

CS FOR SENATE BILL NO. 160(L&C)

IN THE LEGISLATURE OF THE STATE OF ALASKA

THIRTY-SECOND LEGISLATURE - SECOND SESSION

BY THE SENATE LABOR AND COMMERCE COMMITTEE

Offered:
Referred:

Sponsor(s): SENATOR STEDMAN

A BILL

FOR AN ACT ENTITLED

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

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

5 * **Section 1.** AS 21.39.030(a) is amended to read:

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

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

10 (2) consideration shall be given to past and prospective loss experience
11 inside and outside this state; to the conflagration and catastrophe hazards; to a
12 reasonable margin for underwriting profit and contingencies; to dividends, savings, or
13 unabsorbed premium deposits allowed or returned by insurers to their policyholders,
14 members, or subscribers; to past and prospective expenses both countrywide and those

1 specially applicable to this state; and to all other relevant factors inside and outside
2 this state;

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

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

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

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

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

26 * **Sec. 2.** AS 21.39.030(c) is amended to read:

27 (c) In this section,

28 **(1) "dwelling" means a residential structure containing not more than**
29 **four family living units;**

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

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

2 **(B) unusual and rapid accumulation or runoff of surface**

3 **water from any source; or**

4 **(C) mudflow.**

5 * **Sec. 3.** AS 21.60 is amended by adding new sections to read:

6 **Article 2. Alaska Flood Authority.**

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

13 (1) maintain membership in the authority;

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

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

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

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

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

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

28 (b) The director is a nonvoting ex officio member of the board. In approving
29 members of the board under (a)(1) of this section, the director shall consider, among
30 other things, whether all types of authority members are fairly represented.

31 (c) A member of the board serves for a term of three years and may be

1 reappointed to an unlimited number of terms. The term of a board member shall
2 continue until a successor is appointed.

3 (d) At authority meetings, an authority member is entitled to one vote in
4 person or by proxy. At board meetings, a board member is entitled to one vote in
5 person or by proxy.

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

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

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

17 (2) evaluate the benefits of the insurance program under AS 21.60.100
18 - 21.60.300 as compared to 42 U.S.C. 4001 - 4129 (National Flood Insurance Act) for
19 property owners and communities in the state; and

20 (3) identify penalties or sanctions imposed or potentially imposed on
21 individuals and communities in the state by the federal government under 42 U.S.C.
22 4001 - 4129 (National Flood Insurance Act).

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

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

25 (2) sue or be sued;

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

28 (4) establish administrative and accounting procedures for the
29 operation of the authority; and

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

31 **Sec. 21.60.130. Plan of operation.** (a) The authority shall submit to the

1 director a plan of operation to ensure the fair, reasonable, and equitable administration
2 of the authority. The director may, after notice and hearing, adopt reasonable
3 regulations necessary or advisable to carry out the provisions of AS 21.60.100 -
4 21.60.300, including amendment to the plan of operation. The plan of operation and
5 amendments become effective upon approval in writing by the director.

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

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

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

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

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

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

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

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

20 (7) procedures for submitting board member selections to the director
21 for approval;

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

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

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

29 **Sec. 21.60.160. Types of insurance plans.** The authority shall make available
30 to a person who is eligible for coverage under AS 21.60.100 - 21.60.300 at least one
31 state plan of flood insurance. The authority may not refuse coverage under a state plan

1 to a person who is eligible under AS 21.60.100 - 21.60.300, applies for coverage, and
2 pays the required premium.

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

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

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

14 (A) the insured; and

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

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

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

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

22 (5) cancellation provisions that are as restrictive as the provisions
23 contained in a standard flood insurance policy under the National Flood Insurance
24 Program.

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

27 (b) The board shall determine flood insurance premium rates by primarily
28 considering the actual historical flood and damage data on the real and personal
29 property proposed to be insured. The board shall submit premium rates to the director
30 for approval before use.

31 (c) The board may retain an actuary or other consultant as may be necessary to

1 determine flood insurance premium rates and to perform other assigned duties.

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

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

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

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

14 **Sec. 21.60.200. Funding for authority and insurance program; penalties.**

15 (a) Each member of the authority shall share the losses of the insurance program
16 established under AS 21.60.100 - 21.60.300 insuring real and personal property and
17 improvements to real property within a special flood hazard area in the state. Each
18 member of the authority shall pay member dues and share in the operating and
19 administrative expenses incurred or estimated to be incurred by the authority incident
20 to the conduct of its affairs.

21 (b) A member's liability under this section is an amount equal to a member's
22 dues, as determined by the director, plus 2.7 percent of the total direct premium
23 written during the year ending on the preceding December 31 and paid for the
24 insurance of property located in the state after deducting from the total direct premium
25 income applicable cancellations, returned premiums, unabsorbed portions of any
26 deposit premium, all policy dividends, unabsorbed premiums refunded to
27 policyholders, refunds, savings, savings coupons, and other similar returns paid or
28 credited to policyholders with respect to their policies. Deductions may not be made of
29 cash surrender value of policies.

30 (c) The board shall make an annual determination of each member's liability
31 under (b) of this section, if any, and may make an annual fiscal year end assessment if

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

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

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

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

19 (e) If the total amount of member liability calculated under (c) of this section
20 is insufficient to satisfy a duly authorized claim against the insurance program under
21 AS 21.60.100 - 21.60.300, the legislature may appropriate up to a total of \$5,000,000
22 from cash reserves of the Alaska Housing Finance Corporation to the Department of
23 Commerce, Community, and Economic Development to satisfy the unpaid claim.

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

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

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

31 (2) a description of the property to be insured sufficient for the

1 authority to investigate and determine its insurability; and

2 (3) a designation of the plan desired.

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

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

9 **Sec. 21.60.240. Effective date of insurance under a state plan.** Insurance
10 under a state plan takes effect immediately upon receipt of the first premium if the
11 applicant otherwise complies with the requirements of AS 21.60.100 - 21.60.300.

12 **Sec. 21.60.250. Solicitation of eligible persons.** (a) The authority, under a
13 plan approved by the director, shall communicate to persons who reside or own
14 property in a special flood hazard area the existence of the state plan and the means of
15 enrollment. Means of communication may include use of the Internet, press, radio, and
16 television, as well as publication through appropriate state offices, state publications,
17 and Internet websites.

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

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

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

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

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

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

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

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

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

12 (c) Payment for claims under the insurance program under AS 21.60.100 -
13 21.60.300 is subject to appropriation.

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

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

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

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

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

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

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

24 (A) overflow of inland or tidal water;

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

27 (C) mudflow;

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

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

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

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

4 * **Sec. 4.** AS 37.05.146(c) is amended by adding a new paragraph to read:

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

6 * **Sec. 5.** The uncodified law of the State of Alaska is amended by adding a new section to
7 read:

8 APPLICABILITY. Section 1 of this Act applies to an insurance policy or contract
9 entered into or renewed on or after the effective date of sec. 1 of this Act.

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

12 TRANSITION: PLAN OF OPERATION. If the Alaska Flood Authority fails to
13 submit a suitable plan of operation by January 1, 2024, the director of the division of
14 insurance may adopt reasonable regulations necessary or advisable to carry out the provisions
15 of this Act. The regulations continue in force until modified by the director or superseded by a
16 plan submitted by the authority and approved by the director.

17 * **Sec. 7.** Section 6 of this Act takes effect immediately under AS 01.10.070(c).

18 * **Sec. 8.** Except as provided in sec. 7 of this Act, this Act takes effect July 1, 2023.