

**HB**

**51**

**HFIN**

**FILE**



# FISCAL NOTE

STATE OF ALASKA  
2006 LEGISLATIVE SESSION

Fiscal Note Number: 1  
Bill Version: CSSSHB 51(L&C)  
(H) Publish Date: 3/20/06

Revision Date/Time (Note if correction): \_\_\_\_\_ Dept. Affected: Commerce  
Title Employer Assn. for RDU Insurance (116)  
Workers' Comp Insurance Component Insurance Operations  
Sponsor Meyer et al  
Requester Labor & Commerce Component No. 354

**Expenditures/Revenues** (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011	FY 2012
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
<b>TOTAL OPERATING</b>	.	.	.	.	.	.

<b>CAPITAL EXPENDITURES</b>						
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<b>CHANGE IN REVENUES ( )</b>						
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**FUND SOURCE** (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
<b>TOTAL</b>	.	.	.	.	.	.

Estimate of any current year (FY2006) cost: 0.0  
Mark this box (X) if funding for this bill is included in the Governor's FY 2007 budget proposal:

**POSITIONS**

Full-time						
Part-time						
Temporary						

**ANALYSIS:** (Attach a separate page if necessary)

This legislation modifies the qualifications required for workers' compensation self-insurance and permits employers in the same trade or industry to form an employer association for self-insured workers' compensation coverage.

The insurance premium level used as the basis for calculating premium tax will be reduced to the extent that groups elect to self-insure. This would reduce general fund revenue. The amount of fiscal impact is indeterminate since we are unable to ascertain the amount by which premium would be reduced and the related drop in premium tax.

Prepared by: Linda S. Hall, Director Phone 907.269.7900  
Division: Insurance Date/Time 2/9/06 3:35 PM  
Approved by: William C. Noll, Commissioner Date 2/9/2006  
Agency: Commerce, Community and Economic Development

# FISCAL NOTE

STATE OF ALASKA  
2006 LEGISLATIVE SESSION

Fiscal Note Number: \_\_\_\_\_  
Bill Version: HB051CSSS-DOLWD-WC-03-21-06  
( ) Publish Date: \_\_\_\_\_

Revision Date/Time (Note if correction): \_\_\_\_\_ Department: Labor & Workforce Development  
Title: Employer Assn for Workers' Comp Ins RDU: Workers' Compensation  
Sponsor: Representative Meyer Component: Workers' Compensation  
Requester: House Finance Component Number: 344

**Expenditures/Revenues** (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011	FY 2012
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

<b>CAPITAL EXPENDITURES</b>						
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<b>CHANGE IN REVENUES ( )</b>						
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**FUND SOURCE** (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
1157 Workers' Safety Account	0.0	0.0	0.0	0.0	0.0	0.0
<b>TOTAL</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

Estimate of any current year (FY2006) cost: None  
Mark this box (X) if funding for this bill is included in the Governor's FY 2007 budget proposal:

**POSITIONS**

Full-time						
Part-time						
Temporary						

**ANALYSIS:** (Attach a separate page if necessary)

The Committee substitute for HB 51 places regulatory oversight of the group self-insurance program in the Division of Insurance rather than the Workers' Compensation Division where it was placed in the original bill. With this change the legislation is not expected to have a financial impact on the Department of Labor and Workforce Development.

Prepared by: Paul F. Lisankie, Director Phone: 465-6059  
Division: Workers' Compensation Date/Time: 3/21/06 3:20 PM  
Approved by: Greg O'Clara, Commissioner Date: 3/21/2006  
Agency: Department of Labor and Workforce Development

# FISCAL NOTE

STATE OF ALASKA  
2006 LEGISLATIVE SESSION

Fiscal Note Number: 2  
Bill Version: CSSSHB 51(L&C)  
(H) Publish Date: 3/20/06

Revision Date/Time (Note if correction): \_\_\_\_\_ Department: Labor & Workforce Development  
Title: Employer Assn for Workers' Comp Ins RDU: Workers' Compensation  
Component: Workers' Compensation  
Sponsor: Representative Meyer  
Requester: House L&C Component Number: 344

**Expenditures/Revenues** (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011	FY 2012
Personal Services	89.7	89.7	89.7	89.7	89.7	89.7
Travel	9.7	9.7	9.7	9.7	9.7	9.7
Contractual	32.1	32.1	32.1	32.1	32.1	32.1
Supplies	14.0	2.0	2.0	2.0	2.0	2.0
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
<b>TOTAL OPERATING</b>	<b>145.5</b>	<b>133.5</b>	<b>133.5</b>	<b>133.5</b>	<b>133.5</b>	<b>133.5</b>

<b>CAPITAL EXPENDITURES</b>						
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<b>CHANGE IN REVENUES ( )</b>						
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**FUND SOURCE** (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
1157 Workers' Safety Account	145.5	133.5	133.5	133.5	133.5	133.5
<b>TOTAL</b>	<b>145.5</b>	<b>133.5</b>	<b>133.5</b>	<b>133.5</b>	<b>133.5</b>	<b>133.5</b>

Estimate of any current year (FY2006) cost: None  
Mark this box (X) if funding for this bill is included in the Governor's FY 2007 budget proposal:

**POSITIONS**

Full-time	1	1	1	1	1	1
Part-time						
Temporary						

**ANALYSIS:** (Attach a separate page if necessary)

(See Attached)

Prepared by: Paul F. Lisankie, Director Phone: 465-6059  
Division: Workers' Compensation Date/Time: 2/7/06 3:27 PM  
Approved by: Greg O'Clary, Commissioner Date: 2/7/2006  
Agency: Department of Labor and Workforce Development

FISCAL NOTE #2

STATE OF ALASKA  
2006 LEGISLATIVE SESSION

BILL VERSION: CSSSHB 51(L&C)

ANALYSIS: (continued)

This legislation would open the workers' compensation self-insurance program to an indeterminate number of trade associations. Any association in existence for at least five years, composed of at least five member employers engaging in a similar trade or industry and belonging to an Alaskan trade association, could seek to self-insure their workers' compensation liabilities. This expansion of the program (currently comprised of a limited number of large employers and governmental entities) would require an increased level of regulatory oversight. The Division would need to employ an Insurance Financial Examiner to develop and oversee the new regulatory system.

Personal Services: Insurance Financial Examiner II will be responsible for developing a program and monitoring self insured employers and entities. (\$89.7)

Travel: Funding of \$7.7 is necessary for the travel, per diem and hotel costs to enable the Insurance Financial Examiner to go on-site to verify the financial status of self-insured entities. In addition, travel funds of \$2.0 is requested to attend necessary training.

Contractual: Contractual services for the new position include lease costs (\$6.7); mail (\$3.0); departmental administrative support costs (\$11.1); interdepartment chargeback costs (\$5.3); copies, printing, etc (\$4.0) and training (\$2.0).

Commodities: Funding of \$14.0 for supplies for the new positions is required. (\$12.0 for one-time set-up costs and \$2.0 for ongoing costs)

*A. DeWitt 11-1-06*

24-LS0233C  
Bailey  
1/4/06

**CS FOR SPONSOR SUBSTITUTE FOR HOUSE BILL NO. 51( )**

**IN THE LEGISLATURE OF THE STATE OF ALASKA**

**TWENTY-FOURTH LEGISLATURE - SECOND SESSION**

*Am 6  
★ change  
page 15  
line 21  
Pg 5  
Am #5  
part 2*

BY

Offered:  
Referred:

Sponsor(s): REPRESENTATIVES MEYER, Holm, Ramras, Wilson, Neuman, Harris

**A BILL**

**FOR AN ACT ENTITLED**

1 "An Act relating to associations of self-insured employers for purposes of providing  
2 workers' compensation coverage and allowing employers who are members of the same  
3 trade to form associations for providing self-insurance for workers' compensation  
4 coverage; and providing for an effective date."

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

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

7 **Chapter 77. Associations of Self-insured Employers for Providing Workers'**  
8 **Compensation Coverage.**

9 **Sec. 21.77.010. Self-insurance certificates.** (a) The director may issue a self-  
10 insurance certificate to an association of employers if the association files an  
11 application for a certificate and demonstrates that

12 (1) the members of the association of employers have at least 100  
13 employees in the aggregate;

14 (2) the members of the association of employers have a tangible net

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1 worth of at least \$5,000,000 in the aggregate;

2 (3) the association of employers has paid the annual service fee  
3 assessed under AS 23.05.067;

4 (4) each member of the association of employers has a workplace  
5 safety rate reduction program in effect under AS 21.89.015;

6 (5) the association of employers has obtained excess insurance  
7 coverage in amounts and with coverage required by the director; and

8 (6) the association of employers has filed with the director an  
9 indemnity agreement in a form approved by the director jointly and severally binding  
10 each member of the association of employers to secure the payment of all  
11 compensation due to the members' employees under AS 23.30.

12 (b) An application for a self-insurance certificate must include

13 (1) the name of the association of employers;

14 (2) the address of the principal office of the association of employers  
15 and the location where the books and records of the association will be maintained;

16 (3) the date the association of employers was organized;

17 (4) the name and address of each member of the association of  
18 employers;

19 (5) the names of the initial members of the board of directors of the  
20 association of employers and the name of the association's initial administrator;

21 (6) a copy of agreements entered into with the administrator of the  
22 association of employers and a third-party administrator;

23 (7) a copy of the bylaws of the association of employers;

24 (8) a pro forma financial statement prepared by an independent  
25 certified public accountant in accordance with generally accepted accounting  
26 principles that shows the financial ability of the association of employers to pay all  
27 compensation due to its members' employees and their beneficiaries under AS 23.30;

28 (9) a compiled, reviewed, or audited financial statement prepared by an  
29 independent certified public accountant for each member of the association of  
30 employers or internal financial statements with at least three years of tax returns or  
31 evidence of the ability of the association or its members to provide a solvency bond

1 under AS 21.77.050(c);

2 (10) proof that each member of the association of employers will make  
3 the initial payment to the association required under AS 21.77.160 on a date specified  
4 by the director.

5 (c) Financial information relating to a member of an association of employers  
6 received by the director under this section is confidential and is not a public record.

7 (d) For purposes of this section, "association of employers" means a group of  
8 five or more employers who are

9 (1) merchants, craftsmen, or businesses in a similar trade or industry;  
10 and

11 (2) members of an Alaska trade association for that trade or industry;  
12 the Alaska trade association shall be organized under the laws of this state to promote  
13 the common interests of the trade or industry and shall have been in existence for at  
14 least five years.

15 **Sec. 21.77.020. Issuance of certificate of self-insurance.** (a) On determining  
16 that an association is qualified as an association of self-insured employers, the director  
17 may issue a certificate of self-insurance to the association and the association's  
18 administrator.

19 (b) A certificate of self-insurance must include, without limitation, the name  
20 of the association of self-insured employers, the name of each employer who the  
21 director determines is a member of the association at the time the certificate is issued,  
22 an identification number assigned to the association by the director, and the date the  
23 certificate was issued.

24 (c) A certificate of self-insurance is valid until it is withdrawn by the director  
25 or voluntarily terminated by the association.

26 (d) The director may not issue a certificate of self-insurance to an association  
27 that has had its certification as an association of self-insured employers involuntarily  
28 withdrawn by the director within two years immediately preceding the association's  
29 application.

30 (e) The director may not grant a request to cancel a certificate of self-  
31 insurance unless the association has insured or reinsured all incurred obligations with

1 an insurer authorized to do business in the state under an agreement filed with and  
2 approved by the director. The agreement must include coverage for actual claims,  
3 claims incurred but not reported, and expenses associated with those claims.

4 **Sec. 21.77.030. Effect of certificate.** (a) An association of self-insured  
5 employers directly assumes the responsibility for providing compensation due the  
6 employees of the members of the association and the employees' beneficiaries under  
7 AS 23.30.

8 (b) An association of self-insured employers is not required to pay premiums  
9 required of other employers under AS 23.30, but is relieved from other liability for  
10 personal injury to the same extent as other employers.

11 (c) An association of self-insured employers may act on behalf of or for the  
12 benefit of its members to provide for its members' workers' compensation obligations  
13 under AS 23.30. An association of self-insured employers shall have the rights and  
14 obligations of an employer under AS 23.30.

15 (d) The claims of employees and their beneficiaries resulting from injuries  
16 while in the employment of a member of an association of self-insured employers  
17 must be handled in the manner provided under AS 23.30, and the association is subject  
18 to regulations adopted by the Alaska Workers' Compensation Board.

19 **Sec. 21.77.040. Board of directors; members; duties; prohibited acts.** (a)  
20 An association of self-insured employers shall be operated by a board of directors  
21 consisting of at least five members elected by the members of the association for terms  
22 as set out in the bylaws of the association. At least two-thirds of the members of the  
23 board of directors shall be employees, officers, or directors of the members of the  
24 association. An association's administrator, third-party administrator, or an owner,  
25 officer, employee or other person affiliated with the association's administrator or  
26 third-party administrator may not serve as a member of the board of directors. A  
27 member of the board of directors must be a resident of this state or an officer of a  
28 corporation authorized to do business in this state.

29 (b) The board of directors of an association of self-insured employers shall

30 (1) ensure the prompt payment of compensation due under AS 23.30;

31 (2) take all actions necessary to protect the assets of the association;

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(3) employ full time an administrator to carry out the policies of the board of directors and perform the duties the board delegates to the administrator; an association's administrator may not perform the duties assigned to a third-party administrator;

(4) employ a third-party administrator to administer the claims or other obligations of the association during the period of the contract;

(5) engage the services of an independent certified public accountant to prepare the statement of financial condition required under AS 21.77.150; and

(6) maintain minutes of the meetings of the board and make the minutes available for inspection by the director.

(c) The board of directors of an association of self-insured employers may not

(1) extend credit to any member of the association for the payment of that member's annual assessment, except under a payment plan approved by the director;

(2) borrow money from the association or in the name of the association, except in the ordinary course of its business, without prior approval from the director.

**Sec. 21.77.050. Excess insurance, reinsurance contracts, surety, and solvency bonds.** (a) Except as otherwise provided in this section, an association of self-insured employers shall

(1) maintain a policy of specific and aggregate excess insurance or a reinsurance contract in a form and amount required by the director; excess insurance or a reinsurance contract must be written by an insurer approved by the director; nothing in this paragraph prohibits an association from purchasing secondary excess insurance or reinsurance contracts in addition to the excess insurance or reinsurance contract required under this paragraph;

(2) collect an annual assessment from each member of the association ~~in~~ an amount necessary to maintain the solvency of the association; ~~and~~

(3) except as provided in (4) of this subsection, deposit as security with the director a bond executed by the association as principal and issued by a licensed surety, payable to the State of Alaska, and conditioned on the payment of

1 compensation due to the members' employees under AS 23.30;

2 (4) in lieu of a bond, deposit with the director a like amount of lawful  
3 money of the United States or other form of security authorized by the director; if  
4 security is provided in the form of a savings certificate, certificate of deposit, or  
5 investment certificate, the certificate must state that the amount is unavailable for  
6 withdrawal except on order of the director.

7 (b) In addition to complying with the requirements of (a) of this section, an  
8 association of self-insured employers shall maintain a combined tangible net worth of  
9 all members in the association of at least \$5,000,000 or deposit with the director a  
10 solvency bond, in a form prescribed by the director, in an aggregate amount of at least  
11 \$5,000,000.

12 (c) The administrator of the association of self-insured employers shall deposit  
13 with the director a bond, in an amount determined by the director, executed by the  
14 association's administrator as principal, issued by a licensed surety, payable to the  
15 State of Alaska, and conditioned on the faithful performance of the administrator's  
16 duties.

17 (d) A third-party administrator providing claims services for the association of  
18 self-insured employers shall deposit with the director a bond, in an amount determined  
19 by the director, executed by the third-party administrator as principal, issued by a  
20 licensed surety, payable to the State of Alaska, and conditioned on the faithful  
21 performance of the third-party administrator's duties.

22 (e) The director may increase or decrease the amount of a bond or money  
23 required to be deposited under this section in accordance with statutory and regulatory  
24 requirements for loss reserves in casualty insurance. If the director requires an  
25 association of self-insured employers, the association's administrator, or the third-  
26 party administrator to increase its deposit, the director may specify the form of the  
27 additional security. The association, association's administrator, or third-party  
28 administrator shall provide the additional security within 60 days after receiving notice  
29 from the director.

30 (f) The security deposited under this section does not relieve an association of  
31 self-insured employers from responsibility for the administration of claims and

1 payment of compensation under AS 23.30.

2 **Sec. 21.77.060. Surety and solvency bonds.** A surety or bonding company  
3 may not furnish a bond or other form of security required under this chapter for an  
4 association of self-insured employers or the association's members unless the surety or  
5 bonding company is authorized to do business in the state.

6 **Sec. 21.77.070. Fiscal responsibilities.** (a) The board of directors of an  
7 association of self-insured employers is responsible for the money collected and  
8 disbursed by the association.

9 (b) The board of directors shall establish

10 (1) a claims account in a financial institution in this state that is  
11 approved by the director and that is federally insured; except as provided in (c) of this  
12 section, at least 65 percent of the annual assessments collected by the association from  
13 its members must be deposited in the claims account to pay claims, expenses related to  
14 those claims, costs associated with the association's policy of excess insurance or  
15 reinsurance contract, and assessments, payments, and penalties related to the second  
16 injury fund (AS 23.30.040);

17 (2) an administrative account in a financial institution in this state that  
18 is approved by the director and that is federally insured; the amount of annual  
19 assessments collected by the association not deposited in the claims account must be  
20 deposited in the administrative account to pay the administrative expenses and to  
21 support loss control and occupational safety programs of the association and the  
22 members.

23 (c) The director may authorize an association of self-insured employers to  
24 deposit less than 65 percent of the associations annual assessments in a claims account  
25 if the association presents evidence satisfactory to the director that more than 35  
26 percent of the association's annual assessments are needed to maintain programs for  
27 loss control and occupational safety.

28 (d) The board of directors may invest the money of the association of self-  
29 insured employers not needed to pay the obligations of the association under AS 23.30  
30 consistent with AS 21.21.

31 (e) The director shall review the accounts of an association of self-insured

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employers established under this section at the times necessary to ensure compliance with the provisions of this section.

**Sec. 21.77.080. Prohibited relationships.** (a) An administrator of an association of self-insured employers or an employee, officer, or director of an association's administrator may not be an employee, officer, or director of a third-party administrator employed by the association or have a direct or indirect financial interest in the third-party administrator.

(b) A third-party administrator or an employee, officer, or director of a third-party administrator may not be an employee, officer, or director of the association's administrator or have a direct or indirect financial interest in the association's administrator.

**Sec. 21.77.090. Termination and cancellation of membership in association; coverage following termination or cancellation.** (a) A member of an association of self-insured employers may terminate its membership at any time by submitting to the association's administrator a notice of intent to withdraw from the association at least 120 days before the effective date of withdrawal. The notice of intent to withdraw must include a statement indicating that the member has

- (1) been certified as a self-insured employer under AS 23.30.090;
- (2) become a member of another association of self-insured employers;

or

(3) become insured for liability under AS 23.30 by a private carrier authorized to do business in this state.

(b) The board of directors of an association of self-insured employers may cancel the membership of a member of the association in accordance with the bylaws of the association.

(c) At the expense of the member whose membership is terminated or cancelled, the association of self-insured employers shall maintain coverage for that member for 30 days after the notice is given under (a) of this section unless the association first receives notice from the association's administrator that the member has

- (1) been certified as a self-insured employer under AS 23.30.090;

1 (2) become a member of another association of self-insured employers;

2 or

3 (3) become insured for liability under AS 23.30 by a private carrier  
4 authorized to do business in this state.

5 **Sec. 21.77.100. Notification of additional members, termination or**  
6 **cancellation of membership, or change in information.** (a) An association of self-  
7 insured employers shall notify the director in writing within 30 days after a member  
8 withdraws from the association, a new member joins the association, or the board of  
9 directors of the association cancels a membership. In the case of a new member, the  
10 notice must include information that the new member is qualified under  
11 AS 21.77.010(a) and (b).

12 (b) An association of self-insured employers shall notify the director of any  
13 change in the information submitted in its application for a certificate of self-insurance  
14 or in the manner of its compliance with AS 21.77.050 within 30 days after the change.

15 **Sec. 21.77.110. Liability for compensation obligations of members.** An  
16 association of self-insured employers is liable for the payment of any compensation  
17 required to be paid by a member of the association under AS 23.30 during the period  
18 of membership. Insolvency or bankruptcy of a member does not relieve the association  
19 of liability for the payment of compensation.

20 **Sec. 21.77.120. Examination of books, records, accounts, and assets;**  
21 **payment of fees.** The director may examine the books, records, accounts, and assets  
22 of an association of self-insured employers as necessary to carry out the provisions of  
23 this chapter. The director may charge the association a reasonable fee for conducting  
24 the examination.

25 **Sec. 21.77.130. Director as resident agent of association.** The director is  
26 considered the resident agent to receive initial legal process authorized by law or court  
27 rule to be served on the association of self-insured employers for as long as the  
28 association is obligated to pay compensation under AS 23.30.

29 **Sec. 21.77.140. Merger of associations.** An association of self-insured  
30 employers may merge with another association of self-insured employers if the  
31 members of the merging associations are members of the same trade association, the

1 resulting association assumes in full all obligations of the merging associations, and  
2 the merger is approved by the director. The director may hold a hearing on a proposed  
3 merger on the motion of the director or at the request of a member of the merging  
4 associations.

5 **Sec. 21.77.150. Statement of financial condition.** (a) An association of self-  
6 insured employers shall file with the director an audited statement of financial  
7 condition prepared by an independent certified public accountant. The statement must  
8 be filed within 120 days after the conclusion of the association's fiscal year and must  
9 contain information for the previous fiscal year.

10 (b) The statement required in (a) of this section must be prepared in  
11 accordance with generally accepted accounting principles and must include

12 (1) a statement of reserves for actual claims and expenses, claims  
13 incurred but not reported and expenses associated with those claims, assessments that  
14 are due but not paid, and unpaid debts; unpaid debts must be shown as liabilities;

15 (2) an actuarial opinion regarding reserves, prepared by a member of  
16 the American Academy of Actuaries or another specialist in loss reserves identified in  
17 the annual statement adopted by the National Association of Insurance  
18 Commissioners, including a statement of actual claims and the expenses associated  
19 with those claims and a statement of claims incurred but not reported, and the  
20 expenses associated with those claims.

21 (c) The director may require the filing of other reports necessary to carry out  
22 the provisions of this section, including

23 (1) audits of the payrolls of the members of an association of self-  
24 insured employers;

25 (2) reports of losses; and

26 (3) quarterly financial statements.

27 **Sec. 21.77.160. Calculation of annual assessments.** (a) Except as provided in  
28 (b) of this section, the annual assessment required to be paid by each member of an  
29 association of self-insured employers must be

30 (1) calculated by a rate service organization that is a member of the  
31 American Academy of Actuaries or another specialist approved by the director; and

1 (2) based on the assessment rate for the industrial classification of that  
2 member, adjusted by the member's individual experience.

3 (b) The director may approve a reduction in the annual assessment based on  
4 the association's level of expenses and loss experience.

5 (c) If approved by the director, an association of self-insured employers may  
6 calculate the annual assessment required to be paid by each member of the association.  
7 An assessment calculated by the association must be based on at least three years of  
8 the member's individual experience.

9 **Sec. 21.77.170. Annual audits.** An association of self-insured employers shall  
10 cause to be conducted at least annually an audit of each member to verify the  
11 individual experience of each member of the association, the payroll of each member  
12 of the association, and the assessment required to be paid by each member of the  
13 association. The audit required under this section must be conducted by a payroll  
14 auditor approved by the director. An association shall pay the expenses of an audit  
15 required under this section.

16 **Sec. 21.77.180. Objections to industrial classification.** An association of  
17 self-insured employers or a member of the association may request a hearing before  
18 the director to object to an industrial classification assigned to a member of the  
19 association as a result of an audit conducted under AS 21.77.170. If the director  
20 determines that the assessment required to be paid by a member of the association is

21 (1) insufficient because of the industrial classification assigned to the  
22 member, the director shall order the association to collect from that member any  
23 amount required to recover the deficiency;

24 (2) excessive because of the industrial classification assigned to the  
25 member, the director shall order the association to pay the member the excess amount  
26 collected.

27 **Sec. 21.77.190. Payment of dividends to members.** The board of directors of  
28 an association of self-insured employers may, with the approval of the director,  
29 declare and distribute dividends to the members of the association if the assets of the  
30 association exceed the amount necessary to pay its obligations and administrative  
31 expenses, carry reasonable reserves, and provide for contingencies. A dividend

1 declared under this section must be distributed not less than 12 months after the date  
2 of declaration. A dividend may be paid only to an employer who was a member for at  
3 least 12 months before to the date of declaration, and payment of a dividend may not  
4 be conditioned on a member's continuing membership in the association.

5 **Sec. 21.77.200. Plan for payment of annual assessment.** An association of  
6 self-insured employers shall adopt a plan for the payment of annual assessments by the  
7 members of the association. The plan must be approved by the director and must  
8 include a requirement for an initial payment, in advance, of a portion of the annual  
9 assessment due from each member of the association and for the balance of the annual  
10 installment to be paid in quarterly or monthly installments. The advance payment must  
11 be in an amount equal to at least 15 percent of the member's annual assessment.

12 **Sec. 21.77.210. Required reserves.** An association of self-insured employers  
13 shall maintain actuarially appropriate loss reserves. Loss reserves must include  
14 reserves for

- 15 (1) actual claims and the expenses associated with those claims;  
16 (2) claims incurred but not reported and the expenses associated with  
17 those claims; and  
18 (3) reserves for uncollected debts based on the experience of  
19 association or other associations.

20 **Sec. 21.77.220. Regulation by division of insurance.** Self-insurance provided  
21 under a certificate issued to an association of self-insured employers may not be  
22 considered insurance for the purpose of any other law of the state and is subject only  
23 to regulations adopted by the director to implement this chapter.

24 **Sec. 21.77.230. Insufficient assets to pay compensation and maintain  
25 reserves.** (a) If the assets of an association of self-insured employers are insufficient  
26 to pay all compensation under AS 23.30 and to maintain the reserves required under  
27 AS 21.77.210, the association shall immediately notify the director and

- 28 (1) transfer surplus funds acquired from a previous year to the current  
29 year to make up the deficiency;  
30 (2) transfer money from the administrative account of the association  
31 to the claims account of the association;

1 (3) collect an additional assessment from the members of the  
2 association in an amount required to make up the deficiency; or

3 (4) take any other action, approved by the director, to make up the  
4 deficiency.

5 (b) If an association of self-insured employers wishes to transfer surplus funds  
6 from one year to another, the association shall first notify the director of the transfer.

7 (c) The director shall order the association of self-insured employers to make  
8 up any deficiency in accordance with (a) of this section if the association fails to do so  
9 within 30 days after notifying the director of the deficiency.

10 (d) An association of self-insured employers is considered to be insolvent if it  
11 fails to collect an additional assessment from its members within 30 days after being  
12 ordered to do so by the director.

13 **Sec. 21.77.240. Order to cease and desist; penalties.** (a) The director may  
14 issue an order requiring an association of self-insured employers or a member of an  
15 association to cease and desist from engaging in an act or practice found to be in  
16 violation of this chapter or a regulation adopted under AS 21.77.300.

17 (b) If the director determines that an association of self-insured employers or  
18 member of an association has violated an order to cease and desist, the director may  
19 impose an administrative fine of not more than \$10,000 for each violation of the order,  
20 not to exceed an aggregate amount of \$100,000, and may, in addition, withdraw the  
21 association's certificate of self-insurance.

22 **Sec. 21.77.250. Administrative fines.** The director may impose an  
23 administrative fine for each violation of a provision of this chapter or regulation  
24 adopted under AS 21.77.300. Except as provided in AS 21.77.240, the amount of the  
25 fine may not exceed \$1,000 for each violation or an aggregate amount of \$10,000.

26 **Sec. 21.77.260. Withdrawal of certificate; effect of withdrawal.** (a) The  
27 director may withdraw the certificate of an association of self-insured employers if

28 (1) the association's certificate was obtained by fraud;

29 (2) the application for the certificate contained a material  
30 misrepresentation;

31 (3) the association is found to be insolvent;

1 (4) the association fails to have five or more members;

2 (5) the association fails to pay the costs of an examination or a penalty,  
3 fee, or assessment required under this chapter;

4 (6) the association fails to comply with a provision of this chapter or  
5 regulation adopted under AS 21.77.300;

6 (7) the association fails to comply with an order of the director within  
7 the time prescribed by law or in the director's order; or

8 (8) the association or its third-party administrator misappropriates,  
9 converts, illegally withholds, or refuses to pay any money to which a person is entitled  
10 and that was entrusted to the association in its fiduciary capacity.

11 (b) If the director withdraws a certificate of self-insurance, each employer who  
12 is a member of the association of self-insured employers remains liable for the  
13 employer's obligations incurred before and after the order of withdrawal.

14 (c) Before withdrawing a certificate under this section, the director shall give  
15 written notice to the association of self-insured employers by certified mail that the  
16 certificate of the association will be withdrawn 10 days after receipt of the notice  
17 unless, within that time, the association corrects the conduct set out in the notice as the  
18 reason for the withdrawal or submits a written request for a hearing to the director.  
19 The director may grant additional time, not to exceed an additional 120 days, before  
20 the withdrawal of the certificate if the grounds for withdrawal are based on (a)(4) of  
21 this section and the association is financially sound and capable of fulfilling its  
22 commitments.

23 (d) The director may not take action under this section unless the director has  
24 provided the association of self-insured employers with an opportunity for an informal  
25 meeting to discuss and seek correction of conduct that would be grounds for  
26 withdrawal of the association's certificate of self-insurance.

27 **Sec. 21.77.270. Retention of security deposit in event of termination.** If the  
28 certificate of an association of self-insured employers is terminated or withdrawn for  
29 any reason, the security deposited under AS 21.77.050 must remain on deposit for at  
30 least 36 months in an amount necessary to secure the outstanding and contingent  
31 liability for compensation payable under AS 23.30. At the expiration of the 36-month

1 period, or another period the director may prescribe, the director may accept a paid-up  
 2 policy of insurance in a form approved by the director in lieu of the previously  
 3 deposited security.

4 **Sec. 21.77.280. Insolvency; termination of liability on surety bond; effect**  
 5 **of termination of surety bond.** (a) If an association of self-insured employers  
 6 becomes insolvent under AS 21.77.230, institutes any voluntary proceeding under the  
 7 bankruptcy laws of the United States or is named in any involuntary proceeding under  
 8 those laws, makes a general or special assignment for the benefit of creditors, or fails  
 9 to pay compensation due under AS 23.30, after an order for the payment of a claim  
 10 becomes final, the director may, after giving at least 10 days' notice to the association  
 11 and its insurer or guarantor, use money or interest on securities, sell securities, or  
 12 institute legal proceedings on a surety bond deposited with the director to the extent  
 13 necessary to make the payment.

14 (b) A surety providing a surety bond under AS 21.77.050 may terminate  
 15 liability on its surety bond by giving the director and the association of self-insured  
 16 employers, the association's administrator, or the third-party administrator 90 days'  
 17 written notice. Termination does not limit liability that was incurred under the surety  
 18 bond before the termination. If the association fails to requalify as an association of  
 19 self-insured employers on or before the termination date, the director shall withdraw  
 20 the association's certificate of self-insurance, effective on the date the termination  
 21 becomes effective.

22 **Sec. 21.77.290. Judicial review.** A party aggrieved by a decision of the  
 23 director under this chapter may seek judicial review in accordance with applicable  
 24 court rules.

25 **Sec. 21.77.300. Regulations.** The director may adopt regulations to implement  
 26 the provisions of this chapter, *including defining*

27 **Sec. 21.77.399. Definitions.** In this chapter,

28 (1) "association of self-insured employers" means an association of  
 29 employers that has been granted a certificate of self-insurance under AS 21.77.010;

30 (2) "industrial classification" means the industry group code specified  
 31 in the most current version of the North American Industry Classification System.

1 United States in accordance with the established classification practices found in the  
2 most current version of the North American Industry Classification System manual  
3 prepared by the United States Office of Management and Budget.

4 (3) "third-party administrator" means a person under contract with an  
5 association of self-insured employers to administer, from one or more offices in this  
6 state, all claims for the association arising under AS 23.30 and maintain records  
7 concerning those claims.

8 \* Sec. 2. This Act takes effect immediately under AS 01.10.070(c).

# REPRESENTATIVE KEVIN MEYER

HOUSE DISTRICT 30

## MEMORANDUM

**DATE:** April 4, 2006

**TO:** Representative Kevin Meyer, Co-Chairman  
House Finance Committee

**FROM:** Representative Kevin Meyer

**RE:** Changes to CSSSHB 51 (L&C) *Employer Association for Workers' Compensation Insurance* in blank CS for SSIB51 version 24-LS0233\C.

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The attached blank committee substitute for sponsor substitute for HB 51 includes several technical corrections to the L&C CS. Citations below are made for version 24-LS0233\C.

### Changes:

1. Reorder: Sections 21.77.020 & 21.77.030 were reordered to follow 21.77.050, 21.77.060 and 21.77.070 to make the bill's progression more logical.
2. Page 4, line 11: "employers" was replaced with "employees" to correct an oversight.
3. Page 7, line 16: replaced "subsequent injury fund" with "second injury fund" to correct statutory reference.
4. Page 7 line 20-22: added, "loss control and occupational safety programs" to the list of "administrative expenses" to clarify 21.77.070 (c).
5. Page 7, line 30: added "consistent with AS 21.21" to clarify a standard for the investment of an association's assets.
6. Page 9, line 11: clarified that a new member must meet the qualifications of AS 21.77.010 (a) and (b).
7. Rewrote 21.77.180 to be consistent in the use of "member" vs "employer" and separated language into subsection (1) & (2) for drafting purposes.
8. Clarified 21.77.230 (d) to establish a set point of insolvency.
9. Referenced the changed 21.77.230 as the point of insolvency for purposes of 21.77.280.



# REPRESENTATIVE KEVIN MEYER

HOUSE DISTRICT 30

## Sponsor Statement

### House Bill 51

**“An Act relating to permitting employers in the same trade to form joint insurance arrangements for self-insured workers’ compensation coverage.”**

The workers compensation system was developed as a compromise between employees and employers to ensure that employees received compensation for injuries received on the job. Employers provide compensation for medical expenses and lost wages, and in exchange employees agree not to sue employers for damages.

Traditionally, employers have transferred the risk of compensation liability to insurance companies, who, for a premium, agree to cover the costs of an employee’s claim under the worker’s compensation system. Several states, including Alaska, allow an employer to self-insure providing that they meet financial requirements set in statute and regulation.

House Bill 51 allows a group of five or more employers to form an association to self-insure the employers’ workers compensation obligations. The members of the association must be engaged in the same or similar employment classifications, be members of a qualified trade association, and receive a certificate to self-insure under Alaska’s existing rules and regulations.

Workers compensation insurance premiums are a significant cost for employers. While the prospect of reducing costs attracts employers to self-insurance associations, employers and employees in states with similar statutes have seen other benefits. Directly assuming the risks for workers compensation obligations aligns employers and employees in managing workers compensation claims and costs. HB 51 is a tool for Alaska’s trade associations and employers to take direct control of the obligations they are exposed to under current law.



## Alaska Independent Insurance Agents & Brokers, Inc.

### Alaska Independent Insurance Agents & Brokers

#### Position Paper on HB 51

The Alaska Independent Insurance Agents & Brokers is a professional trade association representing business people throughout Alaska. We work with our insurance company partners while representing the interests of our clients. Because we deal with the Alaskan consumer on a daily basis, we are particularly sensitive to their needs and concerns. We believe the best consumer protection is a healthy, competitive insurance marketplace.

HB51 - "An Act relating to modifying the qualifications required for workers' compensation self-insurance and permitting employers in the same trade or industry to form an employer association for self-insured workers' compensation coverage; and providing for an effective date."

#### The Alaska Independent Insurance Agents & Brokers Oppose HB51.

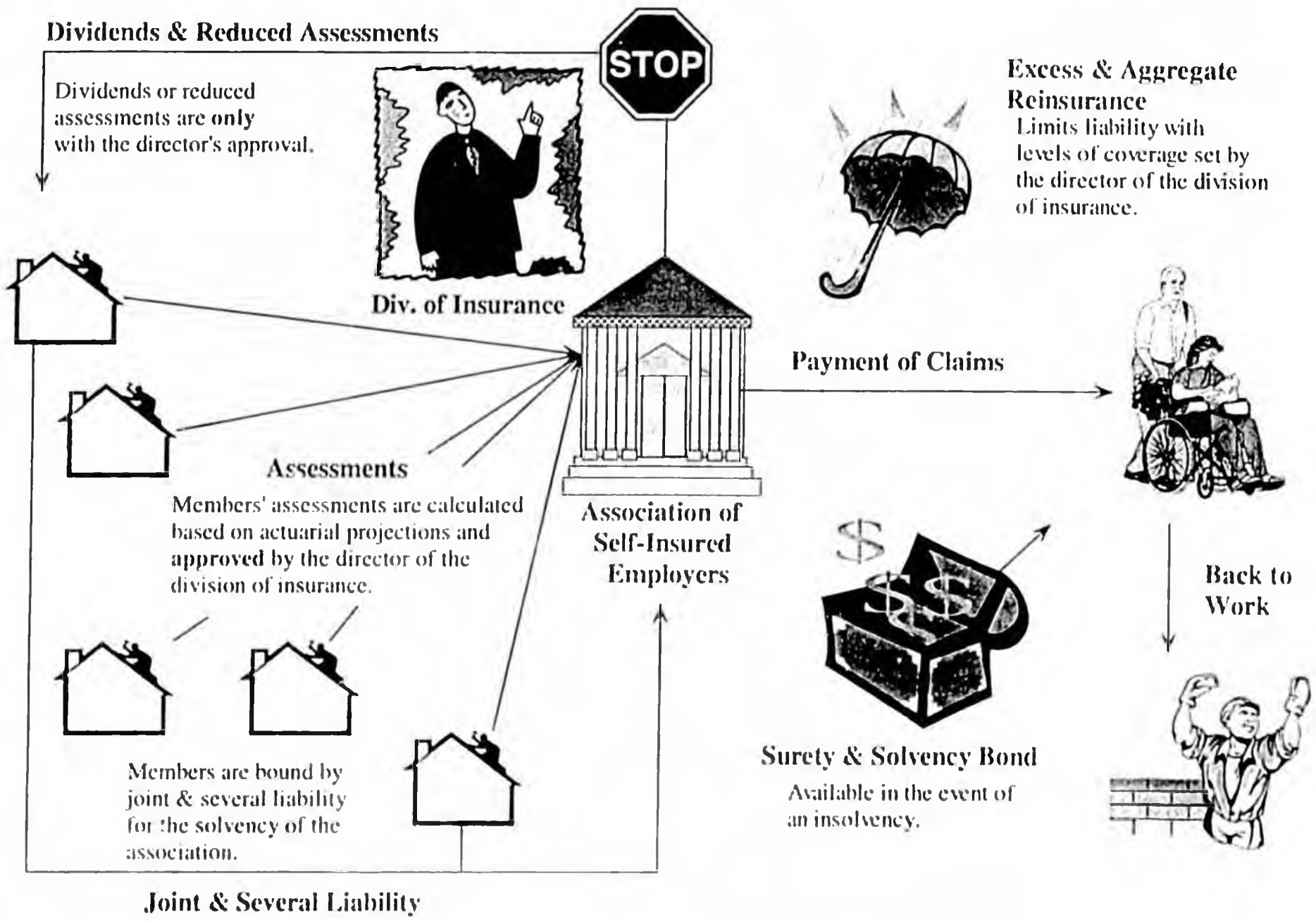
##### Concerns that we have with this bill include but are not limited to:

- There is no safety net for employees - they will not be protected by the Alaska Insurance Guarantee Act therefore the general fund could become the source of claim payments.
- There are already current statutes that allow for the formation of a reciprocal insurer which is a viable option to these groups. An example is the Alaska Timber Exchange.
- Workers' Compensation Reform legislation in 2005 hasn't had any time to make an impact on workers' compensation costs.
- The bill calls for joint and several liability but should include personal indemnity. There is also concern in the wording in how joint and several liability ties the membership to the association.

We respectfully request that you consider these issues when reviewing the bill. We welcome the opportunity to discuss the issues with you in more detail.

Sincerely,  
Mike Combs, CIC, CRM  
President

**CS HB 51 (L&C): How workers' compensation claims are paid.**  
 Prepared by Representative Meyer's Office: 907-465-2812





# REPRESENTATIVE KEVIN MEYER

HOUSE DISTRICT 30

The table below compares the requirements a single self-insured employer vs. a group as proposed by CSSSHB 51 must meet before they can be granted a certificate.

Requirements	Self Insured Employer	Self Insured Group
Regulated by:	Department of Labor (DOL)	DOL/Insurance
Employees	100	100 in the aggregate
Net Worth	\$5,000,000	\$5,000,000 <sup>1</sup>
Minimum Assessment	none	none <sup>2</sup>
Liability	single employer	joint & several
Excess & Reinsurance	none	yes
Surety Bond	none	yes
Guarantee Fund	none	none
Premium Taxes	no	no

- More than 25% of all the workers in the state of Alaska are covered by an employer that self-insures their workers compensation obligations.
- "Alaska's workers compensation premiums are the 2<sup>nd</sup> highest in the nation and we have seen businesses close and still other businesses elect not to hire new workers as a result."

Governor Frank Murkowski

<sup>1</sup> Proposed Amendment: \$10,000,000

<sup>2</sup> Proposed Amendment: \$300,000 aggregate & \$10,000 individual



# REPRESENTATIVE KEVIN MEYER

HOUSE DISTRICT 30

## MEMORANDUM

Date: January 23, 2006

TO: Representative Tom Anderson, Chairman  
House Labor and Commerce Committee

FR: Representative Kevin Meyer, Co-Chairman  
House Finance Committee

RE: Sponsor Substitute for HB 51

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Representative Anderson,

I introduced a sponsor substitute to HB 51 *Joint Insurance Arrangements* after working over the interim with interested parties. This memorandum is intended to provide a comparison between the two versions of HB 51 and insight into the reasons for the changes.

**Statutory Change: From AS 21.76.010 to AS 23.30.090**

The original version of HB 51 amended AS 21.076.010, the *Joint Insurance Association* statutes. The provisions of title 21 apply to Municipalities and their public corporations. The joint insurance arrangements covered by title 21 are limited to public entities that ultimately can turn to taxes and other revenue instruments and who were therefore removed from regulation under AS 21.76.020. Though the original version of HB 51 required an association to meet the standards for a self-insurance certificate issued under AS 23.30.090, there was no oversight due to AS 21.76.020.

Since the intent of HB 51 is to apply to private entities, the sponsor substitute to HB 51 shifts the proposed changes from AS 21.76.010 *Joint Insurance Arrangements* to AS 23.30.090 *Self Insurance Certificates*. By moving to AS 23.30.090, the proposed associations of employers are treated the same as an existing single employer provided the association meets similar financial criteria. Through the joint and several liability provision of SSHB 51 (page 2 lines 8-10) the members of an association are responsible for the workers compensation obligations accrued by **any** of the individual members of the association. The joint and several liability provision enables an association to, in the aggregate, meet the minimum financial thresholds (a net worth of \$5 million) a single employer is currently required to meet.

A single employer is allowed to self-insure their workers compensation obligations under current statutes. SSHB 51 would repeal and reenact the current authorization in statute to allow an association of employers to self-insure without changing the existing rules for a single employer.

Changes to AS 23.30.090 Self-Insurance Certificates

SSHB 51 repeals and reenacts AS 23.30.090 to authorize an *association of employers* as well as an *employer* to self-insure workers' compensation obligations. The proposed reenacted statute incorporates several provisions currently found in regulations adopted by the Alaska Workers' Compensation Board. Below is a summary of the provisions in the proposed AS 23.30.090 and their source material.

23.30.090 (1) [Page 1, lines 10-12] – 8 AAC 46.010 (5)

23.30.090 (2) [Page 1, lines 13-14 & Page 2 line 1] – 8 AAC 46.010 (6)

23.30.090 (3) [Page 2, lines 2-3] – Current AS 23.30.090

23.30.090 (4) [Page 2, lines 4-5] – 8 AAC 46.010 (4)

23.30.090 (5) [Page 2, lines 6-7] – 8 AAC 46.050

23.30.090 (6) [Page 2, lines 8-10] – **New requirement limited to an association of self-insured employers.** Requires an association to file an agreement with the board jointly and severally binding each member of the association.

23.30.090 (b) [Page 2, lines 11-18] – 8 AAC 46.020

23.30.090 (c) [Page 2, lines 19-20] – **New provision** making information provided under (b) confidential.

23.30.090 (d) [Page 2 lines 21-27] – **Changed provision.** Modifies existing AS 23.30.090 to provide that a certificate of self-insurance remains in effect until revoked by the board. Does not alter or change the timeline/process of revocation or the authority to reissue a certificate.

23.30.090 (e) [Page 2 lines 29-31] – Current AS 23.30.090

23.30.090 (f) [Page 3 lines 1-6] – **New requirement limited to an association of self-insured employers.** Requires an association to notify the board if one of its members withdraws from the association or a new member joins the association.

- 23.30.090 (g) [Page 3 lines 7-10] – **New provision limited to an association of self-insured employers. Allows an association to function on behalf of its members as an “employer” for purposes of complying with AS 23.30.**
- 23.30.090 (h) [Page 3 line 11] – **Current AS 23.30.090 (*explicitly allows the Board to adopt regulations to implement this chapter.*)**
- 23.30.090 (i) [Page 3 lines 12-16] – **New provision defining an “association of employers.”**

Thank you for considering SSHB 51.

Representative Kevin Meyer

# Employers Self-Insured For Workers' Compensation Liability In Alaska

## I. Self-Insured Employers Currently Authorized

Total: 31    Private: 23    Public: 8

Alaska Airlines	Fred Meyer Stores, Inc.
Alaska Communications Systems	General Communications Inc.
Alaska Interstate Construction	Harnish Group (NC Machinery/Power)
Alaska Railroad Corp.	Holland America Line-Westours (Carnival)
Alyeska Pipeline Service Co.	Icicle Seafoods, Inc.
Anchorage Daily News (McClatchy Newspapers)	Kenai Peninsula Borough & SD
Anchorage School District	Mat-Su School District
Arctic Slope Regional Corp.	Municipality of Anchorage
Bristol Bay Area Health Corp.	Nabors Alaska Drilling, Inc.
Chevron/Texaco	Peak Oilfield Service Co.
City & Borough of Juneau	Providence Health System
Costco Wholesale Corp.	Safeway, Inc.
Enstar Natural Gas Co.	State of Alaska
Fairbanks Northstar Borough	University of Alaska
Federal Express Corp.	Unocal Corp.
	Veco Corp.

## II. Employees Working for Self-Insured Employers

<u>Total:</u>		<u>Average number of employees per employer:</u>	
2006	75,792	2006	2,445
2005	73,912	2005	2,640
2004	67,403	2004	2,930

<u>% of all covered workers:</u>		<u>% of all injury reports filed:</u>	
2006	26.0%*	2006	N/A
2005	26.0%**	2005	28.1%
2004	25.4%	2004	26.0%

\* 2006 based on estimated data

\*\* 2005 based on preliminary data

## III. Workers' Compensation Benefits/Costs Paid By Self-Insured Employers

<u>Total:</u>		<u>As percentage of all benefits/costs paid:</u>	
2004	\$56,700,000	2004	24.4%
2003	\$48,570,000	2003	21.8%

## IV. Self-Insured Employers - Average Net Worth - Median Net Worth

<u>Average:</u>		<u>Median:</u>	
2006	\$4.997 billion	2006	\$9.971 billion
7 smallest	\$ 55.6 million	7 smallest	\$ 37.2 million

SECTIONAL ANALYSIS  
SS FOR HB 51  
(Workers' Compensation Self-insurance)

**OVERVIEW:**

Existing law (AS 23.30.090) allows the Alaska Workers' Compensation Board to issue a certificate of self-insurance to a qualified individual employer. The board, through the Division of Workers' Compensation, administers the self-insurance program under regulations adopted by the board (8 AAC 46.010 – 8 AAC 46.900).

SS HB 51 amends existing law by allowing the board to issue a certificate of self-insurance to a qualified association of employers.

Section 1 of the bill repeals and reenacts AS 23.30.090, the statute that currently allows individual employers to obtain self-insurance certificates. The bill would allow the board to issue self-insurance certificates to both qualified individual employers and qualified groups of employers and sets out a number of requirements that employers and associations of employers must meet. The bill makes only one change that affects the existing self-insurance program for individual self-insured employers by providing that self-insurance certificates remain in effect until revoked. Under current regulations, 8 AAC 46.065(b), certificates remain in effect for 12 months.

Section 2 provides for an immediate effective date.

**SECTIONAL ANALYSIS:**

All substantive provisions of the bill are contained in Section 1 of the bill, which would adopt a new Sec. 23.30.090(a) through (i):

**Sec. 23.30.090(a):**

Subsection (a) allows the Alaska Workers' Compensation Board to issue a self-insurance certificate to an employer or an association of employers meeting six specified requirements. Requirements (1) and (2) are currently contained in the self-insurance regulations governing individual employers and require an individual employer to have at least 100 employees, a net worth of at least \$5,000,000. (See, 8 AAC 46.010(a)(5) and (6)). The bill would place these regulatory minimums in statute, and would require an association of self-insured employers to meet the minimum requirements in the aggregate. Requirement (3) is contained in existing AS 23.30.090 and the bill would require both individual employers and associations of self-insured employers to pay the annual service fee assessed under AS 23.05.067. Requirements (4) and (5) are currently contained in self-insurance regulations governing individual employers, and require that the employer maintain a workplace safety program and obtain excess insurance coverage in amounts and with coverage required by the board. (See, 8 AAC 46.010(a)(4) and 8 AAC 46.050.) The bill

would place these requirements in statute and they would apply to both individual employers and associations of self-insured employers. Requirement (6) is new and requires an association of self-insured employers to file with the board an indemnity agreement jointly and severally binding each member of the association to secure the payment of all compensation due to any of the members' employees.

Sec. 23.30.090(b):

Subsection (b) would allow the board, either before issuing a self-insurance certificate or at other times designated by the board, to require individual employers and associations of self-insured employers to provide financial information necessary to determine whether the individual employer or the association meets or continues to meet the financial requirements for a self-insurance certificate.

Sec. 23.30.090(c):

Subsection (c) makes confidential the financial information provided under subsection (b).

Sec. 23.30.090(d):

The bill retains the provisions of existing AS 23.30.090 that allow the board to revoke a self-insurance certificate on at least 10 days' notice and a hearing. Existing AS 23.30.090 also allows the board to fix the time that a self-insurance certificate remains in effect. Current regulations provide that certificates remain in effect for one year, subject to renewal. The bill provides that a certificate would remain in effect until it is revoked. The bill retains existing provisions of AS 23.30.090 that allow for a certificate to be re-issued following revocation if the employer or association of employers provides satisfactory proof that it once again meets the requirements for self-insurance.

Sec. 23.30.090(e):

The bill retains the requirements of existing AS 23.30.090 relating to claims facilities, and would require both an individual employer and an association of employers to provide claims adjusting facilities through by its own staff located in Alaska or through independent, licensed resident adjusters with power to effect settlement in Alaska.

Sec. 23.30.090(f):

Subsection (f) applies only to associations of self-insured employers and requires the association to notify the board if a member withdraws from the association or a new member joins. New members would be required to show that they belong to an Alaska trade association, as provided in subsection (i), and to provide the same financial information required under subsection (b).

**Sec. 23.30.090(g):**

Subsection (g) applies only to associations of self-insured employers and provides that an association may act on behalf of or for the benefit of its members in providing for its members' workers' compensation obligations and provides that the association has the same rights and obligations under AS 23 as an employer. For example, this section would allow an association to file the same annual reports on behalf of its members that are currently required for individual self-insured employers under AS 23.30.155(n) and to exercise a member's assignment rights in the case of third party liability under AS 23.30.015.

**Sec. 23.30.090(h):**

Subsection (h) provides express authority for the board to adopt regulations to implement the self-insurance program.

**Sec. 23.30.080(i):**

Subsection (i) defines an "association of employers" to mean a group of five or more employers who are merchants, craftsmen, or businesses in a similar trade or industry and who are members of the same Alaska trade association.

THE  
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DOCUMENT(S)  
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# *Self-Insured Groups*

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## What is a Self-Insured Group

- Self-Insured Group (SIG) is an organization owned by its members to collectively self insure workers' compensation liability. To obtain the same self insured status as singly self insured employers, but in a group format.
- A SIG will retain the first layer of risk (\$350,000 to \$750,000 negotiated with excess carrier) and purchase excess insurance to cover the required statutory workers' compensation limits
- Each member must meet the required financial requirements and must produce acceptable Financial Statements or financial information, and continue to furnish them in the future
- Each member must sign a Joint and Several Liability Agreement, essentially pledging the assets of their company for the financial stability of the SIG.
- A SIG is a long term tool to ensure the safety and well being of employees. By employing stringent safety, risk management and control of program expenses, the long term result is continuity and stability of costs and can result in long term savings.



## *Self-Insured Groups*

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- The financial stability is secured by:
  - Strict underwriting. This is not a “ya’ll come” type of program. Typically only 30-40% of those that apply to a SIG will initially qualify to become a member. Qualification are based upon historical loss record, safety programs and financial stability.
  - Upon becoming a member, each employer must comply with all safety measures and programs required by the SIG. Included are mandatory training seminars, video training and regular job site evaluations.
  - Must attend claims training sessions where members are instructed in “best practices” on how to best take care of injured workers, assist them in their care and return to work status.
  - Claims oversight management and control. Members play an active role in assisting the management of claims. Proactive management lessens the exposure to malingering claims ensures the fair and proper treatment of injured employees and returning them to work as quickly as possible.
  - Purchase of excess and aggregate insurance coverage for catastrophic (severe) claims or lots of claims (frequency)



## *Self-Insured Groups*

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- The financial stability is secured by (continued):
  - Independent Actuarial reviews are done on a regular basis (more than just annually) to project losses over a 5 year period. This allows to SIG to adjust collection of premium assessments to meet the obligations of the SIG more accurately. The most expensive Workers compensation claims are considered a “long tail” type of claims and can take 3-5 years on average to “mature”. The frequent reviews provide the ability to predict trends and costs and allow the SIG to adjust.
  - Monthly financial statements prepared on a GAAP basis provided to board on a fully incurred with IBNR (Incurred But Not Reported projections) reserve basis.
  - Annual independent CPA audits.
  - Annual actuarial audit and rate adequacy audit by independent Actuary.
  - Joint and Several Liability agreement of members remains in place.



# *Self-Insured Groups*

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- Concerns or risks with Self Insured Groups:
  - Bankruptcy of one of the members – The group is considered the insurer and the SIG (and remaining members) remains liable for all claims. The members must report financials to SIG administrator annually to ensure qualifications of the group are maintained.
    - Over time, it would be the intent of a group to develop a membership sufficient to ensure that one members demise does not unduly compromise the solvency of the group.
  - Catastrophic claims – What would be the impact. With excess insurance in place, the SIG's liability is mitigated. Additionally with the long tail nature of larger claims and actuarial projections, the group can adjust.
  - What if SIG does become “insolvent” and unable to pay bills as they are due. The SIG would have to assess their members (Joint and Several Liability) to make up any deficit.
  - What if a member has left the SIG. That member remains liable for the time period that they belonged to the SIG. If an assessment was required for the period they belonged, then they would be liable and be assessed (Joint and Several Liability)



## *Self-Insured Groups*

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- Concerns or risks with Self Insured Groups (continued):
  - What is the history of SIG's around the nation. Some have gone insolvent.
    - SIG's have been in existence around the nation for over 40 years in over 35 states. Most recently Texas enacted enabling legislation authorizing SIG's. In the early 1980's some SIG's in Florida and Oklahoma experienced problems. More recently a group in Kentucky and a group in Tennessee have been taken over by regulators and assessments have been invoice to members. In all of these cases, while the facts and situations are different, there was generally weak regulatory oversight. Regulators were not seeing financials, actuary reports, audits etc. Subsequently those states have strengthened their regulatory roles.
    - Contrast these several problems over a 40 year time span to the admitted carrier market with all of the "regulation" in place. Literally hundreds of carriers are deemed insolvent each year.



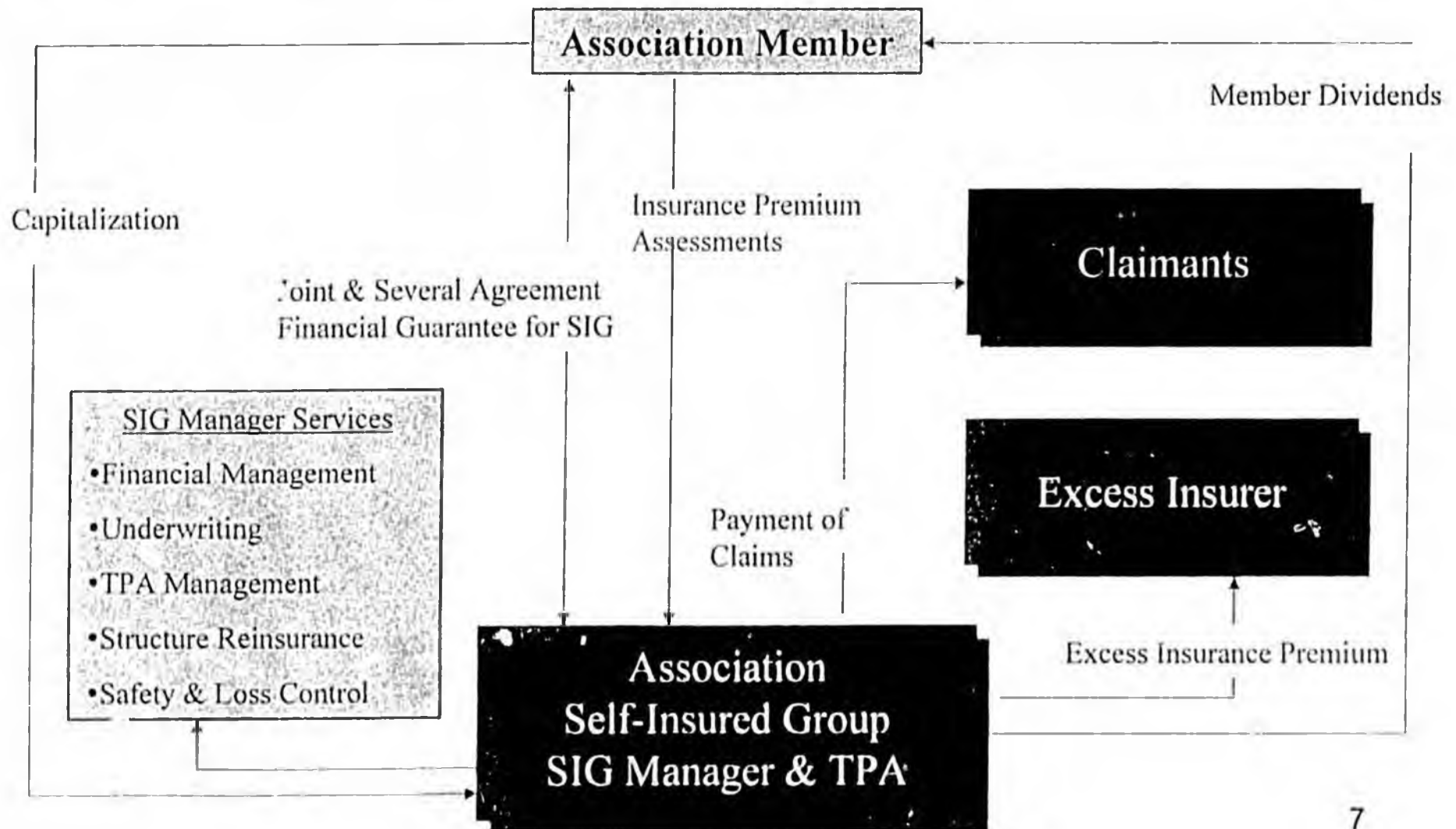
## *Self-Insured Groups*

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- Concerns or risks with Self Insured Groups (continued):
  - Why doesn't the industry consider some other alternative – a reciprocal for example.
    - The industry wants the same benefits of singly self insured rather than another type of insurance product.
    - A reciprocal is arguably another type of alternative solution, but is generally regulated the same as an insurance company regarding reserves, financials and rates.



# How a Self-Insured Group Operates





## *Benefits of a Self-Insured Group(Cont'd)*

---

### **SIG Program:**

- "SIG Retention" shared by members ranges between \$350,000 to \$750,000 depending on the class of business
- Excess and Aggregate coverage is placed over the "SIG Retention" for protection of the members and costs depends on the reinsurance market place and the Groups Feasibility Study results
- Member is provided 1<sup>st</sup> Dollar coverage with Statutory Limits and benefits required by the State of Alaska
- A "Certificate of Coverage" is issued to each member
- Continuous coverage with no annual renewal for the member
- The rate for premiums is calculated based on the Groups and members results
- Underwriting, Loss Prevention, Safety and Claims Management, are key to the groups success
- The reduction of losses, closing claims quickly, results in cost stabilization, and the profits are returned members in dividends or rate reductions

Linda Hall

CS for HB 51

House Labor and Commerce

March 17, 2006

I. INTRODUCTION

Appreciate the time to comment on this CS. I would like to acknowledge the efforts of the group to include more specific financial requirements for self-insured associations. I will limit my comments today to some general concepts and attempt not to delve into the minutia of a 20 page bill. I may address some specific areas and will be happy to answer questions that may arise.

II. FINANCIAL OVERSIGHT

I. One of the basic principles of insurance regulation is financial oversight to ensure that claims get paid. The CS before us today does include far more detailed requirements but I still have concerns about the bottom line repercussions of insolvency:

- a. "tangible net worth" – there is no definition but does not require any liquidity. Insurance regulation limits the types of assets and the valuation of the assets in determining an insurer's financial position. The quality of the assets is a critical principal of solvency.
- b. The \$5 million net worth aggregate is still excessively low – the DOL projection of the adjusted for inflation for this limit required of the individual self-insured single employer today would be approximately \$10 million. Testimony has been provided as to the average and median net worth of current self-insured employers which is substantially higher than these minimal requirements.

c. Solvency Bond – This is a requirement of this CS but I am, in reality, not sure this is even practical. I have discussed the availability of this type of bond with a bond underwriter who is currently active in the Alaska bond market. He has indicated that this would be very difficult to obtain given the reliance on a group of “members” who have not been required to provide audited financial statements and feels it would be difficult. For the “association” to be the principal on a bond requires a corporate signer who agrees to indemnify the bond company and generally there is not a person in the association itself able or willing to take this responsibility.

2. Concept – One area of confusion for me is the actual working of the financial responsibility. Most of the bill provides that the Association is the responsible party for payment of benefits due employees under AS 23. However, the indemnity agreement in 77.010 (a) (6) is between the members. Generally trade associations do not have the assets that would enable them to provide the payments of workers’ compensation benefits and yet this CS places the primary responsibility on the association.
3. Termination of Membership - This section details the conditions under which a member could terminate or be terminated. The conditions deal with going forward mechanisms for providing benefits but do not address what happens to the liabilities (either the employer’s own or the joint liabilities) for the time they were part of the association.
4. 21.77.230 is a section dealing with insufficient assets and the circumstances in which an association is considered insolvent – The issue here seems to be that there is no solution – there is no provision for receivership, for wrap-up of the affairs, etc. The director can withdraw a certificate but THEN WHAT???

5. 21.77.270 deals with the retention of the security deposit in event of termination – 36 months is not sufficient time. Workers' compensation claims have very long tails and in some instances can take 20 years or more to close. It would be more appropriate to condition release of a deposit upon termination of liabilities as determined by actuarial analysis.

## II. REGULATORY OVERSIGHT

An additional function of the Division of Insurance is to have oversight of the practices of any person or entity transacting insurance in Alaska.

1. Chapter 36 of the Insurance Title provides the statutes controlling Trade Practices and Frauds. This includes such things as oversight of marketing insurance including misrepresentation and false advertising, unfair discrimination, unfair claims settlement practices. 21.77.220 would not allow these authorities to apply to the self-insured associations.
2. The CS also provides for a "third party administrator" to administer claims. Today the DOI licenses adjusters who handle workers' compensation claims. Title 23 provides that an individual self-insured employer may have either their own staff or independent licensed 3<sup>rd</sup> parties adjust claims. This bill does not require licensing of the 3<sup>rd</sup> party administrator as an adjuster and therefore would not provide any oversight of the claims handling practices.

This CS does not include any oversight of practices for these small associations. There is no complaint process and no authority to require accountability for the handling of claims. What do injured workers do if claims are not paid promptly?

### III. NEVADA

Most of this CS appears to be based on Nevada statute/regulation. As I have made preliminary comparisons with those provisions, it appears that some significant provisions have not been included, such as:

1. The indemnity agreement also includes the Association
2. Annual assessments must be at least \$300,000 or an amount which the director would determine to be satisfactory based on an annual review of actuarial solvency
3. Each member of the association must have a tangible net worth of at least \$250,000 and a minimum premium for workers comp insurance of at least \$10,000
4. The director would approve annual assessments much as we approve rate filings in the insured industry today
5. Provisions are made to assess other self-insured associations for the claims obligations of an insolvent association.

While I still think Alaska is a very different environment, economy and market from Nevada, I would think these types of provisions would have also been included.

### IV. RECIPROCAL

Not to repeat my past testimony but Alaska statute (AS 21.75) provides for the formation of reciprocal insurers, which allow the formation of a regulated entity to provide various lines of insurance for the members of the reciprocals. The reciprocal statutes provide for a lesser level of capital and surplus – the overall start up would require \$1.5 million with maintenance of \$1,375,000. These amounts are not overly stringent. If ability to pay claims of injured workers is our goal, we need to guarantee that there are liquid monies available to achieve this goal. The reciprocal insurers are regulated in much the same way as a traditional insurer which is intended to protect the public.

The reasons that I have been given for the desirability of a self-insured association program have included safety programs, control of the programs for the industry group, a potential for cost savings and others. Each of these objectives can be accomplished with the formation of a reciprocal.

I still have not heard any reason that the reciprocal as already provided in Alaska statute would not be a viable entity for trade associations to form their own programs.

## V. CONCLUSION

It is still not my intent to come before you today to be negative. I am pleased to see the efforts to include more accountability in this CS. But I continue to have serious reservations about the viability of these small plans when the down side potential of there not being sufficient monies to pay the claims of injured workers exists and there is still not what I consider to be an appropriate level of oversight.

I would urge you to carefully consider the possible effects of this legislation. This legislation has been crafted with great care, time and expense by an Alaska trade group who is attempting to find a viable alternative and remain responsible. The bill, however, would apply to any group who decided to participate and might not have the same principals of accountability but would merely just be looking for a way to skimp on workers' compensation costs.

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*Fifty Years Serving Alaska*



# NECA

ALASKA CHAPTER  
1953-2003

March 17, 2006

Rep. Tom Anderson, Chairman  
House Labor and Commerce Committee  
State Capitol, Room 408  
Juneau, AK 99801-1182

FAX 907 465-2418

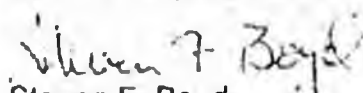
Dear Rep. Anderson,

I am writing on behalf of the members of the Alaska Chapter of the National Electrical Contractors Association ("NECA"). We currently are seeking your support for SSHB 51; "An act relating to modifying the qualifications required for workers' compensation self-insurance and permitting employers in the same trade or industry to form an employer association for self-insured workers' compensation coverage; and providing for an effective date."

State law currently requires a business to have 100 employees and net assets of \$5 Million to be able to self insure for workers comp. Our goal is to allow associations to collectively pool employees and assets to achieve the same requirements. By working together in a self insurance program we have the best probability of controlling safety in the work place; by rewarding those businesses who go the extra mile with lower premiums.

Workers' compensation is a major expense in any business but especially to small business. These costs have risen substantially in the last few years. The percentage paid compared to our gross income is very high. Any relief to this cost while maintaining workers ability to get medical treatment from a job related injury would be greatly appreciated.

Sincerely,  
Alaska Chapter, NECA



Steven F. Boyd  
Chapter Manager



March 13, 2006

Rep. Tom Anderson, Chair Labor & Commerce  
FAX (907) 465-2418

Dear Rep. Tom Anderson,

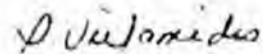
I am writing as the executive director, representing Anchorage Cabaret, Hotel, Restaurant, and Retailers Association (CHARR). We support HB 51 "An act relating to modifying the qualifications required for workers' compensation self-insurance and permitting employers in the same trade or industry to form an employer association for self-insured workers' compensation coverage."

State law currently requires a business to have 100 employees and net assets of \$5 Million to be able to self insure for workers comp. The goal of HB 51 is to allow associations to collectively pool employees and assets to achieve the same requirements. Anchorage CHARR supports the concept of controlling safety in the work place, and rewarding with lower premiums those businesses who go the extra mile. We also support the concept of finding ways to provide more options in the marketplace for contractors who face burdensome and growing workers compensation premiums.

Thank you for all of your previous help and support in our industry. Please evaluate HB 51 based on these concepts, and work with our local and state associations to develop a bill that you and your committee can support and pass. Your efforts to help us address worker's compensation insurance costs are greatly appreciated.

I am available to answer any questions you might have by calling me at (907) 646-4628.

Sincerely,

  
Silvia Villamides, Executive Director  
Anchorage CHARR  
PO Box 242023  
Anchorage, AK 99524



333 West 4th Avenue, Suite 214  
P.O. Box 242023  
Anchorage, AK 99524  
907.646.4628  
anchoragecharr@aci.net

March 6, 2006

Representative Tom Anderson, chair Labor & Commerce  
FAX 465-2418

Dear Representative Tom Anderson,

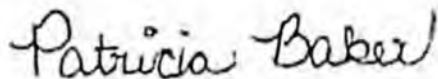
I am writing as Broker and CEO of Northern Trust Real Estate, Inc. We support HB 51 "An act relating to modifying the qualifications required for workers' compensation self-insurance and permitting employers in the same trade or industry to form an employer association for self-insured workers' compensation coverage."

State law currently requires a business to have 100 employees and net assets of \$5 Million to be able to self insure workers compensation. The goal of HB 51 is to allow associations to collectively pool employees and assets to achieve the same requirements. Northern Trust Real Estate, Inc. supports the concept of controlling safety in the work place, and rewarding with lower premiums those businesses who go the extra mile. We also support the concept of finding ways to provide more options in the marketplace for contractors who face burdensome and growing work compensation premiums.

Thank you for all your previous help and support of our industry. Please evaluate HB 51 based on these concepts, and work with our local and state associations to develop a bill that you and your committee can support and pass. Your efforts to help us address worker's compensation insurance costs are greatly appreciated.

I am available to answer any questions you might have by calling me at 907.727.9497.

Sincerely,



Patricia Baker  
Broker and CEO  
Northern Trust Real Estate, Inc.

Headquarters:  
217 2nd Street, Suite 201  
Juneau, Alaska 99801  
(907) 586-2323 FAX 463-5515  
www.alaskachamber.com



Regional Office:  
601 W. 5th Ave., Suite 700  
Anchorage, Alaska 99501  
(907) 278-2722 FAX 278-6643

March 15, 2006

Representative Tom Anderson, Chair  
& Members of the House Labor & Commerce Committee  
State Capitol  
Juneau, Alaska 99801

The Honorable Chairman and Members of the House Labor & Commerce Committee,

The Alaska State Chamber of Commerce strongly supports House Bill 51. HB 51 simply allows for the formation of same trade joint-insurance arrangements; the State Chamber of Commerce supports this additional option, which will hopefully create advantages to those trade groups in lowering their worker's compensation insurance. HB 51 also provides another option for coverage which will likely help those trades or industries that currently have little or no options for worker's compensation insurance coverage.

As you know the Alaska State Chamber of Commerce has worked hard in the past few years to lower the high costs associated with worker's compensation insurance. Through passage of HB 51, we feel that Alaska's businesses will likely gain additional flexibility, while creating new options for worker's compensation insurance coverage. The chamber encourages your constructive work and we are hopeful that the bill will move through the legislative process.

Yours in economic prosperity,

A handwritten signature in black ink that reads "Wayne G. Stevens". The signature is written in a cursive, flowing style.

Wayne Stevens, President  
Alaska State Chamber of Commerce

# ABOUT GROUP SELF INSURERS WORKERS' COMPENSATION FUNDS (SIFs)

## TABLE OF CONTENTS

1. INTRODUCTION
2. WHAT IS A SELF-INSURANCE GROUP?
3. WHAT BENEFITS DO SIFs OFFER?
4. HOW DO SIFs WORK?
5. HOW ARE SIFs REGULATED?
6. GROUP ADMINISTRATION
7. POTENTIAL DISADVANTAGE
8. CONCLUSION

**Q. WHAT IS A GROUP SELF-INSURED WORKERS' COMPENSATION FUND (SIF)?**

A. An SIF is a not-for-profit association of employers formed for the specific purpose of providing statutory workers' compensation and employers' liability coverage. Organizations that form SIFs are typically medium-size companies that may not have the size or financial capacity to become a self-insurer on their own, but want to assume control over their workers' compensation costs and obtain the benefits often realized with self-insurance, just as the larger employers have been doing for years at substantial savings.

**Q. WHAT BENEFITS DO SIFs OFFER?**

A. The primary benefits that can be expected from membership in a SIF are:

- Improved cash flow through elimination of advance premium payments;
- Improved loss experience through more effective loss prevention, loss control, and managed care programs;
- Savings from reduced administrative costs;
- Savings by earning interest income on premium dollars;
- The potential for dividend returns from loss-and-expense-fund surpluses.

In essence, an SIF helps employers control many aspects of their workers' compensation cost. However, the degree to which benefits can be achieved on a variety of factors will be discussed in this discourse.

**Q. HOW DO SIFs WORK?**

A. An SIF enables employers to assume a major portion of their risk and provides group purchasing power for excess insurance to cover losses incurred individually or collectively in excess of a specified amount.

Members of SIFs pay a premium based on their exposures, classification codes, payroll, experience modifications, and rates developed by the state workers' compensation rate making bureau. Premiums are used to pay coverage losses, claims administration and costs associated with the management of the group, such as loss control, legal, accounting and actuarial. Premium surpluses from both the claims fund and the administrative expense fund can be returned to group members on a pro rata share basis in the form of dividends.

Many costs associated with traditional workers' compensation insurance, such as premium taxes (in most states) and residual market charges, do not apply to SIFs. These costs can amount to a significant percentage of traditional workers' compensation insurance premiums. Membership fees are an additional cost.

#### **Q. HOW ARE SELF-INSURED GROUPS RELATED?**

A. SIFs must receive approval to operate from the state insurance department or state workers' compensation agency. The standards for qualification vary from state to state, for the general to the very specific. SIFs are required to follow rating plans and procedures filed in their state of operation. Although the specific requirements for the administration of SIFs may vary, the state regulatory authority's role is to ensure the group's ability to administer and pay claims through appropriate planning and funding.

1. Coverage requirements: Most regulatory authorities require that a SIF purchase additional coverage, such as excess insurance on both a specific and aggregate base to insure that they can pay large losses. The amount and type of insurance may vary by state.
2. Financial requirements: The regulatory authorities require that SIFs meet various financial requirements regarding net worth, profitability, liquidity, and solvency.
3. Security requirements: SIFs are required to post security in the form of cash, surety bond, negotiable securities, and irrevocable letter of credit, or a combination of these.

#### **Q. HOW ARE SIF'S ADMINISTERED?**

A. SIFs select a board of trustees to govern the activities of the group including who may join, the purchase of excess insurance, the distribution of dividends, and the selection of service providers.

SIFs are responsible for the payment of claims in conformance with state workers' compensation laws. In addition, groups usually require a variety of services, such as loss prevention, loss control, and claims management. These services can be performed by company personnel if they have the resources and capabilities or contracted to an outside firm with the requisite expertise. To a large extent, the success of any SIF depends on how effectively it manages and integrates many of these activities. To operate most effectively, an outside firm is usually selected to provide a variety of these services.

#### **Q. HOW ARE CLAIMS MANAGED?**

- 1. A primary benefit of self-insurance is the degree of control to a group can exercise over all aspects of the claims handling process to help contain costs. A group may select to implement a variety of claims management services including:

- Claims processing and settlement
- Investigation
- Managed care and cost containment programs
- Preferred provider service
- Litigation management
- Subrogation
- Medical bill reviews
- Work hardening and early-return-to-work programs
- Risk management reports

**Q. WHAT ARE SOME OTHER ISSUES TO BE CONSIDERED RELATIVE TO SIFs?**

**CASE MANAGEMENT**

A.

2. Case management is an effective way to reduce cost through early intervention and an effective early-return-to-work plan. Case management includes:

Immediate contact by a health care professional to monitor the employee's medical care and to ensure that the employee receives the appropriate care from the time of injury, through treatment and recuperation.

Developing modified work plans with the injured employee and the health care provider to help the employee make the transition back to work and to expedite early-return-to-work.

Implement work hardening and vocational rehabilitation programs, where appropriate, to help individuals return to work and ensure that the early-return-to-work plan is successful.

**RISK MANAGEMENT**

3. Risk management and loss control planning is designed to prevent losses from occurring and to reduce the frequency or severity when they do occur. Risk management specialists can:
  - Analyze and reduce site hazards to prevent or eliminate causes of injury;
  - Evaluate the effectiveness of existing safety programs;
  - Provide periodic inspections and written reports recommending specific corrective action;

- Develop written safety policies and guidelines to help prevent injury;
- Assist in developing and implementing new safety programs;
- Provide risk management analyses reports

#### MARKETING AND MEMBERSHIP

4. Marketing and membership: SIFs require ongoing efforts to promote the group's program, attract new member organizations, and evaluate applications of potential members to ensure the group's long-term survival and continued financial viability. Risk management consultants, insurance companies, and insurance brokers are just a few of the resources that can assist a group in gathering information on prospective group members.

#### UNDERWRITING SERVICE

5. Underwriting is required to develop guidelines for membership, evaluate exposure to loss for individual members and the group as a whole, calculate the premium to be charged to each member, and establish loss reserves in compliance with state regulation

#### FEASIBILITY STUDIES

6. Feasibility studies play an important role when forming an SIF as well as once a group is formed. When forming a self-insurance group, they are used to review and analyze specific state regulations and to provide specific financial and actuarial information to the regulatory authority. Once a group is formed, studies help prospective members determine the financial/cash flow effects that joining the group will have on their firm. Accurate loss forecasting is an extremely important component of a feasibility study. Loss forecasting usually requires a minimum of three years of premium, payroll, experience modification, and claims history. Pro forma financial statements can then be prepared on prospective group members.

#### ACCOUNTING AND FINANCIAL MANAGEMENT

7. Accounting and financial management: SIFs are responsible for the proper establishment, maintenance, and administration of accounting procedures and financial controls including:
  - Collection of accounts and monies owed to the group in connection with providing coverage and the group's administration;
  - Maintenance of all claims fund and administrative fund accounts necessary to satisfy the legal and financial obligations of the group;
  - Systems for the safekeeping of records, books of accounts, and financial affairs;
  - Reporting of financial statements and reports as required by state regulations and the group's bylaws;

- Selection of independent accounting and actuarial services, as appropriate, and proper investment management.

#### **Q. ARE THERE DISADVANTAGES TO FORMING AN SIF?**

A. SIFs offer many advantages, but there are also potential disadvantages.

##### **JOINT AND SEVERAL LIABILITY**

1. Members of the group are typically jointly and severally liable for workers' compensation and employers' liability losses incurred by membership. The subsequent bankruptcy or termination of a member does not release the remaining group members from this liability.

##### **CATASTROPHIC LOSSES**

2. If a catastrophic event occurs that exhausts the group's self-insured retention and excess insurance, the group members are typically responsible for paying their pro rata share of the amount required to cover the total loss.

##### **MULTI-STATE OPERATION**

3. SIFs are regulated by the state and may only cover exposures within that state. As a result, employers with operations in more than one state must find another SIF or alternate means to cover any out-of-state portions of the workers' compensation exposure.

##### **ADMINISTRATIVE FUNCTIONS AND ADDITIONAL COSTS**

4. Many of the services usually provided by an insurer (i.e. claims administration and record keeping, loss control, legal services, and actuarial service) are now the responsibility of the group. The group must select the services it requires, and, if necessary, hire service providers where appropriate.

**ANCHORAGE BOARD  
OF REALTORS® INC.**REALTOR® *The Voice for Real Estate™* in Anchorage1500 W. 33rd Avenue  
Suite #220  
Anchorage, Alaska 99503  
(907) 561-2338  
(907) 563-8478 Fax

March 3, 2006

Rep. Tom Anderson, chair Labor & Commerce  
FAX 465-2418

Dear Rep. Tom Anderson,

I am writing as the Executive Officer representing the Anchorage Board of REALTORS. We support HB 51 "An act relating to modifying the qualifications required for workers' compensation self-insurance and permitting employers in the same trade or industry to form an employer association for self-insured workers' compensation coverage."

State law currently requires a business to have 100 employees and net assets of \$5 Million to be able to self insure for workers comp. The goal of HB51 is to allow associations to collectively pool employees and assets to achieve the same requirements. The Anchorage Board of REALTORS supports the concept of controlling safety in the work place, and rewarding with lower premiums those businesses who go the extra mile. We also support the concept of finding ways to provide more options in the marketplace for contractors who face burdensome and growing work comp premiums.

Thank you for all your previous help and support of our industry. Please evaluate HB51 based on these concepts, and work with our local and state associations to develop a bill that you and your committee can support and pass. Your efforts to help us address worker's compensation insurance costs are greatly appreciated.

Should further information be required, please call Cody Gibson, President of the Board of Directors (907) 273-7272

Sincerely,

Kay DuBois  
Executive Officer  
Anchorage Board of REALTORS



March 2, 2006

Rep. Tom Anderson, chair Labor & Commerce  
FAX 485-2418

Dear Rep. Tom Anderson,

I am writing as President of the Anchorage Home Builders Association, representing over 300 members in Anchorage and Eagle River. We support HB 51 "An act relating to modifying the qualifications required for workers' compensation self-insurance and permitting employers in the same trade or industry to form an employer association for self-insured workers' compensation coverage."

State law currently requires a business to have 100 employees and net assets of \$5 Million to be able to self insure for workers comp. The goal of HB51 is to allow associations to collectively pool employees and assets to achieve the same requirements. ASHBA supports the concept of controlling safety in the work place, and rewarding with lower premiums those businesses who go the extra mile. We also support the concept of finding ways to provide more options in the marketplace for contractors who face burdensome and growing work comp premiums.

Thank you for all your previous help and support of our industry. Please evaluate HB51 based on these concepts, and work with our local associations to develop a bill that you and your committee can support and pass. Your efforts to help us address worker's compensation insurance costs are greatly appreciated.

I am available to answer any questions you might have by calling me at 907-850-2052.

Sincerely,

President  
Anchorage Home Builders Association

**"Building Better Places to Live, Work and Play"**

**ANCHORAGE HOME BUILDERS ASSOCIATION, INC.**

8301 Schoon Street, Suite 200 • Anchorage, AK 99518 • (907) 522-3605 • Fax (907) 522-3757





**Alaska State  
Home Building Association**

February 23, 2006

Rep. Tom Anderson, chair Labor & Commerce  
FAX 465-2418

Dear Rep. Tom Anderson,

I am writing as President of the Alaska State Home Building Association, representing over 900 members across the state. We support HB 51 "An act relating to modifying the qualifications required for workers' compensation self-insurance and permitting employers in the same trade or industry to form an employer association for self-insured workers' compensation coverage."

State law currently requires a business to have 100 employees and net assets of \$5 Million to be able to self insure for workers comp. The goal of HB51 is to allow associations to collectively pool employees and assets to achieve the same requirements. ASHBA supports the concept of controlling safety in the work place, and rewarding with lower premiums those businesses who go the extra mile. We also support the concept of finding ways to provide more options in the marketplace for contractors who face burdensome and growing work comp premiums.

Thank you for all your previous help and support of our industry. Please evaluate HB51 based on these concepts, and work with our local building associations to develop a bill that you and your committee can support and pass. Your efforts to help us address worker's compensation insurance costs are greatly appreciated.

I am available to answer any questions you might have by calling me at 907-232-3751.

Sincerely,

Tom Smith  
President  
Alaska State Home Building Association



8301 Schoon, Ste 200 • Anchorage, Alaska 99518  
Phone (907) 644-4190 • FAX (907) 522-3757  
Website: [www.buildersofalaska.com](http://www.buildersofalaska.com) • E-mail: [info@buildersofalaska.com](mailto:info@buildersofalaska.com)



## ASSOCIATED GENERAL CONTRACTORS of ALASKA

8005 SCHOON STREET • ANCHORAGE, ALASKA 99518  
TELEPHONE (907) 561-5354 • FAX (907) 562-6118

February 24, 2006

Representative Tom Anderson  
Chairman, House Labor & Commerce Committee  
Alaska State Legislator  
State Capitol (MS 3100)  
Juneau, Alaska 99801-1182

Re: HB 51

Dear Representative Anderson:

The Associated General Contractors of Alaska supports the concept of group self-insurance for workers compensation as one means by which Alaskan businesses can deal with the high cost of such insurance.

The bill, as drafted, provides protection for injured workers by making all employers within the group jointly and severally liable for claims, requires a safety rate reduction program, and basically requires all interested members of such groups to make a long term commitment to the program. The fear that a faulty business plan may cause some groups to fail thereby leaving injured workers without their benefits is minimized in this legislation. While this risk cannot be totally eliminated, it should be recognized that the problem also exists under the current insurance structure.

The proposed legislation gives businesses another opportunity to control the costs of doing business in Alaska. The safeguards incorporated in the bills seem sufficient to protect injured workers and allow the state to exercise sufficient oversight of participating groups. AGC urges your support of the proposed legislation.

Sincerely,

Richard Cattanach



February 23, 2006

Dear Representative Tom Anderson,

We would appreciate your support on passing HB-51.

Workman's Comp Insurance as it is now structured is a prohibitive drain on small business. Our company has been in business for the last 25 years. In that period of time we have had one small claim, which was approximately 6 years ago. Over the years our premium has gone up from approximately \$6,000 per annum to over \$27,000 per annum.

Please support HB-51 to enable us to have another source of Workman's Compensation Insurance.

Sincerely,

A handwritten signature in black ink, appearing to read 'Alfred J. Romaszewski'.

Alfred J. Romaszewski  
Broker

**RE/MAX** of Eagle River, Inc.  
18600 Centerfield Dr., Suite 201  
Eagle River, Alaska 99677  
Office: (907) 694-4200  
Fax: (907) 696-0214

# ALASKA TRUCKING ASSOCIATION

3443 Minnesota Drive • Anchorage, Alaska 99503 • Phone: (907) 276-1149 • Fax: (907) 274-1946  
[www.aktrucks.org](http://www.aktrucks.org)

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February 15<sup>th</sup> 2005

Representative Tom Anderson  
State Capital  
Juneau, AK 99801

RE: HB 51

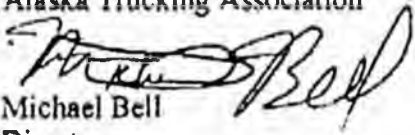
Dear Representative Anderson,

Workers compensation continues to be one of the largest concerns and problems for trucking in Alaska. Companies large and small are faced with increasing rates that can only be attributed to market increases. These companies are faced with extremely limited choices of providers and little alternative to combat the rates continue to increase. These circumstances force small business to operate without or even close their doors.

HB 51 creates the ability for like minded companies to come together to diversify and control risk. The Alaska Trucking Association supports this provision to allow a group or association members to combined to carry the workman's compensation insurance. This will allow for a greater safety presence, ability to control there own pool members resulting in a reduction of the risk of the program. It should provide for long term cost savings and better control of programs fait.

We hope you are able to move this bill forth, this bill provides the new ability of a choice in Alaska where there are so few. It also provides the opportunity for a company to have a fighting chance to determine their own outcome.

Sincerely,  
Alaska Trucking Association

  
Michael Bell  
Director



*Spinell*  
HOMES, Inc.

February 9, 2006

Rep. Tom Anderson  
Chair, Labor & Commerce

Via Fax No. 465-2418

RE: HB 51

Dear Mr. Anderson;

As a member of the Anchorage Home Builders Association and as a local home builder I am urging your support for House Bill 51.

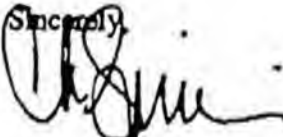
State law currently requires a business to have 100 employees and net assets of \$5 Million to be able to self insure for workers compensation. This is impossible for many businesses, and our goal is to allow associations to collectively pool employees and assets to achieve these requirements.

Currently we are at the mercy of regional workers compensation rates. By working together in a self insurance program, not only do we have the best probability of controlling safety in the work place, but we will have the ability to reward those businesses who go the extra mile in safety with lower premiums.

Not only is this bill good for our communities, it will also benefit our economy. Lower premiums for businesses means employers will be able to provide better benefits and pay to their employees.

If you would like to discuss this further please feel free to contact me at 344-5678. Again, I would greatly appreciate your support of HB 51.

Sincerely,



Charles Spinelli

Fax from :

06 00 00 17:00 19 172  
04 00 00 17:00 19 172

# FAX COVER

To: Chuck Spinelli

Company : Spinell Homes, Inc.

Fax Number : 3441978

From : Vicki Portwood

Company : Anchorage Home Builders Association

Fax Number : 907-522-3757

Subject : workers comp

Pages including cover page: 1

Time: 2:46:52 PM

Date: 2/8/2006

## MESSAGE

The **Government Affairs Committee** is working in Juneau on our Workers Comp Legislation HB 51. Our bill comes up for hearings on Friday, Feb 10th in Juneau and Larry Partusch will be testifying.

Partusch is asking for your help with your company information.

1) What percentage of your company's expense burden is workers comp?  $2005 = 2.6\%$

2) What have your rates done in the last 5 years?

Please **send this information to Matt Gill** (Matt is part of our lobbyist Joe Hayes offices in Juneau) at **907-586-8977**. If you would like the information to be sent for you send it to our offices at 522-3757.

Anchorage Home Builders Assn. Government Affairs



**WORKERS COMP RATES**

CLASS	2002 RATES	2006 RATES
5610	\$ 8.11	\$10.66
5645	\$13.45	\$27.93
6217	\$ 9.53	\$19.52
8742	\$ .61	\$ 1.44
8810	\$ .56	\$ 1.23

YEAR	EMPLOYEES	TOTAL AMOUNT
2002	60	\$ 77,512.00
2003	70	\$199,011.00
2004	85	\$294,287.00
2005	85	\$323,738.00

# Alaska Statutes associated with SSHB51

## AS 23.30.090. Self-Insurance Certificates.

If an employer has complied with the provisions of this chapter relating to self-insurance and has paid annual service fees assessed under AS 23.05.067, the board shall issue the employer a certificate that shall remain in force for a period fixed by the board. The board may, upon a least 10 days' notice and a hearing, revoke a self-insurance certificate upon satisfactory proof that an employer is no longer entitled to it. After revocation, the board may grant a new certificate to an employer, upon the employer's petition and satisfactory proof of the employer's financial ability as provided in this chapter. An employer authorized as a self-insurer shall provide claims facilities through its own staffed adjusting facilities located within the state, or independent, licensed, resident adjusters with power to effect settlement within the state.

## AS 23.05.067. Service Fees For Administration of Workers' Safety and Compensation Programs.

(a) Each insurer providing workers' compensation insurance and each employer who is self-insured or uninsured for purposes of AS 23.30 in this state shall pay an annual service fee to the department for the administrative expenses of the state for workers' safety programs under AS 18.60 and the workers' compensation program under AS 23.30 as follows:

(1) for each employer,

(A) except as provided in (b) of this section, the service fee shall be paid each year to the department at the time that the annual report is required to be filed under AS 23.30.155 (m) or (n); and

(B) the service fee is 2.9 percent of all payments reported to the Alaska Workers' Compensation Board under AS 23.30.155 (m) or (n), except second injury fund payments; and

(2) for each insurer, the director of the division of insurance shall, under (e) of this section, deposit from funds received from the insurer under AS 21.09.210 a service fee of 1.82 percent of the direct premium income for workers' compensation insurance received by the insurer during the year ending on the preceding December 31, subject to all the deductions specified in AS 21.09.210 (b).

(b) An employer who is required to pay an annual service fee under (a) of this section may elect to pay in yearly increments over a five-year period the portion of the service fee due under (a) of this section as a result of a settlement of over \$50,000 approved under AS 23.30.012. An election under this subsection must be made in the first year that a service fee would be due as a result of the settlement. The employer shall notify the department of an election under this subsection. If an election is made, payment of each

yearly increment that is due shall be made at the time the annual report is required to be filed under AS 23.30.155(m) or (n).

(c) Payment of the annual service fee under this section shall be made in the manner and by the method specified by the department.

(d) If an employer who is required to pay an annual service fee under this section does not pay the required amount of the service fee by the time specified in this section, the employer shall pay a civil penalty of \$100 for the first day the payment is late and \$10 a day for each additional day the payment is late. The civil penalty under this subsection is in addition to any civil penalties imposed for late filings of reports under AS 23.30.155 (m).

(e) Annual service fees and civil penalties collected under this section shall be deposited in the workers' safety and compensation administration account in the state treasury. Under AS 37.05.146 (c), the service fees and civil penalties shall be accounted for separately, and appropriations from the account are not made from the unrestricted general fund. The legislature may appropriate money from the account for expenditures by the department for necessary costs incurred by the department in the administration of the workers' safety programs contained in AS 18.60 and of the Alaska Workers' Compensation Act contained in AS 23.30. Nothing in this subsection creates a dedicated fund or dedicates the money in the account for a specific purpose. Money deposited in the account does not lapse at the end of a fiscal year unless otherwise provided by an appropriation.

(f) The department may adopt regulations to implement this section.

(g) Notwithstanding AS 21.76.020 (a), a joint insurance arrangement established under AS 21.76 is subject to the provisions of this section and regulations adopted under this section and, if self-insured, is subject to the annual service fee on behalf of its members.

(h) The department shall grant a credit against the service fee imposed under (a)(1) of this section to an employer if (1) the employer applies to the department for the credit on a form prescribed by the department; (2) the employer provides proof that the employer has paid a premium tax imposed under AS 21.09.210 on an insurance policy; and (3) workers' compensation claims have been paid under the insurance policy described in (2) of this subsection and the claims are subject to the service fee imposed under (a) of this section. The credit allowed under this subsection is equal to the amount of the premium tax paid by the employer under the insurance policy, may not exceed the service fee imposed under (a) of this section, and only applies to premium taxes paid by the employer on or after January 1, 2000.

(i) In this section, "insurer" has the meaning given in AS 21.90.900.

## **AS 21.89.015. Workplace Safety Program.**

An insurer who provides workers' compensation insurance in this state shall establish and maintain a workplace safety rate reduction program, subject to the approval of the division.

# Administrative Codes associated w/ SSHB51

## 08 AAC 46.010. Qualifying as a Self-Insurer

- (a) An employer may self-insure its obligations under the Act if the employer provides satisfactory proof to the board that it has
- (1) the financial ability to meet the obligations;
  - (2) available claims facilities through its own staffed adjusting facilities located within the state or through independent, licensed, resident adjusters with power to effect settlement within the state; for purposes of this paragraph, insurance companies with a certificate of authority from the division of insurance, Department of Community and Economic Development, and with staff adjusters in this state, are considered independent, licensed, resident adjusters;
  - (3) been in business within Alaska for at least five years immediately preceding the filing of the application;
  - (4) a safety/loss control program;
  - (5) in combination with its parent company or subsidiary companies of the employer, a minimum of 100 employees either in Alaska or in another state or states; and
  - (6) a net worth of at least \$5,000,000.
- (b) The board will, in its discretion, waive the requirement in (a)(3) of this section
- (1) if the employer has self-insured its workers' compensation obligations in another jurisdiction for a period of at least five years immediately preceding the filing of the application; or
  - (2) if the employer is a wholly-owned subsidiary and its parent company has been in business for at least five years immediately preceding filing and guarantees the subsidiary's obligations under the Act.
- (c) An employer which is a majority or wholly-owned subsidiary must have its obligations under the Act guaranteed by its parent company.

## 08 AAC 46.050. Excess Insurance

- (a) Both specific and aggregate excess insurance with policy limits and retention amounts acceptable to the board must be provided by each self-insurer unless the board waives this requirement.
- (b) An acceptable excess insurance policy must
- (1) be written by a casualty insurance company or reinsurance company authorized to transact such business in Alaska;
  - (2) not be cancellable except upon at least 60 days' advance written notice by registered or certified mail to the self-insurer and the board; and
  - (3) not contain any type of commutation clause, unless it provides that any commutation does not relieve the underwriter of any liability unknown at the time of the commutation.

(c) If an existing excess policy submitted in compliance with this chapter is cancelled or not renewed, the self-insurer shall file proof of replacement excess coverage within the 60-day notice period required by (b)(2) of this section.

## **08 AAC 46.020. Application For Self-Insurance Certificate**

- (a) An employer shall apply for a self-insurance certificate on Department of Labor and Workforce Development form number 07-6129. The completed application must be
- (1) filed with the board at least 90 days before the desired effective date of self-insurance;
  - (2) signed before a person authorized to take an oath, affirmation, or acknowledgement;
  - (3) accompanied by the employer's audited financial statements for the three fiscal or calendar years immediately preceding the filing of the application; the employer may submit consolidated financial statements of its parent company if the employer does not have its own audited financial statements and the employer is a majority or wholly-owned subsidiary; a public entity must submit audited comprehensive annual financial reports, including detailed schedules, for the three fiscal or calendar years immediately preceding the filing of the application;
  - (4) accompanied by a description of the proposed excess insurance including the effective dates, the types of coverage, the conditions and exclusions, the limits and retentions of each type of coverage, and a guarantee of coverage until the board receives a copy of the policies; and
  - (5) accompanied by a parent company's guarantee of the subsidiary's obligations under the Act, if the employer is a majority or wholly-owned subsidiary.
- (b) If the employer or its parent company self-insures its workers' compensation obligations in any other jurisdiction, the application must be accompanied by a summary of the most recent filings, including a summary of losses, self-insured retention limits, and other data pertinent to the other self-insurance programs. The summary of losses must be categorized by total incurred loss, amount of loss within retention limit, amount of loss subject to reinsurance or excess recovery, and amount of loss subject to subrogation recovery.
- (c) An employer shall submit, as part of the application, a detailed outline or manual of its safety/loss control program.
- (d) An employer shall report for the most recent three years, its total Alaska payroll, Alaska workers' compensation losses, and premiums paid.



## **Alaska Legislators: HB 51 (CS) and SB 241 pose a risk to injured workers, employers, insurers and the state.**

The current drafts of proposed workers compensation self-insurance legislation (HB 51 CS and SB 241) have been represented as reworked or compromise measures that address Insurance Division and insurance industry concerns. But workers compensation insurers in Alaska do NOT support these bills, as we believe they put the physical health of injured workers – and the financial health of insurers and Alaska's economy – at risk.

Importantly, these measures are widely thought of as "homebuilder's" bills – designed to assist building contractors and their subcontractors find an additional option for workers comp coverage. But the bills are not limited to homebuilding or construction of any sort – they allow any employer group with 100 or more workers in the aggregate to form an inadequately regulated insurance pool for workers comp coverage.

Also important is that *current law allows* the formation of reciprocals, which are insurance entities formed in a similar fashion to what is proposed in both HB 51 and SB 241, but which are subject to state regulations as are other workers' compensation insurers, and we believe are a safer alternative than this legislation.

These measures are an understandable effort to provide a lower-cost alternative for employers seeking workers compensation coverage in a difficult insurance market. But it must be said that simply "charging less" without addressing the current system's cost drivers – like provider reimbursement levels, utilization issues, fraud and abuse, and prescription drug costs – will result in artificial savings among these pools. Combined with a lack of regulatory oversight and undercapitalization, it is recipe for insolvency.

We believe the best approach is to use current statutes to pursue alternatives that are regulated by the Insurance Division, and to continue the reform process and the efforts of the Workers Compensation Task Force, chaired by Sen. Seekins. We urge you to consider addressing the costs inherent in the current system before eroding the financial base of that system.

Attached here is a thorough analysis of the proposed legislation, which points out the many areas in which *even the most recent versions* of HB 51 and SB 241 continue to allow the formation of inadequately regulated, under-funded, poorly organized insurance entities that will operate with insufficient state regulatory and enforcement oversight.

### **Even at a glance, the problems with these measures are clear:**

- **Problems for employers:** The proposals provide inadequate net worth requirements for self-insured employer pools. A single worksite accident could easily endanger the financial viability of these groups. The funding requirements for the groups are simply inadequate to cover losses. And under joint and several

liability provisions, if one member suffers a substantial loss, one or more employers in the group can declare bankruptcy and seek protection under federal bankruptcy law, leaving the rest of the pool members to pay claims.

- **Problems for insurance regulators:** The proposals allow any variety of under funded self-insurance pools to form. Funding requirements are similar whether the group stocks grocery shelves or sets dynamite charges, and the Director has little ability to prevent the failure of such under funded groups.
- **Problems for injured workers:** The Alaska insurance code includes statutes designed to protect insurers and consumers – to make sure insurers compete fairly, and to make sure insurers have set aside sufficient reserves to pay claims. If those statutes and regulations are necessary for insurance companies, why are they not necessary for self-insurance pools? More specifically, how well can an injured worker expect to be treated by a self-insured group's third party administrator when that worker's injury threatens the very existence of the entire group? For example, one Alaska insurer presently has a reserve of \$7.7 million for one claim. This single claim would exceed the entire \$5 million minimum net worth requirement under HB 51 for an entire group.
- **Problems for insured employers:** If dozens of Alaska companies choose to cancel their workers compensation policies they have today and join a self-insurance pool, rates for those companies that remain with established, regulated, secure insurers are likely to see premiums rise, as the market for traditional workers compensation coverage shrinks.
- **Problems for the state budget:** Under the proposed bills, any group of employers with a total of 100 or more employees in the aggregate can form a self-insurance pool, without regard to risk or claims experience, and with limited funding requirements. But system costs do not change simply because members of the self-insured pool are charged less in premiums. Therefore, a failure of one or more of these pools is virtually inevitable. Who will step in to pay the claim of a married 22-year old father of three who has suffered a workplace injury that leaves him unable to work for the rest of his life? There is no backstop anticipated in this legislation. Recourse will likely be state government.

**PCI urges you to oppose CS HB 51 and SB 241.**



## PCI Comments on proposed Alaska HB 51 (CS) and SB 241 March 28, 2006

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1. Self-insurance is a viable alternative to traditional risk financing options but only if necessary checks and balances are included in statute to protect workers, employers and the state budget.
2. A group self-insurance program can provide its members a number of both advantages and disadvantages when compared to traditional insurance programs.
3. The inherent nature of self-insured group programs require specific controls in law to protect the public, injured workers, employers, and the state. The inherent differences between industries means a "one size fits all" approach is dangerous. Review and approval of each program by the Director is essential to success.
4. Specific and detailed controls must exist in the areas of:
  - a. Minimum financial requirements to establish and maintain a viable group program;
  - b. Selection, screening and evaluation of initial membership, establishment of group standards, and ongoing evaluation of member compliance;
  - c. Group structure formation, bylaws, procedures and standards, including the determination of the program administrator, delivery of professional services such as accounting, actuarial, claims administration, risk management, and premium audit services;
  - d. Financial responsibilities of the group for the establishment of adequate funds for the payment of claims and services.

Following are comments to the key provisions of the current version of HB 51:

### **Sec. 21.77.010 – Self Insurance Certificates**

1. The proposed legislation requires 100 employees in the aggregate but fails to require specific minimums established by member, number of employees, premium size, years in business, or loss experience. These criteria, established by rule, are essential.
2. A net worth of at least \$5,000,000 in the aggregate will be grossly inadequate for some groups based on the size of the group or the business classifications to be included.
  - a. The initial minimum net worth requirements and subsequent levels should be established by and be subject to the approval of the director;
  - b. The net worth requirements should be adjusted to vary by the size of the group – as the group grows, a provision should be included that would require the net worth of the group to grow accordingly;
3. How are individual members screened and evaluated to assure that they have sufficient net worth given the jointly and severally liable provisions?
4. How are individual members screened and evaluated to assure that they have adequate safety programs in place?

### **Sec. 21.77.020 – Excess insurance, reinsurance contracts, surety and solvency bonds**

1. The tangible net worth of all members in the association of at least \$5,000,000 may not be adequate based on the group membership and type of business.

- a. The current language provides only the statement of "at least \$5,000,000" but makes no provision for increasing the minimum amount based on the size of the group or any other factors that the director believes to be relevant;
  - b. The language also states that the group members may provide a solvency bond in a form prescribed by the director, but does not provide the means for the director to:
    - set minimum financial rating requirements of the insurance carrier providing the surety bond, nor
    - specify the amount of the surety bond if the director determines the amount should be greater than \$5,000,000 to protect the public interest including employees, injured workers, employers, and the state of Alaska.
2. Section (e) provides the authority for the director to increase or decrease the amount of the bond, but only in accordance with requirements for loss reserves in casualty insurance.
    - a. The director should not be limited by such restrictive language;
    - b. The director should be required to increase or decrease the amount of the bond or monetary deposit based on all relevant factors affecting the financial ability and stability of the group to pay compensation claims and group expenses.

**Sec. 21.77.070 -- Financial responsibilities**

1. The use of 65 percent of the annual assessment for the claim account may not be adequate for some groups. The amount to be set aside should be determined by an actuarial review of members' experience, and should be subject to review and approval by the director.
2. The 65 percent is insufficient to cover the cost of claim payments, **AND** expenses related to claims, **AND** costs of excess insurance, **AND** assessments and penalties to the Subsequent Injury Account and the Uninsured Employers' Claim Account for all groups. These amounts must be subject to review and approval by the director.
3. The minimum amount in the claim account should be established by the director and should be available to cover claim and specific claim related expenses, and should not be tapped to cover other operating costs.
4. If the 35 percent set aside in the administration account is not sufficient to cover the expenses of its programs for loss control and occupational safety, the group should not be allowed to access the claim fund, and the additional amounts required should be assessed its members.
5. The claim account should be maintained at actuarially sound levels to protect the injured workers, insuring that funds will be available to pay for lost wages, injuries, and medical expenses. An annual certification of the claim accounts' adequacy of each group by an actuary approved by the director is a necessary requirement.
6. Section (d) allows the board of directors to invest without restrictions. Investments should be of a type acceptable to the director and specified by rule.

**Sec. 21.77.090 -- Termination and cancellation of membership**

1. Stability of the group should be encouraged. There are no requirements that employers maintain membership for a specified minimum period of time.
2. There are no specified cancellation/renewal policies relating to the ongoing financial strength, commitment to safety, or loss experience of individual members.
3. There are no detailed policies or procedures relating to penalties that may apply for early exit by a member from the program.

**Sec. 21.77.110 – Liability for compensation obligations of members**

1. An important feature required for group self-insurance is what happens in the case of insolvency or bankruptcy. Although this section confirms the joint and several liability binding each member, other requirements must be addressed for the following contingencies:
  - a. The remaining members of the group have insufficient net worth to meet the minimum net worth requirements established by the director, and/or
  - b. The insolvency or bankruptcy of one or more members of the group results in the inability of the remaining members to meet the group's financial obligations.
2. What financial protections exist for the injured worker to assure that compensation claims will be paid in full?
  - a. Will the state of Alaska be required to pay?
  - b. Or, will the injured worker be left without any recourse?
3. Due to the joint and several liable provisions, the financial strength of each member needs to be thoroughly screened and evaluated initially and ongoing by the director according to requirements specified by rule.

**Sec. 21.77.150 – Statement of financial condition**

1. The provisions provide for an audited statement prepared in accordance with generally accepted accounting principles. To assure adequacy of the separate accounts and in particular the adequacy of the claim account, statutory accounting principles must be applied.

**CONCLUSION**

Group self-insurance is a viable option to traditional insurance coverage, but only when necessary elements are in place to protect employees, employers, and the citizens of Alaska. Current regulations allow for the formation of reciprocal insurance carriers that allow for the creation of self-insured groups while at the same providing necessary controls. The CS for HB 51 (L&C) creates a statutory "one size fits all" program with minimal input from the Director. It does not provide even a bare minimum level of financial or operational control required for a successful group self-insurance program and would needlessly endanger the welfare of workers and put the financial health of insurers and the state's economy at risk.

## SECTIONAL ANALYSIS

### CSSSHB 51

Workdraft "S" 3/3/06

#### Associations of Self-insured Employers for Providing Workers' Compensation Coverage

#### OVERVIEW:

CSSSHB 51 differs from SSHB 51 in two significant ways. First, while both versions allow employers who are in the same trade or business to form associations for the purpose of self-insuring their workers' compensation obligations, SSHB 51 placed regulatory authority for the self-insurance program with the Workers' Compensation Board. The CS places regulatory authority in the Division of Insurance. Second, SSHB 51 included only the most basic requirements for the self-insurance program, leaving many details to be established by regulation. The CS contains a much more detailed set of statutory requirements for the program.

#### SECTION BY SECTION ANALYSIS OF CSSSHB 51:

Section 1 adds Chapter 77 to the Alaska Insurance Code (AS 21). The provisions of the new Chapter 77 are as follows:

**Sec. 21.77.010.** Subsection (a) sets out the requirements that an association of employers must meet in order to qualify for a certificate of self-insurance. Members of the association must have at least 100 employees in the aggregate and must have a net worth of at least \$5 million in the aggregate. The association must have paid the annual service fee assessed under AS 23.05.067; each member of the association must have a workplace safety rate reduction program in effect, and the association must file an indemnity agreement with the director that makes each member jointly and severally liable to secure the payment of all workers' compensation obligations of all members of the association. Subsection (b) sets out the information and supporting documentation that must accompany an application for a certificate of self-insurance, including financial statements. Subsection (c) provides that financial information filed with the director is confidential and not a public record (that is, it is not available to the public for inspection or copying). Subsection (d) specifies that the membership in the association must include at least five employers who are members of the same Alaska trade association and that the trade association must have been in existence for at least five years.

**Sec. 21.77.020.** Subsection (a) requires an association of self-insured employers to maintain excess coverage in an amount and in a form required by the Director of the Division of Insurance, to collect an annual assessment from its members to cover their workers' compensation obligations and associated administrative expenses, and to provide security for the payment of the workers' compensation obligations of its

members. Subsection (b) requires the association to maintain an aggregate tangible net worth of at least \$5 million or provide a solvency bond in an aggregate amount of at least \$5 million. Subsections (c) and (d) require the association's administrator and third-party administrator each to deposit bonds with the director to secure performance of their respective duties. Subsection (e) allows the director to increase or decrease the amount of bonds required under the section in accordance with reserves requirements for casualty insurance. Subsection (f) makes it clear that depositing a bond does not relieve an association from the responsibility of administering claims and making workers' compensation payments.

**Sec. 21.77.030.** This section provides that only a surety or bonding company authorized to business in Alaska may furnish a bond or other form or security under the chapter.

**Sec. 21.77.040.** This section requires the director to issue a certificate of self-insurance if the director determines that the association meets the qualifications set out in Sec. 21.77.020. A certificate remains valid until it is withdrawn by the director or voluntarily terminated by the association. An association is not entitled to receive a new certificate if it has had a previous certificate involuntarily withdrawn within the previous two years. The director may not grant a request to cancel a certificate unless the association has insured or reinsured all incurred obligations.

**Sec. 21.77.050.** If a certificate is issued, the association directly assumes responsibility for providing workers' compensation to the members' employees and beneficiaries under the workers' compensation statutes (AS 23.30). In addition, except for the requirement to pay workers' compensation insurance premiums, the association is treated the same as any other employer under AS 23.30 for purposes of liability to the members' employees for injury. The association also acts on behalf of or for the benefit of its members and has the same rights and obligations under AS 23.30 as an employer. Claims must be handled in accordance with the requirements of AS 23.30, and the association is subject to regulations adopted by the Alaska Workers' Compensation Board.

**Sec. 21.77.060.** Subsection (a) provides that an association of self-insured employers shall be governed by a board of directors and imposes restrictions on who may serve on the board. Subsection (b) imposes a number of duties on the board of directors, including prompt payment of compensation due under AS 23.30, protection of association assets, the employment of a full time administrator, the employment of a third-party administrator to administer claims, engagement of an independent certified public accountant to prepare statements of financial condition; and maintenance of minutes of board meetings. Subsection (c) sets out certain prohibited acts, including extension of credit to a member of the association for payment of workers' compensation, unless under a payment plan approved by the director, and borrowing money from the association, except in the ordinary course of its business.

**Sec. 21.77.070.** Under subsection (a), the association's board of directors is responsible for the funds of the association. Subsection (b) requires the association to establish a claims account in a financial institution approved by the director and to deposit in the claims account at least 65 percent of the annual assessments received from its members. The director, under subsection (c), is authorized to allow a deposit of less than 65 percent if more than 35 percent of the annual assessments are needed to maintain loss control and occupational safety programs. Subsection (d) authorizes the association's board of directors to invest funds not needed to pay compensation payments. Subsection (e) authorizes the director to review the association's accounts to assure compliance with this section.

**Sec. 21.77.080.** This section prohibits an association's administrator and third-party administrator from having a direct or indirect financial relationship with one another.

**Sec. 21.77.090.** This section governs the relationship between the association and its members. Subsection (a) allows a member to withdraw from an association if the member has either become a self-insured individual employer under AS 23.30.090, has become a member of another association, or has obtained workers' compensation insurance. Subsection (b) allows the association to provide for cancellation of membership in accordance with the association's bylaws. Subsection (c) requires the association to maintain coverage for a cancelled or terminated member for 30 days after notice of cancellation or termination unless the member has been certified as a self-insured employer under AS 23.30.090, has become a member of another association of self-insured employers, or has obtained workers' compensation insurance.

**Sec. 21.77.100.** This section requires the association to notify the director in writing if a member withdraws from the association, a new member is added, or the board of directors cancels a membership. It also requires the association to notify the director of any changes in the information submitted with the application for a certificate of self-insurance.

**Sec. 21.77.110.** This section provides that the association is liable for payment of compensation required to be paid by a member under AS 23.30 and further provides that insolvency or bankruptcy of a member does not relieve the association of liability for payment of compensation due that member's employees.

**Sec. 21.77.120.** This section allows the director to examine the books, records, accounts and assets of an association of self-insured employers as necessary to carry out the provisions of Chapter 77 and allows the director to charge the association for the costs of the examination.

**Sec. 21.77.130.** This section provides that the director is considered to be the resident agent to receive service of initial legal process that may be served on the association of self-insured employers so long as the association is obligated to pay compensation under AS 23.30.

**Sec. 21.77.140.** This section authorizes an existing association of self-insured employers to merge with another association of self-insured employers if the members of both associations are members of the same trade association and if the merger is approved by the director. The section further provides that the resulting association assumes all of the obligations of the merging associations.

**Sec. 21.77.150.** Subsection (a) requires an association of self-insured employers to file an annual audited statement of financial condition with the director. Subsection (b) requires the statement to be prepared in accordance with generally accepted accounting principles and to include a statement of reserves for actual claims and expenses, claims incurred but not yet reported, the expenses associated with those claims, and unpaid debts, which must be shown as liabilities. The statement must also include an actuarial opinion regarding reserves prepared by a member of the American Academy of Actuaries or another specialist in loss reserves identified in the annual statement adopted by the National Association of Insurance Commissioners. Subsection (c) allows the director to require the filing of other reports, including payroll audits, reports of losses and quarterly financial statements.

**Sec. 21.77.160.** This section provides two alternative methods for calculating the annual assessments that must be paid by the association's members. One method is for the assessment to be calculated by a rate service organization that is a member of the American Academy of Actuaries or another specialist approved by the director and based on the assessment rate for the industrial classification of each member. The other method, which must be approved by the director, is for the association itself to calculate the assessment, based on three years of the member's actual experience. Under subsection (b), the director may approve a reduction in the annual assessment based on the association's expenses and loss experience.

**Sec. 21.77.170.** This section requires the association to conduct an annual audit of each of its members to verify the individual experience of each member, each member's payroll, and the assessment required to be paid by each member. The audit must be conducted by a payroll auditor approved by the director.

**Sec. 21.77.180.** This section allows an association to object to the industrial classification assigned to a member and to request a hearing on the objection before the director. The director may increase or decrease the amount of a member's annual assessment based on the industrial classification.

**Sec. 21.77.190.** This section allows the board of directors of an association, with the approval of the director, to declare and distribute dividends to its members if the assets of the association exceed the amount needed to pay its obligations and expenses, maintain reasonable reserves, and provide for contingencies.

**Sec. 21.77.200.** This section requires the association of self-insured employers to adopt a plan for payment of annual assessments by its members. The plan must be

approved by the director and must require an initial advance payment of a portion of the annual assessment and provide for the balance to be paid quarterly or in monthly installments. The advance payment must be at least 15 percent of the total.

**Sec. 21.77.210.** This section requires an association to maintain actuarially appropriate loss reserves necessary to for actual claims and expenses, claims incurred but not reported and the expenses associated with those claims, and reserves for unpaid debts based on the experience of the association or other associations.

**Sec. 21.77.220.** This section provides that self-insurance is not to be considered insurance for purposes of the director's general statutory and regulatory authority over insurance companies. Associations of self-insured employers are subject only to the statutory provisions of Chapter 77 and regulations adopted by the director to implement these provisions.

**Sec. 21.77.230.** Subsection (a) requires an association to notify the director immediately if the assets of the association become insufficient to pay compensation under AS 23.30 and to maintain the reserves required under Sec. 21.77.210. Subsection (a) also requires the association under such circumstances to take actions to make up the deficiency. Subsection (b) requires the association to notify the director before making any transfers of surplus funds from one year to another. Subsection (c) requires the director to order the association to make up any deficiencies within 30 days after the association notifies the director of the deficiency. Under subsection (d), the director may find the association to be insolvent if the association fails to collect additional assessments from its members within 30 days of being ordered to do so by the director.

**Sec. 21.77.240.** This section authorizes the director to order an association or a member of an association to cease and desist from engaging in an act or practice in violation of Chapter 77 or regulations adopted under the chapter. The director may impose administrative fines for violation of an order to cease and desist of not more than \$10,000 for each violation of the order, not to exceed \$100,000 in the aggregate.

**Sec. 21.77.250.** This section authorizes the director to impose an administrative fine for violation of a provision of Chapter 77 or a regulation adopted under the chapter. The maximum fine under this section is \$1,000 for each violation, not to exceed an aggregate amount of \$10,000.

**Sec. 21.77.260.** Subsection (a) allows the director to withdraw a certification of self-insurance if the association obtained its certificate through fraud or material misrepresentation, becomes insolvent, fails to maintain a minimum of five members, fails to pay the costs of an examination or a penalty imposed under the chapter, fails to comply with a provision of Chapter 77 or a regulation adopted under the chapter, fails to comply with an order of the director, or misappropriates funds or fails to pay money to which a person is entitled and that was entrusted to the association in its fiduciary capacity. Subsection (b) provides that if a certificate is withdrawn, the

members remain liable for their workers' compensation obligations. Subsection (c) provides that before withdrawing a certificate, the director shall notify the association in writing and provide 10 days within which to correct the conduct set out in the notice as the reason for the withdrawal. An association may request a hearing prior to withdrawal. Subsection (d) requires the director to provide an opportunity for an informal conference before taking any action to withdraw a certificate of self-insurance.

**Sec. 21.77.270.** This section provides that in the event a certificate is terminated or withdrawn, the security deposited under Sec. 21.77.020 must remain on deposit for at least 36 months. The director may release the security if the director receives evidence of a policy of insurance in lieu of the previously deposited security.

**Sec. 21.77.280.** Subsection (a) provides that an association is insolvent if it is unable to pay its outstanding obligations as they mature in the ordinary course of business. Under subsection (b), if an association becomes insolvent, files for bankruptcy, makes an assignment for the benefit of creditors, or fails to pay compensation due under AS 23.30 after an order for payment of a claim becomes final, the director may take action against any security filed with the director. Subsection (c) allows a surety providing a surety bond to terminate the bond by giving the director and the association notice of termination. Termination does not limit liability on the bond incurred before the termination. The director may withdraw the association's certificate of insurance if the association fails to requalify as an association of self-insured employers before the termination date.

**Sec. 21.77.290.** This section allows a party aggrieved by a decision of the director to seek judicial review in accordance with applicable court rules.

**Sec. 21.77.300.** This section gives the director authority to adopt regulations to implement the provisions of Chapter 77.

**Sec. 21.77.399.** This section defines "association of self-insured employers" as an association of employers that has been granted a certificate of self-insurance under Sec. 21.77.010. It defines "third-party administrator" as a person under contract with an association of self-insured employers to administer, from one or more offices in Alaska, all claims for the association arising under AS 23.30 and to maintain records concerning the claims.

**Section 2** of the Act provides for an immediate effective date.

4-7-06

Adopted

24-LS0233X.1

Bailey

4/4/06

AMENDMENT

1 Meyer

OFFERED IN THE HOUSE

TO: CSSSHB 51(L&C)

- 1 Page 2, line 11, following "AS 23.30":
- 2 Insert "and the solvency of the association of self-insured employers"

*adopted as amended*

*4-7-06*

AMENDMENT

*2*

OFFERED IN THE HOUSE

TO: CSSH B 51( ), Draft Version "C"

1 Page 5, line 27, following "assessment":

2 Insert "of not less than \$200,000 in the aggregate and not less than \$10,000"

3

4 ~~Page 5, line 28:~~

5 ~~Delete all material.~~

6 ~~Insert ":",~~

*Delete*

*See pg 5 CS*

adopted 4-7-06

24-LS0233C.2  
Bailey  
4/6/06

AMENDMENT

3

Meyer

OFFERED IN THE HOUSE

TO: CSSSHB 51( ), Draft Version "C"

- 1 Page 2, line 1:
- 2 Delete "\$5,000,000"
- 3 Insert "\$10,000,000"
- 4
- 5 Page 6, line 9:
- 6 Delete "\$5,000,000"
- 7 Insert "\$10,000,000"
- 8
- 9 Page 6, line 11:
- 10 Delete "\$5,000,000"
- 11 Insert "\$10,000,000"

adopted 4-7

24-LS0233C.3  
Bailey  
4/6/06

AMENDMENT

4 Meyer

OFFERED IN THE HOUSE

TO: CSSH B 51( ), Draft Version "C"

- 1 Page 6, line 18, following "employers":
- 2 Insert "shall be registered under AS 21.27.630 - 21.27.660 and"

Adopted 4/7/06

AMENDMENT

5

Meyer

OFFERED IN THE HOUSE

TO: CSSH HB 51( ), Draft Version "C"

1 Page 12, line 23, following "chapter":

2 Insert ", except that an association of self-insured employers shall be considered an  
3 insurer for purposes of ~~AS 23.05.067~~ AS 23.30"

4

5 Page 16, following line 7:

6 Insert new bill sections to read:

7 \*\*\* Sec. 2. AS 23.05.067(a) is amended to read:

8 (a) Each insurer providing workers' compensation insurance, each association  
9 of self-insured employers, and each employer who is self-insured or uninsured for  
10 purposes of AS 23.30 in this state shall pay an annual service fee to the department for  
11 the administrative expenses of the state for workers' safety programs under AS 18.60  
12 and the workers' compensation program under AS 23.30 as follows:

13 (1) for each employer or association of self-insured employers,

14 (A) except as provided in (b) of this section, the service fee  
15 shall be paid each year to the department at the time that the annual report is  
16 required to be filed under AS 23.30.155(m) or (n); and

17 (B) the service fee is 2.9 percent of all payments reported to the  
18 division of workers' compensation [ALASKA WORKERS'  
19 COMPENSATION BOARD] under AS 23.30.155(m) or (n), except second  
20 injury fund payments; and

21 (2) for each insurer, the director of the division of insurance shall,  
22 under (e) of this section, deposit from funds received from the insurer under  
23 AS 21.09.210 a service fee of 1.82 percent of the direct premium income for workers'

1 compensation insurance received by the insurer during the year ending on the  
2 preceding December 31, subject to all the deductions specified in AS 21.09.210(b).

3 \* Sec. 3. AS 23.05.067(b) is amended to read:

4 (b) An employer or association of self-insured employers who is required to  
5 pay an annual service fee under (a) of this section may elect to pay in yearly  
6 increments over a five-year period the portion of the service fee due under (a) of this  
7 section as a result of a settlement of over \$50,000 approved under AS 23.30.012. An  
8 election under this subsection must be made in the first year that a service fee would  
9 be due as a result of the settlement. The employer or association of self-insured  
10 employers shall notify the department of an election under this subsection. If an  
11 election is made, payment of each yearly increment that is due shall be made at the  
12 time the annual report is required to be filed under AS 23.30.155(m) or (n).

13 \* Sec. 4. AS 23.05.067(d) is amended to read:

14 (d) If an employer or association of self-insured employers who is required  
15 to pay an annual service fee under this section does not pay the required amount of the  
16 service fee by the time specified in this section, the employer or association of self-  
17 insured employers shall pay a civil penalty of \$100 for the first day the payment is  
18 late and \$10 a day for each additional day the payment is late. The civil penalty under  
19 this subsection is in addition to any civil penalties imposed for late filings of reports  
20 under AS 23.30.155(m).

21 \* Sec. 5. AS 23.05.067(h) is amended to read:

22 (h) The department shall grant a credit against the service fee imposed under  
23 (a)(1) of this section to an employer or association of self-insured employers if (1)  
24 the employer or association of self-insured employers applies to the department for  
25 the credit on a form prescribed by the department; (2) the employer or association of  
26 self-insured employers provides proof that the employer or a member of the  
27 association of self-insured employers has paid a premium tax imposed under  
28 AS 21.09.210 on an insurance policy; and (3) workers' compensation claims have been  
29 paid under the insurance policy described in (2) of this subsection and the claims are  
30 subject to the service fee imposed under (a) of this section. The credit allowed under  
31 this subsection is equal to the amount of the premium tax paid by the employer or by

1        a member of the association of self-insured employers under the insurance policy,  
2        may not exceed the service fee imposed under (a) of this section, and only applies to  
3        premium taxes paid by the employer on or after January 1, 2000, or by a member of  
4        the association of self-insured employers on or after the effective date of this bill  
5        section."

6

7        Renumber the following bill section accordingly.