

ALASKA LEGISLATURE COMMITTEE FILES 1987-88 8672

4468 HCRA HB 226 - HB 227

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226

STATE OF ALASKA
THE LEGISLATURE

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

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May, 1988

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

Ma: an Nimwegen

House C+RA

4-8-87

3:00 p.m.

BILL: HB 226

05:40 PM 03/30/87

NAME:

TITLE: "AN ACT RELATING TO FISHERIES BUSINESS TAX REFUNDS TO
LOCAL GOVERNMENT; AND PROVIDING FOR AN EFFECTIVE
DATE."

PRIME SPONSOR: HERRMANN

BY REQ

CURRENT STATUS: (H) CRA

STATUS DATE: 03/27/87

03/27/87 (H)

657

READ THE FIRST TIME - REFERRAL(S)

03/27/87 (H)

658

C&RA, RESOURCES, FINANCE

BILL WORKSHEET

Bill #: HB 226
 Date Sched.: HCRA Committee, Wednesday April 8, 1987
 Title: "An Act relating to fisheries business tax refunds to local government"
 Sponsors: Rep. Herrmann and Sen. Zharoff (SB 162)

Info Attached: Copy of Bill
 Position paper from Dept. of Community and Regional Affairs
 Fiscal Note
 Letter to Senate Labor and Commerce from 3 Aleutians East cities
 Aleutians East borough brochure - Aleutians East Coastal Resource Service Area

Sponsor's Briefing, Intent/purpose:
 To remove a disincentive to borough formation.

Effect of Bill:
 Sec. 1 -- Technical Changes
 Makes 5 minor technical language changes in existing statute.
 Sec. 2 -- Tax Apportionment
 Provides for a phased-in reapportionment of municipal raw fish tax receipts in newly formed boroughs (not retroactive). Currently, State law provides that cities in the unorganized borough receive a 50% share of raw fish tax receipts collected within their boundaries. Upon incorporation, extant law provides that the local 50% share of raw fish tax receipts be divided equally between a municipality and the borough, each receiving a 25% share.

This bill phases in this reapportionment over a five year period. The borough would receive less than it's eventual entitlement during those early years when it will receive organizational grants from the State.

YEAR	BOROUGH	CITY
1.	5%	45%
2.	10%	40%
3.	15%	35%
4.	20%	30%
5.	25%	25%

Fiscal Impact:
 0 (Zero)

Proponents:

Proponents of the Aleutians East borough plan, Sen. Zharoff,
Rep. Herrmann.

Opponents:

None apparent

Analysis of Bill's effect, by staff:

The bill was introduced particularly to remove disincentives to borough formation in the Aleutians East Area. Proponents of the legislation hold that municipalities will not suffer through organization; that areawide taxes available to the borough will capture raw fish taxes from outside municipalities, thus enlarging the pie.

This bill conveniently phases in increments to borough revenues as organizational grants from the State phase out.

The bill will favorably affect other coastal areas of the State which may eventually choose to organize (Prince William Sound, for example).

Committee Report:

HOUSE COMMITTEE REPORT

6 HB 226

(5)

Date referred: 3/27/87

FURTHER REFERRALS: Resources Finance

DATE: 04/08/87

The Community and Regional Affairs Committee has considered HB 226

"An Act relating to fisheries business tax refunds to local government; and providing for an effective date."

RECOMMENDS:

- [] replace with [] the same title
[] attached amendment(s) [] a new title
[XXX] do pass
[] do not pass
[] no recommendation
[] individual recommendations
[] additional referral to the Committee

ADOPTS: [] letter of intent

ATTACHES NEW FISCAL NOTE(s):

- [] fiscal impact [] same as previous fiscal note published
[XXX] zero fiscal note S (DCRA & REV)
[] zero with analysis [] same as previous zero fiscal note published

SIGNING DO PASS:

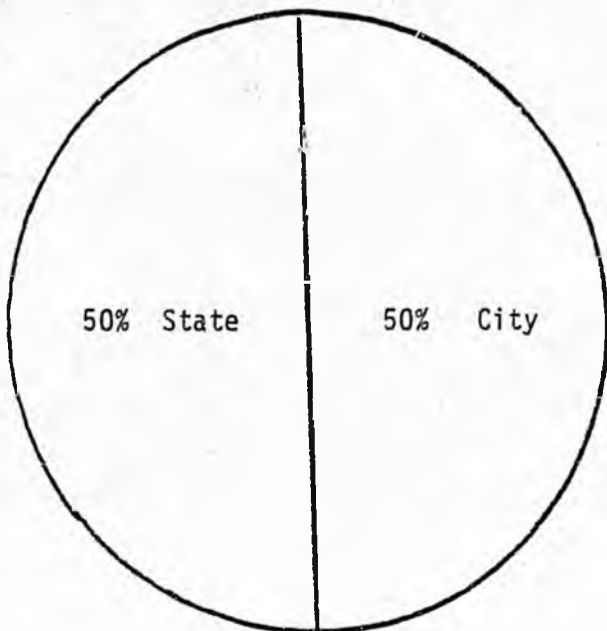
SIGNING OTHER RECOMMENDATIONS:

Handwritten signatures and names: Betty Cato, Ursula Mallis, James ZAWACKI, Adelheid HERRMANN, Heinrich SPRINGER.

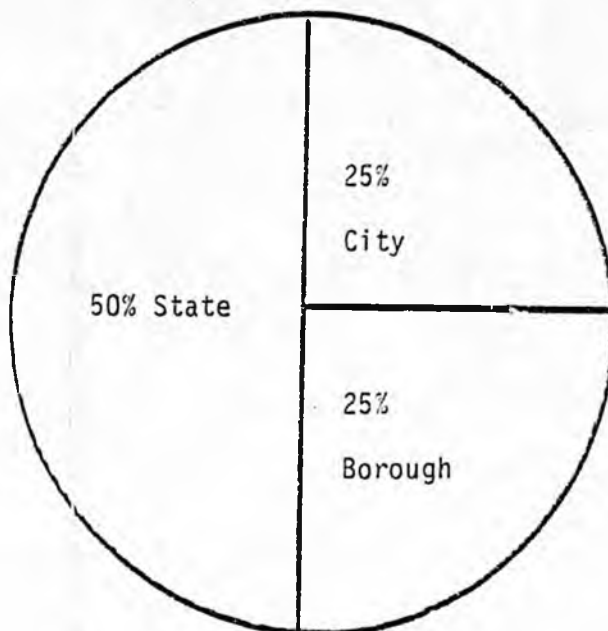
Handwritten signature: Heinrich Springer, Chairman's signature

CITIES - under current law the state shares fish tax revenue 50% / 50% with cities

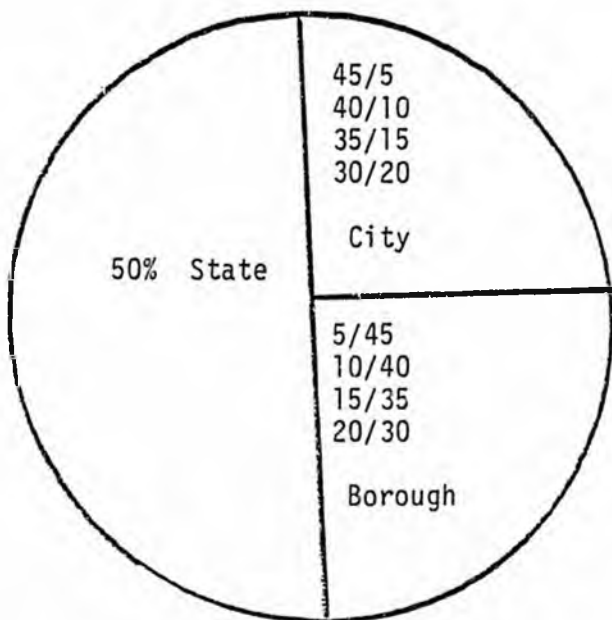
⑤ HB 226



BOROUGH'S - when a Borough is formed, cities are required to share half of their fish tax revenue with the new Borough



HB 225



First year of Incorporation: City retains 45% and returns 5% to Borough

First calendar year of Borough: City retains 40% and returns 10% to Borough

Second calendar year of Borough: City retains 35% and returns 15% to Borough

Third Calendar year of Borough: City retains 30% and returns 15% to Borough

Because the cities are giving up a substantial portion of their fish tax revenue to the new Borough organization, HB 226 will help to ease the revenue loss by phasing in revenue payments to the new organization.

This affects only revenues generated within the cities boundaries and does not affect the portion of revenues generated in the new borough boundaries. Those additional revenues will be shared 50% state / 50% Borough

CITY OF KING COVE

P.O. Box 37 • King Cove, Alaska 99812 • (907) 497-2340

April 7, 1987

Dear Honorable Members of the Senate and House Community and Regional Affairs Committees

The communities of the Aleutians East region, Akutan, Cold Bay, False Pass, King Cove, Nelson Lagoon and Sand Point, ask for your support of SB 162/HB 226, an Act relating to Fisheries Business Tax refunds. Our region is presently circulating the petition required to establish a borough government, and we view passage of SB 162/HB 226 as critical to formation of the new Aleutians East borough.

SB 162/HB 226 will enable the phased transfer of fish tax revenues between existing cities and newly established boroughs. This transition would occur over a period of five years and would allow the cities to adjust existing service delivery to the decrease in the amount and percentage of fish tax revenues they will receive.

Alaska Statutes stipulate that the State equally share its fish tax revenues with cities in the unorganized borough for fish delivered to processors in city boundaries. However, if a borough exists, the State retains its 50% share, but the cities (25%) and the borough (25%) equally share the other 50%. Thus, under existing statutes, when the Aleutians East Borough is established, the cities will lose one-half of the fish tax revenues they have traditionally received.

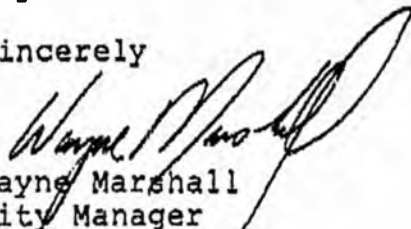
The amount of fish tax the cities receive varies each year, but the loss of one-half of this tax would generally result in a 15% - 20% decrease in Akutan's and King Cove's annual operating revenues, and a 5% - 10% decrease in Sand Point's and Cold Bay's revenues. Simply stated, this revenue loss, when coupled with losses in State Revenue Sharing, Municipal Assistance, Federal Revenue Sharing and other traditional sources of city revenues, is difficult to adjust to in one year. SB 162/HB 226 would provide cities a phased five year adjustment period by reducing the percentage of city fish tax revenues each year by 5% until the equal sharing of revenues with the borough is obtained. Attachment I illustrates the total amount of revenues to be shared between the borough and cities, and Attachment II illustrates this sharing of revenues with each city.

Also, this legislation will not negatively affect the newly established borough's ability to meet service delivery expenses. The borough, because of its larger boundaries, will be receiving fish tax revenues that the State has not previously shared with cities. These revenues will be collected from the area that was in the unorganized borough. SE 162/HB 226 structures the phase in of revenues so that as the borough undertakes delivering service which were previously done by the Cities, its percentage of revenues will increase and the city share of revenues will decrease. In year five, the borough will receive its full share. Attachment 1 identifies new revenues that will be available to the Aleutians East Borough.

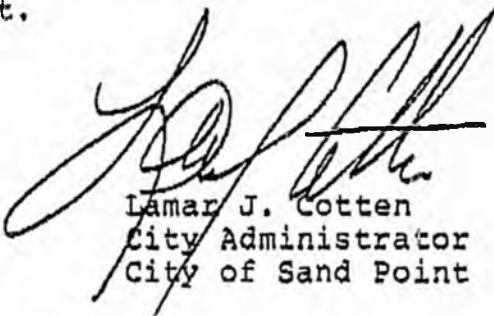
In addition, as SB 162/HB 226 addresses one of the disincentives that affects borough formation, its passage may encourage cities in areas other than the Aleutians East to consider establishing a borough. The Aleutians East region is pursuing Borough formation because of decreases in State and Federal expenditures, and the region's desire to continue good quality service delivery. Other areas may need to pursue borough government for similar reasons.

We ask for your support of SB 162/HB 226 to remove one of the disincentives affecting borough organization, particularly in the Aleutians East region. This bill will not affect the new borough's ability to deliver quality services, does not affect fish tax revenues existing boroughs receive and does not affect State revenues. In addition, it does not require any new State monies to implement.

Sincerely



Wayne Marshall
City Manager
City of King Cove



Lamar J. Cotten
City Administrator
City of Sand Point

On behalf of the Aleutians East communities.

ATTACHMENT I

In Fiscal Year 1987, the total amount of State Fisheries Business Tax revenues shared with the four incorporated cities (State tax on fish delivered to processors within City boundaries) in the Aleutians East region was \$805,000. This tax represents 10%-50% of each of the cities general operating revenues. Under existing statutes, if a borough is established, these cities must equally share these revenues with the borough.

HB 226/SB 162 which the Aleutians East communities support, would allow a phased transfer of fish tax revenues between cities and the new borough. Table I, below, illustrates this revenue transition. This revenue transition will allow cities to adjust service delivery to the decreased revenues, and will not negatively effect the borough's ability to deliver services.

TABLE I
HB 226/SB 162 Formula for Shared Revenues

	<u>City Share</u>	<u>Borough Share</u>
Year 1	\$734,500 (45%)	\$ 80,500 (5%)
Year 2	644,000 (40%)	161,000 (10%)
Year 3	563,500 (35%)	241,500 (15%)
Year 4	483,000 (30%)	322,000 (20%)
Year 5	402,500 (25%)	402,500 (25%)

Starting in year 5 and each year thereafter, the borough and cities will equally share State Fish Business Tax revenues for fish delivered within City limits.

Also, the Borough will annually receive about \$1,200,000 in new revenues that none of the existing cities receive. These revenues, when combined with the borough's share of fish tax revenues identified in Table I, will be adequate to meet anticipated borough expenditures. The \$1,200,000 mainly consists of the following revenue sources:

- o \$400,000 in State Fish Business Tax Revenues for fish delivered to processors within borough boundaries, but outside City limits. The State is the only entity that presently receives these funds.

- o \$700,000 in sales/use tax revenues. The Borough plans to levy a 2% sales/use tax as its main method of local taxation.

- o \$100,000 in State revenue sharing and municipal assistance monies and other shared revenues.

ATTACHMENT II

The tables below illustrate how revenues would be shared with the individual cities in the new borough if MD 220/SB 102 is adopted. If this bill is not adopted, revenues would immediately be shared as indicated in year 5 of these tables. This sharp one year drop in revenues would seriously effect each city's ability to deliver services, and may negatively effect potential borough formation.

AKUTAN - \$356,000 in FY 87
approximately 50% of Akutan's Budget

	City	Borough
Year 1	\$320,400 (45%)	\$ 35,600 (5%)
Year 2	284,800 (40%)	71,200 (10%)
Year 3	249,200 (35%)	106,800 (15%)
Year 4	213,600 (30%)	142,400 (20%)
Year 5	178,000 (25%)	178,000 (25%)

COLD BAY - \$7,200 in FY 87
approximately 10% of Cold Bay's Budget

	City	Borough
Year 1	\$ 6,840 (45%)	\$ 720 (5%)
Year 2	5,760 (40%)	1,440 (10%)
Year 3	5,040 (35%)	2,160 (15%)
Year 4	4,320 (30%)	2,880 (20%)
Year 5	3,600 (25%)	3,600 (25%)

KING COVE - \$327,000 in FY 87
approximately 35% of King Cove's budget

	City	Borough
Year 1	\$294,300 (45%)	\$ 32,700 (5%)
Year 2	261,600 (40%)	65,400 (10%)
Year 3	228,900 (35%)	98,100 (15%)
Year 4	196,200 (30%)	130,800 (20%)
Year 5	163,500 (25%)	163,500 (25%)

SAND POINT - \$114,000 in FY 87
approximately 10% of Sand Point's budget

	City	Borough
Year 1	\$102,600 (45%)	\$ 11,400 (5%)
Year 2	91,200 (40%)	22,800 (10%)
Year 3	79,800 (35%)	34,200 (15%)
Year 4	68,400 (30%)	45,600 (20%)
Year 5	57,000 (25%)	57,000 (25%)

The communities of False Pass and Nelson Lagoon, which are also in the Aleutians East area, do not presently receive State Fish Business Tax revenues because they are unincorporated. The State only shares these revenues with incorporated cities.

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ure was made was having substantial

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ment may not approve a this section if the fisher- iming the credit is in yment of a fisheries busi- S 43.75.015; for purposes n, a taxpayer is not in yment is under adminis- al appeal. tment shall prepare an for a credit under this

ment shall approve or plication for a credit un- ot later than 60 days af- application."

Sec. 43.75.034. Tax credit report [Repealed effective February 15, 1992]. Not later than the 15th legislative day of each regular legislative session the Department of Revenue, in conjunction with the Department of Commerce and Economic Development, shall submit to the legislature a report on the fisheries business tax credit program under AS 43.75.032. The report shall describe the expenditures for which a credit was approved during the previous tax year and, if possible, the increase in employment and processing capacity by the fisheries businesses for which the credit was approved. (§ 2 ch 79 SLA 1986; r § 8 ch 79 SLA 1986)

Postponed repeal. Section 8, ch. 79, SLA 1986 repeals this section, effective February 15, 1992.

Effective dates. — Section 9, ch. 79, SLA 1986 makes this section effective July 1, 1986.

Editor's notes. — Section 6, ch. 79, SLA 1986 provides that the first tax credit report under this section is due February 2, 1987 and shall describe the expenditures for which credit was approved during 1986 for the 1987 tax year.

Article 3. General Provisions.

Section

- 130. Refund to local governments
- 140. Definitions

Sec. 43.75.130. Refund to local governments. (a) The commissioner of revenue shall pay

(1) to each unified municipality and to each city located in the unorganized borough, 50 percent of the amount of tax revenue collected in the municipality from taxes levied by this chapter;

(2) to each city located within a borough, 25 percent of the amount of tax revenue collected in the city from taxes levied by this chapter; and

(3) to each borough
(A) 50 percent of the amount of tax revenue collected in the area of the borough outside cities from taxes levied by this chapter; and

(B) 25 percent of the amount of tax revenue collected in cities located within the borough from taxes levied by this chapter.

(b) For purposes of this section, tax revenue collected under AS 43.75.015 from a person entitled to a credit under AS 43.75.032 shall be calculated as if the person's tax had been collected without applying the credit.

(c) [Repealed effective January 1, 1992] Within 60 days after a credit is approved under AS 43.75.032 for a capital expenditure involving a shore-based fisheries business facility or cooperative seafood industrial park located or to be located in a municipality, the municipality may adopt an ordinance directing the department to reduce the municipality's refund under this section over a period of not more

Fiscal Note Analysis
House Bill 226
Prepared 4/3/87

The communities of Sand Point, King Cove, Akutan, False Pass and Nelson Lagoon will soon be incorporating to form a new borough within the state. AS 43.75.130(a) currently provides that to each unified municipality and to each city located within an unorganized borough, 50 percent of the amount of fisheries business tax revenue collected in the municipality will be refunded by the Commissioner of Revenue to these agencies. The cities named above have in past years received this 50 percent share. However, when a city lies within an organized borough, the city and borough each receive a 25 percent share. Therefore, in order to phase in an anticipated reduction in shared revenues to these areas, HB 226 amends AS 43.75.130 by adding a new subsection (d) to minimize the revenue impact on the impacted cities.

AS 43.75.130(d) provides that the Commissioner of Revenue shall pay to each city in a borough that is incorporated after the effective date of this Act: 45 percent of the taxes collected during the calendar year in which incorporation occurs; 40 percent of the taxes collected during the first calendar year following the year of incorporation; 35 percent of the taxes collected during the second calendar year; and 30 percent of the taxes collected during the third calendar year.

Subsection (d) also provides that the Commissioner shall pay to each borough that is incorporated after the effective date of this Act; 5 percent of the taxes collected during the calendar year in which the borough is incorporated; 10 percent during the first calendar year after incorporation; 15 percent during the second calendar year; and 20 percent during the third calendar year.

The Act is to take effect immediately under AS 01.10.070(c).

STATE OF ALASKA 1987 LEGISLATIVE SESSION
FISCAL NOTE

REQUEST _____

Bill Version: HB 226
Publish Date: _____

Revision Date: 4/3/87
Title: An act relating to fisheries
business refunds to local governments
Sponsor: Herrmann
Requestor: C&RA

Agency Affected: Revenue
BRU: Audit
Components: _____

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 87	FY 88	FY 89	FY 90	FY 91	FY 92
OPERATING						
PERSONAL SERVICES	-	-	-	-	-	-
TRAVEL	-	-	-	-	-	-
CONTRACTUAL	-	-	-	-	-	-
SUPPLIES	-	-	-	-	-	-
EQUIPMENT	-	-	-	-	-	-
LANDS & STRUCTURES	-	-	-	-	-	-
GRANTS, CLAIMS	-	-	-	-	-	-
MISCELLANEOUS	-	-	-	-	-	-
TOTAL OPERATING	-	-	-	-	-	-
CAPITAL	-	-	-	-	-	-
REVENUE	-	-	-	-	-	-

FUNDING: (Thousands of Dollars)

GENERAL FUND	-	-	-	-	-	-
FEDERAL FUNDS	-	-	-	-	-	-
OTHER	-	-	-	-	-	-
TOTAL	-	-	-	-	-	-

POSITIONS:

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

ANALYSIS: See attached.

Prepared By: Steven E. Kettel
Division: Audit

Phone: 465-2320
Date: 4/3/87

Approved by Commissioner: H. Malone
Agency: _____

Date: 9/3/87

Distribution (by Agency preparing fiscal note):

- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)
- Senate Secretary

STATE OF ALASKA 1987 LEGISLATIVE SESSION
FISCAL NOTE

APR 06 1987

REQUEST _____

Bill Version: HB 226
Publish Date: _____

Revision Date: _____
Title: An act relating to fisheries
business tax refunds to local gov't.
Sponsor: Herrmann
Requestor: Community & Regional Affairs

Agency Affected: Revenue
BRU: Administrative Services
Components: _____

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 87	FY 88	FY 89	FY 90	FY 91	FY 92
OPERATING						
PERSONAL SERVICES	-	-	-	-	-	-
TRAVEL	-	-	-	-	-	-
CONTRACTUAL	-	-	-	-	-	-
SUPPLIES	-	-	-	-	-	-
EQUIPMENT	-	-	-	-	-	-
LANDS & STRUCTURES	-	-	-	-	-	-
GRANTS, CLAIMS	-	-	-	-	-	-
MISCELLANEOUS	-	-	-	-	-	-
TOTAL OPERATING	-	-	-	-	-	-
CAPITAL	-	-	-	-	-	-
REVENUE	-	-	-	-	-	-

FUNDING: (Thousands of Dollars)

GENERAL FUND	-	-	-	-	-	-
FEDERAL FUNDS	-	-	-	-	-	-
OTHER	-	-	-	-	-	-
TOTAL	-	-	-	-	-	-

POSITIONS:

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

ANALYSIS: Attach a separate page if necessary

There is no measurable administrative impact on this division.
The accounting for shared taxes will be made slightly more complex.

Prepared By: Ervin B. Jones
Division: Administrative Services

Phone: 465-2313
Date: 4/2/87

Approved by Commissioner: [Signature]
Agency: Revenue

Date: 4/3/87

Distribution (by Agency preparing fiscal note):

- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)
- Senate Secretary

March 18, 1987

③ HB 226

FW
CRA file.

Dear Honorable Members of the Senate Labor and Commerce Committee

The communities of the Aleutians East region, Akutan, Cold Bay, False Pass, King Cove, Nelson Lagoon and Sand Point, ask for your support of SB162, an Act relating to Fisheries Business Tax refunds. Our region is presently circulating the petition required to establish a borough government, and we view passage of SB162 as critical to formation of the new Aleutians East borough.

SB162 will enable the phased transfer of fish tax revenues between existing cities and newly established boroughs. This transition would occur over a period of four years and would allow the cities to adjust existing service delivery to the decrease in the amount and percentage of fish tax revenues they will receive.

Alaska Statutes stipulate that the State equally share its fish tax revenues with cities in the unorganized borough for fish harvested in city boundaries. However, if a borough exists, the State retains its 50% share, but the cities (25%) and the borough (25%) equally share the other 50%. Thus, under existing statutes, when the Aleutians East Borough is established, the cities will lose one-half of the fish tax revenues they have traditionally received.

The amount of fish tax the cities receive varies each year, but the loss of one-half of this tax would generally result in a 15% - 20% decrease in Akutan's and King Cove's annual operating revenues, and a 5% - 10% decrease in Sand Point's revenues. Simply stated, this revenue loss, when coupled with losses in State Revenue Sharing, Municipal Assistance, Federal Revenue Sharing and other traditional sources of city revenues, is difficult to adjust to in one year. SB162 would provide cities a phased four year adjustment period by reducing the percentage of city fish tax revenues each year by 5% until the equal sharing of revenues with the borough is obtained.

*Special purpose
bill*

Also, this legislation will not negatively affect the newly established borough's ability to meet service delivery expenses. The borough, because of its larger boundaries, will be receiving fish tax revenues that the State has not previously shared with cities. These revenues will be collected from the area that was in the unorganized borough. SB162 structures the phase in of revenues so that as the borough undertakes delivering service which were previously done by the Cities, its percentage of revenues will increase and the city share of revenues will decrease. In four years, the borough will receive their full share.

In addition, as SB162 addresses one of the disincentives that affects borough formation, its passage may encourage cities in areas other than the Aleutians East to consider establishing a borough. The Aleutians East region is pursuing Borough formation because of decreases in State and Federal expenditures in the region and the region's present and future desire to continue quality service delivery. Other areas may need to pursue borough government for similar reasons.

We ask for your support of SB162 to remove one of the disincentives affecting borough organization, particularly in the Aleutians East region. This bill will not affect the new borough's ability to deliver quality services, does not affect fish tax revenues existing boroughs and receive does not affect State revenues. In addition, it does not require any new State monies to implement.

Sincerely

Wayne Marshall
City Manager
City of King Cove

Lamar J. Cotten
City Administrator
City of Sand Point

Erika Tritremmel
City Administrator
City of Akutan

STATE OF ALASKA

DEPT. OF COMMUNITY & REGIONAL AFFAIRS

OFFICE OF THE COMMISSIONER

STEVE COWPER, GOVERNOR

- P.O. BOX B
JUNEAU, ALASKA 99811-2100
PHONE: (907) 465-4700
- 949 E. 36TH AVENUE, SUITE 400
ANCHORAGE, ALASKA 99508-4301
PHONE: (907) 563-1073

April 2, 1987

POSITION PAPER

RE: HB 226 -- "An Act relating to fisheries business tax refunds to local government; and providing for an effective date."

SPONSOR: Representative Herrmann By Request

Program Effects of Bill:

Section 1 of the bill amends existing language in AS 43.75.130(a) to provide for a new subsection (d) as well as several minor "house cleaning" wording changes.

Section 2 of the bill amends AS 43.75.130 by adding a new subsection (d) which provides for a five-year phasing in of the sharing of fish tax revenues between cities and boroughs in the instance of new borough formation.

Section 3 of the bill provides for an immediate effective date for the Act.

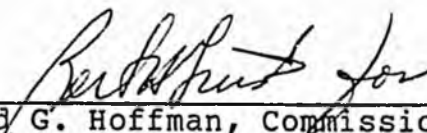
Comments:

The existing State Fisheries Business Tax law provides for a "refund" of this state tax to municipalities in whose jurisdiction the tax was collected. In the case of unified municipalities and cities in the unorganized borough, 50 percent of the tax revenue collected within municipal boundaries is returned. However, cities located within a borough must in turn share 50 percent of their fish tax refund with the surrounding borough. In other words, such a city would receive only 25 percent of the fish tax collected within its jurisdiction; the other 25 percent would go to the borough.

HB 226
April 2, 1987
Page Two

The state fish tax provides a significant and relatively stable portion of total revenues for many cities presently located outside of organized boroughs. The formation of a borough which would include such cities would result in sudden and substantial revenue losses for these cities. Cities located within the new borough have no guarantee of receiving any of this funding back from the borough. The prospect of such a revenue shock represents a clear disincentive to borough formation. Providing for a phased transition into the sharing of fish tax revenues from cities to new boroughs would reduce the severity of the shock to city operations; consequently, reducing the disincentive to borough formation.

The establishment of strong, self-sufficient, local and regional government throughout Alaska is a longstanding goal of the Department of Community and Regional Affairs. The Department endorses practical measures which provide incentives, or reduce existing disincentives, with regard to borough formation. The measures provided for in this bill appear to be straightforward in effect and relatively simple in their implementation. The Department therefore supports the expeditious passage of this bill.



David G. Hoffman, Commissioner

**STATE OF ALASKA 1987 LEGISLATIVE SESSION
FISCAL NOTE**

Bill Version: HB 226

Publish Date: _____

REQUEST: _____

Revision Date: _____

Title: "An Act..fisheries business tax
refunds etc"

Sponsor: Rep. Herrmann

Requestor: _____

Agency Affected: Community & Regional Affairs

BRU: _____

Components: _____

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 87	FY 88	FY 89	FY 90	FY 91	FY 92
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-

CAPITAL						
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REVENUE						
---------	--	--	--	--	--	--

FUNDING: (Thousands of Dollars)

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

POSITIONS:

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

ANALYSIS : (Attach a separate page if necessary)

Prepared by: Michael Cushing, Planner

Phone: 465-4750

Division: Municipal & Regional Assistance

Date: 4/2/87

Approved by Commissioner: *Bert...*

Date: 4/3/87

Agency: Community & Regional Affairs

Distribution (by preparer):

- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)
- Senate Secretary

STATE OF ALASKA 1987 LEGISLATIVE SESSION
FISCAL NOTE

Bill Version: HB 226

Publish Date: _____

REQUEST _____

Revision Date: _____

Title: An act relating to fisheries
business tax refunds to local gov't.

Sponsor: Herrmann

Requestor: Community & Regional Affairs

Agency Affected: Revenue

BRU: Administrative Services

Components: _____

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 87	FY 88	FY 89	FY 90	FY 91	FY 92
OPERATING						
PERSONAL SERVICES	-	-	-	-	-	-
TRAVEL	-	-	-	-	-	-
CONTRACTUAL	-	-	-	-	-	-
SUPPLIES	-	-	-	-	-	-
EQUIPMENT	-	-	-	-	-	-
LANDS & STRUCTURES	-	-	-	-	-	-
GRANTS, CLAIMS	-	-	-	-	-	-
MISCELLANEOUS	-	-	-	-	-	-
TOTAL OPERATING	-	-	-	-	-	-
CAPITAL	-	-	-	-	-	-
REVENUE	-	-	-	-	-	-

FUNDING: (Thousands of Dollars)

GENERAL FUND	-	-	-	-	-	-
FEDERAL FUNDS	-	-	-	-	-	-
OTHER	-	-	-	-	-	-
TOTAL	-	-	-	-	-	-

POSITIONS:

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

ANALYSIS: Attach a separate page if necessary

There is no measurable administrative impact on this division.
The accounting for shared taxes will be made slightly more complex.

Prepared By: Ervin B. Jones
Division: Administrative Services

Phone: 465-2313

Date: 4/2/87

Approved by Commissioner: [Signature]
Agency: Revenue

Date: 4/3/87

Distribution (by Agency preparing fiscal note):

- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)
- Senate Secretary

STATE OF ALASKA 1987 LEGISLATIVE SESSION
FISCAL NOTE

REQUEST _____

Bill Version: HB 226

Publish Date: _____

Revision Date: 4/3/87

Agency Affected: Revenue

Title: An act relating to fisheries

BRU: Audit

business refunds to local governments

Sponsor: Hejrmann

Components: _____

Requestor: C&RA

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 87	FY 88	FY 89	FY 90	FY 91	FY 92
OPERATING						
PERSONAL SERVICES	-	-	-	-	-	-
TRAVEL	-	-	-	-	-	-
CONTRACTUAL	-	-	-	-	-	-
SUPPLIES	-	-	-	-	-	-
EQUIPMENT	-	-	-	-	-	-
LANDS & STRUCTURES	-	-	-	-	-	-
GRANTS, CLAIMS	-	-	-	-	-	-
MISCELLANEOUS	-	-	-	-	-	-
TOTAL OPERATING	-	-	-	-	-	-
CAPITAL	-	-	-	-	-	-
REVENUE	-	-	-	-	-	-

FUNDING: (Thousands of Dollars)

GENERAL FUND	-	-	-	-	-	-
FEDERAL FUNDS	-	-	-	-	-	-
OTHER	-	-	-	-	-	-
TOTAL	-	-	-	-	-	-

POSITIONS:

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

ANALYSIS: See attached.

Prepared By: Steven E. Kettel *Stu*

Phone: 465-2320

Division: Audit

Date: 4/3/87

Approved by Commissioner: *H. Malone*

Date: 4/3/87

Agency: _____

Distribution (by Agency preparing fiscal note):

- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)
- Senate Secretary

Fiscal Note Analysis
House Bill 226
Prepared 4/3/87

The communities of Sand Point, King Cove, Akutan, False Pass and Nelson Lagoon will soon be incorporating to form a new borough within the state. AS 43.75.130(a) currently provides that to each unified municipality and to each city located within an unorganized borough, 50 percent of the amount of fisheries business tax revenue collected in the municipality will be refunded by the Commissioner of Revenue to these agencies. The cities named above have in past years received this 50 percent share. However, when a city lies within an organized borough, the city and borough each receive a 25 percent share. Therefore, in order to phase in an anticipated reduction in shared revenues to these areas, HB 226 amends AS 43.75.130 by adding a new subsection (d) to minimize the revenue impact on the impacted cities.

AS 43.75.130(d) provides that the Commissioner of Revenue shall pay to each city in a borough that is incorporated after the effective date of this Act: 45 percent of the taxes collected during the calendar year in which incorporation occurs; 40 percent of the taxes collected during the first calendar year following the year of incorporation; 35 percent of the taxes collected during the second calendar year; and 30 percent of the taxes collected during the third calendar year.

Subsection (d) also provides that the Commissioner shall pay to each borough that is incorporated after the effective date of this Act; 5 percent of the taxes collected during the calendar year in which the borough is incorporated; 10 percent during the first calendar year after incorporation; 15 percent during the second calendar year; and 20 percent during the third calendar year.

The Act is to take effect immediately under AS 01.10.070(c).



**AN ALEUTIANS EAST BOROUGH—
WHY IS IT BEING CONSIDERED?**

JANUARY, 1987

INTRODUCTION

Two years ago, the Aleutians East CRSA and Regional Strategy Board initiated a study on forming a regional government - a borough - for the Aleutians East region. The study was completed this past March, and the question - Is it a good idea for the region's communities to organize as a borough government? - is now being discussed by community leaders. The main reasons organization of a borough is being considered are:

- The falling price of crude oil that has caused the state to substantially reduce both its capital and operating budgets and thus its financial contributions to communities for education, capital improvements and general government operations.
- Proposed changes in the state's school foundation funding formula that would provide more money for regional school districts, such as boroughs, rather than the smaller school districts such as Sand Point, King Cove and the Aleutians REAA.
- Legislative proposals that could result in the

combination of the Unalaska, King Cove, Sand Point, Aleutians REAA, Pribilof REAA and other area school districts into a single school district.

- A changed emphasis in federal spending patterns which has resulted in substantial cuts in federal appropriations for community water, sewer, airport, highway and other uses.

In the face of these circumstances, the Aleutians East Strategy Board and community leaders from Akutan, Cold Bay, False Pass, King Cove, Nelson Lagoon and Sand Point met in Anchorage on November 10, 1986, to:

- examine the important changes that are taking place - or being proposed - and how they will affect the Aleutians East region;
- take a closer look at the prospect of an Aleutians East Borough to assist in overcoming the financial problems facing the region; and
- see what fellow residents from the region think should be done to overcome these difficulties.

Persons attending the meeting included:

NAME	COMMUNITY	REPRESENTING
Donald V. Mc Callum	King Cove	AE CRSA, KC City Council
Debra Dushkin	Sand Point	City of Sand Point, City Clerk
Marva J. O'Keefe	Sand Point	AE CRSA, SP Pl. n. Comm.
Paul R. Gronholdt	Sand Point	Sand Point City Council
Raymond Koso	King Cove	King Cove City Council
Paul E. Gundersen	Nelson Lagoon	Comm. Rep., NL Corp.
Dick Jacobsen	Sand Point	Sand Point City Council
William R. Eubank	Sand Point	Comm. Rep., Board of Ed.
Wayne Marshall	King Cove	City of King Cove - Mgr.
James Gould	King Cove	Community Rep.
Dean Gould	King Cove	King Cove City Council
Carol Samuelson	King Cove	City of King Cove, Dep. Clerk
Cynthia Samuelson	King Cove	City of King Cove, City Clerk
B.B. Cumberlidge	Sand Point	Sand Point City Council
Dave Osterback	Sand Point	Sand Point City Council
Per Jonsson	False Pass	Community Rep.
Edwin Bendixen	King Cove	King Cove City Council
Lamar J. Cotten	Sand Point	City of Sand Point - Mgr.
Jack R. Foster, Sr.	Sand Point	City of Sand Point, Mayor
Martin Gundersen	Sand Point	Sand Point City Council
Jennie Robinson	Akutan	City of Akutan
Florence Anderson	Akutan	Akutan
Erika Tritremmel	Akutan	City of Akutan - Mgr.
Jacob Stepetin	Akutan	City of Akutan, Mayor
Anna McGlashen	Akutan	City of Akutan, City Clerk
Henry D. Larsen, Jr.	King Cove	King Cove City Council
Edward G. Jackson	King Cove	Aleutians East CRSA
Borge Larsen	False Pass	Aleutians East CRSA
Ken Johnson	Sand Point	Aleutians East CRSA
Allan Nelson	Nelson Lagoon	Aleutians East CRSA
Alex Samuelson	King Cove	City of King Cove, Mayor
Clayton Brown	Cold Bay	CB, Mayor; Pres. ARSD
LeRoy Owens	Anchorage	Supt., Aleutian REAA
Marjorie Dunaway	Sand Point	Program Coordinator, Aleutians East CRSA

In summary, conference participants generally agreed:

- there are a number of serious financial, capital improvement, political and other problems facing the region;
- conference participants should meet again early in 1987 to make a more informed decision on borough organization;
- more up-to-date information should be gathered

and examined before community leaders make a final decision on if the area should incorporate an Aleutians East Borough;

- an Aleutians East Borough is probably the best way for residents to address many of the region's problems; and
- the incorporation of an Aleutians East Borough is or may soon be necessary.

TERMS YOU NEED TO KNOW

This brochure makes repeated use of several words or phrases common to the subject of local government in Alaska. These include:

Mandatory Powers: powers which must be exercised by a municipality (i.e., a borough or city) as required by law.

Ordinance: a local law enacted by the borough assembly or city council.

Jack R. Foster, Sr.
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 Clayton Brown
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 Marjorie Dunaway

Sand Point
 Sand Point
 Akutan
 Akutan
 Akutan
 Akutan
 Akutan
 King Cove
 King Cove
 False Pass
 Sand Point
 Nelson Lagoon
 King Cove
 Cold Bay
 Anchorage
 Sand Point

City of Sand Point, Mayor
 Sand Point City Council
 City of Akutan
 Akutan
 City of Akutan - Mgr.
 City of Akutan, Mayor
 City of Akutan, City Clerk
 King Cove City Council
 Aleutians East CRSA
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TERMS YOU NEED TO KNOW

This brochure makes repeated use of several words or phrases common to the subject of local government in Alaska. These include:

Areawide Powers: responsibilities and services (e.g., education, planning, taxation, etc.) that a borough provides everywhere within the borough's boundaries - including the area within the boundaries of cities.

Assembly: the legislative body of a borough whose members are elected to office.

Borough: a regional local government and municipal corporation with legislative responsibility and executive authority to carry out required and desired powers. A borough is a political subdivision of the state.

City: a community that has formally incorporated as a first or second class municipality or taken on home rule status under the laws of the state of Alaska. A city is a political subdivision of the state. Akutan and Cold Bay are second class cities. King Cove and Sand Point are first class cities.

Aleutians East Coastal Resource Service Area (CRSA): is the organization established in 1982 to prepare a coastal management program for the Aleutians East Region. The CRSA is governed by a locally elected seven-member board. The Aleutians East Regional Strategy Board has worked as part of the CRSA to do planning for the region.

Local Boundary Commission: is the state body composed of citizen members appointed by the governor, that consider petitions for the incorporation of borough governments and decide if such requests should be put to a vote of the people in the area requesting the formation of a borough government.

Mandatory Powers: powers which must be exercised by a municipality (i.e., a borough or city) as required by law.

Ordinance: a local law enacted by the borough assembly or city council.

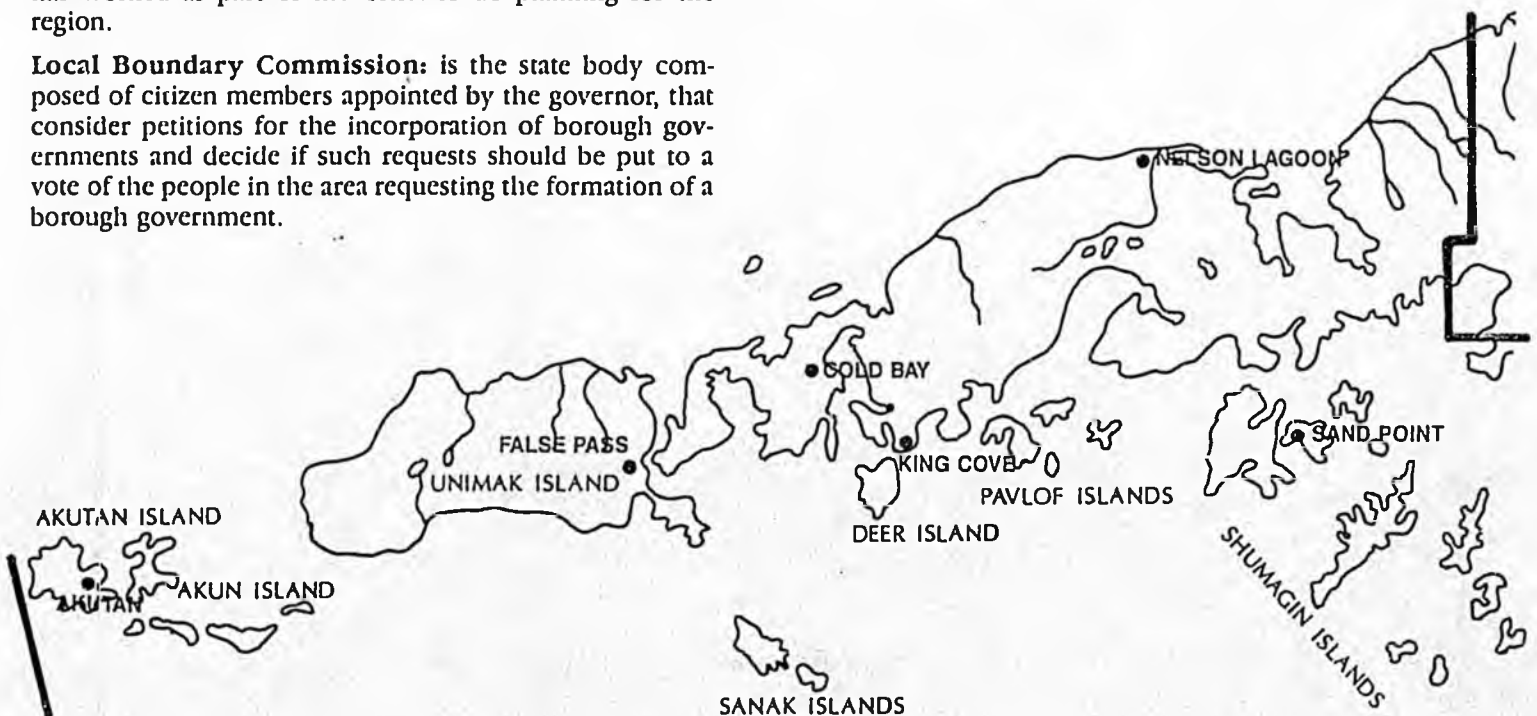
Personal Property: property other than real property, such as merchandise and stock-in-trade, machinery and equipment, furniture and fixtures, motor vehicles, boats and vessels, and aircraft.

Real Property: land and improvements and all possessory rights and privileges appurtenant to the property, and includes personal property affixed to the land or improvements.

School Board: the elected representative body of a municipality (i.e., borough or city) which is responsible for exercising certain educational powers defined by law.

State Board of Education: is the state body composed of citizen members appointed by the governor, that is responsible for overseeing the state's educational program.

PROPOSED BOROUGH BOUNDARY



WHAT WOULD A BOROUGH DO?

An organized borough must - by state law - exercise at least three areawide responsibilities: taxation, planning, and education. These are mandatory powers of a borough.

However, the law provides that a borough can delegate its planning and zoning responsibilities back to the cities in the borough. Also, there are ways a borough can give a

great deal of its responsibilities for education back to the individual communities within it (for example: each community decides which teachers should be hired).

A borough would also provide a much bigger resource base from which to raise local revenues to provide funds for education services and capital improvement projects.

WHY IS FORMING AN ALEUTIANS EAST BOROUGH BEING DISCUSSED?

If state revenues and spending were to remain at FY 83-FY 86 levels, there would be little need to consider forming a borough. However, as described below, there are many changes which are occurring or projected to occur which

will negatively affect state and federal spending and services to the region. A borough may be one way to help address these revenue and service reductions.

HOW HAS STATE AID TO COMMUNITIES FOR GENERAL GOVERNMENT PURPOSES BEEN AFFECTED?

State revenues and the state budget have been on the decline for the past several years because of falling crude oil prices. For example, the FY 87 (July 1, 1986 - June 30, 1987) state budget was \$2.6 billion. The proposed budget for next year - FY 88 - will be about \$1.5 billion. Thus, the budget will decline by over 40% in just one year.

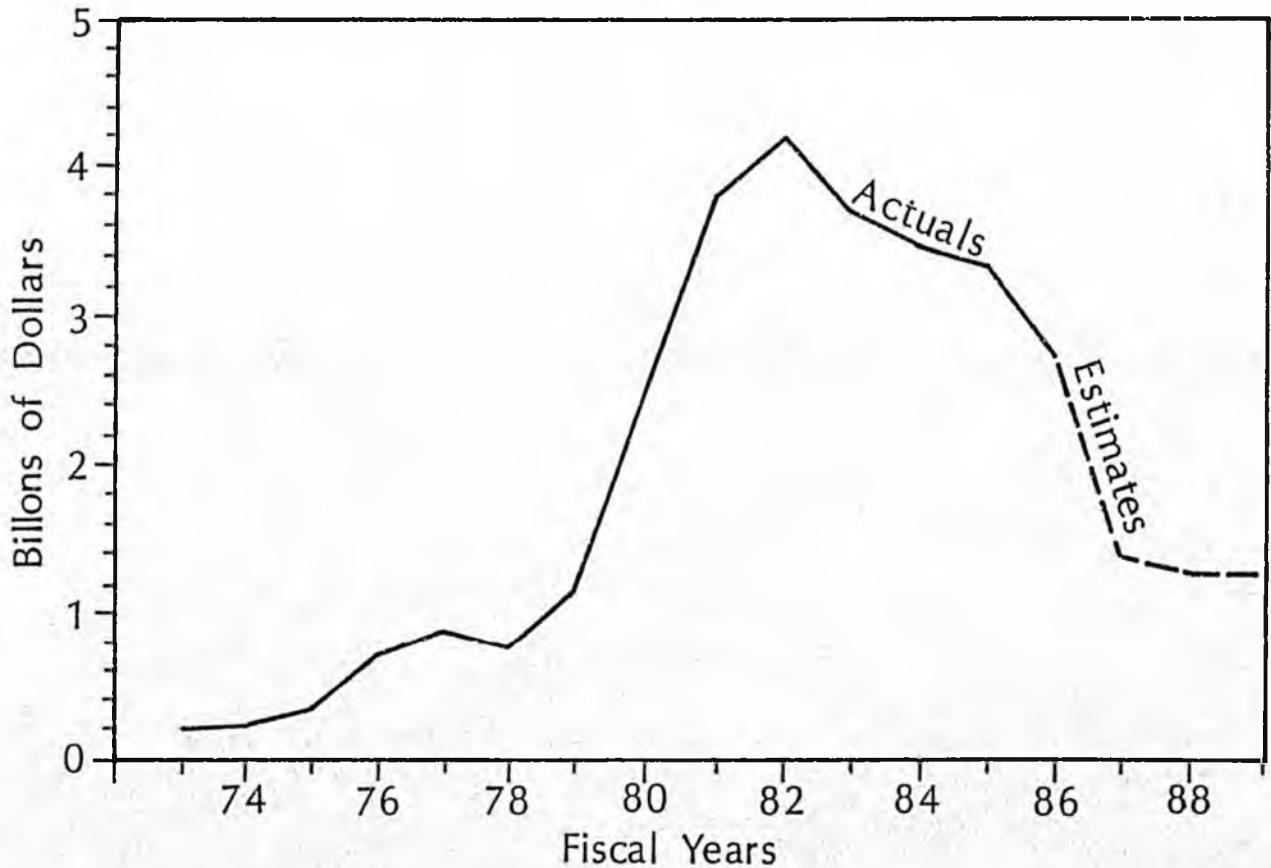
This reduction in oil revenues to the state, as illustrated in the following graph, is expected to continue. Thus, the state and local communities must decide how to deliver services when there is less money available.

This drastic decline in state revenues means major reductions in state grants and state spending in communities in the Aleutians East Region. Examples of this decline in-

clude:

- State school funding support has decreased by about 20% in the last two years and additional cuts of 15% - 30% are proposed for next year. This means considerably less monies to operate all schools in the region.
- State Revenue Sharing has decreased by 20% in the last two years and is expected to decrease an additional 15% next year. This reduction affects all communities in the region.
- Municipal Assistance has decreased by 20% in the last two years, and is proposed to be completely eliminated next year. This reduction mostly affects Akutan, Cold Bay, King Cove and Sand Point.

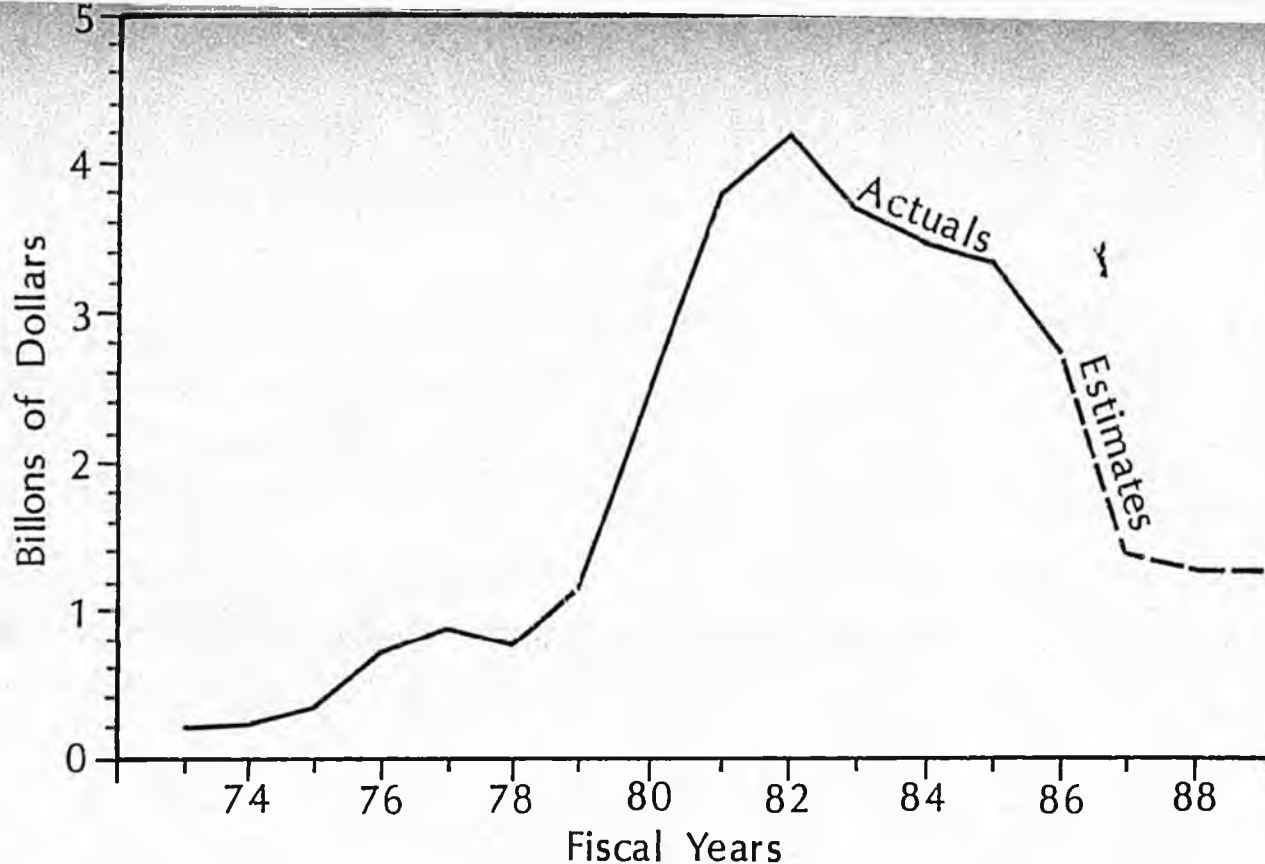
GENERAL FUND UNRESTRICTED REVENUES



HOW HAS CAPITAL IMPROVEMENT PROJECT FINANCING BEEN AFFECTED?

State funding for capital improvements (docks, harbors, roads, etc.) construction has likewise been drastically curtailed. For example, state appropriations for capital improvements have fallen from a high of \$1.2 billion in 1983

the Aleutians East region since politics plays an important role in the legislature's decision making on capital improvement allocations. There can be no doubt, however, that the region faces a rather significant drop



HOW HAS CAPITAL IMPROVEMENT PROJECT FINANCING BEEN AFFECTED?

State funding for capital improvements (docks, harbors, roads, etc.) construction has likewise been drastically curtailed. For example, state appropriations for capital improvements have fallen from a high of \$1.2 billion in 1983 and 1984 to only \$150 million for the current fiscal year. In short, state monies for capital improvement projects have decreased 90% in three years.

It is impossible to calculate precisely what this means to

the Aleutians East region since politics plays an important role in the legislature's decision making on capital improvement allocations. There can be no doubt, however, that the region faces a rather significant drop in the appropriation of state funds for community facilities. Especially, when it is remembered that the six communities in the Aleutians East region - alone - received well over \$25 million for capital improvements construction between 1983 and 1986.

HOW HAS COMMUNITY EDUCATION/FINANCING BEEN AFFECTED?

The problems associated with the delivery of education services in the Aleutians East area are troublesome. State funding for education is being substantially reduced because of the fall in oil prices. Thus, local school districts must come up with more local money to cover these state reductions just to maintain educational services at past levels. And, if this isn't bad enough, the state is requiring local school districts to contribute a greater proportion of their education budget from local sources.

On another front, many people in the state believe that the way the state distributes educational monies to city, borough, and REAA school districts is not equitable. They propose that regional borough school districts get a bigger slice of the educational financial pie - at the expense of smaller school districts such as Sand Point, King Cove and the Aleutians REAA. Also, a number of state legislators have suggested that the state must consolidate school districts because of administrative inefficiency.

Most significantly, these problems affect the Aleutians East region as follows:

- State aid for education in Sand Point has dropped from \$8,800 per student, to \$7,200 per student, and is expected to drop to \$6,100 next year.

- State aid for education in King Cove has dropped from \$9,700 per student, to \$7,800 per student, and is expected to drop to \$6,600 next year.
- State aid for education in the Aleutian REAA has been reduced by \$400,000, and is expected to decrease another \$175,000 next year.
- The Sand Point, King Cove, Unalaska, Aleutians REAA, Pribilof REAA, and other school districts could all be combined into a single school district.
- Last year the State Board of Education proposed a new formula for the distribution of state education dollars. This new formula highly favors organized borough government school districts over city and REAA school districts.
- Finally, there is a lawsuit challenging the present formula which would result in less funds to REAA's and small city school districts.

In short, each of the school districts in the region has and will continue to experience significant decreases in funds. Formation of a borough is one way the region can take to lessen the net effect of these funding decreases and avoid state efforts to force a consolidated school district.

HOW HAVE FEDERAL FUNDS FOR LOCAL USE BEEN AFFECTED?

Over the past several years, the federal government has made substantial cuts in federal expenditures for community water, sewer, airport, highway, and other capital facilities construction projects. They have also made substantial cuts in BIA General Assistance, Indian Health Service, and transfer payment programs that aid individuals in the re-

gion. And, they have made attempts to reduce or eliminate federal funds for education associated with the amount of federal land within the area. Finally, they have completely eliminated their federal revenue sharing program that brought over \$100,000 in cash to communities in the Aleutians East region in 1985.

WHAT WOULD AN ALEUTIANS EAST BOROUGH GOVERNMENT COST?

An updated financial analysis for an Aleutians East Borough that exercises only the mandatory taxation, education, and planning responsibilities shows the following:

(All Figures in Thousands of Dollars)

	FY 89	FY 90	FY 93
BOROUGH COSTS	\$ 878.2	\$ 859.2	\$ 959.9
STATE FUNDS - GIVEN TO BOROUGH *	1,325.0	1,225.0	1,015.0
	+\$ 446.8	+\$ 365.8	+\$ 56.1

* Various state program funds and shared revenues such as shared fish tax revenues, revenue sharing, etc.

Projected borough costs would include the following: assembly travel and meetings, mayor salary, planning department, accounting staff, legal expenses and education.

NOTE that the borough would receive more in state funds than it costs to operate the borough government. Some people have suggested these extra funds, as well as other local revenues, could be used to make up the state reductions in funds for badly needed community capital improvements.

If the borough is required to raise additional revenues a sales/use tax - **not property taxes** - is the most cost effective way to raise local revenues required to pay for borough operations. It is estimated that a 1% borough sales/use tax would generate approximately \$625,000 per year.

HOW WOULD ESTABLISHING A BOROUGH AFFECT LOCAL CONTROL IN EDUCATION, PLANNING, AND EXISTING CITY GOVERNMENTS?

Three of the more important issues facing Aleutians East residents in deciding whether to seek borough incorporation will have to do with local control over education, planning and city government.

Education

Educational services in the Aleutians East area are currently provided by the Sand Point City School District, the King Cove City School District, and the Aleutians REAA (for schools at Akutan, Cold Bay, False Pass, and Nelson Lagoon). Each of these school districts is governed by its own school board composed of members from the respective communities or REAA area. If an Aleutians East Borough were formed, all of these schools would become part of a single Aleutians East Borough School District. This district would be governed by a single school board composed of elected members from the borough.

While this "larger" school district may not be desired, it should be remembered that it is likely a bill will be introduced in the state legislature to consolidate some of the smaller school districts around the state. If this were done, it is not unlikely that the Sand Point, King Cove, Aleutian REAA, Unalaska, Pribilof REAA and other school districts could be combined into one district. Certainly, an Aleutians East Borough School District would be more acceptable to residents of the region.

It should also be noted that it would be possible for the

borough school district to give certain responsibilities to the local communities. Powers such as the hiring and firing of teachers and program planning could be contracted back to the local school boards.

Planning

Another function of borough government that many people feel should be locally controlled is planning and land use regulation. Fortunately, state law allows a borough to delegate planning and land use regulatory powers to cities. The four cities in the borough could, therefore, be delegated the responsibilities to adopt, hear, decide and enforce all plans, zoning ordinances, zoning matters, subdivision matters, and codes adopted within their boundaries.

In other communities in the borough, local advisory committees could be established to guide the borough in planning for those areas.

City Government

Four of the six communities in the Aleutians East region have established city governments as a way of obtaining local control. If a borough is established, each of the cities will continue to deliver the services they presently deliver. The sole exception is education services. Thus, the city governments will remain much as they are today.

HOW WOULD A BOROUGH AFFECT NATIVE LANDS/TAXATION?

Federal law provides that undeveloped Native lands cannot be taxed by city or borough governments until 1991 or until 20 years after the corporation has received conveyance from the federal government - whichever comes later. Furthermore, if any undeveloped Native lands are accepted into a federal "land bank," they too cannot be taxed by any local government.

Remember, it is also recommended that an Aleutians East borough should not levy any real or personal property taxes because it is not a cost effective way to any required local revenues. Thus, the prospects for property taxation on either private or Native corporation lands would be small if a borough were organized.

HOW WOULD A BOROUGH ASSEMBLY BE COMPOSED?

Any borough organized in the Aleutians East area would have to meet the U.S. Supreme Court's one-man, one-vote decision. This could mean that an Aleutians East Borough would have a 7-person Assembly as follows:

• Nelson Lagoon, False Pass, and Akutan - would elect 1 representative;

- Cold Bay - would elect 1 representative;
- King Cove - would elect 2 representatives; and
- Sand Point - would elect 3 representatives.

WHERE WOULD THE BOROUGH SEAT BE LOCATED?

Many people have questioned which community would become the home of the new borough government. This decision is made by the borough assembly by passage of an ordinance. In discussions to date, it appears there is a preference to split the responsibilities of the borough between the different communities. That is, have the borough ad-

ministration located in one community, and the school administration located in another community. This is permissible under the law and would divide the economic growth associated with locating a borough in two communities rather than just a single community.

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LOCAL/REGIONAL POLITICAL CLOUT - MORE OR LESS?

If the Aleutians East region organized a borough government the area would no doubt find itself with increased political clout. The Anchorage area presently elects over half of the state senators and representatives, and the state must be reapportioned in 1990. Thus, Anchorage and the "railbelt" area will likely increase their hold on the legisla-

ture. As this legislative balance shifts more to Anchorage, areas such as the Aleutians East can expect to get less out of Juneau. The organization of an Aleutians East Borough is one way of trying to counteract such circumstances.

HOW DO WE INCORPORATE (FORM) A BOROUGH GOVERNMENT?

There are a number of petition, hearing and notice procedures that must be followed before a borough can be incorporated by local initiative. The more important considerations are:

- Fifteen percent of the number of residents who voted in the last state general election in the Aleutians East region must sign a petition requesting the State Local Boundary Commission to allow them to form a borough before the Commission will consider allowing residents to vote on the question.
- Public notices/hearings on the question of borough incorporation would be held in the Aleutians East Region before the Commission would decide if it is going to let

people in the region vote on the question.

- If the Commission allows residents to vote on the question of borough incorporation, a majority of those voting on the question in the region must approve it or the incorporation fails.
- If any one community votes against the incorporation of the borough, but a majority of the total voters approve the question, the incorporation is approved and the community that voted against incorporation is still in the borough.

Overall, the process of incorporating a borough will probably take 8 to 14 months.

WHERE DO WE GO FROM HERE?

At the conclusion of the Anchorage Conference it was determined that:

- more up-to-date information should be gathered and examined before a final decision is made on whether the area should try to incorporate an Aleutians East Borough;
- conference participants should meet again early in 1987 (currently scheduled for mid-February) to make a more informed decision on the matter; and
- some officials from the new state administration, legisla-

ture, and the newly formed Northwest Arctic Borough should be invited to the meeting to share their ideas and experience with the region.

Ms. Marjorie Dunaway is organizing a February meeting. If you should desire more detailed information about any subject matter contained in this brochure, please contact her at:

Aleutians East CRSA
P.O. BOX 90
Sand Point, Alaska 99661
Phone (907) 383-2699

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STATE OF ALASKA THE LEGISLATURE

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

LEGISLATIVE AFFAIRS AGENCY LEGISLATIVE REFERENCE LIBRARY

May, 1988

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

Mary Van Nimwegen

House	C+RA	2-8-88	3:00 p.m.
"	"	3-14-88	3:00 p.m.

(DCIT) R ~~AE~~ A

BILL PREPARATION/ACTION*

Bill # HB 227

Date Referred: 3/30/87 Out: 1/1

Title: Joint Insurance Arrangements

Taylor

Referrals: CRA L, CJM

CONTACTS:*****

Name	Organization	Phone	Date Contacted
	Address		Attend/Remarks
DCRA	Plasman	(FN) PP	2/1 reg.; 2/3 [2/8]; 2/5 reg again; 2/8 coming FN
AML	Bugess 506-1325		2/3 msg; will be there 2/3; 2/17 [2/19];
DCED - Ins	Linda Wied 2505	PP (FN)	2/3 msg Stephen Randall; 2/3 FN coming 2/8; 2/5 msg FN; 2/5 Stephen DCED for its use; 2/5 FN 3:45; 3/15 FN okay for CS. will call 3/16 to verify, after Kohl gets back;
Taylor			2/3 - [2/8]; 2/8 bus coming down; 2/15; 2/17 [2/19];
Don Koehn	Sir. DCED Ins. 2515		10 days reg. - plan will have music then no 2/5; 2/17 [2/19];

REMARKS:*****

ANALYSIS: _____ Completed: _____

MEETINGS:*****

Date	Action
* 2/8/8	Needs more discussion. Kohl work w/ Taylor. Sched next wk.
3/14/8	CS HB 227 (CRA) 4 DP



Official Business

COMMITTEE:

HOUSE COMMUNITY & REGIONAL AFFAIRS

DATE: MON., March 14, 1988

SIGN-IN

Subject of meeting:

~~HB 429 Tax Exemption/Old Bldgs Removed from Land~~

HB 227 Joint Insurance Arrangements

~~*HB 422 Payment for Purchases; Schools/Municip.'s~~

NAME (PLS PRINT)	YOUR TITLE & ADDRESS	PHONE	REPRESENTING	DO YOU WANT TO TESTIFY?
Scott Burgess	Juman	6-1325	AMC	Yes
Rep. Taylor				

(12) ^{CS} HB 227

STATE OF ALASKA
THE LEGISLATURE

POUCHY STATE CAPITOL
JUNEAU, ALASKA 99811
907 465 3800

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

March 15, 1988

SUBJECT: Joint insurance arrangements
CSHB 227(C&RA)

TO: Representative Heinrich Springer

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

I wanted to point out two concerns with CSHB 227(C&RA) as passed out of the committee. On page 2, line 16, the word "authorized" should be "unauthorized", in order to allow the board additional authority to purchase insurance. Also, the new language in section 5, is redundant when compared with the last sentence of that section. The last sentence should be deleted.

Please contact me if you have further questions.

MFF:gc
WKG2:54

STATE OF ALASKA
1988 LEGISLATIVE SESSION

(1.1) (CS) HB 227
CS
BILL VERSION: HB 227
PUBLISH DATE: _____

FISCAL NOTE

REQUEST:

Revision Date: _____
 Title: "An act relating to joint insurance arrangements."
 Sponsor: Taylor
 Requestor: _____
 Agency Affected: Community & Regional Affairs
 BRU: _____
 Components: _____

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 88	FY 89	FY 90	FY 91	FY 92	FY 93
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-

CAPITAL						
---------	--	--	--	--	--	--

REVENUE						
---------	--	--	--	--	--	--

FUNDING: (Thousands of Dollars)

GENERAL FUNL	-0-	-0-	-0-	-0-	-0-	-0-
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)

Prepared by: Jin Plasman, Deputy Director Phone: 465-4750
 Division: Municipal & Regional Assistance Date: _____
 Approved by Commissioner: [Signature] Date: _____
 Agency: Community & Regional Affairs

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

1.2 (6) HB 227

STATE OF ALASKA
1988 LEGISLATIVE SESSION

BILL VERSION: ^{CS} HB 227
PUBLISH DATE: 03/30/87

FISCAL NOTE

REQUEST:

Revision Date: 02/05/88 Agency Affected: Commerce & Economic Dev.
Title: An Act relating to joint insurance BRU: Insurance
arrangements
Sponsor: Taylor Components: Public Protection
Requester: _____

EXPENDITURES / REVENUES : (Thousands of Dollars)

OPERATING	FY 88	FY 89	FY 90	FY 91	FY 92	FY 93
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL	0.0	0.0	0.0	0.0	0.0	0.0
---------	-----	-----	-----	-----	-----	-----

REVENUE	0.0	0.0	0.0	0.0	0.0	0.0
---------	-----	-----	-----	-----	-----	-----

FUNDING: (Thousands of dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

POSITIONS:

FULL-TIME	0.0	0.0	0.0	0.0	0.0	0.0
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary.)

Prepared by: John L. George, Director *John L. George* Phone: 465-2515
Division: Division of Insurance Date: February 5, 1988

Approved by Commissioner: J. Anthony Smith *J. Anthony Smith* Date: February, 1988
Agency: Department of Commerce and Economic Development

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

File Contents

HB 227 - Joint Insurance Arrangements

<u>No.</u>	<u>Description</u>
1.	Bill - HB 227
2.	To: All Legislators, From: Sen. Kelly Update on Municipal Ins. Pooling Program
3.	Solutions to Insurance Crisis - House Research Request 87.080
4.	"We the People" - publication
5.	Zero Fiscal Note - DCED, Division of Insurance
6.	Bill Review - HCRA Staff, Harrison
7.	DCRA - Zero Fiscal Note
8.	Position Paper - AML
9.	Position Paper - DCED (Commerce)
10.	Bill Analysis/Proposed AMENDMENTS - DCED

BILL: HB 227

05:40 PM 03/30/87

NAME:

TITLE: "AN ACT RELATING TO JOINT INSURANCE ARRANGEMENTS."

PRIME SPONSOR: TAYLOR

CURRENT STATUS: (H) CRA

STATUS DATE: 03/30/87

03/30/87 (H)

674

READ THE FIRST TIME - REFERRAL(S)

03/30/87 (H)

674

C&RA, LABOR & COMMERCE, JUDICIARY



Official Business

COMMITTEE:

HOUSE COMMUNITY & REGIONAL AFFAIRS

DATE: Monday, Feb. 8, 1988

SIGN-IN

Subject of meeting: (B) HB 227

HB 357

*HB 392

*HB 227 Joint Insurance Arrangements

NAME (PLS PRINT)	YOUR TITLE & ADDRESS	PHONE	REPRESENTING	DO YOU WANT TO TESTIFY?
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<p><i>Ray Davis Taylor</i> S.H. Burgess</p>	<p><i>Have for 3 more months</i></p>		<p>AML</p>	<p><input checked="" type="checkbox"/></p> <p>Yes <input checked="" type="checkbox"/></p>
<p>DON KOCH</p>	<p>P.O. BOX D JUN</p>	<p>2577</p>	<p>DIV. OF INSURANCE</p>	<p>YES</p>

ALASKA STATE SENATE

JW/CRA

② HB 227

SENATOR TIM KELLY
ANCHORAGE/EAGLE RIVER
CHAIRMAN



MEMBERS
SENATOR BETTYE FAHRENKAMP
FAIRBANKS

SENATOR DICK ELIASON
SITKA
VICE CHAIRMAN

LABOR AND COMMERCE COMMITTEE

SENATOR RICK UEHLING
ANCHORAGE

SENATOR MIKE SZYMANSKI
ANCHORAGE

JAN 26 1988

MEMORANDUM

TO: All Legislators

FROM: Senator Tim Kelly *TDK*
Chairman, Senate Labor & Commerce Committee

DATE: January 25, 1988

RE: Update on Municipal Insurance Pooling Program

Enclosed is a summary of the presentation from the Municipal League. I thought you would find this of interest.

Phil Younker, Chairman, Board of Trustees of the Alaska Municipal League Joint Insurance Arrangement, gave a brief presentation regarding pooling insurance. Mr. Younker was joined in the committee meeting by several of the Board of Trustees. Mr. Younker explained that the program came about after legislation was passed by the Legislature permitting the Municipal League to create the joint insurance arrangement. Mr. Younker went on to say that a few years ago, the League attempted to put together an insurance pool. The insurance market had gotten very hard and the availability to the municipalities in Alaska was almost impossible. The price was totally prohibitive in some cases. The League backed off and left it alone for about five years. About four years ago, the market hit one of its all time hard spots. Mr. Younker stated that the municipality he served had a half a million dollar rate increase in one year. Many municipalities in Alaska were forced to give up carrying insurance. The Municipal League again began its efforts to start a joint insurance arrangement. It worked through the staff of the Municipal League and the Board of Directors to promote the legislation and allow the pools to be created in Alaska. After the legislation was adopted, the Municipal League immediately went through the Frank B. Hall Company and began to develop the joint insurance arrangement. In the interim there were municipalities who could not buy insurance, especially some of the rural municipalities, so a joint purchase agreement was formed through the broker at

the Old Republican Insurance Company in Pennsylvania. They were able to place 109 municipalities and rural school districts in that program for two years.

Mr. Younker stated that last year the goal was to begin to write insurance July 1, 1987. In the early spring of 1987, the Trustees met and reviewed the program. There was a problem because there were no excess carriers available and there wasn't a way to set up financial reserves. The Board of Trustees decided to delay the pool one year. In less than two weeks after that decision was made, they got a letter from the Old Republican Insurance Company cancelling 109 communities in the state. The League hustled to get the Old Republican Insurance Company to come back into the market in Alaska for at least another year until the pool could be put together. They agree to do that. The League was then able to provide coverage for 52 communities in the state.

Mr. Younker further stated that as of July 1, 1988, the Municipal League will issue its first policies. A solution was found in the excess markets for the financial reserves. The markets are available at reasonable costs. They can reinsure themselves through those excess companies so that they can control their liability. Mr. Younker stated that they can do this at a rate that will save the municipalities money or at least be competitive in the market place.

Mr. Younker stated that the pools throughout the nation have proven that the availability of insurance through the pools have been very stable. He further stated that fifty percent of all public entities in the United States are now under some form of pool. While the availability looks very stable to the municipalities and school districts, the price begins to stable out too. The pool is nonprofit and the money will not be shipped outside. The reserves will be kept in Alaska. As the reserves grow, they will buy less excess coverage and have more total self-control.

Mr. Younker explained that he felt they would be up and operating July 1, 1988.



ALASKA STATE LEGISLATURE
HOUSE OF REPRESENTATIVES
RESEARCH AGENCY

③ HB 227

P.O. Box Y, State Capitol
Juneau, Alaska 99811-3100
Mail Stop 3100
(907) 465-3991

February 2, 1987

MEMORANDUM

TO:

ATTN:

FROM: Penelope Weyhrauch
Legislative Analyst

RE: Solutions to the Insurance Crisis
Research Request 87.080

You asked for a discussion of what caused the insurance crisis and a presentation of possible solutions, other than tort reform, to the crisis.

What Caused the Insurance Crisis

The insurance crisis, which began in 1985, is generally considered a crisis because of the lack of available and affordable insurance for some consumers. Most groups which have studied the insurance crisis attribute its occurrence to insurance companies' policy of cash flow underwriting. Cash flow underwriting is the practice of charging inadequate premiums to generate cash for investment, and then relying upon investment returns to offset underwriting deficits.

During the late 1970s and the early 1980s, insurance companies offered premiums at bargain levels to attract more money for investments. Table 1 shows insurance companies' income from underwriting and investments for the years 1981 to 1984. In 1984, interest rates began to fall and investment income no longer offset expenses and underwriting losses. Insurance companies began to increase premiums and to select the risks they would underwrite with greater caution.

Table 1
U.S. Insurance Industry
Underwriting Loss and Investment Return Rates

	<u>1981</u>	<u>1982</u>	<u>1983</u>	<u>1984</u>
Underwriting Loss (in billions of dollars)	6.3	10.3	13.3	21.0
Investment Returns (in billions of dollars)	13.2	14.9	15.8	17.3
Net Gain (Loss)	6.9	4.6	2.5	(3.7)

SOURCE: Council of State Governments, December 1985.

* * * * *

According to a report done by the National Conference of State Legislatures (NCSL), "The large increase in premiums in recent months is due to the fact that premiums paid in the early 1980s did not accurately reflect the real cost of insurance and insurance companies are now trying to make up for losses." The NCSL, which has done extensive research on insurance, also reports that other factors which influenced a legitimate increase in insurance costs include an increase in sales and property values, an expansion in business activities, and general economic growth.¹

Insurance has also become more difficult to obtain because foreign-based companies who share part of the risk with domestic insurance companies began to withdraw from the U.S. market. The withdrawal of reinsurers was the result of underwriting losses and a strong U.S. dollar.

Insurers say that underpricing in combination with severe claim losses in 1980-1984 caused the current crisis. They claim that the major factor in underpricing was insurers' inability to predict the losses they would have to pay. Insurers have lobbied for tort reform, contending that courts are including coverages never intended in policies and that million dollar jury awards are becoming common, forcing insurers to increase premium costs.

Arguments regarding the need for tort reform in addressing the insurance crisis were considered to be valid by the federal Tort Policy Working Group on the Causes, Extent and Policy Implications of the Current Crisis in

¹Brenda Tolin, "Controlling Liability Insurance Costs: State Initiatives in the Area of Insurance Regulation." State Legislative Report, National Conference of State Legislatures, May 1986.

February 2, 1987

Page 3

Insurance Availability and Affordability, in their report of February 1986. The group stated that developments in tort law are a major cause of sharp premium increases. The group further stated that "...there is little to suggest that the recent massive increases in premiums is related solely to these losses, or that the cost of liability insurance will decline significantly as the industry limits its underwriting losses and restores its desired level of overall profitability."

Addressing the Insurance Crisis

Many states have addressed the insurance crisis by enacting reforms to their civil justice systems (tort reform), while others have looked at tightening regulations on the insurance industry or establishing new state insurance mechanisms. Attachment A is a summary of 1986 legislative action on the liability insurance issue in the fifty states.

New insurance mechanisms and strategies that some states are considering include allowing the pooling of risks, allowing joint underwriting associations, and developing market assistance plans. These terms are defined beginning on the next page. Attachment B identifies states which are implementing new insurance mechanisms and strategies. Insurance regulatory reforms being considered by states include: expanding data submitted by insurers; permitting policy cancellation only with cause; requiring the mandatory notice of nonrenewals, cancellations and rate increases; and instituting studies which estimate tort reform savings. Attachment C identifies states which have instituted insurance regulation reforms.

Alaska Legislation

Tort Reform. The 1986 Alaska Legislature passed a tort reform bill (Ch 139, SLA 86) which, among other things, limits the recovery of damages in a civil action, provides for the reduction of future damages to present value, requires the apportionment of damages for multiple defendants, and limits the joint liability of certain parties. Don Koch, with the Department of Commerce and Economic Development, Division of Insurance, said that while insurance companies have not responded to the tort reforms with rate decreases, there has been an improvement in availability. Mr. Koch believes that most insurance companies will wait to see how the new reforms work before they reduce their rates. Other tort reform legislation that was considered by the legislature but was not passed included a bill on the periodic payment of judgments (HB 490) and a bill on verdicts, damages and liability in civil actions (HB 481).

Insurance Reform. In addition to tort reform legislation recently enacted or introduced in Alaska, the 1985-1986 Legislature also considered the following bills which addressed the insurance crisis:

HB 356	Assignment of Group Insurance Policies
HB 506	Reinsurance Fund and Insurance Pooling
HB 522	Unfair Insurance Claims Settlement Practices
HB 547	Health Insurance Pool for High Risk People
HB 585	Joint Self-Insurance for School Districts
HB 702	State Reinsurance Fund
SB 88	Alaska Life/Disability Insurance Guarantee Assoc.
SB 156	Form of Payment for Insurance Settlements
SB 288	Liquor License Holders' Insurance Corporation
SB 366	Cancellation of Insurance Policies
SB 404	Joint Insurance Arrangements
SB 445	Miscellaneous Changes in Insurance Laws
SCR 20	Availability of Marine Insurance

Two bills listed here, HB 356 and HB 506, were signed into law. The other bills listed here, excluding HB 522, did not progress out of committees in their house of origin. House Bill 522 died in the Senate Rules Committee. Shari Kochman--aide to Representative John Sund, who sponsored HB 522--said that the bill was not high on the list of priorities last year, but that it is considered a priority this year. The bill related to an insurance broker's receipt of premium payments, the cancellation or nonrenewal of insurance policies, and medical malpractice insurance for nurses and nurse midwives, among other things. Attachment D includes a complete summary of insurance-related legislation introduced in 1985-1986, additional information on insurance legislation passed during that time and House Bill 522.

Solutions to the Insurance Crisis, Other than Tort Reform

In researching solutions to the insurance crisis, I gathered information from the National Conference of State Legislatures, the Conference of Insurance Legislators, the Congressional Quarterly, the Council of State Governments, and the National Insurance Consumer Organization (NICO). I discussed some alternatives with Don Koch to get his response on how these solutions might work in Alaska. The alternatives that follow are gathered from these sources and are divided into two sections: Insurance Mechanisms and Strategies, and Insurance Regulation. The alternatives listed in each section are in no particular order.

Insurance Mechanisms and Strategies

1. Allowing the State to act as an insurance company could provide consumers with insurance when none is otherwise available to them. The State could act as an insurance company in a manner similar to

those states that self-insure worker's compensation. Mr. Koch said that implementation of this alternative would put the State in the position of replacing private markets. He said that this would be similar to the implementation of the Medical Indemnity Corporation of Alaska (MICA).

The MICA is a statutorily created insurance company which insures physicians and hospitals in Alaska (AS 21.88.020--Attachment E). The MICA was capitalized with State funds and operates with low-interest State loans (with a borrowing limit of \$6 million). The MICA has already borrowed \$5 million, and according to Mr. Koch, has been a financial concern for the State. Mr. Koch said that because MICA was created by the State, the corporation believed it was their obligation to offer insurance to anyone, even very poor risks. Although MICA is now more selective, Mr. Koch is still concerned for MICA's financial stability. If MICA goes out of business, the State will not recover the \$5 million loaned to the corporation.

2. **Allowing the State to act as a reinsurance company** could provide insurance companies with a reinsurer when one might otherwise not be available. Reinsurance is the mechanism by which the original insurer transfers part or all of the liability to a second insurer (the reinsurer).

A system of State or federal reinsurance, similar to that used during the race riots of the 1960s, could be established. During that time, insurers were pulling out of the inner city areas of the nation. The federal government agreed to offer reinsurance for riot damages, and in return, insurers formed pools to assure full coverage (including fire, liability, etc.) in distressed areas. The federal government collected a reinsurance premium and also required the insurers to impose certain safety standards for risks they undertook. The federal government made a \$125 million profit operating this insurance program.²

According to Mr. Koch, if the State acts as a reinsurance company, the State would be liable for insurance losses if an insurance company went bankrupt. He believes this would be a risky position for the State to be in, particularly in light of the present budget deficit. He also mentioned that setting aside funds for future liability payments could violate Alaska's constitutional prohibition on the dedication of funds.

3. **Allowing banks to sell insurance** will increase competition in the insurance market and provide more alternatives to consumers. The Florida legislature recently passed legislation which allows

²There is no state, according to Jay Angoff of the National Insurance Consumers' Organization, that is considering acting as a reinsurance company.

financial institutions to enter the reinsurance business. Mr. Koch believes that allowing banks to insure will give them too much leverage. His primary concern is that banks may attempt to coerce people into buying insurance in order to get a loan.

4. **Authorizing the establishment of joint underwriting associations** may aid in providing coverage of risk that individual insurers do not want to cover. Joint underwriting associations (JUAs) are established by state law and require that insurers insure certain risks. There are no JUAs in Alaska, though the automobile and worker's compensation assigned risk plans operate on a similar principle. Mr. Koch believes that establishing JUAs in Alaska will adversely affect the availability of voluntary underwriting in Alaska.
5. **Allowing insurance pools** affords consumers with common insurance needs a way to reduce insurance costs. In a pool, the group is often responsible for a portion of the losses experienced by individuals within the group. Savings result from both partial self-insurance and economies of scale. Tennessee and Michigan indicate that savings have been realized by allowing consumers to pool; buyers have obtained higher amounts of coverage and smaller municipalities have been able to insure at rates lower than those that would have been available to them on an individual basis. However, Utah reports that pooling legislation enacted in 1976 has not changed the availability or affordability of insurance in the state. Alaska allows the pooling of insurance for school districts and municipalities by statute (Ch 136, SLA 86). There have not been any pools set up under the statute, to Mr. Koch's knowledge.

Another form of "pooling" called "reciprocal insurance" is defined in AS 21.75. By statute, ten or more persons in the state may organize as a reciprocal insurer. Financial accountability is the primary difference between the pooling of insurance and reciprocal insurers. Pools set up under Ch 136, SLA 86 are free from State surveillance; reciprocal insurers in Alaska have certain financial requirements which they must meet--such as adequate capitalization--in order to begin operating. Mr. Koch hopes that if the legislature decides to allow other entities to pool outside of the reciprocal insurer mechanism in AS 21.75, they require such pools to have adequate capitalization and some government regulation.

6. **Establishing Market Assistance Plans (MAPS)** will provide information on markets available for high risk and unique consumers. MAPS are developed through state insurance regulatory agencies in an effort to coordinate those seeking insurance and those willing to sell often hard-to-get types of insurance.

The Division of Insurance responded to the unavailability of day care insurance in Alaska by coordinating with the Department of Health and Social Services (DHSS). This effort, the Coordination of Alaska Day Care Insurance Search (CADIS), has been successful in finding appropriate and affordable insurance for day care providers in Alaska. The CADIS worked by making inspection reports completed by the DHSS available to day care providers. Day care providers were then able to provide specific information (compiled by a neutral party) to insurance brokers, who in turn were able to provide the information to insurers. Mr. Koch said that a lack of information was one of the main factors deterring insurers from insuring day care providers. Making inspection reports available to day care providers also provided them with information regarding their deficiencies, which providers often corrected.

7. **Developing an interstate organization** may increase the availability of insurance. NICO suggests that states group together and agree to license insurance companies in their state only if they agree to write insurance in all the states within the group. Western states--such as California, Oregon, Washington and Alaska--could band together to demand insurance availability in their states. Mr. Koch said that some state insurance commissioners are politically motivated and believes it would be difficult to successfully coordinate an interstate insurance organization.
8. **Establishing a State office of insurance consumer advocacy** will provide consumers with an advocate to represent the interests of consumers in regard to rate increases and other insurance issues. Mr. Koch said that the Division of Insurance has a consumer advocacy specialist who is responsible for representing the interests of consumers in insurance issues.
9. **Employing mediation and arbitration** usually reduces the costs of lawsuits, which means lower litigation expenses for insurance companies. This may ultimately lead to lower insurance rates for consumers. The use of alternative forms of dispute resolution, such as mediation and arbitration, may also create incentives to settle disputes at the earliest possible time and to refrain from filing frivolous cases. The State of Michigan recently enacted a law which requires pretrial mediation of all medical malpractice cases and of other personal injury claims for more than \$10,000.
10. **Urging the federal government's involvement in insurance regulation** may result in federal legislation addressing the insurance crisis. Both Congress and the Reagan administration have considered federal tort reform legislation. The administration developed tort reform legislation and sent it to Capitol Hill, but Congress has not been willing to act on national insurance legislation. This reluctance to act may be because insurance has traditionally been an area of state regulation. The last major congressional legislation

on the subject was the McCarran-Ferguson Act, which was passed to overcome a 1940 Supreme Court decision authorizing federal regulation of insurance.

One suggestion for federal legislation is to subject the insurance industry to both federal and state antitrust laws. Under the McCarran-Ferguson Act, insurance companies are exempt from federal antitrust rules. This exemption makes it harder to stop companies if they act in concert to raise prices for a particular line of insurance. Another suggestion is that the federal government act as a reinsurer, much the same as it did during the race riots of the 1960s. This alternative has not been seriously considered by Congress.

11. **Authorizing the development of captive insurers** creates another opportunity for self-insurance. Captive insurance companies are subsidiaries set up to provide insurance for the parent corporations. Vermont, Colorado, and Tennessee have all authorized the formation of captive insurers. The Conference of Insurance Legislators believes that use of this vehicle has been effective in regard to the availability and affordability of insurance.
12. **Increasing state regulatory staff** may provide greater surveillance of the insurance industry and result in more consistent insurance rates for consumers. According to the NCSL, many state regulatory agencies are understaffed. State regulatory agencies are often expected to act as a watchdog over insurance companies, act as a consumer advocate, and act as an insurance clearinghouse between both groups, as well as supply a number of other necessary regulatory functions. Mr. Koch would like to increase surveillance over insurance companies and provide additional insurance information to consumers, but said he requires additional staff to do so.

Insurance Regulation

1. **Expanding reporting requirements for insurance companies** may help state regulatory agencies monitor the insurance industry. Insurance companies could provide information such as how much is reserved for claims as compared to the amount actually awarded, and specific information on how civil justice doctrines affect insurance companies.

State regulatory agencies often have little information from insurance companies which would allow them to understand the industry's methods. Terminology and accounting methods used by the industry often differ from the general understanding of such concepts. For example, reports of industry losses for 1985 have been calculated at anywhere from a \$5.5 billion loss to a \$1.7 billion profit. The

NCSL believes that the discrepancies are due, in part, to industry accounting methods on certain types of income, including returns on investments.

In a study done by the Conference of Insurance Legislators (applicable sections appear in Attachment F), the State of Oregon reported that there is no lack of available medical malpractice insurance in Oregon. This is primarily due to information obtained from closed claims data filed pursuant to the state's 1975 medical malpractice reform law, which showed loss trends. Distribution of this information aided in establishing a climate where medical malpractice insurance is available in the private market. Tennessee reported that its 1977 law requiring the filing of closed claims data is effective in making medical malpractice insurance available in Tennessee. Several states, including Pennsylvania, Delaware and Louisiana, are increasing their state disclosure requirements. According to Mr. Koch, the State of Alaska has fairly strict disclosure standards as compared with other states.

2. **Requiring cancellation, nonrenewal and policy termination notification** will allow consumers an opportunity to seek other insurance without a gap in insurance coverage. The current lack of available and affordable insurance for some consumers stems from abrupt cancellations and the nonrenewal of coverage by insurers. It has been suggested that insurance companies be permitted to cancel or refuse to renew coverage only in certain clearly defined circumstances, such as the nonpayment of premiums or fraud on the part of the insured. Requirements which address the timely notification of a cancellation or nonrenewal of a policy may cut down on the exposure and/or disruption of business caused by the sudden cessation of liability coverage.

Oregon, Maryland and Nevada have enacted requirements which address the cancellation and renewal of insurance policies. According to the Conference of Insurance Legislators, it is not known how these requirements affect insurance availability and affordability. The state of Alaska does not currently have requirements which address the timely notification of a policy cancellation or nonrenewal. Commercial policies can be cancelled with a ten-day notice, and often premiums are not returned to the policy holder for 60 to 90 days. As a result, policy holders can experience a gap in insurance coverage and not have sufficient funds to purchase a new policy.

Mr. Koch said that the Division of Insurance has supported a cancellation/nonrenewal notification bill for the past two years. He believes that a 45 to 60-day cancellation notice with a requirement that the policy continue until the company returns the premium to the policy holder would be a benefit to policy holders.

3. Amending Alaska law to decrease deposit requirements for companies not licensed in Alaska will increase the availability of insurance in the state. According to Mr. Koch, AS 21.34.040 allows companies not licensed in Alaska to do business in the state only if they have a deposit of \$3.5 million in trust in the United States. Mr. Koch said that only two foreign-based companies can meet this requirement, and 88 other foreign-based companies are barred by this statute from doing business in Alaska. Mr. Koch suggested that a deposit level of \$1.5 million, which is the deposit level in most states, be established. Mr. Koch cautioned that amending this law should not include a decrease in the amount of capitalization and surplus funds required to do business in the state.
4. Requiring insurance companies to itemize state-by-state expenses may eventually lead to insurance companies basing state rates on what occurs in that state. Mr. Koch is not sure how the logistics of a state-by-state itemization by insurance companies would work. He believes that it would be difficult for some companies to attribute expenses for business conducted in Alaska if only a small percentage of their business is in the state.
5. Regulating prices may aid in keeping the insurance industry on an even keel. However, Mr. Koch believes that setting limits on what insurers may charge will also limit the availability of insurance.
6. Establishing rate regulation laws could ensure that rates are adequate, reasonable and not unfairly discriminatory. The three types of rating laws are prior approval, file and use, and open competition. Alaska utilizes the most stringent of these approaches, a prior approval law, which requires the Division of Insurance to approve insurance rate changes before they can be implemented.

* * * * *

I hope this information is helpful to you. Attachment F, referenced in this memorandum, contains additional information on states which have implemented some of the alternatives suggested here. Attachment G is a compilation of alternatives on what states should do to address the crisis on what states are considering doing. If you have any questions or require additional information, please contact our agency.

Attachments

ATTACHMENT A -
1986 STATE LEGISLATIVE ACTION:
LIABILITY INSURANCE
(NCSL)



National Conference of State Legislatures



CIVIL LAW + ACTIONS
Liability +
Tort Reform



info-key

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President David E. Nething
Majority Leader
North Dakota Senate

Executive Director
Earl S. Mackey

Summary

1986 State Legislative Action:

Liability Insurance

The attached summary represents various actions taken or planned for the interim by state legislatures. This list highlights legislative activity and some regulatory initiatives. It is not a comprehensive survey of all enacted legislation.

We have attempted to briefly summarize action taken in legislatures which have already adjourned their 1986 sessions.

This information has been produced through the cooperation of state legislative staff personnel in each state.

Michael Bird/Brenda Trolin
March 10, 1986 (original report)

UPDATE: September 25, 1986

ALABAMA

1986 Session Completed

Enacted

- SB 239 - Authorizes two or more counties to establish self-funded insurance funds for the purpose of providing liability protection for member counties and employees acting in the line and scope of their employment.
- HB 202 - Requires insurance companies which sell medical liability insurance to report to the appropriate state licensing agencies any judgment or settlement resulting from a claim for personal injury caused by an error, omission or negligence in the performance of professional services.
- HB 178 - Grants immunity from suit to the Board of Medical Examiners and the Medical Licensure Commission.
- SB 369 - Grants immunity to the Board of Dental Examiners, certain members, agents, employees, consultants and others in connection with hearing investigations.

Legislation Considered - Not Passed

- o House Bills 213-219 comprised a legislative package proposing to:
- o HB 213 - establish noneconomic damage caps at \$250,000; modify the collateral source rule; limit attorneys' contingency fees; permit structured settlements; and alter the standard of proof.
 - o HB 215 - allow introduction into evidence the amount of reimbursed expenses related to a pending civil suit.
 - o HB 217 - amend the "scintilla" rule by increasing the minimum standards of proof needed to be met to bring about a tort liability action.
 - o HB 218 - cap liability for punitive damages in civil actions at \$250,000 or the amount of non-punitive damages, whichever was less. Would have changed burden of proof from preponderance of the evidence to beyond a reasonable doubt.

ALASKA

1986 Session Completed

Enacted

- SB 377 - Limits of \$500,000 for noneconomic damages for each claim based on a separate injury or incident. It also:

- o Bars a person who suffers personal injury or death from recovering damages if the injury or death occurs in the commission of a felony.
- o Provides for itemization of damages between economic and noneconomic losses.
- o Provides for periodic payment in certain circumstances.
- o Limits liability of members of board of directors of nonprofit corporations; public or nonprofit hospitals; school districts; and citizens advisory committees of a municipality.
- o Modifies joint and several liability by making contributory fault (chargeable to the claimant) diminish the amount of damages proportionate to his fault.
- o Allows a defendant to introduce into evidence the amount of compensation from collateral sources.
- o Establishes prejudgment interest accrual principle.

HB 506 - authorizes municipalities, school districts and regional educational areas to self-insure jointly or purchase coverage on a group basis.

SB 442 - authorizes the Department of Commerce to provide technical assistance to individuals intending to form reciprocal insurers for provision of marine liability insurance.

ARIZONA

1986 Session Completed

Enacted

Seven tort reform bills were sent to the Governor. Five were vetoed. The two which have been enacted into law include:

- o HB 2377 - establishes penalties for unjustified actions and raises limits for mandatory arbitration.
- o HB 2170 - prescribes liability for liquor to a certain intoxicated person or minor; defines "obviously intoxicated" and prescribes certain liability limitations.
- o HB 2375 - modifies insurance regulation and provides for alternative insurance options as follows:
 1. self-insurance for boards of directors of non-profit organizations;
 2. pooling for political subdivisions;
 3. self-insurance for schools;

4. conditions for non cancellation of policies for commercial and industrial risks;
 5. a temporary joint underwriting association for all lines;
 6. the Department of Insurance to set rules and regulations for disclosure of loss experience.
 7. provides authority for profit and non-profit corporations to ensure directors and officers against certain liability.
 8. establishes a study commission on insurance.
- o HB 2418 - authorizes the establishment of a joint underwriting association for provision of medical malpractice coverage for licensed midwives and registered nurses.

Among the legislation vetoed were bills calling for structured settlements (SB 1378), limitation of joint and several liability (HB 2013), collateral source rule modification (HB 2163) and scheduled contingent attorneys fees (HB 2376).

Interim

A petition to refer to the people a proposal to invoke legislative authority to place caps on damages has received over 200,000 signatures and will appear on the November, 1986 ballot. This petition, Proposition 103, also calls for periodic payments and scheduled attorneys fees.

CALIFORNIA

Under Consideration

- o No less than 40 bills have been introduced thus far, including legislation extending all provisions of the state's medical malpractice laws to general tort liability.
- o AB 4406 would expand the annual information provided by insurers to the Insurance Commissioner to include total premiums paid (by individual lines of coverage), total reinsurance ceded and premiums paid, claims made or occurrence base policy identification, trial and judgment incidence, lines of coverage provided, average settlements and judgments, etc.
- o AB 4407 would compel all admitted insurers to offer, in California, every category of direct commercial liability insurance or reinsurance for commercial liability insurance offered by the insurer anywhere in the U.S. Similar provisions are stipulated for surplus line providers.
- o AB 3554 would establish a State fund for providing excess liability coverage for local governments and liability insurance for nonprofit organizations.

- o AB 3875 would require 45 days notice of intent to renew a policy conditioned upon a premium increase.
- o SB 1538 seeks to establish an assigned liability risk pool and SB 1581 would create a rate review board.

Previous Action

- o Proposition 51, which passed by a margin of 62% - 38%, will eliminate joint and several liability in all suits seeking noneconomic damages.
- o Restricted attorneys' contingency fees, an issue upheld by the U.S. Supreme Court in 1985.

COLORADO

1986 Session Completed

Enacted

- o SB 67 will reduce awards by sums from specific collateral sources.
- o SB 67 will limit damages for non-economic loss to \$250,000 unless a court finds "clear and convincing evidence," in which case up to \$500,000 can be awarded. Eliminates awards for derivative non-economic loss except when court finds "clear and convincing evidence" and may award up to \$250,000. Provides that an action against an architect, engineer or land surveyor must be certified by similar professionals.
- o SB 69 will make uniform most statutes of limitations at three years. Time limits for bringing tort actions are either 1 or 2 years.
- o SB 70 will eliminate the doctrine of joint and several liability. Limits liability of a defendant to his proportionate share of negligence or fault.
- o SB 76 extends "good Samaritan" laws to limit the liability of individuals, businesses and corporations, directors of non-profit organizations and government entities when they volunteer their time without pay or enforce a policy or regulation to protect another person.
- o SB 86 limits the liability of vendors to \$150,000 if liquor has been served to an intoxicated patron or a minor. (Became law without Governor's signature). Actions can be brought only by individuals other than the intoxicated person.
- o SB 1167 permanently extends the division of risk management and its fund which were scheduled to expire 6/30/86. Requires purchase of property or liability insurance policies by state agencies to be approved by the division.
- o HB 1185, 1186 and 1187 limit liability for employers, shareholders, officers and board members resulting from the flow of water from a

reservoir. Establishes immunity for state engineers and employees when monitoring reservoirs.

- o HB 1192 limits liability of manufacturers of firearms when products are operated properly.
- o HB 1196 clarifies the immunity of public entities and their employees.
- o HB 1197 ties punitive damages to actual damages in a one-to-one ratio with 2/3rd paid to injured parties and 1/3rd to the state general fund.
- o HB 1201 limits liability for mental health professionals when they use an accepted standard of care but fail to anticipate a patient's violent behavior.
- o HB 1204 permits exemptions to notice of intent to cancel, nonrenew, change benefits or increase rates. Authorizes the Insurance Commissioner to inspect any rate, underwriting rule, policy form or contract and prohibit those deemed hazardous to the public/policyholders. Also requires claims-made policy forms to be filed on or after 1-1-87 except for public entity self-insurance pools.
- o HB 1206 changes the regulation of investments of assets by domestic insurers based upon model NAIC legislation.
- o HB 1205 limits a homeowner's liability when property is entered illegally.
- o 1193 lengthens notice provisions for midterm cancellations of commercial and medical malpractice policies from 45 or 60 days to 90 days. Requires 90 day notice of a unilateral premium increase or coverage reduction and an explanation for said action. Allows cancellations and coverage deductions only with cause.
- o HB 1358 authorizes the Insurance Commissioner to promulgate rules requiring insurers to file supplemental reports or closed - claim files or both for any line, class or subclass, authorizes permissive public hearings to review rates and investigations of availability affordability problems. Sunsets 7-1-89.

CONNECTICUT

1986 Session Completed

Enacted

Public Act 86-338 accomplishes the following:

- o increases from 30 days to 60 days notice of nonrenewal of commercial and personal liability insurance policies.
- o increases from 30 days to 60 days notice of rate or coverage changes for insured risks paying an annual premium of \$50,000 or less.

- o establishes 8 grounds for cancellation of policies including nonpayment of premiums, substantial loss of reinsurance, material misrepresentations, etc. Cancellations are prohibited unless one or more of these grounds are substantiated.
- o requires insurers to submit data on multi peril, general liability and auto coverage lines which includes information comparing aggregate premiums charged and premiums established through rating mechanisms.

Substitute HB 6134 would accomplish the following civil justice changes:

- o modify joint and several liability.
- o reimpose modified sovereign immunity for municipal governments.
- o allow all judgments (currently limited to medical malpractice) to be reduced by sums awarded through collateral sources.
- o impose a penalty, which could include defense costs, for filing suits in absence of probable cause.
- o impose periodic payments on future economic and noneconomic damages exceeding \$200,000.
- o schedule attorneys contingency fees (a five-tiered approach commencing at 33% of the first \$300,000 and finishing at 10% of any amount exceeding \$1.2 million).
- o Recovery is not barred if the plaintiff's negligence was not greater than the combined negligence of the person or persons against whom recovery is sought. Damages shall be diminished in proportion to the plaintiff's percentage of negligence. A defendant is liable to claimant for only his percentage of fault. Provision is made for reallocation of uncollectible amounts among defendants.
- o Liquor liability
 - (a) Sellers (to intoxicated persons) are liable to the person injured for not more than \$20,000 or not more than an aggregate of \$50,000 to all injured parties. (b) A rebuttable presumption that the seller who sold alcoholic liquor to the intoxicated person is solely liable for any damages payable to the injured person is established.
- o Directors, Officers, Trustees
 - Any person who serves as a director, officer, or trustee of a nonprofit organization qualified as tax-exempt under IRS provisions and who not compensated for services shall be immune from civil liability for acts or omissions resulting in injury (provided that person is acting in good faith and within the course and scope of his or her official duties).

Previous Action

Established a market assistance plan and statutorily authorized the creation of joint underwriting associations.

Interim Studies

Public Act 86-338 instructs a legislative committee to analyze underwriting standards, classification systems and premium development techniques. It further instructs the committee to make recommendations re: the claims-made form and potential return to prior approval.

DELAWARE

1986 Session Completed

Enacted

- o SB 533 - limits personal liability of directors of corporations in cases where directors are accused by shareholders of violating their "duty of care."
- o HB 470 requires expanded disclosure of information by property/casualty insurers on a line by line basis for the state of Delaware and as total.
- o HB 444 alters cancellation and nonrenewal notice requirements for commercial, municipal and professional liability policies. Notices must be delivered a minimum of 60 days prior to the effective date of the cancellation or nonrenewal. HB 444 prohibits cancellations or nonrenewals unless one or more of ten reasons (such as premium nonpayment or breach of contractual duties) exists. Suspension of insurer cancellation/nonrenewal authority occurs after the Commissioner has deemed unavailability to be critical.

FLORIDA

1986 Session Completed

Enacted

The Tort Reform and Insurance Act of 1986 accomplishes the following:

- o It freezes rates for all commercial property and liability coverages in Florida at their May 1, 1986 levels from July 1, 1986 until January 1, 1987;
- o It requires a 40 percent roll-back of insurance premiums applicable to one-fourth of the policy-term premium of all commercial liability policies in Florida, pro-rated for the period that such policies are in effect from October 1, 1986 until January 1, 1987; and
- o It requires that all commercial property and liability insurers file new rates with the department which are based upon the rates that were in effect on January 1; 1987.

During the period from July 1, 1986 until January 1, 1987, the applicable insurers would be prohibited from cancelling or nonrenewing their insureds at a rate greater than 30 percent of their cancellation and nonrenewal rates for the previous 24 months during any 30 day

period. Insurers would be permitted to escape the roll-back provisions to the extent that they could show that the resulting rates would be inadequate or would impair their solvency. Lastly, the rates to be implemented on January 1, 1987 would be based on 1984 rates but would be adjusted upward (or downward) as justified by each insurer to comply with actuarial principles.

- o Authorizes financial institutions to participate in reinsurance and Florida insurance exchanges.
- o Authorizes commercial liability risks to be group insured.
- o Increases the department's rate review and enforcement authority.
- o Creates a property/casualty insurance excess profits law.
- o Authorizes creation of a commercial property/casualty joint underwriting association.
- o Expands the types of health care providers that can self-insure and authorizes CPAs, architects, engineers, veterinarians, land surveyors and insurance agents to self-insure.
- o eEstablishes notice requirements for cancellation, nonrenewal and renewal of premium of commercial liability policies.
- o Authorizes the creation of commercial self-insurance funds.
- o Modifies the application of the doctrine of joint and several liability.
- o Limits when punitive damages may be pled, specifies to whom they are to be distributed, and caps the maximum amount of such damages in certain cases.
- o Caps noneconomic damages in civil actions at \$450,000.
- o Requires, under certain circumstances, periodic payment of future damages exceeding \$250,000.
- o Creates a five member Academic Task Force for Review of the Insurance and Tort Systems.

Interim

Insurers and three industry trade groups are challenging the constitutionality of Florida's new law.

GEORGIA

1986 Session Completed

Enacted

- o SB 369 and SB 440 - respectively authorize local governments and school boards to join together for purposes of securing liability insurance.
- o HB 1146 - (Act No. 1670) compels plaintiffs found to have filed frivolous suits to pay fees and costs incurred by defendants.
- o HB 1185 - (Act No. 1486) regards dismissal of actions for frivolous suits.
- o HB 1471 - (Act No. 1619) clarifies sovereign immunity of municipal corporations.
- o HB 1549 - (Act No. 1422) and HB 1526 (Act No. 1621) establish immunity for governmental employees and officials.
- o HB 1503 - (Act No. 1456) places tighter restrictions on cancellation and renewal of policies by insurance companies.
- o SB 553 - (Act No. 1457) establishes assigned risk pools for certain property/casualty insurance risks and authorizes the insurance commissioner to order a refund of portions of premiums.
- o SB 384 - (Act No. 1518) requires insurers to file itemized annual reports.

HAWAII

1986 Session and Special Session Completed

Enacted

- o HB 1993-86 - provides for additional exceptions to the state's tort claims act.
- o HB 2238-86 - provides a statutory mechanism for ensuring that child care providers will be able to secure liability insurance.
- o HB 1695-86 - authorizes mass merchandising of motor vehicle, property casualty insurance to the employees of any employer or to the members of any association or organization under a mass merchandising plan audited by the insurance commissioner.
- o HB 1694-86 - authorizes the licensure and operation of pure captive insurance companies and association captive insurance companies.
- o HB 2549-86 - allows for the formation of workers' compensation self-insured groups.

- o S1-86, special session legislation, accomplishes the following:
- o Beginning October 1, 1986, all authorized insurers transacting commercial liability insurance shall implement a 10% rate reduction, excepting motor vehicle and medical malpractice policies (new rates in effect through September 30, 1987). The Insurance Commissioner is empowered to except companies who petition and show that such rates affect solvency of company.
- o Beginning October 1, 1987, all authorized insurers providing commercial liability insurance shall implement a 12% rate reduction, excepting motor vehicle policies only effective through September 30, 1988.
- o Effective October 1, 1988, all authorized insurers shall implement a 15% rate reduction, excepting motor vehicle policies, effective through September 30, 1989.
- o Provides for a closed claim study which could result in rebates or credits to insureds if premiums are excessive.
- o Prohibits cancellation of the insured prior to expiration of agreed term or one year from effective date of the policy or renewal, with 8 specific exceptions.
- o Provides for nonrenewal of policies if insurer gives 45 days notice with reasons for nonrenewal.
- o Provides that insurance contracts shall not cover punitive or exemplary damages unless specifically included.
- o Provides for limitation of attorneys' fees for plaintiff and defendant to a reasonable amount (determined by court of jurisdiction).
- o Provides that plaintiff or defendant in a settlement may request attorneys' fees be subject to approval of court of jurisdiction.
- o Provides that attorneys' contingent fees in any action for medical tort are subject to court of jurisdiction approval.
- o Provides that courts may assess either party a reasonable sum for attorneys' fees if the court finds that the party's claim or defense was frivolous (amount shall not exceed 25% of amount originally prayed for).
- o Provides for periodic payment of damages in excess of \$1,000,000 if defendant is the State, political subdivision of the state or any governmental agency.
- o Provides for a statute of limitations on medical torts; no suit can be brought more than 2 years after the plaintiff discovers or should have discovered the injury, and not more than 6 years after the date of the alleged act or omission causing the injury (exception for minors).

- o Provides for payment of valid liens (arises out of claim for payment made from collateral sources for costs and expenses arising out of injury) from special damages recovered.
- o Abolishes joint and several liability with four specific exceptions.
- o Provides standard for determination of loss or impairment of earning capacity.
- o Places a \$375,000 cap on non-economic damages.
- o Establishes a court annexed arbitration program for cases having a probable jury award of \$150,000 or less.
- o Abolishes cause of action for serious emotional distress arising from damage to property or material objects.
- o Appropriates \$100,000 for subsidy payments covering liability insurance premiums of certain obstetricians and gynecologists.
- o Appropriates \$400,000 for the insurance commissioner to carry out purposes of this act and hire additional staff.
- o Appropriates \$200,000 to implement court annexed arbitration program.
- o Provides for closed case reports prior to 1988 and 1989 sessions, evaluating the effects of the act along with recommendations for change or repeal of provisions.
- o Provides for the chief justice to prepare a report on court annexed arbitration prior to 1987 regular session.

IDAHO

1986 Session Completed

Enacted

- o SB 1439 - limits dram shop and social host liability.
- o HB 1469 - places limits on attorney contingency fees.

Legislation Considered - Not Passed

A major proposal (SB 1297) calling for establishment of a state insurance fund was among the bills not passing.

ILLINOIS

1986 Session Completed

Enacted

SB 1200, passed on the final day of session, accomplishes the following:

- o Joint and several liability. It retains joint liability in cases of medical malpractice, environmental concerns and medical costs. Defendants who are less than 25% at fault for an injury would not be jointly liable for other damages.
- o Collateral sources. Any judgment against a defendant would be reduced by any insurance reimbursements to the plaintiff above \$25,000.
- o Comparative negligence. A plaintiff who is more than 50% responsible for his injury would not be permitted to collect damages in cases of negligence or product liability.
- o Municipal immunity. Grants broad immunity from liability suits to municipalities; exempts present or former public employees from punitive damages for actions arising from official duties; exempts a public entity from liability for "hazardous recreational activities" when warning of the hazard is posted.
- o Requires insurers to provide loss information with notification of cancellation or at request of insured.
- o Requires 90-day notice to the state of termination of any line of insurance in the state.
- o Requires 60-day notice to insureds of cancellation, nonrenewal or premium increase of 30% or more.

Previous Action

- o In December 1985, the Insurance Department launched a market assistance plan.
- o Select Committees in both the House and Senate have examined the affordability/availability issue.

INDIANA

1986 Session Completed

Enacted

- o SB 393 authorizes judges to determine what are frivolous suits and to assess fees for such suits.
- o SB 394 modifies the state's collateral source rule. Juries are to be instructed not to take into account taxes to be paid on potential awards.
- o SB 85, dealing with dram shop, asserts that licensed sellers are not liable for the actions of their customers unless they know customers making purchases are intoxicated.
- o HB 1255 allows the state to administer insurance pools for local governments.

- o HB 1284 grants volunteers immunity from liability unless the entity which they assist has insurance.

IOWA

1986 Session Completed

Enacted

- o Increase the risk manager's duties in relation to providing insurance and risk management assistance to local governmental entities and increase the risk manager's authority to self-insure fidelity exposures for state officials.
- o Authorize local governmental entities to enter into alternative financing agreements for insurance, self-insurance, risk sharing or risk pooling, and for the funding of such agreements.
- o Create an Insurance Assistance Act, which sets out requirements for data collection and analysis, authorization for certain insurance assistance programs, provision for the financing of the programs and required insurance rate adjustment reviews.
- o Modify laws relating to the recovery of damages, including:
 - o limiting the liability of the state for financial regulatory activities.
 - o exempting social hosts from liability for the service of alcohol to guests.
 - o restricting the discovery and use of medical malpractice peer review and disciplinary proceedings.
 - o expanding the use of voluntary agreements in medical malpractice cases.
 - o creating a retailer's exemption in products liability actions.
 - o limiting the liability of municipalities for licensing and inspection activities.
 - o limiting the liability of municipal officers and employees for punitive damages.
 - o authorizing the court to stay court actions if past actions by the party have been frivolous.
 - o prohibiting the stating of money damages demanded in original pleadings and filings.
 - o requiring the certification of pleadings and motions, and providing sanctions for the failure to so certify or for actions in violation of the certification requirement.

- o authorizing the use of structured and other nonlump-sum payment methods by the court.
- o creating a state of the art defense in products liability actions.
- o raising the required findings for the award of punitive or exemplary damages, and creating a new system for the award and disbursement of such damages.
- o Establish a Liability and Liability Insurance Study Commission to be comprised of eight legislators, four members of the public or private sector, the Attorney General and the Insurance Commissioner.

Interim

A continuing legislative/public member study will focus on tort liability and insurance issues for which there is insufficient documentation of need and effectiveness. Items likely to receive attention are the collateral source rule, damage caps, attorney fees, premium rollbacks and innovative judicial mediation techniques.

KANSAS

1986 Session Completed

Enacted

- o HB 2661 - caps damage awards against health care providers at \$1 million. Noneconomic damage awards in these same medical malpractice judgments are capped at \$250,000 (subject to cost of living adjustments). Juries must itemize noneconomic damage awards and all settlements are to be paid periodically.

A "pinhole" provision permits claimants to petition courts to award supplemental benefits for medical-related expenses up to a maximum of \$3 million.

- o SB 512 - prohibits cancellation of business and professional liability insurance policies unless one of 5 causes for cancellation can be determined (as nonpayment of premiums, material misrepresentations, etc.).

This legislation also requires insurers to give policyholders 60 day notice of a decision to nonrenew.

- o SB 382 - allows deductible health care provider liability insurance.
- o SB 400 modifies civil procedures regarding determination of frivolous suits.

Legislation Which Failed

- o SB 540 would have established a \$1 million liability cap for various professionals.

Interim

An interim study on liability insurance has been commenced.

KENTUCKY

1986 Session Completed

Enacted

- o SB 309 - will permit the Insurance Commissioner to establish a voluntary risk sharing association for hard-to-get lines of commercial liability coverage.

Legislation Considered - Not Passed

- o Among dozens of introduced bills which did not pass was legislation capping awards, providing for structured settlements, modifying the collateral source rule and providing changes in the areas of medical malpractice.

Interim

Legislative leadership authorized the creation of a task force to review the entire issue including authority to investigate the State Insurance Department and the insurance industry.

LOUISIANA

1986 Session Completed

Enacted

- Act 18 - Provides that those who sell, serve or furnish alcoholic beverages are generally not civilly liable for damages caused by purchasers and those served.
- Act 111 - Relative to joint self-insurance programs by local governmental subdivisions.
- Act 473 - Relative to the funding and operation of the Department of Insurance, to establish the budget units of the Department, to create a special fund to provide monies for operation of the department.
- Act 499 - Requires that written notice of partial settlement of medical malpractice claims be sent to the attorney general.
- Act 548 - Requires property and casualty insurers to provide additional information in their annual reports.
- Act 641 - Authorizes governmental subdivisions to form, join and participate in interlocal risk management groups.

- Act 662 - Authorizes sheriffs and others to form an interlocal risk management agency.
- Act 754 - Prohibits midterm cancellation or rewriting of insurance.
- Act 830 - Empowers the attorney general to represent consumers in all proceedings before the Insurance Rating Commission.
- Act 843 - Authorizes the Louisiana Insurance Rating Commission to use subpoenas and other methods of discovery.
- Act 857 - Requires increased data reporting to the commissioner of insurance.
- Act 902 - Allows statewide professional, trade and occupational associations to establish one or more professional or public liability trust funds without such funds being deemed insurance.
- Act 952 - Establishes a special committee to study the affordability and availability of liability insurance. Provides for limited civil liability in connection with hazardous waste and asbestos abatement and cleanup.

MAINE

1986 Session Completed

Enacted

- o Public Law 671 prohibits midterm cancellations unless cause (such as nonpayment of premiums, fraud, breach of contract, potential insurer insolvency, etc.) can be confirmed. Notice of cancellation must be made 10 days prior to the cancellation. Notice of a nonrenewal must be made 30 days prior to a policy's expiration date. Policyholders can request that the Superintendent of Insurance verify that the insurer has established cause for the nonrenewal.
- o LD 2080 grants immunity to servers unless minors they serve can prove they were negligently served. Servers who are negligent or reckless in serving minors or visibly intoxicated adults could be sued. Per occurrence caps of \$250,000 on awards against alcohol servers are established. These caps exclude medical care and treatment expenses.
- o Public Law 713 authorizes political subdivisions to participate in public self-funded pools.
- o Public Law 804 shortens statute of limitations for suits related to medical and legal professional liability

Legislation Considered - Not Passed

LD 2053 would have given the Insurance Commissioner authority to establish a joint underwriting association for provision of liability coverage for day care operators, public entities, liquor retailers and municipalities.

Interim

An interim commission comprised of legislators, legal and insurance representative will explore tort liability.

MARYLAND

1986 Session Completed

Enacted

- o Awards for noneconomic damages would be capped at \$350,000 per SB 558.
- o Prior approval of premium rates would not be required for three additional years per HB 329.
- o SB 600 provides personal immunity for directors of charitable organizations provided the organization itself is insured.
- o SB 899 will require that personal lines providers make coverage available to licensed operators of in-home day care facilities.
- o SB 1015 authorizes pooling and self-insuring for certain types of casualty risks, particularly local governments and nonprofit organizations.
- o SB 379 permits a CUA (Commercial Casualty Underwriting Association - a private association comprised of all Maryland licensed insurers) to write insurance for "subpools" (e.g., day care centers) upon the Insurance Commissioner's determination that commercial insurance is unavailable.

Interim

A Joint Task Force is exploring the feasibility of establishing a catastrophic loss fund to cover catastrophic losses for all commercial casualty lines. The task force is also examining the possibility of establishing a Maryland Reinsurance Exchange.

MASSACHUSETTS

Enacted

- o HB 6172 accomplishes the following regarding medical malpractice:
 - o establishes an independent medical review board comprised of disciplinary and risk management units and vested with subpoena powers.
 - o requires medical malpractice insurers and tribunals to report final disposition of medical malpractice cases.
 - o eliminates the collateral source rule and establishes a mechanism to have awards itemized.

- o establishes a \$500,000 cap on general noneconomic damages except where plaintiff is substantially impaired or disfigured.
- o schedules attorneys fees (40% of first \$150,000 down to 25% of excess over \$500,000).
- o amends the outside statute of limitations (after date of occurrence which gave rise to an original claim) to 7 years.
- o requires the Insurance Commissioner to set final rates and permits imposition of a surcharge on medical malpractice premiums. The maximum amount of coverage for physicians and hospitals is doubled.
- o a medical malpractice commission shall study the health insurance industry including premiums, reimbursement practices, feasibility of a patient compensation fund, etc.
- o establishes a medical malpractice analysis unit in the Department of Insurance.

MICHIGAN

Enacted

- o HB 4550 - prescribes liability for retail liquor licensees under certain circumstances; requires security for that liability and provides procedures, defenses and remedies.
- o HB 4676 - health facilities with medical staff, including HMO's, shall report to appropriate licensing boards and to the Department of Health any disciplinary action taken against a member of the medical staff and relevant circumstances.
- o HB 5163 - makes uniform the liability of municipal corporations, political subdivisions, and the state, its agencies and departments, when engaged in the exercise or discharge of a governmental function; defines and limits liability; authorizes the purchase of liability insurance; provides for defense of public officers, and their immunity in certain circumstances.
- o HB 5154 - provides for a \$225,000 limitation on non-economic damages in medical malpractice cases, unless one of the following circumstances exist: death; intentional tort; foreign object wrongfully left in body; injury involves reproductive system; discovery of claim was prevented by fraudulent conduct of health care provider; limb or organ was wrongfully removed; loss of bodily function. HB 5154 also:
 - o stipulates that the trier of fact shall itemize damages into economic and non-economic.
 - o provides a cost-of-living escalator in the cap which is tied to the annual increase in the consumer price index.

- o permits a party named as one of multiple defendants in a medical malpractice case to file an affidavit of noninvolvement.
- o requires that plaintiffs and defendants in medical malpractice cases file an affidavit containing a written opinion from a licensed physician, dentist or other appropriate health care provider stating that the claim or defense has merit.
- o allows defendant to recover (contribution) from co-defendants any amount for which they may have been liable.
- o provides for implementation of pre-trial mediation in all medical malpractice claims, regardless of dollar amount of claim.
- o addresses prejudgment and postjudgment interest rates.
- o provides that evidence that expense or loss was paid or is payable by collateral source is admissible after the verdict and before judgment is entered; court will be required to determine the amount of expense which has been paid by collateral source and then reduce that amount by an amount equal to the premiums paid for the benefit by the plaintiff, the plaintiff's family or employer.
- o joint and several liability - the trier of fact shall determine the total amount of damages and the percentage of total fault of all parties regarding each claim as to each plaintiff, defendant and third party defendant. Then the amount shall be reduced by collateral source payments. If a party's share is uncollectible, then a reallocation of the uncollectible amount occurs (a party shall not be required to pay an amount which exceeds its percentage of fault).
- o mandates structured payment provisions if judgment for future damages exceeds \$250,000 gross present cash value; then court enters an order that defendant shall satisfy the entire judgment amount, less cost and attorneys fees, by purchase of an annuity contract; requires itemization of past economic and noneconomic damages and future damages.

MINNESOTA

1986 Session Completed

Enacted

HF 1950 contains the following civil justice system modifications:

- o imposition of a \$400,000 cap on "intangible losses".
- o provision for the automatic reduction from judgments of payments made from collateral sources.
- o prohibition of victims seeking punitive damages in original complaints.

- o allows the court to award costs in frivolous suits.
- o exempts future damages from prejudgment interest.

SF 2078 accomplishes the following insurance regulation and provision modifications:

- o creates a state risk management fund.
- o requires P/C insurers to submit annual reports on liquor and product liability and medical malpractice and any other line designated by the commerce commissioner. These reports shall contain: written and earned premiums, investment income, incurred claims, operating and underwriting gains and losses.
- o creates a state-run joint underwriting association (specifically for day care providers, foster homes, group homes and sheltered workshops).
- o In determining whether rates are or are not excessive, the commissioner will be authorized to utilize a definition of "less than 5 insurers writing more than 75% of the coverage" as non-competitive.
- o SF 1612 - authorizes the state's temporary j.u.a. to issue medical malpractice insurance to hospitals and nursing homes unable to get coverage.

MISSISSIPPI

1986 Session Completed

Enacted

- o HB 755 - authorizes the Commissioner of Insurance to establish a plan for the availability of certain general liability insurance policies. In 1985, HB 983 established immunity for government employees and officials and modified sovereign immunity. HB 983 placed a statute of limitation on suits filed against the state.
- o SB 2166 - reestablishes sovereign immunity for the state effective July 1, 1987, and for political subdivisions effective October 1, 1987.
- o The Mississippi Insurance Commission has imposed a moratorium on p/c rate increases effective through December 30, 1986.

MISSOURI

1986 Session Completed

Enacted

- o SB 663 - caps noneconomic damages awardable in medical malpractice suits at \$350,000. This legislation also requires certain doctors to carry

medical malpractice insurance and adds additional reporting requirements regarding disciplinary actions taken by hospitals against doctors. SB 663 requires submission to court of an affidavit from a licensed health care provider averring that a medical malpractice action is not frivolous.

- o HB 1435 and 1461 - create a "Missouri Public Entity Risk Management Fund" for participating political subdivisions whose contributions will be used to pay insured claims and legal fees for such claims. Coverage for tort claims will cover official actions of employees. A limit of \$800,000 is established for payment for any single occurrence. Contribution by political subdivisions will be determined by the Board in accordance with standard rating procedures. The minimum contribution will be \$1,000.
- o SB 647 - reestablishes sovereign immunity with several exceptions.
- o SB 701 - updates statutory language of the "FAIR Plan", authorizing that plan to assist people in securing basic property insurance in non-urban areas, and to issue its own policies. Raises coverage limit on commercial property at one location to one million dollars.

MONTANA

1986 Special Sessions Completed

Enacted

- o SB 2 - authorizes bond issues for local government self-insurance funds.
- o SJR 1 - authorizes an interim study commission to review public and private sector problems regarding liability insurance.
- o HB 16 - authorizes the Insurance Commissioner to establish a market assistance plan, and, if necessary, a joint underwriting association for provision of liability insurance coverage.
- o SB 22 - revises limits on tort recovery against public entities.
- o Special session legislation caps government liability at \$750,000 per claimant and \$1.5 million per incident. Previously enacted statutes on this same matter were found unconstitutional by Montana's Supreme Court.

Legislation Introduced - Not Passed

- o HB 21 would have created a state reinsurance program.

NEBRASKA

1986 Session Completed

- o Established a major study commission to review the scope of the entire issue during the 1986 interim.

NEW HAMPSHIRE
1986 Session Completed

Enacted

HB 513 - will accomplish the following:

- o place a \$875,000 cap on pain and suffering awards;
- o reduce the statute of limitations from six to three years;
- o prohibit policy cancellations unless 60 days notice is given.
- o permit judges to assess costs and attorneys fees from frivolous lawsuits and frivolous defenses.
- o apply liability caps of \$500,000 (per occurrence) and \$150,000 (per person) to municipalities. When municipalities are found over 50% liable, joint and several liability will apply with only several liability applying when municipalities are 50% or less liable.
- o defines "good business practice" for purposes of defense in liquor liability lawsuits. Intoxicated drivers will need to show "gross" negligence in future suits against sellers and servers.
- o requires contingency fee agreements to be in writing with final costs set out at the end of litigation. Attorneys will be required statutorily to offer hourly rate and contingency fee options. Judges will be permitted to review contingency fee costs in all judgments exceeding \$200,000.
- o outlaw punitive damages (existing practice).
- o set out the burden of proof in medical malpractice actions.
- o limit the liability of directors and officers of charitable organizations and societies.

HB 479 (Chapter 59) - relates to regulation of surplus lines insurance coverage.

HB 414 (Chapter 58) - provides for licensing of insurance consultants.

HB 360 - relates to credits for reinsurance.

Interim

HB 513 - also creates a Tort Reform Commission to evaluate the workability of the new law and to study issues, as the collateral source rule, not resolved in this session. The Commission will report in December, 1986 and December, 1987.

NEW JERSEY

Enacted

SB 1678 - grants immunity to volunteer unpaid athletic coaches provided these individuals have participated in league-established safety and training programs.

Under Consideration

- o AB 2400 - 2404 have passed the General Assembly proposing the following: structured settlements for awards exceeding \$300,000; a \$500,000 per claimant or \$1 million per occurrence cap on judgments entered against a public entity; immunity for volunteers and public officials; arbitration for all liability claims of \$20,000 or less; rate filings based on New Jersey loss experience; and a graduated cap on "pain and suffering" awards in the private sector. These bills are now before the Senate.
- o Assembly Bills 2357-2365 would apply various tort and regulatory reforms in the area of municipal liability. Besides establishing an excess insurance fund, the bills would modify joint and several liability and provide for structured settlements.
- o The Senate has put forth two packages. Majority Democrats have developed a major package, SB 2312-2323, of insurance reform bills and selected civil justice reform measures. SJR 40 also calls on the federal government to take over regulation of the insurance industry. Minority Republicans have a six-bill package of insurance and civil justice modifications and reforms. Hearings on liability insurance may occur during the summer.
- o S. 1718 would create an excess insurance fund and require all public entities, except the state, to join. All public entities would be assessed premiums and the coverage would be for claims exceeding \$500,000 up to \$20 million. This legislation has passed the Senate and is before the House Insurance Committee.
- o Other Senate legislation seeks to provide indemnification of hazardous waste contractors and modify standards of negligence.
- o SB 346 - now in the Assembly, would grant immunity to boards of trustees of nonprofit corporations carrying out their official duties.

Previous Actions

- o Counties, municipalities and school boards may self-insure or join together in regional insurance pools.
- o The Insurance Commissioner prohibited midterm cancellations and nonrenewals unless notice is given.
- o A market assistance plan aimed at making liability insurance available for municipalities, day care centers, taverns and restaurants has been established.

NEW MEXICO

1986 Session Completed

Enacted

HB 178 - provides school districts with insurance coverage at a cost savings and clarifies statutes related to the public school insurance authority.

SB 108 - creates a District Court Arbitration Fund and provides for collection of an arbitration user fee.

HB 317 - extends the coverage which the risk management division is able to provide to school districts through the public school insurance authority.

SB 110 - caps attorneys fees for workers compensation cases at 20% of the first \$5,000; 15% of next \$5,000 and 10% of remaining benefits.

HB 244 - provides for certain limitations on liability for alcoholic liquor sales or service. Establishes caps of \$20,000 for property damage, \$50,000 for injury to or death of one person; \$100,000 for injury to or death of two or more persons for each transaction or occurrence.

SB 105 - expands the applicability of the self-insurance and risk pooling provisions of the Municipal Code to include other political subdivisions and local public bodies.

Committee substitute for HB 226 - requires most insurers to submit quarterly financial reports to the superintendent of insurance. Based on these reports, the superintendent is required to compile an annual report for legislators.

HE 242 - creates a public child contractor liability fund.

SB 137 - creates a Metropolitan Court Mediation Fund; provides for collection of certain costs to fund mediation programs for certain civil and criminal actions.

Study Groups

- o establishing a legislative liability insurance study committee.

NEW YORK

Enacted

Insurance and civil justice reforms are both included in omnibus legislation signed by the Governor in late June. SB 9351-A and A-10663 (Chapter 220, 1986 Session Laws) accomplish the following tort reforms:

- o compels courts to offset awards by amounts received from collateral sources (similar 1985 legislation regarding medical malpractice).

- o allows recovery of up to \$10,000 in court costs and attorneys fees for frivolous suits and defenses in personal injury, property and wrongful death actions.
- o establishes "gross negligence" as the determinant of liability of directors, trustees, officers of nonprofits.

The same legislation accomplishes the following insurance reforms:

- o creates a flex rating system to ~~replace~~ open, competitive ratemaking. Insurers must file rates to reflect enacted tort reforms within 90 days. The Insurance Department in September, 1986, informed insurers that the net effect of tort reforms would compel reductions ranging from 3% to 20% depending on line of coverage.
- o authorizes the Insurance Department to conduct a selected review of rates for the period 6/85 - 6/86. Mandates that every rate filed since 6-1-86 be reviewed.
- o the flex rating system includes Commissioner - imposed "bands" on rate increases/decreases by line. If a proposed rate increase/decrease falls within the band, rates are filed and used. If the proposed rates are outside the band, rates are filed and subject to approval. Bands can be changed. Commercial, professional and public entity lines are included in flex-rating (not homeowners or automobile).
- o authorizes a discretionary joint underwriting association for troubled commercial, public entity and professional liability lines pursuant to Insurance Department determination of unavailability. Requires establishment of a j.u.a. for public entities by 10-1-86 unless the Department determines that coverage is available.
- o prohibits unwarranted midterm cancellations.
- o requires P/C policies to extend a minimum of one year.
- o prohibits policy cancellations unless warranted (as when there is fraud - nonpayment - material charges, etc.). Lack of reinsurance is not in and of itself a reason to cancel unless solvency is threatened.
- o requires at least 60 days notice to not renew or to affectuate a premium increase exceeding 10%.
- o enables policyholders to secure claims loss history.
- o permits municipalities, school districts and other public entities to form reciprocal insurers.
- o permits certain nonprofits and charitable/religious organizations to collectively purchase P/C coverage.