

S B

268

STEVE FRANK  
DISTRICT K  
SEAT A

# Alaska State Legislature



## Senate

MEMBER  
Finance Committee  
Resources Committee  
Legislative Council  
Special Committee on Banking &  
Economic Development

VICE-CHAIR  
Community & Regional  
Affairs Committee

119 N. Cushman, Rm. 213  
Fairbanks, Alaska 99701

*While in Juneau*  
P.O. Box V

Juneau, Alaska 99811  
(907) 465-3709

Capitol Rm. 514

### MEMORANDUM

DATE: April 12, 1989

TO:  Senator Al Adams, Chairman  
Community and Regional Affairs Committee

FROM: Senator Steve Frank

SUBJECT: SB 268, An Act relating to municipal financing and municipal joint insurance arrangements; the Alaska Municipal Bond Bank Authority; and providing for an effective date.

SB 268, legislation developed and endorsed by the Alaska Municipal League will allow municipalities and municipal joint insurance associations to utilize debt financing to establish reserves to self-insure against liability when the cost of reinsurance is too high.

Recognizing that insurance costs were reaching levels beyond the reach of many individual municipalities, the Fourteenth Legislature passed legislation establishing joint insurance pools. The proposed bill will provide a back-up tool that municipalities and municipal joint insurance associations can use in instances where excessively high premiums predominate in the reinsurance market.

Drafts of the bill were reviewed by Eric Wohlforth, bond counsel for the Alaska Municipal League Joint Insurance Association, and John Havelock. Both attorneys have endorsed the proposed bill and are of the opinion that the proposed legislation, as phrased, is constitutional.

The Alaska Municipal League Joint Insurance Association has offered to have staff available to answer any questions the committee might have regarding provisions of the legislation.

# AML JIA

## Alaska Municipal League Joint Insurance Association, Inc.

217 Second Street, Suite 200

Juneau, Alaska 99801

(907) 586-3222

FAX: (907) 463-5480

April 12, 1989

The Honorable Steve Frank  
Alaska State Senate  
State of Alaska  
P. O. Box V  
Juneau, Alaska 99811-3100

Re: AN ACT RELATING TO MUNICIPAL FINANCING  
AND MUNICIPAL JOINT INSURANCE ARRANGEMENTS,  
THE ALASKA MUNICIPAL BANK

Dear Senator Frank:

In 1986 the Alaska Legislature, under AS 21.76, gave Alaskan municipalities, city and school borough school districts authority to form joint insurance arrangements as an alternative to commercial property, liability and workers compensation insurances. This legislation was enacted to enable municipalities to cope with the adverse effects of constantly fluctuating insurance markets. Availability and cost of needed insurance coverages has been subject to wild swings which place a strain on the municipal budgeting process. These wild swings are best illustrated by the enclosed study published recently by the Insurance Services offices. These severe swings in profitability have caused large rate increases and restrictions of coverage for municipalities countrywide.

In recent years, many states including, California, New York, Texas, Louisiana, Arkansas, Michigan, Washington, Maryland, South Dakota, Montana, Kentucky and Illinois have passed enabling legislation allowing their public entities, municipalities, school districts, special districts, etc, to use alternative methods of financing the costs of their insurance risks. Such capital market financing methods as Bonds, Certificates of Participation and Letters of Credit, are now being used to augment, supplement, or replace commercial insurance. These alternative financing methods are also being used in private industry. Self insurance, risk retention groups and risk purchase groups are indications of the continuing trend towards alternative approaches to insurance in the financing of risk (costs of loss). It is estimated that by 1990, 35 to 40 per cent of commercial organizations, both public and private, will be using such alternative risk finance techniques. In the public sector there are currently over 200 public pools such as ours. In addition, most major cities, counties and states are

self insured to some extent.

The purpose of this Act, then, is to allow municipalities and municipal joint insurance arrangements organized under AS 21.76 to utilize such alternative methods to finance the costs of establishing self funded reserves to cover their liabilities. Such funds would be used:

- \* to create capital surplus on a pre-loss basis to fund to aggregate retention levels for multiple losses requiring payments in excess of retention level.
- \* to fund large losses in excess of aggregate retentions on a post loss basis in lieu of assessments.
- \* to augment, supplement or replace reinsurance or excess insurance.

The amount of funds needed to accomplish these goals would be determined by actuaries certified by the American Academy of Actuaries. The Alaska Bond Bank or other lender would have right of approval. They could either accept or reject our proposal based on their underwriting criteria.

Currently, the AML Joint Insurance Association self funds the first \$250,000 of its Property and Liability losses. The first \$350,000 of Workers Compensation loss is also self funded. This self funding is accomplished on a pooled basis using a portion of the member's premium contributions. This pooled loss fund is actuarially determined by certified actuaries, and along with reinsurance and administrative costs is reflected in the rates charged our members. Our reinsurance includes both an occurrence limit and aggregate retention limits as required by AS 21.76.

The requested legislation would provide us with a "tool" to use in better managing the financing of our risks. It could be used to reduce or replace reinsurance when its cost is expensive and to supplement our program with coverages not offered by commercial insurers. The fund could also be used to provide coverages for our members at more favorable costs than is now provided by insurers. Municipalities in other states have used this approach to provide necessary funds at substantially less cost than those of insurers when the market is "hard." The cost of insurance premiums can be likened to the cost of debt service on a capital instrument. If the cost of debt service is less than the cost of conventional insurance then certainly debt financing serves a legitimate public purpose. Financing of its costs of risk also gives municipalities greater control of their own destinies. These alternative financing arrangements would give us flexibility and clout when dealing with insurers. Flexibility in that we would purchase

Honorable Steve Frank  
April 12, 1989

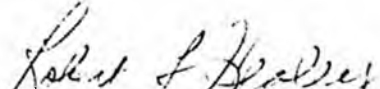
Page three

reinsurance in greater amounts when prices and coverage are The inexpensive, and lesser amounts when prices increase and coverage decreases. The clout comes from reinsurers knowing that we have an alternative to purchasing our coverage from them.

In summary, the requested legislation would give Alaskan municipalities and the AML Joint Insurance Association greater protection against the cyclical swings of the insurance industry. It would enable us to increase our financial strength while broadening our coverages and would give us a stronger bargaining position with reinsurers.

Your support is earnestly requested and will be deeply appreciated.

Sincerely,

  
Robert F. Healey, CPCU, ARM, ALCM  
Administrator

Enclosure

Copies to: Phil Younker, Chairman, Board of Trustees, AML/JIA  
Members, Board of Trustees, AML/JIA

## CURRENT PARTICIPATING MEMBERS OF THE AML/JIA

PARTICIPANTS	AUTHORIZED REPRESENTATIVES	RISK MANAGERS
Akutan	Jacch Stephin, Mayor	Erika Tritremmel, Administrator
Angoon	Cynthia Paul, City Clerk	Cynthia Paul, City Clerk
Barrow	Eben Hopson, Jr., Mayor	Eben Hopson, Jr., Mayor
Chuathbaluk	Terry Hoeflerle, City Manager	Terry Hoeflerle, City Manager
Cordova	Jack Ferrence, Finance Director	Jack Ferrence, Finance Director
Craig	Dave Palmer, Administrator	Dave Palmer, Administrator
Dillingham	Lyle Larson, City Manager	Lyle Larson, City Manager
Eagle	Jean Boone, City Clerk/Treasurer	Oscar Ingold
Elim	Luther Nagaruk, City Clerk	Luther Nagaruk, City Clerk
Emmonak	John Alder, City Manager	John Alder, City Manager
Golovin	Thomas Punguk, Mayor	Thomas Punguk, Mayor
Hooper Bay	Susie DeGrace, Administrative Assistant	Susie DeGrace
Huslia	Elsie Vent, Administrator	Elsie Vent, Administrator
King Cove	Wayne Marshall, City Manager	Wayne Marshall, City Manager
Kotlik	Peter F. Elachik, Sr.	Peter F. Elachik, Sr.
Kotzebue	Allen Jessup, Finance Director	Allen Jessup, Finance Director
Mountain Village	Joyce A. Brown, City Clerk	Robert H. Hall, VPSO
Nenana	Steve Bainbridge, City Manager	Steve Bainbridge, City Manager
Nikolai	Roger Jenkins, City Manager	Roger Jenkins, City Manager
Nome	Polly Prchal, City Manager	Polly Prchal, City Manager
Nunapitchuk	Eli J. Wassillie, Administrator	Eli J. Wassillie, Administrator
Ouzinkie	Debra Garner, City Clerk	Debra Garner, City Clerk
Palmer	David L. Soulak, City Manager	David L. Soulak, City Manager
Petersburg	Patricia Curtiss, Acting City Manager	Patricia Curtiss, City Clerk
Port Lions	David Wakefield, City Clerk	David Wakefield, City Clerk
Quinhagak	Larry Strunk, Administrator	Larry Strunk, Administrator
St. Mary's	Francis Thompson, Administrator	Francis Thompson, Administrator
Sand Point	Bob Juettner, Administrator	Bob Juettner, Administrator
Seward	Max Royle, City Manager	Max Royle, City Manager
Shishmaref	Morris Klyutelluk, Administrator	Morris Klyutelluk, Administrator
Skagway	Tom Healy, City Manager	Tom Healy, City Manager
Soldotna	Richard Underkoller, City Manager	Richard Underkoller, City Manager
Tenakee Springs	Janice Eagle, City Clerk	Janice Eagle, City Clerk
Thorne Bay	Ruth Anne Taylor	Ruth Anne Taylor
Unalakleet	Steve Kniseley, Administrator	Steve Kniseley, Administrator
Wainwright	Frances Hopson, Mayor	Frances Hopson, Mayor
Whittier	Cecil DePedro, Finance Director	Cecil DePedro, Finance Director

November 7, 1988

# AML JIA

Alaska Municipal League Joint Insurance Association, Inc.

217 Second Street, Suite 200

Juneau, Alaska 99801

(907) 586-3222

FAX: (907) 463-5480

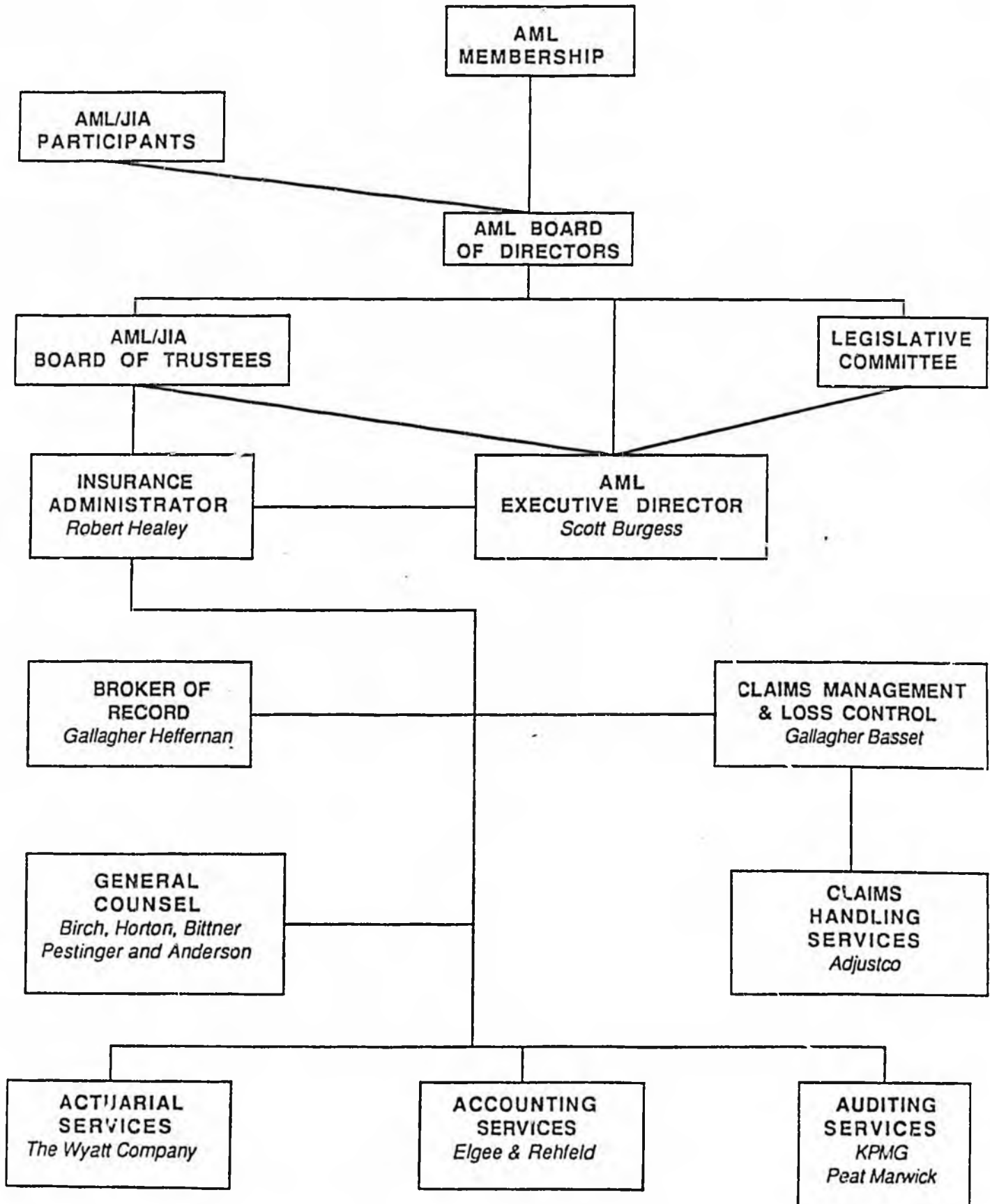
April 12, 1989

## AML/JIA ACTIVE PROSPECTS

Aleutians East Borough  
Atka  
Atkasuk  
Brevig Mission  
Haines  
Houston  
Homer  
Koyukuk  
Hughes  
Kake  
Ketchikan Gateway Borough  
Kenai  
Kenai Peninsula Borough  
Mat-Su Borough  
Napakiak  
New Halen  
Northwest Arctic Borough  
Nightmute  
Nondalton  
Old Harbor  
Pelican  
Pilot Station  
Point Hope  
St. Michaels  
Shaktoolik  
Sitka  
Unalaska  
Upper Kalskag  
Wasilla

ALASKA MUNICIPAL LEAGUE  
JOINT INSURANCE ASSOCIATION, INC.

ORGANIZATION CHART



# Summary Of Coverages And Limits Of Liability

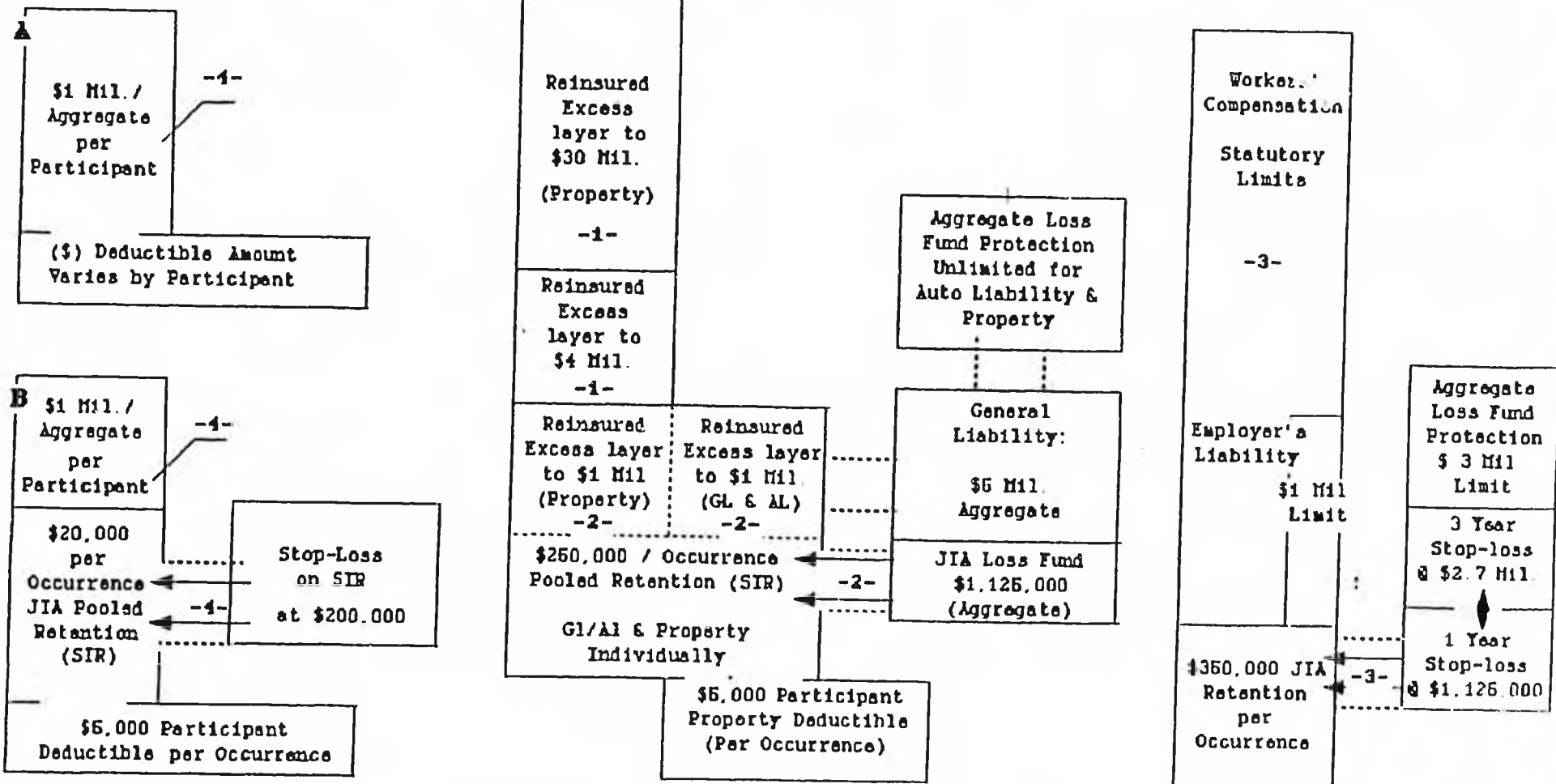
(AML-JIA)

FY 1989 Structure

**A - PUBLIC OFFICIALS and  
B - POLICE PROFESSIONAL  
LIABILITY**

**GENERAL & AUTOMOBILE LIABILITY  
and PROPERTY**

**WORKERS' COMPENSATION &  
EMPLOYER'S LIABILITY**



-1-, -2-, -3-, -4- References Specific To Carriers  
(Refer To Section On "Reinsurance & Excess Insurance Coverages" Detail)

THIRTY THREE & ONE-HALF YEAR STUDY  
ALL STOCK PROPERTY/CASUALTY COMPANIES IN U.S.A.

(UNDERWRITING PROFIT/LOSS IN MILLIONS)

Derived from data in: "BEST'S INSURANCE MANAGEMENT REPORTS" of A.M. BEST CO.

	PLUS (+)		MINUS (-)		Billions
	\$17-999 Millions	\$1-99 Millions	\$1-99 Millions	\$17-999 Millions	
1953	335				
1954	387				
1955	258				
1956				134	
1957				358	
1958		87			
1959		73			
1960		70			
1961		35			
1962		9			
1963				210	
1964				341	
1965				419	
1966		109			
1967		27			
1968				186	
1969				383	
1970				143	
1971		854			
1972		919			
1973		219			
1974				1,763	
1975				2,899	
1976				1,399	
1977		793			
1978	1,284				
1979				1,000	
1980				2,770	
1981				4,573	
1982				8,440	
1983				11,091	
1984				19,371	
1985				22,567	
1986				13,844	
1987-1/2				3,272	
1988				?	
1989				?	

STEVE FRANK  
DISTRICT K  
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119 N. Cushman, Rm. 213  
Fairbanks, Alaska 99701

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# Alaska State Legislature



## Senate

MEMBER  
Finance Committee  
Resources Committee  
Legislative Council  
Special Committee on Banking &  
Economic Development

VICE-CHAIR  
Community & Regional  
Affairs Committee

April 12, 1989

RE: Joint Insurance Association  
Debt Financing

attached letters:

March 24, 1989	John Havelock
March 24, 1989	Eric Wohlforth
February 15, 1989	Mike Ford
January 31, 1989	Jim Baldwin

WOHLFORTH, ARGETSINGER, JOHNSON & BRECHT

PETER ARGETSINGER  
 JULIUS J. BRECHT  
 ROBERT M. JOHNSON  
 THOMAS F. KLINNER  
 ROGER A. LUBOVICH\*\*  
 BRADLEY E. MEYER  
 DANIEL PATRICK O'ERNEY  
 JAMES A. SARAFIN  
 JAMES R. ZENDER  
 KENNETH E. VASSAR  
 ERIC E. WOHLFORTH

OF COUNSEL  
 ROGER O. CONNOR  
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JUNEAU  
 GRUENING & SPITZFADEN  
 217 SECOND STREET  
 JUNEAU, ALASKA 99801  
 (907) 886-8110 TELECOPY (907) 886-8088

March 24, 1989

The Honorable Steve Frank  
 Member, House of Representatives  
 State of Alaska Legislature  
 P.O. Box V  
 Juneau, Alaska 99811

Dear Representative Frank:

I have been asked by the Alaska Municipal League to give you my opinion as to the constitutionality of the proposed draft legislative bill relating to municipal insurance arrangements. This letter will refer to the work draft of that bill dated 02/20/89 with amendments suggested by my letter of February 28, 1989 to Robert Healy.

In my opinion, the draft legislative bill with the changes indicated in my letter of February 28, 1989 would if enacted constitute a valid legislative enactment. Further, in my opinion such a legislative bill if enacted would not be in violation of any provision of the Alaska State Constitution. Specifically, the apprehension that indebtedness might be authorized pursuant to the legislative enactment which would violate the Alaska State Constitution does not make the enactment unconstitutional. We would assume that action be taken pursuant to the legislative authority which is constitutional at the local government level. I suggested that the particular means of authorizing constitutionally permitted indebtedness be specified in the bill if it was deemed to be the only means that was permitted under our Constitution. This suggestion which I had hoped would satisfy the apprehension on the bill did not find favor.

Very truly yours,

*Eric E. Wohlforth*

Eric E. Wohlforth

LAW OFFICES  
JOHN E. HAVELOCK  
725 WEST 16TH AVENUE  
ANCHORAGE ALASKA 99501

(907) 276-1816

March 24, 1989

Representative Steve Frank  
119 N. Cushman, Suite 211  
Fairbanks, Alaska 99701  
Fax Number 458-3346

Dear Representative Frank,

Alaska's smaller towns and villages need affordable insurance. The only way they can get it is through systems like the nonprofit, Municipal League JIA, creating their own insurance pool arrangement. The pool needs the backing of a capital reserve. I am pleased to hear that you will be a principal backer of legislation allowing the creation of the fund through the Bond Bank.

I have reviewed draft legislation on this subject which is before you. As an attorney formerly specializing in bond work and now devoting much of my time to constitutional law, I believe the proposed legislation is constitutional.

I realize that an attorney with the Attorney Generals Office has voiced concerns on this subject. To a degree, I share his concern. However, the distinction must be made between "facial" constitutionality and constitutionality "in execution".

This distinction might be illustrated better by a bill to allow health officials to conduct searches. On its face, such a bill is not unconstitutional though it signals many constitutional issues. The administrative practices which determine when, how, and by whom such searches are conducted may well be unconstitutional but such issues are not ripe until the plan of execution is established.

There are many issues to be addressed beyond the legislation itself, in determining in how this bond fund should be created and administered. Mr. Wohlforth and other draftsmen of this bill (which is similar to legislation adopted in other jurisdictions on this subject and which have similar constitutional restrictions) have wisely chosen in this draft to leave open specific choices in execution until a more detailed exploration of interrelated marketing and legal strategies is undertaken with this legislation in place.

Unlike some other legislations, this statute is neither mandatory nor automatic but requires specific implementation, always under the eye of cautious attorneys.

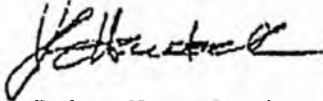
In the extreme case...

Representative Steve Frank  
March 24, 1989  
Page 2

counsel require that a test case be brought to test the legality of a particular strategy. Some years ago I represented the taxpayers in such a case on the earthquake mortgage relief bonds, which paved the way for that successful program.

Thus, while there are many constitutional pitfalls to be avoided in execution, the legislation, as now phrased, is not unconstitutional on its face and should not be tabled or otherwise defeated on constitutional grounds. I urge the legislature to adopt the bill so we can get on with the plan.

Sincerely,



John Havelock

cc: Alaska Municipal League  
Eric Wolforth

STATE OF ALASKA  
THE LEGISLATURE

POUCHY STATE CAPITOL  
JUNEAU ALASKA 99811  
907 465 3800

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

February 15, 1989

SUBJECT: Joint insurance arrangements  
(Work Order No. 6-0814)

TO: Senator Steve Frank  
Attn: Paul Pesika

FROM: Michael F. Ford *M.F.*  
Legislative Counsel

You have asked for our review of legislation to allow municipalities involved in joint insurance arrangements to finance debt through the Alaska Municipal Bond Bank. As explained in this memo, it is our opinion that the legislation would violate Article IX, section 9, of the Alaska Constitution.

Under Article IX, section 9, municipalities are prohibited from contracting debt, unless the debt is authorized by the governing body for capital improvements and ratified by the voters. A "debt" in the context of this constitutional limitation, means an obligation secured by the full faith and credit of the municipality; it does not include an obligation payable from funds on hand or current revenue. 81A C.J.S. §§219,220. The proposed legislation would authorize a contractual pledge of money by a municipality through a joint insurance arrangement. This pledge of money is the type of "debt" that is prohibited by Article IX, section 9, unless the debt is for a capital improvement and is ratified by the voters. The use of notes, certificates of participation, or bonds to establish insurance reserves would clearly not constitute a "capital improvement." See City of Juneau v. Hixson, 373 P.2d 743 (Alaska 1962).

Under Sec. 21.76.120(c) of the proposed legislation, the debt incurred would "not be a general obligation of a municipality." This language is clearly an attempt to avoid the prohibition against debt contained in Article IX, section 9. I do not think that this language will effectly remove the constitutional problem. If a court considered this issue,

Senator Steve Frank  
Page 2  
February 15, 1989

it would certainly look at the substance of the pledge. Unless the pledge is limited to current revenues, the pledge amounts to creation of a prohibited obligation on future revenues of the municipal treasury. This same section also provides that a pledge may "not include revenues derived from taxes." Again this is an effort to avoid creating the kind of "debt" prohibited by the constitution. However the debt will still be payable from whatever other general revenues are available, probably state funding. So, by eliminating tax revenues in securing the pledge, the state may be faced with an increased "moral obligation" to make payments on these bonds as a practical matter. This is precisely the kind of future obligation that Article IX, section 9 was designed to avoid.

I should also mention that there is an exception to Article IX, section 9, contained in Article IX, section 11. But this exception does not apply to the suggested legislation as I interpret it. The only bonds mentioned in this proposal are those issued by the Alaska Municipal Bond Bank. The exception would not apply to debt undertaken by a municipality, to repay revenue bonds issued by the Alaska Municipal Bond Bank.

For the above reasons, it is our opinion that a municipality could not finance it's joint insurance arrangement in this manner, without serious risk of violating the state constitution. Because bond financing is a specialized area of the law it would be wise to have bond counsel review this proposal before introducing legislation on the subject. This kind of financing arrangement may also create marketing or other practical bonding problems that bond counsel could provide advice on.

MFF:kb  
WKK2/007

STATE OF ALASKA

STEVE COWPER, GOVERNOR

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

REPLY TO:

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SUITE 200  
ANCHORAGE, ALASKA 99501-1994  
PHONE: (907) 276-3550

1st NATIONAL CENTER  
100 CUSHMAN ST.  
SUITE 400  
FAIRBANKS, ALASKA 99701-4679

January 31, 1989

P.O. BOX K—STATE CAPITOL  
JUNEAU, ALASKA 99811-0300  
PHONE: (907) 465-3600

Hon. Ronald L. Larson  
Alaska State Legislature  
P.O. Box V  
Juneau, AK 99811

Re: Debt financing for municipal  
joint insurance pool

Dear Representative Larson:

At the request of Jay Hogan of your staff, I have reviewed a memorandum dated February 12, 1988 of the Alaska Municipal League relating to "debt financing for municipal liability exposures." I have also reviewed a draft bill dated January 24, 1989 attached to the memorandum. You ask our opinion whether it would be lawful under art. IX of the Alaska Constitution for an association of municipalities to finance an insurance pool through the issuance of revenue bonds. I believe that it is possible to finance an insurance enterprise through the issuance of revenue bonds. Of course, my opinion is conditioned on the financial feasibility of the enterprise and possible federal tax consequences which would affect the marketability of the bonds.

It must be made clear at the outset that we are not giving an opinion concerning the adequacy of the draft bill to accomplish the purpose of the municipal league. We believe that providing insurance coverage for municipal activities is a public purpose for which municipal funds may be expended. Under art. IX, sec. 11 of the Alaska Constitution, the prohibition against incurring debt does not apply to a public enterprise financed solely by revenues generated by the enterprise. The provision of insurance to an association of municipalities probably qualifies as an enterprise under sec. 11. Presently, the municipalities are presumably purchasing insurance from private carriers and we all know that they are not charitable institutions. Insurance premiums paid by municipalities would serve as the source of rev-

Hon. Ronald L. Larson  
Alaska State Legislature  
Re: Debt financing, municipal joint ins.

January 31, 1989  
Page #2

enue to support the issuance of revenue bonds. These periodic premiums could be pledged by the public corporation operating the insurance enterprise to secure the repayment of the bonds.

Subject to authorization being granted by law, the Municipal Bond Bank Authority could operate the enterprise or it could be authorized to spin off a subsidiary public corporation for this purpose. It is also possible for municipalities to form an entity by cooperative agreement to jointly exercise the implied power to insure against risks without using the Municipal Bond Bank Authority. See Alaska Const. art. X, sec. 13 and AS 36.30.700 -- 36.30.790. However, it may be desirable to use the authority as the conduit for the financing because it is recognized by potential investors and, by virtue of that recognition, enjoys a favorable bond rating. Section 13 also allows cooperative agreements between municipalities and state agencies.

I have reviewed the memorandum dated January 30 prepared by legislative counsel on this matter and must respectfully disagree with his conclusions. Legislative counsel argues that a municipality would be barred from this financing technique because the municipality is not financing capital improvements. In support of his conclusion, counsel cites City of Juneau v. Hixson, 373 P.2d 743 (Alaska 1962). This financing arrangement could be distinguished from the method used in Hixson if the premiums paid by the municipalities are subject to annual appropriation. For this financing to work, there would need to be agreements between each municipality and the financing entity in which the payment of premiums is conditioned on the adoption of municipal appropriations. It is also likely that each municipality would need to acknowledge a moral obligation to make premium payments until the bonded indebtedness is retired. Because the debt incurred under this proposal is not for capital improvements, a municipality cannot unconditionally pledge general tax revenues. However, we believe there is no problem making premium payments from tax revenues generated by a municipality if, as explained above, the governing body of the municipality retains the discretion to appropriate amounts to pay the premiums.

I agree with legislative counsel that the committee should seek the advice of a qualified bond counsel before this bill is prepared for introduction. For example, without the concurrence of bond counsel, I would be hesitant to recommend that the bill allow the issuing entity to use negotiable or nonnegotiable instruments or certificates of participation.

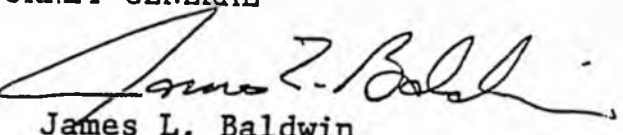
Hon. Ronald L. Larson  
Alaska State Legislature  
Re: Debt financing, municipal joint ins.

January 31, 1989  
Page #3

I hope this memorandum will serve your purposes.

Sincerely yours,

GRACE BERG SCHAIBLE  
ATTORNEY GENERAL

By:   
James L. Baldwin  
Assistant Attorney General

JLB/pjg

cc: Michael Ford  
Legislative Affairs Agency

Arthur H. Peterson  
Department of Law