

HB

223

A M E N D M E N T

OFFERED IN THE HOUSE

BY REPRESENTATIVE IVAN

TO: HB 223

1 Page 1, line 13, after "basis.":

2 Insert "If the participating membership of a joint insurance arrangement includes
3 a nonprofit corporation, Native association, or Native village council, at least 60 percent
4 of the membership of the joint insurance arrangement must consist of municipalities,
5 city or borough school districts, or regional educational attendance areas."

FISCAL NOTE

STATE OF ALASKA
1995 LEGISLATIVE SESSION

BILL NO. HB 223

Revision Date: _____
 Title: Joint Insurance Arrangements
 Sponsor: Representative Ivan
 Requestor: _____

Department: Commerce and Economic Development
 BRU: Insurance
 Component: Operations
 COMPONENT SERIAL NO. _____ #354

Expenditures/Revenues

(Thousands of Dollars)

OPERATING EXPENDITURES	FY 96	FY 97	FY 98	FY 99	FY 00	FY 01
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES						
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FUND SOURCE

(Thousands of Dollars)

FUND SOURCE	FY 96	FY 97	FY 98	FY 99	FY 00	FY 01
1002 Federal Receipts						
1003 GF Match						
1004 General Fund						
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY 95) cost: \$ 0.0

POSITIONS

POSITIONS	FY 96	FY 97	FY 98	FY 99	FY 00	FY 01
FULL-TIME	0	0	0	0	0	0
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)
 No fiscal impact.

Prepared by: Joan Brown, Administrative Officer
 Division: Insurance
 Approved by Commissioner: William L. Hensley
 Agency: Commerce and Economic Development

Phone: 465-2597
 Date: 3/6/95
 Date: 3/7/95

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Representative Ivan M. Ivan

SPONSOR SUMMARY for HOUSE BILL 223

This bill is in response to the needs of quasi-governmental entities, such as Native tribal councils, port authorities and others, who either cannot obtain insurance or find the cost of insurance prohibitively expensive. House Bill 223 gives these entities an option to obtain affordable liability coverage that they currently do not have under current statute.

The current joint insurance statute limits participation to municipalities and their public corporations, school districts and REAA's. This bill expands the scope of pooling so that pools, either those in existence or additional pools, can serve the unmet needs of tribal councils and other quasi-governmental bodies. Those that would be eligible for coverage must perform at least two of the general municipal powers described under AS 29.35.101.

Sec. 21.76.010

AUTHORITY TO ESTABLISH JOINT INSURANCE ARRANGEMENTS.

(a) Municipalities and their public corporations, city and borough school districts, and regional educational attendance areas may enter into cooperative agreements with each other for the purpose of establishing, operating, or participating in joint insurance arrangements through which the participating members agree to pool contributions in order to either assume risks from losses to the participants on a group basis or purchase coverage for the participants on a group basis.

(b) A joint insurance arrangement may be for any kind of insurance defined by this title except for disability insurance, health insurance, life insurance, and title insurance.

(c) A joint insurance arrangement shall be considered an alternative or supplement to any other policy or contract of insurance authorized or required by law, including insurance under AS 21.75.

(d) For purposes of AS 23.30.075, a joint insurance arrangement is considered to be an association duly authorized to transact workers' compensation insurance in the state.

History -

(Sec. 1 ch 136 SLA 1986; am Sec. 3 ch 97 SLA 1992)

Amendment Notes -

The 1992 amendment, effective June 20, 1992, inserted "and their public corporations" in subsection (a).

Sec. 29.35.010

GENERAL POWERS.

All municipalities have the following general powers, subject to other provisions of law:

- (1) to establish and prescribe a salary for an elected or appointed municipal official or employee;
- (2) to combine two or more appointive or administrative offices;
- (3) to establish and prescribe the functions of a municipal department, office, or agency;
- (4) to require periodic and special reports from a municipal department to be submitted through the mayor;
- (5) to investigate an affair of the municipality and make inquiries into the conduct of a municipal department;
- (6) to levy a tax or special assessment, and impose a lien for its enforcement;
- (7) to enforce an ordinance and to prescribe a penalty for violation of an ordinance;
- (8) to acquire, manage, control, use, and dispose of real and personal property, whether the property is situated inside or outside the municipal boundaries; this power includes the power of a borough to expend, for any purpose authorized by law, money received from the disposal of land in a service area established under AS 29.35.450;
- (9) to expend money for a community purpose, facility, or service for the good of the municipality to the extent the municipality is otherwise authorized by law to exercise the power necessary to accomplish the purpose or provide the facility or service;
- (10) to regulate the operation and use of a municipal right-of-way, facility, or service;
- (11) to borrow money and issue evidences of indebtedness;
- (12) to acquire membership in an organization that promotes legislation for the good of the municipality;
- (13) to enter into an agreement, including an agreement for cooperative or joint administration of any function or power with a municipality, the state, or the United States;
- (14) to sue and be sued.

History -

(Sec. 10 ch 74 SLA 1985)

Decisions -

The rule of strict construction did not apply - to the mode adopted by the corporation to carry into effect powers expressly or plainly granted under a former, similar provision. The power having been granted, the municipal corporation had the power to exercise such power in any reasonable way it saw fit. *Femmer v. City of Juneau*, 9 Alaska 175 (1937),

aff'd, 97 F.2d 649 (9th Cir. 1938).

Taxing authority consistent with liberal construction requirements. - The broad grant of taxing authority, limited only by other provisions of law, is consistent with the second sentence of Alaska Const., art. X, Sec. 1, which requires that a "liberal construction shall be given to the powers of local government units." *Liberati v. Bristol Bay Borough*, 584 P.2d 1115 (Alaska 1978), decided under former, similar law.

Imposition of civil penalties. - The power of a municipality to impose a civil penalty for failure to timely file or pay sales taxes is granted primarily because Alaska Const., art. X, Sec. 1, requires that a liberal construction be given the powers of municipalities. *Bookey v. Kenai Peninsula Borough*, 618 P.2d 567 (Alaska 1980), decided under former, similar law.

There is no general prohibition against like municipal and state taxes. - *Liberati v. Bristol Bay Borough*, 584 P.2d 1115 (Alaska 1978), decided under former, similar law.

Collateral Refs -

56 Am. Jur. 2d, Municipal Corporations, Counties, and Other Political Subdivisions, Sec. 193-230.

Estoppel as to claim against municipality. 1 ALR2d 338.

Contributory negligence as defense in action by municipality. 1 ALR2d 827.

Granting or taking of lease by municipality as within authorization of purchase or acquisition thereof. 11 ALR2d 168.

Compromise of claim, power of city as to. 15 ALR2d 1359.

Liability of municipality owning public ball park for injuries by ball to person on nearby premises. 16 ALR2d 1458.

Death action against municipal corporation as subject to statute of limitations governing wrongful death actions or that governing actions against a municipality for injury to person or property. 53 ALR2d 1068.

Mandamus, liability of municipal corporation for damages to successful plaintiff or relator in. 73 ALR2d 903; 34 ALR4th 457.

Waiver of, or estoppel to rely upon, contractual limitation of time for bringing action against municipality or other political subdivision. 81 ALR2d 1039.

Pledging parking meter revenues as unlawful relinquishment of governmental power. 83 ALR2d 649.

Revocation, prior to execution of formal written contract, of vote for decision of public body awarding contract to bidder. 3 ALR3d 864.

Power of municipal corporation to submit to arbitration. 20 ALR3d 569.

Right of municipal corporation to recover back from contractor payments made under contract violating competitive bidding statute. 33 ALR3d 397.

Liability of municipality on quasi contract for value of property or work furnished without compliance with bidding requirements. 33 ALR3d 1164.

Power of eminent domain as between state and subdivision or agency thereof, or as between different subdivisions or agencies themselves. 35 ALR3d 1293.

Validity of "freezing" ordinances or statutes preventing prospective condemnee from improving, or otherwise changing, the condition of his property. 36 ALR3d 751.

Validity and construction of statute or ordinance providing for repair or destruction of residential building by public authorities at owner's expense. 43 ALR3d 916.

Right of governmental entity to maintain action for defamation. 45 ALR3d 1315.

Power of municipal corporation to lease or sublet property owned or leased by it. 47 ALR3d 19.

Recovery of exemplary or punitive damages from municipal corporation. 1 ALR4th 448.

Standing of local government, or agency thereof to bring suit under Civil Rights Act of 1871 (42 USCS Sec. 1983). 106 ALR Fed 586.

Supreme Court's views as to who is "person" subject to liability under civil rights statute (42 USCS Sec. 1983) providing private right of action for violation of federal rights. 105 L Ed 721.

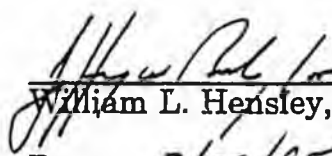
HB 223: Joint Insurance Arrangements

This legislation has no direct effect on the programs of the Division of Insurance. However, the division has concerns about this proposed legislation because it may expose both individuals and those entities listed in the bill to serious financial risks.

This legislation would allow nonprofit corporations, Native associations, and Native Village Councils to form Joint Insurance Arrangements under AS 21.76. Organizations formed under AS 21.76 are unregulated. The entities added to JIAs under this bill are frequently small and undercapitalized, meaning that potential claims could seriously jeopardize the entities' solvency, and/or result in the nonpayment of claims. For example, a workers' compensation loss can be very large and sometimes require payments to be made over a long period of time. Such a loss could cause a severe financial strain on not only the entity directly liable on the claim, but on all participants of the JIA.

AS 21.76 currently allows municipalities and school districts to establish JIAs. These entities, unlike those proposed to be added by this bill, have a tax base to cover potential claims and alleviate solvency concerns.

Finally, this legislation is arguably unnecessary because the entities to be added already have the ability to form a reciprocal insurer under AS 21.75. Any such reciprocal insurer would have to meet regulatory requirements, including those relating to solvency for the protection of potential claimants.



William L. Hensley, Commissioner
Date: 3/29/95



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March 2, 1995

The Honorable Representative Ivan Ivan
Alaska State House of Representatives
Alaska State Capitol
Juneau, Alaska 99811

Dear Representative Ivan:

Thank you for agreeing to sponsor HB223, an act relating to joint insurance arrangements. The AML/JIA offers the bill in response to the needs of quasi-governmental entities, such as Native tribal councils, port authorities, and others, many of which cannot obtain insurance, or for which insurance is prohibitively expensive. This bill will give these organizations an option — in some cases, their only option — to obtain affordable liability coverage.

The current joint insurance statute limits participation to municipalities and their public corporations, school districts, and REAAs. The AML/JIA is one of two pools that have formed to serve these public entities. The bill would expand the scope of pooling so that pools — either those in existence or additional pools — can serve the unmet needs of tribal councils and other quasi-governmental bodies. In offering these public organizations another option for their insurance coverage, this expansion of the statute would serve all of Alaska.

The AML/JIA does not receive State funds. It is a cooperative self-insurance arrangement that permits municipalities and schools to pool their resources to finance their losses. The AML/JIA was created in the mid-1980s, when many municipalities and school districts, particularly the small ones, found themselves unable to secure coverage commercially. The AML/JIA provides an important pooling option for these municipalities and schools, and wishes to be able to do the same for certain organizations that perform governmental functions but for which, under the current statute, pooling is not an option.

You will see that the proposed expansion is limited to nonprofit organizations, Native associations, or Native village councils that perform at least two of the general municipal powers described under AS29.35.101.

Senator John Torgerson has agreed to sponsor a companion bill in the other body, and is aware that you will be sponsoring a version in the house.

We look forward to working with you and Mr. Wright in your sponsorship of the legislation, and we thank you for your interest and assistance.

Sincerely,

Kevin Smith
Risk Control Manager

cc Senator John Torgerson
Steve Wells, Director of Risk Management, AML/JIA
Kevin Ritchie, Executive Director, AML

Resolution of the Alaska Municipal League

Resolution No. 95-22

**A RESOLUTION URGING THE PASSAGE OF LEGISLATION EXPANDING
THE TYPE OF ENTITIES WHICH MAY PARTICIPATE IN JOINT INSURANCE
ARRANGEMENTS**

WHEREAS, Alaska Statute 21.76 allows municipalities and their public corporations, city and borough school districts, and regional education attendance areas to enter into cooperative agreements with each other for the purpose of establishing, operating, or participating in joint insurance arrangements through which the participating members agree to pool contributions in order to either assume risks from losses to the participants on a group basis or purchase coverage for the participants on a group basis; and


WHEREAS some Alaska municipalities are dissolving and native associations and corporations and other non-profits are assuming quasi-governmental roles; and

WHEREAS there is a trend for municipalities to shift service delivery to not-for-profit entities such as port authorities, library associations, and other not-for-profit corporations performing governmental functions; and

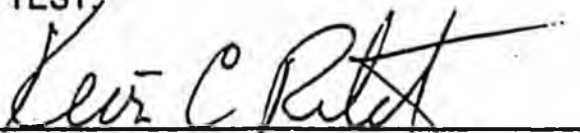
WHEREAS not-for-profits and native associations and corporations are finding it increasingly difficult and expensive to find commercial insurance for these exposures; and

WHEREAS, the pooling of risks, self-insurance management, joint purchase of insurance, claims administration, loss prevention and control, insurance defense and other related risk management services can assure significant long-term economic savings for members of a joint insurance arrangement due to the joint buying power of the members, the non-profit tax-exempt status of the Association, the pooling and investment of premiums paid, and risk management services provided for members;

NOW, THEREFORE, BE IT RESOLVED that the Alaska Municipal League urges the Alaska Legislature and the Governor to pass legislation expanding the type of entities which may participate in joint insurance arrangements.


John Torgerson, President

ATTEST:


Kevin C. Ritchie, Executive Director