ALASKA LEGISLATURE COMMITTEE FILES 1985-1986 8072

3364 HJUD HB 502 - HB 506

240

In light of the command of the First Amendment we have no choice but to rule that here government, not the press, is lawless.

I would affirm the judgment of the Court of Appeals except as to Beacon Press in which case I would reverse.

---

MR. JUSTICE BRENNAN, with whom MR. JUSTICE DOUGLAS, and MR. JUSTICE MARSHALL, join, dissenting.

The facts of this case, which are detailed by the Court, and the objections to over-classification of documents by the Executive, detailed by my Brother DOUGLAS, need not be repeated here. My concern is with the narrow scope accorded the Speech or Debate Clause by today's decision. I fully agree with the Court that a Congressman's immunity under the Clause must also be extended to his aides if it is to be at all effective. The complexities and press of congressional business make it impossible for a member to function without the close cooperation of his legislative assistants. Their role as his agents in the performance of official duties requires that they share his immunity for those acts. The scope of that immunity, however, is as important as the persons to whom it extends. In my view, today's decision so restricts the privilege of speech or debate as to endanger the continued performance of legislative tasks that are vital to the workings of our democratic system.

I

In holding that Senator Gravel's alleged arrangement with Beacon Press to publish the Pentagon Papers is not shielded from extra-senatorial inquiry by the Speech or Debate Clause, the Court adopts what for me is a far too narrow view of the legislative function. The Court seems to assume that words spoken in debate or written in congressional reports are protected by the Clause, so that if Senator Gravel had recited part of the Pentagon Papers on the Senate floor or copied them into a Senate report, those acts could not be questioned "in any other place." Yet because he sought a wider audience, to publicize information deemed relevant to matters pending before his own committee, the Senator suddenly loses his immunity and is exposed to grand jury investigation and possible prosecution for the publication. The explanation for this anomalous result is the Court's belief that "Speech or Debate" encompasses only acts necessary to the internal deliberations of Congress concerning proposed legislation. "Here," according to the Court, "private publication by Senator Gravel through the cooperation of Beacon Press was in no way essential to the deliberations of the House." *Ante*, at 19. Therefore, "the Senator's arrangements with Beacon Press were not part and parcel of the legislative process." *Ibid.*

Thus the Court excludes from the sphere of protected legislative activity a function that I had supposed lay at the heart of our democratic system. I speak, of course, of the legislator's duty to inform the public about matters affecting the administration of government. That this "informing function" falls into the class of things "generally done in a session of the House by one of its members in relation to the business before it," *Kilbourn* v. *Thompson*, 103 U. S. 168, 204 (1881), was explicitly acknowledged by the Court in *Watkins* v. *United States*, 354 U. S. 178 (1957). In speaking of the "power of Congress to inquire into and publicize corruption, maladministration or inefficiency in the agencies of Government," the Court noted that "[f]rom the earliest times in its history, the Congress has assiduously performed an 'informing function' of this nature." *Id.*, at 200, n. 33.

We need look no further than Congress itself to find evidence supporting the Court's observation in *Watkins*. Congress has provided financial support for communications between its members and the public, including the franking privilege for letters, telephone and telegraph allowances, stationery allotments, and favorable prices on reprints from the Congressional Record. Congressional hearings, moreover, are not confined to gathering information for internal distribution, but are often widely publicized, sometimes televised, as a means of alerting the electorate to matters of public import and concern. The list is virtually endless, but a small sampling of contemporaneous hearings of this kind would certainly include the Kefauver hearings on organized crime, the 1966 hearings on automobile safety, and the numerous hearings of the Senate Foreign Relations Committee on the origins and conduct of the war in Vietnam. In short, there can be little doubt that informing the electorate is a thing "generally done" by the members of Congress "in relation to the business before it."

The informing function has been cited by numerous students of American politics, both within and without the Government, as among the most important responsibilities of legislative office. Woodrow Wilson, for example, emphasized its role in preserving the separation of powers by ensuring that the administration of public policy by the Executive is understood by the legislature and electorate:

> "It is the proper duty of a representative body to look diligently into every affair of government and to talk much about what it sees. It is meant to be the eyes and voice, and to embody the wisdom and will of its constituents. Unless Congress have and use every means of acquainting itself with the acts and the disposition of the administrative agents of the government, the country must be helpless to learn how it is being served; and unless Congress both scrutinize these things and sift them by every form of discussion, the country must remain in embarrassing, crippling ignorance of the very affairs which it is most important that it should understand and direct." W. Wilson, Congressional Government 303 (1885).

---

record and that this record is open to the public. See Government's Brief, at 3.

Others have viewed the give-and-take of such communication as an important means of educating both the legislator and his constituents:

> "With the decline of Congress as an original source of legislation, this function of keeping the government in touch with public opinion and of keeping public opinion in touch with the conduct of the government becomes increasingly important. Congress no longer governs the country; the Administration in all its ramifications actually governs. But Congress serves as a forum through which public opinion can be expressed, general policy discussed, and the conduct of governmental affairs exposed and criticized." The Reorganization of Congress, A Report of the Committee on Congress of the American Political Science Association 14 (1945).

Though I fully share these and related views on the educational values served by the informing function, there is yet another and perhaps more fundamental interest at stake. It requires no citation of authority to state that public concern over current issues—the War, race relations, governmental invasions of privacy—has transformed itself in recent years into what many believe is a crisis of confidence, in our system of government and its capacity to meet the needs and reflect the wants of the American people. Communication between Congress and the electorate tends to alleviate that doubt by exposing and clarifying the workings of the political system, the policies underlying new laws and the role of the Executive in their administration. To the extent that the informing function succeeds in fostering public faith in the responsiveness of Government, it is not only an "ordinary" task of the legislator but one that is essential to the continued vitality of our democratic institutions.

Unlike the Court, therefore, I think that the activities of Congressmen in communicating with the public are legislative acts protected by the Speech or Debate Clause. I agree with the Court that not every task performed by a legislator is privileged; intervention before Executive departments is one that is not. But the informing function carries a far more persuasive claim to the protections of the Clause. It has been recognized by this Court as something "generally done" by Congressmen, the Congress itself has established special concessions designed to lower the cost of such communication, and, most important, the function furthers several well-recognized goals of representative government. To say in the face of these facts that the informing function is not privileged merely because it is not necessary to the internal deliberations of Congress is to give the Speech or Debate Clause an artificial and narrow reading unsupported by reason.

Nor can it be supported by history. There is substantial evidence that the Framers intended the Speech or Debate Clause to cover all communications from a Congressman to his constituents. Thomas Jefferson clearly expressed that view of legislative privilege in a case involving Samuel Cabell, Congressman from Virginia. In 1797 a federal grand jury in Virginia investigated the conduct of several Congressmen, including Cabell, in sending newsletters to constituents critical of the administration's policy in the war with France. The grand jury found that the Congressmen had endeavored "at a time of real public danger, to disseminate unfounded calumnies against the happy government of the United States, and thereby to separate the people therefrom; and to increase or produce a foreign influence, ruinous to the peace, happiness, and independence of these United States." Jefferson immediately drafted a long essay signed by himself and several citizens of Cabell's district, condemning the grand jury investigation as a blatant violation of the congressional privilege. Revised and joined by James Madison, the protest was forwarded to the Virginia House of Delegates. It reads in part as follows:

> ". . . that in order to give to the will of the people the influence it ought to have, and the information which may enable them to exercise it usefully, it was a part of the common law, adopted as the law of this land, that their representatives, in the discharge of their functions, should be free from the cognizance or coercion of the coordinate branches, Judiciary and Executive; and that their communications with their constituents should be of right, as of duty also, be free, full, and unawed by any: that so necessary has this intercourse been deemed in the country from which they derive principally their descent and laws, that the correspondence between the representative and constituent is privileged there to pass free of expense through the channel of the public post, and that the proceedings of the legislature have been known to be arrested and suspended at times until the Representatives could go home to their several counties and confer with their constituents.
>
> . . . . .
>
> "That when circumstances required that the ancient confederation of this with the sister States, for the government of their common concerns, should be improved into a more regular and effective form of general government, the same representative principle was preserved in the new legislature, one branch of which was to be chosen directly by the citizens of each State, and the laws and principles remained unaltered which privileged the representative functions, whether to be exercised in the State or General Government, against the cognizance and notice of the coordinate branches, Executive and Judiciary; and for its safe and convenient exercise, the intercommunication of the representative and constituent has been sanctioned and provided for through the channel of the public post, at the public expense.
>
> . . . . .
>
> "That the grand jury is a part of the Judiciary,

not permanent indeed, but in office, *pro hac vice* and responsible as other judges are for their actings and doings while in office: that for the Judiciary to interpose in the legislative department between the constituent and his representative, to control them in the exercise of their functions or duties towards each other, to overawe the free correspondence which exists and ought to exist between them, to dictate what communications may pass between them, and to punish all others, to put the representative into jeopardy of criminal prosecution, of vexation, expense, and punishment before the Judiciary, if his communications, public or private, do not exactly square with their ideas of fact or right, or with their designs of wrong, is to put the legislative department under the feet of the Judiciary, is to leave us, indeed, the shadow, but to take away the substance of representation, which requires essentially that the representative be as free as his constituents would be, that the same interchange of sentiment be lawful between him and them as would be lawful among themselves were they in the personal transaction of their own business; is to do away the influence of the people over the proceedings of their representatives by excluding from their knowledge, by the terror punishment, all but such information or misinformation as may suit their own views; and is the more vitally dangerous when it is considered that grand jurors are selected by officers nominated and holding their places at the will of the Executive . . . ; and finally, is to give to the Judiciary, and through them to the Executive, a complete preponderance over the legislature rendering ineffectual that wise and cautious distribution of powers made by the constitution between the three branches, and subordinating to the other two that branch which most immediately depends on the people themselves, and is responsible to them at short periods." 8 The Works of Thomas Jefferson 322–327 (Ford ed. 1904).

Jefferson's protest is perhaps the most significant and certainly the most cogent analysis of the privileged nature of communication between Congressman and public. Its comments on the history, purpose and scope of the Clause leave no room for the notion that the Executive or Judiciary can in any way question the contents of that dialogue. Nor was Jefferson alone among the Framers in that view. Aside from Madison, who joined in the protest, James Wilson took the position that a member of Congress "should enjoy the fullest liberty of speech, and . . . should be protected from the resentment of everyone, however powerful, to whom the exercise of that liberty may occasion offence." I Works of James Wilson 421 (McCloskey ed. 1967). Wilson, a member of the Committee responsible for drafting the Speech or Debate Clause, stated in plainest terms his belief in the duty of Congressmen to inform the people about proceedings in the Congress:

> "That the conduct and proceedings of representatives should be as open as possible to the inspection of those whom they represent, seems to be, in republican government, a maxim, of whose truth or importance the smallest doubt cannot be entertained. That, by a necessary consequence, every measure, which will facilitate or secure this open communication of the exercise of delegated power, should be adopted and patronised by the constitution and laws of every free state, seems to be another maxim, which is the unavoidable result of the former." *Id.*, at 422.

Wilson's statements, like those of Jefferson and Madison, reflect a deep conviction of the Framers, that self-government can succeed only when the people are informed by their representatives, without interference by the Executive or Judiciary, concerning the conduct of their agents in government. That conviction is no less valid today than it was at the time of our founding. I would honor the clear intent of the Framers and extend to the informing function the protections embodied in the Speech or Debate Clause.

The Court, however, offers not a shred of evidence concerning the Framers' intent, but relies instead on the English view of legislative privilege to support its interpretation of the Clause. Like the Court itself, *ante*, at n. 14, I have some doubt concerning the relevance of English authority to this case, particularly authority post-dating the adoption of our Constitution. But in any event it is plain that the Court has misread the history on which it relies. The Speech or Debate Clause of the English Bill of Rights was at least in part the product of a struggle between Parliament and Crown over the very type of activity involved in this case. During the reign of Charles II, the House of Commons received a number of reports about an alleged plot between the Crown and the King of France to restore Catholicism as the established religion of England. The most famous of these reports, Dangerfield's Narrative, was entered into the Commons Journal and then republished by order of the Speaker of the House, Sir William Williams, with the consent of Commons. In 1686, after James II came to the throne, informations charging libel were filed against Williams in King's Bench. Despite the arguments of his attorney, Sir Robert Atkyns, that the publication was necessary to the "counselling" and "enquiring" functions of Parliament, Williams' plea of privilege was rejected and he was fined £10,000. Shortly after Williams' conviction James II was sent into exile, and a committee was appointed by the House of Commons to report upon "such things as are absolutely necessary for securing the Laws and Liberties of the Nation." 9 Grey's Debates 37. In reporting to the House, the chairman of the committee stated that the provision for freedom of speech and debate was included "for the sake of one. . . . Sir William Williams, who was punished out of Parliament for what he had done in Parliament." *Id.*, at 81. Following consultation with the

House of Lords, that provision was included as part of the English Bill of Rights, and the judgment against Williams was declared by Commons "illegal and subversive of the freedom of parliament." 1 Townsend, Memoirs of the House of Commons 414 (2d ed. 1844).

Although the origins of the Speech or Debate Clause in England can thus be traced to a case involving republication, the Court, citing *Stockdale* v. *Hansard*, 9 Ad. & E. 1, 112 K. B. 1112 (1839), says that "English legislative privilege was not viewed as protecting republication of an otherwise immune libel on the floor of the House." *Ante*, at 16. That conclusion reflects an erroneous reading of precedent. *Stockdale* did state that "if the calumnious or inflammatory speeches should be reported and published, the law will attach responsibility on the publisher." *Id.*, at 114, 112 K. B., at 1156. But *Stockdale* concerned only the publisher's liability, not that of a member of Parliament; thus it has little bearing on the instant case. Furthermore, contrary to the Court's assertion, *ante*, at n. 14, even the narrow result of *Stockdale* was repudiated 30 years later in *Wason* v. *Walter*, [1868] 4 Q. B. 73, for reasons strikingly similar to those expressed by Jefferson in his protest.[1] In my view, therefore, the English precedent, if relevant at all, supports Senator Gravel's position here.

Thus, from the standpoint of function or history, it is plain that Senator Gravel's dissemination of material, placed by him in the record of a congressional hearing, is itself legislative activity protected by the privilege of speech or debate. Whether or not that privilege protects the publisher from prosecution or the Senator from senatorial discipline, it certainly shields the Senator from any grand jury inquiry about his part in the publication. As we held in *United States* v. *Johnson*, 383 U. S. 169 (1966), neither a Congressman, nor his aides, nor third parties may be made to testify concerning privileged acts or their motives. That immunity, which protects legislators "from deterrents to the uninhibited discharge of their legislative duty," *Tenney* v. *Brandhove*, 341 U. S. 367, 377 (1951), is the essence of the Clause, designed not for the legislators' "private indulgence but for the public good." *Id.*, at 377.

That privilege, moreover, may not be defeated merely because a court finds that the publication was irregular or the material irrelevant to legislative business. Legislative immunity secures "to every member exemption from prosecution, for everything said or done by him, as a representative, in the exercise of the functions of that office . . . whether the exercise was regular, according to the rules of the house, or irregular and against their rules." *Coffin* v. *Coffin*, 4 Mass. 1, 27 (1808). Thus, if the republication of this committee record was unauthorized or even prohibited by the Senate rules, it is up to the Senate, not the Executive or Judiciary, to

[1] In *Wason* the proprietor of the London Times was sued for printing an account of a libellous debate in the House of Lords. The Court agreed with *Stockdale* that the House did not have final authority to determine the scope of its privileges and thus could not confer immunity on any publisher merely by ordering a document printed and then declaring it privileged. Indeed the *Wason* Court gave its "unhesitating and unqualified adhesion" to *Stockdale* on that point. *Id.*, at 86. The only issue for the Court, therefore, was whether the publication "is, independently of such order or assertion of privilege, in itself privileged and lawful." *Id.*, at 87. On that issue the Court severely criticized the reasoning of earlier cases, including *Stockdale*, stating that two of the Justices in that case had expressed a "very shortsighted view of the subject." *Id.*, at 91. The Court held that so long as the republication was accurate and in good faith, it could not be the basis of a libel action; and the member himself was privileged to publish his speech "for the information of his constituents." *Id.*, at 95. Relying not on the Parliamentary Papers Act of 1840, which was enacted in response to *Stockdale*, but on the analogy to judicial reports and the need for an informed public, the Court stated:

"It seems to us impossible to doubt that it is of paramount public and national importance that the proceedings of the houses of parliament shall be communicated to the public, who have the deepest interest in knowing what passes within their walls, seeing that on what is there said and done, the welfare of the community depends. Where would be our confidence in the government of the country or in the legislature by which our laws are framed, and to whose charge the great interests of the country are committed,—where would be our attachment to the constitution under which we live,—if the proceedings of the great council of the realm were shrouded in secrecy and concealed from the knowledge of the nation? How could the communications between the representatives of the people and their constituents, which are so essential to the working of the representative system, be usefully carried on, if the constituencies were kept in ignorance of what their representatives are doing? What would become of the right of petitioning on all measures pending in parliament, the undoubted right of the subject, if the people are to be kept in ignorance of what is passing in either house? Can any man bring himself to doubt that the publicity given in modern times to what passes in parliament is essential to the maintenance of the relations subsisting between the government, the legislature, and the country at large?" *Id.*, at 89.

The fact that the debate was published in violation of a standing order of Parliament was held to be irrelevant. "Independently of the orders of the houses, there is nothing unlawful in publishing reports of parliamentary proceedings . . . . [A]ny publication of its debates made in contravention of its orders would be a matter between the house and the publisher." Id., at 95.

Whether *Wason* was based on parliamentary privilege or on an analogy to the publication of judicial proceedings is unimportant. What is important to the instant case is that *Wason* firmly rejected any implication in *Stockdale* that the informing function was not among the legislative activities that a member of Parliament was privileged to perform. Indeed that same conclusion was reached by Sir Gilbert Campion, a noted scholar, in his memorandum to the House of Commons' Select Committee on the Official Secrets Acts. After reviewing the republication cases through *Wason*, the memorandum concluded:

"If . . . a member circulated among his constituents a speech made by him in Parliament in which he had disclosed information [otherwise subject to the Official Secrets Acts], it might be held on the analogy of the principles which have been said to apply to prosecutions for libel that he could not be proceeded against for disclosing it to his constituents, unless, of course, the speech had been made in a secret session. Even if the suggested analogy is not admitted, it would be repugnant to common sense to hold that though the original disclosure in the House was protected by parliamentary privilege, the circulation of the speech among the member's constituents was not." Minutes of Evidence Taken before the Select Committee on the Official Secrets Acts 29 (1939).

fashion the appropriate sanction to discipline Senator Gravel.

Similarly, the Government cannot strip Senator Gravel of the immunity by asserting that his conduct "did not relate to any pending Congressional business." Brief, at 41. The Senator has stated that his hearing on the Pentagon Papers had a direct bearing on the work of his Subcommittee on Buildings and Grounds, because of the effect of the Vietnam war on the domestic economy and the lack of sufficient federal funds to provide adequate public facilities. If in fact the Senator is wrong in this contention, and his conduct at the hearing exceeded the subcommittee's jurisdiction, then again it is the Senate that must call him to task. This Court has permitted congressional witnesses to defend their refusal to answer questions on the ground of nongermaneness. *Watkins* v. *United States*, 354 U. S. 178 (1957). Here, however, it is the Executive that seeks the aid of the judiciary, not to protect individual rights, but to extend its power of inquiry and interrogation into the privileged domain of the legislature. In my view the Court should refuse to turn the freedom of speech or debate on the Government's notions of legislative propriety and relevance. We would weaken the very structure of our constitutional system by becoming a partner in this assault on the separation of powers.

Whether the Speech or Debate Clause extends to the informing function is an issue whose importance goes beyond the fate of a single Senator or Congressman. What is at stake is the right of an elected representative to inform, and the public to be informed, about matters relating directly to the workings of our Government. The dialogue between Congress and people has been recognized, from the days of our founding, as one of the necessary elements of a representative system. We should not retreat from that view merely because, in the course of that dialogue, information may be revealed that is embarrassing to the other branches of government or violates their notions of necessary secrecy. A member of Congress who exceeds the bounds of propriety in performing this official task may be called to answer by the other members of his chamber. We do violence to the fundamental concepts of privilege, however, when we subject that same conduct to judicial scrutiny at the instance of the Executive.[2] The threat of "prosecution by an unfriendly executive and conviction by a hostile judiciary," *United States* v. *Johnson*, 383 U. S., at 179, which the Clause was designed to avoid, can only lead to timidity in the performance of this vital function. The Nation as a whole benefits from the congressional investigation and exposure of official corruption and deceit. It likewise suffers when that exposure is replaced by muted criticism carefully hushed behind congressional walls.

[2] Different considerations may apply, of course, where the republication is attacked, not by the Executive, but by private persons seeking judicial redress for an alleged invasion of their constitutional rights.

II

Equally troubling in today's decision is the Court's refusal to bar grand jury inquiry into the source of documents received by the Senator and placed by him in the hearing record. The receipt of materials for use in a congressional hearing is an integral part of the preparation for that legislative act. In *United States* v. *Johnson*, 383 U. S., 169 (1966), the Court acknowledged the privileged nature of such preparatory steps, holding that they, like the act itself and its motives, must be shielded from scrutiny by the Executive and Judiciary. That holding merely recognized the obvious—that speeches, hearings, and the casting of votes require study and planning in advance. It would accomplish little toward the goal of legislative freedom to exempt an official act from intimidating scrutiny, if other conduct leading up to the act and intimately related to it could be deterred by a similar threat. The reasoning that guided that Court in *Johnson* is no less persuasive today, and I see no basis, nor does the Court offer any, for departing from it here. I would hold that Senator Gravel's receipt of the Pentagon Papers, including the name of the person from whom he received it, may not be the subject of inquiry by the grand jury.

I would go further, however, and also exclude from grand jury inquiry any knowledge that the Senator or his aides might have concerning how the source himself first came to possess the Papers. This immunity, it seems to me, is essential to the performance of the informing function. Corrupt and deceitful officers of government do not often post for public examination the evidence of their own misdeeds. That evidence must be ferreted out, and often is, by fellow employees and subordinates. Their willingness to reveal that information and spark congressional inquiry may well depend on assurances from their contact in Congress that their identity and means of obtaining the evidence will be held in strictest confidence. To permit the grand jury to frustrate that expectation through an inquiry of the Congressman and his aides can only dampen the flow of information to the Congress and thus to the American people. There is a similar risk, of course, when the member's own House requires him to break the confidence. But the danger, it seems to me, is far less if the members' colleagues, and not an "unfriendly executive" or "hostile judiciary," are charged with evaluating the propriety of his conduct. In any event, assuming that a Congressman can be required to reveal the sources of his information and the methods used to obtain that information, that power of inquiry, as required by the Clause, is that of the Congressman's House, and of that House only.

I respectfully dissent.

ROBERT J. REINSTEIN, Philadelphia, Pa., and CHARLES L. FISHMAN, Washington, D.C. (HARVEY A. SILVERGLATE, ALAN M. DERSHOWITZ, and ZALKIND & SILVERGLATE,

with them on the brief) for petitioner in No. 71-1017 and respondent in No. 71-1026, and SAM J. ERVIN, JR., Washington, D.C., and WILLIAM B. SAXBE, Washington, D.C. (JAMES O. EASTLAND, JOHN O. PASTORE, HERMAN E. TALMADGE, NORRIS COTTON, PETER H. DOMINICK, CHARLES McC. MATHIAS, JR., PHILIP B. KURLAND, and EDWARD I. ROTHSCHILD, with them on the brief) for United States Senate, as amicus curiae, for petitioner in No. 71-1017 and respondent in No. 71-1026; ERWIN N. GRISWOLD, Solicitor General (ROBERT C. MARDIAN, Assistant Attorney General, JEROME M. FEIT and ALLAN A. TUTTLE, Assistants to the Solicitor General, ROBERT L. KEUCH and WILLIAM M. PLATT, Justice Dept. attorneys, with him on the brief) for respondent in No. 71-1017 and petitioner in No. 71-1026; JAMES REIF, DORIS PETERSON, MORTON STAVIS, and PETER WEISS filed brief for Dr. Leonard Rodberg, as amicus curiae, seeking reversal and affirmance; MELVIN L. WULF, JOEL M. GORA, SANFORD JAY ROSEN, WILLIAM BIRTLES, and EARL NEMSER filed brief for American Civil Liberties Union, as amicus curiae, seeking reversal and affirmance; FRANK B. FREDERICK, WILLIAM B. DUFFY, JR., JOHNSON, CLAPP, STONE & JONES, and HENRY PAUL MONAGHAN filed brief for Unitarian Universalist Assn., as amicus curiae, seeking reversal and affirmance.

No. 69-5001

| | |
|---|---|
| Lyman A. Moore, Petitioner, *v.* State of Illinois. | On Writ of Certiorari to the Supreme Court of Illinois. |

[June 29, 1972]

Syllabus

Moore, who was convicted of murder and sentenced to death for the shotgun slaying of a bartender at a Lansing, Illinois, tavern, claimed that he was denied a fair trial and due process because the State failed to make pretrial disclosure of several items of evidence helpful to the defense, failed to correct false testimony of one Henley Powell, and succeeded in introducing into evidence a shotgun that was not the murder weapon. The evidence not disclosed consisted of a pretrial statement by Virgle Sanders that Moore was known to him as "Slick" and that he had first met "Slick" some six months before the killing, and documents and testimony that established that Moore was not the man known to others in the area as "Slick." Powell testified that he observed the killing, and the State did not introduce into evidence a diagram that, Moore claims, illustrates that Powell did not see the shooting. The State Supreme Court rejected the claim that evidence had been suppressed and false evidence had been left uncorrected, and held that the shotgun was properly admitted into evidence as a weapon in Moore's possession when he was arrested and suitable for commission of the crime charged. Moore also attacks the imposition of the death penalty for noncompliance with the standards of *Witherspoon* v. *Illinois*, 391 U. S. 510. *Held:*

1. The evidentiary items (other than the diagram) on which Moore bases his suppression claim relate to Sanders' misidentification of Moore as "Slick" and not to the identification, by Sanders and others, of Moore as the person who made the incriminating statements in the Ponderosa Tap. These evidentiary items are not material under the standard of *Brady* v. *Maryland*, 373 U. S. 830. The diagram does not support Moore's contention that the State knowingly permitted false testimony to remain uncorrected, in violation of *Napue* v. *Illinois*, 360 U. S. 264, since the diagram does not show that it was impossible for Powell to see the shooting.

2. Moore's due process claim as to the shotgun was not previously raised and therefore is not properly before this Court, and in any event the introduction of the shotgun does not constitute federally reversible error.

3. The sentence of death may not be imposed on Moore. *Furman* v. *Georgia*, *post*, p. —.

42 Ill. 2d 73, 246 N. E. 2d 299, reversed in part and remanded.

BLACKMUN, J., delivered the opinion of the Court, in wh BURGER, C. J., and BRENNAN, WHITE, and REHNQUIST, JJ., joi MARSHALL, J., delivered an opinion concurring in part and dissent in part, in which DOUGLAS, STEWART, and POWELL, JJ., joined.

MR. JUSTICE BLACKMUN delivered the opinion of t Court.

This state murder case, with the death penalty i posed by a jury, comes here from the Supreme Co of Illinois. The grant of certiorari, 403 U. S. 953 (197 was limited to three of four questions presented by t petition. These concern the nondisclosure to the d fense of allegedly exculpatory evidence possessed by t prosecution or the police; the admission into evidence a shotgun that was not the murder weapon; and t rejection of eight veniremen who had voiced gene objections to capital punishment. The first and th issues respectively focus on the application of *Brady Maryland*, 373 U. S. 83 (1963), and *Witherspoon Illinois*, 391 U. S. 510 (1968).

I

Petitioner Lyman A. Moore was convicted in 1 of the first degree murder of Bernard Zitek. Moo appeal to the Supreme Court of Illinois was held abeyance while he petitioned the trial court for p conviction relief. After a hearing on January 1967, t petition was denied. Moore's appeal from the denial consolidated with his appeal from the conviction sentence. With one justice dissenting and another participating, the Illinois court affirmed the judgme 42 Ill. 2d 73, 246 N. E. 2d 299 (1969).

II

The homicide was committed on April 25, 1962. facts are important:

A. The victim, Zitek, operated a bar-restaurant the village of Lansing, southeast of Chicago. Patr Hill was a waitress there. Donald O'Brien, Charles Mayer, and Henley Powell were customers.

Another bar called the Ponderosa Tap was loc in Dolton, also southeast of Chicago. It was ow by Robert Fair. William Joyce was the bartender. of Fair's customers was Virgle Sanders.

A third bar known as Wanda and Del's was in Chic Delbert Jones was the operator. William L on Tho son was a patron.

The Westmoreland Country Club was in Wilm about 50 miles north of Lansing. The manager t was Herbert Anderson.

B. On the evening of April 25 Zitek was tending at his place in Lansing. Shortly before 10 p. m. men, one with a moustache, entered and ordered Zitek admonished the pair several times for using fane language. They continued in their profanity shortly, Zitek ejected them. About an hour lat man carrying a shotgun entered. He laid the wea on the bar and shot and killed Zitek. The gunman out, pursued by patrons, and escaped in an automo

Original sponsor: Rules/Legislative
Budget and Audit

IN THE HOUSE BY THE JUDICIARY COMMITTEE

CS FOR HOUSE BILL NO. 502 (Judiciary)

IN THE LEGISLATURE OF THE STATE OF ALASKA

FOURTEENTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act relating to confidential tax information of the Department of Revenue; and providing for an effective date."

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

* Section 1. LEGISLATIVE FINDINGS AND PURPOSE. (a) The legislature finds that

(1) the majority of the state's revenue is derived from taxation;

(2) tax revenue enables the state to provide essential services to the citizens of the state to ensure the public health and welfare;

(3) the elected representatives of the people of the state must be assured that the state is receiving all of the income to which it is entitled and that the tax laws are operating in the manner intended by the legislature;

(4) the legislature must exercise its oversight authority to assure that tax revenue collection by the Department of Revenue is efficient, fair, prompt and in the best interest of the state;

(5) there is a legitimate and compelling governmental interest in the legislature having adequate access to tax related information to allow responsible oversight;

(6) without sufficient information, the legislature cannot adequately determine that the state's tax revenue collection functions are properly administered and that tax revenue due the state is promptly received;

(7) tax returns and return information contain confidential information, often regarding sensitive business information;

(8) taxpayers have protections against public disclosure of certain tax information;

(9) exchange agreements with the Internal Revenue Service require that certain tax information not be publicly disclosed;

(10) protection of confidentiality fosters full disclosure by taxpayers to taxing authorities and therefore promotes effective administration of tax programs; and

(11) legislators and legislative employees who improperly disclose confidential tax information should be subject to the same sanctions imposed against executive branch employees.

(b) The purpose of this Act is to ensure that

(1) the state is receiving all the tax revenue due the state;

(2) oversight of the tax revenue collection function is effectively provided; and

(3) tax revenue due to the state is available to provide for the public health and welfare of the citizens of the state;

(4) taxpayers have protections against improper disclosure of tax information;

(5) the exchange agreements with the Internal Revenue Service regarding tax information are not jeopardized; and

(6) tax programs are administered fairly.

* Sec. 2. AS 24.10 is amended by adding a new section to article 2 to read:

Sec. 24.10.070. CONFIDENTIALITY OF INFORMATION. A present or former employee or agent of the legislature may not disclose tax information contained in a report or return filed under AS 43 with the Department of Revenue and furnished to the person under

AS 43.05.230(h).

* Sec. 3. AS 24.60.060 is amended by adding a new subsection to read:

(b) A person to whom this chapter applies may not disclose tax information contained within a report or a return filed under AS 43 with the Department of Revenue and furnished to the person under AS 43.05.230(h).

* Sec. 4. AS 24.60 is amended by adding a new section to read:

Sec. 24.60.172. SPECIAL PROCEEDINGS BEFORE THE COMMITTEE. Notwithstanding AS 24.60.170, if a complaint before the committee involves an allegation that a person to whom this chapter applies has disclosed tax information contained within a report or return filed under AS 43 with the Department of Revenue and furnished to the person under AS 43.05.230(h) and the taxpayer or a third party whose tax information is alleged to have been improperly disclosed does not agree to the public disclosure of the identity of the taxpayer, the third party, or the tax information,

(1) the hearing may not be held in open session;

(2) a transcript containing confidential tax information must be edited to prevent the disclosure of the confidential information;

(3) a decision, if made public, must be edited to prevent the disclosure of the tax information and to protect the identity of the taxpayer or the third party; and

(4) a public statement may not contain information identifying the taxpayer, a third party, or the tax information.

* Sec. 5. AS 43.05.230(f) is amended to read:

(f) <u>An intentional</u> [A WILFUL] violation of the provisions of this section is <u>a class C felony</u> [PUNISHABLE BY A FINE OF NOT MORE THAN $5,000, OR BY IMPRISONMENT FOR NOT MORE THAN TWO YEARS, OR BY

BOTH].

* Sec. 6. AS 43.05.230 is amended by adding new subsections to read:

(h) A legislative committee, after identifying the scope of an investigation or inquiry relating to matters of taxation and the adoption by either house of a simple resolution giving the committee authority to receive confidential tax information, may request the commissioner of revenue to provide confidential taxpayer returns or return information; the request by the committee shall be in writing and may identify, directly or indirectly, a particular taxpayer. On adoption of the resolution, the commissioner of revenue shall provide the committee with the requested returns or return information. If specific returns or return information concerning a particular taxpayer are provided to a legislative committee under this subsection, the commissioner of revenue shall notify the particular taxpayer of the request and of the delivery to the committee of the information. The committee may designate legislative employees or agents to inspect returns and return information. The committee may consider information made available under this subsection only in executive session unless the taxpayer and any third party whose tax information is being considered consent in writing to a disclosure in open session.

(i) The legislative committee and the commissioner of revenue shall establish procedures governing the transmittal, receipt, safekeeping, and use of the confidential information provided by the commissioner under (h) of this section.

(j) This section does not permit the disclosure to the legislature of confidential information provided by the Internal Revenue Service under exchange agreements with the department.

* Sec. 7. This Act takes effect immediately in accordance with AS 01.-10.070(c).

# RECORDS CERTIFICATION

I, the undersigned, an employee of the State of Alaska, do hereby certify that the microfilm images on this microform are accurate reproductions of the original records of the State of Alaska as accumulated during the regular course of business, and that it is the established policy and practice of this State to microfilm its records and to dispose of the original records after microfilm reproductions have been made.

James A. O. Smith
Signature of Camera Operator

7/25/89
Date

02-519 (REV 8/78)

HB

503

to the Chief Clerk for

o notify the Senat .

the House recede from its
ctive date), namely HCSSB
4), and recommended that

House recede f m its
taken with the following

n, Thompson

, Cato, Clocksin,
n, Davis, Frank,
Gruenberg,
anley, Herrmann,
n, Marrou,
avarre, Pearce,
llips, Pignalberi,
er, Ringstad,
Szymanski, Taylor,
s

n, Hurley

r,M.W.

members to a CONFERENCE
ittee from the Senat to

(Chairman)

o notify the Senate.



HB 503

The Speaker waived the Judiciary Committee referral on HOUSE BILL NO. 503 (relating to ice classics) at the request of the Chairman.

HB 503 was sent to the Finance Committee.

HCR 57

Representative Koponen added his name as co-sponsor to HOUSE CONCURRENT RESOLUTION NO. 57 (relating to Alaska as the host for the 1988 Arctic Winter Games).

HJR 66

Representative Rieger added his name as co-sponsor to HOUSE JOINT RESOLUTION NO. 66 (relating to a federal tax on imported oil).

HB 535

Representative M.M. Miller added his name as co-sponsor to HOUSE BILL NO. 535 (relating to the registration of motor vehicles).

ENGROSSMENT

CSHCR 57(SA)

CSHCR 57(SA) was engrossed, signed by the Speaker and Chief Clerk and transmitted to the Senate for consideration.

CSHB 113(Fin)

CSHB 113(Fin) was engrossed, signed by the Speaker and Chief Clerk and transmitted to the Senate for consideration.

ANNOUNCEMENTS

Labor & Commerce Court 603 1:15 p.m., 3/3
Cancelled:
HB 577 Yukon River Ice Classic

Finance Capitol 519 1:30 p.m., 3/3
Continued from Friday:
HB 502 Disclosure of state tax assessments of the Department of Revenue

# RECORDS CERTIFICATION

I, the undersigned, an employee of the State of Alaska, do hereby certify that the microfilm images on this microform are accurate reproductions of the original records of the State of Alaska as accumulated during the regular course of business, and that it is the established policy and practice of this State to microfilm its records and to dispose of the original records after microfilm reproductions have been made.

James O. Smith
Signature of Camera Operator

7/25/89
Date

02-519 (REV 8/78)

HB

506

# Robinson Homes

215 Corral Ave., Soldotna, Alaska 99669 (907) 262-5074 Cont. Lic. No. AA-5818


March 1, 1986

Rep. Mike Navarre
Alaska State House od Representatives
Pouch V (MS 3100)
Juneau, Alaska 99811

Dear Mike,

I would like to thank you for your hospitality while the Home Builders were in Juneau. I would also like to assure you and your staff that I continue to work hard here on the grass-roots level to promote that dearest of issues, close to all of our hearts: the swift passage of H.B 700!

## H.B. 494

I feel that the position expressed in the Teleconference hearing on Feb. 26th by the Homebuilders represents middle ground, and that to do more than these suggested changes is to assure future Legislatures of having to correct the law back closer to what it is now. **Making the mis-appropriation of funds a criminal offense** should go a long way towards correcting the problems of the present law. Further, if Subs and Suppliers can simply file a **Right to Lien** instead of having to get an Acknowledgement of Right to Lien signed by the Owner of Record, this will make this part of the process much less onerous, and ultimately result in more Subs and Suppliers getting their money. The inclusion of **a criminal penalty for the filing of a false or fraudulent lien** would keep "grudge liens" from being the next problem we would have to deal with.

## S.S.H.B. 506

In Chapter 76. JOINT INSURANCE ARRANGEMENTS., Sec. 21.76.010 AUTHORITY TO ESTABLISH JOINT INSURANCE ARRANGEMENTS., sub-section (a) should be amended further to include " and non-profit corporations".

## FUNDING FOR MUNICIPAL PROJECTS IN SOLDOTNA FOR FY 1987

We in Soldotna are satisfied with the Governor's Capital Budget figures as they were passed to the House from the Senate. These represent the projects that are at the top of our priorities, and will allow us to move forward with plans to include traffic signalization in our Binkley Street Project next summer. Including Signalization at this time will ultimately cost less than doing it as a separate job later, and as you well know, is badly needed. We also need to expand our water and sewer on the south side of the Kenai River to allow for the Development of the Salamantof property, and the building of a much-needed Water Storage Tank.

Sincerely,

Mitchel L. Robinson

# STATE OF ALASKA
# THE LEGISLATURE

POUCH Y - STATE CAPITOL
JUNEAU, ALASKA 99811
907-465-3800

## LEGISLATIVE AFFAIRS AGENCY

LEGISLATIVE REFERENCE LIBRARY

May, 1986

Copies of minutes listed below were originally included in this file. The minutes are available on the STAIRS date base CM 14. In order to save space copies of minutes have not been left in the files.

Jeanie Henry

| | | |
|---|---|---|
| House Judiciary | 4/2/86 | 1:30 pm |
| " " | 4/3/86 | 1:30 pm |
| " " | 4/4/86 | 1:30 pm |
| " " | 4/8/86 | 1:30 pm |

# HOUSE

# COMMITTEE REPORT

(7

Date referred: 3/26/86

FURTHER REFERRALS: FINANCE

DATE: _____

The JUDICIARY Committee has considered SSHB 506

"An Act relating to insurance; and providing for an effective date."

and recommends:

[X] do pass

[ ] do not pass

[ ] do pass with attached amendment(s)

[ ] no recommendation

[X] replace with CS [ ] same title

[X] new title

and recommends do pass

[X] further referral to the Finance Committee

and attaches: [ ] letter of intent
[ ] first fiscal note
[ ] new fiscal note
[ ] zero fiscal note

SIGNING DO PASS:

SIGNING OTHER RECOMMENDATIONS:

Chairman

Original sponsors: Taylor, Gruenberg,
Larson, et al

IN THE HOUSE BY THE JUDICIARY COMMITTEE

CS FOR SPONSOR SUBSTITUTE FOR HOUSE BILL NO. 506 (Judiciary)

IN THE LEGISLATURE OF THE STATE OF ALASKA

FOURTEENTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act relating to joint insurance arrangements; and providing for an effective date."

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

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

CHAPTER 76. JOINT INSURANCE ARRANGEMENTS.

Sec. 21.76.010. AUTHORITY TO ESTABLISH JOINT INSURANCE ARRANGEMENTS. (a) The following groups may enter into cooperative agreements with each other for the purpose of establishing, operating, or participating in joint insurance arrangements through which the participating members agree to pool contributions in order to either assume risks from losses on a group basis or purchase coverage on a group basis:

(1) municipalities;

(2) school districts;

(3) regional educational attendance areas;

(4) unincorporated associations;

(5) regional electrical associations;

(6) entities qualified to do business under the Federal Risk Retention Act;

(7) groups that would be considered valid under this title for the type of insurance for which the joint insurance arrangement is established.

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

insurance.

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

Sec. 21.76.020. REGULATION BY DIVISION OF INSURANCE. A joint insurance arrangement may not be considered insurance for the purpose of any other law of the state and is not subject to regulations of the director except as expressly provided in this chapter.

Sec. 21.76.030. GENERAL PROVISIONS OF COOPERATIVE AGREEMENTS. A cooperative agreement shall provide for the proper operation of the joint insurance arrangement, and include provisions for

(1) administration of the arrangement by a board of directors, specifying the number of members of the board and other requirements necessary for the proper functioning of the board;

(2) appointment of an administrator and other persons as necessary for the proper functioning of the arrangement;

(3) organization of the arrangement, including a roster of participating members and the names of the members of the board of directors;

(4) procedures to establish and promote an aggressive risk management and program among the members of the arrangement, including procedures for identifying and reducing the risks that can be reduced through implementing better safety technologies and improved work techniques and procedures;

(5) enforcing the collection of contributions or payments in default from members of the arrangement;

(6) the addition of new members to the arrangement or the withdrawal of members from the arrangement;

(7) the method of apportioning costs and disposition of

excess contributions;

(8) transmission of financial statements and audit reports of the arrangement to participating members;

(9) terminating the arrangement and disposing of its assets; and

(10) establishing and administering a joint insurance fund.

Sec. 21.76.040. FINANCIAL PROVISIONS OF AGREEMENTS. (a) A cooperative agreement must include a provision requiring an annual determination by a casualty actuary who is a member of the American Academy of Actuaries that procedures for establishing reserves for losses of the joint insurance arrangement are actuarially sound.

(b) A joint insurance arrangement shall be subject to an annual independent audit. The audit shall be conducted in accordance with generally accepted auditing standards and must include a review of the actuarial assumptions used for establishing the reserves under (a) of this section. The audit report must include certification from a casualty actuary who is a member of the American Academy of Actuaries that the actuarial assumptions continue to be sound and the level of the reserves are adequate.

(c) A joint insurance arrangement shall use a method of accounting that conforms with generally accepted government accounting principles.

Sec. 21.76.050. CONTRACTING WITH PRIVATE ADMINISTRATORS. A cooperative agreement may authorize the board of directors to enter into contracts for services necessary to perform the functions of a joint insurance arrangement. The person contracting to perform the functions must be appropriately licensed under this title if this title so requires.

Sec. 21.76.060. DELEGATION OF POWER TO SETTLE CLAIMS. A

cooperative agreement may delegate to the board of directors, or authorize delegation by the board to another person or group, the power to compromise, arbitrate, or otherwise settle claims on behalf of the arrangement.

Sec. 21.76.070. EXCESS INSURANCE. A cooperative agreement may authorize the board of directors to purchase excess or catastrophic insurance on behalf of the joint insurance arrangement. The cost of the insurance shall be apportioned in the manner specified in the joint insurance agreement. The board may purchase insurance under this section only from an insurer authorized to do business in the state or from an unauthorized insurer if the insurance is placed through a licensed surplus lines broker.

Sec. 21.76.080. JOINT INSURANCE FUND. (a) A joint insurance arrangement shall establish a joint insurance fund. The fund consists of money

(1) contributed by members of the joint insurance arrangement through budgetary appropriations or transfers from a self-insurance reserve;

(2) contributed by officers and employees of members of the joint insurance arrangement under an employee benefit plan; and

(3) collected by the joint insurance arrangement through subrogation of a claim paid from the fund to a member of the arrangement.

(b) An expenditure may be made from a joint insurance fund only to pay claims, losses, or benefits, including interest on them, and the administrative and adjustment expenses incurred in connection with them, involving the types of protection for which the fund provides coverage as specified in the joint insurance agreement.

(c) The administrator shall keep the fund separate from other

funds of a member of a joint insurance arrangement.

(d) For each type of protection offered by the joint insurance arrangement, the method of accounting must show the order, source, date, and amount of each payment from the fund.

(e) Within 60 days of the end of the fiscal year, the administrator shall furnish a detailed report of the operation and condition of the fund to the board of directors and the director of insurance. The report furnished to the director of insurance shall be available for public inspection.

(f) Money held by a fund as reserves and money not needed for daily operations may be invested by the board of directors.

(g) A fund may not be terminated unless the administrator certifies that an amount of money sufficient to pay accrued and contingent expenditures has been placed in a fully collateralized escrow account.

Sec. 21.76.090. FILING OF AGREEMENT. The board of directors shall file a copy of the cooperative agreement with the director of insurance at least 60 days before the effective date of the agreement. The agreement shall be available for public inspection.

Sec. 21.76.100. REGULATIONS. A cooperative agreement may authorize the board of directors to adopt regulations not inconsistent with law for the fair and equitable administration of the joint insurance arrangement and the joint insurance fund.

Sec. 21.76.110. SUBROGATION. A joint insurance arrangement has a cause of action for reimbursement of money paid to a participating member for a loss or injury if the participating member recovers money for the loss or injury from a third party. The joint insurance arrangement also has a direct cause of action for reimbursement against a third party responsible for loss or injuries sustained by a participating member if the joint arrangement has paid money to the

participating member for the loss or injuries.

Sec. 21.76.900. DEFINITIONS. In this chapter

(1) "adjustment expenses" means expenses for investigative, processing, legal, actuarial, arbitration, and settlement services incurred in the adjustment of losses, claims, or benefits;

(2) "administrator" means a person or group appointed by the board of directors to administer a joint insurance arrangement or a joint insurance fund;

(3) "board" or "board of directors" means the board of directors provided for in a cooperative agreement;

(4) "cooperative agreement" means a written agreement entered into by two or more entities described in AS 21.76.010 for the purpose of establishing, operating, or participating in a joint insurance arrangement;

(5) "fund" or "joint insurance fund" means a fund established under AS 21.76.080;

(6) "joint insurance arrangement" means a joint insurance arrangement authorized under AS 21.76.010.

* Sec. 2. AS 21.36.190 is amended by adding a new subsection to read:

(e) This section does not apply to insurance coverage under a joint insurance arrangement authorized by AS 21.76.

* Sec. 3. AS 21.39.155(a) is amended to read:

(a) The director may require carriers, except a reciprocal insurer formed by and insuring only a group of municipalities or nonprofit public utilities under AS 21.75 or a joint insurance arrangement formed under AS 21.76, as a condition of writing a line of insurance dealing with workers' compensation, to participate in an assigned risk pool if the director finds that mandatory carrier participation is in the public interest.

* Sec. 4. AS 21.80.180(5) is amended to read:

(5) "insolvent insurer" means an insurer

(A) authorized to transact insurance in this state, except an assessable reciprocal insurer formed by and insuring only municipalities or nonprofit public utilities, a joint insurance arrangement formed under AS 21.76, the Medical Indemnity Corporation of Alaska, and the Health Care Providers Joint Underwriting Association established under AS 21.88, either at the time the policy was issued or when the insured event occurred, and

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

* Sec. 5. AS 21.80.180(6) is amended to read:

(6) "member insurer" means a person, except an assessable reciprocal insurer formed by and insuring only municipalities or nonprofit public utilities, a joint insurance arrangement formed under AS 21.76, the Medical Indemnity Corporation of Alaska, and the Health Care Providers Joint Underwriting Association established under AS 21.88, who

(A) writes any kind of insurance to which this chapter applies under AS 21.80.020 including the exchange of reciprocal or interinsurance contracts, and

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

* Sec. 6. This Act takes effect immediately in accordance with AS 01.-10.070(c).

Lauterbach
4/3/86

Original sponsors: Taylor, Gruenberg,
Larson, et al

IN THE HOUSE BY THE JUDICIARY COMMITTEE

CS FOR SPONSOR SUBSTITUTE FOR HOUSE BILL NO. 506 (Judiciary)

IN THE LEGISLATURE OF THE STATE OF ALASKA

FOURTEENTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act relating to joint insurance arrangements; repealing certain prohibitions related to fictitious groups formed for insurance purposes; and providing for an effective date."

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

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

CHAPTER 76. JOINT INSURANCE ARRANGEMENTS.

Sec. 21.76.010. AUTHORITY TO ESTABLISH JOINT INSURANCE ARRANGEMENTS. (a) The following groups may enter into cooperative agreements with each other for the purpose of establishing, operating, or participating in joint insurance arrangements through which the participating members agree to pool contributions in order to either assume risks from losses on a group basis or purchase coverage on a group basis:

(1) municipalities;

(2) school districts;

(3) regional educational attendance areas;

(4) unincorporated associations;

(5) regional electrical associations;

(6) entities qualified to do business under the Federal Risk Retention Act;

(7) groups that would be considered valid under this title for the type of insurance for which the joint insurance arrangement is established.

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

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

Sec. 21.76.020. REGULATION BY DIVISION OF INSURANCE. A joint insurance arrangement may not be considered insurance for the purpose of any other law of the state and is not subject to regulations of the director except as expressly provided in this chapter.

Sec. 21.76.030. GENERAL PROVISIONS OF COOPERATIVE AGREEMENTS. A cooperative agreement shall provide for the proper operation of the joint insurance arrangement, and include provisions for

(1) administration of the arrangement by a board of directors, specifying the number of members of the board and other requirements necessary for the proper functioning of the board;

(2) appointment of an administrator and other persons as necessary for the proper functioning of the arrangement;

(3) organization of the arrangement, including a roster of participating members and the names of the members of the board of directors;

(4) procedures to establish and promote an aggressive risk management and program among the members of the arrangement, including procedures for identifying and reducing the risks that can be reduced through implementing better safety technologies and improved work techniques and procedures;

(5) enforcing the collection of contributions or payments in default from members of the arrangement;

(6) the addition of new members to the arrangement or the

withdrawal of members from the arrangement;

(7) the method of apportioning costs and disposition of excess contributions;

(8) transmission of financial statements and audit reports of the arrangement to participating members;

(9) terminating the arrangement and disposing of its assets; and

(10) establishing and administering a joint insurance fund.

Sec. 21.76.040. FINANCIAL PROVISIONS OF AGREEMENTS. (a) A cooperative agreement must include a provision requiring an annual determination by a casualty actuary who is a member of the American Academy of Actuaries that procedures for establishing reserves for losses of the joint insurance arrangement are actuarially sound.

(b) A joint insurance arrangement shall be subject to an annual independent audit. The audit shall be conducted in accordance with generally accepted auditing standards and must include a review of the actuarial assumptions used for establishing the reserves under (a) of this section. The audit report must include certification from a casualty actuary who is a member of the American Academy of Actuaries that the actuarial assumptions continue to be sound and the level of the reserves are adequate.

(c) A joint insurance arrangement shall use a method of accounting that conforms with generally accepted government accounting principles.

Sec. 21.76.050. CONTRACTING WITH PRIVATE ADMINISTRATORS. A cooperative agreement may authorize the board of directors to enter into contracts for services necessary to perform the functions of a joint insurance arrangement. The person contracting to perform the functions must be appropriately licensed under this title if this

title so requires.

Sec. 21.76.060. DELEGATION OF POWER TO SETTLE CLAIMS. A cooperative agreement may delegate to the board of directors, or authorize delegation by the board to another person or group, the power to compromise, arbitrate, or otherwise settle claims on behalf of the arrangement.

Sec. 21.76.070. EXCESS INSURANCE. A cooperative agreement may authorize the board of directors to purchase excess or catastrophic insurance on behalf of the joint insurance arrangement. The cost of the insurance shall be apportioned in the manner specified in the joint insurance agreement. The board may purchase insurance under this section only from an insurer authorized to do business in the state or from an unauthorized insurer if the insurance is placed through a licensed surplus lines broker.

Sec. 21.76.080. JOINT INSURANCE FUND. (a) A joint insurance arrangement shall establish a joint insurance fund. The fund consists of money

(1) contributed by members of the joint insurance arrangement through budgetary appropriations or transfers from a self-insurance reserve;

(2) contributed by officers and employees of members of the joint insurance arrangement under an employee benefit plan; and

(3) collected by the joint insurance arrangement through subrogation of a claim paid from the fund to a member of the arrangement.

(b) An expenditure may be made from a joint insurance fund only to pay claims, losses, or benefits, including interest on them, and the administrative and adjustment expenses incurred in connection with them, involving the types of protection for which the fund provides

coverage as specified in the joint insurance agreement.

(c) The administrator shall keep the fund separate from othe funds of a member of a joint insurance arrangement.

(d) For each type of protection offered by the joint insuranc arrangement, the method of accounting must show the order, source date, and amount of each payment from the fund.

(e) Within 60 days of the end of the fiscal year, the adminis trator shall furnish a detailed report of the operation and condition of the fund to the board of directors and the director of insurance. The report furnished to the director of insurance shall be available for public inspection.

(f) Money held by a fund as reserves and money not needed for daily operations may be invested by the board of directors.

(g) A fund may not be terminated unless the administrator certifies that an amount of money sufficient to pay accrued and contingent expenditures has been placed in a fully collateralized escrow account.

Sec. 21.76.090. FILING OF AGREEMENT. The board of directors shall file a copy of the cooperative agreement with the director of insurance at least 60 days before the effective date of the agreement. The agreement shall be available for public inspection.

Sec. 21.76.100. REGULATIONS. A cooperative agreement may authorize the board of directors to adopt regulations not inconsistent with law for the fair and equitable administration of the joint insurance arrangement and the joint insurance fund.

Sec. 21.76.110. SUBROGATION. A joint insurance arrangement has a cause of action for reimbursement of money paid to a participating member for a loss or injury if the participating member recovers money for the loss or injury from a third party. The joint insurance arrangement also has a direct cause of action for reimbursement against

a third party responsible for loss or injuries sustained by a participating member if the joint arrangement has paid money to the participating member for the loss or injuries.

Sec. 21.76.900. DEFINITIONS. In this chapter

(1) "adjustment expenses" means expenses for investigative, processing, legal, actuarial, arbitration, and settlement services incurred in the adjustment of losses, claims, or benefits;

(2) "administrator" means a person or group appointed by the board of directors to administer a joint insurance arrangement or a joint insurance fund;

(3) "board" or "board of directors" means the board of directors provided for in a cooperative agreement;

(4) "cooperative agreement" means a written agreement entered into by two or more entities described in AS 21.76.010 for the purpose of establishing, operating, or participating in a joint insurance arrangement;

(5) "fund" or "joint insurance fund" means a fund established under AS 21.76.080;

(6) "joint insurance arrangement" means a joint insurance arrangement authorized under AS 21.76.010.

* Sec. 2. AS 21.39.155(a) is amended to read:

(a) The director may require carriers, except a reciprocal insurer formed by and insuring only a group of municipalities or nonprofit public utilities under AS 21.75 <u>or a joint insurance arrangement formed under AS 21.76</u>, as a condition of writing a line of insurance dealing with workers' compensation, to participate in an assigned risk pool if the director finds that mandatory carrier participation is in the public interest.

* Sec. 3. AS 21.80.180(5) is amended to read:

(5) "insolvent insurer" means an insurer

(A) authorized to transact insurance in this state, except an assessable reciprocal insurer formed by and insuring only municipalities or nonprofit public utilities, a joint insurance arrangement formed under AS 21.76, the Medical Indemnity Corporation of Alaska, and the Health Care Providers Joint Underwriting Association established under AS 21.88, either at the time the policy was issued or when the insured event occurred, and

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

* Sec. 4. AS 21.80.180(6) is amended to read:

(6) "member insurer" means a person, except an assessable reciprocal insurer formed by and insuring only municipalities or nonprofit public utilities, a joint insurance arrangement formed under AS 21.76, the Medical Indemnity Corporation of Alaska, and the Health Care Providers Joint Underwriting Association established under AS 21.88, who

(A) writes any kind of insurance to which this chapter applies under AS 21.80.020 including the exchange of reciprocal or interinsurance contracts, and

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

* Sec. 5. AS 21.36.190 is repealed.

* Sec. 6. This Act takes effect immediately in accordance with AS 01.-10.070(c).

LEGISLATIVE AFFAIRS AGENCY

**MEMORANDUM**

4/8/05 CSSS HB 506(JUD)

Nancy -

For stylistic reasons, I added your requested language as a new subsection rather than amending subsection (c). If this version becomes law, subsections (c), (d), and (e) will each refer to different kinds of exemptions from the prohibitions of AS 21.36.190. (See * Sec. 2 of the draft.)

Teri Lauterbach
Asst. Revisor
Legal Services

Lauterbach
4/8/86

Original sponsors: Taylor, Gruenberg,
Larson, et al

IN THE HOUSE BY THE JUDICIARY COMMITTEE

CS FOR SPONSOR SUBSTITUTE FOR HOUSE BILL NO. 506 (Judiciary)

IN THE LEGISLATURE OF THE STATE OF ALASKA

FOURTEENTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act relating to joint insurance arrangements; and providing for an effective date."

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

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

CHAPTER 76. JOINT INSURANCE ARRANGEMENTS.

Sec. 21.76.010. AUTHORITY TO ESTABLISH JOINT INSURANCE ARRANGEMENTS. (a) The following groups may enter into cooperative agreements with each other for the purpose of establishing, operating, or participating in joint insurance arrangements through which the participating members agree to pool contributions in order to either assume risks from losses on a group basis or purchase coverage on a group basis:

(1) municipalities;

(2) school districts;

(3) regional educational attendance areas;

(4) unincorporated associations;

(5) regional electrical associations;

(6) entities qualified to do business under the Federal Risk Retention Act;

(7) groups that would be considered valid under this title for the type of insurance for which the joint insurance arrangement is established.

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

insurance.

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

Sec. 21.76.020. REGULATION BY DIVISION OF INSURANCE. A joint insurance arrangement may not be considered insurance for the purpose of any other law of the state and is not subject to regulations of the director except as expressly provided in this chapter.

Sec. 21.76.030. GENERAL PROVISIONS OF COOPERATIVE AGREEMENTS. A cooperative agreement shall provide for the proper operation of the joint insurance arrangement, and include provisions for

(1) administration of the arrangement by a board of directors, specifying the number of members of the board and other requirements necessary for the proper functioning of the board;

(2) appointment of an administrator and other persons as necessary for the proper functioning of the arrangement;

(3) organization of the arrangement, including a roster of participating members and the names of the members of the board of directors;

(4) procedures to establish and promote an aggressive risk management and program among the members of the arrangement, including procedures for identifying and reducing the risks that can be reduced through implementing better safety technologies and improved work techniques and procedures;

(5) enforcing the collection of contributions or payments in default from members of the arrangement;

(6) the addition of new members to the arrangement or the withdrawal of members from the arrangement;

(7) the method of apportioning costs and disposition of

excess contributions;

(8) transmission of financial statements and audit reports of the arrangement to participating members;

(9) terminating the arrangement and disposing of its assets; and

(10) establishing and administering a joint insurance fund.

Sec. 21.76.040. FINANCIAL PROVISIONS OF AGREEMENTS. (a) A cooperative agreement must include a provision requiring an annual determination by a casualty actuary who is a member of the American Academy of Actuaries that procedures for establishing reserves for losses of the joint insurance arrangement are actuarially sound.

(b) A joint insurance arrangement shall be subject to an annual independent audit. The audit shall be conducted in accordance with generally accepted auditing standards and must include a review of the actuarial assumptions used for establishing the reserves under (a) of this section. The audit report must include certification from a casualty actuary who is a member of the American Academy of Actuaries that the actuarial assumptions continue to be sound and the level of the reserves are adequate.

(c) A joint insurance arrangement shall use a method of accounting that conforms with generally accepted government accounting principles.

Sec. 21.76.050. CONTRACTING WITH PRIVATE ADMINISTRATORS. A cooperative agreement may authorize the board of directors to enter into contracts for services necessary to perform the functions of a joint insurance arrangement. The person contracting to perform the functions must be appropriately licensed under this title if this title so requires.

Sec. 21.76.060. DELEGATION OF POWER TO SETTLE CLAIMS. A

cooperative agreement may delegate to the board of directors, or authorize delegation by the board to another person or group, the power to compromise, arbitrate, or otherwise settle claims on behalf of the arrangement.

Sec. 21.76.070. EXCESS INSURANCE. A cooperative agreement may authorize the board of directors to purchase excess or catastrophic insurance on behalf of the joint insurance arrangement. The cost of the insurance shall be apportioned in the manner specified in the joint insurance agreement. The board may purchase insurance under this section only from an insurer authorized to do business in the state or from an unauthorized insurer if the insurance is placed through a licensed surplus lines broker.

Sec. 21.76.080. JOINT INSURANCE FUND. (a) A joint insurance arrangement shall establish a joint insurance fund. The fund consists of money

(1) contributed by members of the joint insurance arrangement through budgetary appropriations or transfers from a self-insurance reserve;

(2) contributed by officers and employees of members of the joint insurance arrangement under an employee benefit plan; and

(3) collected by the joint insurance arrangement through subrogation of a claim paid from the fund to a member of the arrangement.

(b) An expenditure may be made from a joint insurance fund only to pay claims, losses, or benefits, including interest on them, and the administrative and adjustment expenses incurred in connection with them, involving the types of protection for which the fund provides coverage as specified in the joint insurance agreement.

(c) The administrator shall keep the fund separate from other

funds of a member of a joint insurance arrangement.

(d) For each type of protection offered by the joint insurance arrangement, the method of accounting must show the order, source, date, and amount of each payment from the fund.

(e) Within 60 days of the end of the fiscal year, the administrator shall furnish a detailed report of the operation and condition of the fund to the board of directors and the director of insurance. The report furnished to the director of insurance shall be available for public inspection.

(f) Money held by a fund as reserves and money not needed for daily operations may be invested by the board of directors.

(g) A fund may not be terminated unless the administrator certifies that an amount of money sufficient to pay accrued and contingent expenditures has been placed in a fully collateralized escrow account.

Sec. 21.76.090. FILING OF AGREEMENT. The board of directors shall file a copy of the cooperative agreement with the director of insurance at least 60 days before the effective date of the agreement. The agreement shall be available for public inspection.

Sec. 21.76.100. REGULATIONS. A cooperative agreement may authorize the board of directors to adopt regulations not inconsistent with law for the fair and equitable administration of the joint insurance arrangement and the joint insurance fund.

Sec. 21.76.110. SUBROGATION. A joint insurance arrangement has a cause of action for reimbursement of money paid to a participating member for a loss or injury if the participating member recovers money for the loss or injury from a third party. The joint insurance arrangement also has a direct cause of action for reimbursement against a third party responsible for loss or injuries sustained by a participating member if the joint arrangement has paid money to the

participating member for the loss or injuries.

Sec. 21.76.900. DEFINITIONS. In this chapter

(1) "adjustment expenses" means expenses for investigative, processing, legal, actuarial, arbitration, and settlement services incurred in the adjustment of losses, claims, or benefits;

(2) "administrator" means a person or group appointed by the board of directors to administer a joint insurance arrangement or a joint insurance fund;

(3) "board" or "board of directors" means the board of directors provided for in a cooperative agreement;

(4) "cooperative agreement" means a written agreement entered into by two or more entities described in AS 21.76.010 for the purpose of establishing, operating, or participating in a joint insurance arrangement;

(5) "fund" or "joint insurance fund" means a fund established under AS 21.76.080;

(6) "joint insurance arrangement" means a joint insurance arrangement authorized under AS 21.76.010.

* Sec. 2. AS 21.36.190 is amended by adding a new subsection to read:

(e) This section does not apply to insurance coverage under a joint insurance arrangement authorized by AS 21.76.

* Sec. 3. AS 21.39.155(a) is amended to read:

(a) The director may require carriers, except a reciprocal insurer formed by and insuring only a group of municipalities or nonprofit public utilities under AS 21.75 <u>or a joint insurance arrangement formed under AS 21.76</u>, as a condition of writing a line of insurance dealing with workers' compensation, to participate in an assigned risk pool if the director finds that mandatory carrier participation is in the public interest.

* Sec. 4. AS 21.80.180(5) is amended to read:

(5) "insolvent insurer" means an insurer

(A) authorized to transact insurance in this state, except an assessable reciprocal insurer formed by and insuring only municipalities or nonprofit public utilities, a joint insurance arrangement formed under AS 21.76, the Medical Indemnity Corporation of Alaska, and the Health Care Providers Joint Underwriting Association established under AS 21.88, either at the time the policy was issued or when the insured event occurred, and

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

* Sec. 5. AS 21.80.180(6) is amended to read:

(6) "member insurer" means a person, except an assessable reciprocal insurer formed by and insuring only municipalities or nonprofit public utilities, a joint insurance arrangement formed under AS 21.76, the Medical Indemnity Corporation of Alaska, and the Health Care Providers Joint Underwriting Association established under AS 21.88, who

(A) writes any kind of insurance to which this chapter applies under AS 21.80.020 including the exchange of reciprocal or interinsurance contracts, and

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

* Sec. 6. This Act takes effect immediately in accordance with AS 01.-10.070(c).

14-2005
Lauterbach
3/17/86

IN THE HOUSE

BY THE LABOR AND COMMERCE COMMITTEE

HOUSE BILL NO.

IN THE LEGISLATURE OF THE STATE OF ALASKA

FOURTEENTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act relating to insurance; and providing for an effective date."

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

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

CHAPTER 79. ALASKA REINSURANCE FUND.

Sec. 21.79.010. REINSURANCE FUND ESTABLISHED. (a) The Alaska reinsurance fund is established as an account in the general fund. The fund consists of appropriations made to it by law for the purposes of this chapter.

(b) Money in the fund may be used to pay

(1) reinsurance claims under the reinsurance coverage provided under AS 21.79.050; and

(2) administrative expenses of the Department of Commerce and Economic Development that are necessary or appropriate to carry out the purposes of this chapter.

Sec. 21.79.020. HEARINGS ON AVAILABILITY OF INSURANCE. (a) Within 30 days after receiving an application by a manufacturer, service provider, or a group or association representing manufacturers or service providers, the division shall hold a hearing on the availability and affordability of adequate commercial general liability insurance and other lines of insurance for the applicant or members of the applicant group or association.

(b) In addition to hearings under (a) of this section, the division may hold a hearing on the availability and affordability of

adequate commercial general liability insurance and other lines of insurance after a finding by the director that the line of insurance has become unavailable or unaffordable in the state.

Sec. 21.79.030. DETERMINATION OF AVAILABILITY OF INSURANCE. (a) Within 30 days after a hearing under AS 21.79.020, the director shall determine in writing, based on the hearing record, whether the insurance at issue in the hearing is, and will be, reasonably available and affordable to cover anticipated claims of the affected manufacturers or service providers.

(b) If the director determines under (a) of this section that a line of insurance is not available or affordable or will not be available or affordable, the director may implement the insurance pool provisions of AS 21.79.040 or the reinsurance coverage described in AS 21.79.050, or both.

Sec. 21.79.040. INSURANCE POOLS. (a) After a determination of unavailability or unaffordability under AS 21.79.030(b), the director may encourage and assist insurers licensed to operate in the state to join together in insurance pools for the purpose of assuming, on the terms and conditions they agree to, a reasonable portion of responsibility for the adjustment and payment of claims arising from product or service related injuries, disabilities, illnesses, and deaths.

(b) Money from the insurance pools established under (a) of this section may be used only to pay claims resulting from product or service related actions in excess of amounts that are established each year by the director. The director may establish different amounts for each manufacturer, service provider, or insurer and each product or service based on the needs of the manufacturer, service provider, or insurer and other relevant factors.

(c) Insurance pools established under this section may be funded

by premiums paid by manufacturers or service providers to insurers approved by the director. If the director finds, after notice and public hearing, that the premiums charged by the insurance pools make the insurance from the pools unavailable or unaffordable for manufacturers or service providers, the director may amend the terms and conditions of reinsurance under AS 21.79.050 to decrease the premiums to be paid.

Sec. 21.79.050. REINSURANCE COVERAGE. (a) After a finding of unavailability or unaffordability under AS 21.79.030(b), the director may take necessary action to make reinsurance coverage available to the insurance pools formed under AS 21.79.040. The director may also make reinsurance available directly to insurers that participate in pools established under AS 21.79.040 for the portion of their business that is related to a line of insurance that the director determines is unavailable or unaffordable under AS 21.79.030(b) but that is not within a pool created under AS 21.79.040. Action authorized under this subsection includes the authority to enter into a contract with an insurer or pool for reinsurance coverage based on a premium, fee, or other charge set by the director.

(b) The director shall include in a contract or arrangement under this section the terms the director considers necessary to carry out the purposes of this chapter. The reinsurance may be subject to deductibles and other restrictions and limitations.

(c) The director may not provide reinsurance under this section to a manufacturer, service provider, insurer, or pool of insurers that

(1) the director determines to be uninsurable; or

(2) has not adopted reasonable protective measures to prevent loss, consistent with standards adopted by the director under AS 21.79.100(a).

(d) Reinsurance offered under this section shall reimburse an insurer or pool for its total proved and approved claims for covered losses resulting from product or service related injuries, disabilities, illnesses, and deaths during the term of the reinsurance contract or other agreement, above the amount of the insurer's or pool's retention of the losses as provided in the reinsurance contract.

(e) Reinsurance claims under this section shall be paid from the fund established in AS 21.79.010.

Sec. 21.79.060. CONTRACTING WITH INSURANCE COMPANIES. The director may contract with a private insurer, agent, broker, or insurance organization to administer the programs established under this chapter, except that the director may not delegate the responsibilities described in AS 21.79.020.

Sec. 21.79.100. GENERAL RESTRICTIONS ON PROGRAMS UNDER THIS CHAPTER. (a) The director shall ensure that programs operated under this chapter

(1) do not act as disincentives for improvements in product safety or safe service delivery;

(2) promote product safety and safe service delivery through the establishment of models for risk management that are agreed on by the director, insurers, and insureds and adopted by the director by regulation as a prerequisite for eligibility for any programs under this chapter.

(b) A manufacturer or service provider that benefits from a program under this chapter shall agree that the relevant product or service will remain available to the public during the period in which the manufacturer or service provider participates in the programs.

(c) An insurer that benefits from programs under this chapter shall agree that insurance that is written during the period in which

the insurer or its insured manufacturer or service provider participates in the programs will have premiums that are based on an experience rate.

Sec. 21.79.110. ENFORCEMENT OF THIS CHAPTER. (a) At the request of the director, the attorney general shall bring an action in the appropriate court to recover from an insurer the amount of an unpaid premium lawfully payable by the insurer to the director or its delegated agent.

(b) An action under this section must be brought within five years of the date the right to payment accrued. If false or fraudulent conduct warrants, the claim is not considered to have accrued until its discovery.

(c) A recovery under this section shall be deposited in the general fund.

Sec. 21.79.200. PERIODIC REVIEW OF PROGRAMS. The director shall periodically review the programs operating under this chapter and annually report to the legislature within the first 10 days of each regular session, beginning with the Second Session of the Fifteenth Legislature, concerning

(1) whether the programs are effectively making commercial general liability and other essential lines of liability insurance readily available to the intended manufacturers and service providers;

(2) the director's recommendations for revising this chapter in order that it may more effectively achieve its purposes.

* Sec. 2. By the fifth day of the First Session of the Fifteenth Legislature, the commissioner of commerce and economic development shall report to the legislature concerning

(1) the nature and extent of anticipated use of the insurance industry in the delivery of reinsurance under this Act to manufacturers,

service providers, insurers, and pools of insurance;

(2) anticipated costs of providing reinsurance under this Act to manufacturers, service providers, insurers, and pools of insurance;

(3) the identity of potential applicants that have contacted the department about the programs that would be authorized under this Act; and

(4) the identity of affected parties that might benefit from participation in the programs authorized under this Act.

* Sec. 3. Section 2 of this Act takes effect immediately in accordance with AS 01.10.070(c).

* Sec. 4. Section 1 of this Act takes effect March 1, 1987.

Lauterbach
3/17/86

Original sponsors: Taylor, Gruenberg,
Larson, et al

IN THE HOUSE

BY THE LABOR AND
COMMERCE COMMITTEE

FOR SPONSOR SUBSTITUTE FOR HOUSE BILL NO. 506 (L&C)

IN THE LEGISLATURE OF THE STATE OF ALASKA

FOURTEENTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act relating to insurance; and providing for an effective

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

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

CHAPTER 76. JOINT INSURANCE ARRANGEMENTS.

Sec. 21.76.010. AUTHORITY TO ESTABLISH JOINT INSURANCE ARRANGEMENTS. (a) Municipalities, school districts, and regional educational attendance areas may enter into cooperative agreements with each other for the purpose of establishing, operating, or participating in joint insurance arrangements through which the participating members agree to pool contributions and

(1) assume risks from losses on a group basis; or

(2) purchase coverage on a group basis.

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

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

Sec. 21.76.020. REGULATION BY DIVISION OF INSURANCE. A joint insurance arrangement may not be considered insurance for the purpose of any other law of the state and is not subject to regulations of the director except as expressly provided in this chapter.

Sec. 21.76.030. GENERAL PROVISIONS OF COOPERATIVE AGREEMENTS. A

cooperative agreement shall provide for the proper operation of the joint insurance arrangement, and include provisions for

(1) administration of the arrangement by a board of directors, specifying the number of members of the board and other requirements necessary for the proper functioning of the board;

(2) appointment of an administrator and other persons as necessary for the proper functioning of the arrangement;

(3) organization of the arrangement, including a roster of participating members and the names of the members of the board of directors;

(4) procedures to establish and promote an aggressive risk management and program among the members of the arrangement, including procedures for identifying and reducing the risks that can be reduced through implementing better safety technologies and improved work techniques and procedures;

(5) enforcing the collection of contributions or payments in default from members of the arrangement;

(6) the addition of new members to the arrangement or the withdrawal of members from the arrangement;

(7) the method of apportioning costs and disposition of excess contributions;

(8) transmission of financial statements and audit reports of the arrangement to participating members;

(9) terminating the arrangement and disposing of its assets; and

(10) establishing and administering a joint insurance fund.

Sec. 21.76.040. FINANCIAL PROVISIONS OF AGREEMENTS. (a) A cooperative agreement must include a provision requiring an annual determination by a casualty actuary who is a member of the American

Academy of Actuaries that procedures for establishing reserves for losses of the joint insurance arrangement are actuarially sound.

(b) A joint insurance arrangement shall be subject to an annual independent audit. The audit shall be conducted in accordance with generally accepted auditing standards and must include a review of the actuarial assumptions used for establishing the reserves under (a) of this section. The audit report must include certification from a casualty actuary who is a member of the American Academy of Actuaries that the actuarial assumptions continue to be sound and the level of the reserves are adequate.

(c) A joint insurance arrangement shall use a method of accounting that conforms with generally accepted government accounting principles.

Sec. 21.76.050. CONTRACTING WITH PRIVATE ADMINISTRATORS. A cooperative agreement may authorize the board of directors to enter into contracts for services necessary to perform the functions of a joint insurance arrangement. The person contracting to perform the functions must be appropriately licensed under this title if this title so requires.

Sec. 21.76.060. DELEGATION OF POWER TO SETTLE CLAIMS. A cooperative agreement may delegate to the board of directors, or authorize delegation by the board to another person or group, the power to compromise, arbitrate, or otherwise settle claims on behalf of the arrangement.

Sec. 21.76.070. EXCESS INSURANCE. A cooperative agreement may authorize the board of directors to purchase excess or catastrophic insurance on behalf of the joint insurance arrangement. The cost of the insurance shall be apportioned in the manner specified in the joint insurance agreement. The board may purchase insurance under

this section only from an insurer authorized to do business in the state or from an unauthorized insurer if the insurance is placed through a licensed surplus lines broker.

Sec. 21.76.080. JOINT INSURANCE FUND. (a) A joint insurance arrangement shall establish a joint insurance fund. The fund consists of money

(1) contributed by members of the joint insurance arrangement through budgetary appropriations or transfers from a self-insurance reserve;

(2) contributed by officers and employees of members of the joint insurance arrangement under an employee benefit plan; and

(3) collected by the joint insurance arrangement through subrogation of a claim paid from the fund to a member of the arrangement.

(b) An expenditure may be made from a joint insurance fund only to pay claims, losses, or benefits, including interest on them, and the administrative and adjustment expenses incurred in connection with them, involving the types of protection for which the fund provides coverage as specified in the joint insurance agreement.

(c) The administrator shall keep the fund separate from other funds of a member of a joint insurance arrangement.

(d) For each type of protection offered by the joint insurance arrangement, the method of accounting must show the order, source, date, and amount of each payment from the fund.

(e) Within 60 days of the end of the fiscal year, the administrator shall furnish a detailed report of the operation and condition of the fund to the board of directors and the director of insurance. The report furnished to the director of insurance shall be available for public inspection.

(f) Money held by a fund as reserves and money not needed for daily operations may be invested by the board of directors.

(g) A fund may not be terminated unless the administrator certifies that an amount of money sufficient to pay accrued and contingent expenditures has been placed in a fully collateralized escrow account.

Sec. 21.76.090. FILING OF AGREEMENT. The board of directors shall file a copy of the cooperative agreement with the director of insurance at least 60 days before the effective date of the agreement. The agreement shall be available for public inspection.

Sec. 21.76.100. REGULATIONS. A cooperative agreement may authorize the board of directors to adopt regulations not inconsistent with law for the fair and equitable administration of the joint insurance arrangement and the joint insurance fund.

Sec. 21.76.110. SUBROGATION. A joint insurance arrangement has a cause of action for reimbursement of money paid to a participating member for a loss or injury if the participating member recovers money for the loss or injury from a third party. The joint insurance arrangement also has a direct cause of action for reimbursement against a third party responsible for loss or injuries sustained by a participating member if the joint arrangement has paid money to the participating member for the loss or injuries.

Sec. 21.76.900. DEFINITIONS. In this chapter

(1) "adjustment expenses" means expenses for investigative, processing, legal, actuarial, arbitration, and settlement services incurred in the adjustment of losses, claims, or benefits;

(2) "administrator" means a person or group appointed by the board of directors to administer a joint insurance arrangement or a joint insurance fund;

(3) "board" or "board of directors" means the board of

directors provided for in a cooperative agreement;

(4) "cooperative agreement" means a written agreement entered into by two or more entities described in AS 21.76.010 for the purpose of establishing, operating, or participating in a joint insurance arrangement;

(5) "fund" or "joint insurance fund" means a fund established under AS 21.76.080;

(6) "joint insurance arrangement" means a joint insurance arrangement authorized under AS 21.76.010.

* Sec. 2. AS 21.39.155(a) is amended to read:

(a) The director may require carriers, except a reciprocal insurer formed by and insuring only a group of municipalities or nonprofit public utilities under AS 21.75 or a joint insurance arrangement formed under AS 21.76, as a condition of writing a line of insurance dealing with workers' compensation, to participate in an assigned risk pool if the director finds that mandatory carrier participation is in the public interest.

* Sec. 3. AS 21.80.180(5) is amended to read:

(5) "insolvent insurer" means an insurer

(A) authorized to transact insurance in this state, except an assessable reciprocal insurer formed by and insuring only municipalities or nonprofit public utilities, a joint insurance arrangement formed under AS 21.76, the Medical Indemnity Corporation of Alaska, and the Health Care Providers Joint Underwriting Association established under AS 21.88, either at the time the policy was issued or when the insured event occurred, and

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

* Sec. 4. AS 21.80.180(6) is amended to read:

(6) "member insurer" means a person, except an assessable reciprocal insurer formed by and insuring only municipalities or nonprofit public utilities, a joint insurance arrangement formed under AS 21.76, the Medical Indemnity Corporation of Alaska, and the Health Care Providers Joint Underwriting Association established under AS 21.88, who

(A) writes any kind of insurance to which this chapter applies under AS 21.80.020 including the exchange of reciprocal or interinsurance contracts, and

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

* Sec. 5. AS 21.36.190 is repealed.

* Sec. 6. This Act takes effect immediately in accordance with AS 01.-10.070(c).

Offered: 3/26/86
Referred: Judiciary and Finance

Original sponsors: Taylor, Gruenberg, Larson, et al

IN THE HOUSE

BY THE LABOR AND COMMERCE COMMITTEE

CS FOR SPONSOR SUBSTITUTE FOR HOUSE BILL NO. 506 (L&C)

IN THE LEGISLATURE OF THE STATE OF ALASKA

FOURTEENTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act relating to insurance; and providing for an effective date."

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

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

CHAPTER 76. JOINT INSURANCE ARRANGEMENTS.

Sec. 21.76.010. AUTHORITY TO ESTABLISH JOINT INSURANCE ARRANGEMENTS. (a) Municipalities, school districts, and regional educational attendance areas may enter into cooperative agreements with each other for the purpose of establishing, operating, or participating in joint insurance arrangements through which the participating members agree to pool contributions and

(1) assume risks from losses on a group basis; or

(2) purchase coverage on a group basis.

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

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

Sec. 21.76.020. REGULATION BY DIVISION OF INSURANCE. A joint insurance arrangement may not be considered insurance for the purpose of any other law of the state and is not subject to regulations of the director except as expressly provided in this chapter.

Sec. 21.76.030. GENERAL PROVISIONS OF COOPERATIVE AGREEMENTS. A

cooperative agreement shall provide for the proper operation of the joint insurance arrangement, and include provisions for

(1) administration of the arrangement by a board of directors, specifying the number of members of the board and other requirements necessary for the proper functioning of the board;

(2) appointment of an administrator and other persons as necessary for the proper functioning of the arrangement;

(3) organization of the arrangement, including a roster of participating members and the names of the members of the board of directors;

(4) procedures to establish and promote an aggressive risk management and program among the members of the arrangement, including procedures for identifying and reducing the risks that can be reduced through implementing better safety technologies and improved work techniques and procedures;

(5) enforcing the collection of contributions or payments in default from members of the arrangement;

(6) the addition of new members to the arrangement or the withdrawal of members from the arrangement;

(7) the method of apportioning costs and disposition of excess contributions;

(8) transmission of financial statements and audit reports of the arrangement to participating members;

(9) terminating the arrangement and disposing of its assets; and

(10) establishing and administering a joint insurance fund.

Sec. 21.76.040. FINANCIAL PROVISIONS OF AGREEMENTS. (a) A cooperative agreement must include a provision requiring an annual determination by a casualty actuary who is a member of the American

Academy of Actuaries that procedures for establishing reserves for losses of the joint insurance arrangement are actuarially sound.

(b) A joint insurance arrangement shall be subject to an annual independent audit. The audit shall be conducted in accordance with generally accepted auditing standards and must include a review of the actuarial assumptions used for establishing the reserves under (a) of this section. The audit report must include certification from a casualty actuary who is a member of the American Academy of Actuaries that the actuarial assumptions continue to be sound and the level of the reserves are adequate.

(c) A joint insurance arrangement shall use a method of accounting that conforms with generally accepted government accounting principles.

Sec. 21.76.050. CONTRACTING WITH PRIVATE ADMINISTRATORS. A cooperative agreement may authorize the board of directors to enter into contracts for services necessary to perform the functions of a joint insurance arrangement. The person contracting to perform the functions must be appropriately licensed under this title if this title so requires.

Sec. 21.76.060. DELEGATION OF POWER TO SETTLE CLAIMS. A cooperative agreement may delegate to the board of directors, or authorize delegation by the board to another person or group, the power to compromise, arbitrate, or otherwise settle claims on behalf of the arrangement.

Sec. 21.76.070. EXCESS INSURANCE. A cooperative agreement may authorize the board of directors to purchase excess or catastrophic insurance on behalf of the joint insurance arrangement. The cost of the insurance shall be apportioned in the manner specified in the joint insurance agreement. The board may purchase insurance under

this section only from an insurer authorized to do business in the state or from an unauthorized insurer if the insurance is placed through a licensed surplus lines broker.

Sec. 21.76.080. JOINT INSURANCE FUND. (a) A joint insurance arrangement shall establish a joint insurance fund. The fund consists of money

(1) contributed by members of the joint insurance arrangement through budgetary appropriations or transfers from a self-insurance reserve;

(2) contributed by officers and employees of members of the joint insurance arrangement under an employee benefit plan; and

(3) collected by the joint insurance arrangement through subrogation of a claim paid from the fund to a member of the arrangement.

(b) An expenditure may be made from a joint insurance fund only to pay claims, losses, or benefits, including interest on them, and the administrative and adjustment expenses incurred in connection with them, involving the types of protection for which the fund provides coverage as specified in the joint insurance agreement.

(c) The administrator shall keep the fund separate from other funds of a member of a joint insurance arrangement.

(d) For each type of protection offered by the joint insurance arrangement, the method of accounting must show the order, source, date, and amount of each payment from the fund.

(e) Within 60 days of the end of the fiscal year, the administrator shall furnish a detailed report of the operation and condition of the fund to the board of directors and the director of insurance. The report furnished to the director of insurance shall be available for public inspection.

(f) Money held by a fund as reserves and money not needed for daily operations may be invested by the board of directors.

(g) A fund may not be terminated unless the administrator certifies that an amount of money sufficient to pay accrued and contingent expenditures has been placed in a fully collateralized escrow account.

Sec. 21.76.090. FILING OF AGREEMENT. The board of directors shall file a copy of the cooperative agreement with the director of insurance at least 60 days before the effective date of the agreement. The agreement shall be available for public inspection.

Sec. 21.76.100. REGULATIONS. A cooperative agreement may authorize the board of directors to adopt regulations not inconsistent with law for the fair and equitable administration of the joint insurance arrangement and the joint insurance fund.

Sec. 21.76.110. SUBROGATION. A joint insurance arrangement has a cause of action for reimbursement of money paid to a participating member for a loss or injury if the participating member recovers money for the loss or injury from a third party. The joint insurance arrangement also has a direct cause of action for reimbursement against a third party responsible for loss or injuries sustained by a participating member if the joint arrangement has paid money to the participating member for the loss or injuries.

Sec. 21.76.900. DEFINITIONS. In this chapter

(1) "adjustment expenses" means expenses for investigative, processing, legal, actuarial, arbitration, and settlement services incurred in the adjustment of losses, claims, or benefits;

(2) "administrator" means a person or group appointed by the board of directors to administer a joint insurance arrangement or a joint insurance fund;

(3) "board" or "board of directors" means the board of

directors provided for in a cooperative agreement;

(4) "cooperative agreement" means a written agreement entered into by two or more entities described in AS 21.76.010 for the purpose of establishing, operating, or participating in a joint insurance arrangement;

(5) "fund" or "joint insurance fund" means a fund established under AS 21.76.080;

(6) "joint insurance arrangement" means a joint insurance arrangement authorized under AS 21.76.010.

* Sec. 2. AS 21.39.155(a) is amended to read:

(a) The director may require carriers, except a reciprocal insurer formed by and insuring only a group of municipalities or nonprofit public utilities under AS 21.75 or a joint insurance arrangement formed under AS 21.76, as a condition of writing a line of insurance dealing with workers' compensation, to participate in an assigned risk pool if the director finds that mandatory carrier participation is in the public interest.

* Sec. 3. AS 21.80.130(5) is amended to read:

(5) "insolvent insurer" means an insurer

(A) authorized to transact insurance in this state, except an assessable reciprocal insurer formed by and insuring only municipalities or nonprofit public utilities, a joint insurance arrangement formed under AS 21.76, the Medical Indemnity Corporation of Alaska, and the Health Care Providers Joint Underwriting Association established under AS 21.88, either at the time the policy was issued or when the insured event occurred, and

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

* Sec. 4. AS 21.80.180(6) is amended to read:

(6) "member insurer" means a person, except an assessable reciprocal insurer formed by and insuring only municipalities or nonprofit public utilities, a joint insurance arrangement formed under AS 21.76, the Medical Indemnity Corporation of Alaska, and the Health Care Providers Joint Underwriting Association established under AS 21.88, who

(A) writes any kind of insurance to which this chapter applies under AS 21.80.020 including the exchange of reciprocal or interinsurance contracts, and

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

* Sec. 5. AS 21.36.190 is repealed.

* Sec. 6. This Act takes effect immediately in accordance with AS 01.-10.070(c).

# FISCAL NOTE

Revision Date: 9-3-86

**REQUEST**

Bill/Resolution No.: SSHB 506 (L&C)
Title: Relating to insurance

Sponsor: House Labor & Commerce
Requester:
Date of Request:

**FISCAL DETAIL**

Agency Affected: Commerce & Economic Development
BRU: Insurance

Components: Public Protection

EXPENDITURES / REVENUES: (Thousands of Dollars)

| OPERATING | FY 86 | FY 87 | FY 88 | FY 89 | FY 90 | FY 91 |
|---|---|---|---|---|---|---|
| PERSONAL SERVICES | | | | | | |
| TRAVEL | | | | | | |
| CONTRACTUAL | | | | | | |
| SUPPLIES | | | | | | |
| EQUIPMENT | | | | | | |
| LAND & STRUCTURES | | | | | | |
| GRANTS, CLAIMS | | | | | | |
| MISCELLANEOUS | | | | | | |
| TOTAL OPERATING | -0- | -0- | -0- | -0- | -0- | -0- |
| CAPITAL | -0- | -0- | -0- | -0- | -0- | -0- |
| REVENUE | -0- | -0- | -0- | -0- | -0- | -0- |

FUNDING: (Thousands of dollars)

| | | | | | | |
|---|---|---|---|---|---|---|
| GENERAL FUND | | | | | | |
| FEDERAL FUNDS | | | | | | |
| OTHER | | | | | | |
| TOTAL | -0- | -0- | -0- | -0- | -0- | -0- |

POSITIONS:

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

ANALYSIS: Attach a separate page if necessary.

To the extent businesses, groups and municipalities avail themselves to this bill, premium tax receipts (generally 3%) will be reduced. 1985 tax totalled $22.4 million.

Prepared by: John L. George, Director
Division: Division of Insurance
Phone: 465-2515
Date:

Approved by Commissioner:
Agency: Commerce and Economic Development
Date:

Distribution (by Agency preparing fiscal note):
- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)



10/25/85

0263KJ040386b

# STATE OF ALASKA
# THE LEGISLATURE

## LEGISLATIVE AFFAIRS AGENCY

POUCH Y STATE CAPITOL
JUNEAU ALASKA 99811
907-465 3809

M E M O R . . N D U M February 13, 1986

SUBJECT: Sectional Analysis
(SSHB 506)

TO: Representative Robin Taylor

FROM: Terri Lauterbach
Assistant Revisor of Statutes

Section 1 is based on a New York proposal and authorizes joint insurance arrangements as follows:

Sec. 21.76.010. Authorizes the entities specified to either jointly self-insure or to jointly purchase insurance as a group.

Sec. 21.76.020. Exempts joint insurance arrangements from regulation by division of insurance.

Sec. 21.76.030. Specifies that an agreement to form a joint insurance arrangement must include certain minimum provisions.

Sec. 21.76.040. Requires joint insurance agreements to contain certain financial provisions related to audits and accounting procedures.

Sec. 21.76.050. Allows a joint insurance arrangement to allow its board of directors to contract for administering the arrangement or any services that are part of the arrangement. This allows for an attorney-in-fact similar to current reciprocals (AS 21.75).

Sec. 21.76.060. Allows delegation of power to settle claims.

Sec. 21.76.070. Allows purchase of catastrophic insurance on behalf of the joint insurance arrangement.

Sec. 21.76.080. Requires the joint insurance arrangement to establish a fund made up of money contributed by members. Restricts use of the fund and requires reports about its use.

Sec. 21.76.090. Requires filing of the agreement.

Sec. 21.76.100. Authorizes the board of directors of an arrangement to adopt regulations.

Sec. 21.76.110. Provides subrogation rights to the arrangement.

Sec. 21.76.900. Defines terms used in the chapter.

Section 2 of the draft represents the draft on reinsurance put together by the division of insurance.

Sec. 21.79.010. Establishes a reinsurance fund and specifies its uses.

Sec. 21.79.020. Provides for hearings on availability and rate structures of certain types of insurance.

Sec. 21.79.030. Requires director of insurance to make determination based on hearings; determination triggers next section.

Sec. 21.79.040. Allows director to assist development of joint underwriting associations. Allows director to modify certain provisions in AS 21.75 with respect to these JUA's.

Sec. 21.79.050. Allows state reinsurance for JUA's formed under preceding section.

Sec. 21.79.060. Allows director to contract for administration of programs under AS 21.79.

Sec. 21.79.100. Specifies that programs under the chapter must be operated with various factors in mind, including promotion of safety and experience-based rates.

Sec. 21.79.110. Allows actions by the Attorney General to recover unpaid reinsurance premiums due the state.

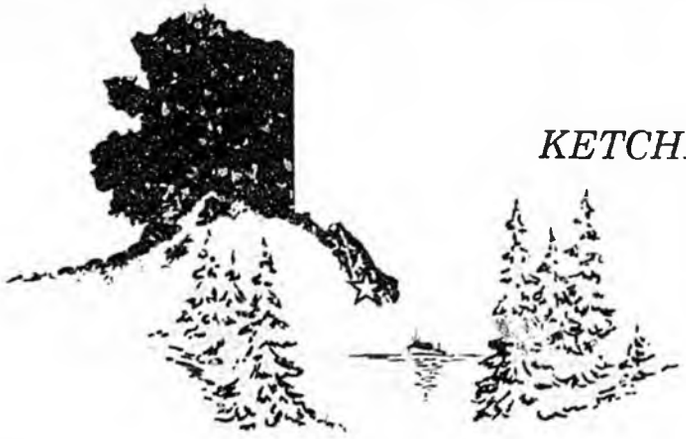
Sec. 21.79.200. Requires director to periodically review the JUA and reinsurance programs operating under the chapter and to recommend to the legislature any changes that would make the programs more effectively achieve their purposes.

Sections 3, 4, and 5 exempt joint insurance arrangements from certain statutes that already exempt municipal reciprocal insurers.

Section 6 requires a report from the commissioner of commerce and economic development.

Section 7 repeals a law that currently prohibits the formation of groups that comprise a group only for the purpose of insurance.

TL:mkr
M3:031



*KETCHIKAN GATEWAY BOROUGH*
344 Front Street
Ketchikan, Alaska 99901

April 1, 1986

Rep. M. Mike Miller, Chairman
House Judiciary Committee
State of Alaska
P.O. Box V
Juneau, Alaska 99811

RE: CSHB 506: Insurance Pooling for Municipalities

Dear Representative Miller:

I would like you to know of our support for CSHB 506, providing for insurance pooling for municipalities. We see this as an important piece of legislation providing options to municipalities which may improve opportunities to obtain municipal insurance.

The nationwide problem of finding insurance coverage is being felt in the Ketchikan Gateway Borough, as in many other Alaskan municipalities. While pooling alone will not solve municipal insurance problems, it will add options which are not currently available.

We urge you to pass this important legislation. If we can be of assistance in support of CSHB 506, please do not hesitate to call Borough Manager David Crow or myself.

Sincerely,

Ralph C. Gregory
Mayor

jw/3/131

Alaska MUNICIPAL League

TELEPHONE
(907) 586-1325

105 MUNICIPAL WAY, SUITE 301
JUNEAU, ALASKA 99801

To: Representative Mike Miller, Chairman
Members of the House Judiciary Committee

From: Scott A. Burgess, Executive Director

Date: March 26, 1986

Subject: CSHB 506 - Insurance Pooling

The Alaska Municipal League, representing 116 direct member municipalities, strongly supports legislation (CSHB 506) that would enable municipalities to pool their insurance costs, and losses. Currently, municipal insurance pools, sponsored by state municipal leagues, are operating in 23 states. Never has any municipal insurance pool gone into default. Never has any municipal insurance pool been unable to pay a claim. All have been very successful.

Municipal insurance pooling lowers costs, and increases availability of insurance to municipalities. Pools offer municipalities a chance to pay premiums based solely upon loss history. In addition, municipalities in an insurance pool can recoup a portion of that premium through a year-end dividend payment, based upon their success at controlling losses. Under a pool, the availability of insurance to municipalities would no longer be subject to the cycles of the general insurance market.

If legislation allowing the formation of a municipal insurance pool were passed, the AML would most likely obtain reinsurance from the National League of Cities, which will begin offering reinsurance on May 1 of this year through a reinsurance pool supported by the 23 state municipal league pools currently in operation. In addition, several other reinsurance opportunities would be available to an Alaska Municipal League insurance pool, due to the success, and past performance, of the League's current insurance program. Though not a pool, the League currently sponsors a program which is providing insurance to over 80 municipalities and school districts in the State for worker's compensation, general liability, business auto, and errors and omissions coverage for law enforcement, public officials, and school board members.

The Alaska Municipal League urges you to pass CSHB 506.

Thank you for your consideration of this important issue. If the League may be of further assistance in any way, please call. Attached, please find a listing of state municipal league insurance pools currently in operation, a listing of Alaska municipalities and school districts currently obtaining their insurance through the Alaska Municipal League, testimony presented to the House Labor and Commerce Committee on behalf of AML member municipalities, a copy of the AML resolution on the insurance crisis facing the State of Alaska, and a sample survey of insurance rate increases for Alaska municipalities.

National League of Cities
1301 Pennsylvania Avenue NW
Washington, D.C.
20004
(202) 626-3000
Cable: NLCITIES



# GROUP SELF-INSURANCE POOLS SPONSORED BY STATE MUNICIPAL LEAGUES

| State | Type of Risk Covered | | | | |
|---|---|---|---|---|---|
| | Health & Accident | Workers Compensation | Liability | Unemployment Compensation | Property |
| Alabama | | x | | | |
| Arkansas | x | x | x | | |
| Connecticut | | x | (1) | | |
| Florida | x | x | x | | |
| Georgia | | x | | | |
| Illinois | | x | x | | x |
| Iowa | | x | | | |
| Kentucky | | x | | x | |
| Louisiana (3) | | x | x | | |
| Maine | x | x | (1) | x | |
| Massachusetts | | x(2) | | | |
| Michigan | | x | x | x | x |
| Minnesota | x | x | x | | x |
| New Hampshire | x | | | x | |
| New Mexico | | x | | | |
| North Carolina | x | x | (1) | | |
| Oklahoma (3) | x | x | x | | |
| South Carolina (3) | x | x | | | |
| Tennessee | x | x | x | | |
| Texas | | x | x | | |
| Utah | x | (1) | | | x |
| Vermont | | (1) | | x | |
| Virginia | | x | | | |

(1) Pool being developed (as of 8/85)
(2) Fronted safety group program rather than pure pool
(3) Not participating in NLC/RMPSP

Prepared by: National League of Cities
December, 1985

# ALASKA MUNICIPAL LEAGUE PARTICIPANTS

ADAK REGION S/D
CITY OF AKUTAN
CITY OF ALEKNAGIK
CITY OF ANVIK
CITY OF BARROW
CITY OF BETHEL
CITY OF BREVIG MISSION
BRISTOL BAY BOR. & S/D
CHATHAM S/D
CITY OF CHIGNIK
CITY OF COLD BAY
COPPER RIVER S/D
CITY OF CORDOVA
CITY OF CRAIG
CRAIG CITY S/D
CITY OF DILLINGHAM
CITY OF EAGLE
CITY OF EMMONAK
CITY OF FORT YUKON
CITY OF GALENA
CITY OF GAMBELL
CITY OF GOLOVIN
HAINES BOROUGH & S/D
CITY OF HAINES
CITY OF HOONAH
CITY OF HOOPER BAY
CITY OF HOUSTON
CITY OF HUSLIA
CITY OF HYDABURG
CITY OF KACHEMAK
KASHUNAMIUT S/D
CITY OF KAKE
KENAI PENINSULA BOR. & S/D
CITY OF KETCHIKAN
KETCHIKAN GATEWAY BOR. & S/D
CITY OF KIANA
KING COVE S/D
CITY OF KING COVE
CITY OF KLAWOCK
KLAWOCK CITY S/D
CITY OF KOBUK
CITY OF KOTZEBUE
LAKE & PENINSULA S/D
CITY OF LARSEN BAY
CITY OF LOWER KALSKAG
MATANUSKA SUSITNA BOR. & S/D
CITY OF MCGRATH
CITY OF NENANA
CITY OF NEWHALEN
CITY OF NIKOLAI
CITY OF NOORVIK
CITY OF NUIQSUT
CITY OF NUNAPITCHUK
CITY OF OLD HARBOR
CITY OF OUZINKIE
CITY OF PALMER
CITY OF PORT HEIDEN
PRIBILOF S/D
CITY OF RUBY
CITY OF RUSSIAN MISSION
CITY OF ST. MARY'S
CITY OF ST. MICHAEL
CITY OF ST. PAUL
CITY OF SAND POINT
SAND POINT CITY S/D
CITY OF SAVOONGA
CITY OF SAXMAN
CITY OF SEWARD
CITY OF SHISHMAREF
CITY OF SKAGWAY & S/D
SOUTHWEST REGION S/D
CITY OF TELLER
CITY OF THORNE BAY
CITY OF TOKSOOK BAY
CITY OF UNALASKA
CITY OF WALES
CITY OF WASILLA
CITY OF WHITTIER
CITY OF YAKUTAT
YUPIIT S/D

Alaska MUNICIPAL League

TELEPHONE
(907) 586-1325

105 MUNICIPAL WAY, SUITE 301
JUNEAU, ALASKA 99801

To: Representative Mike Navarre, Chairman
Members of the House Labor and Commerce Committee

From: Scott A. Burgess, Executive Director

Date: February 17, 1986

Subject: Legislation Addressing The Insurance Problem

On behalf of the Alaska Municipal League, thank you and all the members of the 14th Legislature for recognizing that an insurance crisis exists, and for taking on, what has already proven itself to be, a difficult issue. The League, on behalf of the 116 municipalities it represents, directly, and all local governments in Alaska, offers its assistance in finding short-term and long-term solutions.

Attached is a copy of an AML resolution on the insurance and tort reform issue from the 1986 Policy Statement which was sent to you at the beginning of the year. Also, the following policy appears on page 8 of the Statement:

> F. TORT REFORM
> The League urges the Legislature to review tort reform and to work for a viable municipal insurance system.

These policies came out of the discussions and actions at the annual conference in Fairbanks. The Board of Directors chose finding solutions to the availability and affordability of insurance for municipalities as one of its top four legislative priorities for this year. While the League has been working for several years to assist municipalities with their insurance needs, it has been unable to address and fully understand the current crisis.

The League is in support of legislation allowing municipalities to create a self-insured risk pool. The current statutes allowing for municipalities to form reciprocals is unnecessarily burdensome and expensive. It requires municipalities to essential create an insurance company rather than contracting with existing insurance and financial agencies; requires a heavy surplus deposit over and above the current high premiums; and, is subject to unnecessary regulation by the Division of Insurance.

The League is already helping municipalities with their insurance needs. The League has pursued setting up a self-insurance pool program for several years but have been thwarted by interpretations of existing law, and our attempts to change it. The League has a group insurance program which is providing insurance coverage to over 70 municipalities for workers compensation, general liability, business auto, and errors and

omissions coverage for law enforcement, public officials, and school board members. However, because of the market and our inability to pool, we are unable to improve the program and offer the coverage desired.

The League has not been able to research the current tort reform issue well enough to commit to supporting all the recommended changes to the Statues, or to make the direct connection between tort reform and the current insurance problem. Like you, local elected officials are equally concerned for both today's plaintiff and tomorrow's taxpayer. The Board of Directors is unsure whether the fault for the current insurance problems rest with a reckless society, the insurance industry, the justice system or State laws, or a combination of all. Therefore, the League is asking the Legislature for help to analyze the problem and develop reasonable solutions. Tort reform should be evaluated on whether it is good policy, and on the long term effects, not just as a possible solution to the current problem.

There is a problem. Municipalities, and others who will appear before you, are unable to obtain or afford insurance to protect themselves, their investments, and the public. The problem faced by municipalities is unique. Municipalities are regarded as high risk clients by insurance companies because they have a greater potential for being sued; therefore, they have, historically, been victims of paying higher premiums. This, itself, is not unique because the same applies to doctors. However, the fact that municipalities are in the business of providing high risk public services, such as fire and police, that they cannot stop providing just because of the cost or risk, is unique to municipalities. Secondly, municipalities are the victims of the "deep pocket" theory. Municipalities are named in suits, directly or indirectly, regardless of the degree of fault because there is a perceived unlimited ability to pay. A claim is not limited by the amount of insurance coverage but by assets, and juries perceive that municipalities need only raise taxes to pay the claim.

The League is currently collecting information through a survey of its 116 members on their recent insurance experiences. The survey is not complete; however, attached is the information from the communities that have responded to date. Also included is information from other municipalities in the AML Insurance Program, provided by our broker Frank B. Hall & Co. of Alaska.

Several bills are before the Legislature attempting to address the insurance problem in Alaska. We support the concept of allowing municipalities to form self-insured risk pools. An AML Legislative Subcommittee has reviewed the bills introduced this session and before your committee, and has no problem with the tort reform measures most completely covered in HB 532. However, the Subcommittee and the staff will follow the hearings and your deliberations closely to better understand all concerned before recommending any specific bill. The League, of course, is available to help you in any way we can to find short and long term solutions to the insurance problems faced by municipalities and others.

RESOLUTION OF THE ALASKA MUNICIPAL LEAGUE

RESOLUTION NO. 86-13

A RESOLUTION OF THE ALASKA MUNICIPAL LEAGUE URGING THE STATE LEGISLATURE TO INVESTIGATE TORT REFORM AND THE REASONS BEHIND THE UNAVAILABILITY OF CERTAIN LINES OF INSURANCE.

WHEREAS, insurance rates have increased astronomically and this has caused businesses to close and has created a financial burden on taxpayers in Alaska, and

WHEREAS, municipal insurance rates have increased as much as 500% in some areas, and

WHEREAS, day care operators, air carriers, truckers, contractors, CHAPP-affiliated businesses, doctors, and architects are in many cases unable to obtain any insurance, and

WHEREAS, the Alaska Municipal League feels strongly that an investigation into causes should be made and a solution to this problem must be found this year;

NOW, THEREFORE, BE IT RESOLVED by the Alaska Municipal League that the Office of the Governor and the Alaska State Legislature are urged to immediately pursue all avenues available to solve this problem and find a way to provide insurance in Alaska.

Adopted this 16th day of November 1985.

LEO B. RASMUSSEN, President

ATTEST:

SCOTT A. BURGESS, Executive Director

| MUNICIPALITY | LAST YEAR PREMIUM/COVERAGE | THIS YEAR PREMIUM/COVERAGE | % of budget | JOIN/ SUPPORT POOLING |
|---|---|---|---|---|
| ALAKANUK | UNINSURED | UNINSURED | 4% | YES |
| ALEKNAGIK | $ 4,500 | $15,000 | 13% | MAYBE |
| BARROW | $ 4,100/$ 1 million | $10,000/$500,000 | | |
| BETHEL | $350,000 | $600,000 | 10% | YES |
| CORDOVA | $ 21,000/$ 1 million | $ 31,850/$500,000 | | |
| EAGLE | $ 3,365/$500,000 | $ 8,739/$500,000 | 6% | YES |
| FAIRBANKS | $212,876/$20 million | $514,167/$5 million | 2.5% | NO |
| GALENA | REPEATED CANCELLATIONS/PREMIUMS UP 200% | | 5% | MAYBE |
| GAMBELL | $ 19,300/$1 million | $ 15,617/$500,000 | | |
| HAINES BOROUGH | $ 25,000 | $ 34,797 | 3.5% | NO |
| HOONAH | $ 6,484/$1 million | $ 11,640/$500,000 | | |
| HOUSTON | $ 23,906 | 37,444 | 16% | MAYBE |
| JUNEAU | $518,000 | $1,253,900 | 2% | YES |
| KAKE | $ 10,617/$1 million | $ 7,080/$500,000 | | |
| KENAI | $ 85,000/$10 million | $320,000/$10 million | | NO |
| KODIAK | $ 90,083/$500,000 | $155,725/$500,000 | 5% | YES |
| KOTZEBUE | $140,000 | $280,000 | 5% | YES |
| LOWER KALSKAG | $ 2,500/$1 million | $ 5,000/$500,000 | | |
| McGRATH | $ 13,596 | $ 41,063 | 7.5% | YES |
| NULATO | $ 4,500/$500,000 | $ 12,000/$500,000 | 5% | YES |
| PALMER | $138,000/$10 million | $219,000/$1.5 million | | YES |
| PELICAN | $ 7,457/$500,000 | $ 15,908/$300,000 | 11.5% | YES |
| RUSSIAN MISSION | $ 2,580/$1 million | $ 5,000/$500,000 | | |
| St. MARY'S | $ 4,200/$1 million | $ 5,000/$500,000 | 10% | YES |
| SAND POINT | $ 45,000 | $ 80,000 | 9% | YES |
| SITKA | $ 53,753/$10 million | $131,628/$5 million | 3% | YES |
| SKAGWAY | $ 31,883/$1 million | $ 55,806/$ 1 million | 6% | MAYBE |
| SOLDOTNA | $110,000/$10 million | $270,000/$10 million | 6% | YES |
| TENAKEE SPRINGS | $ 13,670 | $ 42,000 | 16% | YES |
| UNALASKA | $131,124/$14 million | $ 99,468/$4 million | 10% | YES |
| WALES | $ 11,663 | UNINSURED | | YES |
| WASILLA | $ 11,000/$6 million | $19,000/$1.5 million | 2% | MAYBE |

** ALL INFORMATION COMPILED BY THE ALASKA MUNICIPAL LEAGUE BY SURVEY. BACK-UP IS AVAILABLE THROUGH THE AML 105 Municipal Way, Suite 301, Juneau, Alaska 99801

# Alaska Independent
# Insurance Agents & Brokers, Inc.

SEND REPLY TO: Dianne M. Leighton
A.I.I.A.B.
P.O. Box 775303
Eagle River, AK 99577

March 20, 1986

Rep. M. Mike Miller, Ch.
House Judiciary Committee
Pouch V
Juneau, AK 99811

RE: CSHB 506, referred to Jud. 3/20/86

Dear Representative Miller:

We are pleased to see that the Labor & Commerce committee has split this HB in to two sections and offerd a substitute. They have left one detail up to your committee , however.

We are concerned that this pooling arrangement would appear to not be regulated by any entity other that a board of directors.

As we understand it, this arrangement would not be subject to regulation by the director of insurance nor the federal McCarran-Ferguson Act.

While we are confident today that the administrators would be responsible, it is very possible that in a period of time the administration would change. It is a pooling for insurance purposes and we feel that there should be some type of review by the Division of Insurance.

Also, we cannot seem to find any provision for insolvency of the pool ie, if there comes a time when there is not enough money to pay the claims, and the public entities cannot raise enough money due to fixed budgets, who provides the additional funds?

We are concerned that the state will end up bailing out the pool and wonder if there should be some wording in the bill to clarfy this.

Those are some of our major concerns. There are others but clearly this seems to be a reasonable way to handle the short term insurance crisis.

The long term aid will of course be the tort reform package aka HB 532 including all substitutes.

Because the HB 506 is short term, should there be a sunset clause on the end - say three years?

This is more of a one-sided discussion to simply raise a few qustions before your committee takes action.

Sincerely,

Dianne M. Leighton

Dianne M. Leighton
Executive Director

cc: Committee members

ASSOCIATION OF ALASKA SCHOOL BOARDS
326 Fourth St., Suite 510 • Juneau, Alaska 99801 • (907) 586-1083

TESTIMONY

of

Robert C. Greene
Executive Director
Association of Alaska School Boards

The Association of Alaska School Boards would like to state its support for HB 506, which would allow school districts to pool contributions and assume risks from losses on a group basis through a Joint Insurance Arrangement.

It appears that the present restrictive insurance market will continue as insurance companies attempt to write the better risks at a price designed to replace lost surplus and to attain financial stability. Insurance availability to school districts has been severely curtailed and coverage has been narrowed has the marketplace continues to harden. The result has created a hardship for school districts not only in their ability to adequately provide coverage, but in their attempt to budget for unanticipated increases in insurance premiums.

Many municipalities and school districts country-wide are implementing pooling programs as an alternative to the lack of affordable insurance available in the present insurance market. Prior to the current market restrictions, many school districts used group insurance purchasing as an alternative to pooling. This was attempted by the school districts in Alaska last July; however, due to the restrictive insurance market conditions, group purchase was not successful.

In a pooling program, losses are shared to some extent among participants. The advantage that pooling has over a group purchase program is the pool's collective ability to support a higher deductible (or self-insured retention) than any single member can afford.

The lower levels of insurance are the most expensive and require greater capacity from an insurance company than the higher levels. A pooling program can eliminate these expensive insurance layers and open up capacity from the insurance market. Such a program can also provide better stability in terms of cost of insurance to participants.

Attached is a summary of some information we have collected recently regarding the increased rates experienced by some school districts from 1984-85 to 1985-86. While the list represents slightly less than half of the state's school districts, we feel that this information can provide some insight into the impact that the insurance market is having on school districts.

The Association of Alaska School Boards appreciates the attention being given to school districts's insurance problems by the Alaska State Legislature and would encourage the Labor and Commerce Committee to view HB 506 favorably.

ASSOCIATION OF ALASKA SCHOOL BOARDS
SURVEY OF ALASKA SCHOOL DISTRICTS
INCREASE IN INSURANCE COSTS

1984-85 to 1985-86

| SCHOOL DISTRICT | 1984-85 | 1985-86 | COMMENTS |
|---|---|---|---|
| Aleutian Region | $ 39,319 | $ 101,234 | * |
| Anchorage | 414,652 | 1,582,280 | Property/Casualty 85-86 Increased SIR |
| Bering Strait | 348,842 | 896,708 | |
| Bristol Bay | 114,471 | 185,441 | 85-86 projected for Dec. 31 renewal |
| Chatham | 30,628 | 44,000 | * |
| Chugach | 19,148 | 46,769 | * |
| Copper River | 96,045 | 197,583 | See attached sample survey response |
| Cordova | 28,020 | 23,344 | 85-86 may receive later adjustment |
| Delta/Greely | 45,788 | 94,578 | Property only |
| Galena | 69,993 | 80,000 | |
| Haines | 26,078 | 36,161 | |
| Hoonah | 37,258 | 84,211 | |
| Ketchikan | 547,165 | 560,000 | Insured through the Borough |
| Lake and Peninsula | 203,353 | 314,516 | |
| Matanuska/Susitna | 474,461 | 923,185 | |
| Railbelt | 367,733 | 151,614 | ** |
| St. Mary's | 66,963 | 139,196 | ** |
| Sitka | 119,392 | 118,970 | 85-86 Increased deductibles |
| Valdez | Estimated rates for 85-86 would have been 85% to 150% higher if same coverages had been secured. However, types of coverage changed dramatically and comparisons wouldn't be logical. | | |
| Wrangell | 15,784 | 16,488 | * |
| Yukon-Koyukuk | 110,000 | 240,000 | |

* 1985-86 figure doesn't include all coverages that were carried in 1984-85
** Some coverage hasn't been billed for 85-86 so final costs will be higher