

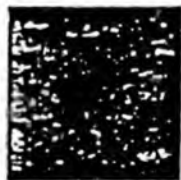
ALASKA LEGISLATURE COMMITTEE FILES, 1989-1990 8672
5622 HOUSE COMMUNITY & REGIONAL AFFAIRS

Bond-Financed Self-Insurance for Public Entities

by the Chicago Chapter, The Society of CPCU

ABSTRACT— This paper was written to assist public entity risk managers and brokers in the development of an alternate approach to traditional risk management problems faced by public entities. Although there is a quantity of information available on both risk management techniques, in particular on retention plans and public finance, until recently there was practically no information available on the use of public finance and risk management techniques in combination. The purpose of this paper is to begin to fill that void.

Statement of the Problem



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Resolution of the Alaska Municipal League

Resolution No. 89-10

**A RESOLUTION SEEKING ENABLING LEGISLATION
ALLOWING MUNICIPALITIES AND JOINT INSURANCE
ARRANGEMENTS TO USE DEBT FINANCING**

WHEREAS, AS 21.76 allows municipalities to form joint insurance arrangements in order to mitigate the effect of wide fluctuations in the availability and price of coverage for local governments, and

WHEREAS, beginning July 1, 1988, 38 Alaska municipalities created such a joint insurance arrangement through the Alaska Municipal League by retaining a certain amount of expected losses and purchasing reinsurance and stop loss coverage to limit their exposures, and

WHEREAS, reinsurance and stop loss coverage are subject to the same cyclical market conditions that cause costs to escalate and limited availability from commercial insurance carriers, and

WHEREAS, elsewhere in the United States municipalities have found that the cost of debt financing for building a self-insurance reserve can be substantially lower than the cost of premiums from commercial insurance companies, while at the same time providing potentially broader coverage, and

WHEREAS, through the sales of bonds to develop a reserve fund and the use of premium payments to pay off the loan, the municipalities will be better able to provide coverage at the lowest possible cost to protect communities and the taxpayers, and

WHEREAS, the Board of Directors of the Alaska Municipal Bond Bank have approved the concept of backing financially sound bonds through the Bond Bank, an insignificant risk compared to the potential costs to the State of a major loss suffered by an inadequately insured community;

NOW, THEREFORE, BE IT RESOLVED that the Alaska Municipal League urges the passage of legislation by the 16th Alaska Legislature and the Governor that would give joint insurance arrangements or municipalities the explicit authority to incur debt to establish reserves and self-insure liability


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Summary. The problems faced by public entities are not new to this particular cycle. Public entities have never been on most insurers' target accounts lists. While some insurers have specialized in public entity business, most treat the business as agency accommodation or write the entity in a spirit of civic-mindedness. With the pressure put upon financial results by investors, particularly the financial service conglomerates, upon statutory results by regulators and legislators and upon the industry itself out of fear of widespread insolvency and capital impairment, agency accommodation and civic duty has taken a back seat to cancellation and nonrenewal notices. The future appears no brighter, as the reinsurers appear to be reluctant to assume public entity exposures, and the primary carriers can still afford to pick and choose the risks they wish to write with little fear of competition.

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The Traditional Approach. The traditional approach to protecting a public entity for its exposures to loss centers around insurance or self-insurance if the entity is of sufficient size, or a combination of both. Typically, insurance contracts are written for most property exposures, except perhaps for automobile physical damage, all liability exposures, including professional or errors and omissions, excess liability coverages, and workers' compensation. Unemployment compensation is gener-

ally provided by a state-sponsored insurance program. Employee benefit programs are typically provided as insurance contracts or combinations of insurance and subscriber-type plans.

Larger public entities typically will deviate from the above by retaining some or all of their general liability exposures, workers' compensation, unemployment compensation and employee medical benefit plans. In other words, if they retained, they have tended to retain exposures that are of relatively high and predictable frequency and low and calculable severity.

The Advantages of Insurance. When municipalities insure, they enjoy the advantages of a relatively predictable maximum cost for the policy year. Their potential payouts are capped by the premiums and deductibles. In addition, the municipality can receive services from the insurers, such as loss control and claims administration and settlement. When the insurance cycle is in its competitive phase, municipalities may be able to purchase coverage for a premium which is less than their expected losses.

The Disadvantages of Insurance. Insurance companies are driven by a profit motive and a survival motive (sometimes it is unclear which is dominant). Premiums charged include profit loadings, contingency loadings, pro-rata taxes levied to finance regulation, insolvency funds, other funds, such as workers' compensation second-injury funds. The municipality is not exempt from these taxes unlike most other taxes or levies. The insurers' profit and survival motives can create such variance in pricing the coverages that the premium determination process creates budgetary and planning difficulties and uncertainties for the public entity.

The control of the programs is not in the hands of the insured or its representative, and so the entity may be subject to the changing winds of underwriting philosophy and endure in some fashion cancellations, nonrenewals and notification of restrictions of coverage. The public official may be placed in the paradoxical position of retaining an outlandishly high premium, which would be paid on a taxpayer suit if accepted, for a line of coverage which is needed to protect him when he is sued for having the coverage in place, and which would likely be cancelled or renewed at an even higher premium if the taxpayer suit is brought.

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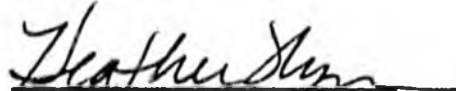
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exposures and also allow the Alaska Municipal Bond Bank to underwrite this debt through the sale of revenue bonds, notes, or certificates of participation either directly or through an entity it might create.

Adopted this 18th day of November 1988 in Fairbanks, Alaska.


Heather Flynn, President

ATTEST:



Scott A. Burgess, Executive Director

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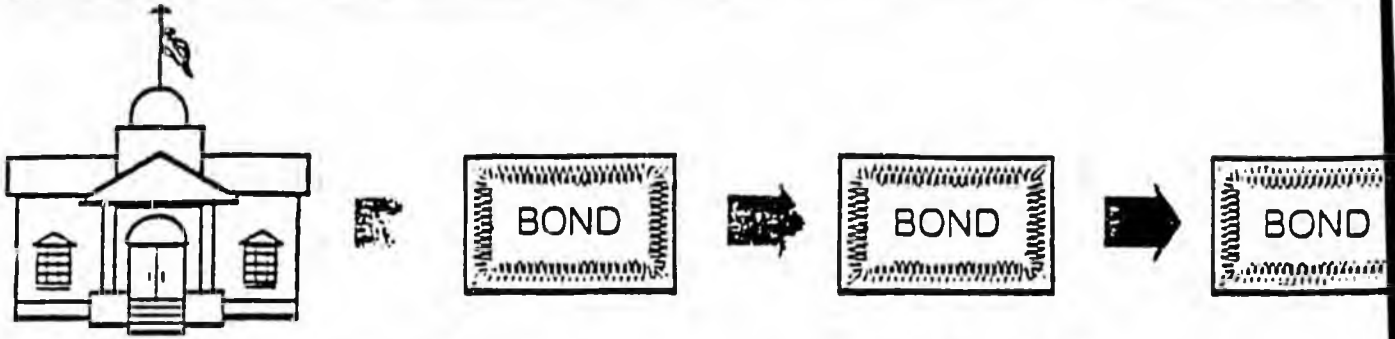
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ance market, self-insurance has an advantage over traditional insurance. The greater the distance between the protected entity and the insurance market, as measured by the retention, the greater the control the protected entity has over its risk management program.

Since insurance premiums are significantly reduced, if not eliminated in a self-insurance program, cost factors such as an insurer profit margin, contingency margin and premium tax are not incurred, thus enhancing the efficiency of the risk management program dollar, as more of the allocated funds are available to pay claims.

The Disadvantages of Self-Insurance. To the extent that there is excess insurance, there is a likelihood of exclusions, limitations, and other restrictions that evidence a lack of program control by the protected entity and the possibility of uncovered exposures.

There may be a program cost volatility that is greater than that of traditional insurance price volatility, as the self-insurer's program cost contains more of the losses that are transferred out of the entity through insurance. This is particularly likely if there is little emphasis on loss control. This volatility is more prevalent in a single-entity self-insurance program than in a multiple-entity self-insured pool, wherein the combination of many exposures lessens the variance of risk or volatility of results to all participants.

Depending upon the existence of excess insurance coverage for an entity or pool of entities, and if there is coverage, upon the structure of the excess insurance coverage, post-loss funding may create budgetary difficulties akin to those created by traditional prospective premium determinations.

A Proposed Solution

Bond-Financed Self Insurance. Bond-financed insurance programs, whether covering single exposures or pooled exposures, are a combination of traditional concepts of insurance/self-insurance and capital finance in a nontraditional fashion. To properly analyze such programs, they must be broken down into their two fundamental components, the risk retention structure which may involve varying degrees of risk transfer and retention, and the issuance of principal bonds or debt instruments in the capital market to provide proceeds for pre-loss funding of expected future losses.

Statedly alternatively, a public entity (or pool of entities) enters the insurance market as a supplier of insurance capacity by becoming its own insurer, raising funds for capitalization by issuance of debt. This simplified depiction of the bond-financed self-insurance programs points out the two significant departures from tradition: (1) public entities are not traditionally creators of insurance capacity and (2) insurers traditionally do not use debt in their capitalization structures. However, for the public entity wishing to form an insurance mechanism of some sort, i.e., company, reciprocal or retention group, it has no alternative but to capitalize with debt, assuming there is no sufficient surplus of current funds available.

The Self-Insurance Function

General Design. Self-insurance for a public entity or a pool of entities in a bond-financed self-insurance structure is similar to a normal self-insurance program in its design. The significant departure from the traditional approach is the lessening of price and coverage volatility experienced by the entity by the use of self-insurance as protection for the retention funds and the entity. The pool of funds raised by the issuance of bonds acts both as the capital and surplus of an insurance company and as the excess insurance for the retention structure, so that if any losses exceed the planned retentions, on a single occurrence or in the aggregate, pre-loss funds are available to maintain solvency of the retention funds and to pay for those losses as an excess policy would replace the deficits and the losses in excess of retentions.

Breadth of Coverage. Since there is no real need for excess insurance, the risk retention structure can template any exposure or peril desired without re-

to policy language and underwriting concerns, including consideration of the so-called "uninsurable" exposures.

Expected Loss Retentions. The retention levels are established by historical review of exposures and losses, generally for a minimum of five years. From this review the aggregate expected losses are determined by loss forecasting techniques. Although a specific loss limitation is not required, as all losses can be forecast without a loss limit being applied and thus fully included in the aggregate expected losses, a specific loss limit can be developed by analysis of the arithmetic means and mode(s) of losses. This feature enhances cost stability as it now sets the maximum impact on the currently funded retentions.

Expected Loss Variance Retention. A further refinement of this retention structure is the addition of another retention fund designed to provide pre-loss funding via current expenditures in a "super-retention" fund that covers the variance of actual specific and aggregate losses from the expected specific and aggregate losses. The only certain (or nearly so) prediction that can be made about actual cash and expected losses is that actual losses either will exceed or be less than predicted. The attainment of actual losses less than expected is desirable in that surplus pre-loss funds can be accumulated for future losses. The reverse scenario, however, can reintroduce program cost instability. By establishing a pre-loss funding in the "super-retention" fund, these excess variances of actual over expected are handled with less likelihood of cost instability, particularly after several years of favorable experience which builds a surplus.

Actual vs. Expected. If actual losses do not exceed total expected losses, the surplus is retained in the retention fund(s) for future periods. This can be continued, provided that luck and accurate predictions hold out, as long as the entity and its risk management advisors deem proper and prudent. Any excess accumulation can be used for reduction of future contributions into the expected loss funds, as contributions into the bond fund, or returned to the general revenues of the entity or entities as a distribution of excess contributions and profit.

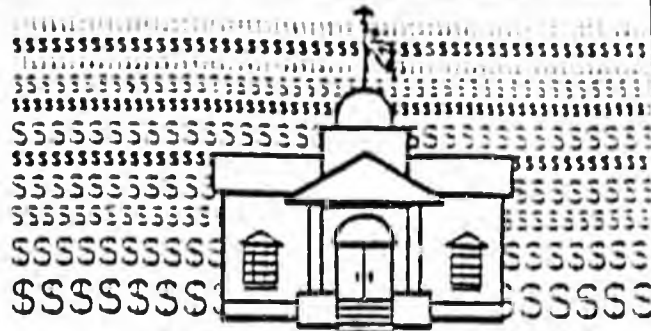
If total actual losses exceed expected losses, the deficit is provided by the bond fund resources, at which time the funds are transferred into the retention accounts, to be held and invested until needed as a payout. Since the bond funds are already in place and a repayment of the debt is structured at the time the bonds are issued, there is no program cost instability arising out of adverse

losses. The bond fund can be protected by insurance or reinsurance, if there is a reasonable and stable market offering coverage at attractive rates, so adverse losses might be covered by insurance. Without any insurance, adverse loss depletion of the bond fund can be handled by issuance of judgment bonds which serve to spread the adverse financial consequences of the loss over future years, by use of current funds from future periods or be ignored, with the bond fund remaining in a depleted state.

Expense Factors. In a self-insurance program, the traditional excess insurer, if any, is rarely responsible for loss control and frequently takes no part in loss adjustment unless the loss has penetrated the retention. The costs associated with these functions, while included in traditional insurance premiums, are highlighted in a self-insurance plan as they are applied separately and identifiably. Similarly, the general administrative expenses normally included in the premium loadings must be separately recognized. These are not additional costs incurred uniquely by the self-insurance, as they are included in traditional premiums. There is, however, an opportunity to recognize greater efficiency in the use of the self-insurer's properly trained staff or the staff of an outside administrator by comparing the self-insured's costs for these services to those included in the premium. It is not uncommon to attain a 10 percent savings in this area alone with an improvement in the quality of services by using the entity's staff or a third-party administrator. Taxes, profits, and contingency loadings account for another 7 to 11 percent of premium. These costs are completely avoided if there is no excess insurance and are significantly reduced in dollar amounts when incurred in the premiums for excess coverage. Measured as a percentage of total program costs, these loadings can be reduced dramatically over traditional insurance program levels.

Coverage Provided. Given the high degree of program control in the hands of the self-insured entity, coverage can be as broad as the entity wishes, including coverage for the traditionally uninsurable perils. If there is excess coverage in place stipulating certain exclusions, limitations or restrictions, and therefore restraining what can be paid from the expected loss funds and applied against the retentions, a second expected loss "slush" fund can be established outside the protected self-insurance structure, but within the bond financed catastrophe structure to address those carved-out areas of exposures.

Coverages Not Provided. In the absence of specific statutory prohibitions, all lines of coverage and all types of



coverage can be included in the self-insurance program. This includes the routine property and casualty exposures as well as the more exotic (and frequently troublesome) types of liability exposures peculiar to public entities, such as school board liability, corporal punishment, sexual abuse, public officials' errors and omissions, police professional liability, medical malpractice and nursing home liability, environmental impairment, and so on.

There are three areas of exposure requiring special attention. The first two items should not be included in a self-insurance program. Since surety is not insurance, but is essentially a credit relationship, surety bonds should be placed in the conventional insurance market. Since boiler and machinery exposures require a highly specialized type of loss control, those exposures should be left to the traditional providers of boiler and machinery coverage. In both instances there is and has been a ready and reasonably stable market for traditional coverage with respect to both price and coverage availability.

Because of the catastrophic nature of property losses and the unpredictability of severity, particularly that arising out of storms and the possibility of widespread damages being incurred, either to a single entity or to members of a pool, property losses in excess of a selected property loss limit (\$100,000 to \$500,000, depending upon the size of the total expected loss fund) should be insured with an excess property cover. There is a ready and reasonably priced market for such coverage; therefore, this transfer of risk out of the self-insurance program is a prudent decision which serves to protect the loss funds from a catastrophic loss.

Coverage Form. A self-insurance program is designed to pay for the expected losses that occur in the normal course of events, commonly called the working or burning layer. The difference between an occurrence-triggered form and a claims-triggered form is less meaningful in these programs, as ultimately all of the loss dollars come out of the same revenue source without any transfer or sharing of the loss with outsiders. Since there is not transfer or sharing, there is little need to assign potential outflows of funds to specific periods or entities. Further, the distinction between the formats is less critical as there are fewer "long-tail" exposures for public entities, with most losses incurred on property and workers' compensation exposures.

In the event of an occurrence, a reserve is established against the expected loss fund, and if needed, against the catastrophe fund. The catastrophe funds, which are being held in a yield-restricted investment

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account (due to tax implications to be discussed in section on bond finance), are then transferred to the loss fund account at the time a payout is necessary.

"Docking the Lamb" or Entry and Exit from the Program. In animal husbandry parlance, "docking the lamb" refers to the practice of cutting the lamb's naturally long tail to the familiar short stub for purposes of ovine hygiene. Similarly, the self-insurance program allows docking the tail of current claims-made programs when the exposures are transferred into the bond-financed self-insurance program. Depending upon jurisdiction differences in statutes of limitations and the premium for electing to purchase insurer-offered "tail" coverage, unfavorable or "unhygienic" "long-tail" exposures can be included in the self-insurance program with prior-acts inclusion endorsement at an appropriate contribution to the expected loss fund.

Should a pooled entity wish to transfer out of the bond-financed program, there is no prior-acts difficulty as the program is an occurrence-triggered coverage format. To protect the various funds' solvency, the joint agreements required in all self-insurance poolings obligate the entity to the pool's loss funds for a specified period of years and the bond issue obligates the withdrawing entity to the maturity or call date of the bond, so the pool is adequately protected financially in the event of a withdrawal.

Limits of Liability. In general, limits of liability can be written for virtually any amount deemed proper and necessary by the entity or pool of entities. Since all exposures are covered by several types of pre-loss funding, the pre-loss funds can be structured in layers stacked

high enough to satisfy the post-loss financial objectives of the self-insuring entity. In terms of limits, the bulk of the protection is provided by the bond-generated catastrophe loss fund, so the only constraint on limits is the financial strength and willingness of the entity or pool of entities to take on the debt obligation. If conventional insurance is made part of the structure, the insurer's "leased" capital is added to the funds available to pay losses, thus serving to further increase the limits of liability afforded. If there is not any traditional insurance at the lower levels of funding, there are not any insurer-imposed limits or sublimits of liability over specific exposures.

Municipal Finance Functions

Overview. The traditional use of funds raised by entities in the capital markets is for public works projects, such as roads, schools, hospitals, water and sewage treatment, buildings, parks, and the like. Providing a systematic method of protecting these facilities from direct damage as well as the entity's responsibility for injury to employees and the general public, and thereby facilitating and enhancing the quality and quantity of governmental services, is an equally important public use of funds.

The significant contribution municipal finance brings to the public risk management table is the capability of adequate pre-loss funding of losses in excess of expected losses, the area of traditional coverage assumed by umbrella policies, excess liability policies and reinsurance, without subjecting the entity to the capriciousness of the insurance marketplace. It is not to say that this layer of the risk retention structure is without cost of premium. In fact, the cost of effecting excess coverage via bonds can be more costly than traditional coverage as the debt service on the bond issue will be viewed as the cost of the protection. Such "cost," however, is not spent in the same manner premium dollars are spent, that is, leaving the entity for another permanently, but instead is an acquisition of equity in an insurance entity. Through the repayment of principal from tax revenues, or new money, the obligation is repaid while leaving the bond funds which provide the catastrophe protection intact. It is no different a process from buying a residence, wherein the principal amount of the loan is repaid over time, increasing the borrower's equity and decreasing the lender's equity.

Public Finance Issues. There are several issues that must be addressed in the structuring of a plan of finance

intended to support a self-insurance program, some of which are common to most public finance deals, and some of which are unusual or unique to self-insurance programs.

Enabling Legislation. In most jurisdictions, the power and activities of a public entity are restricted by legislation. Therefore, in order to obtain a favorable opinion of bond counsel for the official statement, the document detailing that specific features of the debt offering for the potential lenders, there must be a legal purpose for the bond issuance, which necessitates some type of enabling legislation that permits the entity to borrow money for public purposes, and that includes the establishment of a public risk management program as such a public purpose.

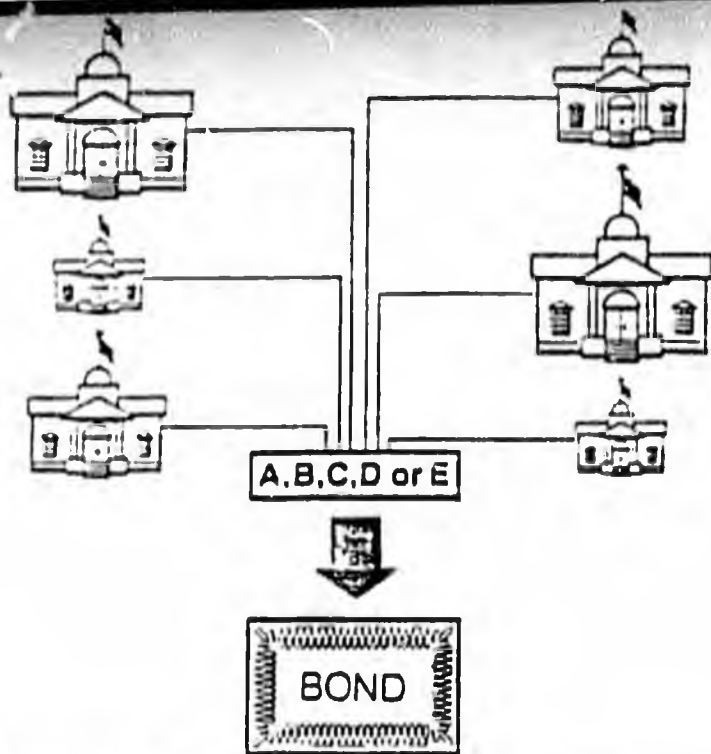
Typically, enabling legislation takes three forms: federal legislation; state-legislated intergovernmental cooperation statutes; and specific legislatively-intended statutes.

Federal legislation, such as the Risk Retention Act, is perhaps the most troublesome from the standpoint of bond counsel, as there is no clear legal opinion on whether or not local and state governments are included in the Act. Because of the broad nature of federal legislation, individual state and local legal issues may remain. In addition, the problem of workers' compensation coverage remains, as the Risk Retention Act clearly excludes this line of coverage. Lastly, the Risk Retention Act allows for establishment of purchasing groups, a practice permitted and used through existing intergovernmental cooperation statutes, as well as the establishment of insurance entities, but does not detail how public entities can raise the capital for forming the insurance entity, and does not address the public purpose issue.

Intergovernmental cooperation statutes are relatively common, but have not been used extensively for addressing risk management activity. The usual cooperative effort deals with purchase of durable goods and consumable supplies, with economies of scale being the motivating factor rather than the procurement of goods and services not otherwise readily available.

While joint purchasing is made possible under the statutes, the insurance industry continues to individually underwrite multiple participants, and current rating programs offer little in the way of economies of scale except for the premium discount factors in workers' compensation plans. The weakness of the cooperation statutes is that there is no clearly identified mechanism for creating insurance capacity, but only the mechanism to collectively purchase goods and services. This weakness leaves the collectivized entities subject to insurance cycles and the inherent instabilities of the insurance marketplace.

Specific legislation retains the collectivization feature



“
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 or pooling program
 the issue of the debt
 can be accomplished
 in several fashions...*
 ”

of the intergovernmental cooperation statutes while specifically stating the legislative intent that entities can finance their liabilities by issuance of public debt.

The Issuing Entity. In the case of a single-entity program, the proposed self-insurer is the issuer of the bonds. Typically this would be a large entity, large enough in terms of exposures and losses to justify a retention program without bond financing. If there is a joint self-insurance plan or pooling program (the distinction between the two being a matter of the number of participants, ranging from several to many), the issue of debt can be accomplished in several fashions:

- a. A legislative authority is formed with taxation powers, by legislative action, and all participants subscribe to an equitable portion of the debt through certificates of participation, commonly called COP's. This

has the advantage of allowing a variety of public entities with varying abilities to raise funds in the capital market to participate.

- b. Each entity raises its own share of the bond financing and is responsible only for its own obligations. This is fair with respect to the differing investment patterns of the entities, and their corresponding interest costs, but is more costly with respect to cost of issuance and is more difficult to coordinate.
- c. Entities, in the absence of legislated authorities may create a new entity pursuant to pooling statute or intergovernmental cooperation statutes for the purchase of issuing bonds. The intergovernmental cooperation statutes must allow members to delegate this power to the cooperative entity.
- d. State bond bank statutes, if existent, may permit entities to pool their underlying obligations to be offered to the public. The typical method used in this approach is for the bond bank to buy the obligations, using funds raised from the general public. This facilitates issues of small or unrated obligations by providing a ready market for the obligations. A variation of this is the use of a large commercial bank who will buy these pooled obligations, generally on a direct placement basis, using the resources of its customers as the source of funds, with the intent of making the pooled obligations part of its investment portfolio.
- e. One entity can act as the sole issuer, or as a lead bond bank with other entities participating by subscription to the obligation via intergovernmental agreements. This has the advantage of minimizing the cost of the debt issuance. Also the debt service is lower, as the lead entity should have a very favorable investment rating and a correspondingly low rate of interest on the bonds.

Maturity and Repayment Terms. Maturity is not generally restricted in the enabling legislation, but the terms of the intergovernmental agreements are time-limited which suggests the terms of the bond issues should correspond to the initial period of the intergovernmental agreements, typically ten to twelve years. This has the effect of spreading the cost of the debt service over a long enough time to make the annual debt service "cost" palatable and provide program cost stability.

Repayment of the debt can be accomplished in several ways:

- a. A serial retirement of the debt, whereby the debt is repaid over the life of the issue, generally in a series of equal payments.

- b. A rollover of the entire debt at maturity, with no repayment of principal, such as the Federal debt approach, with the entire bond fund being refinanced every ten to twelve years.
- c. A partial serial repayment with a balloon payment at the maturity, which is rolled over and refinanced.
- d. A sinking fund in which repayments are accumulated and the debt is retired with this accumulation at maturity.

Economics of Repayment. The economics of the repayment structure are such that the greatest investment earnings for the bond fund are earned when the debt is systematically retired, as the interest payment to the lenders is based upon the debt outstanding, an amount that serially decreases, yet the repayment of principal from resources outside the bond fund permits investment of the full corpus of the bond fund to the extent no catastrophic losses have been paid from the fund, with the result being an ever-increasing amount of investment earnings accruing to the fund. At the other extreme, no annual repayment of principal maintains a maximum level of interest to be paid, with fewer opportunities for investment profits due to tax implications to be discussed later.

The typical debt service of a bond issue is an increasing amount of principal repayments which reduces the amount of outstanding liability and causes a decreasing amount of interest payments, as the interest due is based upon the amount of debt outstanding. The sum of the principal and interest repayments is relatively flat over the life of the issue. This level debt service payment provides that means of stabilizing the cost of the protection facility to the participants of the self-insurance plan, and in fact allows for the generation of significant net investment income. Since the full bond fund is available for investment, it earns more in interest than the outstanding debt costs, even at an interest rate equal to the coupon rate on the bond issue.

This accumulation of wealth can be put to several uses, depending upon the enabling legislation. The net investment income can be accumulated as capital to support higher limits of coverage. The earnings can be transferred to the operating account to lower current contributions to the loss fund or to enhance the size of the expected loss fund so as to contain, in the primary layer, larger aggregates or per occurrence losses. The profits can be returned as dividends or be used to repay the principal.

Constitutional and Statutory Debt Limitations. The efficacy of bond-financed self-insurance programs depends

upon constitutional and statutory debt limitations: it is not the power to issue debt, but the ability to secure that debt with revenues over the intended life of the issue. The ability to enter into long-term contracts depends upon constitutional and statutory prohibitions against the issuance of debt without a referendum, issuance of debt without specific current appropriations, or a percentage limitation under which the debt must fail. In spite of this typical constitutional or statutory language, most states permit funding of long-term service contracts with debt.

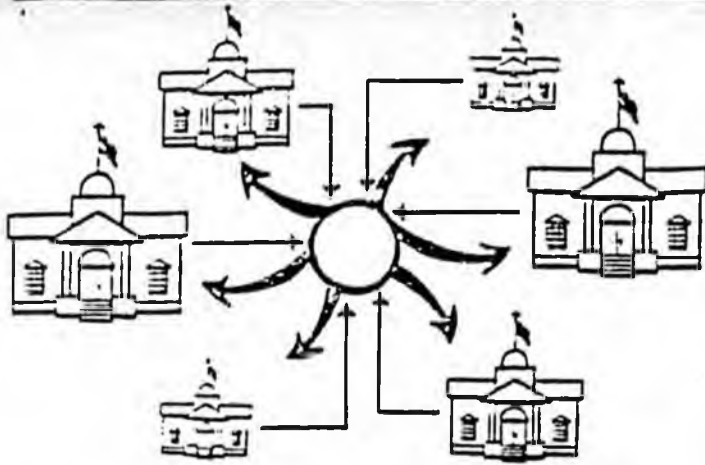
Therefore, in jurisdictions with rigid debt restrictions, each contract and agreement must be questioned with respect to validity and enforceability to avoid non-appropriation problems and direct violation of specific restrictions.

Some jurisdictions have recognized these difficulties and have passed specific statutes, where permitted by state constitutions, that offer a nearly free hand for issuance of debt intended to pay for insurance or insurance-like programs. For example, Illinois law allows for issuance of general obligations public debt for the purpose of funding liabilities, both present and future, without referendum and without being charged against the statutory debt ceiling. The only limiting force on Illinois public entities is the rating services and capital markets, which may deem an issuing entity to be overextended.

Equitable Treatment of Participants. In any pooling program, there is always a concern expressed by participants for equitable treatment. This may arise due to entities with good experience not wanting to subsidize other entities to their own detriment, large entities not wanting to subsidize small entities or vice versa, small rural entities not wanting to participate in metropolitan area loss problems, or any number of similar parochial concerns, which, if not addressed, may be of sufficient concern to prevent the establishment of the pool.

Variances in Loss Experience. Provisions in the intergovernmental agreements can allow for adjustment in the expected loss funds for individual adverse experience. This serves to equalize the exposures among the participants, punishing the adverse experience and protecting the funds of the favorably experiencing entities as well as protecting the security of the bond fund by generating additional expected loss funds.

In keeping with the objective of cost stability and predictability, the adjustments should be limited by either applying loss limits to the actual losses, so as to avoid the full impact of catastrophic losses when forecasting expected losses from actual losses, or to limit, on a



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*...in any pooling program,
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for equitable treatment...*

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percentage basis, the adjustment in the contribution to the expected loss fund.

Capitalization of the Insuring Entity. Since participating entities will differ, in varying degrees, in size of exposures and losses, as well as in financial size as measured by the tax base, it is desirable to allocate the share of bonds to be issued for the purpose of providing catastrophic protection for all on an equitable basis.

The allocation of the debt to be issued is based upon some common factor that all participants share that is not inherently unfair, not subject to manipulation by the entity, and easy to determine, verify and understand. This factor may vary by the type of entity, but might be a measure of total tax base, population, school enrollment, miles of highway and roads, or the like.

Investment Ratings and Interest Costs. The interest rate public debt carries is a function of the familiar relationship of risk and return: the greater the risk, the greater the return required by the investor. Investors will either conduct a financial analysis of their prospective borrowers or will rely on the judgment of the analysts of ratings services, such as Moody's or Standard and Poor's. An entity with a high investment rating will receive a rate of interest equal to or close to the market rate of interest as determined by supply and demand in the capital markets.

In the case of a single entity bond-financed self-insurance

program, the interest rate at which the bonds are offered is a function of the entity's investment rating. With multiple participants, however, there may be inequities among the entities arising out of differentials in investment ratings, regardless of whether the bonds are issued by an authority or which the participants assume liability by contract or by one or more entities acting as "lead" issuer, with non-issuing entities assuming liability by intergovernmental agreements.

As an example, an entity with an A rating may have to offer its debt at fifty basis points (.5 percent) over that of an AAA rated entity. This premium represents what the market feels is necessary to offset the additional risk introduced by the lower rated entity. While familiarity with the rating process is needed to understand this principle, it is not the purpose of this paper to explain the rating process in detail. An excellent and easy-to-read book, *Investing in Municipal Bonds*, by James L. Cooner, is a good resource for a basic understanding of investment ratings.

In the case of an authority acting as the issuer, the rating services or analysts would assign either a rating that is a composite of the individual subscribing entities or the lowest rating of all participating entities, as in the "weak link" theory.

If a composite is used, the "average" rating is translated into an "average" interest rate at which the bonds will be sold, thus rewarding the entities with lower ratings (and higher interest costs) and penalize the entities with higher ratings. If the lowest rating is used, higher rated entities suffer. Similarly, these inequities arise in the "lead" issuer approach.

This inequity is minimized by use of interest rate penalties and credits provided in the contracts of subscription to the authority or the intergovernmental agreements, in the case of the "lead" issuer approach. In the typical debt repayment scenario, the lower rated entity agrees to pay, to the bond trustee, an amount of interest greater than that required by the bond coupon and the higher rated entity agrees to pay less, such that the penalty paid by the lower-rated entity offsets the underpayment made by the higher-rated entity. The amount of the credit and penalty is determined by subtracting the bond coupon rate from the rate the entity would expect to have to pay if it were borrowing on its own merits and its own investment rating.

For example, assume there are only two entities participating, one carrying an AA rating and one a BAA rating. The investment banker, in taking the issue to the market, determines that the rate of interest the bonds issued will carry is 9 percent. In his opinion, the

AA rated entity could issue and sell bonds on its own rating at 7.8 percent, while the BAA rated entity would have to offer bonds with a 40 basis points premium, at 8.2 percent. Each year the bond trustee will make an \$80 payment to the bond holders for each \$1,000 bond outstanding. The AA rated entity will pay to the trustee \$40, the coupon rate for his 50 percent share of the bond, less a \$2 credit for the .2 percent additional cost he bears. The BAA entity will pay his \$40, the coupon rate on his share, plus a \$2 penalty for the .2 percent advantage he gains. The \$38 from the AA entity and the \$42 from the BAA entity pays the combined \$80 interest.

Credit Enhancement. If, in the opinion of the investment banker, credit enhancement is desirable or advisable in order to effectively increase a low investment rating so as to lessen the basis point spread between the particular entity's rate and the "average" rate, the cost of the credit enhancement is borne by that particular entity, as in the absence of the enhancement, the entity would be paying a greater penalty. Any residual differentials between rates would again be subject to penalty/credit adjustments.

In practice, the interest to be paid is not paid directly by the entities, as the investment of the bond fund is sufficient to pay the interest on behalf of the participants. The rating differentials are still effective, as the penalty/credit is computed and applied to the principal repayment amounts instead of the interest amounts.

Security. Closely related to interest rates and credit enhancement is the issue of financial security of the individual entities and their ability to repay their respective indebtedness. The intergovernmental agreements or participation contracts detail the joint and several responsibilities of the participants to each other and to the bond issuer(s). The financial security issue has two elements.

First, repayment of principal and interest is guaranteed by contract or intergovernmental agreement whereby each guarantees its own portion of the debt service as well as the debt service of the others, with the bond principal held on its account acting as collateral to its repayment obligations. If an entity should default, its portion of the bond fund is attached by the other entities who may have to assume the debt service. This gives the nondefaulting entities the option of returning the current portion of the debt with the defaulting entity's share of the bond fund, in effect, buying the equity of the defaulter's share of the bond fund at a discounted or lesser amount.

The second issue of security deals with maintaining as many funds in the bond fund as there are outstanding debt service principal obligations to the bondholder. Since the corpus of the bond fund effectively collateralizes the debt, any catastrophe penetrations of losses into the bond fund must be replenished. If there is insufficient excess interest earnings accruing to the bond fund, the fund can be restored by an adjustment in principal repayment. This spreads catastrophic losses either over time, if the entity suffering the loss is charged with entire deficit, or over all participants, if the entities opt to spread the risks among themselves, as in a risk transfer mechanism.

Tax Status of the Issue. Tax status of the issue does not refer to the deductibility of interest expense from taxable income for the borrower, as public entities are protected from taxation by the Constitution of the United States and by state constitutions. The issue of tax status refers instead, to the inclusion of interest earnings as taxable income for the lenders. Therefore, determination of taxable or tax-exempt status affects the coupon rate the bonds bear, as taxpayers are willing to take a lesser rate of return if the interest income is excluded from their taxable incomes. Since the impact of the Tax Reform Act of 1986 is still not completely understood by the capital markets, there is, in 1987, still market confusion surrounding the spread between taxable and tax-exempt rates of interest, as evidenced by the historically narrow spread of rates during 1986-87. While tax status is only one function of the complex means by which the capital markets determine the market rate of interest, it has a singular impact upon bond-financed self-insurance programs with respect to the investment activities of the pooled or catastrophic funds.

The Arbitrage Issue. Arbitrage is the financial concept of borrowing at a low rate of interest and investing the proceeds immediately at a higher rate of interest. A common type of arbitrage occurred in the early 1980's when life insurance policy loans were made at the contractually guaranteed rates of 4 or 5 percent, and the loans were immediately invested at 9, 10, 12 or more percent. So great is the power of this type of arbitrage that new insurance contract language allowed for higher rates or floating rates for loans, and existing contracts were modified by rider, whereby, in exchange for a higher rate of interest on policy loans, a higher yield on the cash value was guaranteed.

Under current federal income tax laws, arbitrage activity is restricted. The IRS defines arbitrage bonds as

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... Under current federal income tax laws, arbitrage activity is restricted...



those obligations of state and local entities which are invested in taxable investments such that the yield on the investment exceeds the yield or coupon rate on the obligation. If the obligations are deemed to be arbitrage bonds, then the interest is taxable to the bondholders, regardless of its previously determined tax-exempt status, and the excess earnings of the arbitrage fund must be rebated to the bondholders to compensate them for losing the tax exemption.

Permitted Arbitrage. Arbitrage is allowed in bond-financed self-insurance programs to a limited degree, currently 10 percent of the outstanding obligation, so that investment costs and the initial expense of issuance of the debt can be covered, leaving the remainder of the proceeds to be invested on a yield-restricted basis. This small degree of arbitrage is sufficient in nearly all cases to pay the administrative costs of running the fund and the initial bond underwriting fees.

Contributions into funds intended to pay losses, i.e., the self-insurance portion of the program can be invested without restrictions on yields as these funds are not bond proceeds, but new monies. There is no problem of commingling funds and creating ambiguity as to the source and use of the funds, as principal payments to retire the debt as the actual dispersion of these monies is accomplished by the bond trustee, typically a commercial bank, while the contributions to pay losses and the dispersion of those funds are made by the insurance administrator.

"Spent" Proceeds. Entities may attempt to conduct arbitrage bond activity without losing the tax-favored status for their bondholders in several ways. The simplest approach is to argue that the original proceeds, once "spent" by the establishment of the catastrophe fund,

are "spent" in the same fashion that conventional insurance premiums are spent, and are no longer proceeds from the borrowing. If that view were accepted by the IRS, the "spent" proceeds held in reserve could be invested freely, without yield restrictions at no adverse financial impact on the bondholders.

Pension Analogy. There are existent revenue rulings which have allowed arbitrage when funding pension obligations, as the bond proceeds were transferred to a third party who assumed contractually all liability for future pension payments. Since there was no further liability of the entity and no possible means by which the entity could directly profit from the arbitrage, the IRS letter ruling was rendered holding the proceeds to be spent, and the bonds were not considered to be arbitrage bonds.

Captive Analogy. The last method by which entities seek to avoid arbitrage restrictions is by arguing that the proceeds of the bonds are spent in the same sense that premium payments are made to the captive insurance company. The IRS applies its usual rules pertaining to shifting of risk outside the "economic family" and unless the entity can survive the IRS test of captives, the proceeds are not deemed to have been spent and the arbitrage restrictions are not avoided.

Under current IRS rulings, neither the "spent" proceeds argument, pension analogy or captive insurance analogy are accepted as being a valid "spending" of the bond proceeds, and hence, arbitrage is restricted. Further, an attempt to "spend" the bond proceeds by actually paying losses from the bond proceeds and accumulating a sinking fund to retire the bonds or to actually retire the bonds by contributions to the bond trust will not prevail under IRS scrutiny as the IRS has already made its position clear: as long as any part of the obligation created by the bond issuance is outstanding, the arbitrage rule is in effect.

Arbitrage Resolved. There is one very simple way in which the entire issue of arbitrage bonds and the resultant problems on tax status can be avoided. If the obligations are issued on a taxable basis, there are no arbitrage restrictions. The only constraint to public entities being issued on a taxable basis is tradition, as law or statute requires public debt to be offered on a tax-exempt basis. Currently less than 1 percent of all public debt is taxable, but if the historically narrow spread between taxable yields and tax-exempt yields continues, this volume may well rise.

Regulation of the Pool as an Insurer. Legislation that enables entities to form pools typically does not address the issue of whether or not the insuring entity created is regulated by a department of insurance, unlike the Risk Retention Act, which clearly states such groups or pools are outside the purview of the state regulators. Instead, the insurance statutes will determine whether such entities are regulated, monitored, or ignored. Some jurisdictions allow the regulator to decide whether or not the entities are within the scope of its authority.

Regardless of the actual issue of regulation, bond-financed self-insurance entities are not formally constituted insurers, and, without specific insurance legislation, do not pay premium taxes, participate in residual market mechanisms, or contribute to insolvency funds.

Achieving Stability

By itself, self-insurance does not achieve cost stability; it simply is a method of loss financing. Unless contributions into the loss fund are set at worst-case plus scenario levels, an increase in losses over the pre-funded levels will require an increase in contributions. To paraphrase a current automotive repair advertisement, "You can fund me now or you can fund me later."

Excess insurance over self-insurance programs, in the long run, cannot achieve cost stability. As the insurance marketplace goes through the premium/loss cycle, the excess costs move up and down.

Similarly, loss control activities, an essential part of self-insurance programs, will not achieve stability of costs, as that can lessen the likelihood of some losses, but not prevent all losses.

By itself, a bond fund cannot achieve stability of costs. While the principal and interest are completely predictable, and relatively level over the life of the issue, if losses are paid from the bond funds, there is no assurance that the bond funds will be liquidated "on time." If losses are greater than predicted and funded, the proceeds of the bonds are depleted but the obligations are not repaid. If losses are less than predicted, there are excess bond funds, a tolerable error, but one which suggests the level of costs as represented by debt service was too high.

By establishing a risk management structure consisting of an actuarially sound self-insurance plan supported by an aggressive loss control program and a bond-financed catastrophe fund, stability can be achieved for a long time period. Losses are forecast over an extended time period, such as ten years, and discounted to present

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...the bond-financed self-insured public entities have control over availability, capacity, definition, policy language and the solvency issue...

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values at an appropriate discount rate. The funds for losses are contributed into the expected loss fund (ELF). A super-retention plan or super-expected loss fund (SELF) is funded with contributions based on a percentage of the ELF. This fund is used to pay the variance of individual annual aggregate losses or individual losses over the primary ELF limit, as well as cover the variance created by differences in the "appropriateness" of the selected discount rate. An administrative fee is added to these contributions. At this point, the program cost is predictable and stable, but only within the actuary's assumed degree of confidence, e.g., "sufficient within the 90th percentile."

This remaining degree of instability is removed not by excess insurance, which, by virtue (or lack thereof) of being insurance, introduces cyclical cost variance, but by the bond fund, which has a predictable and nearly level debt repayment structure determined as of the initial issue date. Should any losses exceed the ELF or SELF as well as any accumulated interest and past period ELF/SELF surpluses, the deficiencies can be paid with bond funds. Since the earnings on the bond fund are sufficient to pay the interest portion of the debt service as well as part of the principal, these deficiencies are first paid with interest earnings, and then, if necessary, with bond proceeds. Any future surpluses in the ELF and SELF go to replenish the bond fund to its full amount.

Should a catastrophe loss occur, even on the first day of the existence of the program, the accumulation of interest on the reserves will serve to offset a part of the ultimate net loss when the case is finally closed several years into the future. If at any time the bond fund is severely depleted, there will be a one-time instability, or adjustment, as the pool issues post-loss judgment bonds. The cost of those bonds is then added to the previously determined costs, and stability is again restored.

There is, of course, the possibility of multiple catastrophe losses occurring within a short time period. While this is a possibility, the relative frequency of casualty losses in excess of \$1,000,000, e.g., exceeding the ELF, and assuming there are no funds available in the SELF, is, in reality, very low. If one assumes the likelihood of a loss in excess of \$1,000,000 is as great as .01 per year, the likelihood of two such losses within one year is .0001, as the probability of the second loss is predicated on the occurrence of the first loss. Expressed as $P(B|A)$, the conditional probability is computed as $P(A) \times P(B)$, or $.01 \times .01 = .0001$. If three such events are feared, the likelihood drops to .000001, expressed as $P(C|B|A)$.

If one assumes the probability of a loss exceeding \$1,000,000 and penetrating the catastrophe fund is .05 during the ten years, the probability of the second loss in the ten year period is .0025. Given the likelihood of such events, the expected value of even a \$5,000,000 penetration (\$6,000,000 ultimate net loss), is only \$262,500, the expected value of the first loss (\$250,000, or $\$5,000,000 \times .05$) plus the expected value of the second loss (\$12,500, or $\$5,000,000 \times .0025$).

If one assumes both such losses occur in the same year, the ELF and SELF will probably not contain both losses, so the expected value of the second loss would be slightly higher, as it is the expected value of \$6,000,000, or \$15,000.

Although a probability analysis may be a convenient attempt to assuage concerns with a pseudo-scientific approach, it does not guarantee the hypothesized events will not occur simply because the events are unlikely. In reality, however, public entities insuring exposures conventionally still face similar dilemmas, such as the determination of how high a limit of liability is sufficient, the danger of exceeding aggregate limits on one or more lines of coverage, the problem of facing excluded exposures, and the exposure created by insolvency of the carrier(s) and reinsurer(s).

While there may be no perfect solution, the bond-financed self-insured public entities, by creating their own insuring entity, have control over availability, capacity, definition, and construction of policy language, both pre-loss and post-loss, and the solvency issue. While they cannot completely avoid the uncertainty arising out of the possibility of multiple losses in rapid succession, they do not face the other probabilities of exposures to loss that conventionally insured entities face. Further, if all else fails, they issue post-loss judgment bonds and face the one-time cost adjustment.

Summary

What originally appeared as a crisis turned out to be an opportunity to avoid astronomical cost increases for insurance and began reducing losses. †

As stated, the purpose of this paper is to explain a means by which the public sector can address its exposures to loss in spite of difficulties in obtaining needed coverage of sufficient limits. Further, it is the purpose of this paper to develop a cost stabilization structure that facilitates the budgeting process of public entities and the correct pricing (i.e., tax levy) of government services.

The structure of a bond-financed self-insurance program, whether for a group of entities or a single entity, accomplishes both goals. The "insurance" capacity or capital raised by the issuance of debt instruments allows public entities to create and control their own insurance programs, thus eliminating the coverage and capacity instabilities inherent in the insurance marketplace.

The use of actuarially sound contributions for expected losses, when coupled with the ability to cover temporary deficits in the loss fund with bond fund proceeds which have a stable "cost," provides a stable, easily budgetable cost factor that can be used in determining appropriate tax levies.

The complicated combination of two traditional disciplines in an innovative manner is not without disadvantages, primarily in the form of long-term commitments of a financial nature. The benefits accruing to a risk management program with stable costs and proper coverage will far outweigh any disadvantages. ■

References

- James J. Cooper, *Investing in Municipal Bonds*, John Wiley & Sons, New York, 1997.
- Public Risk & Insurance Management Association, *Public Risk*, November/December, 1986.

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HOUSE COMMITTEE REPORT

(5)

Date Referred: April 2, 1990

FURTHER REFERRALS:

FINANCE

Date of Committee Action: 5/1/90

The COMMUNITY & REGIONAL AFFAIRS Committee considered:

SB 307

SENATE BILL NO. 307

REPURCHASE FROM MUNI/FORECLOSED PROPERTY

"An Act relating to property foreclosed upon by a municipality."

RECOMMENDATIONS:

- be replaced with _____ the same title
- have attached amendment(s) a new title
- do pass
- do not pass
- no recommendation
- individual recommendations
- additional referral to the _____ Committee

ADOPTS: _____ letter of intent

ATTACHES NEW FISCAL NOTE(S):
(Dept)

APPROVES PREVIOUS: (Date/Dept)

- fiscal impact _____
- zero fiscal note _____
- zero with analysis _____

- fiscal note(s) _____
- zero fiscal note(s) Dept of Rev., C & RA
- zero fn/analysis _____

SIGNING DO PASS:

SIGNING:
(Check approp. column)

Do Not
Pass No Rec Amend

<u>Eileen P. Maclean</u> MACLEAN			
<u>Eugene Kubina</u> KUBINA			
<u>Richard [Signature]</u> FOSTER		x	

Eileen P. Maclean
Chairman's Signature

DEPT. OF COMMUNITY & REGIONAL AFFAIRS

OFFICE OF THE COMMISSIONER

February 14, 1990

- P.O. BOX B
JUNEAU, ALASKA 99811-2100
PHONE: (907) 465-4700
- 949 E. 36TH AVENUE, SUITE 400
ANCHORAGE, ALASKA 99508-4302
PHONE: (907) 563-1073

POSITION PAPER

RE: Senate Bill 307

SPONSOR: Senator Drue Pearce

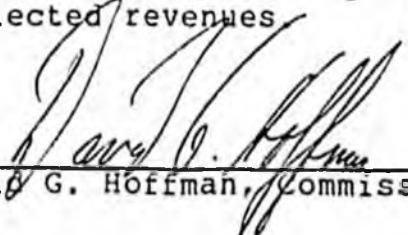
Program Effects

Senate Bill 307 provides for reimbursement to municipalities for certain costs incurred as a result of maintaining and managing property which has been foreclosed on because of non-payment of local property taxes. The bill adds to the existing list of costs those expenditures by a municipality for insurance, repairs, association dues (condominium), and management fees.

Comments

Over the past few years, as municipal economies have been negatively impacted by reduced revenues, the subsequent reductions in populations have magnified problems related to property foreclosure. Municipalities typically must foreclose on properties which are less desirable and, therefore difficult to sell. Those types of property are likely to be in need of costly repair before they can be marketed. These problems, combined with a glut of available property on the market, cause the holding period to be extended, thereby increasing the costs to municipalities for maintenance and management of the properties.

The department supports the passage of SB 307. The bill provides for fair and reasonable reimbursement of maintenance and management expenses, and only to the extent that those expenses exceed any income to the municipality through rental or other payments made during the holding period. The recovery of these costs through the sale of the property would eliminate the present necessity of the municipality having to pay the costs by using other locally-collected revenues.



David G. Hoffman, Commissioner

FISCAL NOTE

REQUEST:

Revision Date: _____
Title: Repurchase from Municipality of Foreclosed Property
Sponsor: Pearce
Requestor: Senate Community & Regional Affairs

Agency Affected: Department of Revenue
BRU: Treasury
Components: _____

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 91	FY 92	FY 93	FY 94	FY 95	FY 96
OPERATING						
PERSONAL SERVICES	0	0	0	0	0	0
TRAVEL	0	0	0	0	0	0
CONTRACTUAL	0	0	0	0	0	0
SUPPLIES	0	0	0	0	0	0
EQUIPMENT	0	0	0	0	0	0
LANDS & STRUCTURES	0	0	0	0	0	0
GRANTS, CLAIMS	0	0	0	0	0	0
MISCELLANEOUS	0	0	0	0	0	0
TOTAL OPERATING	0	0	0	0	0	0
CAPITAL	0	0	0	0	0	0
REVENUE	0	0	0	0	0	0

FUNDING: (Thousands of Dollars)

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

POSITIONS:

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

ANALYSIS: attach a separate page for analysis.

Fiscal year 1990 effect is zero.

Prepared By: Milt Barker MB
Division: Treasury
Approved by Commissioner: [Signature]
Agency: Department of Revenue

Phone: 465-2350
Date: February 1, 1990
Date: 2/1/90

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

FISCAL NOTE

REQUEST:

Revision Date: _____
Title: "An Act relating to property fore-
closed upon by a municipality."
Sponsor: Senator Pearce
Requestor: _____

Agency Affected: Community & Regional Affairs
BRU: _____
Components: _____

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 91	FY 92	FY 93	FY 94	FY 95	FY 96
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 FUND	-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)

There is no fiscal effect for FY 90.

Prepared by: Jim Plasman, Deputy Director Phone: 465-4750
Division: Municipal & Regional Assistance Date: 7-1-90
Approved by Commissioner: Carol Hill Date: 7-4-90
Agency: Community & Regional Affairs

Distribution (by preparer):

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

Alaska State Legislature

3111 C Street, Suite 150
Anchorage, Alaska 99503
(907) 561-2038



During Session:
P.O. Box V
Juneau, Alaska 99811
(907) 465-4993

Senator Drue Pearce
District G

SB 307

Sponsor Statement

April 29, 1990

Over the past few years municipal economies have been negatively impacted by reduced revenues, and reductions in population have magnified problems related to property foreclosure. Typically, municipalities must foreclose on properties which are less desirable and therefore more difficult to sell. These properties are often in need of repair before they can be marketed. These problems and the glut of available property on the market can result in an extended holding period, thereby increasing property maintenance and management costs to the municipalities.

Current statutes provide that the record owner of tax foreclosed property may repurchase the property for ten years after foreclosure, if the property is not otherwise sold. In order to redeem, the previous owner must pay the municipality the full amount of the judgment, together with interest computed from the date of the entry of judgment to the date of repurchase at a rate

not to exceed 15% per annum. He must also pay delinquent taxes assessed as though the property had remained in private ownership, and the costs of foreclosure and sale.

SB 307 adds the costs of management and maintenance to the sale price of the property and allows the municipality to recover them to the extent that they exceed income received by the municipality for the use of the property during the holding period.

This Bill, which passed the Senate by an 18/0 vote, was originally requested by the Municipality of Anchorage and has the support of the Alaska Municipal League.

DP:pc

**Municipality
of
Anchorage**



P.O. BOX 196650
ANCHORAGE, ALASKA 99519-6650
(907) 343-4433

*TOM FINK,
MAYOR*

OFFICE OF THE MUNICIPAL MANAGER

April 6, 1990

Senator Drue Pearce
Alaska State Legislature
P.O. Box V (MS 3100)
Juneau, AK 99811

Re: Senate Bill No. 307, an act relating to property foreclosed upon by a municipality

Dear Senator Pearce:

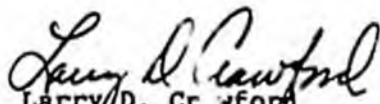
The Municipality of Anchorage strongly endorses SB 307.

The language in the existing tax-foreclosure legislation allows the Municipality to recover costs associated with preparing tax-foreclosed properties for tax-foreclosure sales. SB 307 provides a means to recover expenses incurred by the Municipality in property management and maintenance costs, upkeep, code compliance, lease management, etc., of tax-foreclosed properties when the properties are not sold or designated for a public purpose, but held for an indefinite period and eventually reclaimed by the former owner of record. The recovery of these expenses is important, especially when considering our diminishing budget.

The Municipality of Anchorage supports this legislation and will urge other municipalities to support bill.

If you have any questions, please contact Ken Lythgoe, Director of Property & Facility Management at 786-8114.

Sincerely,


Larry D. Crawford
Municipal Manager

0237n

S B

3 0 8

HOUSE COMMITTEE REPORT

(5)

Date Referred: April 25, 1990

FURTHER REFERRALS:

FINANCE

Date of Committee Action: 5/1/90

The COMMUNITY & REGIONAL AFFAIRS Committee considered: CSSB 308(FIN)

CS SB NO. 308 (Finance) MUNICIPAL TAXATION OF CERTAIN ST. PROP

"An Act relating to taxation by municipalities of certain property of governmental entities; and providing for an effective date."

RECOMMENDATIONS:

- be replaced with _____ the same title
- have attached amendment(s) a new title
- do pass
- do not pass
- no recommendation
- individual recommendations
- additional referral to the _____ Committee

ADOPTS: _____ letter of intent

ATTACHES NEW FISCAL NOTE(S):
(Dept)

APPROVES PREVIOUS:

(Date/Dept)

- fiscal impact
- zero fiscal note _____
- zero with analysis _____

- fiscal note(s) Commerce & Econ Dev
- zero fiscal note(s) _____
- zero fn/analysis _____

SIGNING DO PASS:

SIGNING:
(Check approp. column)

Do Not
PASS No Rec Amend

<u>Eileen P. Maclean Maclean</u>			
<u>James Kubina Kubina</u>	<u>Cheri Davis</u>	C. DAVIS	X
<u>Richard J. Foster</u>			

Eileen P. Maclean
Chairman's Signature

Division of Pioneers' Benefits Position Paper



"An Act making a special appropriation for payment as grants for development, rehabilitation, relocation, or expansion of cemeteries and certain related access facilities; and providing for an effective date."

HB 507

This position paper only comments on lines 11 and 13 of page two of the bill: "City and Borough of Sitka - rehabilitation of the Pioneers' Home cemetery."

The \$177,400 requested is for the building of a memorial with all the names of the buried deceased Alaskans from the Sitka Pioneers' Home cemetery and for the preparation of the grounds with ground cover, a fence, lights to protect against vandalism, walkways and shrubbery. The initial estimate in 1986 was high due to defoliant spraying and the need for new topsoil. Since then the rain has been perking through the soil and no new topsoil is needed. The original estimate is attached.

The Sitka Pioneers' Home is a historic building monument. The cemetery of the Sitka Pioneers' Home is located about three miles away from the home. The cemetery contains about 1,650 graves of pioneer Alaskans. The cemetery has not been kept up for at least 15 years. The attached letter dated August 25, 1975, clearly states the sad disrepair of the cemetery.

The Division of Pioneers' Benefits does not have funds available in either the operational or CIP budgets for this cemetery project. Therefore, the Division strongly supports the passing of this bill.

Barbara Bathony
Barbara Bathony, Director
Division of Pioneers' Benefits

3-13-90
Date

Frank S. Baxter
Frank S. Baxter, Commissioner
Department of Administration

3/13/90
Date

BB2/LTR/0305
Attachments



60 Malaspina St.
Eagle River, Alaska 99577
August 25, 1975

Governor Jay Hammond
State Capitol Bldg.
Juneau, Alaska

Dear Governor Hammond,

My Father, the late James F. Harrigan, was a past Superintendent of the Pioneers Home in Sitka.

At the time of his death, I was unable to attend his funeral. I have for the past two years, had the vision of my Father at rest in the beautiful Pioneer Home Cemetery. This summer, I was finally able to go to Sitka and view my Father's grave. I cried! I cried for my Father and for all the others who were buried in what was once a beautiful state maintained cemetery.

It is fortunate that my Mother and sister still reside in Sitka. They maintain my Father's grave. But what of the pioneers without families? As a taxpayer and twenty-six year resident of this state, I am for the first time, embarrassed at the neglect of the State Government and the careless maintenance of that once beautiful clean cemetery. My Father took great pride in maintaining the beauty of the cemetery during his years as Superintendent. I know how disgusted he would be at the present conditions.

The condition of the cemetery is deplorable! Tombstones out of place and upside down. My children and I tried to correct this to some extent. Graves are sunken in and litter such as beer cans, broken bottles, dead flowers, weeds and tire tracks may be found all over the cemetery.

Vandalism is an excuse, but not a very good one. When other State properties are vandalized, is it ignored and left unmaintained?

I sincerely hope that you can find the time to look into this matter. It is sad to think that these pioneers who helped build this wonderful state do not even deserve the privilege of resting in a clean cemetery.

Sincerely,

Mrs. Patricia Gallien

cc: Mr. Andy Warwick
Manager, Sitka Pioneers Home
Editor, Sitka Sentinel
Mr. Wm. A. Egan
Mrs. Alice A. Harrigan

March 13, 1990

Division of Pioneers' Benefits

Pictures in support of HB507, Sitka Cemetery upgrade

The pictures below show the overgrowth of the headstones with alders, salmonberry bushes and other vegetation. It also shows clearly the sinking of the graves and the general poor condition the cemetery of our Pioneers' is in.



A M E N D M E N T

OFFERED IN THE HOUSE

TO: CS HB 507

Page 2, line 17:

Adds the following:

(16) City of Noorvik - cemetery restoration project
\$20,000

CITY of HOONAH

PO. Box 360
Hoonah, Alaska 99829
(907) 945-3663

RECEIVED

March 2, 1990

Representative Peter Goll
Room 122, Capitol
P.O. Box V
Juneau, Alaska 99811

Dear Representative Goll:

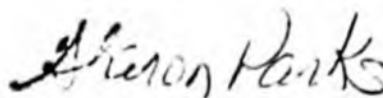
This letter is in support of HB No. 507 for the construction of cemeteries.

There has been a definite need in our community for a new cemetery for some time now. Communities such as ours have set aside lands to fill those needs but have been unable to develop them due to a lack of funding. Small communities such as ours have difficulty setting aside those monies, meeting more immediate needs.

It is with respect and gratitude that we support your bill and hope that it is met with favor before committee. We also support it's final passage.

Thank you.

Sincerely,



Sharon Parks
Administrator



CITY OF HAINES, ALASKA

P.O. BOX 1049

HAINES, ALASKA 99827

(907) 766-2231 • TOURISM (907) 766-2234 • FAX (907) 766-3179

March 8, 1990

Peter Goll, Representative
Pouch V
Juneau, Ak 99811

Re: HB 507 Cemetery Funding

Dear Peter:

House Bill 507 will give much needed financial support to expanding, upgrading, and rehabilitating existing cemeteries. Mayor Frank Wallace and the city council have discussed the proposed house bill and they agree that it is a good idea.

The Haines Sawmill Road Cemetery serves the whole area of Haines, the surrounding borough, and Klukwan. It needs to be enlarged, and clearly defined access roads need to be installed. Also, a survey is necessary to be able to identify established plots, roads, and markers. Winter access through deep snow presents the problem of knowing where to drive the heavy equipment necessary in the burial process. I submit that a survey and access roads would be a viable solution to these problems.

Peter, this is a valid area for funding and you are encouraged to support it.

Sincerely,

Walter Wilcox
City Administrator
CITY OF HAINES

WW/KSG

MEMORANDUM
MEMORANDUM
MEMORANDUM
MEMORANDUM

State of Alaska
State of Alaska
State of Alaska
State of Alaska

To: Representative Grussendorf
Room 204, Capitol
Juneau, Alaska 99811

Date: February 7, 1990

File no:

Telephone no: 907-747-3213

From: Julia A. Smith
Administrator, Sitka Pioneers' Home
Administration
Division of Pioneers' Benefits

Subject: Pioneers' Home Cemetery

This is the information we have in our files concerning your request about upgrading the Pioneers' Home Cemetery.

The plan was to make the Pioneers' Home Cemetery into more of a monument to all Alaskan Pioneers' buried there. Approximately 1650 past residents graves would be surveyed, plotted so that the old head stones could then be removed and the grounds maintained more like a park at less expense. A rock/concrete type monument was planned that would hold plaques with all the names on it. To alleviate concern by family who wished to visit a grave sight it was invisioned that numbered metal stakes would be driven level with the ground surface at a corner of each eight graves. This way family could place flowers, etc. The plan included leveling the sight, reseeding, installing a fence and lighting to protect against vandalism. Several years ago we were asked to prepare a cost estimate for this project for Senator Eliason to present to the Legislature. The budget we estimated was \$347.4 for capital plus approximately \$7.3 for annual operational budget to keep it up. Since then, we found that we had overestimated by approximately \$170.0 since at the time we thought the soil was so depleted with extensive use of defoilants it would have to be completely replaced. Not so, as the soil tests fine after two years of rain perking thru it. The remainder of the estimated cost is approximately the same less \$170.0 or \$177.4. To complicate matters somewhat only \$25,000.00 was appropriated for the project. The money was to be a pass thru to the City of Sitka.

All these figures are from an estimate done in 1988 by Gary Sheridan, then Manager of the Sitka Home. The project is as valid today as then, but the figures may not be. I suggest that you contact Barbara Bathony, Director of Pioneers' Benefits and Elmer Sorenson, Buildings Management Specialist, Pioneers' Benefits for their input.

Tanana Chiefs Conference, Inc.

TOK SUBREGIONAL OFFICE
P.O. BOX 126
TOK, ALASKA 99780
(907) 883-5181

February 2, 1990

Representative Dick Shultz
Alaska State Legislature
P.O. Box V (MS 3100)
Juneau, Alaska 99811

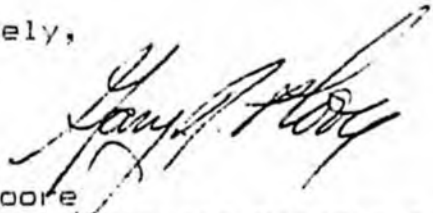
Dear Representative Shultz:

Please find the enclosed Capital Improvement Project request and supporting documents from the village of Tanacross.

Because of the utmost importance and urgency of this project, Tanacross is requesting that their proposal be given serious consideration and be included in the budget during this legislative season.

If you have any questions, please do not hesitate to give me a call.

Sincerely,



Gary Moore
Community Resource Coordinator

GM/cdw

cc: Senator Jack Coghill
Commissioner DCRA
Ted Charles
Ed Rutledge
Tanacross Village Council

Circle, Alaska
March 12, 1990

Representative Mike Davis
Representative Gal I
Box
Juneau, Alaska

Dear Representatives,

The Circle Civic Community Association is interested in securing funds through H.B. 507 in order to help preserve the Historical Graveyards in our area. These Graveyards date back to the 1800's when Circle was a "jumping off place" to the Klondike Gold Rush.

Last summer, restoration was begun. Repairs to the many graves, as well as brush cutting and the building of fences around approximately 40 of the 200 graves was completed through Revenue Sharing Funds.

We are requesting \$ 7000.00 to complete this project during the summer of 1990. This money will be used as following :

1. Brush Cutting Supplies (axes, chain saw files, gas etc.)
\$ 300.00
2. Purchase of Materials for Fencing \$1200.00
3. Labor (local) \$3500.00
4. Road Improvements \$2000.00

(gravel to be hauled to site)

Thank you for your help in this matter.

Sincerely,
Jeanne M. Boyle
Jeanne M. Boyle, President

Circle Civic Community Association
Box 25
Circle, Alaska 99733

C I T Y O F H Y D A B U R G
Box 49
Hydaburg, AK 99922
(907) 285-3761

March 12, 1990

State of Alaska
House of Representatives
Honorable Representative Goll
Box V
Juneau, AK 99811

RECEIVED

Dear Representative Goll:

Re: Cemetery Rehabilitation Bill.

We are in support of this bill and are glad for your consideration. Hydaburg's cemetery is in very poor shape and has gotten little maintenance since the site was first used nearly eighty years ago. Thank you for allowing us the opportunity to comment on this bill.

Sincerely,



Bruce A. Cook, Sr.
Mayor

Angoon. AK. 99820

Box 121

Jan. 29, 1990

Representative Peter Gall:

Box V.

Juneau. AK. 99811.

Dear Mr Gall:

lot of times Robert James and I talked about getting a seaside cemetery. we even mention it to our Town Council to take action on it. but we never hear of any action.

Just talking among the Golden age Club, we really need a new cemetery since our present cemetery is really crowded, and can't find another place since its on top of a cliff.

Its really hard to find a place to dig, some places its only $1\frac{1}{2}$ to 2 feet Grounds.

as a Golden age Club we are asking for your help. the state to give us seaside cemetery some where by the ferry terminal where there is a road.

we would like to hear from you on our request.

Sincerely,

Paul James, Sr.

Golden age Club.

Secretary.

TANACROSS VILLAGE COUNCIL
RESOLUTION NO. 90-06

WHEREAS, Tanacross Village Council is the legal governing body of the village of Tanacross, Alaska; and

WHEREAS, The Tanacross Village Council is in need of improving the following which would cost:

Projects	Amount
1. Cemetery Relocation	\$47,306.00
2.	
3.	
4.	
5.	
6.	
7.	
8.	

and,

WHEREAS, the Tanacross Village Council is lacking financial resources necessary to provide those certain capital improvements, and

WHEREAS, it would be in the best interest of the citizens of the community of Tanacross, Alaska to acquire the above referenced improvements.

THEREFORE BE IT RESOLVED, that the Capital Improvement list attached is hereby adopted and approved as the officially recognized Capital Improvement goal of the village of Tanacross, Alaska.

BE IT FURTHER RESOLVED, that the Tanacross Village Council submit a request to the State Legislature for possible funding of these Capital Improvement needs.

C E R T I F I C A T I O N

I hereby certify that the above resolutions was duly passed by the Village Council this 2nd day of February, 1990 and that a quorum was present.

President

Jerry Elmer



Division of Pioneers' Benefits Position Paper

"An Act making a special appropriation for payment as grants for development, rehabilitation, relocation, or expansion of cemeteries and certain related access facilities; and providing for an effective date."

HB 507

This position paper only comments on lines 11 and 13 of page two of the bill: "City and Borough of Sitka - rehabilitation of the Pioneers' Home cemetery."

The \$177,400 requested is for the building of a memorial with all the names of the buried deceased Alaskans from the Sitka Pioneers' Home cemetery and for the preparation of the grounds with ground cover, a fence, lights to protect against vandalism, walkways and shrubbery. The initial estimate in 1986 was high due to defoliant spraying and the need for new topsoil. Since then the rain has been perking through the soil and no new topsoil is needed. The original estimate is attached.

The Sitka Pioneers' Home is a historic building monument. The cemetery of the Sitka Pioneers' Home is located about three miles away from the home. The cemetery contains about 1,650 graves of pioneer Alaskans. The cemetery has not been kept up for at least 15 years. The attached letter dated August 25, 1975, clearly states the sad disrepair of the cemetery.

The Division of Pioneers' Benefits does not have funds available in either the operational or CIP budgets for this cemetery project. Therefore, the Division strongly supports the passing of this bill.

Barbara Bathony
Barbara Bathony, Director
Division of Pioneers' Benefits

3-13-90

Date

Frank S. Baxter
Frank S. Baxter, Commissioner
Department of Administration

3/13/90

Date

BB2/LTR/0305
Attachments

Tanana Chiefs Conference, Inc.

122 First Avenue
Fairbanks, Alaska 99701-4897
(907) 452-8251
Fax (907) 451-8936

TO: Representatives

~~MR. MIKE DAVES~~

MR. Peter GOLL

FR:

LARRY Nathaniel

Chief, Circle Village Council

DATE:

13 MAR 90

FAX TRANSMITTAL MEMO
TO: Rep. MR. DAVES & MR. GOLL
DEPT: Admin FAX #: 463-5661
FROM: Circle VC PHONE: 452-8251
CO: _____ FAX #: _____
Post-it brand fax transmittal memo 7671
LARRY NATHANIEL

NO. OF PAGES

Subj.

H.B. 507: Funding for Cemetery Restoration

x x x x x x x x x x

Circle is in need of funding to do restoration work at three (3) cemeteries that are located at Circle. The funding will be used for fencing, tools, equip and labor. The amount requested is 7,000. Please support this legislation on behalf of Circle. Thank you.
Respectfully Larry Nathaniel

6-2142E
Utermohle
3/12/90

Funding Information: General Fund \$2,111,706
Other Funds -0-
\$2,111,706

Original sponsor(s): REP. GOLL, Menard, Foster

1 IN THE HOUSE

2 CS FOR HOUSE BILL NO. 507 ()

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 SIXTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act making a special appropriation for payment as
7 grants for development, rehabilitation, relocation,
8 restoration, or expansion of cemeteries and certain
9 related access facilities; and providing for an
10 effective date."

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

12 * Section 1. The sum of \$2,052,400 is appropriated from the general
13 fund to the Department of Administration for payment as grants under
14 AS 37.05.315 to the following municipalities for the purposes and in the
15 amounts stated:

16	(1) City of Angoon - rehabilitation and expansion of	
17	Danger Point cemetery and rehabilitation of the Danger Point	
18	cemetery access road	\$170,000
19	(2) City of Haines - rehabilitation and expansion of	
20	the Haines cemetery	250,000
21	(3) City of Hoonah - development and rehabilitation of	
22	the Hoonah cemetery	150,000
23	(4) City of Kasaan - rehabilitation and expansion of	
24	the Kasaan cemetery	150,000
25	(5) City of Klawock - rehabilitation and expansion of	
26	the Klawock cemetery	100,000
27	(6) City of Thorne Bay - development of a cemetery	175,000
28	(7) City of Craig - rehabilitation of the Craig	
29	cemetery	100,000

1	(8) City of Yakutat - rehabilitation of the Yakutat	
2	cemetery and rehabilitation of access to the Yakutat cemetery	150,000
3	(9) City of Metlakatla - rehabilitation of the	
4	Metlakatla cemetery	175,000
5	(10) City of Skagway - rehabilitation of the Skagway	
6	cemetery	50,000
7	(11) City of Kake - rehabilitation and expansion of the	
8	Grave Island cemetery and rehabilitation of access to the Grave	
9	Island cemetery	200,000
10	(12) Matanuska-Susitna Borough - development of a	
11	cemetery at Trapper Creek	10,000
12	(13) City and Borough of Sitka - rehabilitation of	
13	the Pioneers' Home cemetery	177,400
14	(14) City of Hydaburg - rehabilitation of the	
15	Hydaburg cemetery	75,000
16	(15) City of Nome - cemetery restoration project	70,000

17 * Sec. 2. The sum of \$59,306 is appropriated from the general fund to
 18 the Department of Community and Regional Affairs for payment as grants
 19 under AS 37.05.316 to the following organizations for the purposes and in
 20 the amounts stated:

21	(1) Tanacross Village Council - relocation of the	
22	Tanacross cemetery	\$47,306
23	(2) Circle Village Council - rehabilitation of the	
24	Circle cemetery	7,000
25	(3) Chilkat IRA Council - development of a cemetery at	
26	Klukwan	5,000

27 * Sec. 3. The appropriations made by sec. 2 of this Act are for capital
 28 projects and are subject to AS 37.25.020.

29 * Sec. 4. This Act takes effect July 1, 1990.

S B

3 7 4

HOUSE COMMITTEE REPORT

(5)

Date Referred: March 12, 1990

FURTHER REFERRALS:

Date of Committee Action: 4/27/90

HESS

The COMMUNITY & REGIONAL AFFAIRS Committee considered: CSSB 374 (JUD)

CS SB NO. 374 (Judiciary) DEFINITION OF ALCOHOLIC BEVERAGES

"An Act amending the definition of 'alcoholic beverage'; and providing for an effective date."

[] be replaced with _____ [] the same title
[] a new title

[] have attached amendment(s)

[] 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

zero fiscal note

[] zero with analysis

APPROVES PREVIOUS:

[] fiscal note(s) published:

zero fiscal notes(s) published:

Public Safety, Dep't of Revenue

SIGNING DO PASS:

SIGNING OTHER THAN DO PASS:

(Do Not Pass, No Recommendation, Amend)

Eileen P. McKeon McKeon

Ernest A. Kubina Kubina

Cheri Davis C. DAVIS

Eileen P. McKeon

Chairman's signature

STATE OF ALASKA

STEVE COWPER, GOVERNOR

DEPARTMENT OF LAW

CRIMINAL DIVISION

REPLY TO

CRIMINAL DIVISION CENTRAL OFFICE
P.O. BOX KC
JUNEAU, ALASKA 99811-0310
PHONE: (907) 465-3428

OFFICE OF SPECIAL PROSECUTIONS
AND APPEALS
1031 WEST 4TH AVENUE, SUITE 318
ANCHORAGE, ALASKA 99501-5993
PHONE: (907) 279-7424

April 26, 1990

The Honorable Eileen P. MacLean
Alaska State Representative
P.O. Box V
Juneau, Alaska 99811

Re: CSSB 374(Jud) -- definition of
"alcoholic beverage"

Dear Representative MacLean:

Yesterday your legislative assistant, Rena Bukovich, asked that we provide you with an explanation of why the Governor introduced SB 374, a bill that redefines the "alcoholic beverage." As set out in the Governor's transmittal letter, the bill was introduced to correct an unintended problem that was caused by the new definition of "alcoholic beverage" that was adopted last year in CSHB 181(Jud). In order to understand the Governor's concern, it is useful to consider why, prior to passage of last year's law, the definition of "alcoholic beverage" applied to beverages intended for human consumption that contained any amount of alcohol.

Before 1986, communities had the authority to ban the sale or importation, but not the possession, of alcoholic beverages. During extensive committee hearings on whether legislation to ban possession should be considered, many rural residents testified that people circumvented bans on importation by manufacturing homebrew. In part, horror stories about the abusive use of homebrew led to the legislative decision that allowed communities to ban possession of alcohol. To make the law banning possession of alcoholic homebrew enforceable, the definition of "alcoholic beverage" was amended in 1986 to include any substance intended for human consumption that contained alcohol.

For prosecutions under the definition of "alcoholic beverage" that passed during the 1989 session, the state is required to prove that a beverage contained more than 0.5% by volume of alcohol at the time of possession. In cases involving commercially produced alcoholic beverages, proof of percent of alcohol by volume is simple. In contrast, proving the percent of

The Honorable Eileen P. MacLean

April 26, 1990

Page 2

alcohol in homebrew at one particular point in time is more difficult.

For example, if law enforcement officers seized a vat of homebrew as evidence and shipped a sample to the state crime laboratory for analysis of the percent of alcohol, fermentation of the beverage would continue during shipment and until analysis. Further, the rate of fermentation is not constant and varies for each vat of homebrew. As a result, if the definition of alcoholic beverage includes a threshold level of anything other than 0.0% alcohol by volume, prosecution of offenders for possession of homebrew in local option areas will be more difficult.

The current definition of alcoholic beverage weakens local option laws banning possession of alcohol, and may undercut the state's ability to prosecute local option violations based on possession of homebrew. As a result, in order to make local bans on the possession of alcohol enforceable, the governor introduced SB 374 to clarify that in local option areas, it is not necessary to prove the percent of alcohol that is contained privately produced alcoholic beverages.

Please let me know if I can provide you with any additional information about CSSB 374 (Jud).

Very truly yours,

DOUGLAS B. BAILY
ATTORNEY GENERAL

By: 

Laurie V. Otto
Assistant Attorney General

LHO:me-198

S B

5 0 5

HOUSE COMMITTEE REPORT

(5)

Date Referred: April 23, 1990

FURTHER REFERRALS:

FINANCE

Date of Committee Action: 5/1/90

The C&RA Committee considered:

SB 505

SENATE BILL NO. 505

MUNICIPAL SALES TAXES

"An Act relating to sales taxes levied by general law municipalities."

RECOMMENDATIONS:

- [] be replaced with _____ [] the same title
- [] have attached amendment(s) [] a new title
- [] do pass
- [] do not pass
- [] no recommendation
- [X] individual recommendations
- [] additional referral to the _____ Committee

ADOPTS: _____ letter of intent

ATTACHES NEW FISCAL NOTE(s):
(Dept)

APPROVES PREVIOUS:

(Date/Dept)

- [] fiscal impact _____
- [] zero fiscal note _____
- [] zero with analysis _____

- [] fiscal note(s) _____
- [X] zero fiscal note(s) C&RA
- [] zero fn/analysis _____

SIGNING DO PASS:

SIGNING:

(Check approp. column)

Do Not
Pass No Rec Amend

<i>Ernest G. Kubina</i> Kubina				
<i>Richard J. Foster</i> Foster	<i>Cheri Davis</i> C. DAVIS			
	<i>Eileen P. McKeon</i> McKEON			

Eileen P. McKeon
Chairman's Signature

DEPT. OF COMMUNITY & REGIONAL AFFAIRS

OFFICE OF THE COMMISSIONER

April 13, 1990

POSITION PAPER

RE: Senate Bill 505

SPONSOR: Community and Regional Affairs Committee

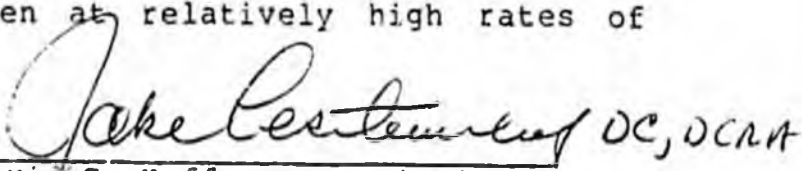
Program Effects of Bill

The major effect of this bill is to remove the existing six percent limit on sales tax rates for general law municipalities. It would also make explicit reference in Title 29 to the existing Title 4 limitation on sales taxes on alcoholic beverages. Section 2 of the bill would repeal AS 29.60.650(g) which is no longer necessary because of the repeal of the sales tax limitation in Section 1 of the bill.

Comments

The department supports passage of this bill as an expansion of municipal powers and enhancement of local governments' ability to raise revenues locally. Home rule municipalities under current law are not subject to the six percent sales tax limit. This bill provides similar treatment to general law municipalities. Any proposed increase in sales tax rates must be approved by the voters in a general law municipality under AS 29.45.670, providing a safeguard against the imposition of unreasonably high sales tax rates.

While this will provide additional flexibility to municipalities to raise revenues locally, it is not a total answer to local governmental financial problems. Particularly in smaller cities, there is simply not enough sales activity to raise significant revenues even at relatively high rates of taxation.


David G. Hoffman, Commissioner

- P.O. BOX B
JUNEAU, ALASKA 99811-2100
PHONE: (907) 485-4700
- 949 E. 36TH AVENUE, SUITE 400
ANCHORAGE, ALASKA 99508-4302
PHONE: (907) 563-1073

FISCAL NOTE

REQUEST:

Revision Date: _____
 Title: "An Act relating to sales taxes levied by general law municipalities."
 Sponsor: Senate C&RA
 Requestor: _____

Agency Affected: Community & Regional Affairs
 BRU: _____
 Components: _____

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 91	FY 92	FY 93	FY 94	FY 95	FY 96
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 FUND	-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)
 There is no fiscal effect for FY 90.

Prepared by: Jim Plasman, Deputy Director
 Division: Municipal & Regional Assistance
 Approved by Commissioner: [Signature]
 Agency: Community & Regional Affairs

Phone: 465-4750
 Date: 3/12/90
 Date: 3-12-90

Distribution (by preparer):
 Legislative Finance
 Legislative Sponsor
 Requestor
 Office of Management and Budget

Alaska
MUNICIPAL
League


TELEPHONE
(907) 586-1325
FAX 463-5480

217 SECOND STREET, SUITE 200
JUNEAU, ALASKA 99801

March 13, 1990

MEMORANDUM

TO: Senator Mike Szymanski, Chair
Members, Senate Community and Regional Affairs Committee

FROM: Scott A. Burgess, Executive Director 

SUBJECT: SB 505 - Municipal sales tax

The Alaska Municipal League supports SB 505 repealing of the limits on sales tax rates contained in Title 29 and allowing local voters to set the limits according to the public need and acceptance of taxation methods.

Because voters must approve a sales tax before it is levied, there should be no statutory limit on the rate of sales tax a municipality may impose. If the voters in a municipality desire to tax themselves at a rate higher than the 6 percent currently authorized by statute (AS 29.45.650(a)) for general law municipalities, they should be permitted to do so. Sales tax represents a significant revenue source for 89 municipalities in Alaska and accounted for \$60,559,971 in municipal revenues in 1988 (compared to \$281,960,341 in property tax revenues collected by only 25 municipalities in Alaska).

I have attached a sheet listing municipalities whose sales and use taxes approach the limit for general law municipalities.

Attachment

sab2:sb505.sales

MUNICIPALITIES WITH 5% OR GREATER GENERAL SALES OR USE TAX

Municipality	Percentage of Sales Tax	Percentage of Other Tax	Type
City and Borough of Juneau	4	7	Hotel/Motel
City of Anderson		6	Heating fuel, phone, electricity, TV
City of Bethel	5		
City of Craig	4	6	Liquor
City of Dillingham	5		
City of Fairbanks		8	Liquor; Hotel/Motel
City of Galena	3	6	Liquor
City of Haines	5		
City of Kake	5		
City of Kenai	5		
City of Kodiak	5	5	Hotel/Motel
City of Petersburg	6	3	Hotel/Motel
City of Skagway	4	6	Hotel/Motel
City of Tenakee Springs	1	6	Hotel/Motel
City of Wrangell	6		
Haines Borough	5		
Matanuska-Susitna Borough		5	Hotel/Motel
Municipality of Anchorage		8	Hotel/Motel
North Slope Borough	6		

Source: *Alaska Municipal Officials Directory 1990*, Alaska Municipal League, Alaska Department of Community and Regional Affairs, 2/8/90.

k7/salestax

MEMORANDUM

State of Alaska

Department of Law

TO: Marty Rutherford, Director
Div. of Municipal & Regional Asst.
Dept. of Community &
Regional Affairs

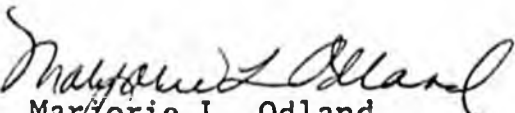
DATE: March 1, 1988

FILE NO: 663-87-0491

TEL NO: 465-3600

SUBJECT: Sales tax limitations
when borough, and city
within borough, both levy
taxes

FROM:


Marjorie L. Odland
Assistant Attorney General
Governmental Affairs-Juneau

You have asked our opinion regarding several specific municipal sales tax questions stemming from an interpretation of the statutory sales and use tax provisions, AS 29.45.650 and 29.45.700. Each of the questions you have asked will be addressed individually below.

1. Does the six percent sales tax limitation on boroughs under AS 29.45.650(a) apply to cities as well?

The answer is yes. AS 29.45.700 states that a city, which is empowered to levy and collect sales and use taxes, may do so "in the manner provided for boroughs." AS 29.45.650 specifies the "manner" in which boroughs may levy and collect such taxes. This "manner" includes the setting of the maximum percentage (six percent) that can be levied and collected on sales, rents and services. It also includes the maximum interest rate that can be imposed on delinquent taxes, the method of creating, recording, and notice of a lien on property to secure payment, and requirements for imposing a use tax (e.g., use tax rate must equal sales tax rate and can only be imposed on buyers).

2. Does the six percent sales tax limitation apply to the combined tax rate for cities within boroughs or may each entity separately tax up to a rate of six percent for a potential total of twelve percent?

The applicable tax statutes do not readily provide the answer to this question. Neither AS 29.45.650 nor 29.45.700 specify a "maximum" percentage of sales tax when both a borough and a city are imposing a sales tax on the same sale. However, taken literally, a city within a borough that levies and collects area-wide sales and use taxes may do the same as the borough and a 12 percent sales tax (combined) appears to be allowed by law. This interpretation is consistent with the constitutional requirement that municipal powers are to be broadly construed. Alaska Const. art. X, § 1. Unfortunately, there is no Alaska case law on point to assist us in interpreting these statutes. And, we were unable

Marty Rutherford, Director
DCRA -- Munic. & Reg. Asst. Div.
663-87-0491

March 1, 1988
Page #2

to find any legislative history on the sales and use tax statutes to provide us with any helpful insight on this particular matter. However, according to one legal treatise, it is generally held that tax laws are to be interpreted to avoid any possibility of double taxation, in any form, including taxes levied by distinct sovereignties upon the same tax basis, especially where the intention of the legislature is not clear in respect to the matter. 68 Am. Jur. 2d Sales and Use Taxes § 178 (1973).

In conclusion, a literal reading of AS 29.45.650 and 29.45.700 allows for a maximum 12 percent sales and use tax when both the borough and city within the borough levy taxes on the same sources. However, we believe that the intention of the legislature is not altogether clear on this issue and needs clarification before we can render a definitive answer.

3. Assuming a city within a borough has the power to levy a sales tax which would make the combined tax rate in excess of six percent, would the borough be able to only collect up to the six percent limit under AS 29.45.645(a)?

No. Under AS 29.35.170(b), the borough "shall" collect taxes levied by a city and must return those taxes it collects to the city, in full. See 1987 Inf. Op. Att'y General (663-88-0178; Nov. 13). The borough, of course, also collects its own sales and use taxes under AS 29.45.645(a). Therefore, assuming that a total nine percent sales tax is levied on sales in a city within a borough, with six percent imposed by the borough and three percent imposed by the city, the borough collects the entire nine percent sales tax under its authority to collect taxes on behalf of the city and gives the city its three percent and retains six percent for itself. AS 29.35.170(b).

In your memorandum, you expressed concern that there may be a conflict of tax "collection" powers between a city within a borough and the borough when the city levies sales taxes on sources not taxed by the borough. AS 29.45.700(a) allows a city within a borough to "levy" sales and use taxes on all sources taxed by the borough, but does not allow the city to collect those taxes. Those sales and use taxes are collected by the borough on behalf of the city. But, as you have pointed out in your opinion request, AS 29.45.700(a) allows cities within boroughs to levy and collect sales and use taxes "on other sources," which the borough does not tax. However, AS 29.45.700(a) also states that a city is only allowed to levy and collect these taxes if the borough assembly authorizes the city to do so by ordinance. Therefore, no conflict exists between AS 29.35.170(b) and AS 29.45.700(a), because a city within a borough can only

Marty Rutherford, Director
DCRA -- Munic. & Reg. Asst. Div.
663-87-0491

March 1, 1988
Page #3

levy and collect its own sales and use taxes if the taxes are:
(1) levied on sources not taxed by the borough; and (2) the borough assembly authorizes the city to levy and collect the tax on those sources. Since the borough does not tax these "other sources," it has been given the power to delegate its tax levy and collection power to the city under AS 29.45.700(a) for this limited purpose.

We hope this addresses your questions. I apologize for the lateness in answering this opinion request.

MLO/pjg

cc: Mike Worley, State Assessor
DCRA - Juneau

Sec. 29.45.600. Combining property tax with incorporation of a second class city. A petition for second class city incorporation may request that a property tax proposal be placed on the same ballot. The petition must state the proposed tax rate. The petition may request that incorporation be dependent on the passage of the property tax proposition. If so, the incorporation proposition fails if the property tax fails. (§ 12 ch 74 SLA 1985)

Article 4. Borough Sales and Use Tax.

Section

650. Sales and use tax

660. Notice of sales and use tax

Section

670. Referendum, adoption, and modification

Sec. 29.45.650. Sales and use tax. (a) Except as provided in (f) of this section, a borough may levy and collect a sales tax not exceeding six percent on sales, rents, and on services provided in the borough. The sales tax may apply to any or all of these sources. Exemptions may be granted by ordinance.

(b) A borough levying a sales tax may also by ordinance levy a use tax on the storage, use, or consumption of tangible personal property in the borough. The use tax rate must equal the sales tax rate and the use tax shall be levied only on buyers.

(c) A person who furnishes proof, in the form required by the borough tax collector, that the person has paid a sales tax on the source on which a use tax is levied by the borough is required to pay the use tax only to the extent of the difference between the amount of the sales tax paid and the amount of the use tax levied by the borough. This subsection applies to a sales tax levied in any taxing jurisdiction whether inside or outside the state.

(d) If the assembly charges interest on sales taxes not paid when due, the rate of interest may not exceed 15 percent a year on the delinquent taxes and shall be charged from the due date until paid in full. This subsection applies to home rule and general law municipalities.

(e) A borough may provide for the creation, recording, and notice of a lien on real or personal property to secure the payment of a sales and use tax, and the interest, penalties, and administration costs in the event of delinquency. When recorded, a lien authorized under this section has priority over other liens except those for property taxes and special assessments.

(f) A borough may not levy and collect a sales tax on a purchase made with food coupons, food stamps, or other type of certificate issued under 7 U.S.C. 2011 — 2025 (Food Stamp Act). This subsection applies to home rule and general law municipalities. (§ 12 ch 74 SLA 1985; am §§ 3, 4 ch 38 SLA 1986)

Effect of amendments. — The 1986 amendment substituted "Except as provided in (f) of this section, a" for "A" at the beginning of subsection (a) and added subsection (f).

NOTES TO DECISIONS

Editor's notes. — The cases cited in the notes below were decided under a former, similar provision.

Evolutionary development of present language of subsection (a). — See *Liberati v. Bristol Bay Borough*, Sup. Ct. Op. No. 1735 (File No. 3365), 584 P.2d 1115 (1978).

Subsection (a) of this section permits a selective sales tax. *Liberati v. Bristol Bay Borough*, Sup. Ct. Op. No. 1735 (File No. 3365), 584 P.2d 1115 (1978).

This section states no limits on what may be exempted. *Liberati v. Bristol Bay Borough*, Sup. Ct. Op. No. 1735 (File No. 3365), 584 P.2d 1115 (1978).

And there is nothing in the statute which expressly requires a general tax. *Liberati v. Bristol Bay Borough*, Sup.

Ct. Op. No. 1735 (File No. 3365), 584 P.2d 1115 (1978).

The term "sales tax" carries no connotation of generality. *Liberati v. Bristol Bay Borough*, Sup. Ct. Op. No. 1735 (File No. 3365), 584 P.2d 1115 (1978).

The city of Homer bed tax, based upon the actual rental of a room, and imposed, computed and collected according to traditional sales tax methods, is a sales tax within the meaning of this section. *City of Homer v. Gangl*, Sup. Ct. Op. No. 2559 (File Nos. 5702, 5743), 650 P.2d 396 (1982).

A real property lien is beyond the scope of what may be "necessarily or fairly implied in or incident to" the authority to collect a sales tax. *Fairbanks N. Star Borough v. Howard*, Sup. Ct. Op. No. 2036 (File No. 4575), 608 P.2d 32 (1980).

Collateral references. — 68 Am. Jur. 2d, Sales and Use Taxes, § 1 et seq.

Sec. 29.45.660. Notice of sales and use tax. (a) If the borough levies and collects only a sales tax and use tax, the assembly shall provide a notice substantially in the form set out in AS 29.45.020. In providing notice under this subsection, the assembly shall substitute for the millage equivalency its estimate of the equivalent sales tax rate for each of the categories of financial assistance set out in AS 29.45.020. Notice shall be provided

(1) by publishing in a newspaper of general circulation in the borough a copy of the notice once each week for a period of three successive weeks, with publication to occur not later than 45 days after the final adoption of the borough's budget; or

(2) if there is no newspaper of general circulation in the borough, by posting a copy of the notice for at least 20 days in at least two public places in the borough, with posting to occur not later than 45 days after the final adoption of the borough's budget.

(b) Compliance with the provisions of this section is a prerequisite to receipt of municipal tax resource equalization assistance under AS 29.60.010 — 29.60.080 and state aid for miscellaneous municipal services under AS 29.60.100 — 29.60.180. The department shall withhold annual allocations under those sections until municipal officials demonstrate that the requirements of this section have been met. (§ 12 ch 74 SLA 1985)

CITY OF SKAGWAY
RESOLUTION 90-6R

A RESOLUTION SUPPORTING SENATE BILL 505 IN THE LEGISLATURE OF THE STATE OF ALASKA SIXTEENTH LEGISLATURE - SECOND SESSION.

Whereas, SB 505 seeks to equalize taxing abilities for all communities within the state, and

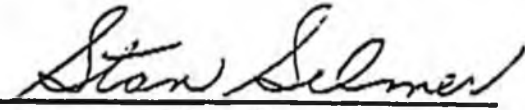
Whereas, the City of Skagway recognizes that the hotel/motel bed tax is considered a sales tax under Sec. 29.45.650, and

Whereas, Sec. 29.45.650 requires that sales tax not exceed 6%, and


Whereas, SB 505 seeks to remove the 6% restriction so that a Borough or City may increase its hotel/motel bed tax upon approval of voters.

NOW, THEREFORE, BE IT RESOLVED that the City of Skagway supports approval of Senate Bill 505 during the Second Session of the Alaska Sixteenth Legislature.

PASSED AND APPROVED THIS 5th DAY OF APRIL, 1990.


Stan Selmer, Mayor

ATTEST:


Lorene S. Gordon, City Clerk

Drafted by: Tourism Director Fuqua
Introduced by: Councilman McBride

Municipal Taxes
(general law muni's)

SENATE BILL NO. 505 by the Community & Regional Affairs Committee. Rewrites AS 29.45.650(a) to allow a borough to levy and collect a sales tax on sales, rents, and on services provided in the borough, except as provided in AS 04.21.010(c), relating to municipal regulation of alcoholic beverages, and AS 29.45.650(f), relating to food stamps. AS 04.21.010(c) provides:

- (c) A municipality may not impose taxes on alcoholic beverages except a
- (1) property tax on alcoholic beverage inventories;
 - (2) sales tax on alcoholic beverage sales if sales taxes are imposed on other sales within the municipality;
 - (3) sales tax on alcoholic beverage sales that was in effect before July 1, 1985; and
 - (4) sales and use tax on alcoholic beverages if the sale of alcoholic beverages within the municipality has been prohibited under AS 04.11.490.

AS 29.45.650(f) provides:

(f) A borough may not levy and collect a sales tax on a purchase made with (1) food coupons, food stamps, or other type of certificate issued under 7 U.S.C. 2011 — 2025 (Food Stamp Act); or (2) food instruments, food vouchers, or other type of certificate issued under 42 U.S.C. 1786 (Special Supplemental Food Program for Women, Infants, and Children). This subsection applies to home rule and general law municipalities.

Repeals AS 29.45.650(g), relating to cigarettes and tobacco:

(g) The limitation on the rate of levy specified in (a) of this section does not apply to taxes imposed on sales of cigarettes and tobacco products at retail. For purposes of this subsection,

- (1) "cigarette" has the meaning given in AS 43.50.170;
- (2) "tobacco product" has the meaning given in AS 43.50.390. (§ 12 ch 74 SLA 1985; am §§ 3, 4 ch 38 SLA 1986; am § 1 ch 20 SLA 1987; am § 2 ch 30 SLA 1988; am §§ 1, 2 ch 96 SLA 1989)

If enacted, the bill becomes law 90 days after it is signed by the Governor.

Introduced February 22, 1990 and referred to Community & Regional Affairs; Finance.

S B

5 2 4

HOUSE COMMITTEE REPORT

(5)

Date Referred: April 5, 1990

FURTHER REFERRALS:

HESS

Date of Committee Action: 4/24/90

The COMMUNITY & REGIONAL AFFAIRS Committee considered: CSSB 524(JUD)

CS SB NO. 524 (Jud)

EMERGENCY MEDICAL & AMBULANCE SERVICES

"An Act relating to ambulance and emergency medical services provided by municipalities, nonprofit medical service corporations, or nonprofit associations."

RECOMMENDATIONS:

- [] b. replaced with _____ [] the same title
[] have attached amendment(s) [] a new title
 do pass
[] do not pass
[] no recommendation
[] individual recommendations
[] additional referral to the _____ Committee

ADOPTS: _____ letter of intent

ATTACHES NEW FISCAL NOTE(S):
(Dept)

APPROVES PREVIOUS:

(Date/Dept)

- [] fiscal impact _____ [] fiscal note(s) _____
 zero fiscal note Commerce & Econ. Dev. [] zero fiscal note(s) _____
[] zero with analysis _____ [] zero fn/analysis _____

SIGNING DO PASS:

SIGNING:

(Check approp. column)

Do Not
Pass
No Rec
Amend

Eileen S. Mackay
Eugene A. Kubina

	Do Not Pass	No Rec	Amend
<u>Cheri Davis</u>	x		

E.P. Mackay

Chairman's Signature

FISCAL NOTE

REQUEST:

Revision Date: _____ Agency Affected: Commerce & Economic Dev.
 Title: An Act relating to ambulance and BRU: Insurance
emergency medical services provided by municipalities
 Sponsor: Senate Labor & Commerce Comm. Components: _____
 Requestor: House C&RA Committee

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 91	FY 92	FY 93	FY 94	FY 95	FY 96
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0	0	0	0	0	0
CAPITAL	0	0	0	0	0	0
REVENUE	0	0	0	0	0	0

FUNDING: (Thousands of Dollars)

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

POSITIONS:

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

ANALYSIS: (Attach a separate page if necessary)

No impact in FY 90

Prepared by: Joan Brown, Administrative Officer Phone: 465-2597
 Division: Insurance Date: 4/24/90
 Approved by Commissioner: Larry Merculieff Date: 4-25-90
 Agency: Department of Commerce & Economic Development

Distribution (by preparer):

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

Southern Region
EMERGENCY
Medical Services Council, Inc.

December 11, 1989

Jim Jordan, Acting Director
Division of Insurance
3301 C Street, Suite 740
Anchorage, AK 99503-5990

Dear Mr. Jordan:

I would like to get the Division's opinion whether or not ambulance service membership programs are in compliance with the State's insurance laws and regulations. Specifically, I would like your opinion regarding the attached contract to be used by the Ninilchik Community Ambulance Association.

An ambulance service membership program, also known as a subscription program, has the following characteristics:

1. Member pays an annual fee, e.g. \$50.00 per family.
2. Fee covers out-of-pocket expenses for medically necessary ambulance service.
3. The ambulance service bills all third party payors who provide coverage to member.
4. Contract clearly states that this is not an insurance contract.

These type programs are rapidly expanding throughout the lower 48. There is increasing interest in them here in Alaska. Ambulance services have been heavily subsidized by local and state government. With the decline in support from those quarters they now see the need to begin charging their patients the real cost of providing the service. They want to be able to offer an option to the members in the community that mitigates the impact of increasing fees.

For your information I have enclosed a Medicare letter ruling on membership programs and the section from the Medicare manual dealing with these programs. I have also enclosed an article on the programs by Jack Stout, a leading national consultant on implementing these programs.

Other states where these programs currently operate include Arizona, Oregon, Texas, Oklahoma, and Michigan.

The Ninilchik Community Ambulance Association intends to begin selling memberships on January 1, 1990. The contract is modeled on the contract used by Medstar in Fort Worth, Texas. They have agreed to refund all of the

EMG letter 12/11/89
to Div. OF INSURANCE



6325 Security Boulevard
Baltimore, MD 21207

JUN 3 1986

Mr. David M. Werfel
1320 Stony Brook Road
Suite 213
Stony Brook, New York 11790

Dear Mr. Werfel:

This is in reply to your recent letter asking whether an ambulance company commits a criminal violation of the bribe, kickback and rebate provisions of section 1877(b) of the Social Security Act if it furnishes services under an annual subscription agreement, accepts assignment for all Medicare covered services furnished to agreement subscribers, and routinely does not bill the subscribers for applicable deductible and coinsurance amounts.

Services furnished by an ambulance company under a subscription agreement calling for payment of an annual membership fee may be covered under Medicare only if the agreement explicitly or by clear implication authorizes the company to charge, except for applicable deductible and coinsurance, to the extent of the available Medicare or other coverage of the services. Under this type of agreement, the subscription fees for subscribers who have Medicare or other coverage become, in effect, premiums for coverage by the ambulance company of deductible and coinsurance amounts. Thus, the actual charge and customary charge reductions imposed under Medicare Carriers Manual section 5220 for routine waiver of deductible and coinsurance do not apply. There is no requirement, moreover, that subscription fees be uniform for all subscribers nor is there any requirement that fees be different for those subscribers who have Medicare or other insurance than for those subscribers who have no insurance.

In accepting Medicare assignments from subscribers and treating annual fees under subscription agreements as premium for deductible and coinsurance coverage, ambulance companies function in a manner similar to group practice prepayment plans.

We have discussed above the Medicare reimbursement implications of ambulance company subscription agreements. These civil implications of the agreements under the Social Security Act are in the jurisdiction of the Health Care Financing Administration. The question of whether these agreements involve any criminal

Jack Stout

INTERFACE

Why Subscription Programs?

Several weeks ago I was discussing with my philosophical arch-rival, Dennis Murphy, author of *jems*' "Public Forum" column, the legal subtleties of ambulance subscription programs. At the end of our discussion, Dennis suggested that, because this issue is so deceptively complex and poorly understood, I should devote an "Interface" column to subscription programs. Here it is.

What Are They? Ambulance subscription programs fall into two major categories: those which involve the actual sale of ambulance services on a prepaid basis (i.e., for purposes of this discussion, Type I programs); and those which allow subscribers to fix price and prepay the uninsured portions of ambulance bills (i.e., Type II programs). Legally and financially, these two types of programs are profoundly different.

If the subscription agreement (sometimes called a "membership agreement") entitles the subscriber to "free ambulance services" for a defined period of time in exchange for a subscription or membership fee, then the program involves the actual sale of ambulance services on a prepaid basis and is, therefore, a Type I program. But if the subscription agreement merely allows the subscriber to prepay at a fixed price set by the company the uninsured portions of ambulance bills, then the

contract is *not* for the sale of ambulance services, but is instead an agreement between the customer and the provider to alter the method of payment of uninsured portions of ambulance bills—i.e., a Type II program.

The most important difference between Type I and Type II subscription programs is that, under a Type II program, the provider may (with certain restrictions) collect and retain third party reimbursements for services rendered to subscribers. Under a Type I program, monies collected from third party payors technically belong to the subscriber, and in some cases, it may be unlawful for third party bills to exceed the amount of annual subscription fee.

In practice, subscription agreements and promotional materials are often so poorly drafted that it is impossible to determine what is actually being sold—ambulance services versus an altered method of paying uninsured costs. That uncertainty carries great financial risk for the provider who bills third party payors, especially Medicare, for services received by subscribers.

Why Subscription Programs? For most providers, public and private, a subscription program is primarily a political safety value. If it didn't raise a dollar, the program would still be worth having for some providers.

Since about 1970 the ambulance industry has experienced tremendous clinical and technological progress. In about half of our communities, this progress has been heavily financed by local tax subsidies, with user fees remaining at token levels a fraction of production costs. But in other

communities, progress has either been limited or financed through substantial increases in user fees. In addition, many local governments which were able to afford large ambulance subsidies in the easy-money fiscal years of the 1970s must now choose between higher user fees versus allowing a deterioration in quality of ambulance services.

For reasons detailed in depth in previous "Interface" articles, poor EMS at any price is false economy, and there are serious disadvantages to local tax financing of health care services, including EMS. Thus, assuming reasonable levels of efficiency, it is good public policy to finance quality ambulance services by raising ambulance fees to cover full production costs. It's good public policy, but it can also sting.

When ambulance rates go up dramatically, either to finance better service or to offset a subsidy reduction, the wisdom of the action may be less than widely recognized by the public at large. Here's why.

In some insurance policies, the level of maximum reimbursement for ambulance service was established back when teenaged ambulance jockeys roared through the streets in barely modified Cadillac hearses loosely called ambulances. Furthermore, Medicare's method of changing its "allowable charges" for ambulance services incorporates an 18-month delay from the time the rates are raised. And if your community is surrounded by heavily subsidized providers, your neighbor's token rates will, because of Medicare's method, forever depress your own reimbursement levels.

The bottom line: When you raise

Jack Stout has been at the forefront of innovations in the design and implementation of EMS systems for the past dozen years. If you have a question, a problem, or a solution related to the public/private interface in prehospital care, address your letter to "Interface" jems, PO Box 1026, Solana Beach, CA 92075.

subscriber because, under a Type I subscription plan, he has already paid you for services in advance.

The solution to this problem is simple: If you intend to collect money from third party payors for services rendered to subscribers, just be sure your subscription contract and promotional materials make it very clear that yours is a Type II subscription program.

Deductibles and Coinsurance. Even for Type II subscription programs, there have remained questions regarding whether the subscription fees can count toward the subscriber's deductible, and whether the provider is at risk for failing to attempt to collect "coinsurance" amounts as required by Medicare law.

Attorney David Werfel, consultant to the American Ambulance Association, recently succeeded in obtaining from the Health Care Financing Administration (HCFA) clarification of policy regarding these issues. Quoting from HCFA's June 3, 1986 response to Mr. Werfel's letter:

"Services furnished by an ambulance company under a subscription agreement calling for payment of an annual membership fee may be covered under Medicare only if the agreement explicitly or by clear implication authorizes the company to charge, except for applicable deductible and coinsurance, to the extent of the available Medicare or other coverages of the services. Under this type of agreement, the subscription fees for subscribers who have Medicare or other coverage become, in effect, premiums for coverage by the ambulance company of deductible and coinsurance amounts. Thus, the actual charge and customary charge reductions imposed under Medicare Carriers Manual section 5220 for routine waiver of deductible and coinsurance do not apply. There is no requirement, moreover, that subscription fees be uniform for all subscribers nor is there any requirement that fees be different for those subscribers who have Medicare or other insurance than for those subscribers who have no insurance."

That's about as clear-cut a statement of policy as you'll ever get out of HCFA, and what's more, it's a policy our industry and our customers can live with. This happy outcome is, I believe, partly the result of Mr. Werfel's careful drafting of the letter requesting the opinion. (How you ask a question can greatly affect the answer you get.) Mr. Werfel is clearly earning his fee.

The Plot Thickens. Mr. Werfel's letter also asked for an opinion on whether subscription programs might

violate the anti-kickback provisions of the Social Security Act—i.e., Section 1877(b). He didn't get it.

HCFA's response: "The question of whether these (subscription) agreements involve any criminal conduct under section 1877(b) of the Social Security Act is in the jurisdiction of the Department's Office of Inspector General (OIG). . . . We understand that the OIG does not give advisory opinions on the effect of criminal statutes." Thus, we seem to be left, for the moment, in a sort of awkward situation.

Pricing Subscription Fees. Most subscription programs employ a uniform price per "household." However, you may wish to consider setting the subscription fee for Medicare subscribers separately. Here's why.

When you accept assignment, as you will do for all Medicare-eligible subscribers, you agree to accept Medicare's reimbursement as payment in full for the balance which would otherwise be owed by the customer. The subscription fee already paid by the subscriber satisfies the customer's obligation to pay any deductible and coinsurance which would otherwise be owed. Okay so far.

But what if, at the end of a fiscal year, it turns out that your revenues from subscription fees paid by Medicare-eligible subscribers, when added to the Medicare payments received for services rendered to those same patients, exceeds the combined "allowable charges" for all of those services? You could be found guilty of overcharging for services to Medicare patients on whom you have accepted assignment.

Readers already familiar with how Medicare works will immediately see the problem. For the rest of you (whose lives are obviously filled with more interesting stuff to think about), just understand that when you "accept assignment" on a Medicare patient, you are agreeing to charge Medicare no more than 80% of its "allowable charge" for that service (which may be far less than your standard rate), and you are agreeing to collect from the patient the remaining 20% and not one cent more. That's the law.

Steve Williamson, Executive Director of the Tulsa system, and manager of an unusually successful urban subscription program, has a solution to this problem that should satisfy the law. Every year, before setting the following year's subscription fees, Steve compiles

TWELVE IMPECCABLE EXCUSES FOR NOT GIVING BLOOD.

1. I think I have lumbago.
2. I'm type Z negative.
3. I'm on the grapefruit diet.
4. I gave six months ago.
5. I just got back from Monaco.
6. The lines are thirteen blocks long.
7. My mother won't let me.
8. I didn't sign up.
9. I'm going out of town.
10. Asthma runs in my family.
11. I forgot to eat this morning.
12. I'm allergic to flowering magnolia.



Each one's a doozy,
but we're hoping you
won't use any of them.
Give blood through the
American Red Cross.
Please, don't chicken out.

**EXCUSES DON'T SAVE LIVES.
BLOOD DOES.**

American
Red Cross



**NINILCHIK COMMUNITY AMBULANCE ASSOCIATION (NCAA)
MEMBERSHIP APPLICATION AND CONTRACT**

Description of Membership and Fee: I understand the annual fee for my Ninilchik Community Ambulance Association, hereinafter known as NCAA, Membership limits my out-of-pocket expenses for the uninsured portion of bill(s) for ambulance services provided by NCAA for medically necessary ambulance transportation originating and terminating in NCAA's Primary Service Area and to or from a medical facility. This year's fee is \$50 for NCAA Primary Service Area residents.

Who Is Eligible for NCAA Membership?: NCAA Membership is available to legal residents of NCAA's Primary Service Area, which includes: Mile 121 to mile 145 of the Sterling Highway and the roads which are connected to the Sterling Highway between those mile markers. NCAA does not solicit memberships from Medicaid eligible recipients and such membership constitutes a voluntary contribution only.

Who In My Home Is Covered by This Program?: The NCAA Membership covers a husband and wife, or single parent, and their children 18 years and younger living at the same address, or a single individual in a household.

Where am I Covered: The NCAA Membership is good throughout NCAA's Primary Service Area. The Membership does not cover ambulance service outside the Primary Service Area, or services provided by companies other than NCAA.

What Is Medically Necessary?: I understand that NCAA Membership ambulance services are restricted to the "medically necessary", defined as the specific need for ambulance service transportation to or from a health care facility (hospital, nursing home, etc.) where use of alternative forms of transportation (private car, taxi, etc.) would be medically inappropriate given the patient's condition. NCAA reserves the right to require physician certification of medical necessity in cases of suspected abuse. If abuse is found to exist, then I understand my membership can be terminated. If my insurance company denies my NCAA claim on grounds that my transport by ambulance was not medically necessary, I will be responsible to NCAA for the full amount of the bill.

If I Have Insurance*, Who Receives Claim Payments?: I understand that my NCAA Membership is not insurance and that NCAA will receive payments from my insurer or third party agency (e.g. Medicare, Blue Cross, etc.). To help process authorized claims, I authorize release of any medical information necessary to process a claim to both my insurer and to NCAA, and I further authorize such payment to be made directly to NCAA. I further agree to forward to NCAA any payments made by my insurer to me for services provided by NCAA.

***Note:** I understand that if it is the policy of my insurance company that my NCAA Membership voids its responsibility for payment of claims, this contract may be cancelled and full amount of my membership fee refunded to me.

Effective Dates: I understand that my membership is effective upon receipt of full payment and signed membership application and contract, through December 31, 1990.

Signature _____

Date _____

Spouse's Signature _____

Date _____

Membership contract must be signed by the Insurance Policy Holder or Authorized Person if uninsured. Membership is non-transferable and non-refundable except as described above.

If you have questions or have trouble understanding this contract, please call 567-3342.

When you have completed the Member Information and signed the Contract, please mail it to:

NCAA Membership Program
P.O. Box 39351
Ninilchik, AK 99639

If you are paying by check or money order, please make it payable to:
Ninilchik Community Ambulance Association

STATE OF ALASKA

DEPARTMENT OF COMMERCE & ECONOMIC DEVELOPMENT

DIVISION OF INSURANCE

STEVE COWPER, GOVERNOR

7th FLOOR FRONTIER BLDG.
3601 C STREET, SUITE 740
ANCHORAGE, ALASKA 99503-5934
PHONE: (907) 562-3626

January 4, 1990

Southern Region Emergency
Medical Services Council
6130 Tuttle Place, Suite 2
Anchorage, Alaska 99507-2041


Dear Mr. Scott:

Acting Director Jordan has asked me to respond to your letter of December 11, 1989 in which you requested this Division's opinion as to compliance with Title 21 of Alaska Statutes dealing with insurance of your proposed ambulance service membership program.

Based upon review of the information provided in your letter and follow up package, it is the opinion of the Division that your organization's ambulance service membership program would be required to comply with Chapter 87 of the Alaskan insurance statutes. Specifically, AS 21.87.010 requires any organization "...engaging... in the provision of all or a part of a health care service as defined in AS 21.87.330, for its subscribers in exchange for periodic prepayments in identifiable amount by or as to subscribers" to adhere to AS 21.87.

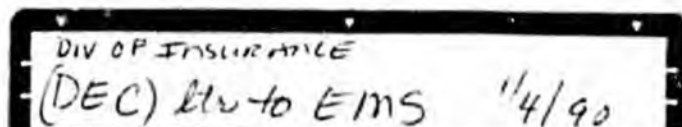
Accordingly, your attention is directed to the enclosures and in particular AS 21.87.070 to .090 for the procedures you should follow in applying for a certificate of authority. Our licensing officer, Jan Clemetson, who is located in Juneau can be contacted for the necessary forms and further information.

Very truly yours,


Eugene W. Furman, CPA
Insurance Financial Examiner

Enclosures

EF/sh
2661R



Southern Region
EMERGENCY
Medical Services Council, Inc.

February 5, 1990

Honorable Pat Rodey
Alaska State Senate
P.O. Box V
Juneau, AK 99811

Dear Pat:

A problem has come up which we need the legislature's help on. I would like to get your advice about how best to solve the problem.

On January 1, 1990 Ninilchik Community Ambulance Association, the volunteer ambulance service in Ninilchik, raised their rates from \$50 per call to \$200 per call. At the same time they offered the residents of this unincorporated area the option of purchasing a membership for \$50 per year. The membership covers the uninsured portion of the ambulance bill for the member and his family.

The Association started this membership program to help offset hard feelings in the community about such a dramatic rate increase. At the same time the rate increase is needed so that the association can continue to offer ambulance service. The annual Memorial Day Pancake Feed and \$50 for 40 ambulance calls per year does not cover the cost of training, equipment, insurance, heated storage, gasoline and maintenance.

I assisted Ninilchik with formulating their program so that it would meet the insurance company requirements. I also asked the Division of Insurance to review the contract to assure that it complied with Alaska law. Unfortunately, the Division pointed out that the services provided by Ninilchik fall within the definition of prepaid health care services and therefore must comply with the requirements of AS 21.87.

In reading this statute it is clear that the intent of the Legislature was to regulate prepaid health care that is comprehensive in nature, e.g. health maintenance organizations and preferred provider organizations. The need to offer protection to the consumer is that these services are both expensive to the customer and represent a very large contingent liability for the provider. I think you will agree that these ambulance service membership programs bear little resemblance to these types of plans in terms of cost, contingent liability of the provider and even basic structure.

The following language is intended to exempt municipal and non-profit ambulance services which choose to provide any form of prepaid ambulance service from regulation under the state insurance statutes.

The assumption is that only Section 21.87 applies. It has not been determined if any other portion of the insurance statutes would apply to such schemes. If so, we would like to see language included that would exempt them from that as well.

Section 21.87.010 (b) is amended by adding the following:

(5) municipalities, fire service areas, emergency medical service areas and private non-profit corporations which provide emergency medical services certified by the Department of Health and Social Services under AS 27.08.080 that either individually or jointly accept prepayment from persons within their service areas for ambulance and emergency medical services, but not for other health services.

This statute would also allow two or more providers to join together to provide such services. This would be useful where adjacent service areas want to conduct a joint marketing campaign, so that if their members are hurt in the neighboring jurisdiction that they are covered.

This is modeled on the Oregon statute, which is attached.

withstanding this subsection, an association of employes described in this subsection may elect to be subject to the Insurance Code by a majority vote of its members residing in Oregon.

(2) A doctor contracting to furnish health care services to an association of employes described in subsection (1) of this section.

(3) An association of grade schools, high schools, colleges or universities that:

(a) Provides health care services to students of member institutions; and

(b) Does not compensate anyone for procuring new members.

(4) A patrons of husbandry association, fraternal fire insurance association, fraternal life insurance association, or religious organization providing fire insurance for its members or churches, that was continuously active in this state for 15 years prior to January 1, 1957, and was not required to have a certificate of authority on that date.

(5) A fraternal benefit society that:

(a) Admits to membership only persons engaged in one or more crafts or hazardous occupations, in the same or similar lines of business; and

(b) Insures only its own members and their families, and its ladies' societies or ladies auxiliaries.

(6) An air ambulance service which is operated by a nonprofit corporation, if the majority of the group of persons vested with the management of the affairs of the corporation are not employes of the corporation.

(7) An association of the members of a workers' productive cooperative, which cooperative has been organized under ORS chapter 62 and is engaged primarily in reforestation, if the association insures only the members of the cooperative and their families for health insurance. [1967 c.359 §7; 1971 c.69 §1; 1971 c.536 §1; 1979 c.548 §1]

731.036 Persons completely exempt from application of Insurance Code. The Insurance Code does not apply to any of the following to the extent of the subject matter of the exemption:

(1) A bail bondsman, other than a corporate surety and its agents;

(2) A fraternal benefit society that has maintained lodges in this state and other states for 50 years prior to January 1, 1961, and for which a certificate of authority was not required on that date;

(3) A religious organization providing insurance benefits only to its employes, which organization is in existence and exempt from taxation under section 501 (c) (3) of the federal Internal Revenue Code on September 13, 1975;

(4) Public bodies, as defined in ORS 30.260, that either individually or jointly establish a self-insurance fund for tort liability in accordance with ORS 30.282;

(5) Public bodies, as defined in ORS 30.260, that either individually or jointly establish a self-insurance fund for property damage;

(6) Cities and counties that either individually or jointly insure for health insurance coverage, excluding disability insurance, their employes or retired employes, or their dependents, or combination of employes and dependents, with or without employe contributions, if all of the following conditions are met:

(a) The scope of the program meets the following minimum requirement:

(A) In the case of an individual public body program, the number of covered employes and retired employes aggregates at least 1,000 individuals; and

(B) In the case of a joint program of two or more public bodies, the number of covered employes and retired employes aggregates at least 1,000 individuals, or the annual contributions to the program aggregate at least \$500,000;

(b) The health insurance includes all coverages and benefits required of group health insurance policies under ORS chapter 743;

(c) The public body, or the program administrator in the case of a joint insurance program of two or more public bodies, files with the Director of the Department of Insurance and Finance copies of all documents creating and governing the program, all forms used to communicate the coverage to beneficiaries, the schedule of payments established to support the program and, annually, a financial report showing the total incurred cost of the program for the preceding year. A copy of the annual audit required by ORS 297.425 may be used to satisfy the financial report filing requirement; and

(d) Each public body in a joint insurance program is liable only to its own employes and no others for benefits under the program in the event, and to the extent, that no further funds, including funds from insurance policies obtained by the pool, are available in the joint insurance pool; or

(7) Cities, rural fire protection districts and rural ambulance districts providing transport

Revisor's notes. — Reorganized in 1986 to alphabetize the defined terms.

Effect of amendments. — The 1982 amendment added paragraph (2).

Editor's notes. — "Health systems agencies," referred to in (10) of this section, are further described in 42 U.S.C. 300f1.

NOTES TO DECISIONS

Health care facility. — Federal law defines a skilled nursing facility in a manner which includes such facilities when they are contained in larger institutions such as pioneer homes (42 C.F.R. § 100.102(e)(4) (1979)). Alaska state law

was meant to be no less comprehensive. South Cent. Health Planning & Dev., Inc. v. Commissioner of Dep't of Admin., Sup. Ct. Op. No. 2359 (File No. 5633), 628 P.2d 551 (1981).

Chapter 68. Emergency Medical Services.

Section

- 10. Administration
- 20. Advisory Council on Emergency Medical Services
- 30. Composition
- 40. Term of office
- 50. Compensation and per diem
- 60. Meetings

Section

- 70. Special committees
- 80. Regulations
- 82. Issuance of certificates
- 84. Certificate required
- 86. Immunity from liability
- 88. Penalty
- 90. Definitions

Collateral references. — 39 Am. Jur. 2d, Health, §§ 9-18.

39A C.J.S., Health and Environment, §§ 3-17.

Sec. 18.08.010. Administration. The department is responsible for the development, implementation and maintenance of a statewide comprehensive emergency medical services system and, accordingly, shall

(1) coordinate public and private agencies engaged in the planning and delivery of emergency medical services to plan an emergency medical services system;

(2) assist public and private agencies to deliver emergency medical services through the award of grants in aid. (§ 1 ch 100 SLA 1977)

Sec. 18.08.020. Advisory Council on Emergency Medical Services. There is established in the department an Advisory Council on Emergency Medical Services. The council shall

(1) advise the commissioner with regard to the planning and implementation of a statewide emergency medical services system;

(2) assist the Statewide Health Coordinating Council in performing its duties under AS 18.07.011 relating to emergency medical services. (§ 1 ch 100 SLA 1977)

Sec. 18.08.030. Composition. The council consists of 11 members appointed by the governor. Four of the members must be consumers of emergency medical services, and one from each judicial district in the state. (§ 1 ch 100 SLA 1977)

Sec. 18.08.040. Term of office. (a) Members of the council shall be appointed for staggered terms of four years.

(b) Each year the governor shall appoint a consumer to one of the staggered terms on the council that expire during that year.

(c) A vacancy occurring in the membership of the council shall be filled by appointment by the governor in the same manner as original appointments, and when a seat is vacated before expiration of a term, the vacancy shall be filled for the unexpired portion of the vacated term. (§ 1 ch 100 SLA 1977; am §§ 25, 26 ch 37 SLA 1986)

Effect of amendments. — The 1986 "overlapping" in subsection (a) and amendment substituted "staggered" for rewrote subsection (b).

Sec. 18.08.050. Compensation and per diem. Members of the council receive no salary, but are entitled to per diem, reimbursement for travel, and other expenses authorized by law for boards and commissions. (§ 1 ch 100 SLA 1977)

Cross references. — For provisions relating to per diem, travel and other expenses for members of boards and commissions, see AS 39.20.180.

Sec. 18.08.060. Meetings. The council shall meet at the call of the chairman not less frequently than twice a year. A majority of members constitutes a quorum. (§ 1 ch 100 SLA 1977)

Sec. 18.08.070. Special committees. The council may create special committees or task forces outside its membership and may appoint persons who are not members of the council to serve as advisors or consultants to any committee created to carry out the purposes of the council. (§ 1 ch 100 SLA 1977)

Sec. 18.08.080. Regulations. The department shall adopt, with the concurrence of the Department of Public Safety, regulations establishing standards and procedures for the issuance, renewal, reissuance, revocation, and suspension of certificates required under AS 18.08.084, as well as other regulations necessary to carry out the purposes of this chapter. (§ 1 ch 100 SLA 1977; am § 1 ch 78 SLA 1978)

Sec. 18.08.082. Issuance of certificates. (a) The department shall prescribe by regulation a course of training or other requirements prerequisite to the issuance of certificates that provide for the following:

(1) certifies that a person meets the training and other requirements as an emergency medical technician;

(2) authorizes an emergency medical technician certified under this chapter to provide under the written or oral direction of a physician the advanced life support services enumerated on the certificate;

(3) certifies that a person, organization, or government agency that provides an emergency medical service meets the minimum operating standards prescribed by the department; and

(4) authorizes an emergency medical service certified under this chapter to provide under the written or oral direction of a physician the advanced life support services enumerated on the certificate.

(b) The department is the central certifying agency for personnel certified under (a)(1) and (2) of this section and under regulations adopted under AS 18.08.080. (§ 2 ch 78 SLA 1978)

Sec. 18.08.084. Certificate required. (a) One may not represent oneself, nor may an agency or business represent an agent or employee of that agency or business, as an emergency medical technician certified by the state unless the person represented is certified as an emergency medical technician under AS 18.08.082.

(b) A person, organization, or government agency may not represent itself as an emergency medical service or ambulance service certified by the state unless the person, organization, or government agency is certified as an emergency medical service under AS 18.08.082.

(c) A person may not provide, offer, or advertise to provide advanced life support services outside a hospital unless authorized by law.

(d) A person, organization, or government agency that provides, offers, or advertises to provide an emergency medical service may not provide advanced life support services unless authorized under AS 18.08.082. (§ 2 ch 78 SLA 1978)

Sec. 18.08.086. Immunity from liability. (a) A person certified under AS 18.08.082, or a person or public agency that employs, sponsors or controls the activities of persons certified under AS 18.08.082, who administers emergency medical services to an injured or sick person is not liable for civil damages as a result of an act or omission in administering those services, if done in good faith and if the injured or sick person is in immediate danger of serious harm or death. This

subsection does not preclude liability for civil damages that are the proximate result of gross negligence or intentional misconduct, nor preclude imposition of liability on a person or public agency that employs, sponsors, or controls the activities of persons certified under AS 18.08.082 if the act or omission is a proximate result of a breach of duty to act created under this chapter. For the purposes of this subsection, "gross negligence" means reckless, wilful, or wanton misconduct.

(b) A physician who in good faith arranges for, requests, recommends, or initiates the transfer of a patient from a hospital to another hospital is not liable for civil damages as a result of arranging, requesting, recommending, or initiating the transfer if

(1) in the exercise of that degree of knowledge or skill possessed, or that degree of care ordinarily exercised by physicians practicing the same specialty in the same or similar communities to that in which the physician is practicing, the physician determines that treatment of the patient's medical condition is beyond the capability of the transferring hospital or the medical community in which the hospital is located;

(2) the physician has confirmed that the receiving facility is more capable of treating the patient; and

(3) the physician has secured a prior agreement from the receiving facility to accept and render the necessary treatment to the patient.

(c) A registered nurse or licensed practical nurse who escorts a patient in a means of conveyance not equipped as an ambulance is not liable for civil damages as a result of an act or omission in administering patient care services, if done in good faith and if the life of the injured or sick person is in danger. This subsection does not preclude liability for civil damages that are the result of gross negligence or intentional misconduct. (§ 2 ch 78 SLA 1978; am § 2 ch 122 SLA 1986)

Cross references. — For liability for services rendered by a physician-trained mobile intensive care paramedic, see AS 08864.366.

For civil liability for emergency aid, see AS 09.65.090.

Effect of amendments. — The 1986 amendment substituted "if done in good faith and if the injured or sick person is in immediate danger of serious harm or death" for "if done in good faith and if the life of the injured or sick person is in danger" at the end of the first sentence in

subsection (a) and made minor grammatical changes.

Collateral references. — Liability of hospital operating ambulance for personal injuries to person being transported. 21 ALR2d 915.

Hospital's liability as to diagnosis and care of patients brought to emergency ward. 72 ALR2d 396.

Application of rule of strict liability in tort to person or entity rendering medical services. 100 ALR3d 1205.