

ALASKA LEGISLATURE COMMITTEE FILES, 1989-1990 8672
6399 SENATE LABOR & COMMERCE

803

PETITION

We the undersigned request the Governor and the Legislature to make an appropriation of \$350,000 to the Alaska Power Authority Loan programs to allow the electrification of the Hollis area. The area is currently without central station power, which is serious hardship upon the residents. This is not a request for a grant. It is a request that the loan programs created by the Legislature, specifically for this type project be modestly funded to allow construction of this basic utility service. The loan would be repaid plus interest to the State of Alaska. An appropriation is needed this year to allow construction during 1989. This project is included in the APA's FY90 Loans budget.

Thank you for your consideration.

<u>Name</u>	<u>Address</u>	<u>Phone</u>
John N. Mott	P.O. BOX 447 CRAIG	826-3327
John Mott	BOX 111 CRAIG	826-3464
John Mott	P.O. Box 8 Craig	826-3662
Lucy Williams	Box 115 Klawock	755-2291
Tom R. Rasmussen	BOX 402 CRAIG	826-3811
Alfred R. Mott	P.O. Box 402 CRAIG	826-3945
Denise James	PO BOX 292 CRAIG	826-3426
John Mott	Box 40 CRAIG	826-3290
John Mott	Box 40 CRAIG	826-3290
John Mott	Box 40 CRAIG	826-3290
John Mott	Box 47 CRAIG	826-3381
Carl A. Waterman	Box 201 CRAIG	826-3205
James J. Green	Box 125 Klawock	755-2961
Bob Dovel	Bx 10 Craig	826-3635
Alan Vanhook	Gen. Deliv. Craig	826-3954

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Thank you for your consideration.

<u>Name</u>	<u>Address</u>	<u>Phone</u>
PAT Rust	Box 309 Craig	826-3334
Barbara	Box 324 Craig	826-3745
Myra Ouellette	PO-188 Craig	826-3343
W. K. K.	Box 58 Craig	826-3370
Verashitodeau	Box 58 Craig	826-3370
Davis W. Deoman	Box 201 Craig	826-3502
Roberta Leichty	Box 47 Craig	826-3381
Ernest Mackie	Box 252 Craig	826-3324
Leitner Larvaine	Box 170 Craig	826-3302
W. F. Permenter	Box 196 Klawock	826-2944 work
Jamie Gunkel	PAB 146 Klawock	755-2982
Richard H. Donath	Box 900 Craig	826-2333
Rose Wundersloh	Box 138 Klawock	755-2991
Robin Friese	Gen Del	755-2352

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Thank you for your consideration.

<u>Name</u>	<u>Address</u>	<u>Phone</u>
Barbara Moots	P.O. Box 447, Craig AK	826-2327
Bob Ryan	P.O. Box 103, Craig AK	826-3991
Deborah Quenbargh	Bx 78, Craig AK	826-3539
Thomas R. Sinden	P.O. Box 179, Craig AK	no phone
David J. St. Germain	Craig	826-0394
Deborah Y. Holter	P.O. Box 86	826-3228
Carolyn Dooley	Box 396, Craig AK	826-3275
Luan Williams	S.V.B. 228, Klawock AK	955-2395
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Kathy D. Ota	Bx 159, Craig AK 99921	826-3777

S B

249

Alaska State Legislature

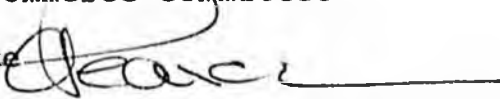
3111 C Street, Suite 150
Anchorage, Alaska 99503
(907) 561-2038

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

Senator Drue Pearce
District G

MEMORANDUM

TO: Senator Dick Eliason, Chairman
Senate Labor and Commerce Committee

FROM: Senator Drue Pearce 

RE: SB 249 "An Act relating to the Alaska Industrial
Development and Export Authority; and providing for
an effective date."

DATE: April 3, 1989

I request that you schedule a hearing for Senate Bill 249
before the Senate Labor and Commerce Committee.

The purpose of this legislation (and its companion bill CSHB
123) is to promote employment through resource development
projects using the Alaska Industrial Development and Export
Authority.

Attached is a packet of information originally prepared by
AIDEA to explain CSHB 123. Since the two bills are identical,
the information is equally relevant to SB 249.

If you have questions, you may feel free to call me.

DP:jf

STATE OF ALASKA
1989 LEGISLATIVE SESSION

BILL VERSION: SB 249
PUBLISH DATE: _____

FISCAL NOTE

REQUEST:

Revision Date: _____ Agency Affected: Commerce & Econ. Dev.
Title: AIDEA BRU: AIDEA
Sponsor: Senator Pearce Components: _____
Requester: Senate Labor & Commerce

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-
---------	-----	-----	-----	-----	-----	-----

FUNDING: (Thousands of dollars)

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

POSITIONS:

FULLTIME	-0-	-0-	-0-	-0-	-0-	-0-
PARTTIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary.)

Existing staffing and budget of the Authority will be utilized to implement legislation. The primary focus of the Authority will shift from commercial/service sector financing to primary basic industries.

Prepared by: Bert Wagon, Executive Director Phone: 279-1651
Division: Alaska Industrial development & Export Authority Date: 4/3/89

Approved by Commissioner: Larry Mercurieff, Commissioner Phone: 465-2500
Agency: Department of Commerce & Economic Development Date: 4/4/89

Distribution (by preparer):

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

STATE OF ALASKA

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

STEVE COWPER, GOVERNOR

REPLY TO:

1031 W 4th AVENUE
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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

April 19, 1989

Honorable Jan Faiks
Alaska State Legislature
P.O. Box V
Juneau, AK 99311

Re: SB 249 -- relating to the
Alaska Industrial Development
and Export Authority

Dear Senator Faiks:

Bert Wagon, Executive Director of the Alaska Industrial Development and Export Authority (AIDEA), requested this office to respond to you regarding the meaning of sec. 9 of SB 249. That section purports to put bondholders on notice that the authority has a moral obligation to request the state to assist in the repayment of bonds of AIDEA only for bonds issued before January 1, 1989. Under existing law bondholders are guaranteed that the state will consider appropriating amounts to the authority if the bond reserve fund balance drops to a level that would not allow the authority to make periodic repayment to bondholders.

The amendment set out in sec. 9 does not change the effect of the recognition of a moral obligation conveyed by statute to bonds sold before the effective date of the bill. Existing bonds are based on contracts made between AIDEA and the bondholders. The legislature lacks the power to enact a law that impairs contracts. Alaska Const. art. I, § 15. This constitutional limitation is implemented by the enactment of AS 01.10.-100, which provides in pertinent part:

The repeal or amendment of any law does not release or extinguish any ... right accruing or accrued under such law, unless the repealing or amending act so provides expressly. The law shall be treated as remaining in force for the purpose of sustaining any proper action or prosecution for the enforcement of the right....

The foregoing constitutional and statutory guarantees are sufficient to protect the rights of existing bondholders.

Hon. Jan Faiks
Alaska State Senate
Re: SB 249 -- re AIDEA

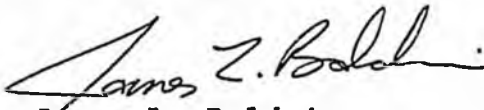
April 12, 1989
Page #2

It is also worth noting that the section does not prohibit holders of future bonds issued by AIDEA from seeking relief from the state in the event of a default. There would be allegations of dire consequences to the state's credit rating if the state fails to bail out the authority. Section 9 is intended to entirely delete any assurance of a moral obligation to repay AIDEA bondholders for bonds issued after the effective date of the bill. This was proposed by AIDEA so that a bondholder would not be able to assert reliance on the state's backing and would make a decision to buy bonds based only on the security provided by the assets of AIDEA.

We hope this memorandum serves your purposes.

Sincerely yours,

DOUGLAS B. BAILY
ATTORNEY GENERAL

By: 
James L. Baldwin
Assistant Attorney General

JLB/pjg

cc: Arthur H. Peterson
Assistant Attorney General
Department of Law - Juneau

Bertram M. Wagnon
Executive Director
AIDEA - Anchorage



ALASKA INDUSTRIAL DEVELOPMENT
AND EXPORT AUTHORITY

1577 "C" STREET • SUITE 304 • ANCHORAGE, ALASKA 99501-5177 • (907) 274-1651

April 20, 1989

The Honorable Jan Faiks
Alaska State Legislature
P.O. Box V
Juneau, Alaska 99811

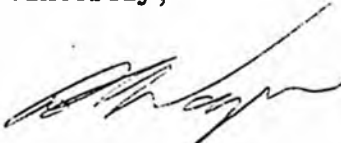
Dear Senator Faiks:

Thank you for furnishing me a copy of your proposed amendment to SB 249. My reading of the amendment is that its net effect would be a "wash" transaction for the Authority. An offer would be made to those borrowers who had loans at banks that were closed by the FDIC and whose loans were subsequently purchased by the Authority. Should this amendment become law, it would be my intention to draft a regulation that would provide for notification of each such impacted borrower and give the borrower a period of time (say, 3 months) to make their decision.

I have noted this amendment is retroactive to January 1, 1988, and you may wish to consider adding Federal Savings and Loan Insurance Corporation to cover closed S & L's and offer these borrowers the same option as FDIC closed banks.

If there is anything I can do please let me know.

Sincerely,



Bertram L. Wagnon
Executive Director

BLW/ss

SENATE BILL 249

"An Act Relating to the Alaska Industrial
Development and Export Authority; and providing for
an effective date."



ALASKA INDUSTRIAL
DEVELOPMENT AND EXPORT
AUTHORITY

The Alaska Industrial Development and Export Authority

PROMOTES EMPLOYMENT THROUGH FINANCING

Since 1981, Authority Financing has resulted in an estimated 13,582 jobs and 804 projects with a value of \$871,932,230.

	Employment per Region	Projects per Region	Dollar Value per Region
Northern	437	27	30,535,250
Interior	1,480	91	99,875,250
Southwest	788	41	52,095,250
Anchorage	7,178	422	458,710,805
Southcentral	1,804	135	97,815,500
Southeast	1,895	85	135,100,000
Total	13,582	804	871,932,230

*HOW WILL
SENATE BILL 249
FURTHER THE AUTHORITY'S
EFFORTS IN PROMOTING
RESOURCE DEVELOPMENT ?*

The Authority will be able to own, operate, or construct facilities

*solely,
by partnership,
by joint venture,
or through other agreements with persons for shared
ownership.*

Example:

To enhance development of the Beluga coal fields, a common transportation system accessible by all lease holders could provide a stimulus for further movement of this project. Financing and/or partial ownership with the lease holders in this common system could reduce the costs of moving the coal to tidewater.

The Authority will be able to provide financial support in the form of

*loans,
guarantees,
equity investments.*

Example:

In reference to the Beluga Coal Fields, the Authority could function as a lender for the project, or could have an equity interest in the coal transportation system in conjunction with others and be repaid by charging fees on the amount of coal transported. Flexibility and a menu of options are necessary as each project will be different and present unique problems to overcome.

In addition to these current statutory bonding limitations:

The Authority cannot issue bonds in a total amount over \$400 million during a 12 month period.

The Authority cannot issue bonds for a particular project within a 12 month period over \$50 million.

Project bonds over \$6 million require location approval from the city or borough where the project will be located.

Project bonds over \$10 million require a public hearing as well as municipal approval.

In all cases, the Authority must find that;

The project is economically advantageous to the State and public welfare.

The project applicant is financially responsible.

Increased demand on public utilities will be satisfied.

The project will provide or retain employment reasonably related to the amount of Authority financing.

The project is feasible enough to repay the bonds or loans.

The bond issuance will not adversely affect the marketability of other state bonds.

Senate Bill 249 proposes the following:

The Authority can issue bonds up to \$25 million to assist in the acquisition of a development project without prior legislative approval, as opposed to \$10 million currently.

The State's moral obligation on any future bonds issued by the Authority is eliminated.

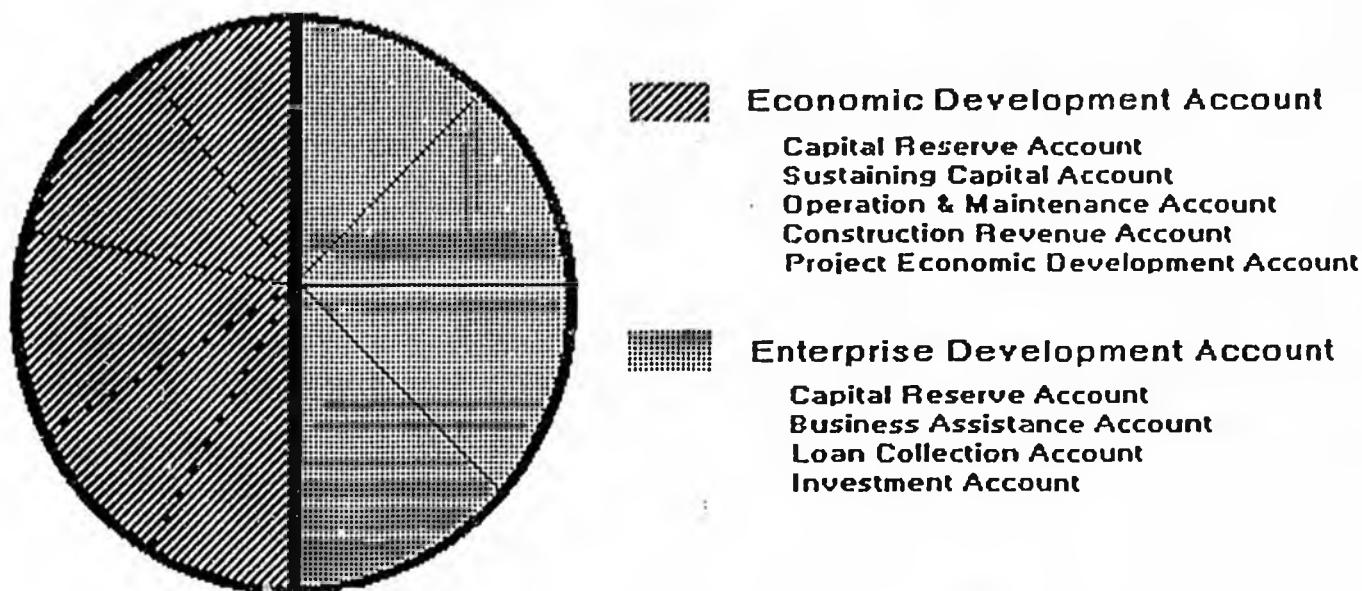
The principle amount of a loan retained by the originator is increased from 10% to 20%.

The Authority can regulate conditions where it will no longer purchase loan participations from a financial institution as a result of excessive delinquencies.

The Authority will be able to utilize assets in pursuing the promotion of resource development projects by revising the scope of the Revolving Fund.

The revolving fund is comprised of two primary accounts: the *Enterprise Development Account* and the *Economic Development Account*. The Enterprise Development account is utilized for daily operations and obligations of the Authority and the Economic Development Account is utilized for major development projects like Red Dog. All accounts are independent and monies cannot be transferred between accounts.

THE REVOLVING FUND



Proposed:

"Pool" all the non-promised monies of both major accounts together to function as a general fund.

Senate Bill 249 proposes the following changes to the Authority's Commercial Business Loan Program to effectively market the program to banking institutions.

The guaranteed portion of the loan is increased from 70% to 80%.

The guarantee will cover \$1 million or less, as opposed to guaranteeing a loan of \$1 million or less.

The Authority is given the power to pay liquidation costs of collateral securing loans that are guaranteed by this program as deemed necessary.

The changes proposed in this legislation will not require additional funding.

SECTIONAL ANALYSIS

Senate Bill 249

"An Act Relating to the Alaska Industrial Development and Export Authority; and providing for an effective date"

DISCUSSION:

The purpose of this legislation is to further the Alaska Industrial Development and Export Authority's efforts in promoting employment through resource development projects. The Authority has historically functioned as a correspondent to Alaskan banks, financing real estate mortgages in the service sector of the economy. This legislation is an attempt to redirect the Authority's efforts to achieve the goal of increased employment through primary sector industrial development. This redirection is an attempt to create new jobs and promote population growth within the State. This in turn will provide assistance to the service sector which currently is suffering from a lack of demand.

The congressional changes to the tax code in 1986 significantly altered the type of projects that can be financed with the proceeds of tax-exempt bonds. The only projects currently eligible are manufacturing plants (through December 31, 1989) and certain facilities referred to as "exempt facilities." Financing for airports, docks, and wharves is still available if the project is owned by a governmental entity. This change in the tax law has reduced the attractiveness and demand for Authority tax-exempt financing.

The definition of a development project in AS 44.88.900(9)(A) limits Authority ownership. The current definition stresses the primary resource industries, and accentuates transportation and infrastructure associated with those projects.

This legislation does not eliminate the essential framework whereby the Authority acts as a correspondent to Alaskan banks. The current banking situation has curtailed many of the existing banks correspondent relationships. It is critical that the Authority remain as an institute correspondent during these difficult times.

Pursuant to its purpose, all provisions of the bill accomplish at least one of the following four objectives.

1. Increase efforts in promoting resource development projects.
2. Amend existing statutes to allow utilization of the Authority's assets in pursuing the promotion of development projects.
3. Conform existing statutes to the 1986 Tax Act.
4. Reorganize, refine, and consolidate statutes of the Authority.

Section 1. AS 44.88.010(a)(9):

Three changes are made in this section: two deletions of dated language that is no longer applicable, and an addition allowing the Authority to participate in different types of ownership.

The deletions conform state law to the federal law changes made as a result of the 1986 Tax Reform Act.

The addition defines the necessary relationship possibilities between the Authority and other persons or entities. Each project will face unique problems, and flexibility is needed to address and overcome them. Without this flexibility, the Authority's effectiveness in promoting resource development projects will be limited.

Section 2. AS 44.88.010(c):

There are two changes in this section: the addition that sets forth the Authority's scope of providing financial support for or with various persons or entities, and the deletion removes language that is unnecessary and could be viewed as applying only to exports.

Section 3. AS 44.88.060:

The two additions in this section establish the scope of the revolving fund. The revolving fund is currently made up of two separate accounts: the Enterprise Development Account where loans are originated and financed through banks, and the Economic Development Account designated for major development projects. The additions allow the Authority to create additional accounts within the unrestricted accounts of the revolving fund, and transfer monies between accounts subject to bond-holder agreements. The investment powers are moved into the revolving fund, allowing it to function as the general fund and be invested in accordance with Title 37.

Section 4. AS 44.88.070:

The addition in this section sets forth the Authority's scope of owning and operating development projects: solely or by partnership, joint venture, or other agreement with another person. This definition is necessary as the projects contemplated will require the flexibility to deal with different forms of ownership and operation.

Section 5. AS 44.88.080(14):

The two additions in this section broaden and conform the Authority's scope of powers with regard to development projects that are not standardized.

Section 6. AS 44.88.090(a):

The deletion in this section removes language that is unnecessary in this legislation as proposed.

Section 7. AS 44.88:

This addition creates a new section, 44.88.095, BONDING LIMITATIONS. It consolidates all the Authority's statutory limitations regarding the issuance of bonds into one section. The provisions do not change and are merely moved from another section with one exception; the Authority will have the ability to issue bonds up to \$25 million as opposed to \$10 million to assist in the financing or operation of a development project without prior legislative approval. Local approval is still required under this section.

Section 8. AS 44.88.105(a):

The deletion in this section eliminates the ceiling on bonds regarding the establishment of capital reserve funds. It also eliminates the state's moral obligation to supplement a capital reserve fund created after January 1, 1989 should it ever fall below the required amount.

With this elimination of moral obligation, bonds of the Authority issued after January 1, 1989, will stand on their own and do not contingently obligate the State in any form whatsoever. Since 1981 all bonds have had the benefit of the State's moral obligation. It is now appropriate that the Authority stand on its own financially with respect to future bond issues. Of course, the Authority's bonds that are already outstanding and were issued with the moral obligation will continue to have that benefit.

Section 9. AS 44.88.105(d):

This addition is in conjunction with the changes of section 8 and sets forth the date, January 1, 1989, after which no additional moral obligation bonds could be issued.

Section 10. AS 44.88.155(b):

The change in this section allows the Authority to establish accounts within the enterprise development account considered appropriate by the Authority.

Section 11. AS 44.88.155(c)

The deletion in this section is in conjunction with the changes in section 3, it simply moves the investment powers into the revolving fund.

Section 12. AS 44.88.155(d):

There are two changes and one deletion in this section.

The first change allows the Authority to participate in the financing of projects that previously have been beyond the Authority's financial scope. Increasing the loan limit on a project from \$10 million to \$25 million will allow the Authority to participate in larger projects strictly as a correspondent. Several tourism-related projects have been beyond the \$10 million limit. This change would allow Authority participation in these projects.

The second change requires that the principle amount of a loan held by the originator be increased from 10% to 20% as long as the loan is outstanding. This would promote caution when banks contemplate selling their loans to the Authority. They will be responsible for holding a more significant portion of the credit and hopefully act accordingly.

The deletion will allow the Authority to become active in purchasing the guaranteed portion of federal SBA loans from banks. The revised investment statute, AS. 37.10.071, will permit the Authority to invest its funds in the guaranteed portion of federal SBA loans once the program restrictions are removed from statute. This flexibility is essential. The SBA modifies its program periodically, and casting the program in statute does not provide enough flexibility to maintain a market presence in these guarantees.

Section 13. AS 44.88.165:

The statute regarding loan delinquencies is repealed and reenacted. It allows the Authority to regulate conditions whereby it may discontinue purchase of loan participations from a financial institution because of excessive loan delinquencies. This revision is necessary to allow more financial institutions to participate in the authority's loan programs.

Section 14. AS 44.88.172(a):

The additions to this section establish the Economic Development Account within the Revolving Fund. They set forth the scope for which the Economic Development Account will be used.

The changes to the following three sections affect the Authority's commercial business loan guarantee program. These changes are necessary to make this program more marketable to banking institutions.

Section 15. AS 44.88.535(b):

The guaranteed portion of the loan is increased from 70% to 80%

Section 16. AS 44.88.545:

The guaranty will cover \$1 million or less, as opposed to guaranteeing a loan of \$1 million or less.

Section 17. AS 44.88.560:

The Authority is given the power to provide for the portion costs of collateral securing loans that are guaranteed under this program when the Authority considers it to be in its best interest to do so.

Section 18. AS 44.88.900(4):

This section clarifies the definition of "development" project by referring to the resource development oriented plants and facilities described in the definition of "project," including transportation related facilities as set forth in section 19.

Section 19. AS 44.88.900(9):

There is one addition and deletion in this section. The addition includes certain transportation facilities in the definition of a project, while the deletion eliminates the obsolete language from the tax code prior to the 1986 Tax Reform Act.

Section 20. Repealed statutes:

AS 44.88.090(g), 44.88.160, 44.88.172(c), 44.88.175, and 44.88.176 are reenacted in substantially the same form and placed in Section 6, Bonding Limitations.

AS 44.88.090(i) is repealed to allow the Authority to issue bonds after January 1, 1990.

AS 44.88.105(e) and (g) relate to the moral obligation provisions, that under this legislation, would terminate on January 1, 1989. The provisions of 44.88.105(e) duplicate those added by section 10, AS 44.88.155(d)(7)(A) of this legislation.

AS 44.88.157 creates a loan insurance account and permits the Authority to insure loans purchased under its general financing provisions. This section is unnecessary because it has not been used since its inception.

AS 44.88.159(c), 44.88.212(a), and 44.88.900(3) refer to AS 44.88.158, the small business enterprise loan account that is repealed under this legislation.

AS 44.88.158 provides authority that is already given in the investment powers (AS 37.10.071) in the revolving loan fund.

The deletion in section 10, page 8, line 10 will allow the Authority to become active once again in purchasing the guaranteed portion of federal SBA loans from banks. The revised investment statute, AS 37.10.071, will permit the Authority to invest its funds in the guaranteed portion of federal SBA loans once the program restrictions are removed from statute. This flexibility is essential. The SBA modifies its program periodically, and casting the program in statute does not provide enough flexibility to maintain a market presence in these guarantees.

AS 44.88.172(b) does not allow use of the Authority's assets for resource development projects and is repealed.

Section 21:

This section provides for an immediate effective date.

1 IN THE SENATE

BY PEARCE

2

SENATE BILL NO. 249

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 the Alaska Industrial Development

7

and Export Authority; and providing for an effective

8

date."

9

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

10

* Section 1. AS 44.88.010(a)(9) is amended to read:

11

(9) the achievement of the goal of full employment, and of

12

establishment and continuing operation and development of industrial,

13

manufacturing, export, small business, and business enterprises in the

14

state [, INCLUDING, WITHOUT LIMITATION, FACILITIES FOR TRANSPORTATION,

15

FACILITIES FOR POLLUTION CONTROL AND WASTE DISPOSAL, FACILITIES FOR

16

THE LOCAL FURNISHING OF GAS, FACILITIES FOR WATER, FACILITIES FOR

17

INDUSTRIAL PARKS, MASS COMMUTING VEHICLES, FACILITIES FOR LOCAL DIS-

18

TRICT HEATING OR COOLING, PARKING FACILITIES, OR A STORAGE OR TRAINING

19

FACILITY RELATING TO A PLANT OR FACILITY,] will be accelerated and

20

facilitated by the creation of an instrumentality of the state with

21

powers to incur debt, to own and operate facilities, to enter into

22

partnership, joint venture, and other agreements with other persons

23

with respect to the ownership, operation, or construction of facil-

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ities, and to make and insure loans to finance, and to assist private

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lenders to make loans to finance, the establishment, operation, and

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development of industrial, manufacturing, export, small business, and

27

business enterprises [, INCLUDING, WITHOUT LIMITATION, FACILITIES FOR

28

TRANSPORTATION, FACILITIES FOR POLLUTION CONTROL AND WASTE DISPOSAL,

29

FACILITIES FOR THE LOCAL FURNISHING OF GAS, FACILITIES FOR WATER,

1 FACILITIES FOR INDUSTRIAL PARKS, MASS COMMUTING VEHICLES, FACILITIES
2 FOR LOCAL DISTRICT HEATING OR COOLING, PARKING FACILITIES, OR A STOR-
3 AGE OR TRAINING FACILITY RELATING TO A PLANT OR FACILITY];

4 * Sec. 2. AS 44.88.010(c) is amended to read:

5 (c) It is further declared to be the policy of the state, in the
6 interests of promoting the health, security, and general welfare of
7 all the people of the state, and a public purpose of the state, to
8 accomplish the objectives set out in (b) of this section through the
9 provision of financial support, in the form of loans, guarantees,
10 equity investments, or other methods provided in this chapter, for or
11 in cooperation with, or through joint venture, partnership, or other
12 agreements with, public [FEDERAL, STATE,] and private institutions
13 [FOR THE PURPOSE OF INCREASING THE EXPORT OF ALASKA GOODS, TALENT, RAW
14 MATERIALS, AND SERVICES].

15 * Sec. 3. AS 44.88.060 is amended to read:

16 Sec. 44.88.060. ALASKA INDUSTRIAL DEVELOPMENT AND EXPORT AUTH-
17 ORITY REVOLVING FUND. The Alaska Industrial Development and Export
18 Authority revolving fund is established in the authority. The revolv-
19 ing fund consists of appropriations made to the revolving fund by the
20 legislature, money or other assets transferred to the revolving fund
21 by the authority, and unrestricted payments on loans made or purchased
22 by the authority. Unless otherwise expressly stated, the accounts
23 created in this chapter are accounts in the revolving fund. The
24 authority may create additional accounts either in the revolving fund
25 or outside the revolving fund. Subject to agreements made with the
26 holders of the authority's bonds or with other persons, the authority
27 may transfer amounts in an account in the revolving fund to another
28 account in the revolving fund. Amounts deposited in the revolving
29 fund may be pledged to the payment of bonds of the authority or ex-

1 pended for the purposes of the authority under this chapter. The
2 authority has the powers and responsibilities established in AS 37.-
3 10.071 with respect to the investment of amounts held in revolving
4 fund.

5 * Sec. 4. AS 44.88.070(2) is amended to read:

6 (2) owning and operating, either solely or by partnership,
7 joint venture, or other agreement with another person, the enterprises
8 and other facilities described in AS 44.88.172;

9 * Sec. 5. AS 44.88.080(14) is amended to read:

10 (14) to acquire, manage, and operate projects, and to enter
11 into agreements with other persons for shared ownership, operation, or
12 construction of projects, as the authority considers necessary or
13 appropriate to serve a public purpose or to exercise its powers under
14 this chapter;

15 * Sec. 6. AS 44.88.090(a) is amended to read:

16 (a) The [SUBJECT TO (g) OF THIS SECTION, THE] authority may
17 borrow money and may issue bonds, including but not limited to bonds
18 on which the principal and interest are payable

19 (1) exclusively from the income and receipts or other money
20 derived from the project or development project financed with the
21 proceeds of the bonds or derived from the exporter or exporting trans-
22 action financed, guaranteed, or insured with the proceeds of the
23 bonds;

24 (2) exclusively from the income and receipts or other money
25 derived from designated projects or development projects or other
26 sources whether or not they are financed, insured, or guaranteed in
27 whole or in part with the proceeds of the bonds; or

28 (3) from its income and receipts or other assets generally,
29 or a designated part or parts of them.

1 * Sec. 7. AS 44.88 is amended by adding a new section to read:

2 Sec. 44.88.095. BONDING LIMITATIONS. (a) The authority may not
3 issue bonds in a 12-month period in an amount that exceeds
4 \$400,000,000.

5 (b) The authority may not issue revenue bonds, other than re-
6 funding bonds, to purchase a loan for a project under AS 44.88.155 -
7 44.88.159, to acquire a development project or an interest in a devel-
8 opment project under AS 44.88.172 - 44.88.177 or to provide money to
9 finance, guarantee, or insure an exporting transaction under AS 44.-
10 88.300 - 44.88.390 in an amount greater than \$50,000,000 during any
11 12-month period unless the issuance is included separately in the
12 estimates required in the report of the authority under AS 44.88.-
13 210(b) and unless the legislature, by law, approves the issuance.

14 (c) Before entering into a lease or other agreement under
15 AS 44.88.090(e) regarding a project for which the authority agrees to
16 issue bonds in an amount in excess of \$6,000,000, there must be filed
17 with the authority a certified copy of a resolution of the governing
18 body of the political subdivision of the state, if any, in which the
19 project is to be located, consenting to the location of the project.
20 The consent need only refer to the general nature of the project
21 ultimately to be acquired, as set out in a request of the proposed
22 project applicant. Before entering into a lease or other agreement
23 under AS 44.88.090(e) regarding a project, the authority shall find,
24 on the basis of all information reasonably available to it, that

25 (1) the project and its development under this chapter will
26 be economically advantageous to the state and the general public
27 welfare and will contribute to the economic growth of the state;

28 (2) the project applicant is financially responsible;

29 (3) provision to meet increased demand upon public facili-

1 ties that might result from the project is reasonably assured; and

2 (4) the project will provide, or retain, employment reason-
3 ably related to the amount of the financing by the authority, con-
4 sidering the amount of investment per employee for comparable facil-
5 ities and other relevant factors.

6 (d) Before adopting a resolution approving a project to be
7 financed under AS 44.88.172 for which bonds must be issued, the au-
8 thority shall, on the basis of all information reasonably available to
9 it, make findings, with respect to the project, as described in
10 (c)(1) - (4) of this section, and also find that

11 (1) the project is economically and financially feasible
12 and able to produce revenue adequate to repay the bonds or loans with
13 which it is financed;

14 (2) the project complies with applicable law; and

15 (3) issuance of the bonds is not expected to adversely
16 affect the ability of the state or any political subdivision of the
17 state to market other bonds.

18 (e) Before entering into an agreement to finance or to develop a
19 proposed project with a cost in excess of \$10,000,000 financed under
20 AS 44.88.172 for which bonds must be issued, the authority shall
21 obtain the approval of each Regional Resource Advisory Council
22 appointed under AS 44.88.174 or municipality in the area in which the
23 proposed project is to be located. Approval under this subsection
24 must be evidenced by a certified copy of a resolution of the council
25 or of the governing body of the municipality. Before considering a
26 resolution regarding the approval or rejection of the development or
27 financing of a proposed project under this subsection, a Regional
28 Resource Advisory Council shall conduct a public hearing in the
29 region. If a proposed project is located in a municipality, the

1 governing body of the municipality shall conduct a hearing on the
2 proposed project.

3 (f) Without prior legislative approval, the authority may not
4 issue bonds in an amount greater than \$25,000,000 to assist in the
5 financing of a development project under AS 44.88.172 - 44.88.177.

6 * Sec. 8. AS 44.88.105(a) is amended to read:

7 (a) For the purpose of securing one or more issues of its bonds,
8 the authority may establish one or more special funds, called "capital
9 reserve funds", and shall pay into those capital reserve funds the
10 proceeds of the sale of its bonds and other money which may be made
11 available to the authority from other sources for the purposes of the
12 capital reserve funds. A capital reserve fund may be established only
13 if the authority determines that the establishment of the fund would
14 enhance the marketability of the bonds [, AND IF THOSE COSTS OF A
15 PROJECT, AS DEFINED IN AS 44.88.900, WHICH ARE TO BE FINANCED WITH THE
16 PROCEEDS OF THE BONDS, DO NOT EXCEED \$10,000,000]. Money in a capital
17 reserve fund, except as provided in this section, may be used as
18 required only for (1) the payment of the principal of, and interest
19 on, bonds or of the sinking fund payments with respect to those bonds;
20 (2) the purchase or redemption of the bonds; or (3) the payment of a
21 redemption premium required to be paid when the bonds are redeemed
22 before maturity. However, money in a capital reserve fund may not be
23 withdrawn if the withdrawal would reduce the minimum in the capital
24 reserve fund to less than the capital reserve minimum requirement, except
25 for the purpose of making payment, when due, of principal, interest,
26 redemption premiums on the bonds, and sinking fund payments when other
27 money of the authority is not available for the payments. Income or
28 interest earned by, or increment to, a capital reserve fund, from the
29 investment of all or part of the fund, may be transferred by the

1 authority to other funds or accounts of the authority if the transfer
2 does not reduce the amount of the capital reserve fund below the
3 capital reserve fund requirement.

4 * Sec. 9. AS 44.88.105(d) is amended to read:

5 (d) With respect to a capital reserve fund created under this
6 section on or before January 1, 1989, the [THE] chairman of the
7 authority shall annually, no later than January 2, certify in writing
8 to the governor and the legislature the amount, if any, required to
9 restore the [A] capital reserve fund to the capital reserve fund
10 requirement. The legislature may appropriate to the authority the
11 amount certified by the chairman of the authority. The authority
12 shall deposit the amounts appropriated under this subsection during a
13 fiscal year in the proper capital reserve fund. Nothing in this
14 section creates a debt or liability of the state.

15 * Sec. 10. AS 44.88.155(b) is amended to read:

16 (b) The authority may establish in the enterprise develop-
17 ment account the [A SMALL ENTERPRISE LOAN ACCOUNT, A LOAN INSURANCE
18 ACCOUNT, AND OTHER] accounts it considers appropriate.

19 * Sec. 11. AS 44.88.155(c) is amended to read:

20 (c) Money and other assets of the enterprise development account
21 may be used to secure bonds of the authority issued to finance the
22 purchase of loans for projects [AND SHALL BE HELD AND INVESTED BY THE
23 AUTHORITY IN ACCORDANCE WITH AS 37.10.071] or shall be used to pur-
24 chase loans for projects.

25 * Sec. 12. AS 44.88.155(d) is amended to read:

26 (d) A loan purchased in whole or in part by the authority with
27 assets of the enterprise development account or with proceeds of bonds
28 secured by assets of the enterprise development account, other than a
29 loan which is financed with the proceeds of bonds of the authority and

1 secured only by a project applicant or a project,

2 (1) may not exceed \$25,000,000

3 [(A) \$10,000,000; OR

4 (B) \$500,000 IF THE LOAN IS PURCHASED UNDER AS 44.88.-

5 158];

6 (2) may not exceed the cost of the project or 75 percent of
7 the appraised value of the project, whichever is less, unless the
8 amount of the loan in excess of this limit is federally insured or
9 guaranteed or is insured by a qualified mortgage insurance company;

10 (3) may not be for a term longer than three-quarters of the
11 authority's estimate of the life of the project or 25 years from the
12 date the loan is made, whichever is earlier;

13 (4) shall contain complete amortization provisions satis-
14 factory to the authority requiring periodic payments by the borrower;

15 (5) shall be in the form and contain the terms and provi-
16 sions with respect to insurance, repairs, alterations, payment of
17 taxes and assessments, default reserves, delinquency charges, default
18 remedies, acceleration of maturity, secondary liens, and other matters
19 the authority prescribes;

20 (6) shall be secured as to repayment by a mortgage or other
21 security instrument in the manner the authority determines is feasible
22 to assure timely repayment under a loan agreement entered into with
23 the borrower;

24 (7) may not be made unless

25 (A) at least 20 [10] percent of the principal amount
26 of the loan is retained by the originator of the loan as long as
27 the loan is outstanding; or

28 (B) 100 percent of the principal amount of the loan is
29 guaranteed by the United States or an agency or instrumentality

1 of the United States;

2 (8) must be

3 (A) [AT LEAST PARTIALLY GUARANTEED BY THE UNITED
4 STATES OR AN AGENCY OR INSTRUMENTALITY OF THE UNITED STATES,
5 SUBJECT TO THE PROVISIONS OF AS 44.88.158;

6 (B)] financed from the proceeds of bonds; or

7 (B) [(C)] expected by the authority to be financed
8 from the proceeds of bonds.

9 * Sec. 13. AS 44.88.165 is repealed and reenacted to read:

10 Sec. 44.88.165. DELINQUENT LOANS. The authority shall adopt
11 regulations to describe the circumstances under which it will discon-
12 tinue purchasing loans from a financial institution because of exces-
13 sive delinquencies among the loans previously purchased by the author-
14 ity from the financial institution. In adopting the regulations, the
15 authority must consider the authority's delinquency experience with
16 loans it purchased from all financial institutions. The authority may
17 include in the regulations other remedies it considers appropriate as
18 alternatives to the discontinuance of purchasing loans from the finan-
19 cial institution.

20 * Sec. 14. AS 44.88.172(a) is amended to read:

21 (a) The economic development account is established in the
22 revolving fund. The economic development account consists of money or
23 assets appropriated, loaned, or transferred to the authority for
24 deposit in the account [,] and other money or assets deposited in the
25 account by the authority. While money is on deposit in the economic
26 development account, the money [THE ACCOUNT] may be used only to
27 finance, acquire, manage, and operate development projects that the
28 authority intends to own and operate either solely or by partnership,
29 joint venture, or other agreement with another person. The term

1 "operate" includes operation directly by the authority [,] or by an
2 agent of the authority.

3 * Sec. 15. AS 44.88.535(b) is amended to read:

4 (b) The authority may provide a guarantee from the fund for up
5 to 80 [70] percent of a loan that qualifies under AS 44.88.500 -
6 44.88.599. The ratio of the guarantee to the outstanding principal of
7 the loan may not increase over the term of the loan.

8 * Sec. 16. AS 44.88.545 is amended to read:

9 Sec. 44.88.545. LIMITATIONS OF GUARANTEES WITH RESPECT TO
10 BORROWERS. The authority may not provide a guarantee

11 (1) [A LOAN] of more than \$1,000,000;

12 (2) [LOANS] to an individual borrower that cumulatively
13 exceeds [EXCEED] \$1,000,000 of guaranteed indebtedness.

14 * Sec. 17. AS 44.88.560 is amended to read:

15 Sec. 44.88.560. POWERS OF THE AUTHORITY. The authority may

16 (1) adopt regulations to implement AS 44.88.500 - 44.88.-
17 599;

18 (2) establish terms and conditions for loan guarantees and
19 refinancing agreements subject to the requirements of AS 44.88.500 -
20 44.88.599;

21 (3) make and execute contracts and other instruments to
22 implement AS 44.88.500 - 44.88.599;

23 (4) charge

24 (A) [(i)] one percent of the amount guaranteed for the
25 service it provides under AS 44.88.500 - 44.88.599; and

26 (B) [(ii)] any other reasonable fee that the authority
27 may establish by regulation;

28 (5) acquire real or personal property by purchase,
29 transfer, or foreclosure when the acquisition is necessary to protect

1 an interest in the fund; and

2 (6) exercise any other power necessary to implement AS 44.-
3 88.500 - 44.88.599;

4 (7) to the extent the authority considers it to be in its
5 best interest to do so, use money in the business assistance fund to
6 pay expenses relating to the liquidation of collateral securing loans
7 guaranteed by the business assistance fund.

8 * Sec. 18. AS 44.88.900(4) is repealed and reenacted to read:

9 (4) "development project" has the meaning given to "proj-
10 ect" in (9)(A) of this section;

11 * Sec. 19. AS 44.88.900(9) is amended to read:

12 (9) "project" means

13 (A) a plant or facility used or intended for use

14 [(i)] in connection with making, processing, pre-
15 paring, transporting, or producing in any manner, goods,
16 products, or substances of any kind or nature or in connec-
17 tion with developing or utilizing a natural resource, or
18 extracting, smelting, transporting, converting, assembling,
19 or producing in any manner, minerals, raw materials, chemi-
20 cals, compounds, alloys, fibers, commodities and materials,
21 products, or substances of any kind or nature;

22 [(ii) AS AN INDUSTRIAL PARK; IN CONNECTION WITH
23 TRANSPORTATION; FOR THE PREVENTION, LIMITATION OR CONTROL OF
24 POLLUTION; FOR THE DISPOSAL OF SEWAGE OR SOLID WASTE; FOR
25 THE LOCAL FURNISHING OF GAS; FOR THE FURNISHING OF WATER; AS
26 OR IN CONNECTION WITH MASS COMMUTING VEHICLES; FOR LOCAL
27 DISTRICT HEATING OR COOLING; AS A PARKING FACILITY; OR AS A
28 STORAGE OR TRAINING FACILITY DIRECTLY RELATED TO A PLANT OR
29 FACILITY DESCRIBED IN THIS PARAGRAPH;]

1 (B) a plant or facility used or intended for use in
2 connection with a business enterprise;

3 (C) commercial activity by a small enterprise;

4 * Sec. 20. AS 44.38.090(g), 44.88.090(i), 44.88.105(e), 44.88.105(g),
5 44.88.157, 44.88.158, 44.88.159(c), 44.88.160, 44.88.172(b), 44.88.172(c),
6 44.88.175, 44.88.176, 44.88.212(a), and 44.88.900(3) are repealed.

7 * Sec. 21. This Act takes effect immediately under AS 01.10.070(c).



Alaska Environmental Lobby, Inc.

P.O. Box 22151 Juneau, Alaska 99802

907 463-3366

GENERAL CONCERNS WITH HB 123 / SB249 --AIDEA

The Alaska Environmental Lobby has the following concerns :

- 1 The findings required before AIDEA enters into a lease or other agreement lack consideration of a) potential land use conflicts and b) environmental, social, and economic concerns.
- 2 A local hearing is required only if the project exceeds \$10,000,000.
- 3 No legislative review is required on projects under \$25,000,000.

As a land use planner, I am aware that potential land use conflicts are tied to the nature of a proposed development. People can be brought together to create win-win solutions that work for all parties by incorporating provisions for local review and land use conflict resolution. This is particularly important in Alaska where many areas do not have land use ordinances.

Requirements for local hearings and provisions in the bill for the consideration of land use and other social, economic, and environmental concerns need not be a stumbling block to economic development. These provisions pave the way for resource development which is compatible with the community and the environment. This balanced approach avoids potential litigation and public relations problems. It ensures that future funds will not be spent for mitigating environmental damage and that environmental degradation will not impact existing industry within the area.

We believe that the \$25,000,000 threshold for legislative review is too high. Projects much smaller than that may involve major public policy decisions .

We appreciate your consideration of these issues.

Becky Achten 4-14-89

REPEALERS

AS 44.88.090(g)

This section is deleted and reenacted under bond limitations. (g)(1) becomes 44.88.095(a) with a technical change only. The language in (g)(1) equates to \$400 million when the history of bond authorization is followed back to enactment in 1980. As time progresses, this gets increasingly difficult to do and as a simplification the \$400 million is now directly stated in the CS.

(g)(2) is moved and becomes AS 44.88.095(b)

AS 44.88.090(i)

This language is deleted and with the adoption of the amendments to the CS will appear as a new section (g) on page 6, line 6, on the CS with the one change being instead of reading "1990" it will read "1991."

AS 44.88.105(e)

This section is repealed as it is no longer necessary. The CS provides on page 8, line 26, that 20% of a loan be retained by the originator.

AS 44.88.105(g)

This section is repealed as it is no longer necessary. The CS provides on page 6, line 5, that a project in excess of \$10 million requires legislative approval.

AS 44.88.157

This section is repealed in its entirety and not reenacted in the CS. The loan insurance sections were written in 1980 and have never been utilized. At the time of the original drafting it was believed possible that to sell Authority bonds the Authority must insure its loans (self-insure) as well as pledge its credit. This proved unnecessary in the marketplace.

AS 44.88.158

This repeals the S.B.A. purchase program from statute and its attendant restrictions. The rationale for this repeal is that the state's investment statutes now provide that the governmental portion of S.B.A. loans can be purchased with Authority funds (AS 37.10.071). The Authority will be allowed to purchase that portion guaranteed by the U.S. Government with this repealer.

AS 44.88.159(c)

Same as AS 44.88.158 (removing from statute restrictions on the S.B.A. purchase program).

AS 44.88.160

This section is repealed and reenacted in the CS on page 4 under bonding limitations. The one exception is AS 44.88.160(5) which is deleted in that it says the same thing as AS 44.88.160(1).

AS 44.88.172(b)

This is deleted as the CS sets up a revolving fund on page 2, line 23, and all accounts become part of the revolving fund.

AS 44.88.172(c)

This is repealed and covered by page 6, line 6, concerning legislative approval (same as AS 44.88.090(i)).

AS 44.88.175

This is now contained on page 4, line 3, Bonding Limitations.

AS 44.88.176

This is relocated to the section on bonding limitations beginning on page 4, line 3.

AS 44.88.212(a)

Deleted as it deals with the S.B.A. purchase program.

AS 44.88.900(3)

Deleted as it deals with the S.B.A. purchase program.

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May 8, 1989

Senator Dick Eliason
Room 417, Capitol
Juneau, Alaska 99811

Dear Senator Eliason,

Your support of Senate Bill 249 to expand the authority and the flexibility of the Alaska Industrial Development and Export Authority is needed. This bill enhances the opportunity for Alaska to facilitate more resource based financings which could create thousands of new jobs and help diversify our economy. Any comments or suggestions on how I could help the administration on this bill would be appreciated.

Sincerely

A handwritten signature in cursive script that reads 'Allan R. Johnston'.

Allan R. Johnston
Regional Manager

"People Serving People"



THE
GEORGE
WASHINGTON
UNIVERSITY

School of Government and Business Administration / Washington, D.C. 20052

*Department of
Business Administration
(202)676-6115*

Mr. Allan R. Johnston
Vice President
Wedbush Securities
1009 Cushman Street
Fairbanks, Alaska 99701

April 22, 1988

Dear Mr. Johnston:

Thank you for your letter of March 4, as well as the reference materials on oil and other commodity-indexed bond issues. I am sorry that I am late in commenting on your ideas because of my long trip to London, Manila and Seoul over a six-week period.

I am very enthusiastic about the prospect of Alaska to be more active in international trade and finance as part of its move toward diversifying its economic base both in terms of industry and geography. Since Alaska is abundantly endowed with natural resources such as oil, natural gas, timber and other mineral deposits, it would be ideal for Alaskan entities to float commodity-based bond issues on international markets.

For example, bond issues linked with oil or other Alaskan commodities would have several advantages:

1. It would serve as a low-cost financing source for Alaska, since commodity indexed bonds carry much lower interest rate than regular bonds.
2. It would serve as a partial hedging mechanism for Alaska against the fluctuation in the market prices of these commodities.
3. It would spread the name of Alaska in international financial markets and indirectly promote more investor interest in the State of Alaska.
4. Finally, such experiment would increase the financial market expertise of Alaskan financial institutions.

For the above reasons, I strongly support the idea of floating commodity-indexed bonds by Alaskan public and private sector agencies involved in natural resource development in Alaska. Please keep me posted on further developments there.

Sincerely yours,

Yoon S. Park
Professor of Business Admin.

School of Management
Michael L. Rice, Dean



UNIVERSITY OF ALASKA FAIRBANKS
Fairbanks, Alaska 99775

Mr. Allan R. Johnston
Regional Manager
Wedbush Securities
714 Fourth Avenue
Fairbanks Alaska 99701

Dear Allan,

I have just read your report : *Oil Indexed Bond Concept* . The concept is a sound one. Clearly East Asian countries such as Japan have a very real interest in assuring long-run access to petroleum resources at reasonable cost. Our problem, just as clearly, is one of assuring long-run markets for Alaska's petroleum reserves and at reasonable margins. This is a perfect opportunity for a new financial instrument to reduce the high volatility of oil prices for both parties.

The implications of making a market in the new instrument for the development of Anchorage as a major international financial center are both interesting and possible. This would be a benefit to Alaska quite above and beyond the obvious good financial effects on our oil-based revenue.

I am impressed with your idea. If there is any way the School of Management can be helpful in seeing this idea become a reality please let me know.

Sincerely,

A handwritten signature in cursive script, appearing to read "Michael L. Rice".

Michael L. Rice, Dean
School of Management

FRANK H. MURKOWSKI
ALASKA

COMMITTEES:
VETERANS' AFFAIRS (RANKING MEMBER)
ENERGY AND NATURAL RESOURCES
FOREIGN RELATIONS
INDIAN AFFAIRS
INTELLIGENCE

United States Senate

WASHINGTON, DC 20510
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JUNEAU
U.S. FEDERAL BUILDING
BOX 1047 99801
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February 25, 1988

Mr. Allan R. Johnston
Vice President
Wedbush Securities, Inc.
1009 Cushman Street
Fairbanks, Alaska 99701

Dear Allan:

Thank you for forwarding to me a copy of Dr. Park's paper "Advancing Alaska's Strategic Position in International Trade and Finance" as well as your ideas for an oil-indexed bond.

Although your proposal is still in its infancy, I believe your ideas definitely merit further consideration. If Alaska is going to develop as an economic hub of the Pacific Rim, a financial service center such as the one proposed in Dr. Park's paper would be a good step in this direction.

With respect to your idea of an oil-indexed bond I believe that such an instrument may also have potential. You will have to develop this idea further, though, with representatives from the financial community. I would like to be kept informed of your efforts in this regard. I appreciate your interest in exploring new ideas that may lead to the diversification of Alaska's economy.

Once again, thank you for taking the time to share your ideas with me.

Sincerely,



Frank H. Murkowski
United States Senator

United Brotherhood of Carpenters and Joiners of America

LOCAL UNION NO. 1743



Farthest North Local in the World

DON K. SWARNER
Business Representative
Financial Secretary-Treasurer

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99707

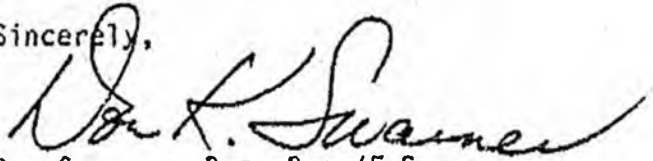
June 9, 1988

Allan R. Johnston
Wedbush Securities, Inc.
714 Fourth Avenue, #305
Fairbanks, Alaska 99701

Dear Allan:

The low-interest resource-backed bond proposal we discussed today sounds quite fascinating. If development projects were more economic by your financing method, then it would seem natural that more jobs would be created in the state. I would hope that the increased profitability of these projects would encourage a fair wage for the Alaskans employed by these projects. I support your endeavor in pursuing alternative sources of capital to stabilize the Alaskan economy.

Please keep me advised on your progress and let me know if there is anything I can do to help.

Sincerely,

Don Swarner, Bus. Rep./F.S.

DKS:jf



LABORERS INTERNATIONAL UNION OF NORTH AMERICA

LOCAL NUMBER 942

FAIRBANKS OFFICE: 316 BARNETTE ST., ALASKA 99701-4506 PHONE (907) 456-3500
JUNEAU OFFICE: 710 W. 9th AVE JUNEAU, ALASKA 99801, PHONE (907) 586-2880



WILLIE LEWIS
President

JOE J. THOMAS
Business Manager
Secretary-Treasurer

January 10, 1989

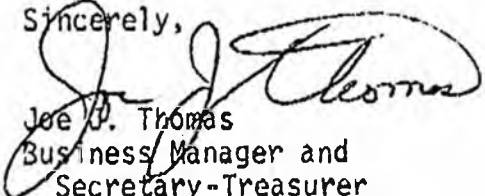
Allan R. Johnston, Regional Manager
Wedbush Securities, Inc.
714 Fourth Avenue, Suite 305
Fairbanks, Alaska 99701

Dear Allan:

Thank you for stopping by and discussing your low interest resource-backed bond proposal with me. If your assumptions are correct, then this financing vehicle should help increase employment opportunities as well as add more continuity and stability to existing projects. I am certainly in favor of new ideas that will create fair paying jobs for my members and I'd like you to keep me informed on your progress.

If I can help in any way, please feel free to call on me.

Sincerely,


Joe J. Thomas
Business Manager and
Secretary-Treasurer
Laborers' Local No. 942

JJT/cs



United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry

of the United States and Canada

Composed of journeymen and apprentices who have jurisdiction over every branch of the plumbing and pipe fitting industries

LOCAL NO. 375

STREET ADDRESS 3568 Geraghty Street

CITY STATE ZIP Fairbanks, Alaska 99709

SUBJECT MATTER

DATE

November 14, 1988

Allan R. Johnston, Regional Manager
Wedbush Securities, Inc.
714 Fourth Avenue, Suite 305
Fairbanks, Alaska 99701

Dear Allan;

Congratulations on an interesting and innovative proposal. As you are well aware, organized labor and the resource companies have been at odds over local hire for sometime. If your proposal is valid then there should be more stability, job opportunities and profitability in the natural resource industry which should benefit everyone. The cyclical nature of the Alaskan economy in general and the construction industry in particular requires that the working man receive an adequate wage to carry him through the substantial periods of unemployment. If your proposal can help moderate the cyclical nature of the Alaskan economy and help create jobs then please keep me posted on what you are doing and how I can help.

Sincerely,

J. L. "Lenny" Arsenault, Business Manager
Financial Secretary - Treasurer

ycc

MARVIN J. BOELE
General President

CHARLES J. HABIC
General Secretary-Treasurer

M. EDDIE MOORE
Asst. General President

LOUIS H. STINE
Asst. General Secretary-Treasurer



AFL-CIO-CFL

Letters should be confined to one subject



**YUKON
PACIFIC
CORPORATION**
TRANS ALASKA GAS SYSTEM

November 9, 1988

Mr. Allan R. Johnston
Wedbush Securities, Inc.
4300 B Street, Suite 105
Anchorage, Alaska 99503

Dear Allan:

Resource based bonding, as described in the material you have shared with us, could be an important means to finance long-term projects which depend on a certain market price level for viability.

Energy prices have as you know, fluctuated widely in recent years. For some projects that Alaska needs to get started, resource based bonding might help disperse the added risks of that volatility.

At the present time, I don't know if our company is interested in using this form of financing for the Trans-Alaska Gas System. However, it is in our interest to see that the option remains available and we would appreciate being kept informed of regulatory developments that could foreclose that opportunity.

Thank you for making us aware of this issue.

With best regards.

Sincerely,

Walter J. Hickel
Chairman

MT:mli

cc: Mr. E. John P. Browne

FROM E. JOHN P. BROWNE

EXECUTIVE VICE PRESIDENT AND
CHIEF FINANCIAL OFFICER

TELEPHONE
216 586-2325



BP AMERICA INC.

200 PUBLIC SQUARE 40-A
CLEVELAND, OHIO 44114-2375

August 22, 1988

Dear Allan:

Thank you for your recent letter concerning oil indexed bonds. As the first issuer of these bonds back in 1986, I was interested to learn of your proposal for oil indexed bonds to be used for state financing.

The Standard issue consisted of fixed coupon debentures and oil indexed warrants. The debentures have a 6.30% coupon and were sold at 74.70% of par. The warrants return their original cost plus an amount of interest contingent upon the future price of West Texas Intermediate Crude Oil. Warrant holders receive appreciation on a dollar-for-dollar basis for oil prices between \$25 and \$40 per barrel. Each 1990 warrant represents 170 barrels of oil and matures on December 15, 1990. Each 1992 note represents 200 barrels of oil and matures March 15, 1992. Eight debentures, one 1990 oil warrant, and one 1992 oil warrant were combined for sale to the public as a \$10,000 unit.

In my experience, oil indexed financing has provided low cost debt during periods of declining or stable oil prices. With Alaska's dependence on oil revenues, this financing technique can provide a partial hedge against future oil price declines. In the event that the State of Alaska was interested in gaining some protection this way, you are right to point to involving Alaska as an interested party with the CFTC. As you are no doubt aware, the regulatory environment has changed considerably since the Standard issue.

Please let me know if BP America can be of assistance in this endeavor.

Yours sincerely,

A handwritten signature in dark ink, appearing to read 'John Browne', written over a horizontal line.

Mr. Allan R. Johnston
Wedbush Securities, Inc.
4300 B Street, Suite 105
Anchorage, Alaska 99503

Resource-Based Bonding Fits Alaska's Capital Needs

By Allan Johnston



ALASKA IS AS RICH IN OPPORTUNITIES as it is in resources. Alaskans don't need to create new opportunities, just capture a few that are passing it by. The state's natural resource-based economy is largely nondiversified and oil-dependent. Although this creates problems, it also offers unique opportunities.

Traditionally, Alaskans have financed development projects and new businesses with a substantial amount of expensive fixed-debt borrowings. Unfortunately, the state's nondiversified economy lends itself to rather dramatic changes in cash flows. Boom and bust aspects of cash flow financing prevent many potentially viable economic projects and businesses from taking root.

There are thousands of variations of participating loans. Almost any variation is more appropriate than fixed rate financing on new business ventures. One type of participating loan gaining more recognition in the United States is the gold loan. Earlier this year, Newmont Mining gave a major boost to the credibility of this type of financing by borrowing one million ounces of gold from the Bank of Nova Scotia on a five-year, 2.5 percent per year loan. This financing was particularly significant because it was twice the size of any previous gold loan and longer than the more common three-year loans.

Newmont immediately sold the gold for \$477 million and was able to use this inexpensive source of financing to refinance other loans. Considering that Newmont Mining should be able to mine its gold at less than \$150 per ounce, the firm effectively has realized a \$300 million dollar gross profit. Of course, Newmont has lost the potential gain if gold rises above \$477 on that one million ounces of gold, but the opportunity cost is insignificant compared to the phenomenal risk-adjusted return it had locked in.

This financing technique could make a number of Alaskan gold mining projects economical that otherwise wouldn't justify the development risks. The possibility of funding the significant capital requirements that it takes to develop a major project and the ability to hire a long-term stable work force with a reasonably assured profit offers as many positive benefits to affected communi-

ties as it does to the economics of projects.

A much more discussed type of participating loan is the oil indexed bond. Alaskan legislators and administrators have pondered the merits of this hedging mechanism for some time without coming up with any politically acceptable vehicle. Coincidentally, Standard Oil Co., the parent firm of Alaska's largest private oil producer, issued an oil-indexed bond in June 1986 when crude prices hovered around \$14 a barrel. The securities were so enthusiastically received that Standard increased the issue's size to 300 million from 250 million. The Aug. 25th issue of *Business Week* states, "For its part, Standard reduces its borrowing cost without increasing its risk."

The fundamental concept of an oil-indexed bond is the creation of a financing vehicle to counterbalance the special needs and risks of an unbalanced energy producer—such as Alaska. The local buyer and cocreator of such a vehicle would be an energy deficient unbalanced energy user such as Japan, Korea or Taiwan. For example, Japan as an energy deficient country is highly dependent on imported oil. Projections for its industrial economy are based on conservatively high prices for oil to minimize risks of rising energy costs. Conversely, Alaska—an oil producing state whose revenues are disproportionately dependent on oil—bases its state operating budget on a conservatively low price for oil.

Oil indexed bonds would have lower interest rates that serve Alaska's development needs. But because the resource-based interest rate would rise to reflect any oil price increases, the lender—and end user—would be protected as well. At the same time, Alaskan producers would be better able to pay higher cost financing due to increased oil revenues. If Alaska were to follow Standard's lead and issue some type of low interest oil-indexed bond, and place it within an energy-deficient industrial or insurance consortium in a country such as Japan, Korea or Taiwan, the risk-adjusted return to both the borrower and the lender could be mutually more attractive. The interna-

tional financial team established to create and place these financial instruments could evaluate other Alaskan financial/business opportunities that would be particularly attractive to Pacific Rim financing.

A few potential spinoffs: low-interest natural gas-indexed bonds for pipeline construction, other natural resource projects, international tourism developments and, most importantly, the broadening of expertise of Alaskan financial institutions.

If BP Minerals were to use a similar financing technique for its Greens Creek gold operation, it possibly could save \$8-\$10 million a year in financing costs (assuming a \$225 million five-year, 2.5 percent gold loan), as well as lend greater stability to the Alaskan employment picture. Variations of the financing technique are critical to the economic viability of projects such as the Red Dog Mine, the Quartz Hill molybdenum project south of Anchorage and almost any other type of resource-related development.

Low-interest participating financing is not geared only for mega-projects. Issuing a substantial amount of capital using the financing technique actually is more suitable for a \$25,000 tourism loan or a \$500,000 small business loan. The major drawback for these secure venture capital loans is that the lender generally requires part ownership of the business financed. If the borrower defaults on the loan, then the lender forecloses on the business and attempts to find a new manager to resurrect the venture.

Finding the appropriate lender with a vested interest in the enterprise's success can significantly increase the borrower's chance of making a go of it. For example, a tour company might lend to an historic tourist attraction or a trailer to a new television station. The lending companies not only provide some initial capital but frequently can share technical expertise. Additionally they often can generate business for the new enterprise.

(Allan R. Johnston is vice president and resident manager of Woodhull Securities.)

S B

259

SENATE COMMITTEE REPORT

FIRST COMMITTEE OF REFERRAL

Date of 5-DAY NOTICE 4/6/89
IN ACCORDANCE WITH UNIFORM RULE 23

**FISCAL NOTE(S) MUST BE ATTACHED
IN ACCORDANCE WITH AS 24.08.035

FURTHER JUD
FIN

DATE TURNED INTO OFFICE 3/26/90

4/4/89

Mr. President:

L&C

Committee considered SB 259

insurance guaranty funds; changing Rule 62(a), Rules of Civil Procedure;
efd

and recommended:

replace with CS SB 259 (L+C) same title

attached amendment(s) and

new title

_____ letter of intent adopted

do pass

do not pass

no recommendation

individual recommendations

further referral to _____

FISCAL NOTE(S) attached zero

appropriation no FN attached

fiscal impact

Gov. FN introduced w/ bill

zero - unchanged in CS

MEMBERS SIGNING DO PASS

OTHER RECOMMENDATIONS

[Signature]

[Signature]

[Signature]
Chair: signature and recommendation

Committee backup attached

REMARKS ON SB 259

MR. PRESIDENT, I RISE TO SPEAK IN SUPPORT OF SB 259. THIS BILL AND SB 212, WHICH WE HAVE JUST PASSED, PROVIDE ADDITIONAL PROTECTION FOR INSURED INDIVIDUALS AND BUSINESS IN THE STATE OF ALASKA.

THE BILL CREATES A LIFE INSURANCE, DISABILITY INSURANCE, AND ANNUITY GUARANTY FUND TO PROVIDE FUNDS FOR PAYMENT OF CLAIMS WHEN AN INSURANCE COMPANY BECOMES INSOLVENT. THE BILL WILL PROTECT THE POLICYHOLDERS AND CLAIMANTS FROM FINANCIAL LOSS UP TO \$500,000 FOR ANY ONE LIFE AND UP TO \$5 MILLION IN UNALLOCATED ANNUITY CONTRACT BENEFITS.

THE BILL ESTABLISHES THE ALASKA LIFE AND DISABILITY INSURANCE GUARANTY ASSOCIATION AS A NONPROFIT ENTITY TO ASSESS THE ADMITTED INSURERS IN THE STATE OF ALASKA UP TO 2% OF THEIR ANNUAL PREMIUM AND TO DISBURSE THIS MONEY TO POLICYHOLDERS AND CLAIMANTS OF INSOLVENT INSURERS. THE BILL ALSO ALLOWS THE GUARANTY ASSOCIATION TO ASSUME OR REINSURE ALL POLICIES OF AN IMPAIRED INSURER IN ORDER TO ENSURE CONTINUITY OF COVERAGE FOR POLICYHOLDERS. THE BOARD SERVES WITHOUT COMPENSATION, EXCEPT FOR EXPENSES, AND HAS THE ABILITY TO ASSIST POLICYHOLDERS AND CLAIMANTS FOR COMPANIES WHICH ARE IMPAIRED BUT NOT YET INSOLVENT.

THE BILL PROVIDES AN IMPORTANT TOOL TO ENSURE, TO THE MAXIMUM EXTENT POSSIBLE THAT ALASKANS WILL NOT SUFFER FINANCIAL LOSS IN THE EVENT THAT THEIR INSURANCE COMPANY BECOMES INSOLVENT.

STATE OF ALASKA
1989 LEGISLATIVE SESSION

BILL VERSION: SB 259
PUBLISH DATE: 4/4/89

FISCAL NOTE

REQUEST:

Revision Date: _____
Title: An Act relating to Insurance
Guarantee Funds
Sponsor: Rules
Requester: Governor

Agency Affected: Commerce & Econ. Dev.
BRU: Insurance
Components: Operations

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
---------	---	---	---	---	---	---

REVENUE	0	0	0	0	0	0
---------	---	---	---	---	---	---

FUNDING: (Thousands of dollars)

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

POSITIONS:

FULLTIME	0	0	0	0	0	0
PARTTIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary.)

No fiscal impact on the division.

Prepared by: Joan Brown, Administrative Officer
Division: Insurance

Phone: 465-2597
Date: 3-31-89

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

Phone: 465-2500
Date: 4/3/89

Distribution (by preparer):

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

3712D-1/040389a

STATE OF ALASKA
THE LEGISLATURE

POUCHY STATE CAPITOL
JUNEAU ALASKA 99811
907 465 3800

LEGISLATIVE AFFAIRS AGENCY

M E M O R A N D U M

March 15, 1990

SUBJECT: CSSB 259(L&C); go0129sE

TO: Senator Dick Eliason, Chairman
Senate Labor and Commerce Committee

FROM: Pamela Finley *Pam*
Assistant Revisor of Statutes

Enclosed is the draft you requested. In addition to changes to conform the draft to the drafting manual, we have made the following changes to the bill as introduced by the governor:

1. In AS 21.79.020(b), "life, disability, annuity, or supplemental" was inserted after "direct group".
2. The last three sentences of AS 21.79.050(a), with some changes, were moved to temporary law (new sec. 17). In the first sentence of AS 21.79.050(a) "representative of" was inserted before "member insurers."
3. In AS 21.79.060(j), the cross reference was changed from AS 21.79.020(c)(3) to AS 21.79.020(c)(4).
4. AS 21.79.060(m) was rewritten.
5. In AS 21.79.060(o) the reference to a "temporary stay" was replaced with a reference to "an injunction". "Stay" is usually used in connection with a court order, judgment, or proceeding. The term "injunction" includes temporary and permanent injunctions. Also, we do not understand the last phrase in this subsection ("in addition to . . . value.") Is this a power in addition to the right to seek an injunction, or is it tied to the right to withdraw funds?
6. In AS 21.79.900, the definitions of "director," "impaired," and "insolvent" were deleted because the definitions in AS 21.90.900 will apply to AS 21.79 without a cross reference.

Senator Dick Eliason
Page 2
March 15, 1990

7. In AS 21.80.080(b)(4), I deleted a cross reference to AS 21.80.065 because that section was deleted.

8. The references to "majority vote" in AS 21.79.100(f), (g), and (h) were deleted. Boards act by majority vote unless otherwise provided.

9. A new section 16 was added to note a court rule change.

10. The title was changed to include the added court rule change and the definitions of terms (in bill sec. 13) that apply to matters other than guaranty funds.

If you have any questions, please call me (until March 19) or Mike Ford (after March 18). You may want to consult with the AG's Office about the changes noted above, as well as the meaning of the last phrase of AS 21.79.060(o), mentioned in #5 above.

PF:gc
G13/124

Enclosure

Original sponsor(s): Rules/Governor

1 IN THE SENATE

BY THE LABOR & COMMERCE COMMITTEE

2 CS FOR SENATE BILL NO. 259 (L&C)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 SIXTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to insurance guaranty funds and to
7 definitions of "impaired or impairment" and "insol-
8 vent or insolvency" in laws relating to insurance;
9 amending Rules 24(a) and 62(a), Alaska Rules of Civil
10 Procedure; and providing for an effective date."

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

12 * Section 1. AS 21.21.250 is amended by adding a new subsection to
13 read:

14 (c) A domestic insurer may invest in notes or other evidence of
15 indebtedness of the Alaska Life and Disability Insurance Guaranty
16 Association established under AS 21.79.040, and the director may
17 consider those notes and other evidence of indebtedness, that are not
18 in default, as admitted assets of the insurer.

19 * Sec. 2. AS 21.36 is amended by adding a new section to read:

20 Sec. 21.36.035. PROHIBITED ADVERTISEMENTS AND REPRESENTATIONS.

21 (a) A person may not place before the public an advertisement, an-
22 nouncement, or statement that uses the existence of the Alaska Life
23 and Disability Insurance Guaranty Association established under
24 AS 21.79.040 to sell, solicit, or induce the public to purchase any
25 form of insurance governed by AS 21.79.

26 (b) A person having a beneficial interest in any form of insur-
27 ance governed by AS 21.79 may not represent to a lender or another
28 person that the insurance or form of insurance has value as collateral
29 for a loan because the insurance is covered by the Alaska Life and

1 Disability Insurance Guaranty Association. This subsection does not
2 apply to the Alaska Life and Disability Insurance Guaranty Association
3 itself, or to an entity that does not sell or solicit insurance.

4 * Sec. 3. AS 21 is amended by adding a new chapter to read:

5 CHAPTER 79. ALASKA LIFE AND DISABILITY INSURANCE
6 GUARANTY ASSOCIATION ACT.

7 Sec. 21.79.010. PURPOSE. The purpose of this chapter is to
8 provide a mechanism to pay a covered claim under a life insurance
9 policy, disability insurance policy, annuity contract, or supplemental
10 contract; to protect a policyholder; and to avoid financial loss to a
11 claimant or policyholder because of the impairment or insolvency of a
12 member insurer issuing the policy or contract.

13 Sec. 21.79.020. SCOPE. (a) This chapter applies to a policy
14 and contract specified in (b) of this section and to a person who

15 (1) except for a nonresident certificate holder under a
16 group policy or contract, is the beneficiary, assignee, or payee of a
17 person described in (2) of this subsection; and

18 (2) is the owner of, or a certificate holder under, the
19 policy or contract, or, in the case of an unallocated annuity con-
20 tract, is the contract holder, and who

21 (A) is a resident, or

22 (B) is not a resident, if the following conditions are
23 satisfied:

24 (i) the insurer that issued the policy or con-
25 tract is domiciled in this state;

26 (ii) the insurer never held a license or certifi-
27 cate of authority in the state in which the person resides;

28 (iii) the state in which the person resides has an
29 association similar to the association created by this

1 chapter; and

2 (iv) the person is not eligible for coverage of
3 the association of the state in which the person resides.

4 (b) This chapter applies to a person specified in (a) of this
5 section and to a direct, nongroup life, disability, annuity, and
6 supplemental policy or contract, to a certificate under a direct group
7 life, disability, annuity, or supplemental policy or contract, and to
8 an unallocated annuity contract issued by a member insurer, except as
9 otherwise limited by this chapter.

10 (c) This chapter does not apply to

11 (1) that part of a policy or contract that is not guaran-
12 teed by the insurer;

13 (2) that part of the risk borne by the policy or contract
14 holder;

15 (3) a policy or contract of reinsurance, unless an assump-
16 tion certificate has been issued;

17 (4) that part of a policy or contract on which the rate of
18 interest

19 (A) averaged over the period of four years before the
20 date on which the association becomes obligated with respect to
21 the policy or contract, exceeds a rate of interest determined by
22 subtracting two percentage points from the published monthly
23 average for that same four-year period or for a lesser period if
24 the policy or contract was issued less than four years before the
25 association became obligated; and

26 (B) on and after the date on which the association
27 becomes obligated with respect to the policy or contract, exceeds
28 the rate of interest determined by subtracting three percentage
29 points from the most recent published monthly average;

1 (5) a plan or program of an employer, association, or
2 similar entity to provide life, disability, or an annuity benefit to
3 an employee or member, to the extent that the plan or program is self-
4 funded or uninsured, including a benefit payable by the employer,
5 association, or similar entity under

6 (A) a multiple employer welfare arrangement as defined
7 in 26 U.S.C. 414 (Employee Retirement Income Security Act of
8 1974);

9 (B) a minimum premium group insurance plan;

10 (C) a stop-loss group insurance plan; or

11 (D) an administrative services only contract;

12 (6) that part of a policy or contract that provides a divi-
13 dend or experience rating credit, or provides that a fee or allowance
14 be paid to a person, including the policy or contract holder, in
15 connection with the service to or administration of the policy or
16 contract; and

17 (7) a policy or contract issued in this state by a member
18 insurer at a time when it was not licensed or did not have a certifi-
19 cate of authority to issue the policy or contract in this state.

20 (d) In this section, "published monthly average" means the
21 monthly average of corporate bond yields as published by Moody's
22 Investor Service, Inc., or its successor, or, if Moody's corporate
23 bond yield average-monthly average corporates is not published, a
24 substantially similar average established by regulation adopted by the
25 director.

26 Sec. 21.79.025. LIABILITY LIMITS. The benefits for which the
27 association may become liable may not exceed the lesser of

28 (1) the contractual obligations for which the insurer is
29 liable or would have been liable if it were not an impaired or

1 insolvent insurer; or

2 (2) with respect to any one life, regardless of the number
3 of policies or contracts, and subject to an aggregate of \$300,000,

4 (A) \$300,000 in life insurance death benefits, but not
5 more than \$100,000 in net cash surrender and net cash withdrawal
6 values for life insurance;

7 (B) \$100,000 in disability insurance benefits, includ-
8 ing any net cash withdrawal values;

9 (C) \$100,000 in the present value of annuity benefits,
10 including net cash surrender and net cash withdrawal values;

11 (3) with respect to any one contract holder, \$5,000,000 in
12 unallocated annuity contract benefits, irrespective of the number of
13 contracts held by that contract holder.

14 Sec. 21.79.030. CONSTRUCTION. This chapter shall be liberally
15 construed to achieve the purposes set out in AS 21.79.010.

16 Sec. 21.79.040. ASSOCIATION ESTABLISHED. (a) There is estab-
17 lished as a nonprofit legal entity the Alaska Life and Disability
18 Insurance Guaranty Association. An insurer that issues an insurance
19 policy described in AS 21.79.020(b) shall be a member of the asso-
20 ciation as a condition of the insurer's authority to transact insur-
21 ance in this state. The association shall perform its functions under
22 a plan of operation established and approved under AS 21.79.080 and
23 shall exercise its powers through the Board of Governors established
24 under AS 21.79.050. For purposes of administration and assessment,
25 the association shall maintain the following accounts:

26 (1) the disability insurance account; and

27 (2) the life insurance, annuity, and unallocated annuity
28 contract account.

29 (b) The association is under the supervision of the director and

1 is subject to the insurance laws of the state. Except as provided in
2 AS 21.79.110(b), meetings or records of the association may be open to
3 the public upon majority vote of the Board of Governors of the asso-
4 ciation.

5 Sec. 21.79.050. BOARD OF GOVERNORS. (a) The Board of Governors
6 of the association consists of not less than five nor more than nine
7 representatives of member insurers. Terms of office for board members
8 shall be established in the plan of operation submitted under AS 21.-
9 79.080. Member insurers shall select the board members, subject to
10 the approval of the director. A vacancy on the board shall be filled
11 for the unexpired term by a majority vote of the remaining board
12 members, subject to the approval of the director.

13 (b) Before the director approves the selection of a board member
14 or appoints a board member, the director shall consider whether all
15 member insurers are fairly represented on the board.

16 (c) A board member is not entitled to compensation by the asso-
17 ciation. However, a board member may be reimbursed from the assets of
18 the association for expenses incurred while performing duties as a
19 member of the board.

20 Sec. 21.79.060. POWERS AND DUTIES OF THE ASSOCIATION. (a) If a
21 domestic insurer becomes impaired, the association may, with the
22 approval of the director,

23 (1) guarantee, assume, reinsure, or provide for the guaran-
24 tee, assumption, or reinsurance of the policies or contracts of the
25 impaired insurer;

26 (2) provide money, pledges, notes, guarantees, or other
27 means that are necessary to act under (1) of this subsection and to
28 assure payment of the contractual obligations of the impaired insurer
29 until those obligations are guaranteed, reinsured, or assumed; or

1 (3) loan money to the impaired insurer.

2 (b) If a member insurer is an impaired insurer, and the insurer
3 is not paying claims in a timely manner, the association may

4 (1) take any of the actions specified in (a) of this sec-
5 tion, or

6 (2) provide a substitute benefit in lieu of the contractual
7 obligation of the impaired insurer solely for a

8 (A) disability claim;

9 (B) periodic annuity benefit payment;

10 (C) death benefit;

11 (D) supplemental benefit; and

12 (E) cash withdrawal for a policy or contract owner who
13 petitions under a claim of emergency or hardship under a standard
14 proposed by the association and approved by the director.

15 (c) The actions specified in (b) of this section may not be
16 taken unless

17 (1) the law of the impaired insurer's state of domicile
18 provides that until all payments of or on account of a contractual
19 obligation of the impaired insurer by a guaranty association, along
20 with all expenses and interest on all payments and expenses, have been
21 repaid to the guaranty association or a repayment plan by the impaired
22 insurer has been approved by a guaranty association,

23 (A) a delinquency proceeding may not be dismissed;

24 (B) neither the impaired insurer nor its assets may be
25 returned to the control of its shareholders or private manage-
26 ment; and

27 (C) solicitation or acceptance of new business or
28 restoration of a suspended or revoked license may not be permit-
29 ted; and

1 (2) if the impaired insurer is a

2 (A) domestic insurer, the insurer has been placed
3 under an order of rehabilitation by a superior court in this
4 state; or

5 (B) foreign or alien insurer,

6 (i) the insurer has been prohibited from solicit-
7 ing or accepting new business in this state;

8 (ii) the insurer's certificate of authority has
9 been suspended or revoked in this state; and

10 (iii) a petition for rehabilitation or liquidation
11 has been filed in a court of competent jurisdiction in the
12 insurer's state of domicile by the insurance commissioner of
13 that state.

14 (d) If a member insurer becomes insolvent, the association
15 shall, with the approval of the director,

16 (1) guarantee, assume, reinsure, or provide for the guaran-
17 tee, assumption, or reinsurance of the covered policies of the insol-
18 vent insurer held by residents;

19 (2) assure payment to residents of the contractual obliga-
20 tions of the insolvent insurer;

21 (3) provide money, pledges, notes, guarantees, or other
22 means necessary to discharge the insurer's duties under this subsec-
23 tion; or

24 (4) with respect only to life and disability insurance
25 policies, provide benefits and coverages required under (e) of this
26 section.

27 (e) When proceeding under (b)(2) or (d)(4) of this section, the
28 association shall, with respect to a life or disability insurance
29 policy,

1 (1) assure payment of benefits, other than terms of conver-
2 sion and renewability, for a premium identical to the premium that
3 would have been payable under a policy of the insolvent insurer for
4 claims incurred with respect to

5 (A) a group policy, not later than the earlier of the
6 next renewal date under the policy or contract or 45 days, but in
7 no event less than 30 days, after the date on which the associa-
8 tion becomes obligated with respect to the policy;

9 (B) an individual policy, not later than the earlier
10 of the next renewal date, if any, under the policy or one year,
11 but in no event less than 30 days, from the date on which the
12 association becomes obligated with respect to the policy;

13 (2) make a diligent effort to provide a known insurer or a
14 group policyholder, with respect to a group policy, 30 days notice of
15 the termination of the benefits provided;

16 (3) with respect to an individual policy, make available to
17 each known insured, or owner if other than the insured, and with
18 respect to an individual formerly insured under a group policy who is
19 not eligible for replacement group coverage, substitute coverage on an
20 individual basis under the provisions of (f) of this section, if the
21 insured had a right under law or the terminated policy to convert
22 coverage to individual coverage, to continue an individual policy in
23 force until a specified age, or for a specific time during which the
24 insurer did not have the unilateral right to make changes in any
25 provision of the policy or had a right only to make changes in premium
26 by class.

27 (f) With respect to life and disability insurance policies, the
28 association

29 (1) in providing the substitute coverage under (e)(3) of

1 this section, shall either offer to reissue the terminated coverage or
2 to issue an alternate policy;

3 (2) shall offer alternative or reissued policies without
4 requiring evidence of insurability, and may not provide for any wait-
5 ing period or exclusion that would not have applied under the termi-
6 nated policy; and

7 (3) may reinsure any alternative or reissued policy.

8 (g) An alternative life or disability policy must,

9 (1) if adopted by the association, be subject to the ap-
10 proval of the director; the association may adopt alternative policies
11 of various types for future issuance without regard to a particular
12 impairment or insolvency;

13 (2) contain at least the minimum statutory provisions
14 required in this state and provide benefits that may not be unrea-
15 sonable in relation to the premium charged; the association shall set
16 the premium under a table of rates that it shall adopt; the premium
17 must reflect the amount of insurance to be provided and the age and
18 class of risk of each insured, but may not reflect changes in the
19 health of the insured after the original policy was last underwritten;

20 (3) if issued by the association, provide coverage of a
21 type similar to that of the policy issued by the impaired or insolvent
22 insurer, as determined by the association.

23 (h) If the association elects to reissue terminated coverage at
24 a premium rate different from that charged under the terminated poli-
25 cy, the premium shall be set by the association according to the
26 amount of insurance provided, the age and class of risk, and is sub-
27 ject to the approval of the director or by a court of competent juris-
28 diction.

29 (i) The association's obligations with respect to coverage under

1 a policy of an impaired or insolvent insurer or under any reissue or
2 alternative policy cease on the date the coverage or policy is re-
3 placed by another similar policy by the policyholder, the insured, or
4 the association.

5 (j) When proceeding under (b)(2) or (d) of this section with
6 respect to a policy or contract carrying guaranteed minimum interest
7 rates, the association shall assure the payment or crediting of a rate
8 of interest consistent with AS 21.79.020(c)(4).

9 (k) Nonpayment of a premium within 31 days after the date re-
10 quired under the terms of a guaranteed, assumed, alternative or reis-
11 sued policy or contract or substitute coverage terminates the obliga-
12 tions of the association under the policy or coverage except with
13 respect to the claims incurred or the net cash surrender value that
14 may be due under the provisions of this chapter.

15 (l) A premium due for coverage after entry of an order of liq-
16 uidation of an insolvent insurer belongs to and is payable at the
17 direction of the association, and the association is liable for un-
18 earned premiums due to a policy or contract owner arising after the
19 entry of the order.

20 (m) The protection provided by this chapter does not apply if
21 guaranty protection is provided to residents of this state by the laws
22 of another state or jurisdiction that is the domicile of the impaired
23 or insolvent insurer.

24 (n) In carrying out its duties under (b), (c), and (d) of this
25 section, the association may impose a permanent policy or contract
26 lien under a guarantee, assumption, or reinsurance agreement, if the
27 policy or contract lien is approved by a court, and the court finds
28 that

29 (1) the amount that may be assessed under this chapter is

1 less than the amount needed to assure full and prompt performance of
2 the insolvent insurer's contractual obligations; or

3 (2) the economic or financial condition that affects member
4 insurers is sufficiently adverse that the imposition of a policy or
5 contract lien is in the public interest.

6 (o) Before taking action under (b) - (e) of this section, the
7 association may request the superior court to impose an injunction
8 against the payment of a cash value and policy loan, or the exercise
9 of another right to withdraw funds held in connection with a policy or
10 contract, in addition to a contractual provision for deferral of a
11 cash or policy loan value.

12 (p) If the association fails to take action under (b) - (e) of
13 this section within a reasonable period of time after a member insurer
14 becomes insolvent, the director shall assume the powers of the asso-
15 ciation under (b) - (e) of this section.

16 (q) If requested by the director, the association may assist and
17 advise the director concerning rehabilitation, payment of claims,
18 continuance of coverage, or the performance of other contractual
19 obligations of an impaired or insolvent insurer.

20 (r) The association is entitled to appear in a court proceeding
21 in the state involving an impaired or insolvent insurer. The standing
22 conferred by this subsection extends to all matters germane to the
23 powers and duties of the association, including proposals to reinsure
24 or guarantee a covered policy of the impaired or insolvent insurer and
25 the determination of a covered policy and a contractual obligation.

26 (s) A person who receives benefits under this chapter is con-
27 sidered to have assigned the rights under the covered policy to the
28 association to the extent of the benefits received under this chapter.
29 The association may require an assignment to the association of those

1 rights by the payees, policy or contract owner, beneficiary, insured,
2 or annuitant before a person receives the rights or benefits conferred
3 by this chapter. The association is subrogated to these rights
4 against the assets of an insolvent insurer. The priority of the
5 association's subrogation right to the assets of the insolvent insurer
6 is the same as the priority of the person entitled to benefits under
7 this chapter.

8 (t) The association may

9 (1) enter into contracts that are necessary or proper to
10 carry out the provisions of this chapter;

11 (2) sue or be sued, and take legal action necessary or
12 proper for recovery of an unpaid assessment under AS 21.79.070;

13 (3) borrow money to carry out the purposes of this chapter;

14 (4) employ or retain those persons necessary to handle the
15 financial transactions of the association and other functions under
16 this chapter;

17 (5) negotiate and contract with a liquidator, rehabil-
18 itator, conservator, or ancillary receiver to carry out the powers and
19 duties of the association;

20 (6) exercise, for the purposes of this chapter and to the
21 extent approved by the director, the powers of a domestic life or
22 disability insurer; however, the association may not issue insurance
23 policies or annuity contracts other than those issued to perform the
24 contractual obligations of an impaired or insolvent insurer;

25 (7) take legal action to prevent the payment of improper
26 claims;

27 (8) join an organization of one or more other state asso-
28 ciations with similar purposes; and

29 (9) perform all other acts necessary or proper to implement

1 this chapter.

2 Sec. 21.79.070. ASSESSMENTS. (a) For the purpose of providing
3 funds necessary to carry out the powers and duties of the association,
4 the Board of Governors shall assess the member insurers, separately
5 for each account, at a time and for an amount that the board finds
6 necessary. Assessments are due not less than 30 days after prior
7 written notice to the member insurers and accrue interest at 10 per-
8 cent a year from the date payment is due.

9 (b) There shall be two assessments as follows:

10 (1) class A assessments shall be made for the purpose of
11 meeting administrative and legal costs and other expenses and examina-
12 tions conducted under the authority of AS 21.79.060; class A assess-
13 ments may be made whether or not related to a particular impaired or
14 insolvent insurer;

15 (2) class B assessments are post assessment charges and
16 shall be made only as necessary to carry out the powers and duties of
17 the association with regard to an impaired or an insolvent insurer.

18 (c) The amount of a class A assessment shall be determined by
19 the board and may be made on a pro rata or nonpro rata basis. If a
20 pro rata assessment is made, the board may provide that it be credited
21 against future class B assessments. A nonpro rata assessment may not
22 exceed \$250 per member insurer in a calendar year. The amount of a
23 class B assessment shall be allocated for assessment purposes among
24 the accounts under an allocation formula that may be based on the
25 premiums or reserves of the impaired or insolvent insurer or by
26 another standard determined by the board as being fair and reasonable
27 under the circumstances.

28 (d) Class B assessments shall be based on the premiums received
29 on business in this state by each assessed member insurer or for

1 policies or contracts covered by each account in proportion to the
2 premiums received on business in this state by all assessed member
3 insurers during the three calendar years preceding the year in which
4 the insolvency or impairment occurred.

5 (e) The association may abate or defer, in whole or in part, the
6 assessment of a member insurer if a payment of the assessment would
7 endanger the ability of the member insurer to fulfill its contractual
8 obligations. The amount by which an assessment against a member
9 insurer is abated or deferred may be assessed against the other member
10 insurers in a manner consistent with the basis for assessments set
11 forth in (c) of this section.

12 Sec. 21.79.080. PLAN OF OPERATION. (a) The association shall
13 submit to the director a plan of operation and any amendments to
14 assure the fair, reasonable, and equitable administration of the
15 association. The plan of operation and any amendments take effect on
16 the written approval of the plan by the director.

17 (b) Notwithstanding (a) of this section, if the association
18 fails to submit a plan of operation acceptable to the director by
19 July 1, 1991, or if at a later time the association fails to submit
20 suitable amendments to the plan, the director shall, after notice and
21 hearing, adopt regulations to implement this chapter. These regula-
22 tions remain in effect until amended or repealed by the director or
23 superseded by a plan submitted by the association that is approved by
24 the director.

25 (c) A member insurer shall comply with the plan of operation.
26 The plan of operation must

27 (1) establish procedures for handling assets of the asso-
28 ciation;

29 (2) establish the amount and method of reimbursing members

1 of the board under AS 21.79.050(c);

2 (3) establish regular places and times for meetings of the
3 board in the state;

4 (4) establish procedures for keeping records of all finan-
5 cial transactions of the association, its agents, and the board;

6 (5) establish terms of office for members of the board, and
7 establish procedures for the selection of the members of the board and
8 for the director's approval of the members selected;

9 (6) establish additional procedures for assessments under
10 AS 21.79.070; and

11 (7) contain additional provisions necessary or proper for
12 the association to exercise its powers and duties.

13 (d) The plan of operation may delegate the powers and duties of
14 the association, other than those under AS 21.79.060(t)(3) and 21.79.-
15 070, to a corporation or other organization performing functions
16 similar to those of the association, or its equivalent, in two or more
17 states. The association shall reimburse the corporation or orga-
18 nization for a payment made for the association and for performing a
19 function of the association. A delegation under this subsection takes
20 effect only with the approval of the board and the director.

21 Sec. 21.79.090. POWERS AND DUTIES OF THE DIRECTOR. (a) Upon
22 request of the board, the director shall provide the association with
23 a statement of the premiums in the appropriate states for each member
24 insurer.

25 (b) The director may

26 (1) after notice and hearing as provided in AS 21.06.180 -
27 21.06.230, suspend or revoke the certificate of authority to transact
28 insurance in this state of a member insurer that fails to pay an
29 assessment when due or fails to comply with the plan of operation;

1 (2) levy a penalty on a member insurer that fails to comply
2 with the plan of operation; or

3 (3) levy a penalty on a member insurer that fails to pay an
4 assessment when due; if the unpaid assessment is more than \$2,000, the
5 penalty may not exceed five percent of the unpaid assessment per month
6 or be less than \$100 per month; if the unpaid assessment is \$2,000 or
7 less, the penalty is \$100 per month.

8 (c) An action of the board or the association may be appealed to
9 the director by a member insurer if the appeal is taken within 30 days
10 after the date the notice of the action is mailed. Final action or
11 order of the director may be reviewed by the superior court.

12 (d) The liquidator, rehabilitator, or conservator of an impaired
13 insurer may notify all interested persons of the effect of this chap-
14 ter.

15 Sec. 21.79.100. PREVENTION OF INSOLVENCIES. (a) The director
16 shall notify, by mail, the commissioner, director, or superintendent
17 of insurance of the other states, territories of the United States,
18 and the District of Columbia, within 30 days after the date on which
19 the following actions are taken against a member insurer:

20 (1) revocation of a license;

21 (2) suspension of a license; or

22 (3) a formal order that a member insurer restrict its
23 premium writing, obtain additional contributions to surplus, withdraw
24 from the state, reinsure all or any part of its business, or increase
25 capital, surplus, or any other account for the security of policy-
26 holders or creditors.

27 (b) The director shall report to the board if an action set out
28 in (a) of this section is taken or a report is received from a state
29 insurance regulator that similar action has been taken in another

1 state. The report to the board must contain all significant details
2 of the action taken or the report received from another insurance
3 regulator.

4 (c) The director shall report to the board if there is reason-
5 able cause to believe, during or after an examination of a member
6 insurer, that the company may be impaired or insolvent.

7 (d) The director shall furnish the board with the NAIC Insurance
8 Regulatory Information System (IRIS) ratios and a listing of companies
9 not included in the ratios developed by the NAIC, and the board may
10 use that information to carry out its duties and responsibilities
11 under this section. The information shall be kept confidential by the
12 board until it is made public by the director.

13 (e) The director may seek the board's advice and recommendations
14 concerning the financial condition of member insurers and insurers who
15 apply for admission to transact insurance business in the state.

16 (f) The board shall

17 (1) make reports and recommendations to the director relat-
18 ing to the solvency, liquidation, rehabilitation, or conservation of a
19 member insurer or the solvency of insurers who apply to transact
20 insurance business in the state; the director and the board shall keep
21 the reports and recommendations confidential;

22 (2) notify the director of any information that indicates
23 that a member insurer may be impaired or insolvent.

24 (g) The board may request the director to examine a member
25 insurer that the board believes may be an impaired or insolvent in-
26 surer. Within 30 days after receipt of the request, the director
27 shall begin the examination. The examination may be conducted as a
28 NAIC examination or may be conducted by persons the director desig-
29 nates. The cost of examination shall be paid by the association, and

1 the examination report shall be treated in the same manner as other
2 examination reports under AS 21.06. The completed examination report
3 may not be released to the board before it is released to the public,
4 but this does not preclude the director from complying with (c) of
5 this section. The director shall notify the board when the examina-
6 tion is completed. The request for an examination shall be kept on
7 file by the director and may not be released to the public before the
8 release of the examination report to the public.

9 (h) The board may make recommendations to the director for
10 detecting and preventing insurer insolvencies.

11 (i) The board shall, at the conclusion of an insurer insolvency
12 in which the association was required to pay covered claims, prepare a
13 report to the director that sets out information concerning the his-
14 tory and cause of the insolvency. The board shall cooperate with the
15 boards of guaranty associations in other states in preparing a report
16 on the history and causes of insolvency of an insurer, and may adopt
17 by reference a report prepared by other associations.

18 Sec. 21.79.110. MISCELLANEOUS PROVISIONS. (a) This chapter
19 does not reduce the liability for unpaid assessments of an insured of
20 an impaired or insolvent insurer operating under an insurance policy
21 with assessment liability.

22 (b) The association shall keep records of negotiations and
23 meetings relating to its activities. Records of negotiations or
24 meetings may only be made public under AS 21.79.040(b)

25 (1) after the termination of a liquidation, rehabilitation,
26 or conservation proceeding that involves the impaired or insolvent
27 insurer;

28 (2) after the insurer is no longer impaired or insolvent;
29 or

1 (3) upon the order of a court of competent jurisdiction.

2 (c) The association is considered to be a creditor of the im-
3 paired or insolvent insurer to the extent of assets attributable to
4 covered policies that are reduced by an amount to which the asso-
5 ciation is entitled under AS 21.79.060(s). Assets of the impaired or
6 insolvent insurer that are attributable to covered policies shall be
7 used to continue all covered policies and pay all contractual obliga-
8 tions of the impaired or insolvent insurer as required by this chap-
9 ter. Assets attributable to covered policies include those assets
10 that should have been established as reserves for the covered poli-
11 cies. These assets are determined by multiplying the total assets of
12 the impaired or insolvent insurer by a fraction, the numerator of
13 which is the amount that should have been established as reserves for
14 the covered policies of the impaired or insolvent insurer, and the
15 denominator of which is the amount that should have been established
16 as reserves for all policies of insurance issued in all states by that
17 insurer.

18 (d) Before the termination of a liquidation, rehabilitation, or
19 conservation proceeding, the court may consider the contributions of
20 the respective parties, including the association, the shareholders
21 and policyholders of the impaired or insolvent insurer, and any other
22 party with a bona fide interest, in distributing the ownership rights
23 of the impaired or insolvent insurer. The court shall consider the
24 welfare of policyholders of the continuing or successor insurers. A
25 distribution to stockholders of an impaired or insolvent insurer may
26 not be made until the total amount of valid claims of the association
27 for money spent in carrying out its powers and duties under AS 21.-
28 79.060, with respect to the insurer, has been fully recovered by the
29 association.

1 (e) The receiver appointed under an order for liquidation or
2 rehabilitation of a domestic insurer may recover the amount distribut-
3 ed, other than stock dividends paid by the insurer on its capital
4 stock, to a controlling affiliate, as defined in AS 21.22.200, during
5 the five years preceding the petition for liquidation or rehabilita-
6 tion. However, if the insurer shows that, when paid, the distribution
7 was lawful and reasonable, and that the distribution might adversely
8 affect the ability of the insurer to fulfill the insurer's contractual
9 obligations, the receiver may not recover the amount distributed to
10 the controlling affiliate. The following provisions apply to recovery
11 of amounts distributed:

12 (1) a controlling affiliate of the insurer at the time the
13 distribution was paid is liable for a distribution received; a con-
14 trolling affiliate at the time the distribution was declared is liable
15 for a distribution that would have been received if the distribution
16 had been paid at that time; if two or more persons are liable with
17 respect to the same distribution, they are jointly and severally
18 liable;

19 (2) if an affiliate liable under (1) of this subsection is
20 insolvent, all its controlling affiliates at the time the dividend was
21 paid are jointly and severally liable for any amount that is not
22 recovered from the insolvent affiliate;

23 (3) the amount needed to pay the contractual obligations of
24 the insolvent insurer that exceeds the available assets of the insol-
25 vent insurer is the greatest amount that may be recovered under this
26 subsection.

27 Sec. 21.79.120. EXAMINATION OF THE ASSOCIATION, ANNUAL REPORT.
28 The association may be examined by the director. The board shall
29 submit to the director, not later than May 1 of each year, a certified

1 financial report for the preceding calendar year in a form approved by
2 the director and a report of its activities during the preceding
3 calendar year. Nothing in AS 21.79.110(b) limits the duty of the
4 association to report under this section.

5 Sec. 21.79.130. TAX EXEMPTION. The association is exempt from
6 payment of all fees and taxes levied by the state or its political
7 subdivisions, other than real property taxes.

8 Sec. 21.79.140. CIVIL IMMUNITY. The association and its agents
9 and employees, members of the Board of Governors, and the director and
10 the director's representatives are not civilly liable for action taken
11 by them to perform duties under this chapter.

12 Sec. 21.79.150. STAY OF PROCEEDING ENFORCING JUDGMENT. Pro-
13 ceedings that involve the enforcement of a judgment of liquidation,
14 rehabilitation, or conservation against an impaired or insolvent
15 insurer may not be taken until at least 60 days after the entry of the
16 judgment.

17 Sec. 21.79.900. DEFINITIONS. In this chapter,

18 (1) "account" means an account created under AS 21.79.040;

19 (2) "association" means the Alaska Life and Disability
20 Insurance Guaranty Association;

21 (3) "board" means the Board of Governors of the Alaska Life
22 and Disability Insurance Guaranty Association;

23 (4) "contractual obligation" means an obligation under a
24 policy, contract, or certificate under a group policy or contract, or
25 a portion of one;

26 (5) "covered policy" means a policy or contract described
27 in AS 21.79.020(a) and (b);

28 (6) "member insurer" means an insurer licensed to transact
29 insurance in the state that issues a policy described in

1 AS 21.79.020(a) and (b), or a subscriber contract providing benefits
2 described in AS 21.87.120(a)(2) - (4) or 21.87.130(a)(2) and (3), and
3 includes an insurer whose license or certificate of authority in this
4 state may have been suspended, revoked, not renewed, or voluntarily
5 withdrawn; "member insurer" but does not include

6 (A) a health maintenance organization;

7 (B) a fraternal benefit society;

8 (C) a mandatory state pooling plan;

9 (D) a mutual assessment company or an entity that
10 operates on an assessment basis;

11 (E) an insurance exchange; or

12 (F) a hospital or medical service organization;

13 (7) "NAIC" means the National Association of Insurance
14 Commissioners;

15 (8) "premium" means the amount received on a covered policy
16 or contract less a premium, consideration, and deposit returned, and
17 less a dividend and experience credit; "premium" does not include an
18 amount charged for an assessment or an amount received for a policy or
19 contract or for the portions of a policy or contract for which cover-
20 age is not provided under AS 21.79.020(b) and (c);

21 (9) "resident" means a person who resides in this state at
22 the time a member insurer is determined to be an impaired or insolvent
23 insurer and to which a contractual obligation is owed; a person may be
24 a resident of only one state, which in the case of a person other than
25 a natural person shall be the principal place of business;

26 (10) "supplemental contract" means an agreement entered into
27 for the distribution of policy or contract benefits;

28 (11) "unallocated annuity contract" means an annuity contract
29 or group annuity certificate that is not issued to and owned by an

1 individual, except to the extent of annuity benefits guaranteed to an
2 individual by an insurer under the contract or certificate.

3 Sec. 21.79.990. SHORT TITLE. This chapter may be cited as the
4 Alaska Life and Disability Insurance Guaranty Association Act.

5 * Sec. 4. AS 21.80.020 is amended to read:

6 Sec. 21.80.020. APPLICABILITY. This chapter applies to all
7 kinds of direct insurance written by an admitted insurer [,] except
8 life, title, surety, disability, credit, mortgage guaranty, and wet
9 [OCEAN] marine and transportation insurance for vessels 100 feet or
10 more in length as measured at the water line.

11 * Sec. 5. AS 21.80.040 is amended to read:

12 Sec. 21.80.040. CREATION OF ASSOCIATION. There is created a
13 nonprofit incorporated legal entity to be known as the Alaska Insur-
14 ance Guaranty Association. All insurers defined as member insurers in
15 AS 21.80.180(6) shall be and remain members of the association as a
16 condition of their authority to transact insurance in this state. The
17 association shall perform its functions under a plan of operation
18 established and approved under AS 21.80.070 and shall exercise its
19 powers through a board of directors established under AS 21.80.050.
20 For purposes of administration and assessment, the association shall
21 be divided into three separate accounts:

- 22 (1) the workers' compensation insurance account;
23 (2) the automobile insurance account; and
24 (3) the account for all other insurance to which this
25 chapter applies, including coverage on vessels less than 100 feet in
26 length as measured at the water line.

27 * Sec. 6. AS 21.80.050(a) is amended to read:

28 (a) The board of directors of the association consists of not
29 fewer than five nor more than nine persons serving terms as

1 established in the plan of operation. The members of the board shall
2 be selected by member insurers subject to the approval of the direc-
3 tor. Vacancies of the board shall be filled for the remaining period
4 of the term in the same manner as initial appointments. If a member
5 is not selected to fill a vacancy on the board of directors within 90
6 days of the vacancy, the director may appoint a member for the remain-
7 ing period of the term.

8 * Sec. 7. AS 21.80.060(a) is amended to read:

9 (a) The association [SHALL]

10 (1) is [BE] obligated to the extent of the covered claims
11 existing before the determination of insolvency and arising within 30
12 days after the determination of insolvency by a court of competent
13 jurisdiction if the insolvent insurer or receiver ceases to pay any or
14 all claims while preparing and adopting a plan of liquidation or
15 having entered into a plan of liquidation approved by the court under
16 AS 21.78, or before the policy expiration date if less than 30 days
17 after the determination, or before the insured replaces the policy or
18 causes its cancellation[,] if the insured does so within 30 days of
19 the determination, but this obligation includes only that amount of
20 each covered claim that [WHICH] is in excess of \$100 and is less than
21 \$500,000 [\$300,000], except that the association shall pay the full
22 amount of any covered claim arising out of a workers' compensation
23 policy; in no event is the association obligated to a policyholder or
24 claimant in an amount in excess of the obligation of the insolvent
25 insurer under the policy from which the claim arises;

26 (2) is [BE] considered the insurer to the extent of its
27 obligation on the covered claims and to that extent has all rights,
28 duties, and obligations of the insolvent insurer as if the insurer had
29 not become insolvent;

1 (3) shall allocate claims paid and expenses incurred among
2 the three accounts separately, and assess member insurers separately
3 for each account amounts necessary to pay the obligation of the asso-
4 ciation under (a)(1) of this section subsequent to an insolvency, the
5 expenses of handling covered claims subsequent to an insolvency, the
6 cost of examinations under AS 21.80.110, and other expenses authorized
7 by this chapter; the assessments of each member insurer must [SHALL]
8 be in the proportion that the net direct written premiums of the
9 member insurer for the preceding calendar year on the kinds of insur-
10 ance in the account bears to the net direct written premiums of all
11 member insurers for the preceding calendar year on the kinds of insur-
12 ance in the account; each member insurer shall be notified of the
13 assessment not later than 30 days before it is due; a member insurer
14 may not be assessed in any year on any account an amount greater than
15 two per cent of the member insurer's net direct written premiums for
16 the preceding calendar year on the kinds of insurance in the account;
17 if the maximum assessment, together with the other assets of the asso-
18 ciation in any account, does not provide in any one year in any ac-
19 count an amount sufficient to make all necessary payments from that
20 account, the funds available shall be prorated and the unpaid portion
21 shall be paid as soon thereafter as funds become available; the asso-
22 ciation may exempt or defer, in whole or in part, an [THE] assessment
23 of any member insurer, if the assessment would endanger the ability of
24 the member insurer to fulfill the insurer's contractual obligations or
25 cause the member insurer's financial statement to reflect amounts of
26 capital or surplus less than the minimum amounts required for a cer-
27 tificate of authority by any jurisdiction in which the member insurer
28 is authorized to transact insurance; each member insurer may set off
29 against an assessment, authorized payments made on covered claims and

1 expenses incurred in the payment of these claims by the member insurer
2 if they are chargeable to the account for which the assessment is
3 made;

4 (4) shall investigate claims brought against the associa-
5 tion and adjust, compromise, settle, and pay covered claims to the
6 extent of the association's obligation and deny all other claims and
7 may review settlements, releases, and judgments to which the insolvent
8 insurer or its insureds were parties to determine the extent to which
9 settlements, releases, and judgments may be properly contested;

10 (5) shall notify persons [AS THE DIRECTOR DIRECTS] under
11 AS 21.80.080(b)(1);

12 (6) shall handle claims through its employees or through
13 one or more insurers or other persons designated as servicing facili-
14 ties; a servicing facility shall operate and maintain its principal
15 office in this state unless the use of a servicing facility located
16 outside of the state would result in operating cost savings of at
17 least 10 percent and would not result in material delay in claim
18 payments; designation of a servicing facility is subject to the ap-
19 proval of the director, but designation may be declined by a member
20 insurer;

21 (7) shall reimburse each servicing facility for obligations
22 of the association paid by the facility and for expenses incurred by
23 the facility while handling claims on behalf of the association and
24 shall pay the other expenses of the association authorized by this
25 chapter.

26 * Sec. 8. AS 21.80.070(a) is amended to read:

27 (a) The association shall submit to the director a plan of
28 operation and any amendments necessary or suitable to assure the fair,
29 reasonable, and equitable administration of the association. The plan

1 of operation and amendments become effective upon approval in writing
2 by the director. If [THE ASSOCIATION FAILS TO SUBMIT A SUITABLE PLAN
3 OF OPERATION BY NOVEMBER 4, 1970 OR IF AT ANY SUBSEQUENT TIME] the
4 association fails to submit suitable amendments to the plan, the
5 director shall, after notice and hearing, adopt reasonable regulations
6 necessary or advisable to effectuate the provisions of this chapter.
7 These regulations shall continue in force until modified by the direc-
8 tor or superseded by a plan submitted by the association and approved
9 by the director.

10 * Sec. 9. AS 21.80.080(b) is amended to read:

11 (b) The director may

12 (1) require that the association notify the insureds of the
13 insolvent insurer and any other interested parties of the determina-
14 tion of insolvency and of their rights under this chapter; this noti-
15 fication shall be by mail at their last known address, when available,
16 but if sufficient information for notification by mail is not avail-
17 able, notice by publication in a newspaper of general circulation is
18 sufficient;

19 (2) suspend or revoke, after notice and hearing, the certi-
20 ficate of authority to transact insurance in this state of any member
21 insurer that [WHICH] fails to pay an assessment when due or fails to
22 comply with the plan of operation; as an alternative, the director may
23 levy a fine on any member insurer that [WHICH] fails to pay an assess-
24 ment when due; this fine may not exceed five per cent of the unpaid
25 assessment per month or portion of a month, except that a [NO] fine
26 may not be less than \$250 [\$100] a month;

27 (3) revoke the designation of any servicing facility upon a
28 finding that claims are being handled unsatisfactorily;

29 (4) upon a finding by the superior court that the board of

1 directors has failed to comply with a requirement of this chapter or
2 the plan of operation, assume the powers of the board of directors
3 under AS 21.80.060.

4 * Sec. 10. AS 21.80.120 is amended to read:

5 Sec. 21.80.120. EXAMINATION OF THE ASSOCIATION. The association
6 is subject to examination and regulation by the director. The board
7 of directors shall submit, not later than March 30 of each year, a
8 certified financial report for the preceding calendar year in a form
9 approved by the director.

10 * Sec. 11. AS 21.80.140 is amended to read:

11 Sec. 21.80.140. RECOGNITION OF ASSESSMENTS IN RATES. The rates
12 and premiums charged for insurance policies to which this chapter
13 applies may [SHALL] include amounts sufficient to offset the assess-
14 ment made under this chapter and [RECOUP A SUM EQUAL TO THE AMOUNTS]
15 paid to the association by the member insurer less [ANY] amounts
16 returned to the member insurer by the association and these rates may
17 [SHALL] not be considered excessive because they contain an amount
18 reasonably calculated to offset [RECOUP] assessments paid by the
19 member insurer. The amount charged on a policy shall be shown sepa-
20 rate from the premium for coverage on the policy. A rating organi-
21 zation may make a provision in its rate filing to recover an assess-
22 ment under this chapter for the organization's member and subscriber
23 insurers. The assessment charge is not considered a premium and is
24 not subject to the premium tax imposed under AS 21.09.210.

25 * Sec. 12. AS 21.90.900 is amended by adding new paragraphs to read:

26 (24) "impaired" or "impairment" means that

27 (A) an insurer's policyholder surplus is greater than
28 zero but less than that required by AS 21.09.070 for the authori-
29 ty to transact the kinds of insurance being transacted; or

1 (B) an insurer is being operated in a manner such that
2 irreparable loss and injury has occurred, or might occur, to the
3 insurer or to the public;

4 (25) "insolvent" or "insolvency" means that an insurer's
5 policyholder surplus is less than or equal to zero.

6 * Sec. 13. AS 21.80.060(b)(6), 21.80.070(d), and 21.80.170 are re-
7 pealed.

8 * Sec. 14. AS 21.79.150, enacted in sec. 3 of this Act, has the effect
9 of changing Rule 62(a), Alaska Rules of Civil Procedure, by providing for
10 an automatic 60-day stay of action in a liquidation, rehabilitation, or
11 conservation proceeding.

12 * Sec. 15. AS 21.79.060(r), enacted in sec. 3 of this Act, has the
13 effect of amending Rule 24(a), Alaska Rules of Civil Procedure, by giving
14 the Alaska Life and Disability Insurance Guaranty Association the right to
15 intervene in certain civil actions.

16 * Sec. 16. INITIAL ORGANIZATION OF ASSOCIATION. To organize the Alaska
17 Life and Disability Insurance Guaranty Association established under
18 AS 21.79.040, as enacted by sec. 3 of this Act, and to select its first
19 Board of Governors, the director of the division of insurance shall give
20 notice to all member insurers of the time and place of the organizational
21 meeting. A member insurer is entitled to one vote in person or by proxy at
22 the organization meeting. If the members of the board are not selected
23 within 60 days after the date that notice of the organizational meeting is
24 given, the director may appoint the members.

25 * Sec. 17. This Act takes effect January 1, 1991.
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CSSB 259 (L&C) Ford 3/16/90
Technical Ammendments

3/19/90

On Page 9, Line 13.

Change word "**insurer**" to read "**insured**"

This is a typographical error that has not been noted in several drafts.

On Page 30, Line 6.

Remove the reference "**AS 21.80.060(b)(6)**"

This was an oversight with the latest draft committee substitute. The section should not be repealed since the guaranty fund will remain a post insolvency plan.