HB

308

Alaska National
INSURANCE COMPANY

A policy of service and protection

April 6, 1983

The Honorable Walt Furness, Representative
Chair House
Labor and Commerce Committee
Alaska State Senate
Pouch Y
Juneau, Alaska 99811

Re: HB #308 An Act relating to insurance.

Dear Mr. Furness:

This measure in its current form is very much opposed by us. On the other hand, the areas of our serious concern can be easily remedied by some amendments, in which case the general thrust of the bill would be acceptable. We, therefore, urge the Committee to adopt the recommended amendments if it intends to proceed with this legislation.

BACKGROUND

For reasons, some of which may be valid, the municipal league, or at least several municipalities, have felt it desirable to have statutory authority to establish a means of exchanging insurance contracts among themselves as an alternative to purchasing insurance from commercial insurance markets. At an early stage in the legislative process when the municipality's interest in establishing their own insurance program first became known to us, we suggested using the reciprocal insurer authority already granted in the Insurance Code. They have accepted this recommendation and House Bill 308 is the result. Unfortunately in the drafting, several specific exceptions from appropriate obligations imposed on insurers were carved out for the municipal reciprocals, and we believe such is wholly inappropriate.

It is the purpose of this letter to indicate these areas and to point out the responsibilities that every other insurer currently has and ought to have in connection with sustaining the workers' compensation system in this State which even a municipal reciprocal should be required to support.

ASSIGNED RISK POOL

[AS21.39.150 (a) - HB 308 Page 1, Line 9 -10]

The proposed amendment would exempt all reciprocals from having to participate in the contributions to the assigned risk pool.

Currently, all commercial insurers writing workers' compensation in the State of Alaska are required to pay an assessment to support the assigned risk pool. The amount of the assessment is a pro-rata charge necessary to cover the extent to which losses and expenses exceed the premium collected in the pool. Assessment based on workers' compensation writings by workers' compensation carriers is a logical way to support the pool since it spreads the cost for supporting the undesirable risks among all other employers in the State. Currently, any employer insured in a commercial insurer, including all municipalities which are insured by commercial insurers, are paying indirectly the assessment to support the assigned risk pool.

To the extent that a group of employers are exempted from having to pay their pro-rata share, the burden falls on a smaller population who must then pay a higher assessment. In effect, by exempting the municipal reciprocal from having to pay the assigned risk pool, all other employers are going to have to pay a slightly higher assessment.

We find it totally inequitable and without justification that the municipalities as employers be relieved of any obligation which any other employer is obligated to pay as part of the cost of hiring employees in this State.

Furthermore, because of the way the provision was drafted, all reciprocals are excluded. As drafted, this means that the Timber Insurance Exchange, which is a private commercial reciprocal insurer owned and operated by the loggers, would also be exempted from supporting the assigned risk pool. I believe this was not intended but is the result of an error in drafting.

RECOMMENDATION

Section 1 of the proposed bill be stricken in its entirety.

ALLOWABLE FUNDING

[Section 2 AS21.75.050 (c) - HB #308 Page 1, Line 15 - 21]

This provision allows only those reciprocals which are formed by two or more muncipalities to post a bond in lieu of otherwise admissible assets to capitalize the reciprocal insurer. Frankly, we believe that places the municipalities in the position of establishing an insurance company with little or none of the capital requirements imposed upon any other commercial insurer and is to that degree inequitable. On the other hand, we recognize that municipalities

have a certain financial capability because of their taxing authority which other commercial employers do not have, and therefore, though we would prefer not to see the statutes drafted with authority to post a bond in lieu of cash, will not object to the bill on that ground alone.

On the other hand, there are two amendments that need to be made to this section in order to limit the authority to the specific concessions intended by the legislature:

A. Arguably, a reciprocal could be formed by two or more municipalities and then insure non-municipalities as part of their business operations. Such ought not to be permitted, thus, I would urge the following recommended amendment; and

B. The bond should be permitted only for the initial capital and not for any of its reserves or surplus.

To meet these points, I would urge the following change in language:

> "A domestic reciprocal insurer formed under this chapter by and insuring only, two or more municipalities shall (1) comply with (a) of this section or post a bond for an amount equal to the capital that would be required of a domestic stock insurer writing the same lines of insurance for which the reciprocal insurer seeks to be authorized, and (2) maintain a surplus in admitted assets of $250,000 or a surplus sufficient to operate the reciprocal insurer for one year, whichever is greater." [Emphasis on language to be added.]

EXEMPTION OF PUBLIC UTILITIES FROM GUARANTEE ASSOCIATION.

[Section 5 AS21.80.180 (5) - Page 2, Line 6 and Section 6 AS21.80.180 (6) - Page 2, Line 14.]

These sections deal with the Guarantee Association, which is a facility established by Alaskan law to protect workers whose employer has acquired workers' compensation insurance from an insurance facility which ultimately becomes insolvent. The protection is provided through the Guarantee Association's ability to assess all other workers' compensation insurers doing business in the State pro-rata to their workers' compensation insurance writings to provide the funds necessary to pay the claims of the insolvent insurer.

The are two sections in that law referred to in the bill define:

A. Which insurers are protected by the Insolvency Fund and,

B. Which insurers must contribute to the assessment in the event another insurer becomes insolvent.

We pointed out to the Senate Labor and Commerce Committee that either the municipal insurer must be included both as a contributor to the assessment and be protected by the Guarantee Association or excluded from both of those. The Labor and Commerce Committee agreed and elected to exclude the municipality from both the assessability and coverage provisions of the Guarantee Association. We support their choice in this regard, however, in creating the exclusion from the application of the Guarantee Association for reciprocals formed by municipalities they added reciprocals formed by public utilities.

We absolutely oppose the exclusion of a reciprocal formed by any commercial enterprise from the obligation imposed upon any other commercial insurer doing business in the State. There is no reason why a business which is operating in this State owned by stockholders who have formed a company for profit, should be excluded from sharing in the obligations that all other corporations formed for profit are obligated to support. All the insured employers of any other commercial insurer indirectly contribute to the Guarantee Association assessment by virtue of that cost being loaded into their premium. It creates a lack of competitive parity when a reciprocal can be formed by a specially defined group and be excluded from having to share in that cost.

RECOMMENDATION

We would propose that the language "or public utilites" be stricken from both line 6 and line 14 of page 2 of the bill.

As a further matter of clarity, on line 5 and line 14 the language should be modified so that it reads as follows:

"Reciprocal insuer formed by and insuring only municipalities."

We would appreciate your favorable consideration of these recommendations.

Yours cordially,

Richard Block
President

RB/krl

Alaska National
INSURANCE COMPANY

A policy of service and protection

March 22, 1983

The Honorable Dick Eliason, Senator
Alaska State Senate
Pouch Y
Juneau, Alaska 99811

Attn: Sheila Peterson, Legislative Analyst

Dear Dick:

Sheila was kind enough to send me a working draft of CSSB 66 (L&C) which is marked "Sofo 3-14-83." Shortly after receiving this draft, I was called by Wes Coyner, who indicated that there were some mistakes made in the drafting; and, in fact, numerous portions of that working draft are not intended to be included. The changes which I was given are as follows:

A. From line 10 strike "AS 23.30.075 (b)"

B. From line 16 strike "AS 23.30.075 (b) by the state or a political subdivision" and insert instead "by a municipality"

C. From page 1, line 28 to page 2, line 2 strike all of the definition and instead insert "municipality is defined as provided in AS 29.78.010 (8)"

D. From page 2, line 5 strike "or policital subdivision of the state, public utilities," and insert in line 5 "a municipality of" so that line 5 reads" reciprocal insurer formed by a municipality of the state ...".

E. Strike all of Section 6.

F. Strike all of Section 7.

My comments deal with the bill as modified.

BASIC THRUST OF THE BILL

The bill seems to permit municipalities to form a reciprocal insurer and changes the Reciprocal Law to permit two or more, as opposed to 25 or more persons, to form a reciprocal insurer. These basic policy changes are acceptable.

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The bill goes further, however, and makes three other changes which I find objectionable in various degrees.

1. Allowing the capital and surplus to be satisfied with a bond. Every other insuring entity in the State of Alaska is required to post cash or other admitted assets in order to do business in the State. The reason, of course, is that only cash and immediately liquidable assets can be made available to pay claims to the extent claims and expense exceed premiums. To permit the requirement to be met with a bond, is to work an utmost hardship on claimants and creditors in the event the premiums are not adequate to meet expenses for operations and claims.

   It should be noted that there is already a significant advantage afforded entities utilizing this new statute since any other carrier writing workers' compensation only in the State of Alaska, must have $250,000 more in assets than is required of the municipal reciprocal. To compound the problem, by allowing this minimal capital and surplus to be put up in the form of a bond as opposed to admitted assets, permits both an unreasonably unfair level of competition among insurers and subjects the claimant to questionable protection for their rights under the Workers' Compensation Act.

2. Section 5 attempts to exempt a municipal reciprocal from its obligations to pay an assessment to fund an insolvency by an insurance carrier formed under existing laws. There may be some argument to be made for excluding them from the obligation to pay assessments of the Guarantee Association, but only if the companion provision which is that the claims of an insolvent municipal reciprocal are not covered by the Guarantee Association, is also included.

   Note that your work draft excludes the reciprocal from AS Section 21.80.180 (6) (A), (Who Must Pay an Assessment for an Insolvency) but does not exclude them from AS 21.80.180 (5) (A) (Who's Insolvency Must Be Protected By The Guarantee Association.) It is my position that the municipal reciprocal must be included as part of the Guarantee Association both as to assessability and coverage, or excluded from the Guarantee Association both as to assessability and coverage. Because of the highly political nature of such a program and because I do not believe that the minimum criteria for forming a municipal reciprocal provides adequate protection for the long term growth and stability of such an organization, I would elect to have them not included in the Guarantee Association and exempt them from assessment.

3. For some reason <u>all</u> reciprocals are exempted from assessment to fund the assigned risk pool. I believe that drafting Section 1 to exclude all reciprocals was an inadvertant error on the part of the drafters since there are commercial workers' compensation

reciprocals in this State that certainly should not be exempted from the assigned risk pool. The more pertinent issue is should the municipal reciprocal be exempted from paying assessments for the assigned risk pool. On this point, I restate a portion of my January 21, 1983, letter to Representative Rick Uehling on a similar subject.

IT IS IMPORTANT TO MAINTAIN A PREMIUM BASIS NECESSARY TO PROVIDE SUPPORT FOR SYSTEM OBLIGATIONS

There are several components to the complete workers' compensation system which are funded by assessment of insurance companies, and those assessments are a function of the premiums written. It was recognized that since all employers were required to purchase insurance, assessing insurance companies based on their pro-rata writings of workers' compensation insurance was an equitable and efficient means for funding collateral aspects of the workers' compensation system. If significant shares of premium were allowed to "escape" the system because insurance pools were allowed to exist under the sham name of "group self-insurance", then the assessment base would be reduced placing a larger burden on those employers remaining insured through traditional insurance markets and relieving other employers of their obligation to pay their fair share of these collateral program costs.

It is, of course, true that a truly self-insured employer does escape some of these obligations, and in other states there has been a tendency to require the truly self-insured employer to be subjected to assessment to the same extent they would be had they been insured through an insurance company. Though that is not the current State of Alaska law with respect to true self-insured employers, the problem should not be exacerbated by allowing the fiction of group self-insurance to permit substantial additional premium to be removed from the premium base.

Some of these collateral programs are:

Assigned Risk Pool

Since insurance is required to be carried by all employers, but insurance companies are not legally obligated to provide insurance to a particular employer, it was necessary to create a mechanism for poor risks, or risks that underwriters chose not to write voluntarily, to obtain their workers' compensation insurance. In Alaska an assigned risk pool has been established, and any employer who cannot obtain their insurance through negotiation with an insurance company may obtain their insurance from the assigned risk pool at standard rates. The net cost of operating the assigned risk pool, that is, the amount by which losses from pool risks exceed premium from pool risks, is paid by assessment of all other insurance companies pro-rata to their writings of workers' compensation insurance. In short, the cost of underwriting pool risks is borne by the workers' compensation system.

I very much appreciate your allowing me an opportunity to comment on your work draft and hope that my comments are a value to you.

Yours cordially,

Richard L. Block
President

RB/krl

STATE OF ALASKA

BILL SHEFFIELD, GOVERNOR

DEPARTMENT OF COMMERCE &
ECONOMIC DEVELOPMENT

POUCH D
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DIVISION OF INSURANCE

March 23, 1983

Honorable Richard I. Eliason
Chairman
Committee on Labor and Commerce
Alaska State Senate
Pouch V
Juneau, Alaska 99811

Dear Senator Eliason:

RE: Position Paper SB 66

The Administration has carefully reviewed the ramifications of SB 66 and concludes that the public would best be served by a committee substitute that deletes the content of the current bill and replaces it with the enclosed changes which are similar to those forwarded to you on March 1, 1983.

SB 66 would allow two or more municipalities to pool their workers' compensation liabilities in a self-insured pool. The terms "self-insured pool" and "group self-insured" are anomalous terms. Self-insurance for two or more entities is insurance. The insurance code would normally apply to such situations. The bill as written, however, does not treat the combination of municipalities as an insurer. It would be more consistent with the general approach of the insurance code to treat this combination of municipalities the same as other combinations of other entities.

We recommend that SB 66 be replaced with a CS that would continue the regulation of insurers (group self-insurers) in the insurance code and apply the requirements for formation of an insurer to a group of municipalities. The requirements that would apply to municipalities, as well as public utilities, can be reasonably eased in view of the nature of those entities. The recommended easing would incorporate four changes. These are:

1. Reduction of the financial requirements for municipalities by permitting the use of a bond in lieu of cash surplus and by reducing the amount of operational surplus necessary;

2. Removal of any assigned risk liabilities that might otherwise accrue to an insurer formed by a group of municipalities or public utilities;

3. Reduction of the number of entities required to form a reciprocal insurer; and,

4. Removal of any liabilities in the Alaska Guaranty Association for insolvencies of other insurers if the insurer formed by a group of municipalities or public utilities is an assessable reciprocal insurer.

We believe that this is a reasonable stance which provides adequate public protection for claimants and policyholders.

Very truly yours,

Richard A. Lyon
Commissioner

RAL/cw#2lI3

Enclosure

cc: Art Peterson
Department of Law

Summary of CSSB 66

Section 1 - This section exempts reciprocal insurers from the assigned risk pool. The rationale is that a reciprocal insurers only a specialized group of individuals with similar activities and should be responsible with their own classification of insurance.

Description of an assigned risk pool.

Assigned Risk Pool

Since insurance is required to be carried by all employers, but insurance companies are not legally obligated to provide insurance to a particular employer, it was necessary to create a mechanism for poor risks, or risks that underwriters chose not to write voluntarily, to obtain their workers' compensation insurance. In Alaska an assigned risk pool has been established, and any employer who cannot obtain their insurance through negotiation with an insurance company may obtain their insurance from the assigned risk pool at standard rates. The net cost of operating the assigned risk pool, that is, the amount by which losses from pool risks exceed premium from pool risks, is paid by assessment of all other insurance companies pro-rata to their writings of workers' compensation insurance. In short, the cost of underwriting pool risks is borne by the workers' compensation system.

Section 2 - This section states or allows a municipality to post a bond equal to the amount necessary for capitalization

minus $250,000 which must be cash. The required capital for a domestic stock insurer would be $1 million if only one form of insurance is covered, for example workers' comp, and $1.5 million if two forms of insurance are covered.

Section 3 - The number of persons needed to form a reciprocal was reduced to two.

Section 4 - The new definition of municipality is included. It was felt this definition encompassed the municipalities who could participate, ie those with taxing powers.

Section 5 - Defines "member insurer" to exclude an assessable reciprocal which in turn takes an assessable reciprocal out of the Guaranty Act.

The Guaranty Act is established to protect insurers if an insurance company folds up. An assessable reciprocal is responsible for its own insurers & therefore should not be responsible for others

AS 21.80180 (5) should probably be amended to exclude municipalities, public utilities from "insolvent insurer". If this were done then the municipalities + utilities would neither participate in the Guaranty nor would they be protected by it.

Dick Block
Ak National
Insurance
Company

Note that your work draft excludes the reciprocal from AS Section 21.80.180 (6) (A), (Who Must Pay an Assessment for an Insolvency) but does not exclude them from AS 21.80.180 (5) (A) (Who's Insolvency Must Be Protected By The Guarantee Association.) It is my position that the municipal reciprocal must be included as part of the Guarantee Association both as to assessability and coverage, or excluded from the Guarantee Association both as to assessability and coverage. Because of the highly political nature of such a program and because I do not believe that the minimum criteria for forming a municipal reciprocal provides adequate protection for the long term growth and stability of such an organization, I would elect to have them not included in the Guarantee Association and exempt them from assessment.

ALASKA RURAL ELECTRIC COOPERATIVE ASSOCIATION, INC.

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April 15, 1983

House Labor and Commerce Committee
Alaska State Legislature
Pouch V
Juneau, Alaska 99811

Dear Committee Members:

The purpose of this letter is to explain our support for HB 308 and provide you with background information regarding the insurance program our association provides its members.

In 1979, the Alaska Rural Electric Cooperative Association applied to the Workers' Compensation Board for a self-insurance certificate for our member utilities. The certificate was issued effective January 1, 1980, and was renewed for a year effective January 1, 1981. Our program has been completely successful in meeting its obligations to the employees of its participants and in saving the participants substantial sums of money in insurance costs. Other associations, including the Municipal League, expressed interest in adopting group self-insurance programs modeled after ours.

At the beginning of 1982, our certificate was renewed for only a few months, and we were told that the Board was "reviewing the situation." In February 1982, Ms. Jacqueline McClintock of the Department of Labor requested an Attorney General's opinion regarding the legal status of group self-insurance programs in Alaska. In April, the Attorney General's opinion declared that since group self-insurance is not specifically mentioned in the Alaska statutes and it is in some other jurisdictions, it can be interpreted that group self-insurance is not authorized in this state.

Based on this opinion from the Attorney General, the Workers' Compensation Board terminated our certificate effective September 30, 1982. We appealed this action to the Superior Court, and we were successful in obtaining a stay of the Board action pending appeal. At the present time we are self-insured as a group by order of the Superior Court.

In principle, what our program does, is to buy a group insurance policy with a large deductible, and the deductible amount is shared within the group. Our retained risk on worker's compensation claims is $200,000 per occurrence. Above that level, we are insured by an excess insurance company. Corroon & Black/Dawson & Company is our broker and has been since the beginning of our program. Each year they calculate what the commercial insurance premium would be for each of our members, including the individual experience modification for each member. Our Board of Directors then determines what discount, if any, will be allowed to the participants for that year. Discounts in our program have been: 1980-0, 1981-10%, 1982-15%, 1983-15%.

We have an active safety program for our members which is paid for as a cost of our self-insurance program. Claims are administered on a professional basis for us by Scott Wetzel Services. After paying expenses and claims (including reserves for claims not yet paid), we have finished each year with a substantial surplus which is held in trust for our members. This money is retained in the program for a few years in order to make sure we have an adequate reserve on hand, but these savings will be paid back to our members. The ultimate beneficiaries of our program are the electric consumers.

We must have a legislative resolution of our uncertain status this year. We began this session by seeking legislation to specifically authorize group self-insurance. This proposal was vigorously opposed by portions of the insurance industry. The Senate Labor and Commerce Committee fashioned a compromise which was later introduced as HB 308.

The compromise basically provides:

(1) We will give up our status as a self-insured group and become a reciprocal insurer. This will require us to establish and maintain reserves of $1,125,000 and place us under regulation of the Division of Insurance.

(2) The reciprocal insurer statutes would be amended to make it possible for us to qualify as a reciprocal, and reciprocals would be relieved of inappropriate cost factors to which they are now subjected.

Section 1 exempts reciprocals from participating in the assigned risk pool. By its very nature a reciprocal is a mutual enterprise which only serves its members. It is inappropriate that reciprocals should be forced to help provide insurance to the high risk businesses in other industries.

Sections 2 and 4 deal only with reciprocals established by municipalities, so I will make no comment on them.

Section 3 reduces the number of participants required to establish a reciprocal from 25 to 2. This is especially important to us because there are only 14 electric cooperatives in Alaska.

Sections 5 and 6 exempt assessable reciprocals organized by municipalities or public utilities from participation in the insurance company guarantee fund. The purpose of the fund is to protect policy holders against loss in case of financial failure by an insurance company. The financial responsibility of an assessable reciprocal is guaranteed by its participants.

The fund could only be called upon to pay the claims for such a reciprocal in the event of bankruptcy of all of its participants. Section 5 exempts these reciprocals from the "benefits" of the fund, and Section 6 exempts them from the costs of the fund.

We think this is a reasonable compromise, and we give it our full support. Please give this bill a "do pass" recommendation and help get it enacted.

The only change we recommend is the correction of a printing error on page 2, line 15. Only the comma should be underlined, not the word Alaska.

Sincerely,

Dave Hutchens

David Hutchens
Executive Director

HB-311

REACH POINT

HB-319 &
BASE WAGE;
BENEFITS
scheduled injury 35%
last two calendar years ÷ 100
@ 66 2/3 %
80 % SPENDABLE
BENEFITS COST
PAYROLL TAXES; SOCIAL SECURITY

(HB-308) RECIPRICAL INSURANCE COMPANY

1) BOND

2.) EXCUSED FROM PAYING GUARENTEES, ASSOCIATION
INSURANCE CODE

3 HOW MUCH CASH WOULD A MUNICIPALITY HAVE TO PUT UP TO BECOME SELF-INSURANCES

→ PAY CLAIMS TO ALL CLAIMENTS;
INSOLVENT - 3-M- ASSESSMENTS
TO OTHER COMPANIES

308
- EXEMPT FROM ASSESSMENT / GUARENTEE-
ASSOCIATION - LOOK TO TAX BASE

PUBLIC UTILITIES - EMPLOYERS
EXEMPTED FROM CHARGE

- CONTRIBUTIONS TO ASSIGNED RISK POOL
EXEMPTION FROM ASSIGNED RISK POOL

Introduced: 3/30/83
Referred: Labor & Commerce

IN THE HOUSE

BY THE LABOR AND COMMERCE COMMITTEE

HOUSE BILL NO. 308

IN THE LEGISLATURE OF THE STATE OF ALASKA

THIRTEENTH LEGISLATURE - FIRST SESSION

A BILL

For an Act entitled: "An Act relating to insurance."

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

* Section 1. AS 21.39.155(a) is amended to read:

(a) The director may require carriers, except a reciprocal insurer formed under AS 21.75, BY A GROUP OF MUNICIPALITIES as a condition of writing a line of insurance dealing with workers' compensation, to participate in an assigned risk pool if the director finds that mandatory carrier participation is in the public interest.

* Sec. 2. AS 21.75.050 is amended by adding a new subsection to read:

(c) A domestic reciprocal insurer formed under this chapter by two or more municipalities shall (1) comply with (a) of this section or post a bond for an amount equal to the capital that would be required of a domestic stock insurer writing the same lines of insurance for which the reciprocal insurer seeks to be authorized, and (2) maintain a surplus of $250,000 or a surplus sufficient to operate the reciprocal insurer for one year, whichever is greater.

* Sec. 3. AS 21.75.060(a) is amended to read:

(a) Two [TWENTY-FIVE] or more persons domiciled in this state may organize a domestic reciprocal insurer and make application to the director for a certificate of authority to transact insurance.

* Sec. 4. AS 21.75 is amended by adding a new section to read:

Sec. 21.75.340. DEFINITIONS. In this chapter "municipality" means a political subdivision incorporated under the laws of the state that is a home rule or general law city, a home rule or general law

borough, or a unified municipality.

* Sec. 5. AS 21.80.180(5) is amended to read:

(5) "insolvent insurer" means an insurer

(A) authorized to transact insurance in this state, except an assessable reciprocal insurer formed by municipalities ~~or public utilities~~, the Medical Indemnity Corporation of Alaska, and the Health Care Providers Joint Underwriting Association established under AS 21.88.010 - 21.88.900, either at the time the policy was issued or when the insured event occurred, and

(B) determined to be insolvent by a court of competent jurisdiction;

* Sec. 6. AS 21.80.180(6) is amended to read:

(6) "member insurer" means a person, except an assessable reciprocal insurer formed by municipalities or public utilities, the Medical Indemnity Corporation of Alaska, and the Health Care Providers Joint Underwriting Association established under AS 21.88.010 - 21.88.900, who

(A) writes any kind of insurance to which AS 21.80.010 - 21.80.190 apply under AS 21.80.020 including the exchange of reciprocal or inter-insurance contracts, and

(B) is licensed to transact insurance in this state;

Honorable Walt Furnace, Chairman
Labor and Commerce Committee
House of Representatives
Pouch V
Juneau, Alaska, 99811

Re: House Bill 308

Dear Representative Furnace,

It has come to my attention that there is some misunderstanding concerning how the workers' compensation assigned risk pool operates in this State, and particularly, how the operation differs from the operation of the automobile assigned risk plan.

The automobile assigned risk plan operates as a mechanism for assigning , in rotation, to all carriers writing automobile insurance, those risks which cannot obtain auto insurance in the voluntary market. The carrier that receives the assignment charges and keeps the premium due in respect of that policy and pays the claims arising out of that policy. The carrier to which that risk is assigned lives with the fortunes of the particular risks assigned to it.

On the other hand, the workers' compensation assigned risk pool operates as a separate insuring facility that takes the premium from all risks using the facility and pays all claims arising out of those risks. The facility is operated by the National Council on Compensation Insurance, an insurance industry funded and managed rating and statistical bureau. The day to day handling of the administrative functions, such as policy issuance, claim handling, audit, collection, etc. is handled by some of the carriers in this state on a contract basis. The carriers doing that work have solicited the right to provide that service at a fee. No carrier is obligated to service workers' compensation assigned risk policies.

At the end of the year, the net difference between claims and expense on the one hand and premiums on the other, paid and received by the pool are charged or paid pro-rata to all insurers writing workers' compensation in the State.

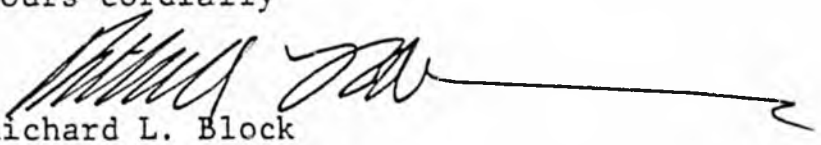
It can thus be seen that a reciprocal insurer seeking to provide its administrative facilities only to its members, is not, by virtue of participating in the workers' compensation assigned risk pool obligated to do more than pay its pro-rata share of the net results in the pool.

It remains our firm position that the reciprocal insurers writing workers' compensation should share in the net cost

of the pool in the same way as do all other carriers doing business in this state.

Thank you for the opportunity to clarify this point.

yours cordially



Richard L. Block

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April 21, 1983

The Honorable Walter Furnace
Chair, Labor & Commerce Committee
Alaska State House
Pouch V
Juneau, Alaska 99811

Re: HB 308

Dear Representative Furnace:

This letter is submitted on behalf of the American Insurance Association.

The basic justification for regulation of the insurance industry is to protect buyers of insurance and injured parties against the insolvency or incompetency of insurers, and to assure that benefits will be there when they are needed. Thus, capitalization requirements, guaranty associations and the like are provided as means of protecting those who rely on the insurance, and assigned risk pools are set up to be sure that the insurance is available to all who need it.

The costs of these protective measures are ultimately borne by the insurance-buying public, as they are passed along by insurers as costs of doing business.

When it is suggested that these safety measures should not apply to certain insurers, we have to ask, first whether the insureds and claimants directly involved are adequately protected; and second, whether the bill is fair to the other companies, and their customers, who pay for the guaranty association, assigned risk pool, etc.

The assigned risk pool for workers' compensation does not require that participating insurers take on individual insureds as their own insureds. There is a servicing carrier for the pool, and the residual cost of the pool (the amount not picked up in premium charges) is assessed to the

other insurers. I am not sure what, if any, assessments have been made in recent years; the director of insurance would know. Given that reciprocals are not asked to take assigned risk insureds as members, or even to service them, we must ask what social policy is being served by exempting one form of insurer from the contingent liability of the pool's expense.

The bill also exempts some reciprocals, those who issue assessable policies, from the Guaranty Association. (Sections 5 and 6). To the extent that financial requirements are lessened (as in Section 2 of the bill, relating to municipal reciprocals), they should probably not be included in the Guaranty Association, since that would unfairly burden other members who have had to guard against insolvency by meeting more stringent capitalization standards. Ironically, by recognizing that assessable reciprocals are somewhat better able to stand on their own than non-assessable reciprocals, the bill puts only those who are more likely to have solvency problems on the backs of the solvent insurers. Perphaps a separate solvency mechanism for self-insureds and any others, like the proposed municipal reciprocals, who have lesser financial standards should be considered.

It may be that the special relationship of the Legislature to the municipalities, and their ultimate guarantees of solvency by taxation or state appropriation, makes it possible to allow somewhat lower financial requirements for municipal reciprocals, as is done in this bill. We do not believe it is fair for them to be exempted as well from carrying the other normal burdens of insurance in this state, however, where the result would be to increase the burden on other insureds. We also suggest that, whatever arguments exist to create special exceptions for municipalities, they do not apply to commercial organizations, including public utilities. It is a little difficult to see where the line is next to be drawn - do certificated air carriers occupy the same kind of favored position?

The policies behind the imposition of these burdens are well thought out, and the mechanisms have generally worked well. Any exception to them should stand on strong

policy grounds and be fair to other insureds in this state, and we suggest that Sections 1, 5 and 6 of this bill do not meet those standards.

Thank you for the chance to comment on this bill.

Very truly yours,

M. T. Thomas

MTT/pl

CORROON & BLACK/DAWSON & CO., INC.

4220 "B" Street
Anchorage, Alaska 99503
907-562-2266 Telex: 25-109

TESTIMONY HOUSE BILL 308

The ARECA insurance program was formed to insure member REA's for General Liability, Auto Liability, Worker's Compensation and also to develop broader coverages and stabilize pricing of their insurance coverages.

The insurance cost is limited to reinsurance cost plus claims and loss prevention services. This eliminates the REA's having to purchase insurance from a carrier at cost plus insurance company profit.

Insurance Companies will lose profit and therefore will be opposed to formation of such Reciprocal insurance companies.

Since the reciprocal insurers will be non profit such as ARECA, the savings will ultimately be passed on to consumers in the form of lower and or more stable utility rates.

While we sympathize with the insurance carrier for loss of profit we feel the public interest is best served by allowing public utilities to form a Reciprocal insurance company

By participation in the Assigned Risk Pool, a small reciprocal such as ARECA would be reducing their surplus with no great benefit to the profit structure of standard carrier's. It would appear, therefore, to be an insignificant and minimal benefit for the large participating carrier but at the same time a significant and unnecessary exposure to the reciprocal insuror. We must remember, again, that in the case of ARECA which is comprised of only 13 non-profit REA's, the passage of House Bill 308 in its present form will provide cost savings to approximately 100,000 consumers.

You may hear testimony from insurance companies who want this bill changed to require participation in the workmens compensation assigned risk pool. I submit to the committee that their reasoning is strictly from a selfish nature, and some that come to mind are as follows:

Insurance companies would lose profits because the reciprocal insuror would write business at cost and insurance companies would not have a chance to write these various accounts in the open market.

To synopsis, Insurance companies will state that they believe reciprocal insurors should participate in the Assigned Risk Pool to primarily allow for reduction of their contribution for payment of losses.

This is totally without merit, and we submit the following facts in argument:

(A) The reciprocal insuror percentage would be so small, there would be no significant benefit for their participation.

(B) The statement is meant to create doubt and uncertainty as to a contingent liability of the potential reciprocal member so that the reciprocal will not become a reality.

(C) The end result of a reciprocal not being formed would place each member back into the open market, thus the insurance companies would be able to write business at a profit. This is their ultimate goal.

I urge passage of the bill in its current form.

Respectfully Submitted,

Wayne W. Brown, Jr.
Chief Operating Officer
Corroon & Black/Dawson & Co., Inc.

WB/cmp

Alaska National
INSURANCE COMPANY

A policy of service and protection

April 6, 1983

The Honorable Walt Furness, Representative
Chair House
Labor and Commerce Committee
Alaska State Senate
Pouch Y
Juneau, Alaska 99811

Re: HB #308 An Act relating to insurance.

Dear Mr. Furness:

This measure in its current form is very much opposed by us. On the other hand, the areas of our serious concern can be easily remedied by some amendments, in which case the general thrust of the bill would be acceptable. We, therefore, urge the Committee to adopt the recommended amendments if it intends to proceed with this legislation.

BACKGROUND

For reasons, some of which may be valid, the municipal league, or at least several municipalities, have felt it desirable to have statutory authority to establish a means of exchanging insurance contracts among themselves as an alternative to purchasing insurance from commercial insurance markets. At an early stage in the legislative process when the municipality's interest in establishing their own insurance program first became known to us, we suggested using the reciprocal insurer authority already granted in the Insurance Code. They have accepted this recommendation and House Bill 308 is the result. Unfortunately in the drafting, several specific exceptions from appropriate obligations imposed on insurers were carved out for the municipal reciprocals, and we believe such is wholly inappropriate.

It is the purpose of this letter to indicate these areas and to point out the responsibilities that every other insurer currently has and ought to have in connection with sustaining the workers' compensation system in this State which even a municipal reciprocal should be required to support.

ASSIGNED RISK POOL

[AS21.39.155 (a) - HB 308 Page 1, Line 9 -10]

The proposed amendment would exempt all reciprocals from having to participate in the contributions to the assigned risk pool.

Currently, all commercial insurers writing workers' compensation in the State of Alaska are required to pay an assessment to support the assigned risk pool. The amount of the assessment is a pro-rata charge necessary to cover the extent to which losses and expenses exceed the premium collected in the pool. Assessment based on workers' compensation writings by workers' compensation carriers is a logical way to support the pool since it spreads the cost for supporting the undesirable risks among all other employers in the State. Currently, any employer insured in a commercial insurer, including all municipalities which are insured by commercial insurers, are paying indirectly the assessment to support the assigned risk pool.

To the extent that a group of employers are exempted from having to pay their pro-rata share, the burden falls on a smaller population who must then pay a higher assessment. In effect, by exempting the municipal reciprocal from having to pay the assigned risk pool, all other employers are going to have to pay a slightly higher assessment.

We find it totally inequitable and without justification that the municipalities as employers be relieved of any obligation which any other employer is obligated to pay as part of the cost of hiring employees in this State.

Furthermore, because of the way the provision was drafted, all reciprocals are excluded. As drafted, this means that the Timber Insurance Exchange, which is a private commercial reciprocal insurer owned and operated by the loggers, would also be exempted from supporting the assigned risk pool. I believe this was not intended but is the result of an error in drafting.

RECOMMENDATION

Section 1 of the proposed bill be stricken in its entirety.

ALLOWABLE FUNDING

[Section 2 AS21.75.050 (c) - HB #308 Page 1, Line 15 - 21]

This provision allows only those reciprocals which are formed by two or more muncipalities to post a bond in lieu of otherwise admissible assets to capitalize the reciprocal insurer. Frankly, we believe that places the municipalities in the position of establishing an insurance company with little or none of the capital requirements imposed upon any other commercial insurer and is to that degree inequitable. On the other hand, we recognize that municipalities

have a certain financial capability because of their taxing authority which other commercial employers do not have, and therefore, though we would prefer not to see the statutes drafted with authority to post a bond in lieu of cash, will not object to the bill on that ground alone.

On the other hand, there are two amendments that need to be made to this section in order to limit the authority to the specific concessions intended by the legislature:

A. Arguably, a reciprocal could be formed by two or more municipalities and then insure non-municipalities as part of their business operations. Such ought not to be permitted, thus, I would urge the following recommended amendment; and

B. The bond should be permitted only for the initial capital and not for any of its reserves or surplus.

To meet these points, I would urge the following change in language:

> "A domestic reciprocal insurer formed under this chapter by and insuring only, two or more municipalities shall (1) comply with (a) of this section or post a bond for an amount equal to the capital that would be required of a domestic stock insurer writing the same lines of insurance for which the reciprocal insurer seeks to be authorized, and (2) maintain a surplus in admitted assets of $250,000 or a surplus sufficient to operate the reciprocal insurer for one year, whichever is greater." [Emphasis on language to be added.]

EXEMPTION OF PUBLIC UTILITIES FROM GUARANTEE ASSOCIATION.

[Section 5 AS21.80.180 (5) - Page 2, Line 6 and Section 6 AS21.80.180 (6) - Page 2, Line 14.]

These sections deal with the Guarantee Association, which is a facility established by Alaskan law to protect workers whose employer has acquired workers' compensation insurance from an insurance facility which ultimately becomes insolvent. The protection is provided through the Guarantee Association's ability to assess all other workers' compensation insurers doing business in the State pro-rata to their workers' compensation insurance writings to provide the funds necessary to pay the claims of the insolvent insurer.

The are two sections in that law referred to in the bill define:

A. Which insurers are protected by the Insolvency Fund and,

B. Which insurers must contribute to the assessment in the event another insurer becomes insolvent.

We pointed out to the Senate Labor and Commerce Committee that either the municipal insurer must be included both as a contributor to the assessment and be protected by the Guarantee Association or excluded from both of those. The Labor and Commerce Committee agreed and elected to exclude the municipality from both the assessability and coverage provisions of the Guarantee Association. We support their choice in this regard, however, in creating the exclusion from the application of the Guarantee Association for reciprocals formed by municipalities they added reciprocals formed by public utilities.

We absolutely oppose the exclusion of a reciprocal formed by any commercial enterprise from the obligation imposed upon any other commercial insurer doing business in the State. There is no reason why a business which is operating in this State owned by stockholders who have formed a company for profit, should be excluded from sharing in the obligations that all other corporations formed for profit are obligated to support. All the insured employers of any other commercial insurer indirectly contribute to the Guarantee Association assessment by virtue of that cost being loaded into their premium. It creates a lack of competitive parity when a reciprocal can be formed by a specially defined group and be excluded from having to share in that cost.

RECOMMENDATION

We would propose that the language "or public utilites" be stricken from both line 6 and line 14 of page 2 of the bill.

As a further matter of clarity, on line 5 and line 14 the language should be modified so that it reads as follows:

"Reciprocal insuer formed by and insuring only municipalities."

We would appreciate your favorable consideration of these recommendations.

Yours cordially,

Richard Block
President

RB/krl

STATE OF ALASKA

POUCH V
JUNEAU, ALASKA 99811
(907) 465-3892

HOUSE LABOR AND COMMERCE COMMITTEE

April 5, 1983

To: Representative Walt Furnace, Chairman
House Labor and Commerce Committee

From: Jefferson B. Barry
Professional Aide

Re: House Bill 308

Introductory Analysis

HB308 is the same bill as CSSB66(L&C). SB66 was introduced by the Governor and modified by the Senate Labor and Commerce Committee after public hearings and testimony. The bill is an attempt to allow municipalities and smaller employers to group together for the purpose of workers compensation and take advantage of the concept of "self-insurance". At the same time HB308 is designed to protect the workers and the public from any potential problems of inadequate reserves or improper management by the groups utilizing this approach to providing workers compensation. The present law allows for larger employer to become self-insured for the purpose of workers compensation if they meet the criteria established by the Workers Compensation Board. Smaller employers or a large employer and a number of smaller employers cannot band together and become "group self-insured" under the current law.

The concept of group self-insurance sounds good, but there are problems with it in practice. First, there is the

very real potential that one major accident could bankrupt a number of companies and that, even then, there would be inadequate resources to settle the claims of the injured worker(s) and/or their next of kin. Second, in industries like construction, which are highly competitive and require bidding against one another, if the group excluded any one individual company there is the potential claim of restraint of trade and price fixing. The group could use the workers compensation coverage as leverage against member companies for purposes not related to the insurance or even legal. Third, insurance companies object that group self-insurance allows individual companies to open an insurance company without being subject to any of the regulations, reporting, maintenance of proper reserves and excess insurance.

There is some merit in each of these arguments. The purpose of workers compensation is to provide absolute immunity to the employer from a civil suit for negligence by providing compensation (without requiring proof of negligence) to an employee injured on the job. HB308 attempts to balance the needs of the various interested parties and allow municipalities and smaller employers to take advantage of cost savings without disrupting the framework of the workers compensation system.

The major provision of HB308 is found in the change in Section 3 where the number of persons required to form a reciprocal insurance company becomes 2 instead of 25. The effect is to allow smaller employers to band together and form their own insurnace company for the purpose of workers compensation. The protection to the public, workers, and insurance industry is that they must become, in fact, a bona fide insurance company subject to the same laws, rules, and regulations that all other insurance companies must follow. This address the three objections cited above and would also provide for the reporting of accidents to national rating agencies so that proper statistics would be kept.

In addition, there is a trade off in Section 1 in that these reciprocals would be exempt from participating in the assigned risk pool. This is a compromise. The insurance companies feel that since these persons are in competition with them as an insurance company they should take some of the high risk or bad experience companies. On the other hand, the companies feel that they are not in the business to make a profit and do not hold themselves out to the general public. They believe that they are only trying to cut the cost of workers compensation and can best accomplish their goals by providing their own safety programs and administering their own claims.

The sections of HB308 which deal with municipalities recognize the constitutional provisions allowing for cooperation between local governments. It is also felt that, while they are required to comply with the provisions of being a reciprocal insurer, they can best meet their public responsibilities by posting a bond rather that the required reserves applicable to the private sector.

Finally, passage of HB308 would solve a court case that is in litigation over the issuance of a group self-insurance certificate by the Worker's Compensation Board. When it was pointed out to the Board that there was no authority at law for them to issue a group self-insurance certificate, they cancelled the one they had issued. The group has continued to operate as a group self-insured and the matter is now in court. HB308 would solve the underlying problem and give all parties an acceptable solution. There would be no group self-insured and the current group would immediately qualify (there has never been a question about, or problem with, the performance of the particular group-only the issuance of the certificate) as a reciprocal insurer so they could continue to provide the service.

STATE OF ALASKA
FISCAL NOTE

Revision Date , 1983

I. REQUEST

Bill/Resolution No.: HB 308
Title: relating to insurance
Sponsor: Labor & Commerce Comm.
Requestor: Labor & Commerce Comm.

II. FISCAL DETAIL

Agency Affected: Commerce & Ec. Dev.
Program Category Affected: Public Prot.
BRU, Program of Subprogram(s) Affected: Division of Insurance

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 83	FY 84	FY 85	FY 86	FY 87	FY 88
OPERATING		0	0	0	0	0
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 COMMODITIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC						
TOTAL OPERATING		0	0	0	0	0
CAPITAL		0	0	0	0	0
REVENUE		0	0	0	0	0

FUNDING: (Thousands of Dollars)

GENERAL FUND		0	0	0	0	0
FEDERAL FUNDS		0	0	0	0	0
OTHER (Specify Source)						

POSITIONS:

FULL-TIME		0	0	0	0	0
PART-TIME		0	0	0	0	0
TEMPORARY		0	0	0	0	0

III. SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

IV. ANALYSIS: Attach a separate page for any Analysis

Prepared By: Kenneth C. Moore, Director
Phone: 465-2515
Division: Insurance
Date: 4/6/83

Approved by Commissioner: Richard A. Lyon
Date: 4/8/83
Department: Commerce & Economic Development

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