 4129 (National Flood Insurance Act) for
22 property owners and communities in the state; and

23 (3) identify penalties or sanctions imposed or potentially imposed on
24 individuals and communities in the state by the federal government under 42 U.S.C.
25 4001 - 4129 (National Flood Insurance Act).

26 **Sec. 21.60.120. Powers of the authority.** The authority may

27 (1) exercise the powers granted to insurers under the laws of the state;

28 (2) sue or be sued;

29 (3) enter into contracts with insurers, similar authorities in other states,
30 or other persons for the performance of administrative functions;

31 (4) establish administrative and accounting procedures for the

1 operation of the authority; and

2 (5) receive funds from sources other than members of the authority.

3 **Sec. 21.60.130. Plan of operation.** (a) The authority shall submit to the
4 director a plan of operation to ensure the fair, reasonable, and equitable administration
5 of the authority. The director may, after notice and hearing, adopt reasonable
6 regulations necessary or advisable to carry out the provisions of AS 21.60.100 -
7 21.60.300, including amendment to the plan of operation. The plan of operation and
8 amendments become effective upon approval in writing by the director.

9 (b) Each member of the authority shall comply with the plan of operation.

10 (c) The plan of operation must contain the following:

11 (1) procedures for the performance of all the powers and duties of the
12 authority under AS 21.60.100 - 21.60.300;

13 (2) procedures for handling assets of the authority;

14 (3) the amount of reimbursement and method for reimbursing
15 members of the board under AS 21.60.110(e);

16 (4) the regular places and times at which meetings of the board will
17 take place;

18 (5) record-keeping procedures for all financial transactions of the
19 authority, agents of the authority, and the board;

20 (6) a provision stating that a member of the authority aggrieved by a
21 final action or decision of the authority may appeal to the director within 30 days after
22 the action or decision is made;

23 (7) procedures for submitting board member selections to the director
24 for approval;

25 (8) additional provisions necessary or proper for the execution of the
26 powers and duties of the authority.

27 **Sec. 21.60.140. Administrative Procedure Act.** The authority is exempt from
28 AS 44.62 (Administrative Procedure Act).

29 **Sec. 21.60.150. Tax exemption.** The authority is exempt from the payment of
30 fees and taxes levied by the state or any of its political subdivisions except taxes levied
31 on real or personal property.

1 **Sec. 21.60.160. Types of insurance plans.** The authority shall make available
 2 to a person who is eligible for coverage under AS 21.60.100 - 21.60.300 at least one
 3 state plan of flood insurance. The authority may not refuse coverage under a state plan
 4 to a person who is eligible under AS 21.60.100 - 21.60.300, applies for coverage, and
 5 pays the required premium.

6 **Sec. 21.60.170. Coverage and terms of state flood insurance plan.** (a) The
 7 coverage of a flood insurance plan offered under AS 21.60.160 shall be the same as
 8 the coverage provided under a standard flood insurance policy offered by the National
 9 Flood Insurance Program established by 42 U.S.C. 4001 - 4129 (National Flood
 10 Insurance Act), including minimum and maximum amounts of coverage, deductibles,
 11 exclusions, conditions, and the requirement that a flood must partially or completely
 12 inundate two or more acres of normally dry land area or two or more properties, at
 13 least one of which is the flood insurance policyholder's property, to be covered.

14 (b) The terms of a plan offered under AS 21.60.160 must contain

15 (1) a requirement to give 45 days' written notice of cancellation or
 16 non-renewal of flood insurance coverage to

17 (A) the insured; and

18 (B) the regulated lending institution or federal agency lender;

19 (2) information about the availability of flood insurance coverage
 20 under the National Flood Insurance Program;

21 (3) a mortgage interest clause similar to the clause contained in a
 22 standard flood insurance policy under the National Flood Insurance Program;

23 (4) a provision requiring an insured to file suit not later than one year
 24 after the date of a written denial of all or part of a claim under the policy; and

25 (5) cancellation provisions that are as restrictive as the provisions
 26 contained in a standard flood insurance policy under the National Flood Insurance
 27 Program.

28 **Sec. 21.60.180. State plan premiums.** (a) The authority may not charge a rate
 29 for flood insurance coverage that is unfairly discriminatory.

30 (b) The board shall determine flood insurance premium rates by primarily
 31 considering the actual historical flood and damage data on the real and personal

1 property proposed to be insured. The board shall submit premium rates to the director
2 for approval before use.

3 (c) The board may retain an actuary or other consultant as may be necessary to
4 determine flood insurance premium rates and to perform other assigned duties.

5 **Sec. 21.60.190. Duties of authority.** (a) The authority shall perform the
6 administrative and claims payment functions required by this section.

7 (b) The authority shall provide to all eligible persons enrolled in a state plan a
8 policy setting out a statement of the insurance protection to which the person is
9 entitled, with whom claims are to be filed, and to whom benefits are payable. The
10 policy must indicate that coverage was obtained through the authority.

11 (c) The authority shall submit to the director on a semiannual basis a report on
12 the plan of operation. The board shall determine the specific information the report
13 must contain.

14 (d) The authority shall pay claims and shall indicate when a claim is paid
15 under a state plan. A claim payment must include a telephone number that can be used
16 for inquiries regarding the claim.

17 **Sec. 21.60.200. Funding for authority and insurance program; penalties;
18 premium tax credit.** (a) Each member of the authority shall share the losses of the
19 insurance program established under AS 21.60.100 - 21.60.300 insuring real and
20 personal property and improvements to real property within a special flood hazard
21 area in the state. Each member of the authority shall pay member dues and share in the
22 operating and administrative expenses incurred or estimated to be incurred by the
23 authority incident to the conduct of its affairs.

24 (b) A member's liability under this section is an amount equal to a member's
25 dues, as determined by the director, plus six percent of the total direct premium
26 written during the year ending on the preceding December 31 and paid for the
27 insurance of property located in the state after deducting from the total direct premium
28 income applicable cancellations, returned premiums, unabsorbed portions of any
29 deposit premium, all policy dividends, unabsorbed premiums refunded to
30 policyholders, refunds, savings, savings coupons, and other similar returns paid or
31 credited to policyholders with respect to their policies. Deductions may not be made of

1 cash surrender value of policies.

2 (c) The board shall make an annual determination of each member's liability
3 under (b) of this section, if any, and may make an annual fiscal year end assessment if
4 necessary to operate the authority and insurance program. The board may also provide
5 for interim assessments against the members as may be necessary to ensure the
6 financial capability of the authority in meeting the incurred or estimated operating and
7 administrative expenses of the authority until the authority's next annual fiscal year
8 end assessment. The board may not make an assessment that exceeds the calculation
9 under (b) of this section unless the total amount of member liability calculated under
10 this section is insufficient to operate the authority and insurance program. The board
11 may decline to levy an assessment against a member if the assessment would be
12 minimal.

13 (d) Payment of an assessment is due within 30 days after a member receives
14 written notice of a fiscal year end or interim assessment. A member that no longer
15 does business in the state remains liable for assessments until the board determines
16 under (c) of this section that no assessment is due. Assessments paid by a member are
17 a general expense of the member. If a member fails to pay a fiscal year end or interim
18 assessment as required in this subsection,

19 (1) the member shall pay a civil penalty to the director in the amount
20 of \$100 for each day the member fails to pay the required assessment; and

21 (2) the director may revoke the member's certificate of authority.

22 (e) A member may offset 50 percent of the amount of the assessment under
23 this section as a premium tax credit, reducing the premium tax payable by the member
24 under AS 21.09.210. The offset applies to the tax levied for the calendar year
25 following an annual determination of each member's liability under (c) of this section.
26 The offset may not reduce the premium tax payable by a member to less than zero or
27 create a premium tax credit for the member. An unused offset may be carried over to
28 the immediately following calendar year. An offset made under this subsection is not
29 subject to AS 21.09.270.

30 (f) If the total amount of member liability calculated under (c) of this section
31 is insufficient to satisfy a duly authorized claim against the insurance program under

1 AS 21.60.100 - 21.60.300, the legislature may appropriate up to a total of \$10,000,000
 2 from cash reserves of the Alaska Housing Finance Corporation to the Department of
 3 Commerce, Community, and Economic Development to satisfy the unpaid claim.

4 **Sec. 21.60.210. Eligibility for state flood insurance.** A person determined by
 5 the authority to have an insurable interest in insurable property is eligible to enroll in a
 6 state plan described in AS 21.60.160. Additional eligibility requirements for
 7 enrollment in a state plan may be imposed if approved by the director.

8 **Sec. 21.60.220. Enrollment by an eligible person.** A person may apply to
 9 enroll in a state plan by applying to the authority. The application must include

10 (1) the name, address, and age of the applicant;

11 (2) a description of the property to be insured sufficient for the
 12 authority to investigate and determine its insurability; and

13 (3) a designation of the plan desired.

14 **Sec. 21.60.230. Response by the authority.** (a) Within 90 days after receiving
 15 the application described in AS 21.60.220, the authority shall provide the applicant
 16 with either a notice of rejection for failing to comply with the requirements of
 17 AS 21.60.210 and 21.60.220 or a notice of acceptance.

18 (b) Upon receiving a notice of acceptance under this section, a person may
 19 enroll in a state plan by paying the appropriate premium to the authority.

20 **Sec. 21.60.240. Effective date of insurance under a state plan.** (a) Insurance
 21 under a state plan takes effect immediately upon receipt of the first premium,
 22 retroactive to the date of the application, if the applicant otherwise complies with the
 23 requirements of AS 21.60.100 - 21.60.300.

24 (b) Insurance under a state plan is effective retroactively to the date that an
 25 insured person's previous policy terminated, if

26 (1) the person applies for a state plan within 60 days after the previous
 27 policy terminated;

28 (2) the application is accepted by the authority; and

29 (3) the applicant pays a specified premium for the period of retroactive
 30 coverage.

31 **Sec. 21.60.250. Solicitation of eligible persons.** (a) The authority, under a

1 plan approved by the director, shall communicate to persons who reside or own
2 property in a special flood hazard area the existence of the state plan and the means of
3 enrollment. Means of communication may include use of the Internet, press, radio, and
4 television, as well as publication through appropriate state offices, state publications,
5 and Internet websites.

6 (b) A person may not sell or market a qualified state plan unless the person is
7 acting within the scope of a license issued in this state.

8 (c) An insurer that rejects or applies underwriting restrictions to an applicant
9 for a flood insurance policy in the state shall notify the applicant of the existence of
10 the state plan, the requirements for being accepted, and the procedure for applying.

11 **Sec. 21.60.260. Duties of director; insurance program.** The director shall
12 formulate general policy and adopt regulations that are reasonably necessary to
13 administer AS 21.60.100 - 21.60.300. The regulations must

14 (1) establish a reserve for payment of flood claims; and

15 (2) require the amount held in reserve for payment of flood claims to
16 be maintained in an amount required by a private insurer participating in the National
17 Flood Insurance Program based on a similar risk profile.

18 **Sec. 21.60.270. State not liable.** The state is not liable for acts or omissions of
19 the authority under AS 21.60.100 - 21.60.300.

20 **Sec. 21.60.280. Board member civil and criminal immunity.** A member of
21 the board may not be held civilly or criminally liable for an act or omission if the act
22 or omission was in good faith and within the scope of the board member's duties under
23 AS 21.60.100 - 21.60.300.

24 **Sec. 21.60.290. Alaska flood insurance fund.** (a) The Alaska flood insurance
25 fund is established in the general fund. Revenue collected shall be separately
26 accounted for and deposited into the fund. Investment earnings and interest earned on
27 the fund shall be retained in the fund.

28 (b) The legislature may appropriate the annual estimated balance in the fund to
29 the Department of Commerce, Community, and Economic Development to operate the
30 authority and fund the insurance program under AS 21.60.100 - 21.60.300.

31 (c) Payment for claims under the insurance program under AS 21.60.100 -

1 21.60.300 is subject to appropriation.

2 (d) Money in the fund does not lapse.

3 (e) Nothing in this section creates a dedicated fund.

4 (f) Money in the fund may be invested in the same manner and on the same
5 conditions as permitted for investment of money belonging to the state or held in the
6 treasury under AS 37.10.070.

7 **Sec. 21.60.300. Definitions.** In AS 21.60.100 - 21.60.300,

8 (1) "authority" means the Alaska Flood Authority;

9 (2) "board" means the board of the Alaska Flood Authority;

10 (3) "flood" means a general and temporary condition of partial or
11 complete inundation of normally dry land area from

12 (A) overflow of inland or tidal water;

13 (B) unusual and rapid accumulation or runoff of surface water
14 from any source; or

15 (C) mudflow;

16 (4) "insurable interest" has the meaning given in AS 21.42.030;

17 (5) "insurable property" means real property located in a special flood
18 hazard area in the state and the personal property located on the real property;

19 (6) "property insurance" has the meaning given in AS 21.12.060;

20 (7) "special flood hazard area" means the land in a flood plain in a
21 community subject to a chance of flooding in any given year of one percent or greater
22 where federally mandated purchase of flood insurance applies.

23 * **Sec. 5.** AS 37.05.146(c) is amended by adding a new paragraph to read:

24 (80) assessments and civil penalties collected under AS 21.60.200.

25 * **Sec. 6.** The uncodified law of the State of Alaska is amended by adding a new section to
26 read:

27 **APPLICABILITY.** Section 2 of this Act applies to an insurance policy or contract
28 entered into or renewed on or after the effective date of sec. 2 of this Act.

29 * **Sec. 7.** The uncodified law of the State of Alaska is amended by adding a new section to
30 read:

31 **TRANSITION: PLAN OF OPERATION.** If the Alaska Flood Authority fails to

1 submit a suitable plan of operation by January 1, 2023, the director of the division of
2 insurance may adopt reasonable regulations necessary or advisable to carry out the provisions
3 of this Act. The regulations continue in force until modified by the director or superseded by a
4 plan submitted by the authority and approved by the director.

5 * **Sec. 8.** Section 7 of this Act takes effect immediately under AS 01.10.070(c).

6 * **Sec. 9.** Except as provided in sec. 8 of this Act, this Act takes effect July 1, 2022.