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1 IN THE HOUSE

2

HOUSE BILL NO. 343

3

IN THE LEGISLATURE OF THE STATE OF ALASKA

4

SIXTEENTH LEGISLATURE - FIRST SESSION

5

A BILL

6 For an Act entitled: "An Act relating to insurance for owners of under-
7 ground storage tanks."

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

9 * Section 1. AS 21 is amended by adding a new chapter to read:

10 CHAPTER 82. STORAGE TANK OWNERS INSURANCE.

11 Sec. 21.82.010. PURPOSE OF THIS CHAPTER. It is the purpose of
12 this chapter to provide a means of furnishing the owners of under-
13 ground storage tanks with adequate insurance against liability for
14 releases or threatened releases from their tanks.

15 Sec. 21.82.020. CORPORATION CREATED. There is created the
16 Environmental Indemnity Corporation of Alaska that is a public corpo-
17 ration having a legal existence independent of and separate from the
18 state. Obligations issued by the corporation do not constitute a
19 debt, liability, or obligation of the state or a pledge of full faith
20 and credit of the state.

21 Sec. 21.82.030. CORPORATION BOARD OF DIRECTORS. (a) The corpo-
22 ration shall exercise its powers through a board of nine directors who
23 are appointed by the governor and who are subject to confirmation by
24 the legislature. Members of the board shall be residents, selected as
25 follows:

26 (1) four persons who are owners of from 1 - 12 underground
27 storage tanks;

28 (2) one person who owns more than 12 underground storage
29 tanks;

1 (3) two professionals from the insurance industry who are
2 authorized or licensed to do business in the state;

3 (4) two persons who are not owners of underground storage
4 tanks or representatives of the insurance industry.

5 (b) The term of office of a board member is three years, except
6 that the governor shall designate two initially appointed members to
7 serve for one year and two initially appointed members to serve for
8 two years. Upon the expiration of the term of a member of the board,
9 the governor shall appoint a successor who shall be from the same
10 class described in (a) of this section as the board member whose term
11 has expired.

12 (c) Upon a board member's early resignation, death, or inability
13 to serve, the governor shall appoint a successor from the same class
14 defined in (a) of this section as the terminating board member, who
15 shall serve for the unexpired term.

16 (d) The director or a designee of the director is not a voting
17 member of the board but shall have the right to attend and participate
18 in all meetings and proceedings of the board.

19 (e) Members of the board shall receive compensation from the
20 corporation and necessary travel expenses according to a policy ap-
21 proved by the director.

22 (f) A board member, officer, or employee or former member of the
23 board, officer, or employee of the corporation is not liable for civil
24 damages or other relief in an action by reason of the person's actions
25 or inactions as a board member, officer, or employee of the corpora-
26 tion, or by reason of the actions or inactions of the corporation, its
27 board, officers, or employees unless the person acts with actual
28 knowledge that the person was acting outside the scope of the person's
29 authority, or unless at the time the person was acting for a purpose

1 that the person knew was not in the best interests of the corporation,
2 or with respect to a criminal act that the person had actual knowledge
3 of or should have known was unlawful. If a claim or action is brought
4 against a person entitled to the protection of this subsection, the
5 claim or action shall be defended by the state. If it is established
6 that the person was acting with actual knowledge that the person was
7 acting outside the scope of the person's authority, or at the time was
8 acting for a purpose that the person knew was not in the best inter-
9 ests of the corporation, or with respect to a criminal act that the
10 person had actual knowledge of or should have known was unlawful, then
11 the person shall reimburse the state for the cost of the person's
12 defense.

13 Sec. 21.82.040. CORPORATION PLAN OF OPERATION. (a) The board
14 shall prepare and submit to the director for approval a plan of opera-
15 tion that provides for the fair and reasonable administration of the
16 affairs of the corporation and the discharge of the purposes for which
17 it is created. The plan and amendments to it become effective upon
18 the director's approval. If the board fails to submit a plan of
19 operation, or if at a subsequent time the board fails to submit suit-
20 able amendments to the plan, the director shall, after notice and
21 hearing, adopt a plan of operation or amendments that are necessary or
22 advisable to carry out the provisions of this chapter. Adoption of
23 the plan is not subject to the Administrative Procedure Act (AS 44.-
24 62).

25 (b) The plan of operation must

26 (1) establish the procedures by which all the powers and
27 duties of the corporation specified in AS 21.82.050 are to be per-
28 formed;

29 (2) establish procedures for handling assets and

- 1 discharging liabilities of the corporation;
- 2 (3) establish regular times and places for meetings of the
3 board;
- 4 (4) establish procedures for records to be kept of all
5 financial transactions of the corporation, its agents, and the board;
- 6 (5) establish the procedures for awarding contracts to
7 carry out the provisions of this chapter;
- 8 (6) establish the procedures for issuing contracts of
9 insurance as provided in AS 21.82.050 and for the determination of
10 rates;
- 11 (7) contain additional provisions necessary for the exe-
12 cution of the powers and duties of the corporation.

13 Sec. 21.82.050. POWERS AND DUTIES OF THE CORPORATION. (a) The
14 corporation shall

15 (1) in the form approved by the director, issue to all
16 owners of underground storage tanks who are found to be acceptable
17 risks under standards developed under (5) of this subsection, and who
18 pay the premiums for it, a contract or contracts indemnifying them and
19 their employees against loss by reason of liability for covered claims
20 for a release or threatened release from their underground storage
21 tanks, and agreeing to tender on behalf of the owners and their em-
22 ployees a defense to a covered claim in a proceeding brought against
23 them for a release or threatened release from their underground stor-
24 age tanks; the limits of liability for policies issued by the corpo-
25 ration shall be approved by the director; the contract must cover the
26 defense against but need not indemnify liability for punitive damages
27 arising from a covered claim; at the option of the corporation, if
28 approved by the director, and for an additional premium, the contract
29 may cover claims against the owners and their employees for a release

1 or threatened release that occurred before the contract is issued,
2 except that coverage may not be provided for a claim already filed or
3 that the owner or employee had or reasonably should have had notice of
4 at the time the retroactive insurance was purchased;

5 (2) charge a premium for the protection provided by the
6 contracts issued by the corporation that shall be determined by the
7 board in accordance with AS 21.82.080 and subject to the approval of
8 the director;

9 (3) comply with the provisions of AS 21.06.090, 21.06.120,
10 21.06.140, 21.06.160, 21.06.250, AS 21.09.180 - 21.09.200, 21.09.250,
11 21.09.280, AS 21.12.020(b) - (e), AS 21.18, AS 21.21, AS 21.24 and
12 AS 21.36; and shall be exempt from participation as a member insurer
13 in the Alaska Insurance Guaranty Corporation;

14 (4) carry out the obligations of the contracts issued by
15 the corporation by defending all covered claims made against insured
16 persons and by paying all liabilities that are finally adjudicated
17 against the insured person or that may in the opinion of the corpo-
18 ration reasonably be expected to be finally adjudicated against the
19 insured person to the extent of the contract obligation;

20 (5) establish standards for the acceptability of risks; in
21 establishing the standards the corporation may exclude an applicant
22 for insurance based on individual risk selection factors, but may not
23 exclude an applicant based only on the classification of the appli-
24 cant.

25 (b) The corporation may

26 (1) employ or retain persons, individual or corporate, to
27 discharge its obligations and pay reasonable compensation for their
28 services; employees of the corporation are not considered state em-
29 ployees;

1 (2) negotiate for and procure reinsurance from private
2 casualty insurers or reinsurers for any and all liability incurred by
3 contracts issued by it;

4 (3) provide coverage to insureds for other hazards custom-
5 arily included in insurance policies for the owners of underground
6 storage tanks when there is a finding by the director that this cover-
7 age is not available to insureds of the corporation in the private
8 insurance market at a competitive price;

9 (4) borrow or advance funds necessary to carry out the
10 purposes of the corporation;

11 (5) negotiate and become a party to contracts that are
12 necessary to carry out the purposes of the corporation;

13 (6) sue or be sued in the name of the corporation;

14 (7) provide risk management advice and services to the
15 owners of underground storage tanks;

16 (8) negotiate and become a party to contracts for manage-
17 ment services for the corporation;

18 (9) in a form approved by the director and for an addition-
19 al premium determined under AS 21.82.080, issue endorsements that
20 provide indemnity for claims not yet reported that arise out of a
21 release or threatened release from an underground storage tank during
22 a period of continuous coverage under the originally issued contract,
23 to owners of underground storage tanks who pay the premium for it and
24 who are terminating their original covered claims contract with the
25 corporation for a period of not less than one year;

26 (10) perform all other acts necessary and proper to carry
27 out the duties of the corporation.

28 Sec. 21.82.055. TERMINATION. (a) If at any time the corpora-
29 tion posts written premiums for two consecutive years of less than 35

1 percent of all premiums written in the state for insurance covering
2 releases or threatened releases from underground storage tanks or
3 posts written premiums for one calendar year of less than 20 percent
4 of all premiums written in the state for insurance covering releases
5 or threatened releases from underground storage tanks, the director
6 may hold a public hearing under AS 21.06.180 - 21.06.230 to determine
7 whether the business of the corporation should be terminated.

8 (b) Upon the effective date of an order of termination issued by
9 the director under (e) of this section, the terms of the board members
10 appointed under AS 21.82.030 expire, and the corporation, its board,
11 officers, and employees are relieved of all further liabilities for
12 all their obligations to the creditors and policyholders of the corpo-
13 ration, and the business of the corporation shall be liquidated under
14 AS 21.78.

15 (c) At any time after termination of the corporation by the
16 director, the director may, after public hearing held under AS 21.06.-
17 180 - 21.06.230 and (d) of this section, order reactivation of the
18 corporation if the director finds that insurance for underground
19 storage tanks is unavailable on the voluntary market. The business of
20 the corporation shall commence operation upon appointment by the
21 governor of a new board of directors.

22 (d) In determining whether to terminate or reactivate the busi-
23 ness of the corporation the director shall consider the following:

24 (1) the level of expected premiums and losses for continued
25 operation;

26 (2) the requirement for state funds to support continued
27 operation;

28 (3) the availability of alternative markets for coverage to
29 a substantial majority of underground storage tank owners in the

1 state;

2 (4) the costs of continued operation of the corporation;

3 (5) the effect that the continued operation of the corpo-
4 ration will have on rates charged for coverage by the corporation or
5 by alternative markets; and

6 (6) the expected number of underground storage tank owners
7 who would participate if the operations were continued.

8 (e) If after public hearing held under (a) of this section the
9 director determines that continuing the business of the corporation
10 would result in substantial underwriting loss unless excessive premi-
11 ums are charged to participating owners, the director may order termi-
12 nation of the corporation.

13 Sec. 21.82.060. PREMIUM TAX. The corporation shall pay a pre-
14 mium tax in the amount of one and one-half percent of the total direct
15 premium income received by the corporation during the year ending on
16 the preceding December 31, after deducting the applicable cancel-
17 lations, returned premium, the unabsorbed portion of any deposit
18 premiums, all policy dividends, unabsorbed premiums refunded to pol-
19 icyholders, refunds, savings, savings coupons and other similar re-
20 turns paid or credited to policyholders with respect to their pol-
21 icies. The tax shall be paid to the director annually before April 1
22 of each year.

23 Sec. 21.82.070. STATISTICS. The corporation shall collect,
24 maintain and report information concerning claims against persons it
25 insures. The information shall be on forms prescribed by the direc-
26 tor, and shall be sufficient to enable a proper determination of
27 losses for rate making and to identify causes and sources of loss for
28 loss control. At least annually the corporation shall report to the
29 director the number and amount of claims filed, reserved, paid,

1 settled and adjudicated during the year, the premiums and the
2 expenses incurred by the corporation during the year. This report
3 shall be available to the public. The director may require that
4 supplemental reports include the names of insured persons and the
5 claimants; however, a report that becomes available to the public may
6 not include the names of insured persons or claimants or information
7 that will permit by inference the identity of specific insured persons
8 or claimants. All statistics including the supplemental reports shall
9 be made available to the Department of Environmental Conservation.

10 Sec. 21.82.080. RATES. The rates and rating placed by the
11 corporation for the policies issued must be determined by license
12 category of underground storage tank owners in accordance with all of
13 the following:

14 (1) a minimum rate may be set for each classification
15 established by the corporation;

16 (2) rates may not be excessive; rates are excessive if,
17 after a period of time and with respect to an amount of business
18 that is actuarially credible, the premiums exceed losses incurred by
19 the corporation, including losses paid, reserves for covered claims
20 reported and unpaid, reserves for covered claims incurred during the
21 policy period and not reported, and reasonable expenses for the opera-
22 tion of the corporation;

23 (3) rates may not be inadequate; rates are inadequate if,
24 based on available actuarial data, the premiums to be paid by insured
25 persons are or may reasonably be expected to be insufficient to pay
26 for losses incurred by the corporation, including covered claims paid,
27 reserves for covered claims reported and unpaid, reserves for covered
28 claims incurred during the policy period and not reported and reason-
29 able expenses for the operation of the corporation;

- 1 (4) rates may not be unfairly discriminatory;
- 2 (5) rates must be adjusted annually;
- 3 (6) rates for a policy year must be calculated to include
- 4 the adjustment for actual experience of the corporation as developed
- 5 for the preceding four policy years;
- 6 (7) in considering losses to be incurred, changes in the
- 7 law, national, regional or local trends in environmental lawsuit
- 8 awards, and other relevant factors may be considered;
- 9 (8) income from the investment of reserves must be con-
- 10 sidered;
- 11 (9) individual risk underwriting factors must be con-
- 12 sidered;
- 13 (10) classifications of storage tanks must be considered;
- 14 (11) amounts sufficient for repayment of loan obligations
- 15 must be considered;
- 16 (12) if the earned premiums of the corporation for a given
- 17 year are less than the incurred claims, claim expense, underwriting
- 18 expense, reserves for that year and provision for repayment of loans,
- 19 the corporation may, subject to the prior approval of the director,
- 20 levy an assessment upon the insureds who held policies during that
- 21 year; the assessment, which may be made in periodic installments, must
- 22 be made within three years and may not exceed 150 percent of the
- 23 insured's premium for that year; the termination of a policy does not
- 24 relieve the insured of contingent liability for the insured's propor-
- 25 tionate share of the obligations to the corporation that accrued while
- 26 the policy was in force;
- 27 (13) if the earned premiums of the corporation for a given
- 28 year exceed its incurred claim expense, underwriting expense, reserves
- 29 for that year and provision for repayment of a loan, the corporation

1 may, subject to the prior approval of the director, apportion and pay
2 or credit its insureds who held policies during that year; a payment
3 or credit must be proportionate to the insured's earned premium for
4 that year;

5 (14) upon application, the director may issue a certificate
6 authorizing the corporation to extinguish all or a portion of an
7 assessment levied, or that could be levied, under (12) of this section
8 for all insureds with policies in force when the certificate is is-
9 sued, and to omit provisions levying an assessment under (12) of this
10 section in all policies delivered or issued for delivery after the
11 certificate is issued, if the director determines that there is a
12 sound actuarial basis for the extinguishment; the director may at any
13 time revoke the certificate; a policy in force at the time of revoca-
14 tion is not subject to the revocation of the certificate for the
15 remainder of the period for which the premium has been paid, but after
16 revocation a policy may not be issued or renewed without providing for
17 an assessment of the insured.

18 Sec. 21.82.090. PAYMENT OF PREMIUMS; CANCELLATION OF INSURANCE.
19 The corporation may provide for installment payment of premiums, in
20 which case each installment is due by the date specified. The corpo-
21 ration may cancel a policy in the event of nonpayment of any premium
22 or installment on a premium, or other charge, by mailing or delivering
23 to the insured at the address shown on the policy written notice of
24 cancellation. Cancellation is not effective until 30 days after the
25 date notice is mailed or delivered.

26 Sec. 21.82.095. TRANSFER OF CORPORATE ASSETS AND LIABILITIES.

27 (a) The corporation may, subject to the prior approval of the direc-
28 tor, transfer its assets and liabilities to a company if the company

29 (1) possesses a valid certificate of authority to transact

1 casualty insurance business in the state; in evaluating the capital
2 and surplus of the company for qualification for a certificate of
3 authority, the value of the assets and liabilities transferred by the
4 corporation may not be considered;

5 (2) pays to the corporation the full value of the surplus
6 in the corporation not represented by unrepaid proceeds of loans by
7 the loan fund to the corporation;

8 (3) executes a complete reinsurance and hold harmless
9 agreement in a form approved by the director covering all of the
10 obligations of the corporation to its creditors and policyholders; and

11 (4) executes modifications of loan agreements with the loan
12 fund by which the company agrees

13 (A) to assume the obligations; and

14 (B) that, if at any time the company writes less than
15 the premium levels provided in AS 21.82.055(a), the director may
16 determine that the loan provisions shall be modified to provide a
17 scheduled amortization repayment of the principal over a period
18 not to exceed 10 years and at an interest rate of four points
19 above the federal discount rate, as that rate is adjusted from
20 time to time;

21 (5) meets other requirements that the director may rea-
22 sonably require to protect the interests of the state, the insureds,
23 the involved company, and the public;

24 (6) provides the board with a written statement from the
25 director that the company qualifies under (1) - (5) of this subsec-
26 tion.

27 (b) If the company to which the assets and liabilities of the
28 corporation are transferred in the manner provided in (a) of this
29 section continues to write premiums in excess of the levels provided

1 in AS 21.82.055, the following provisions shall apply:

2 (1) the company is entitled to carry forward and offset
3 against its premium tax obligation to the state the amount by which
4 the aggregate claims paid on reinsurance assumed under (a)(3) of this
5 section exceeds aggregate reserves on the same business established at
6 the date of the reinsurance agreement; and

7 (2) the obligation to repay to the loan fund loans assumed
8 by the company at the time of transfer of the assets and liabilities
9 of the corporation need not be shown as a liability on the books of
10 the corporation.

11 Sec. 21.82.210. FUND ESTABLISHED. (a) There is in the Depart-
12 ment of Environmental Conservation an environmental liability revolv-
13 ing loan fund to be administered by the commissioner.

14 (b) Loans may be made from the fund to the corporation upon
15 certification by the commissioner that a loan is necessary and under
16 the following circumstances:

17 (1) to provide surplus for policyholders; a loan to estab-
18 lish a surplus may not exceed a total of \$3,000,000 outstanding at any
19 time; these obligations shall be subordinated to all other obligations
20 of the corporation; loans made under this paragraph must be repaid to
21 the fund in annual installments of at least 25 percent of the excess
22 of premiums earned over the total of claims, reserves, expenses, and
23 assessments made by the association, if any; interest must be paid on
24 the outstanding balance at a rate equal to seven percent a year;

25 (2) if the commissioner determines that the corporation is
26 unable to procure reinsurance from a private casualty insurer or
27 reinsurer for the liability incurred by contracts issued by it; a loan
28 under this paragraph when taken together with loans made under (1) of
29 this subsection to compensate for fluctuations in loss experience may

1 not exceed an aggregate of \$6,000,000; loans made under this paragraph
2 must be in parity with all other obligations of the corporation except
3 that they must be subordinated to obligations of policyholders and
4 claimants for indemnity of loss; the loans must be repaid within five
5 years at an annual interest rate of six percent.

6 (c) If a loan is made to the corporation from the fund, the
7 corporation shall issue a note to the fund as evidence of the loan.

8 Sec. 21.82.900. DEFINITIONS. In this chapter

9 (1) "board" means the board of directors of the Environ-
10 mental Indemnity Corporation of Alaska;

11 (2) "commissioner" means the commissioner of environmental
12 conservation;

13 (3) "continuous coverage" means one or more successive
14 policy periods which are uninterrupted by cancellation or failure to
15 renew for any reason;

16 (4) "corporation" means the Environmental Indemnity Corpo-
17 ration of Alaska;

18 (5) "covered claim" means

19 (A) a claim by an injured party reported to the corpo-
20 ration during the period of continuous coverage by the corpo-
21 ration of the insured underground storage tank owner for a re-
22 lease or threatened release from an underground storage tank; and

23 (B) additional claims as defined in the policy, with
24 the prior approval of the commissioner, and that are reported
25 within specified periods after the expiration of the policy;

26 (6) "release" and "threatened release" have the meanings
27 given in AS 46.08.900;

28 (7) "underground storage tank" means an underground storage
29 tank that is regulated under AS 46.03.360.