

ALASKA LEGISLATURE COMMITTEE FILES 1989-1990 8672  
6215 SENATE COMMUNITY & REGIONAL AFFAIRS 019

(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 71 SLA 1985)

**Sec. 29.45.030. Required exemptions.** (a) The following property is exempt from general taxation:

(1) municipal, state, or federally owned property, except that a private leasehold, contract, or other interest in the property is taxable to the extent of the interest;

(2) household furniture and personal effects of members of a household;

(3) property used exclusively for nonprofit religious, charitable, cemetery, hospital, or educational purposes;

(4) property of a nonbusiness organization composed entirely of persons with 90 days or more of active service in the armed forces of the United States whose conditions of service and separation were other than dishonorable, or the property of an auxiliary of that organization;

(5) money on deposit;

(6) the real property of certain residents of the state to the extent and subject to the conditions provided in (e) of this section;

(7) real property or an interest in real property that is exempt from taxation under 43 U.S.C. 1620(d), as amended.

(b) In (a) of this section, "property used exclusively for religious purposes" includes the following property owned by a religious organization:

(1) the residence of a bishop, pastor, priest, rabbi, minister, or religious order of a recognized religious organization;

(2) a structure, its furniture, and its fixtures used solely for public worship, charitable purposes, religious administrative offices, religious education, or a nonprofit hospital;

(3) lots required by local ordinance for parking near a structure defined in (2) of this subsection.

(c) Property described in (a)(3) or (4) of this section from which income is derived is exempt only if that income is solely from use of the property by nonprofit religious, charitable, hospital, or educational groups. If used by nonprofit educational groups, the property is exempt only if used exclusively for classroom space.

(d) Laws exempting certain property from execution under the Code of Civil Procedure (AS 09) do not exempt the property from taxes levied and collected by municipalities.

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§ 29.40.180

MUNICIPAL GOVERNMENT

§ 29.45.050

**Sec. 29.40.180. Violations.** The owner of land located in a subdivision may not transfer, sell, offer to sell, or enter into a contract to sell land in a subdivision before a plat of the subdivision has been prepared, approved, filed, and recorded in accordance with this chapter. A person may not file or record a plat or other document depicting subdivided land in a public recorder's office unless the plat or document has been approved by the platting authority. For the violation of a provision of this chapter, a subdivision regulation adopted under this chapter, or a term, condition, or limitation imposed by a platting authority in the exercise of its powers under this chapter, a municipality may by ordinance prescribe a penalty not to exceed a fine of \$1,000 and imprisonment for 90 days. (§ 11 ch 74 SLA 1985; am § 6 ch 161 SLA 1988)

**Effect of amendments.** — The 1988 amendment, effective January 1, 1989, deleted "It is unlawful for" at the beginning of the first and second sentences; and substituted "may not" for "to" and "filed, and recorded" for "and filed" in the first sentence, and "may not file or record" for "to file" in the second sentence.

## Chapter 45. Municipal Taxation.

### Article

1. Municipal Property Tax (§§ 29.45.050, 29.45.065, 29.45.230)
4. Borough Sales and Use Tax (§ 29.45.650)
5. City Sales and Use Tax (§ 29.45.700)

### Article 1. Municipal Property Tax.

#### Section

50. Optional exemptions and exclusions
65. Assessment of private airports open for public use

#### Section

230. Tax adjustments on property affected by a natural disaster

### Sec. 29.45.030. Required exemptions.

**Cross references.** — For exemption of local ad valorem taxes, see AS electric and telephone cooperatives from 10.25.540(b).

**Sec. 29.45.050. Optional exemptions and exclusions.** (a) A municipality may exclude or exempt or partially exempt residential property from taxation by ordinance ratified by the voters at an election. An exclusion or exemption authorized by this section may not exceed the assessed value of \$10,000 for any one residence.

(b) A municipality may by ordinance

- (1) classify boats and vessels for the purposes of taxation and may establish the assessed valuation of boats and vessels on the basis of their registered or certificated net tonnage;
- (2) classify and exempt from taxation

(A) the property of an organization not organized for business or profit-making purposes and used exclusively for community purposes if the income derived from rental of that property does not exceed the actual cost to the owner of the use by the renter;

(B) historic sites, buildings, and monuments;

(C) land of a nonprofit organization used for agricultural purposes if rights to subdivide the land are conveyed to the state and the conveyance includes a covenant restricting use of the land to agricultural purposes only; rights conveyed to the state under this subparagraph may be conveyed by the state only in accordance with AS 38.05.069(c);

(3) exempt personal property from taxation;

(4) exempt business inventories from taxation;

(5) classify as to type and exempt or partially exempt any or all types of motor vehicles from taxation.

(c) The provisions of (a) of this section notwithstanding,

(1) a borough may, by ordinance, adjust its property tax structure in whole or in part to the property tax structure of a city in the borough, including but not limited to, excluding personal property from taxation, establishing exemptions, and extending the redemption period;

(2) a home rule or first class city has the same power to grant exemptions or exclude property from borough taxes that it has as to city taxes if

(A) the exemptions or exclusions have been adopted as to city taxes; and

(B) the city appropriates to the borough sufficient money to equal revenues lost by the borough because of the exemptions or exclusions, the amount to be determined annually by the assembly;

(3) a city in a borough may, by ordinance, adjust its property tax structure in whole or in part to the property tax structure of the borough, including but not limited to exempting or partially exempting property from taxation.

(d) Exemptions or exclusions from property tax that have been granted by a home rule municipality in addition to exemptions authorized or required by law, and that are in effect on September 10, 1972, and not later withdrawn, are not affected by this chapter.

(e) A municipality may by ordinance classify and exempt or partially exempt from taxation privately owned land, wet land and water areas for which a scenic, conservation, or public recreation use easement is granted to a governmental body. To be eligible for a tax exemption, or partial exemption, the easement must be in perpetuity. However, the easement is automatically terminated before an eminent domain taking of fee simple title or less than fee simple title to the property, so that the property owner is compensated at a rate that does not reflect the easement grant.

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(f) A municipality may by ordinance exempt from taxation all or part of the increase in assessed value of improvements to real property if an increase in assessed value is directly attributable to alteration of the natural features of the land, or new maintenance, repair, or renovation of an existing structure, and if the alteration, maintenance, repair, or renovation, when completed, enhances the exterior appearance or aesthetic quality of the land or structure. An exemption may not be allowed under this subsection for the construction of an improvement to a structure if the principal purpose of the improvement is to increase the amount of space for occupancy or nonresidential use in the structure or for the alteration of land as a consequence of construction activity. An exemption provided in this subsection may continue for up to four years from the date the improvement is completed, or from the date of approval for the exemption by the local assessor, whichever is later.

(g) A municipality may by ordinance exempt from taxation all or part of the increase in assessed value of improvements to a single-family dwelling if the principal purpose of the improvement is to increase the amount of space for occupancy. An exemption provided in this subsection may continue for up to two years from the date the improvement is completed, or from the date of approval of an application for the exemption by the local assessor, whichever is later.

(h) A municipality may by ordinance partially or wholly exempt land from a tax for fire protection service and fire protection facilities and may levy the tax only on improvements, including personal property affixed to the improvements.

(i) A municipality may by ordinance approved by the voters exempt from taxation the assessed value that exceeds \$150,000 of real property owned and occupied as a permanent place of abode by a resident who is

- (1) 65 years of age or older;
- (2) a disabled veteran; or

(3) at least 60 years old and a widow or widower of a person who qualified for an exemption under (1) or (2) of this subsection.

(j) A municipality may by ordinance approved by the voters exempt real or personal property in a taxing unit used in processing timber after it has been delivered to the processing site from up to 75 percent of the rate of taxes levied on other property in that taxing unit. An ordinance adopted under this subsection may not provide for an exemption that exceeds five years in duration. In this subsection "taxing unit" means a municipality and includes

- (1) a service area in a unified municipality or borough;
- (2) the entire area outside cities in a borough; and
- (3) a differential tax zone in a city.

(k) A municipality may by ordinance approved by the voters exempt from taxation pollution control facilities that meet requirements

of the United States Environmental Protection Agency or the Department of Environmental Conservation. An ordinance adopted under this subsection may not provide for an exemption that exceeds five years in duration.

(l) A municipality may by ordinance exempt from taxation an interest, other than record ownership, in real property of an individual residing in the property if the property has been developed, improved, or acquired with federal funds for low-income housing and is owned or managed as low-income housing by the Alaska State Building Authority or a regional housing authority formed under AS 18.55.996. This section does not prohibit a municipality from receiving payments in lieu of taxes authorized under federal law. (§ 12 ch 74 SLA 1985; am § 1 ch 103 SLA 1985; am § 5 ch 70 SLA 1986; am § 1 ch 151 SLA 1988)

*Effect of amendments.* — The 1988 amendment, effective January 1, 1989, added subsection (l).

**Sec. 29.45.065. Assessment of private airports open for public use.** (a) A municipality may provide by ordinance that airports located on private land and open and available for public use may be assessed at full and true value for airport use and not as if subdivided or used for some other nonairport use. The assessor shall maintain records valuing the land at both full and true value and airport use value. If the land is sold, leased, or otherwise disposed of for uses incompatible with airport use by the public or if the owner converts the land to a use incompatible with airport use by the public, the owner is liable to pay an amount equal to the additional tax at the current mill levy together with eight percent interest from the time of the incompatibility, as if the land had not been assessed for airport use. Payment of the additional tax and interest shall be made to the municipality.

(b) To secure the assessment under this section, the owner of the airport shall show that the airport is on private land, is open and available for public use, and is of benefit to the public or municipality. The owner shall apply to the assessor before May 15 of each year that the assessment is desired on forms to be prescribed by the municipality for use of the local assessor and shall include information reasonably required to determine the entitlement of the applicant. If the land is leased for airport purposes, the applicant shall furnish the assessor with a copy of the lease bearing the signature of both the lessee and lessor for the period that the exemption is requested.

(c) In this section, "airport" means an area of land or water that is used for the landing, takeoff, movement, or parking of aircraft, and the appurtenant areas that are used for airport buildings or other

## FISCAL NOTE

**REQUEST:** \_\_\_\_\_

Revision Date: \_\_\_\_\_  
Title: "An Act relating to optional exemptions..municipal taxes."  
Sponsor: Senate Committee on Banking & Requestors  
Economic Development

Agency Affected: Community & Regional Affairs  
BRU: \_\_\_\_\_  
Components: \_\_\_\_\_

**EXPENDITURES/REVENUES:** (Thousands of Dollars)

OPERATING	FY 89	FY 90	FY 91	FY 92	FY 93	FY 94
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
<b>TOTAL OPERATING</b>	<b>-0-</b>	<b>-0-</b>	<b>-0-</b>	<b>-0-</b>	<b>-0-</b>	<b>-0-</b>

CAPITAL						
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REVENUE						
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**FUNDING:** (Thousands of Dollars)

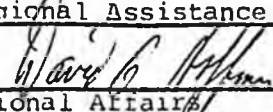
GENERAL FUND	-0-	-0-	-0-	-0-	-0-	-0-
FEDERAL FUNDS						
OTHER						
<b>TOTAL</b>	<b>-0-</b>	<b>-0-</b>	<b>-0-</b>	<b>-0-</b>	<b>-0-</b>	<b>-0-</b>

**POSITIONS:**

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

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

Prepared by:   
 Division: Municipal & Regional Assistance Phone: 465-4750  
 Date: 4/25/89

Approved by Commissioner:  Date: 4-25-89  
 Agency: Community & Regional Affairs

Distribution (by preparer):

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

**S B**

**268**

STATE OF ALASKA  
THE LEGISLATURE

PO BOX 51400  
NORTH SIKOTIA  
907 465 3800

LEGISLATIVE AFFAIRS AGENCY

M E M O R A N D U M

April 13, 1989

SUBJECT: Municipal debt financing - SB 268  
TO: Senator Steve Frank  
FROM: Michael F. Ford *m.f.*  
Legislative Counsel

The following is a sectional analysis of SB 268:

Section 1 - Finding and purpose.

Section 2 - Allows certain evidence of assets to be used in place of or to supplement required insurance certificates, if a municipal joint insurance arrangement uses member contributions or debt financing to establish reserves or to self-insure against liability.

Section 3 - Excludes a cooperative agreement between members of a municipal joint insurance arrangement that pledges money to pay bonds, from regulation by the director of the division of insurance, and provides that the agreement may contain other or different provisions than specified in AS 21.76.030(a).

Section 4 - Allows expenditures from a joint insurance fund to pay contractual obligations to certain lenders, and for the purchase of insurance.

Section 5 - Allows a municipality or a municipal joint insurance arrangement to contract debt for the purpose of self-insuring against liability. Provides that the municipality or joint insurance arrangement may enter into contracts concerning the debt, and may sell notes or certificates of participation at public or private sale as provided by the participants.

Section 6 - Excludes debt issued by a municipality or a municipal joint insurance arrangement from the provisions of AS 37.10.085, concerning prohibited debt issued to a corporation.

Senator Steve Frank  
Page 2  
April 13, 1989

Section 7 - Adds a provision that assisting municipalities to provide insurance coverage through bonds or other debt issued by the Alaska Municipal Bond Bank Authority, is included as the policy of the state.

Section 8 - Authorizes the Alaska Municipal Bond Bank Authority to create a new entity for the purpose of financing a self-insurance program for municipalities or municipal joint insurance arrangements.

Section 9 - Authorizes the Alaska Municipal Bond Bank Authority to lend money to municipalities, or municipal joint insurance arrangements for the purpose of financing a self-insurance program.

Section 10 - Authorizes the Alaska Municipal Bond Bank Authority to make loans by purchasing notes or certificates of participation from a municipality or a municipal joint insurance arrangement.

Section 11 - Effective date.

MF:kb  
wkk4/001

DEPT. OF COMMUNITY & REGIONAL AFFAIRS

OFFICE OF THE COMMISSIONER

April 12, 1989

POSITION PAPER

RE: Senate Bill 268

SPONSOR: Senator Frank

Program Effects

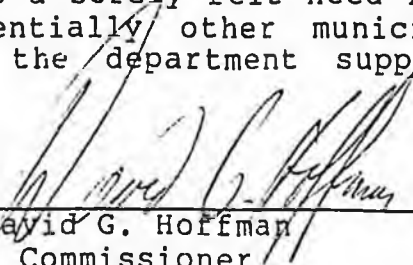
This bill would authorize municipalities and municipal joint insurance arrangements to use debt financing to establish reserves for self insurance. It would also authorize the Municipal Bond Bank to underwrite this debt through the sale of bonds.

Comments

The Alaska Municipal League Joint Insurance Association (JIA) is a joint insurance arrangement of municipalities created to respond to the problems experienced by municipalities in securing reasonably affordable insurance coverage in the past. While the cost of insurance has fallen some from its peak a few years ago, in light of the cyclical nature of the insurance market, the JIA is a needed institution to provide a stable source of insurance for the members.

By allowing the JIA and municipalities to utilize debt financing for excess insurance and reinsurance, this legislation protects the JIA and member municipalities from future market conditions which could lead to the unavailability of such insurance at a reasonable cost. While such financing is not critical at this time, it provides a response to such an event in the future.

Because this legislation addresses a sorely felt need for these affected municipalities and potentially other municipalities which may join in the future, the department supports the concept of this legislation.

  
\_\_\_\_\_  
David G. Hoffman  
Commissioner

- 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

1986; am § 3

### Chapter 76. Joint Insurance Arrangements.

**Section**

- 10. Authority to establish joint insurance arrangements
- 20. Regulation by division of insurance
- 30. General provisions of cooperative agreements
- 40. Financial provisions of agreements
- 50. Contracting with private administrator

**Section**

- 60. Delegation of power to settle claims
- 70. Excess insurance
- 80. Joint insurance fund
- 90. Filing of agreement
- 100. Regulations
- 110. Subrogation
- 903. Definitions

Special Acts.  
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**Sec. 21.76.010. Authority to establish joint insurance arrangements.** (a) Municipalities, city and borough school districts, and regional educational attendance areas may enter into cooperative agreements with each other for the purpose of establishing, operating, or participating in joint insurance arrangements through which the participating members agree to pool contributions in order to either assume risks from losses to the participants on a group basis or purchase coverage for the participants on a group basis.

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

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

(d) For purposes of AS 23.30.075, a joint insurance arrangement is considered to be an association duly authorized to transact workers' compensation insurance in the state. (§ 1 ch 136 SLA 1986)

**Sec. 21.76.020. Regulation by division of insurance.** (a) A joint insurance arrangement may not be considered insurance for the purpose of any other law of the state and is not subject to regulations of the director, except as expressly provided in (b) — (d) of this section and other provisions of this chapter.

(b) A joint insurance arrangement is subject to examination by the division under AS 21.06.140 — 21.06.230.

(c) A joint insurance arrangement is subject to approval by the director. As a condition of approval by the director, a joint insurance arrangement shall have and maintain, as to the coverage provided,

- (1) a certificate of excess insurance or reinsurance
  - (A) for property insurance, to the value of the single most valuable property covered;
  - (B) for liability insurance, to the highest policy limit provided by the arrangement;
  - (C) for workers' compensation, to the extent of all benefits allowed by law above retention;

(2) a certificate of insurance limiting the arrangement's total exposure for liability and workers' compensation to the arrangement's aggregate retention;

(3) assets allowable under AS 21.21.020 — 21.21.140, 21.21.225, or 21.21.230 in an amount no less than the arrangement's aggregate retention plus an amount considered adequate by the director to cover administrative and adjustment expenses.

(d) The value of assets and liabilities under (c) of this section shall be determined in accordance with AS 21.18. (§ 1 ch 136 SLA 1986)

**Sec. 21.76.030. General provisions of cooperative agreements.**

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

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

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

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

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

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

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

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

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

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

(10) establishing and administering a joint insurance fund. (§ 1 ch 136 SLA 1986)

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

(b) A joint insurance arrangement shall be subject to an annual independent audit. The audit shall be conducted in accordance with generally accepted auditing standards and must include a review of

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the actuarial assumptions used for establishing the reserves under (a) of this section. The audit report must include certification from a casualty actuary who is a member of the American Academy of Actuaries that the actuarial assumptions continue to be sound and the level of the reserves are adequate. (§ 1 ch 136 SLA 1986)

**Sec. 21.76.050. Contracting with private administrators.** A cooperative agreement may authorize the board of directors to enter into contracts for services necessary to perform the functions of a joint insurance arrangement. The person contracting to perform the functions must be appropriately licensed under this title if this title so requires. (§ 1 ch 136 SLA 1986)

**Sec. 21.76.060. Delegation of power to settle claims.** A cooperative agreement may delegate to the board of directors, or authorize delegation by the board to another person or group, the power to compromise, arbitrate, or otherwise settle claims on behalf of the arrangement. (§ 1 ch 136 SLA 1986)

**Sec. 21.76.070. Excess insurance.** A cooperative agreement may authorize the board of directors to purchase excess or catastrophic insurance on behalf of the joint insurance arrangement. The cost of the insurance shall be apportioned in the manner specified in the joint insurance agreement. The board may purchase insurance under this section only from an insurer authorized to do business in the state, except that an arrangement formed by municipalities or school districts may purchase insurance under this section from a risk-sharing pool established by a national association of similar entities if the risk-sharing pool meets the qualifications for an unauthorized insurer under AS 21.34.040(b) and (d) and 21.34.220 and has capital and policyholders surplus in an amount at least as great as would be required if the association were a domestic multiple line insurer. An arrangement may purchase insurance under this section for property and liability risks from unauthorized insurers allowed for use by licensed Alaska surplus lines brokers. (§ 1 ch 136 SLA 1986)

**Sec. 21.76.080. Joint insurance fund.** (a) A joint insurance arrangement shall establish a joint insurance fund. The fund consists of money

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

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

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

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

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

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

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

(1) filed in the general form and context acceptable to the director;  
(2) in accordance with accounting principles established under this title; and

(3) available for public inspection.

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

(g) A fund may not be terminated unless the administrator certifies that an amount of money sufficient to pay accrued and contingent expenditures has been placed in a fully collateralized escrow account. (§ 1 ch 136 SLA 1986)

**Sec. 21.76.090. Filing of agreement.** The board of directors shall file a copy of the cooperative agreement with the director of insurance at least 60 days before the effective date of the agreement. The agreement shall be available for public inspection. (§ 1 ch 136 SLA 1986)

**Sec. 21.76.100. Regulations.** A cooperative agreement may authorize the board of directors to adopt rules not inconsistent with law for the fair and equitable administration of the joint insurance arrangement and the joint insurance fund. (§ 1 ch 136 SLA 1986)

**Sec. 21.76.110. Subrogation.** A joint insurance arrangement has a right of subrogation with respect to its participants to the same extent that an insurer has a right of subrogation with respect to one of its insureds. (§ 1 ch 136 SLA 1986)

**Sec. 21.76.900. Definitions.** In this chapter

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

STATE OF ALASKA  
1989 LEGISLATIVE SESSION

BILL VERSION: SB 268  
PUBLISH DATE: \_\_\_\_\_

FISCAL NOTE

REQUEST:

Revision Date: \_\_\_\_\_ Agency Affected: Commerce & Economic Dev.  
Title: An Act relating to municipal BRU: Insurance  
financing and municipal joint arrangements  
Sponsor: Frank, Sturgulewski, et al. Components: \_\_\_\_\_  
Requester: Senate C&RA

EXPENDITURES / REVENUES : (Thousands of Dollars)

OPERATING	FY 89	FY 90	FY 91	FY 92	FY 93	FY 94
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
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REVENUE	0	0	0	0	0	0
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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.)

Prepared by: Joan Brown, Administrative Officer  
Division: Insurance

Phone: 465-2515  
Date: 4-11-89

Approved by Commissioner: Larry Mercurieff  
Agency: Department of Commerce & Economic Development

Phone: 465-2500  
Date: 4/12/89

Distribution (by preparer):

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

COMMUNITY AND REGIONAL AFFAIRS  
APRIL 13, 1989

SB 268: AN ACT RELATING TO MUNICIPAL FINANCING AND MUNICIPAL  
JOINT INSURANCE ARRANGMENTS; THE ALASKA MUNICIPAL BOND BANK  
AUTHORITY AND PROVIDING FOR AN EFFECTIVE DATE  
SPONSOR: FRANK  
FISCAL: NONE

THE NEXT BILL BEFORE THE COMMITTEE IS SENATE BILL 268, AN ACT  
RELATING TO MUNICIPAL FINANCING AND MUNICIPAL JOINT INSURANCE  
ARRANGMENTS; THE ALASKA MUNICIPAL BOND BANK AUTHORITY AND  
PROVIDING FOR AN EFFECTIVE DATE.

THIS BILL WAS INTRODUCED BY SENATOR FRANK. IT WOULD ALLOW  
MUNICIPALITIES AND MUNICIPAL JOINT INSURANCE ASSOCIATIONS TO  
UTILIZE DEBT FINANCING TO ESTABLISH RESERVES TO SELF-INSURE  
AGAINST LIABILITY.

THIS TOOL COULD BE USED WHEN INSURANCE PREMIUMS ARE  
EXCESSIVELY HIGH.

SENATOR FRANK CAN SPEAK FIRST ON THE BILL AND THEN WE HAVE A  
NUMBER OF PEOPLE ON TELECONFERENCE TO TESTIFY.

---

BOB HEALY- AK MUNICIPAL JOINT INSURANCE ASSOC.

ON TELECONFERENCE:

ANCHORAGE: ERIC WOLFORTH AND JOE EVANS

FAIRBANKS: PHIL YONKER AND BRIAN PHILLIPS /

✓ NENANA: STEVE BAMBRIDGE

PERRY DAVIS

PALMER: DAVE SOULAK

SOLDOTNA: RICHARD UNDERCOFFER

LINDA WILDE/PAUL ROLLER

STEVE FRANK  
DISTRICT K  
SEAT A

119 N. Cushman, Rm. 213  
Fairbanks, Alaska 99701

*While in Juneau*  
P.O. Box V  
Juneau, Alaska 99811  
(907) 465-3709  
Capitol Rm. 514

# Alaska State Legislature




Senate

MEMBER  
Finance Committee  
Resources Committee  
Legislative Council  
Special Committee on Banking &  
Economic Development

VICE-CHAIR  
Community & Regional  
Affairs Committee

## MEMORANDUM

DATE: April 12, 1989

TO:  Senator Al Adams, Chairman  
Community and Regional Affairs Committee

FROM: Senator Steve Frank

SUBJECT: SB 268, An Act relating to municipal financing and municipal joint insurance arrangements; the Alaska Municipal Bond Bank Authority; and providing for an effective date.

SB 268, legislation developed and endorsed by the Alaska Municipal League will allow municipalities and municipal joint insurance associations to utilize debt financing to establish reserves to self-insure against liability when the cost of reinsurance is too high.

Recognizing that insurance costs were reaching levels beyond the reach of many individual municipalities, the Fourteenth Legislature passed legislation establishing joint insurance pools. The proposed bill will provide a back-up tool that municipalities and municipal joint insurance associations can use in instances where excessively high premiums predominate in the reinsurance market.

Drafts of the bill were reviewed by Eric Wohlforth, bond counsel for the Alaska Municipal League Joint Insurance Association, and John Havelock. Both attorneys have endorsed the proposed bill and are of the opinion that the proposed legislation, as phrased, is constitutional.

The Alaska Municipal League Joint Insurance Association has offered to have staff available to answer any questions the committee might have regarding provisions of the legislation.

# AML JIA

## Alaska Municipal League Joint Insurance Association, Inc.

217 Second Street, Suite 200

Juneau, Alaska 99801

(907) 586-3222

FAX: (907) 463-5480

April 12, 1989

The Honorable Steve Frank  
Alaska State Senate  
State of Alaska  
P. O. Box V  
Juneau, Alaska 99811-3100

Re:                   AN ACT RELATING TO MUNICIPAL FINANCING  
                      AND MUNICIPAL JOINT INSURANCE ARRANGEMENTS,  
                      THE ALASKA MUNICIPAL BANK

Dear Senator Frank:

In 1986 the Alaska Legislature, under AS 21.76, gave Alaskan municipalities, city and school borough school districts authority to form joint insurance arrangements as an alternative to commercial property, liability and workers compensation insurances. This legislation was enacted to enable municipalities to cope with the adverse effects of constantly fluctuating insurance markets. Availability and cost of needed insurance coverages has been subject to wild swings which place a strain on the municipal budgeting process. These wild swings are best illustrated by the enclosed study published recently by the Insurance Services offices. These severe swings in profitability have caused large rate increases and restrictions of coverage for municipalities countrywide.

In recent years, many states including, California, New York, Texas, Louisiana, Arkansas, Michigan, Washington, Maryland, South Dakota, Montana, Kentucky and Illinois have passed enabling legislation allowing their public entities, municipalities, school districts, special districts, etc, to use alternative methods of financing the costs of their insurance risks. Such capital market financing methods as Bonds, Certificates of Participation and Letters of Credit, are now being used to augment, supplement, or replace commercial insurance. These alternative financing methods are also being used in private industry. Self insurance, risk retention groups and risk purchase groups are indications of the continuing trend towards alternative approaches to insurance in the financing of risk (costs of loss). It is estimated that by 1990, 35 to 40 per cent of commercial organizations, both public and private, will be using such alternative risk finance techniques. In the public sector there are currently over 200 public pools such as ours. In addition, most major cities, counties and states are

self insured to some extent.

The purpose of this Act, then, is to allow municipalities and municipal joint insurance arrangements organized under AS 21.76 to utilize such alternative methods to finance the costs of establishing self funded reserves to cover their liabilities. Such funds would be used:

- \* to create capital surplus on a pre-loss basis to fund to aggregate retention levels for multiple losses requiring payments in excess of retention level.
- \* to fund large losses in excess of aggregate retentions on a post loss basis in lieu of assessments.
- \* to augment, supplement or replace reinsurance or excess insurance.

The amount of funds needed to accomplish these goals would be determined by actuaries certified by the American Academy of Actuaries. The Alaska Bond Bank or other lender would have right of approval. They could either accept or reject our proposal based on their underwriting criteria.

Currently, the AML Joint Insurance Association self funds the first \$250,000 of its Property and Liability losses. The first \$350,000 of Workers Compensation loss is also self funded. This self funding is accomplished on a pooled basis using a portion of the member's premium contributions. This pooled loss fund is actuarially determined by certified actuaries, and along with reinsurance and administrative costs is reflected in the rates charged our members. Our reinsurance includes both an occurrence limit and aggregate retention limits as required by AS 21.76.

The requested legislation would provide us with a "tool" to use in better managing the financing of our risks. It could be used to reduce or replace reinsurance when its cost is expensive and to supplement our program with coverages not offered by commercial insurers. The fund could also be used to provide coverages for our members at more favorable costs than is now provided by insurers. Municipalities in other states have used this approach to provide necessary funds at substantially less cost than those of insurers when the market is "hard." The cost of insurance premiums can be likened to the cost of debt service on a capital instrument. If the cost of debt service is less than the cost of conventional insurance then certainly debt financing serves a legitimate public purpose. Financing of its costs of risk also gives municipalities greater control of their own destinies. These alternative financing arrangements would give us flexibility and clout when dealing with insurers. Flexibility in that we would purchase

Honorable Steve Frank  
April 12, 1989

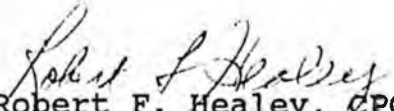
Page three

reinsurance in greater amounts when prices and coverage are The inexpensive, and lesser amounts when prices increase and coverage decreases. The clout comes from reinsurers knowing that we have an alternative to purchasing our coverage from them.

In summary, the requested legislation would give Alaskan municipalities and the AML Joint Insurance Association greater protection against the cyclical swings of the insurance industry. It would enable us to increase our financial strength while broadening our coverages and would give us a stronger bargaining position with reinsurers.

Your support is earnestly requested and will be deeply appreciated.

Sincerely,

  
Robert F. Healey, CPCU, ARM, ALCM  
Administrator

Enclosure

Copies to: Phil Younker, Chairman, Board of Trustees, AML/JIA  
Members, Board of Trustees, AML/JIA

## CURRENT PARTICIPATING MEMBERS OF THE AML/JIA

PARTICIPANTS	AUTHORIZED REPRESENTATIVES	RISK MANAGERS
Akutan	Jacob Stephin, Mayor	Erika Tritremmel, Administrator
Angoon	Cynthia Paul, City Clerk	Cynthia Paul, City Clerk
Barrow	Eben Hopson, Jr., Mayor	Eben Hopson, Jr., Mayor
Chuathbaluk	Terry Hoeflerle, City Manager	Terry Hoeflerle, City Manager
Cordova	Jack Ferrence, Finance Director	Jack Ferrence, Finance Director
Craig	Dave Palmer, Administrator	Dave Palmer, Administrator
Dillingham	Lyle Larson, City Manager	Lyle Larson, City Manager
Eagle	Jean Boone, City Clerk/Treasurer	Oscar Ingold
Elim	Luther Nagaruk, City Clerk	Luther Nagaruk, City Clerk
Emmonak	John Alder, City Manager	John Alder, City Manager
Golovin	Thomas Punguk, Mayor	Thomas Punguk, Mayor
Hooper Bay	Susie DeGrace, Administrative Assistant	Susie DeGrace
Huslia	Elsie Vent, Administrator	Elsie Vent, Administrator
King Cove	Wayne Marshall, City Manager	Wayne Marshall, City Manager
Kotlik	Peter F. Elachik, Sr.	Peter F. Elachik, Sr.
Kotzebue	Allen Jessup, Finance Director	Allen Jessup, Finance Director
Mountain Village	Joyce A. Brown, City Clerk	Robert H. Hall, VPSO
Nenana	Steve Bainbridge, City Manager	Steve Bainbridge, City Manager
Nikolai	Roger Jenkins, City Manager	Roger Jenkins, City Manager
Nome	Polly Prchal, City Manager	Polly Prchal, City Manager
Nunapitchuk	Eli J. Wassillie, Administrator	Eli J. Wassillie, Administrator
Ouzinkie	Debra Garner, City Clerk	Debra Garner, City Clerk
Palmer	David L. Soulak, City Manager	David L. Soulak, City Manager
Petersburg	Patricia Curtiss, Acting City Manager	Patricia Curtiss, City Clerk
Port Lions	David Wakefield, City Clerk	David Wakefield, City Clerk
Quinhagak	Larry Strunk, Administrator	Larry Strunk, Administrator
St. Mary's	Francis Thompson, Administrator	Francis Thompson, Administrator
Sand Point	Bob Juettner, Administrator	Bob Juettner, Administrator
Seward	Max Royle, City Manager	Max Royle, City Manager
Shishmaref	Morris Klyutelluk, Administrator	Morris Klyutelluk, Administrator
Skagway	Tom Healy, City Manager	Tom Healy, City Manager
Soldotna	Richard Underkoffler, City Manager	Richard Underkoffler, City Manager
Tenakee Springs	Janice Eagle, City Clerk	Janice Eagle, City Clerk
Thorne Bay	Ruth Anne Taylor	Ruth Anne Taylor
Unalakleet	Steve Kniseley, Administrator	Steve Kniseley, Administrator
Wainwright	Frances Hopson, Mayor	Frances Hopson, Mayor
Whittier	Cecil DePedro, Finance Director	Cecil DePedro, Finance Director

# AML JIA

Alaska Municipal League Joint Insurance Association, Inc.

217 Second Street, Suite 200

Juneau, Alaska 99801

(907) 586-3222

FAX: (907) 463-5480

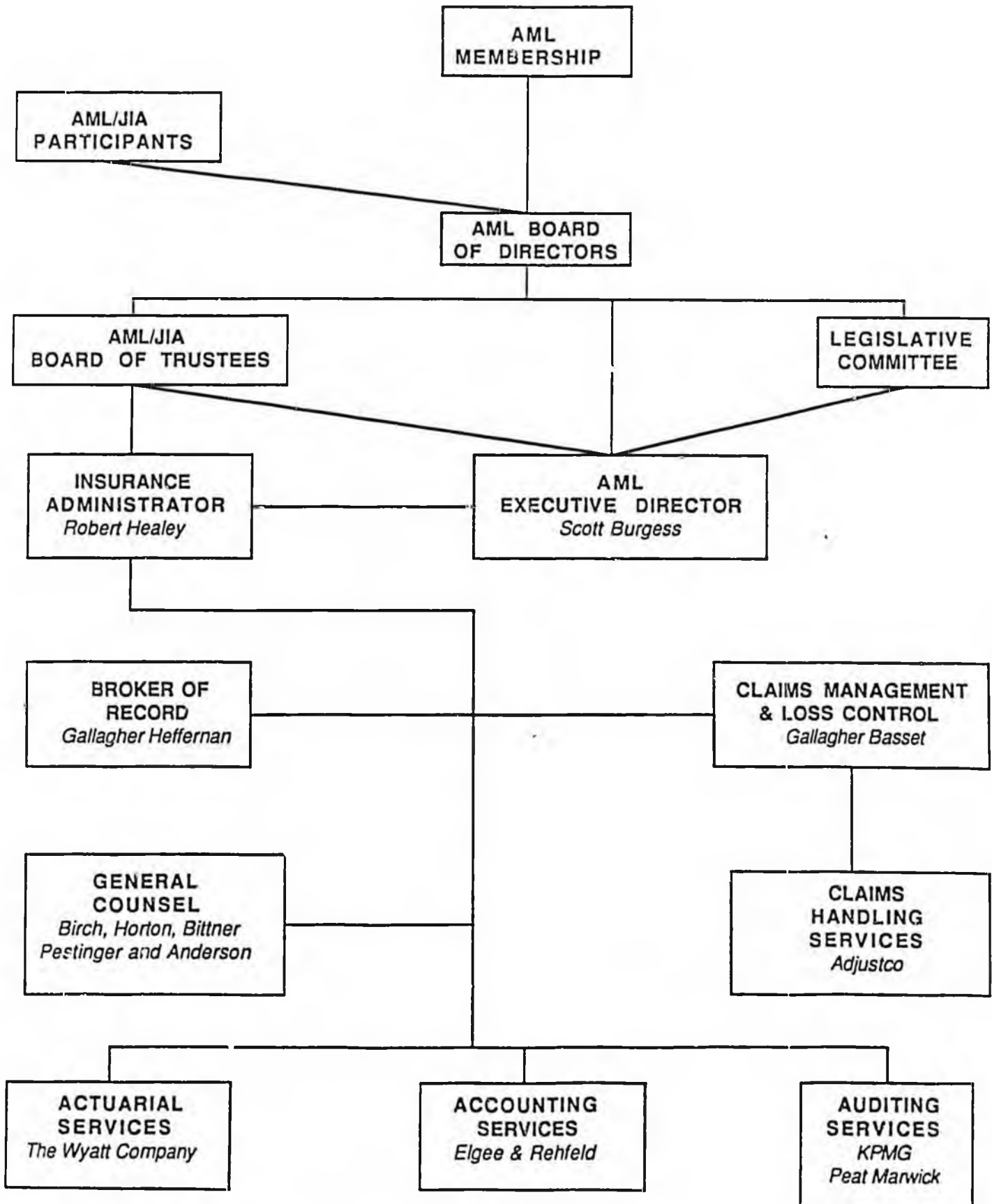
April 12, 1989

## AML/JIA ACTIVE PROSPECTS

Aleutians East Borough  
Atka  
Atquasuk  
Brevig Mission  
Haines  
Houston  
Homer  
Koyukuk  
Hughes  
Kake  
Ketchikan Gateway Borough  
Kenai  
Kenai Peninsula Borough  
Mat-Su Borough  
Napakiak  
New Halen  
Northwest Arctic Borough  
Nightmute  
Nondalton  
Old Harbor  
Pelican  
Pilot Station  
Point Hope  
St. Michaels  
Shaktoolik  
Sitka  
Unalaska  
Upper Kalskag  
Wasilla

ALASKA MUNICIPAL LEAGUE  
JOINT INSURANCE ASSOCIATION, INC.

ORGANIZATION CHART



# Summary Of Coverages And Limits Of Liability

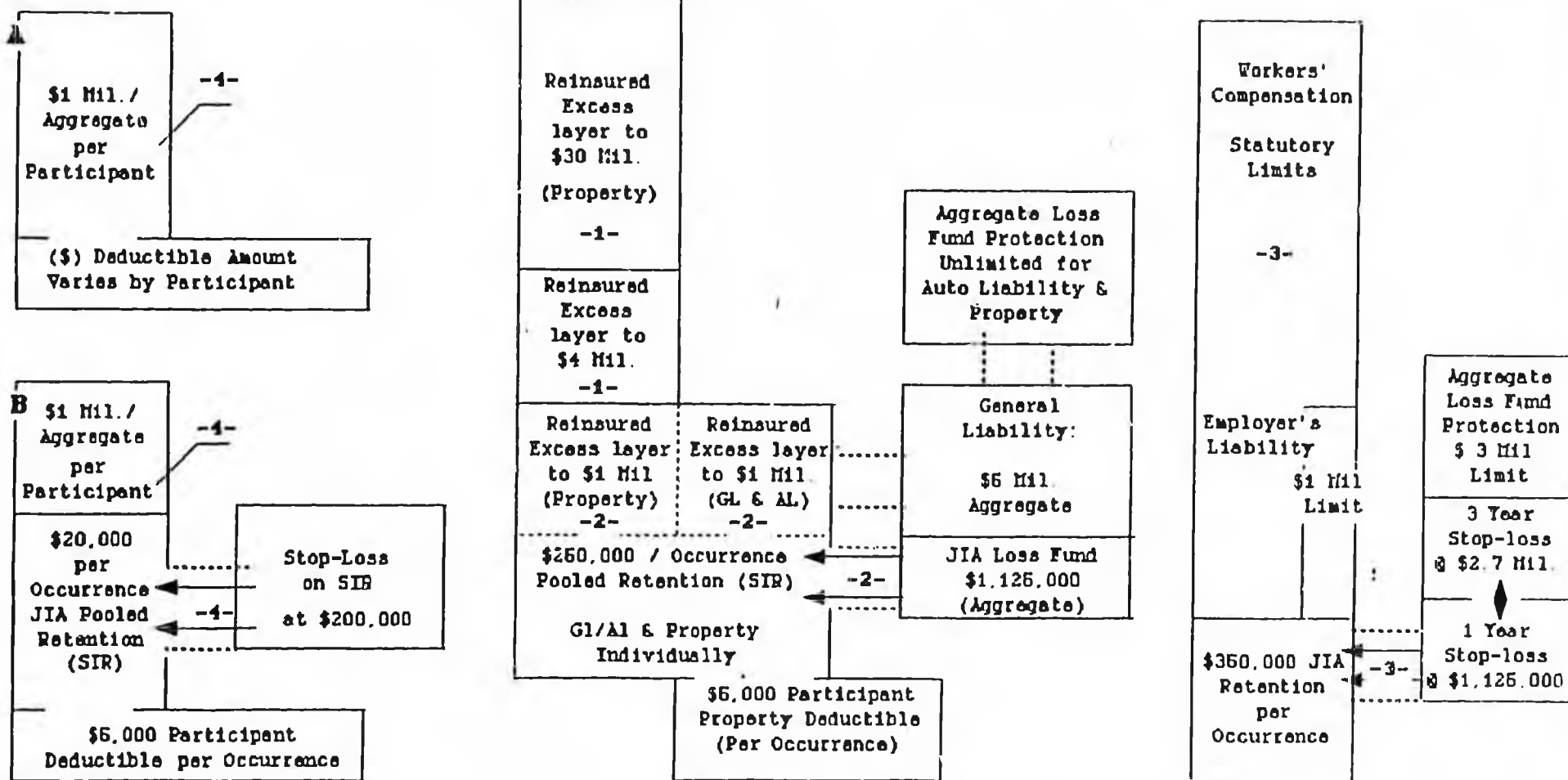
(AML-JIA)

FY 1989 Structure

**A - PUBLIC OFFICIALS and  
B - POLICE PROFESSIONAL  
LIABILITY**

**GENERAL & AUTOMOBILE LIABILITY  
and PROPERTY**

**WORKERS' COMPENSATION &  
EMPLOYER'S LIABILITY**



-1-, -2-, -3-, -4- References Specific To Carriers

(Refer To Section On "Reinsurance & Excess Insurance Coverages" For Detail)

**THIRTY THREE & ONE-HALF YEAR STUDY  
ALL STOCK PROPERTY/CASUALTY COMPANIES IN U.S.A.**

**(UNDERWRITING PROFIT/LOSS IN MILLIONS)**

Derived from data in: "BEST'S INSURANCE MANAGEMENT REPORTS" of A.M. BEST CO.

	PLUS (+)		MINUS (-)		Billions
	\$19-999 Millions	\$1-99 Millions	\$1-99 Millions	\$99-999 Millions	
1953.....	335				
1954.....	387				
1955.....	258				
1956.....				134	
1957.....				358	
1958.....		87			
1959.....	73				
1960.....	70				
1961.....	35				
1962.....	9				
1963.....				210	
1964.....				341	
1965.....				419	
1966.....	109				
1967.....	27				
1968.....				186	
1969.....				385	
1970.....				145	
1971.....	834				
1972.....	919				
1973.....	219				
1974.....				1,765	
1975.....				2,899	
1976.....				1,399	
1977.....	793				
1978.....	1,284				
1979.....				1,000	
1980.....				2,770	
1981.....				4,573	
1982.....				6,440	
1983.....				11,091	
1984.....				19,371	
1985.....				22,567	
1986.....				13,844	
1987-1/2.....				3,272	
1988.....				?	

STEVE FRANK  
DISTRICT K  
SEAT A

119 N. Cushman, Rm. 213  
Fairbanks, Alaska 99701

*While in Juneau*

P.O. Box V

Juneau, Alaska 99811

(907) 465-3709

Capitol Rm. 514

# Alaska State Legislature



## Senate

MEMBER  
Finance Committee  
Resources Committee  
Legislative Council  
Special Committee on Banking &  
Economic Development

VICE-CHAIR  
Community & Regional  
Affairs Committee

April 12, 1989

RE: Joint Insurance Association  
Debt Financing

attached letters:

March 24, 1989	John Havelock
March 24, 1989	Eric Wohlforth
February 15, 1989	Mike Ford
January 31, 1989	Jim Baldwin

## WOHLFORTH, ARGETSINGER, JOHNSON & BRECHT

A PROFESSIONAL CORPORATION

PETER ARGETSINGER  
 JULIUS J. BRECHT  
 ROBERT M. JOHNSON  
 THOMAS F. KLUNKNER  
 ROGER A. LUBOVICH\*\*  
 ERADLEY E. MEYER  
 DANIEL PATRICK O'TIERNEY  
 JAMES A. SARAFIN  
 JAMES M. SZENDER  
 KENNETH E. VASSAR  
 ERIC E. WOHLFORTH

OF COUNSEL  
 ROGER O. CONNOR  
 \*\*SEATTLE OFFICE

ATTORNEYS AT LAW  
 900 WEST 5TH AVENUE, SUITE 800  
 ANCHORAGE, ALASKA 99501  
 TELEPHONE (907) 278-8401  
 TELECOPY (907) 278-8093

SEATTLE OFFICE  
 FIRST INTERSTATE CENTER  
 990 THIRD AVENUE, SUITE 2230  
 SEATTLE, WASHINGTON 98104  
 TELEPHONE (206) 442-9133  
 TELECOPY (206) 442-9138

OF COUNSEL  
 HARRIS, ORR & KINZER  
 3210 FIRST INTERSTATE CENTER  
 999 THIRD AVENUE  
 SEATTLE, WASHINGTON 98104  
 TELEPHONE (206) 821-8118

JUNEAU  
 GRUENING & SPITZFADEN  
 217 SECOND STREET  
 JUNEAU, ALASKA 99801  
 (907) 886-8110 TELECOPY (907) 886-8089

March 24, 1989

The Honorable Steve Frank  
 Member, House of Representatives  
 State of Alaska Legislature  
 P.O. Box V  
 Juneau, Alaska 99811

Dear Representative Frank:

I have been asked by the Alaska Municipal League to give you my opinion as to the constitutionality of the proposed draft legislative bill relating to municipal insurance arrangements. This letter will refer to the work draft of that bill dated 02/20/89 with amendments suggested by my letter of February 28, 1989 to Robert Healy.

In my opinion, the draft legislative bill with the changes indicated in my letter of February 28, 1989 would if enacted constitute a valid legislative enactment. Further, in my opinion such a legislative bill if enacted would not be in violation of any provision of the Alaska State Constitution. Specifically, the apprehension that indebtedness might be authorized pursuant to the legislative enactment which would violate the Alaska State Constitution does not make the enactment unconstitutional. We would assume that action be taken pursuant to the legislative authority which is constitutional at the local government level. I suggested that the particular means of authorizing constitutionally permitted indebtedness be specified in the bill if it was deemed to be the only means that was permitted under our Constitution. This suggestion which I had hoped would satisfy the apprehension on the bill did not find favor.

Very truly yours,

*Eric E. Wohlforth*  
 Eric E. Wohlforth

EEW:dc

LAW OFFICES  
JOHN E. HAVELOCK  
725 WEST 16TH AVENUE  
ANCHORAGE ALASKA 99501

(907) 276-1816

March 24, 1989

Representative Steve Frank  
119 N. Cushman, Suite 211  
Fairbanks, Alaska 99701  
Fax Number 458-3346

Dear Representative Frank,

Alaska's smaller towns and villages need affordable insurance. The only way they can get it is through systems like the nonprofit, Municipal League JIA, creating their own insurance pool arrangement. The pool needs the backing of a capital reserve. I am pleased to hear that you will be a principal backer of legislation allowing the creation of the fund through the Bond Bank.

I have reviewed draft legislation on this subject which is before you. As an attorney formerly specializing in bond work and now devoting much of my time to constitutional law, I believe the proposed legislation is constitutional.

I realize that an attorney with the Attorney Generals Office has voiced concerns on this subject. To a degree, I share his concern. However, the distinction must be made between "facial" constitutionality and constitutionality "in execution".

This distinction might be illustrated better by a bill to allow health officials to conduct searches. On its face, such a bill is not unconstitutional though it signals many constitutional issues. The administrative practices which determine when, how, and by whom such searches are conducted may well be unconstitutional but such issues are not ripe until the plan of execution is established.

There are many issues to be addressed beyond the legislation itself, in determining in how this bond fund should be created and administered. Mr. Wohlforth and other draftsmen of this bill (which is similar to legislation adopted in other jurisdictions on this subject and which have similar constitutional restrictions) have wisely chosen in this draft to leave open specific choices in execution until a more detailed exploration of interrelated marketing and legal strategies is undertaken with this legislation in place.

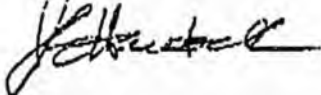
Unlike some other legislations, this statute is neither mandatory nor automatic but requires specific implementation, always under the eye of cautious attorneys. In the extreme case, the responsibility

Representative Steve Frank  
March 24, 1989  
Page 2

counsel require that a test case be brought to test the legality of a particular strategy. Some years ago I represented the taxpayers in such a case on the earthquake mortgage relief bonds, which paved the way for that successful program.

Thus, while there are many constitutional pitfalls to be avoided in execution, the legislation, as now phrased, is not unconstitutional on its face and should not be tabled or otherwise defeated on constitutional grounds. I urge the legislature to adopt the bill so we can get on with the plan.

Sincerely,



John Havelock

cc: Alaska Municipal League  
Eric Wolforth

STATE OF ALASKA  
THE LEGISLATURE

POORLY STATE CAPITAL  
BUREAU ALASKA 99511  
907 465 3800

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

February 15, 1989

SUBJECT: Joint insurance arrangements  
(Work Order No. 6-0814)

TO: Senator Steve Frank  
Attn: Paul Pesika

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

You have asked for our review of legislation to allow municipalities involved in joint insurance arrangements to finance debt through the Alaska Municipal Bond Bank. As explained in this memo, it is our opinion that the legislation would violate Article IX, section 9, of the Alaska Constitution.

Under Article IX, section 9, municipalities are prohibited from contracting debt, unless the debt is authorized by the governing body for capital improvements and ratified by the voters. A "debt" in the context of this constitutional limitation, means an obligation secured by the full faith and credit of the municipality; it does not include an obligation payable from funds on hand or current revenue. 81A C.J.S. §§219,220. The proposed legislation would authorize a contractual pledge of money by a municipality through a joint insurance arrangement. This pledge of money is the type of "debt" that is prohibited by Article IX, section 9, unless the debt is for a capital improvement and is ratified by the voters. The use of notes, certificates of participation, or bonds to establish insurance reserves would clearly not constitute a "capital improvement." See City of Juneau v. Hixson, 373 P.2d 743 (Alaska 1962).

Under Sec. 21.76.120(c) of the proposed legislation, the debt incurred would "not be a general obligation of a municipality." This language is clearly an attempt to avoid the prohibition against debt contained in Article IX, section 9. I do not think that this language will effectly remove the constitutional problem. If a court considered this issue,

it would certainly look at the substance of the pledge. Unless the pledge is limited to current revenues, the pledge amounts to creation of a prohibited obligation on future revenues of the municipal treasury. This same section also provides that a pledge may "not include revenues derived from taxes." Again this is an effort to avoid creating the kind of "debt" prohibited by the constitution. However the debt will still be payable from whatever other general revenues are available, probably state funding. So, by eliminating tax revenues in securing the pledge, the state may be faced with an increased "moral obligation" to make payments on these bonds as a practical matter. This is precisely the kind of future obligation that Article IX, section 9 was designed to avoid.

I should also mention that there is an exception to Article IX, section 9, contained in Article IX, section 11. But this exception does not apply to the suggested legislation as I interpret it. The only bonds mentioned in this proposal are those issued by the Alaska Municipal Bond Bank. The exception would not apply to debt undertaken by a municipality, to repay revenue bonds issued by the Alaska Municipal Bond Bank.

For the above reasons, it is our opinion that a municipality could not finance it's joint insurance arrangement in this manner, without serious risk of violating the state constitution. Because bond financing is a specialized area of the law it would be wise to have bond counsel review this proposal before introducing legislation on the subject. This kind of financing arrangement may also create marketing or other practical bonding problems that bond counsel could provide advice on.

MFF:kb  
WKK2/007

STATE OF ALASKA

STEVE COWPER, GOVERNOR

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

REPLY TO:

1031 W 4th AVENUE  
SUITE 200  
ANCHORAGE, ALASKA 99501-1994  
PHONE: (907) 276-3550

1st NATIONAL CENTER  
100 CUSHMAN ST.  
SUITE 400  
FAIRBANKS, ALASKA 99701-4679

P.O. BOX K—STATE CAPITOL  
JUNEAU, ALASKA 99811-0300  
PHONE: (907) 465-3600

January 31, 1989

Hon. Ronald L. Larson  
Alaska State Legislature  
P.O. Box V  
Juneau, AK 99811

Re: Debt financing for municipal  
joint insurance pool

Dear Representative Larson:

At the request of Jay Hogan of your staff, I have reviewed a memorandum dated February 12, 1988 of the Alaska Municipal League relating to "debt financing for municipal liability exposures." I have also reviewed a draft bill dated January 24, 1989 attached to the memorandum. You ask our opinion whether it would be lawful under art. IX of the Alaska Constitution for an association of municipalities to finance an insurance pool through the issuance of revenue bonds. I believe that it is possible to finance an insurance enterprise through the issuance of revenue bonds. Of course, my opinion is conditioned on the financial feasibility of the enterprise and possible federal tax consequences which would affect the marketability of the bonds.

It must be made clear at the outset that we are not giving an opinion concerning the adequacy of the draft bill to accomplish the purpose of the municipal league. We believe that providing insurance coverage for municipal activities is a public purpose for which municipal funds may be expended. Under art. IX, sec. 11 of the Alaska Constitution, the prohibition against incurring debt does not apply to a public enterprise financed solely by revenues generated by the enterprise. The provision of insurance to an association of municipalities probably qualifies as an enterprise under sec. 11. Presently, the municipalities are presumably purchasing insurance from private carriers and we all know that they are not charitable institutions. Insurance premiums paid by municipalities would serve as the source of rev-

Hon. Ronald L. Larson  
Alaska State Legislature  
Re: Debt financing, municipal joint ins.

January 31, 1989  
Page #2

enue to support the issuance of revenue bonds. These periodic premiums could be pledged by the public corporation operating the insurance enterprise to secure the repayment of the bonds.

Subject to authorization being granted by law, the Municipal Bond Bank Authority could operate the enterprise or it could be authorized to spin off a subsidiary public corporation for this purpose. It is also possible for municipalities to form an entity by cooperative agreement to jointly exercise the implied power to insure against risks without using the Municipal Bond Bank Authority. See Alaska Const. art. X, sec. 13 and AS 36.30.700 -- 36.30.790. However, it may be desirable to use the authority as the conduit for the financing because it is recognized by potential investors and, by virtue of that recognition, enjoys a favorable bond rating. Section 13 also allows cooperative agreements between municipalities and state agencies.

I have reviewed the memorandum dated January 30 prepared by legislative counsel on this matter and must respectfully disagree with his conclusions. Legislative counsel argues that a municipality would be barred from this financing technique because the municipality is not financing capital improvements. In support of his conclusion, counsel cites City of Juneau v. Hixson, 373 P.2d 743 (Alaska 1962). This financing arrangement could be distinguished from the method used in Hixson if the premiums paid by the municipalities are subject to annual appropriation. For this financing to work, there would need to be agreements between each municipality and the financing entity in which the payment of premiums is conditioned on the adoption of municipal appropriations. It is also likely that each municipality would need to acknowledge a moral obligation to make premium payments until the bonded indebtedness is retired. Because the debt incurred under this proposal is not for capital improvements, a municipality cannot unconditionally pledge general tax revenues. However, we believe there is no problem making premium payments from tax revenues generated by a municipality if, as explained above, the governing body of the municipality retains the discretion to appropriate amounts to pay the premiums.

I agree with legislative counsel that the committee should seek the advice of a qualified bond counsel before this bill is prepared for introduction. For example, without the concurrence of bond counsel, I would be hesitant to recommend that the bill allow the issuing entity to use negotiable or nonnegotiable instruments or certificates of participation.

Hon. Ronald L. Larson  
Alaska State Legislature  
Re: Debt financing, municipal joint ins.

January 31, 1989  
Page #3

I hope this memorandum will serve your purposes.

Sincerely yours,

GRACE BERG SCHAIBLE  
ATTORNEY GENERAL

By: 

James L. Baldwin  
Assistant Attorney General

JLB/pjg

cc: Michael Ford  
Legislative Affairs Agency


Arthur H. Peterson  
Department of Law

# 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 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.

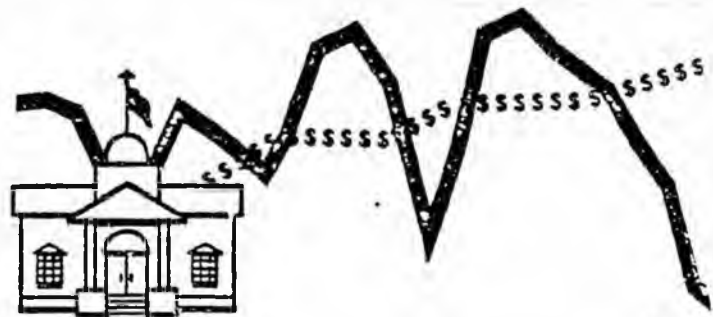
## Statement of the Problem

 cyclicity. Insurance cycles have affected both the insurance industry and the insurance buyers for over 100 years. To the extent that these cycles can be predicted, the effects of the cycles can be managed. Given recent trends, the familiar cycle of three years of lax underwriting standards, excess capacity and the negotiable prices of cash-flow underwriting followed by three years of tight markets, strained capacity, sound underwriting and carefully managed growth is disappearing and is being replaced with cycles of erratic lengths and of increasing magnitudes of heights and depths.

**Planning, Budgeting and Deficits.** The insurance cycle creates a problem in planning and budgeting for public

*The Chicago Chapter of The Society of CPCU submitted this paper in May of 1987, and it received the Outstanding Research Project Award. The Research Committee consists of Richard G. Rudolph, CPCU; John Durfy, CPCU; Daniel Kaminski, CPCU; Megan Meyering, CPCU, and Jill Nelson, CPCU.*

*The committee wishes to acknowledge the assistance provided by Gerard Fernandez, Jr., Anne Beddingfield, Mark Abrams, Steven Hoffman, Thomas C. Brophy, Edward Costner, ACAS, MAAA, and Bruce G. Fernandez. In one way or another, each provided expertise and help to the committee in the preparation of this paper.*



“  
... The insurance cycle creates  
a problem in planning and  
budget for public entities...  
”

entities. Unlike private enterprise, a governmental entity, relying on taxation for its revenue, cannot raise its "price" for its services whenever its costs increase. Once the tax levy is set for the coming year, there is little that can be done to recover, in the current year, for sharply escalating costs. Instead, the public entity may be forced to operate at a deficit and make its recovery of the excess costs in future years.

This fact creates political difficulties, as taxpayers are more and more sensitive to the actions and reactions of their elected officials, and such increases may be met

with taxpayer lawsuits, adverse publicity, taxpayer revolt in the form of referendum-type propositions and opposition at re-election time.

**Capacity.** Another problem created by the insurance cycle is the variability of capacity, as expressed by the industry's changing attitude concerning its willingness to insure certain exposures and to provide sufficient limits to adequately cover exposures which will be insured. Taxpayers are highly sensitive to cutbacks in public services provided, even though the insurance needed to support the activities is unavailable or economically not feasible. Yet, no public official desires to provide uninsured or inadequately insured exposures to his electorate, for then he may be charged with failing to discharge his duty in properly protecting the public entity's interests. With continued erosion of sovereign immunity by a liberal legal system intent upon providing a system of social welfare, the public official faces society's two-edged Sword of Damocles, subject to suits if he buys insurance and subject to suits if he does not.

**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.

### Current Alternatives for Solving the Problem

**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 with insurance contracts or combinations of insurance and subscriber-type plans.

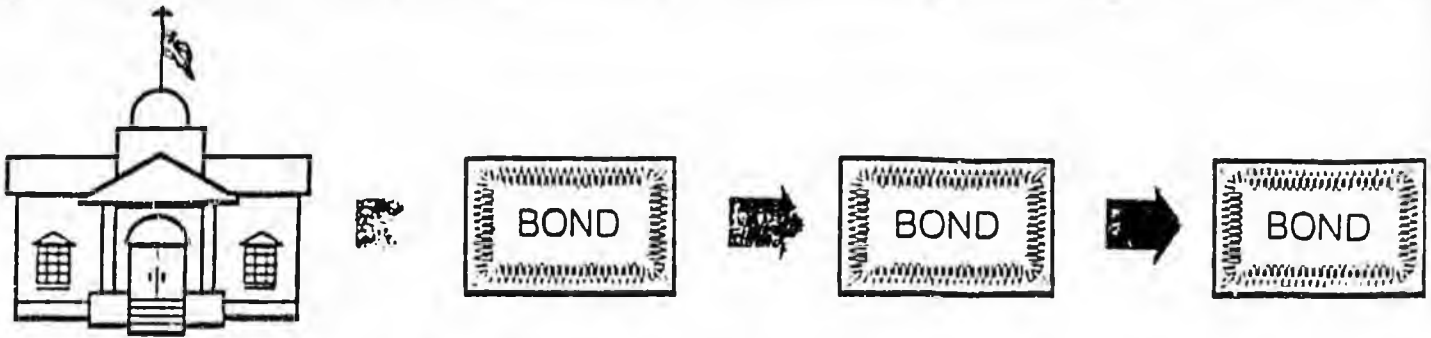
Larger public entities typically will deviate from the above by retaining some or all of their general liability exposures, workers' compensation, unemployment compensation and employee medical benefit plans. In other words, if they retained, they have tended to retain those exposures that are of relatively 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 (times it is unclear which is dominant). Premiums charged include profit loadings, contingency loadings, premium taxes levied to finance regulation, insolvency funds and 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 survival motives can create such variance in pricing of the coverages that the premium determination process creates budgetary and planning difficulties and imposes liabilities for the public entity.

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

**The Advantages of Self-Insurance.** To the extent the volatility of both pricing and coverage availability is either avoided or lessened by distancing an entity from the insur-



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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 self-insurance programs, whether covering single entity exposures or pooled exposures, are a combination of the traditional concepts of insurance/self-insurance and municipal 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 municipal 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 the 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 risk 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: 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 excess insurance as protection for the retention funds and the entity. The pool of funds raised by the issuance of the bonds acts both as the capital and surplus of an insurance company and as the excess insurance for the risk 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, just as an excess policy would replace the deficits and pay the losses in excess of retentions.

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

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.

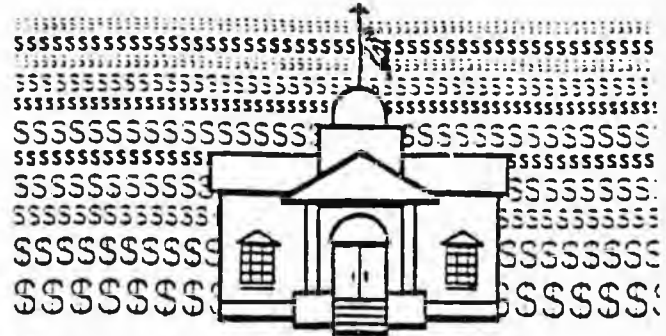
If total actual losses exceed expected losses, the deficit is provided by the bond fund resources, at which time the funds are transferred into the retention accounts, to be held and invested until needed as a payout. Since the bond funds are already in place and a repayment of the debt is structured 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 the 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 for docking the tail of current claims-made programs when the exposures are transferred into the bond-financed self-insurance program. Depending upon jurisdictional differences in statutes of limitations and the premium for electing to purchase insurer-offered "tail" coverage, unfavorable or "unhygienic" "long-tail" exposure can be included in the self-insurance program with a 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

**O**verview. 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 refinance, 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 powers and activities of a public entity are restricted by legislation. Therefore, in order to obtain a favorable opinion by 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.

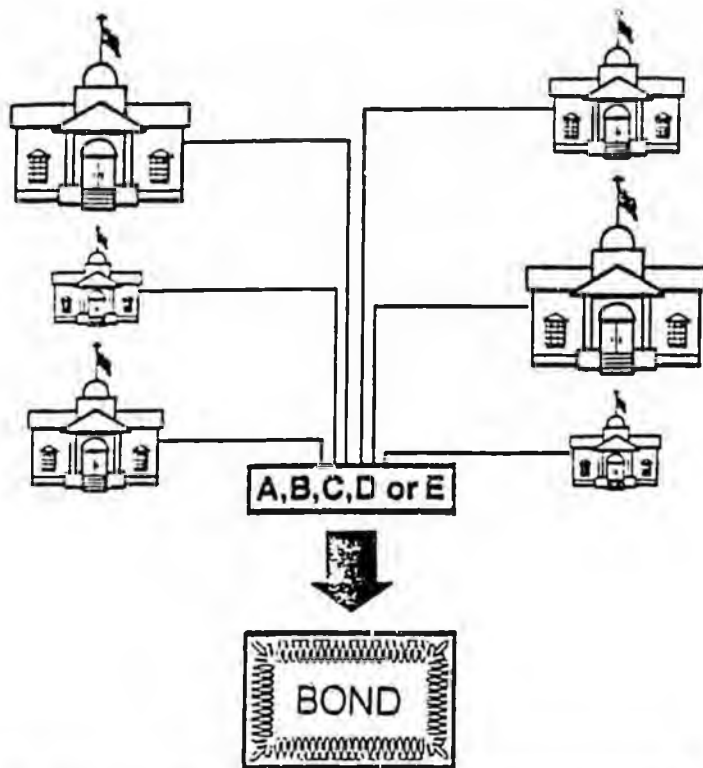
Typically, enabling legislation takes three forms: federal legislation; state-legislated intergovernmental cooperation statutes; and specific legislatively-intended statutes.

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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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 fund and is responsible only for its own obligations. This is fair with respect to the differing investment ratings 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 statutes 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 entities by providing a ready market for the obligation. 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 reserve 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 local 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 lower 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 four ways:

- a. A serial retirement of the debt, whereby the entire 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 fall. In spite of this typical constitutional or statutory language, most states permit funding of long-term service contracts with debt.

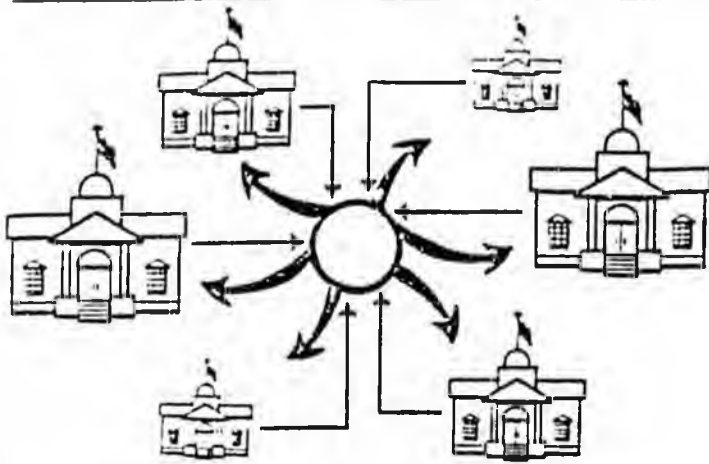
Therefore, in jurisdictions with rigid debt restrictions, each contract and agreement must be questioned with respect to validity and enforceability to avoid non-appropriation problems and direct violation of specific restrictions.

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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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 a "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, all 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 jointly-issued bonds will carry is 8 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 retiring the current portion of the debt with the defaulting entity's share of the bond fund, in effect, buying the equity or 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 bondholders. 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 restocked by an adjustment in principal repayment. This spreads catastrophic losses either over time, if the entity suffering the loss is charged with the 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

  
*...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 may seek to avoid arbitrage restrictions is by arguing that the proceeds of the bond 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 serially retire the bonds by contributions to the bond trustee 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 entity debt being issued on a taxable basis is tradition, as no 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

**B**y 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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self-insured public entities  
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capacity, definition,  
policy language and  
the solvency issue...  
”

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 variances 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 surplus 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 begin 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. Cooner, *Investing in Municipal Bonds*, John Wiley & Sons, New York, 1987.
- Public Risk & Insurance Management Association, *Public Risk*, November/December 1986.

# STATE OF ALASKA

DEPT. OF COMMUNITY & REGIONAL AFFAIRS

OFFICE OF THE COMMISSIONER

STEVE COWPER, GOVERNOR

- P.O. BOX B  
JUNEAU, ALASKA 99811-2100  
PHONE: (907) 485-4700
- 949 E. 36TH AVENUE, SUITE 400  
ANCHORAGE, ALASKA 99508-4302  
PHONE: (907) 583-1073

April 12, 1989

## POSITION PAPER

RE: Senate Bill 268

SPONSOR: Senator Frank

### Program Effects

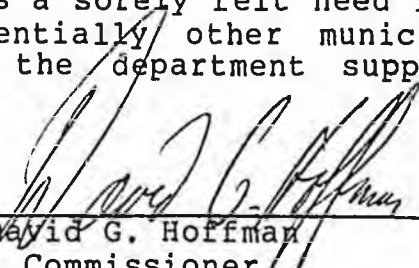
This bill would authorize municipalities and municipal joint insurance arrangements to use debt financing to establish reserves for self insurance. It would also authorize the Municipal Bond Bank to underwrite this debt through the sale of bonds.

### Comments

The Alaska Municipal League Joint Insurance Association (JIA) is a joint insurance arrangement of municipalities created to respond to the problems experienced by municipalities in securing reasonably affordable insurance coverage in the past. While the cost of insurance has fallen some from its peak a few years ago, in light of the cyclical nature of the insurance market, the JIA is a needed institution to provide a stable source of insurance for the members.

By allowing the JIA and municipalities to utilize debt financing for excess insurance and reinsurance, this legislation protects the JIA and member municipalities from future market conditions which could lead to the unavailability of such insurance at a reasonable cost. While such financing is not critical at this time, it provides a response to such an event in the future.

Because this legislation addresses a sorely felt need for these affected municipalities and potentially other municipalities which may join in the future, the department supports the concept of this legislation.

  
\_\_\_\_\_  
David G. Hoffman  
Commissioner

**S B**

**276**

6-1216E✓  
Chenoweth  
4/21/89

*OW*

Original sponsors: Fischer, Kelly,  
Zharoff, and Jones

1 IN THE SENATE

BY THE COMMUNITY AND REGIONAL  
AFFAIRS COMMITTEE

2 CS FOR SENATE BILL NO. 276 (C&RA)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 SIXTEENTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act relating to refunds to local governments of  
7 proceeds of the fisheries business tax during fiscal  
8 year 1990; and providing for an effective date."

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

10 \* Section 1. PURPOSE. (a) The administration has indicated its desire  
11 and this legislature has expressed its wholehearted support of efforts to  
12 pursue the recovery of all costs incurred in responding to the Exxon Valdez  
13 oil spill, and to make every attempt to identify and recover all losses  
14 attributable to that disaster. This Act is enacted consistent with those  
15 objectives.

16 (b) To hold harmless municipalities whose tax receipts would be  
17 affected by reduction of payments of the fisheries business tax, it is the  
18 purpose of this Act to assure that refunds payable to municipalities from  
19 the proceeds of the fisheries business tax during fiscal year 1990 are not  
20 substantially reduced because of the Valdez oil discharge disaster.

21 \* Sec. 2. ALTERNATE COMPUTATION OF REFUND. (a) Instead of the amount  
22 payable as a fisheries business tax refund under AS 43.75.130, a municipal-  
23 ity entitled to that payment may receive a payment computed for the munici-  
24 pality that is the average of the amounts the municipality received under  
25 AS 43.75.130 during the fiscal years ending June 30, 1987, June 30, 1988,  
26 and June 30, 1989, if

27 (1) the payment computed under AS 43.75.130 for fiscal year 1990  
28 is less than the amount the municipality received under AS 43.75.130 for  
29 fiscal year 1989;

1 (2) the average exceeds the amount the municipality would re-  
2 ceive under AS 43.75.130 during fiscal year 1990; and

3 (3) the reduction in the payment computed under AS 43.75.130 for  
4 fiscal year 1990 is attributable to the Valdez oil discharge disaster.

5 (b) For purposes of (a) of this section, a reduction in payments  
6 under AS 43.75.130 is attributable to the Valdez oil discharge disaster if

7 (1) as a result of the disaster,

8 (A) the Department of Fish and Game orders a reduction or  
9 closure of a fishing season and the reduction or closure affects  
10 persons who would normally deliver the resource of the fishery for  
11 processing in the municipality;

12 (B) fishing activities are curtailed because of crude oil  
13 in areas open to fishing activities by persons who would normally  
14 deliver the resource of the fishery for processing in the municipal-  
15 ity;

16 (C) substantial numbers of persons who would have lawfully  
17 participated in fishing activities are engaged in containment and  
18 cleanup of the crude oil spilled from the Exxon Valdez and do not take  
19 advantage of fishing activities to deliver the resource of the fishery  
20 for processing in the municipality; or

21 (D) the price paid for the fisheries resources delivered  
22 for processing in the municipality is reduced, and that price reduc-  
23 tion is due to a diminishment in the quality of or market demand for  
24 the fishery resource because of the Valdez oil discharge disaster; or

25 (2) the municipality demonstrates, to the satisfaction of the  
26 commissioner of revenue, that the reduction in payments made to the munici-  
27 pality is otherwise attributable to the Valdez oil discharge disaster.

28 (c) A city incorporated after June 16, 1987, is eligible for the  
29 alternate refund payable under this Act. For purposes of computing the

1 alternate refund under this section, the commissioner of revenue shall  
2 consider under (a)(2) of this section the sequential reduction of revenue  
3 required by AS 43.75.130(d)(1) for a city incorporated after June 16, 1987.  
4 In making the computation under this subsection, the commissioner may  
5 average the number of years of refunds actually made to a new city but, if  
6 a refund has not been made under AS 43.75.130(d)(1), the commissioner may  
7 not apply this subsection.

8 \* Sec. 3. SUPPLEMENTAL APPROPRIATION REQUEST AUTHORIZED. If the amount  
9 appropriated to provide payment under AS 43.75 and sec. 2 of this Act is  
10 insufficient to pay the full amount of all refunds required, the governor  
11 shall submit a request for a supplemental appropriation for fiscal year  
12 1990 to the Second Session of the Sixteenth Alaska State Legislature.

13 \* Sec. 4. DEFINITION. In this Act "Valdez oil discharge disaster"  
14 means the incident involving the discharge of crude oil after the grounding  
15 of the Exxon Valdez at Bligh Reef on March 24, 1989, the discharge of  
16 ballast water from another tanker on the subsequent weekend in order to  
17 accommodate the transfer of crude oil from the Exxon Valdez to the second  
18 tanker, and attendant containment and cleanup actions.

19 \* Sec. 5. This Act is repealed June 30, 1990.

20 \* Sec. 6. This Act takes effect July 1, 1989.

Original sponsors: Fischer, Kelly,  
Zharoff, and Jones

1 IN THE SENATE

BY THE COMMUNITY AND REGIONAL  
AFFAIRS COMMITTEE

2 CS FOR SENATE BILL NO. 276 (C&RA)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 SIXTEENTH LEGISLATURE - FIRST SESSION

5 A BILL

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10 \* Section 1. CONDITIONS THAT NECESSITATE THIS LEGISLATION. The admin-  
11 istration has indicated its desire and this legislature has expressed its  
12 wholehearted support of efforts to pursue the recovery of all costs incur-  
13 red in responding to the Valdez oil discharge disaster, and to make every  
14 attempt to identify and recover all losses attributable to that disaster.  
15 This Act is enacted consistent with those objectives.

16 \* Sec. 2. PURPOSE. To hold harmless municipalities whose tax receipts  
17 would be affected by reduction of payments of the fisheries business tax,  
18 it is the purpose of this Act to assure that refunds payable to municipal-  
19 ities from the proceeds of the fisheries business tax during fiscal year  
20 1990 are not substantially reduced because of the Valdez oil discharge  
21 disaster.

22 \* Sec. 3. ALTERNATE COMPUTATION OF REFUND. (a) Instead of the amount  
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25 tality that is the average of the amounts the municipality received under  
26 AS 43.75.130 during the fiscal years ending June 30, 1987, June 30, 1988,  
27 and June 30, 1989, if

28 (1) the payment computed under AS 43.75.130 for fiscal year 1990  
29 is less than the amount the municipality received under AS 43.75.130 for

1 fiscal year 1989;

2 (2) the average exceeds the amount the municipality would re-  
3 ceive under AS 43.75.130 during fiscal year 1990; and

4 (3) the reduction in the payment computed under AS 43.75.130 for  
5 fiscal year 1990 is attributable to the Valdez oil discharge disaster.

6 (b) For purposes of (a) of this section, a reduction in payments  
7 under AS 43.75.130 is attributable to the Valdez oil discharge disaster if

8 (1) as a result of the disaster,

9 (A) the Department of Fish and Game orders a reduction or  
10 closure of a fishing season and the reduction or closure affects  
11 persons who would normally deliver the resource of the fishery for  
12 processing in the municipality;

13 (B) fishing activities are curtailed because of crude oil  
14 in areas open to fishing activities by persons who would normally  
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19 cleanup of the crude oil spilled from the Exxon Valdez and do not take  
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24 tion is due to a diminishment in the quality of or market demand for  
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CSSB 276(C&RA)

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3 consider under (a)(2) of this section the sequential reduction of revenue  
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5 In making the computation under this subsection, the commissioner may  
6 average the number of years of refunds actually made to a new city but, if  
7 a refund has not been made under AS 43.75.130(d)(1), the commissioner may  
8 not apply this subsection.

9 \* Sec. 4. SUPPLEMENTAL APPROPRIATION REQUEST AUTHORIZED. If the amount  
10 appropriated to provide payment under AS 43.75 and sec. 3 of this Act is  
11 insufficient to pay the full amount of all refunds required, the governor  
12 shall submit a request for a supplemental appropriation for fiscal year  
13 1990 to the Second Session of the Sixteenth Alaska State Legislature.

14 \* Sec. 5. DEFINITION. In this Act "Valdez oil discharge disaster"  
15 means the incident involving the discharge of crude oil after the grounding  
16 of the Exxon Valdez at Bligh Reef on March 24, 1989, the discharge of  
17 ballast water from another tanker on the subsequent weekend in order to  
18 accommodate the transfer of crude oil from the Exxon Valdez to the second  
19 tanker, and attendant containment and cleanup actions.

20 \* Sec. 6. Sections 2 - 4 of this Act are repealed June 30, 1990.

21 \* Sec. 7. This Act takes effect July 1, 1989.  
22  
23  
24  
25  
26  
27  
28  
29

STATE OF ALASKA  
THE LEGISLATURE

APR 11 1989

POUCHY STATE CAPITOL  
JUNEAU ALASKA 99811  
907 465 3800

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

April 11, 1989

SUBJECT: Fisheries business tax refunds, FY 1990  
(Work Order 6-1216A)

TO: Senator Paul Fischer

FROM: Jack Chenoweth  
Legislative Counsel

In the bill draft accompanying this memorandum, I provide an alternate method of computing the fisheries business license refunds payable to municipalities during FY 1990. That method is dependent on computing the average of payments received by the municipality during the three preceding fiscal years (FY 87 - 89, inclusive). The alternative method applies if (1) there is an actual decrease in the refund payment due a municipality between FY 89 and FY 90; (2) the average of the payments made to the municipality for FY 87 - 89 proves to be greater than the amount payable under AS 43.75.130 for FY 90; and (3) the decrease is attributable to the Exxon Valdez oil spill. This last requirement may be met by meeting any one of the conditions identified in subsection (b) of bill section 3, all of which I perceived as having to do with reducing the delivery of the value or volume of the fishery resource to the municipality for processing (on which the computation of the refund is based):

- ← (1) reduction or closure of a fishery as a result of the spill;
- ← (2) curtailment of fishing activity by commercial fishermen because of the presence of crude oil;
- ← (3) deployment of commercial fishermen in clean-up activities;
- (4) price reductions due to diminishment of quality of the resource or of market demand for the resource; or

MU 105 -

SB - 184

Senator Paul Fischer  
Page 2  
April 11, 1989

(5) any other reason that satisfies the commissioner of revenue.

I included a provision so that new cities that are subject to the legislated declining refund formula of AS 43.75.-130(d)(1) would not see that offset by the application of this provision.

As we briefly discussed, since the commissioner cannot know now with any certainty the amount that would be required for all payments made under AS 43.75.130 and under this Act, the governor is directed to submit a supplemental if necessary.

The bill has a one year life; it is repealed June 30, 1990.

JC:gc  
WKG9/045

Enclosure

STATE OF ALASKA  
1989 LEGISLATIVE SESSION

BILL VERSION: CSSB 276  
PUBLISH DATE: 4/22/89

FISCAL NOTE

REQUEST:

Revision Date: \_\_\_\_\_  
Title: Refunds to local governments -  
fisheries business tax during FY 90  
Sponsor: Fischer, et al  
Requestor: CRA & Res. & Fin

Agency Affected: Revenue  
BRU: Income & Excise Audit  
Components: Operating

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 90	FY 91	FY 92	FY 93	FY 94	FY 95
<b>OPERATING</b>						
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
<b>CAPITAL</b>	0	0	0	0	0	0
<b>REVENUE</b>	-	(4341.0)	-	-	-	-

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: See attached.

Prepared By: Steven E. Kettel *Steven E. Kettel* Phone: (907) 465-2320  
Division: Income and Excise Audit Date: April 22, 1989

Approved by Commissioner: Hugh Malone *Hugh Malone* Date: April 22, 1989  
Agency: Department of Revenue

Distribution (by preparer):

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Office of Management and Budget  
Impacted Agency(ies)

SB 276

Prepared by:

Steven E. Kettel, Director  
Income and Excise Audit Division  
April 21, 1989

## BILL ANALYSIS

### Section 2

Presently communities receive 50% of the fisheries business tax paid on fish processed in that community. The tax is a percentage of the ex-vessel value (price paid fishermen) of the processed fish.

Due to the catastrophic oil spill in Prince William Sound, the amount of the tax revenues which are available to share to communities may drop drastically for several reasons:

- 1) fisheries may be closed by the Department of Fish and Game;
- 2) fish may be intercepted before they reach the areas affected by the spill and processed in alternative communities;
- 3) market values worldwide for Alaska seafood products may drop; affecting the ex-vessel value price paid to fishermen
- 4) toxic properties of the oil may kill either returning fish or fry as they leave the streams and swim into affected waters, impacting future year's salmon returns.

To mitigate the affect on communities that a drop in tax revenues would have, SB 276 will provide a new formula for determining state revenues payable to communities in lieu of the current statutory shared revenue formula. To be eligible for increased share a community must pass a three-pronged test:

- 1) FY90 share computed under existing law is less than FY89 actual share;
- 2) The average actual share for FY87, FY88 and FY89 must exceed FY90 share under existing law.
- 3) The reduction is attributable to the Valdez oil discharge disaster.

The third prong of this test will be met if any one of four conditions are met. Of these conditions, one has the potential to entitle every fishing community in the State of Alaska to receive a larger revenue share computed under this bill. This condition links the reduction in shared revenue payment to the drop in price paid for fisheries resources delivered to any municipality in the state. Conceivably, the price paid for all fisheries resources harvested throughout Alaska will be lower following the spill merely because of the adverse publicity the discharge has caused worldwide.

For purposes of this fiscal note we have estimated the impact the discharge would have on communities directly in the spills path as of April 19, 1989. The estimate assumes that all fisheries in the oil spill area will be closed in 1989. No projection can be made for 1990 and beyond at this time.

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Cities and Boroughs directly in path of oil spill which receive shared fish taxes have received payments for the past two years as follows:.

	<u>FY 87</u>	<u>FY 88</u>	<u>Average</u>
Valdez	64,993	166,311	115,652
Cordova	382,413	815,106	598,760
Seldovia	11,854	12,570	12,212
Kodiak Island Borough	871,500	1,156,269	1,013,885
Old Harbor	3,901	0	1,950
Larsen Bay	13,179	4,927	9,053
Kenai Borough	656,525	1,482,779	<del>1,069,652</del>
Kodiak	617,960	885,584	751,772
Homer	89,036	170,726	129,881
Kenai	174,530	364,879	269,704
Seward	151,656	221,921	186,789
Whittier	9,128	24,664	16,896
Municipality of Anchorage	<u>90,923</u>	<u>239,337</u>	<u>165,130</u>
Total	3,137,598	5,545,073	4,341,336

### DEPARTMENT POSITION

The Department has no objection to this legislation. It is certainly a legitimate response to a potentially devastating situation. Obviously, should "hold harmless" funds be made available, they will come from General Funds

FISCAL NOTE

REQUEST:

Revision Date: \_\_\_\_\_  
Title: Refunds to local governments - fisheries business tax during FY 90  
Sponsor: Fischer, et al  
Requestor: CRA & Res. & Fin

Agency Affected: Revenue  
BRU: Income & Excise Audit  
Components: Operating

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 90	FY 91	FY 92	FY 93	FY 94	FY 95
<b>OPERATING</b>						
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
<b>TOTAL OPERATING</b>	0	0	0	0	0	0
<b>CAPITAL</b>	0	0	0	0	0	0
<b>REVENUE</b>	-	(4341.0)	-	-	-	-

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
<b>TOTAL</b>	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: See attached.

Prepared By: Steven E. Kettel  
Division: Income and Excise Audit

Phone: (907) 465-2320  
Date: April 21, 1989

Approved by Commissioner: Hugh Malone  
Agency: Department of Revenue

Date: April 21, 1989

Distribution (by preparer):

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

SB 276  
Prepared by:  
Steven E. Kettel, Director  
Income and Excise Audit Division  
April 21, 1989

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### Section 2

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- 2) The average actual share for FY87, FY88 and FY89 must exceed FY90 share under existing law.
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The third prong of this test will be met if any one of four conditions are met. Of these conditions, one has the potential to entitle every fishing community in the State of Alaska to receive a larger revenue share computed under this bill. This condition links the reduction in shared revenue payment to the drop in price paid for fisheries resources delivered to any municipality in the state. Conceivably, the price paid for all fisheries resources harvested throughout Alaska will be lower following the spill merely because of the adverse publicity the discharge has caused worldwide.

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SB 276  
 Prepared by:  
 Steven E. Kettel, Director  
 Income and Excise Audit Division  
 April 21, 1989

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Original sponsors: Fischer, Kelly,  
Zharoff, and Jones

1 IN THE SENATE

BY THE COMMUNITY AND REGIONAL  
AFFAIRS COMMITTEE

2 CS FOR SENATE BILL NO. 276 (C&RA)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 SIXTEENTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act relating to refunds to local governments of  
7 proceeds of the fisheries business tax during fiscal  
8 year 1990; and providing for an effective date."

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

10 \* Section 1. CONDITIONS THAT NECESSITATE THIS LEGISLATION. The admin-  
11 istration has indicated its desire and this legislature has expressed its  
12 wholehearted support of efforts to pursue the recovery of all costs incur-  
13 red in responding to the Valdez oil discharge disaster, and to make every  
14 attempt to identify and recover all losses attributable to that disaster.  
15 This Act is enacted consistent with those objectives.

16 \* Sec. 2. PURPOSE. To hold harmless municipalities whose tax receipts  
17 would be affected by reduction of payments of the fisheries business tax,  
18 it is the purpose of this Act to assure that refunds payable to municipali-  
19 ties from the proceeds of the fisheries business tax during fiscal year  
20 1990 are not substantially reduced because of the Valdez oil discharge  
21 disaster.

22 \* Sec. 3. ALTERNATE COMPUTATION OF REFUND. (a) Instead of the amount  
23 payable as a fisheries business tax refund under AS 43.75.130, a municipal-  
24 ity entitled to that payment may receive a payment computed for the municipi-  
25 pality that is the average of the amounts the municipality received under  
26 AS 43.75.130 during the fiscal years ending June 30, 1987, June 30, 1988,  
27 and June 30, 1989, if

28 (1) the payment computed under AS 43.75.130 for fiscal year 1990  
29 is less than the amount the municipality received under AS 43.75.130 for

1 fiscal year 1989;

2 (2) the average exceeds the amount the municipality would re-  
3 ceive under AS 43.75.130 during fiscal year 1990; and

4 (3) the reduction in the payment computed under AS 43.75.130 for  
5 fiscal year 1990 is attributable to the Valdez oil discharge disaster.

6 (b) For purposes of (a) of this section, a reduction in payments  
7 under AS 43.75.130 is attributable to the Valdez oil discharge disaster if

8 (1) as a result of the disaster,

9 (A) the Department of Fish and Game orders a reduction or  
10 closure of a fishing season and the reduction or closure affects  
11 persons who would normally deliver the resource of the fishery for  
12 processing in the municipality;

13 (B) fishing activities are curtailed because of crude oil  
14 in areas open to fishing activities by persons who would normally  
15 deliver the resource of the fishery for processing in the municipa-  
16 lity;

17 (C) substantial numbers of persons who would have lawfully  
18 participated in fishing activities are engaged in containment and  
19 cleanup of the crude oil spilled from the Exxon Valdez and do not take  
20 advantage of fishing activities to deliver the resource of the fishery  
21 for processing in the municipality; or

22 (D) the price paid for the fisheries resources delivered  
23 for processing in the municipality is reduced, and that price reduc-  
24 tion is due to a diminishment in the quality of or market demand for  
25 the fishery resource because of the Valdez oil discharge disaster; or

26 (2) the municipality demonstrates, to the satisfaction of the  
27 commissioner of revenue, that the reduction in payments made to the munici-  
28 pality is otherwise attributable to the Valdez oil discharge disaster.

29 (c) A city incorporated after June 16, 1987, is eligible for the

1 alternate refund payable under this Act. For purposes of computing the  
2 alternate refund under this section, the commissioner of revenue shall  
3 consider under (a)(?) of this section the sequential reduction of revenue  
4 required by AS 43.75.130(d)(1) for a city incorporated after June 16, 1987.  
5 In making the computation under this subsection, the commissioner may  
6 average the number of years of refunds actually made to a new city but, if  
7 a refund has not been made under AS 43.75.130(d)(1), the commissioner may  
8 not apply this subsection.

9 \* Sec. 4. SUPPLEMENTAL APPROPRIATION REQUEST AUTHORIZED. If the amount  
10 appropriated to provide payment under AS 43.75 and sec. 3 of this Act is  
11 insufficient to pay the full amount of all refunds required, the governor  
12 shall submit a request for a supplemental appropriation for fiscal year  
13 1990 to the Second Session of the Sixteenth Alaska State Legislature.

14 \* Sec. 5. DEFINITION. In this Act "Valdez oil discharge disaster"  
15 means the incident involving the discharge of crude oil after the grounding  
16 of the Exxon Valdez at Bligh Reef on March 24, 1989, the discharge of  
17 ballast water from another tanker on the subsequent weekend in order to  
18 accommodate the transfer of crude oil from the Exxon Valdez to the second  
19 tanker, and attendant containment and cleanup actions.

20 \* Sec. 6. Sections 2 - 4 of this Act are repealed June 30, 1990.

21 \* Sec. 7. This Act takes effect July 1, 1989.  
22  
23  
24  
25  
26  
27  
28  
29



Official Business

# Alaska State Legislature

Al Adams  
District L

WHILE IN SESSION  
P.O. Box V  
State Capitol  
Juneau, Alaska 99811  
(907) 465-3707

OUT OF SESSION  
P.O. Box 333  
Korzebue, Alaska 99752  
(907) 442-3245

3111 C Street  
Anchorage, Alaska 99503  
(907) 561-7622

TO: Senator Bettye Fahrenkamp, Chair  
Senate Resources Committee

FROM: Senator Al Adams *ASA*

RE: SB 276, "An Act relating to refunds to local governments of  
proceeds of the fisheries business tax during fiscal year 1990;  
and providing for an effective date."

DATE: April 29, 1989

*This went plus*

Enclosed is the referral file on the aforementioned legislation which was waived from the Community and Regional Affairs Committee today.

In your packet is a proposed committee substitute which was not formally moved out by the committee, but which you may wish to consider for adoption during Resource Committee hearings on this bill. The proposed substitute added a new section one regarding "Conditions that necessitate this legislation." This was added to make a statement supportive of recovering costs lost to the State of Alaska due to the oil discharge in Valdez.

Also changed is section six of the bill which repeals all sections except section one and sections five through seven on June 30, 1990. This was changed so that the provisions in section one could not be interpreted in future court cases as an intention of the Legislature not to recover costs past June 30, 1990.

A new fiscal note for the committee substitute was solicited and is enclosed for your consideration.

The bill's sponsor, Senator Fischer, was supportive of the proposed substitute.

Thank you.

cc: Senator Paul Fischer  
Senator Mike Szymanski

STATE OF ALASKA  
1990 LEGISLATIVE SESSION

BILL VERSION: CSSB 276 (C&RA)

PUBLISH DATE: \_\_\_\_\_

FISCAL NOTE

REQUEST:

Revision Date: \_\_\_\_\_  
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Agency Affected: Revenue  
BRU: Income & Excise Audit

Components: Operating

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 91	FY 92	FY 93	FY 94	FY 95	FY 96
<b>OPERATING</b>						
PERSONAL SERVICES	0	0	0	0	0	0
TRAVEL	0	0	0	0	0	0
CONTRACTS	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
<b>TOTAL OPERATING</b>	0	0	0	0	0	0
<b>CAPITAL</b>	0	0	0	0	0	0
<b>REVENUE</b>	(4341.0)	-	-	-	-	-

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
<b>TOTAL</b>	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 if necessary)

Prepared By: Steven E. Kettel *Steven E. Kettel* Phone: (907) 465-2320  
Division: Income and Excise Audit *Income and Excise Audit* Date: April 4, 1990

Approved by Commissioner: Hugh Malone *Hugh Malone* Date: April 4, 1990  
Agency: Department of Revenue

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

CSSB 276  
Prepared by:  
Steven E. Kettel, Director  
Income and Excise Audit Division  
April 4, 1990

### Bill Analysis

#### Section 2

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Due to the catastrophic oil spill in Prince William Sound, the amount of the tax revenues which are available to share to communities may drop drastically for several reasons:

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CSSE 276

Prepared by:

Steven E. Kettel, Director

Income and Excise Audit Division

April 4, 1990

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Cities and Boroughs directly in path of oil spill which receive shared fish taxes have received payments for the past two years as follows:

	FY87	FY88	FY89
Kenai Peninsula	\$656,525	\$1,037,945	\$1,975,001
Kodiak Island	871,500	809,388	2,044,869
Chignik	164,267	202,825	472,467
Cordova	382,413	570,574	1,294,703
Homer	89,036	119,508	240,153
Kenai	174,530	255,415	583,068
Kodiak	617,960	619,909	1,167,693
Old Harbor	3,901	0	0
Port Lyons	0	0	296
Seldovia	11,854	8,799	45,116
Seward	151,656	155,345	270,699
Soldotna	0	0	1,806
Valdez	64,993	116,418	294,381
Whittier	9,128	17,265	55,864
TOTAL:	\$3,044,069	\$3,662,957	\$8,445,524

#### Department Position

The Department has no objection to this legislation. It is certainly a legitimate response to a potentially devastating situation. Obviously, should "hold harmless" funds be made available, they will come from General Funds.

**S B**

**279**

# Alaska Statutes

## Title 39. Public Officers and Employees.

### Chapter

- 20. Compensation and Allowances (§ 39.20.180)
- 25. State Personnel Act (§§ 39.25.110, 39.25.120, 39.25.150, 39.25.157, 39.25.158)
- 30. Insurance and Supplemental Employee Benefits (§§ 39.30.095, 39.30.150, 39.30.153, 39.30.160, 39.30.162)
- 35. Public Employees' Retirement System of Alaska (§§ 39.35.020, 39.35.060, 39.35.080, 39.35.110, 39.35.330, 39.35.345 — 39.35.360, 39.35.389, 39.35.500, 39.35.505, 39.35.525, 39.35.650, 39.35.680)
- 50. Conflict of Interest (§ 39.50.200)

### Chapter 20. Compensation and Allowances.

#### Article

- 2. Travel Regulations (§ 39.20.180)

#### Article 2. Travel Regulations.

##### Section

- 180. Transportation and per diem ex-

penses for members of boards, commissions, etc

**Sec. 39.20.180. Transportation and per diem expenses for members of boards, commissions, etc.** Except as otherwise provided by law, the provisions in this section relating to per diem and transportation govern exclusively with respect to a member of a state board, commission, committee, judicial council, or other similar body of persons of the state organized or established under the authority of law, but excluding any other state employee other than a legislator, who is otherwise entitled by law to receive from the state payments for expenses of transportation, and for reimbursement or for per diem in lieu of reimbursement for other expenses incident to duties as such member:

(1) for transportation, the member is entitled either to the use of state transportation requests, or to be reimbursed for expenses of transportation to the same extent, in the same manner, and under the same conditions as provided for state officials and employees by the provisions of AS 39.20.110 — 39.20.170;

(2) for reimbursement for other expenses, the member is entitled to a per diem allowance prescribed by the commissioner of administration under the regulatory authority set out in AS 39.20.160 for each day or portion of a day spent in actual meeting or on authorized official business incident to duties as a member. (§ 1 ch 130 SLA 1953; am § 1 ch 34 SLA 1960; am § 1 ch 37 SLA 1962; am § 5 ch 136 SLA 1967; am § 12 ch 47 SLA 1974; am § 31 ch 85 SLA 1988)

**Effect of amendments.** — The 1988 amendment, effective June 2, 1988, deleted "from and after March 27, 1962" following "provided by law" and "and supersede all other provisions of law" following "exclusively" in the introductory language, and made a series of minor stylistic changes throughout paragraphs (1) and (2).

## Chapter 25. State Personnel Act.

### Article

2. Coverage of Personnel (§§ 39.25.110, 39.25.120)
3. Personnel Rules (§§ 39.25.150, 39.25.157 — 39.25.159)

### Article 2. Coverage of Personnel.

#### Section

110. Exempt service
120. Partially exempt service

**Sec. 39.25.110. Exempt service.** Unless otherwise provided by law, the following positions in the state service constitute the exempt service and are exempt from the provisions of this chapter and the rules adopted under it:

- (1) persons elected to public office by popular vote or appointed to fill vacancies in elected offices;
- (2) justices, judges, magistrates, and employees of the judicial branch including employees of the Judicial Council;
- (3) employees of the state legislature and its agencies;
- (4) the head of each principal department in the executive branch;
- (5) officers and employees of the University of Alaska;
- (6) certificate teachers and noncertificated employees employed by a regional educational attendance area established and organized under AS 14.08.031 — 14.08.041 to teach in, administer, or operate schools under the control of a regional educational attendance area school board;
- (7) certificated teachers employed by the Department of Education as correspondence teachers, teachers in skill centers operated by the Department of Education, or in Mt. Edgecumbe School;
- (8) patients and inmates employed in state institutions;
- (9) persons employed in a professional capacity to make a temporary or special inquiry, study or examination as authorized by the governor;

- (10) members of
- (11) the officers an
- sions, and authoritie:
- (A) Alaska Gas Pip
- (B) Alaska Perman
- (C) [Repealed, § 66
- (D) Alaska Industr
- (E) Alaska Comme
- (F) Alaska Commis
- (12) the executive s
- pal Bond Bank Auth
- (13) physicians lice
- the division of mental
- ment of Health and :
- (14) petroleum engi
- professional capacity t
- the Oil and Gas Conse
- in the division of geoi
- ment of Natural Resc
- (15) officers, agents
- trol Board granted lim
- age Control Board ur
- (16) persons employ
- masters and members
- ferry system and who
- ment provided in AS
- (17) officers and em
- tries;
- (18) employees of tl
- (19) firefighters emp
- for a fire emergency;
- (20) employees of tl
- Lieutenant governor, i
- (21) [Repealed Jun
- Commission on Feder
- (22) youth employe
- der the Youth Emplo
- (23) the executive d
- (24) students employ
- dents are enrolled;
- (25) the executive di
- nology Foundation (A;
- (26) investment offic
- (27) the executive d
- Marketing Council. (§
- § 1 ch 133 SLA 1961; a

am § 31 ch 46 SLA 1970; am § 65 ch 69 SLA 1970; am § 13 ch 113 SLA 1970; am § 3 ch 78 SLA 1971; am § 18 ch 78 SLA 1974; am § 42 ch 127 SLA 1974; am § 2 ch 32 SLA 1975; am § 2 ch 79 SLA 1975; am § 37 ch 124 SLA 1975; am § 1 ch 157 SLA 1976; am § 3 ch 90 SLA 1978; am § 7 ch 18 SLA 1980; am § 43 ch 106 SLA 1980; am § 10 ch 131 SLA 1980; am § 4 ch 148 SLA 1980; am § 4 ch 106 SLA 1981; am §§ 2, 3 ch 37 SLA 1982; am § 7 ch 112 SLA 1982; am § 1 ch 11 SLA 1983; am § 1 ch 103 SLA 1984; am § 58 ch 21 SLA 1985; am § 1 ch 50 SLA 1985; am § 69 ch 14 SLA 1987; am § 1 ch 61 SLA 1987; am § 2 ch 37 SLA 1988; am § 2 ch 78 SLA 1988; am § 26 ch 141 SLA 1988)

**Effect of amendments.** — The first 1988 amendment, effective May 14, 1988, inserted paragraph (25).

The second 1988 amendment, effective July 1, 1988, added paragraph (27).

The third 1988 amendment, effective June 9, 1988, inserted paragraph (26).

While none of the amendments gave effect to any other, all have been given effect as set out above.

**Editor's notes.** — Section 41.37.010, referred to in paragraph (21), was repealed June 30, 1988.

**Sec. 39.25.120. Partially exempt service.** (a) Positions in the partially exempt service are included in the position classification plan established under this chapter and are compensated according to the pay plan (AS 39.27.011).

(b) A person holding a position in the partially exempt service is not required to take an examination or qualify or earn a place on a register, and is not eligible for a hearing by the personnel board in case of dismissal, demotion, or suspension. Positions in the partially exempt service are specifically exempt from the rules established under AS 39.25.150(3) — (10), (12), (13), and (16).

(c) The following positions in the state service constitute the partially exempt service:

(1) deputy and assistant commissioners of the principal departments of the executive branch, including the assistant adjutant general of the Department of Military and Veterans' Affairs;

(2) the directors of the major divisions of the principal departments of the executive branch and the regional directors of the Department of Transportation and Public Facilities;

(3) attorney members of the staff of the Department of Law, of the public defender agency, and of the office of public advocacy in the Department of Administration;

(4) one private secretary for each head of a principal department in the executive branch;

(5) employees of councils, boards, or commissions established by statute in the Office of the Governor or the office of the lieutenant governor, unless a different classification is provided by statute;

(6) the executive director, deputy director, hearing officers, and administrative law judges of the Alaska Public Utilities Commission;

(7) *[Repealed, 1983 I]*

(8) not more than two of the principal departments may be increased if the pay plan is amended under AS 39.25.130 to include the

(9) the principal executives or commissions:

(A) Alaska Public Broadcasting

(B) Professional Teaching

(C) Parole Board;

(D) Board of Nursing;

(E) Real Estate Commission

(F) Alaska Royalty Office

(G) Alaska Historical

(H) Alaska State Court

(I) Alaska Police Standards

(J) Older Alaskans Commission

(K) Alaska Mental Health

(L) State Medical Board

(10) Alaska Pioneers'

(11) hearing examiner

(12) the comptroller in

office;

(13) *[Repealed, § 33 c]*

(14) airport managers

Public Facilities employment  
Airports;

(15) the deputy director  
director of the division of  
and Economic Development

(16) the executive director  
Commission;

(17) the rehabilitation  
Board;

(18) guards employed by  
agencies;

(19) *[Repealed, § 2 E.]*

(20) employees of the Alaska  
SLA 1960; am § 2 ch 48 SLA

ch 5 SLA 1966; am § 3 ch

§ 4 ch 78 SLA 1971; am §

am § 10 ch 207 SLA 1975

SLA 1976; am E.O. No. 3

§ 2 ch 108 SLA 1978; am E.O. No. 43

E.O. No. 45 § 3 (1980); a

(7) *[Repealed, 1983 Initiative Proposal No. 2, § 6.]*

(8) not more than two special assistants to the commissioner of each of the principal departments of the executive branch, but the number may be increased if the partially exempt service is extended under AS 39.25.130 to include the additional special assistants;

(9) the principal executive officer of the following boards, councils, or commissions:

(A) Alaska Public Broadcasting Commission;

(B) Professional Teaching Practices Commission;

(C) Parole Board;

(D) Board of Nursing;

(E) Real Estate Commission;

(F) Alaska Royalty Oil and Gas Development Advisory Board;

(G) Alaska Historical Commission;

(H) Alaska State Council on the Arts;

(I) Alaska Police Standards Council;

(J) Older Alaskans Commission;

(K) Alaska Mental Health Board;

(L) State Medical Board;

(10) Alaska Pioneers' Home managers;

(11) hearing examiners in the Department of Revenue;

(12) the comptroller in the division of treasury, Department of Revenue;

(13) *[Repealed, § 33 ch 141 SLA 1988.]*

(14) airport managers in the Department of Transportation and Public Facilities employed at the Anchorage and Fairbanks International Airports;

(15) the deputy director of the division of tourism and the deputy director of the division of insurance in the Department of Commerce and Economic Development;

(16) the executive director and staff of the Alaska Public Offices Commission;

(17) the rehabilitation administrator of the Workers' Compensation Board;

(18) guards employed by the Department of Public Safety for emergencies;

(19) *[Repealed, § 2 E.O. No. 69 (1988).]*

(20) employees of the Alaska State Fire Commission. (§ 6 ch 144 SLA 1960; am § 2 ch 48 SLA 1961; am § 2 ch 133 SLA 1961; am § 4 ch 5 SLA 1966; am § 3 ch 104 SLA 1969; am § 2 ch 109 SLA 1969; am § 4 ch 78 SLA 1971; am § 9 ch 47 SLA 1974; am § 4 ch 82 SLA 1975; am § 10 ch 207 SLA 1975; am § 2 ch 157 SLA 1976; am § 19 ch 263 SLA 1976; am E.O. No. 39 § 6 (1977); am § 1 ch 103 SLA 1978; am § 2 ch 108 SLA 1978; am E.O. No. 41 § 3 (1980); am E.O. No. 42 §§ 3, 4 (1980); am E.O. No. 43 § 4 (1980); am E.O. No. 44 § 5 (1980); am E.O. No. 45 § 3 (1980); am E.O. No. 46 § 4 (1980); am § 18 ch 115

SLA 1980; am § 3 ch 79 SLA 1981; am § 4 ch 110 SLA 1981; am E.O. No. 48 § 3 (1981); am § 4 ch 50 SLA 1982; am § 26 ch 93 SLA 1982; am § 8 ch 112 SLA 1982; am 1983 Initiative Proposal No. 2, § 6; am § 106 ch 6 SLA 1984; am § 15 ch 55 SLA 1984; am § 2 ch 103 SLA 1984; am E.O. No. 58 § 18 (1984); am § 59 ch 21 SLA 1985; am § 54 ch 37 SLA 1986; am § 2 ch 84 SLA 1986; am § 5 ch 48 SLA 1987; am § 12 ch 98 SLA 1988; am § 1 ch 107 SLA 1988; am § 33 ch 141 SLA 1988; am E.O. No. 69 § 22 (1988))

**Effect of amendments.** — The amendments by Section 12, ch. 98, SLA 1988, effective July 1, 1988, and sec. 1, ch. 107, SLA 1988, made identical changes in subsection (c)(9), deleting the repeal line of former subparagraph (J), redesignating former subparagraphs (K) and (L) as present subparagraphs (J) and (K), and adding subparagraph (L).

The 1988 amendment by ch. 141, § 33,

effective June 9, 1988, repealed former subsection (c)(13), which read "investment officers in the Department of Revenue."

The 1988 amendment by E.O. No. 69, § 2, effective March 12, 1988, repealed former subsection (c)(19), which read "the deputy director of the division of housing assistance in the Department of Community and Regional Affairs."

**Article 3. Personnel Rules.**

**Section**  
150. Scope of the rules  
157. Position descriptions

**Section**  
158. Reemployment rights for injured state employees

**Sec. 39.25.150. Scope of the rules.** The personnel rules shall provide for

(1) the preparation, maintenance, and revision by the director of personnel, subject to approval of the commissioner of administration and the personnel board, of a position classification plan for all positions in the classified and partially exempt services; the position classification plan shall include

(A) a grouping together of all positions into classes on the basis of duties and responsibilities;

(B) an appropriate title, a description of the duties and responsibilities, training and experience qualifications, and other necessary specifications for each class of positions;

(2) the preparation, maintenance, revision and administration by the director of personnel of a pay plan for all positions in the classified and partially exempt services; the pay plan (A) shall be based upon the position classification plan; (B) shall provide for fair and reasonable compensation for services rendered, and reflect the principle of like pay for like work; (C) may be amended, approved, or disapproved by the legislature in regular or special session; after the pay plan is in effect, a salary or wage payment may not be made to a state employee covered by the plan unless the payment is in accordance with this chapter and the rules adopted under this chapter or unless the pay-

ment is in accordance with  
ance with AS 23.40;

(3) the use of employee sei  
tive examinations, when app  
and fitness of the person exa  
in which employment is so

(4) the establishment and  
ment and promotion provid  
order of their relative perf

(5) the procedure for certi  
under this paragraph may i  
for certifying local residen

(6) promotions from with  
and candidates in the state  
tion whenever practicable a

and promotion shall be by  
ble; in considering promoti  
ance records, seniority,

(7) a period of probation  
ment to a position become

employee receiving a promoti  
in the service and job clas

the probationary period an  
right of appeal, notwithsta  
dismissed from the service

ply.  
(8) nonpermanent and  
state service in accordan

(9) provisional appoint  
appropriate eligible lists

(10) transfers from one  
merit system jurisdiction

(11) transfers from on  
(12) the reinstatement

(13) layoffs for reason  
tions, or material change  
and seniority records sha

orders;  
(14) the development,  
ance records;

(15) the establishmen  
disciplinary suspension

(16) the procedures f  
volving employee an  
grievances of the gener  
personnel system;

STATE OF ALASKA  
1989 LEGISLATIVE SESSION

BILL VERSION: SB 279  
PUBLISH DATE: \_\_\_\_\_

FISCAL NOTE

REQUEST:

Revision Date: \_\_\_\_\_ Agency Affected: Commerce & Economic Dev.  
Title: Establishing Alaska Racing Commission and authorizing off-track parimutuel wagering  
BRU: Alaska Racing Commission  
Sponsor: Senate C & RA Components: \_\_\_\_\_  
Requester: Senate C & RA

EXPENDITURES / REVENUES : (Thousands of Dollars)

OPERATING	FY 89	FY 90	FY 91	FY 92	FY 93	FY 94
PERSONAL SERVICES			130.1	321.4	321.4	321.4
TRAVEL			9.2	12.6	12.6	12.6
CONTRACTUAL			32.9	72.2	72.2	72.2
SUPPLIES			2.5	5.0	5.0	5.0
EQUIPMENT			10.0			
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0	0	184.7	411.2	411.2	411.2

CAPITAL	0	0	0	0	0	0
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REVENUE	0	0	307.5	1,230.0	1,230.0	1,230.0
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FUNDING: (Thousands of dollars)

GENERAL FUND			184.7	411.1	411.2	411.2
FEDERAL FUNDS						
OTHER						
TOTAL	0	0	184.7	411.2	411.2	411.2

POSITIONS:

FULL-TIME	0	0	5	6	6	6
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary.)

The effective date of SB 279 is July 1, 1990; therefore, no costs would be incurred until FY 91. See attached analysis.

Prepared by: Linda Wild, Special Assistant  
Division: Commissioner's Office

Phone: 465-2500  
Date: 4-24-89

Approved by Commissioner: Larry Mercurieff  
Agency: Department of Commerce & Economic Development

Phone: 465-2500  
Date: 4/25/89

Distribution (by preparer):

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

3954D-1/042489a

Under Sec. 05.50.100 (e), the Commission may establish an annual fee for each location, which must reflect the cost of regulating off-track betting. Further, the amount of the fee shall be offset by the amount paid to the commission under AS 05.40.110(b) (1% of gross receipts from exotic races). As the Commission will set license fees by regulation, it is not possible at this time to estimate revenues generated by those fees.

The department recommends that Sec. 05.40.110 be amended to include standard program receipt authority language.

This fiscal note assumes that there would be two licensees in the state, with two major facilities, as well as branches in Anchorage, Fairbanks, Juneau and Kodiak.

**FY 91 Expenditure Detail:**

**Personal Services**

Executive Director, Range 24, 6 months	\$ 36,700
Clerk Typist III, Range 8, 6 months	13,867
Licensing Examiner, Range 12, 6 months	18,350
State Satellite Supervisor, Range 21 x 6 months x 2	<u>61,200</u>

Each major location will have a full-time supervisor on site; branch locations will receive frequent but unscheduled visits by a supervisor.

This analysis assumes two major locations the first year and full operation by the second year.

Subtotal	\$130,117
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**Travel**

Three commission meetings in Anchorage at two days each. The travel budget assumes three commissioners are appointed from the Anchorage area, one from Fairbanks and one from Juneau. Staff positions, except some of the supervisors, are located in Anchorage.

Commission meetings	\$ 4,194
Staff travel	<u>5,000</u>
Subtotal	\$ 9,194

**Contractual**

Audits, security, investigator, hearing officer, etc.	\$ 20,000
Postage, communications, printing, advertising, etc.	7,500
Office space	<u>5,400</u>
Subtotal	\$ 32,900

Supplies	\$ 2,500
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Equipment	\$ 10,000
<b>FY 91 Total General Fund Expenditures</b>	<b>\$ 184,700</b>

FY 91 Revenue Detail:

Revenue estimates are based on the following for full operation:

Total daily handle \$300,000	
2% tax on \$100,000 =	\$2,000/day
3% tax on \$200,000 =	\$6,000/day
	\$8,000/day
	x 300 days of operation/year
	<u>\$1,230,000/year</u>

An additional 1% of the exotic race wagering (40% of total) would produce an additional \$1,200 per day for municipalities and state fairs.

For the first year of operation, this fiscal note assumes that revenues would be one-fourth of the above, or \$307,500.

FY 92 and Beyond Expenditure Detail:

**Personal Services**

Executive Director, Range 24	\$ 73,400
Clerk Typist, Range 8	27,736
Licensing Examiner, Range 12	36,700
Satellite Supervisors, Range 21 (61,200 x 3)	<u>183,600</u>
(Supervisors in each main location, and one who regularly visits each branch)	

Subtotal	\$ 321,436
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**Travel**

Four commission meetings in Anchorage	\$ 5,600
Director's travel	2,000
Staff travel	<u>3,000</u>
Subtotal	\$ 9,600

**Contractual**

Audits, security, investigator, hearing officer	\$ 50,000
Postage, communications, printing, advertising	15,000
Office space	<u>7,200</u>
Subtotal	\$ 72,200

**Supplies**

\$ 5,000

FY 92 and Beyond Revenue Detail:

See analysis under FY 91	\$1,230,000
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NEW SECTION 1 - DEFINITIONS

Unless the context otherwise requires, words and phrases as used herein shall mean:

"Commission" shall mean the Alaska Horse Racing Commission, hereinafter created.

"Person" shall mean and include individuals, firms, corporations and associations.

"Race meets" shall mean and include any exhibition of thoroughbred, quarter horse, paint, Appaloosa horse racing, Arabian horse racing, or standard bred horse racing, where the pari-mutuel system is used.

"Exotic Race" shall mean any race involving a multiple wager.

Singular shall include the plural, and the plural shall include the singular - and words importing one gender shall be regarded as including all other genders.

NEW SECTION 2 - ALASKA HORSE RACING COMMISSION

There is hereby created the Alaska Horse Racing Commission to consist of one Commissioner, appointed by the Governor and confirmed by the Senate and House. The Commissioner shall be a citizen, resident, and qualified elector of the State of Alaska for the past five years. The term of the Commissioner shall be six years. Commissioner shall hold office until his or her successor is appointed and qualified. Vacancies in the office of Commissioner shall be filled by appointment to be made by the Governor for the unexpired term. Any Commissioner may be removed

at any time at the pleasure of the Governor. Before entering upon the duties of his or her office, the Commissioner shall enter into a surety company bond, to be approved by the Governor and the Attorney General, payable to the State of Alaska, in the penal sum of \$25,000, conditioned upon the faithful performance of the Commissioner's duties and the correct counting and payment of all sums received and coming within his or her control under this chapter, and in addition thereto the Commissioner shall take and subscribe to an oath of office of the same form as that prescribed by law for elected state officials.

NEW SECTION 3 - EX OFFICIO NONVOTING MEMBERS

In addition to the Commission member appointed under this act, there shall be two ex officio nonvoting members consisting of - (1) one member of the Senate, and (2) one member of the House of Representatives. The member from the Senate shall be appointed by the President of the Senate and the member from the House of Representatives shall be appointed by the Speaker of the House of Representatives. Appointment shall be for the term of two years or for the period in which the appointee serves as a legislator, which ever expires first. Members may be reappointed, and vacancies shall be filled in the same manner as original appointments are made. The ex officio member shall assist in the policy-making, rather than administrative, functions of the Commission, and shall collect data deemed essential to further legislative proposals and exchange information with the Commission. The ex officio member shall be deemed engaged in

legislative business while in attendance upon the business of the Commission and shall be limited to such allowances as provided by law. Expenses of the ex officio members shall be paid from the Commission fund as being expenses relative to Commission business.

NEW SECTION 4 - COMMISSION ORGANIZATION -  
SECRETARY - RECORDS - ANNUAL REPORTS

Upon being appointed by the Governor, the Commissioner shall hire an employee secretary, and such other clerical, office, and other help as is necessary in the performance of the duties imposed upon it by this chapter. The Commission shall keep detailed records of all meetings and of the business transacted therein, and of all the collections and disbursements. The Commission shall prepared and submit an annual report to the Governor and Legislature. All records of the Commission shall be public records and as such subject to public inspection.

NEW SECTION 5 - COMMISSIONER TO ISSUE LICENSES  
FOR PARI-MUTUEL BETTING

Pari-mutuel wagering and off-track satellite wagering are hereby authorized and it shall be the duty of the Commissioner, as soon as it is possible after organization to prepare and promulgate a complete set of rules and regulations to govern the pari-mutuel wagering of simulcast and satellite locations in this state. It shall be unlawful for any person to conduct simulcast or satellite pari-mutuel wagering without having first obtained and having in force and effect a license issued by the Commission as provided for in this chapter - and paying the fee which shall

be set by the Commissioner. Said license issued under this section shall be for a period of five years.

NEW SECTION 6 - COMMISSION TO REGULATE AND  
LICENSE MEETS - INSPECTION

The Commission created by this chapter is hereby authorized, and it shall be its duty, to license, regulate, and supervise all simulcast and satellite pari-mutuel wagering held in this state under the terms of this chapter, and to cause the various locations to be visited and inspected at least once a year.

NEW SECTION 7 - APPLICATION FOR ISSUANCE OF LICENSE

The Commissioner shall be the sole judge of whether or not the applicant shall be licensed. No person who has been convicted of any crime involving moral turpitude shall be issued a license, nor shall any license be issued to any person who has violated the terms or provisions of this chapter, or any of the rules and regulations of the Commission made pursuant thereto, or has failed to pay the Commission any or all sums required under the provisions of this chapter. No person who has not been a resident of the State of Alaska for at least five years immediately preceding the application shall be issued a license, nor shall any license be issued to an association or corporation unless a majority of their stockholders have been residents of the State of Alaska for the past five years. Any unexpired license held by any person who violates any of the provisions of this chapter, or any of the rules or regulations of the Commission made pursuant thereto, or who fails to pay to the Commission

any and all sums required under the provisions of this chapter, shall be subject to cancellation and revocation by the Commission. Such cancellation shall be made only after a summary hearing before the Commission, of which three days' notice, in writing, shall be given to the licensee, specifying the grounds for the proposed cancellation, and at which hearing the licensee shall be given an opportunity to be heard in opposition to the proposed cancellation.

NEW SECTION 8 - PROHIBITIVE PRACTICES -  
PARI-MUTUEL SYSTEM PERMITTED

(1) It shall be unlawful -

(a) To conduct pool selling, bookmaking, or to circulate handbooks - or,

(b) To bet or wager on any horse race other than by the pari-mutuel method - or,

(c) For any licensee to take more than the percentage provided in New Section 12 of this act - or,

(d) For any licensee to compute breaks in the pari-mutuel system otherwise than at 10¢.

(2) Any willful violation of the terms of this chapter, or of any rule, regulation, or order of the Commission shall constitute a gross misdemeanor and when such violation is by a person holding a license under this chapter, the Commission may cancel the license held by the offender, and such cancellation shall operate the forfeiture of all rights and privileges granted by the Commission and of all sums of money paid to the Commission by

the offender; and the action of the Commission in this respect shall be final.

(3) The Commission shall have the power to exclude from any and all pari-mutuel wagering locations in the State of Alaska any person whom the Commission deems detrimental to the best interests of racing or any person who willfully violates any of the provisions of this chapter or of any rule, regulation, or order issued by the Commissioner.

(4) Every pari-mutuel wagering, simulcasting or satellite reception held in this state contrary to the provisions of this chapter is hereby declared to be a public nuisance.

(5) Except as provided in this act the state preempts the field of imposing taxes on pari-mutuel wagering authorized under this act.

NEW SECTION 9 - GROSS RECEIPTS AND FEES -  
COMMISSION PERCENTAGE - DISPOSITION

In addition to the license fees required by this chapter, the licensee shall pay to the Commission the percentage of gross receipts of all pari-mutuel machines at each race track in accordance with New Section 11, which sum shall be paid daily to the Commission.

NEW SECTION 10 - SATELLITE LOCATIONS - PARI-MUTUEL WAGERING

The Commission's authority to approve satellite wagering is subject to the following limitations -

(1) The Commission shall approve only one satellite license for each two hundred thousand population. The satellite licensee