ALASKA LEGISLATURE COMMITTEE FILES 1991-1992 8672
7564 SENATE LABOR & COMMERCE

inform the Association board of their desire to become a guaranteed issue carrier. In addition, the board is empowered to design an array of health coverage products by which reinsurance will be provided.

21.55.040 -- requires the reinsurance association to submit a plan of operation to the Insurance Director for approval. This plan assures fair, reasonable and equitable administration of the Association. It does permit the Director of Insurance, after notice and hearing, to adopt reasonable regulations if the Association fails to submit a suitable plan of operation within 180 days from the effective date of the bill.

21.55.050 -- establishes specific provisions for reinsurance of eligible employees of a small employer or dependents of eligible employees. By requiring guaranteed issue carriers to accept groups with greater than normal risks, insurers need assistance in spreading the greater risk, therefore, the establishment of the Reinsurance Association. To reduce the volume of reinsured claims, reinsurance is available on a three-year basis. If reinsurance were permitted annually, insurers would declare more groups or individuals high-risk and utilize reinsurance more often increasing reinsurance losses to unacceptable levels. Because reinsurance would be aimed at employer groups and employees known to be high risk, and because the premium price is capped (1.5 times the adjusted average market premium for groups and 5.0 times for individuals) to encourage carriers to participate in the small employer market, in the aggregate the cost of reinsured persons may well exceed the reinsurance

premiums. The administrating insurer will determine any losses annually. Any losses are covered through assessments from all members in the Reinsurance Association based on the member's share of total premiums net of reinsurance premiums paid for coverage under the chapter in the small employer market, including, to the extent permitted under ERISA, other benefit arrangements covering small employers. Assessments are capped at four percent of premiums charged for health benefit plans covering small employers.

To assure that insurers only cede risk to the reinsurance mechanism when necessary, the premiums charged by the reinsurer are set at 1.5 times the average adjusted market premium price for similar type groups and benefits or 5 times the average adjusted premium market price for individuals with similar type benefits. Insurers are constrained from recouping the increased reinsurance costs as they may only attempt to recoup the 1.5 times average adjusted market premium price within the constraints of the overall rating bands described below. Only the level of coverage provided up to but not exceeding the coverage provided in a small employer health benefit plan is eligible for reinsurance.

These plans are required to incorporate cost containment techniques developed by the board, including but not limited to high cost case management, hospital precertification techniques and other cost containment techniques established by the Association.

Within a specified time of the coverage commencing nonguaranteed issue insurers may reinsure eligible employees and dependents who were hired subsequent to the coverage being offered by the insurer and who are not late enrollees . This section also recognizes that federally qualified HMOs reinsurance premium may be modified to reflect the portion of the risk ceded to the Association, i.e., federally qualified benefits may be different from the benefits determined to be included in the reinsured health plans by the reinsurance board.

21.55.060-21.55.080 -- are sections exempting the Association from the Administrative Procedures Act, imposition of taxes and limits the liability of the Association board.

21.55.100 -- Small Employer Health Insurance Plans. The program applies to all health insurance plans for individuals and group health benefit plans if they provide coverage to one or more employees and the employer pays all or part of the premium and the health plan is applicable to the IRS code section 26 U.S.C. 106 or 26 U.S.C. 162.

This section also exempts all small employer health plans (25 employees or less) from any restrictions on an insurer's ability to negotiate with providers regarding reimbursement for services and eliminates the requirement that the benefit plan cover specific mandated benefits or classes of providers. These provisions will increase the affordability of small employer health plans while providing quality health care to Alaska residents.

21.55.110 -- Underwriting and Rating Requirements. This provision provides stability and predictability of rates; renewability of the insurance contract; guarantees the availability of insurance to all small employers and removes the concern of people with preexisting conditions that they would have to satisfy additional preexisting condition exclusions if they change jobs or if their employer changed insurance carriers. Once someone had satisfied a plan's 12-month preexisting condition restriction, he or she would no longer be required to satisfy those requirements again when changing jobs or when the employer changes insurers.

The premium pricing limitations included in this chapter limits an insurer's ability to vary rates for groups in similar geography, demographic composition and plan design. Specifically, an insurers premiums for similar groups could not vary by more than 35 percent for the carrier's midpoint rate. There is also a 15 percent limitation on how much a carrier could vary rates by industry. Finally, carriers would have to limit a group's year-to-year premium increases to no more than 15 percent above the carrier's trend (the year-to-year increase in the lowest new business rate). These provisions assure the small employer availability of and accessibility to predictable and renewable insurance rates.

21.55.120 Guaranteed Issue Carriers. The top 10 insurers in Alaska based on total premium volume in the small employer market are determined to be guaranteed issue carriers. Other insurers

are permitted to be guaranteed issue carriers if they notify the Reinsurance Board one year in advance of the insurer becoming a so designated. Guaranteed issue carriers are required to offer at least one small employer health plan to a small employer requesting small employer coverage. These carriers may reinsure an individual or group within the provisions of 21.55.060 and must comply with the Reinsurance Board's plan of operation requirements for guaranteed issue insurers.

21.55.130 Small Employer Benefit Plans. The Reinsurance Association board is required to design small employer health benefit plans that are eligible for reinsurance. The board also designs the benefit levels, copayments and deductibles for these plans. The small employer benefit plans designed by the reinsurance board are the only benefit plans which may be reinsured. Benefit plans with benefits exceeding the small employer benefit plan will only be reinsured to the level of benefits included in the board's approved plan. The plans are permitted to include various cost containment features to assure the services are medically appropriate, rendered in the appropriate setting at reasonable prices.

21.55.140 Conditions for Ceasing to Do Business. Insurers ceasing to do business in the small employer market are required to give notice of this decision to the insurance department, the reinsurance board, the policyholder and the employer. Coverage is required to be continued for one year after the date of notification. An insurer is also prevented from reentering the small group market for at least five years from the date the

notice was given that they decided to cease to do business in this Alaska market.

21.55.250 Definitions. This section describes all the terms used in this chapter.

Section 3

The term "insurer" was redefined for this chapter to include HMOs. Therefore, it is necessary to cross reference the definition of HMO for these purposes to the provisions of this chapter. Section 3 achieves this purpose.

Section 4

The term "insurer" was redefined for this chapter to include hospital or medical service corporations. Therefore, it is necessary to cross reference the other sections of the insurance code related to these organizations for the purpose of applicability to this chapter.

Section 5 Transition. Not all sections of the chapter become effective upon enactment. This section lists those portions of the chapter which begin at dates later than the July 1, 1991 effective date.

Section 6 Lists the effective date of the chapter as July 1, 1991.

HIAA

Health Insurance Association of America

April 23, 1991

Mr. Rod Mourant
Office of Senator Drue Pearce
Alaska State Legislature
P. O. Box V
Juneau, AK 99811

Dear Rod:

Thank you very much for all of your assistance in having SB-242 move out of committee after its first hearing and with our concerns and opposition with SB-83. Working with you has been an absolute delight! I look forward to doing so again in the near future.

If I can ever be of any assistance to you or Senator Pearce, or if either of you have any questions regarding SB-242, please do not hesitate to contact me.

Sincerely,

Jan Andrea Meisels
State Affairs Associate

JAM:mlp

cc: Gordon Evans

6052 Hackers Lane Agoura Hills, CA 91301-1410 818/991-6817 Telecopier 818/991-0722

APR 2 6 1991

HIAA

Health Insurance Association of America

April 23, 1991

The Honorable Drue Pearce
Alaska State Senator
Alaska State Legislature
P. O. Box V
Juneau, AK 99811

Dear Senator Pearce:

Thank you very much for all of your support regarding SB-242 and HIAA's small group market reform legislation. I appreciate your assistance in having the bill move out of committee after its first hearing and all the time and attention you and Rod Mourant took with me regarding the support of SB-242 and our opposition and concerns with SB-83.

I look forward to working with you in the future on other pieces of legislation.

Sincerely,

Jan Andrea Meisels
State Affairs Associate

JAM:mlp

cc: Gordon Evans

6052 Hackers Lane Agoura Hills, CA 91301-1410 818/991-6817 Telecopier 818/991-0722

Metropolitan Life Insurance Company
One Madison Avenue, New York, NY 10010-3690

Metropolitan Life
AND AFFILIATED COMPANIES

Robert O. Fleckenstein
Assistant Vice-President
Government and Industry Relations

The Honorable Virginia M. Collins
Vice Chair, Labor & Commerce Committee
State Senate
Juneau, Alaska 99811

RE: SB 242

Dear Senator Collins

Metropolitan Life supports efforts to reform the small group health insurance practices embodied in SB 242. We respectfully urge your Committee to favorably report this bill.

Sincerely,

Robert O. Fleckenstein

Assistant Vice President

April 19, 1991
ROF:wsb

cc: Ms. Jan A. Meisels
HIAA

the Principal Financial Group

Principal Mutual
Life Insurance Company

April 19, 1991

The Honorable Virginia Collins
Alaska Senate
Vice Chairperson
Senate Labor & Commerce Committee
Juneau, Alaska 99811

RE Senate Bill 242 (Small Group Health Insurance Reform)

Dear Senator Collins

I am writing on behalf of Principal Mutual Life Insurance Company to support Senate Bill 242 relating to reforms in the Alaska small group health insurance markets. Principal Mutual is currently the sixth largest life insurance company in the United States measured by premium income and has been a major group health insurance carrier for many years.

We believe that Senate Bill 242 will effectively address the problem that many small businesses face today in obtaining health insurance at a reasonable premium rate for all employees. Senate Bill 242 will guarantee access to coverage for those employees by establishing an industry supported reinsurance pool which spreads the losses associated with high risk employer groups. The National Association of Insurance Commissioners just this week took preliminary steps toward approving a model act which would be very similar to Senate Bill 242. Senate Bill 242 will refine the existing insurance mechanism without unduly disrupting the marketplace.

Senate Bill 242 is a responsible approach to dealing with the problem of employee access to small group health insurance. We strongly encourage your support of this measure. It will work for Alaskans.

Sincerely,

Merle T. Pederson
Assistant Counsel

MTP:paa
\mtp\0419vc.ltr

Mailing Address: Des Moines, Iowa 50392-0001 (515) 247-5111

SENATE COMMITTEE REPORT
FIRST COMMITTEE OF REFERRAL

DATE: 4/5/91

FURTHER: HESS
Finance

Date of 5-Day Notice: 4-11-91
(in accordance with Uniform Rule 23)

DATE TURNED INTO OFFICE: _____

L&C Committee considered SB 242

Health insurance for small employers; efd.

and recommended:

[ ] replace with _____ CS _____ [ ] same title [ ] new title

[ ] attached amendment(s)

[ ] _____ letter of intent adopted

[ ] do pass

[ ] do not pass

[ ] no recommendation

[✓] individual recommendations

[ ] further referral to _____

ATTACHES NEW FISCAL NOTE(S):

Department(s)/Date:

[✓] fiscal note(s) COMMERCE/4-18-91

Department(s)/Date:

[ ] zero fiscal note(s) _____

[ ] appropriation-no fiscal note

[ ] Governor's bill w/fiscal note

SIGNING DO PASS:

OTHER RECOMMENDATIONS:

True Peace - do pass

Chair: Signature and Recommendation

Alaska State Legislature

SENATE

Official Business

SENATOR VIRGINIA COLLINS

P.O. Box V
State Capitol
Juneau, Alaska 99811

SPONSOR STATEMENT

Senate Bill 242

Senate Bill 242, "An Act relating to health insurance for small employers; and providing for an effective date."

As the cost of health care has increased, an unacceptable number of Alaska residents are currently without appropriate health care coverage. Small employers find it very difficult to obtain affordable coverage, if any coverage at all. Over 90% of the businesses in Alaska are considered small businesses, having 25 or fewer employees.

The Health Insurance Association of America, an association of 300 private health insurance companies providing insurance for 95 million Americans, developed a model bill to address the issue of small employer health insurance coverage. Senate Bill 242 is HIAA's model bill.

The focus of the bill is to make certain changes in the small employer insurance market to provide more accessibility, renewability, predictability, and stability for the small employer who has 3 to 25 employees.

This bill creates the Small Employer Health Reinsurance Association, a private nonprofit legal entity. All insurers in the small employer insurance market make up the membership. The Association allows insurers to treat all individuals in a group the same way. High risks are spread broadly through the market rather than concentrated in one small employer group. Managed care and other cost containment provisions may be incorporated into the small employer health plans. Once someone with a preexisting condition satisfies the preexisting condition restriction, he or she is not required to satisfy requirements again when changing jobs or when the employer changes insurers. Premium costs are capped and reinsurance association loss assessments are capped.

The Small Employer Health Reinsurance Association is a self-supported association. The only cost to the State is for travel by the Director of the Division of Insurance. That cost is minimal.

Your support and co-sponsorship of Senate Bill 242 would be appreciated.

DIVISION OF LEGAL SERVICES

LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA

P.O. Box Y, Juneau, Alaska 99811
(907) 465-3867 or 465-2450
FAX (907) 465-2029

Deliveries to: 240 Main Street
Court Plaza, Room 500
Mail Stop 3101

MEMORANDUM April 12, 1991

SUBJECT: Small employer health insurance - (SB 242)

TO: Senator Virginia Collins

FROM: Michael F. Ford
Legislative Counsel

The following is a section by section analysis of SB 242:

Section 1 - Findings.

Section 2 -

Sec. 21.55.010 - Establishes the Small Employer Health Reinsurance Association and requires certain insurers to be members.

Sec. 21.55.020 - Establishes the board of directors of the association and provides for specific board representation and organization.

Sec. 21.55.030 - Establishes the general powers of the association.

Sec. 21.55.040 - Requires the association to submit a plan of operation to the director of the division of insurance. Allows the director to adopt regulations to implement AS 21.55 if the association fails to submit a suitable plan of operation. Requires members to comply with the plan and establishes specific components of the plan.

Sec. 21.55.050 - Establishes specific provisions that apply to reinsurance provided by a member to employees or dependents of employees of a small employer. Imposes certain restrictions on reinsurance of group plans other than small employer health benefit plans and establishes limits for premiums charged for reinsured coverage and for coverage provided by a health maintenance organization. Provides for member assessments, by the administering insurer.

Sec. 21.55.060 - Exempts the association from the Administrative Procedure Act.

Sec. 21.55.070 - Exempts the association from payment of taxes, except for real or personal property taxes.

Sec. 21.55.080 - Provides immunity from civil actions filed against a member of the association for a negligent act on behalf of the association.

Sec. 21.55.100 - Establishes when an individual or group health benefit plan is subject to AS 21.55 and provides that other laws requiring coverage, reimbursement, utilization, or consideration of a specific health care provider do not apply to a health benefit plan provided to a small employer. Exempts a health benefit plan offered to a small employer from certain restrictions contained in other laws.

Sec. 21.55.110 - Establishes underwriting and rating requirements applicable to health benefits plans covering small employers.

Sec. 21.55.120 - Requires a guaranteed issue insurer to offer at least one small employer health benefit plan and that the plan provide certain coverage. Allows a guaranteed issue insurer to reinsure, make special premium arrangements, or appeal unfair administrative or credit risk.

Sec. 21.55.130 - Requires the board to design small employer health benefit plans that are eligible for reinsurance by the association, including the form and level of coverage. Provides that a plan may include certain cost containment features. Requires the plan be submitted to the director of the division of insurance for approval.

Sec. 21.55.140 - Establishes certain conditions that must be met before an insurer or welfare arrangement may cease doing business in the small employer market.
5 YR WAIT TO RE-ENTER

Sec. 21.55.250 - Definitions.

Section 3 - Provides that a health maintenance organization is subject to the small employer health insurance provisions contained in AS 21.55.

Section 4 - Provides that a hospital or medical service corporation is subject to the small employer health insurance provisions contained in AS 21.55.

Section 5 - Transition section.

Section 6 - Effective date.

MFF:plm
91-250.plm

SB242

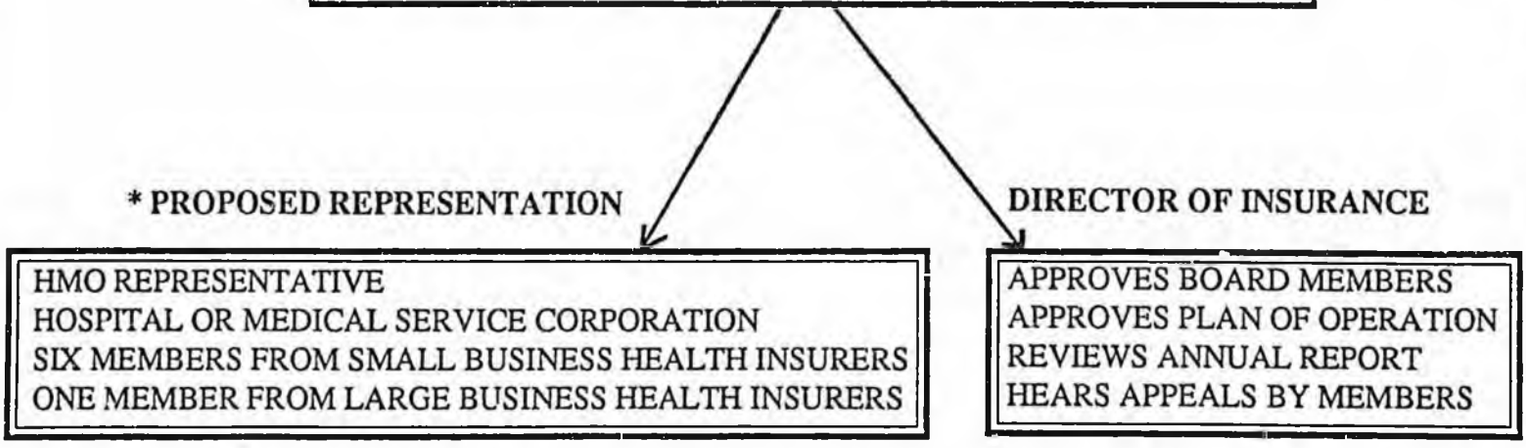
HEALTH INSURANCE FOR SMALL EMPLOYERS
(A NON-PROFIT LEGAL ENTITY)

MEMBERS OF THE HEALTH REINSURANCE ASSOCIATION

LICENSED HOSPITAL OR MEDICAL SERVICE CORPORATIONS
WELFARE ARRANGEMENTS / MULTIPLE EMPLOYER ARRANGEMENT
LICENSED ALASKA HEALTH INSURERS OFFERING A HEALTH PLAN

BOARD OF DIRECTORS

NINE INDIVIDUALS SELECTED BY MEMBERS *
DIRECTOR OR DESIGNEE IS NON-VOTING EX-OFFICIO MEMBER



*** PROPOSED REPRESENTATION**

HMO REPRESENTATIVE
HOSPITAL OR MEDICAL SERVICE CORPORATION
SIX MEMBERS FROM SMALL BUSINESS HEALTH INSURERS
ONE MEMBER FROM LARGE BUSINESS HEALTH INSURERS

DIRECTOR OF INSURANCE

APPROVES BOARD MEMBERS
APPROVES PLAN OF OPERATION
REVIEWS ANNUAL REPORT
HEARS APPEALS BY MEMBERS

COST

SELF-SUPPORTED ASSOCIATION
(ONLY COST TO STATE:
DIRECTOR OF INSURANCE TRAVEL)

SB242

PURPOSE

TO MAKE CERTAIN CHANGES IN THE EMPLOYER INSURANCE MARKET TO PROVIDE MORE: ACCESSABILITY, RENEWABILITY, PREDICTABILITY, AND STABILITY.

TO ENSURE FAIR ACCESS TO AND CONTINUITY OF COVERAGE FOR SMALL EMPLOYERS AND THEIR EMPLOYEES.

HIGHLIGHTS

GUARANTEED ACCESS TO COVERAGE: ALL SMALL EMPLOYER GROUPS WOULD BE ABLE TO OBTAIN BASIC COVERAGE REGARDLESS OF RISK.

COVERAGE OF WHOLE GROUPS: NEITHER AN EMPLOYER NOR AN INSURER WOULD BE ABLE TO EXCLUDE FROM GROUP COVERAGE, HIGH RISK INDIVIDUALS.

RENEWABILITY OF COVERAGE: AT RENEWAL TIME COVERAGE WOULD NOT BE CANCELLED DUE TO DETERIORATING HEALTH.

CONTINUITY OF COVERAGE: ONCE INDIVIDUAL MEETS PREEXISTING CONDITION RESTRICTIONS, HE OR SHE WOULD NOT HAVE TO MEET AGAIN WHEN CHANGING JOBS OR CARRIERS.

PREMIUM PRICING LIMITS: INSURERS WOULD BE REQUIRED TO LIMIT HOW MUCH THEIR RATES COULD VARY FOR GROUPS SIMILAR IN GEOGRAPHY, DEMOGRAPHIC COMPOSITION AND PLAN DESIGN.

March 11, 1991

SMALL EMPLOYER MARKET REFORMS AND REINSURANCE MECHANISM

On February 21, 1991 the HIAA Board of Directors reaffirmed its commitment to the comprehensive set of recommendations adopted a year ago that the Association believes can be achieved in the context of a viable private marketplace. The essence of our proposal is to make certain changes in the market so that it provides substantially more predictability and protection to the purchasers of coverage.

The small employer market precepts that the HIAA recommends are:

1. **Guaranteed Access to Coverage.** All small employer groups would be able to obtain private health insurance for basic coverage regardless of the health risk they present. A reinsurance mechanism would allow carriers to make this basic prototype benefit coverage available to any small employer for no more than 150 percent of the average premium for similar groups.

2. **Coverage of Whole Groups.** Coverage would be made available to entire employer groups; neither an employer nor an insurer would be able to exclude from the group's coverage individuals who present high medical risks.

3. **Renewability of Coverage.** At renewal time, employer groups and/or individuals in these groups would be assured that their coverage would not be canceled because of deteriorating health.

4. **Continuity of Coverage.** Once a person is covered in the small employer market and satisfied a plan's preexisting condition restrictions, he or she would not have to meet those requirements again when changing jobs or when the employer changes carriers.

5. **Premium Pricing Limits.** Insurance carriers would be required to limit how much their rates could vary for groups similar in geography, demographic composition and plan design. More specifically, a carrier's premiums for similar groups could not vary by more than 35 percent from the carrier's midpoint rate (halfway between the lowest and highest rate). There would also be a 15 percent limitation on how much a carrier could vary rates by industry. Finally, carriers would have to limit a group's year-to-year premium increase to no more

than 15 percent above the carrier's "trend" (the year-to-year increase in the lowest new business rate).

GUARANTEEING AVAILABILITY

The "top ten" carriers in a states' small employer market would have to guarantee issue prototype benefit coverage to all applicant small employer groups. Other (non-top ten) carriers could choose to also act as guaranteed issue carriers, although they would not be required to do so. There would be a publicly available list of guaranteed issue companies. Insurers rejecting groups would be responsible for referring the group to this list (or telephone number).

Guaranteed issue carriers would have access to both individual and group reinsurance at issue, renewal and for new entrants. These carriers would have to make prototype benefits available to all small employers, at a rate of no more than 150 percent of adjusted average market premiums. They would face no cost-sharing for group reinsurance (priced at 150 percent of adjusted average market premium minus a ceding factor), could require an advance premium deposit (not to exceed three months) for poor credit risks, and could make special arrangements to cover employees in groups with exceptionally high employee turnover rates.

Insurers that choose not to guarantee issue would not be obligated to accept all applicant small employer groups. However, consistent with the whole group precept, they would be required to accept or reject entire employer groups. These carriers would only access to individual reinsurance and only for new entrants to existing cases. This is to provide financial relief for the new entrants that they would be required to accept under the continuity precept.

Both guaranteed issue and other carriers would have access to individual reinsurance (priced at 500 percent of adjusted average market claims experience, and including a $5,000 deductible but no coinsurance payments). Both carrier types would be included in the assessment base for tier one financing of reinsurance losses.

Non-guaranteed issue carriers that wish to become guaranteed issue carriers, or guaranteed issue wishing to become non-guaranteed issue, would be required to announce one year in advance their intentions to change. Carriers newly converting to guaranteed issue would not be allowed to apply more favorable guaranteed issue reinsurance terms to business already on their books when they make such a change.

Guaranteed issue carriers would be able to appeal to the reinsurance board in the event that they experienced an unfair share of administrative and credit risks. Where the Board finds

that a carrier has experienced such an unfair burden, a decreased reinsurance price to offset administrative expenses may be allowed, or a temporary suspension of guaranteed issue may be granted to the carrier.

A carrier would not have to guarantee issue business received from any agent or broker, but would be free to directly issue coverage to such business or to refer the business to one of its own agents.

HIAA believes this approach allays apprehension over who the designated carrier would be and what their practices are. Another major advantage of this approach is that it does not mandate that every carrier in the market guarantee issue. This will be more efficient since carriers that are only marginally operating in a number of local markets would not have to incur all of the fixed costs associated with acting as a designated carrier (e.g., offering a prototype plan). Further, it will be easier to monitor carriers' cost management of reinsured cases since there will be fewer designated carriers to oversee. Finally, it avoids the problem of one designated carrier (or a very small number of designated carriers) being treated by legislators as a quasi-governmental program and subject to extremely adverse regulatory or financial treatment (e.g., setting rates below market norms).

DEFINING SMALL EMPLOYER GROUPS

Employer-based plans issued to firms with only one or two employees should be excluded from the small employer market reforms and reinsurance. Such plans should continue to be regulated under a state's group or individual insurance laws.

High risk pools should be established in every state and would act to guarantee availability of coverage to persons without access to employer based coverage (i.e., individuals without an attachment to the workplace, as well as high risk persons employed by businesses with one or two employees). High risk pools would not be available to individuals working for firms with at least three employees offering employer-financed coverage to any or all employees.

The following small employer market reforms would <u>not</u> apply to employer-based individual policies: (a) guarantee issue -- carriers would not be required to guarantee issue individual policies to new employer-based groups of individuals (except for new adds to existing groups of individuals as described below) and (b) rating and renewability regulation -- individual rates will not be regulated if there is effective rate regulation in a particular state. In making a determination as to whether there is effective regulation of rates one should analyze the Department's practices rather than relying solely on the

statutory or regulatory authority in place in a particular state.

Individual policies would not have access to the small employer reinsurance mechanism. However, reinsurance assessments would be imposed on employer-based individual policies for employers with 3 to 25 lives to offset the relatively higher costs due to the guaranteed availability of small group coverage to all small employers.

The following small employer market reforms would apply to individual (as well as group) employer-based plans for small employers with 3 to 25 employees: (a) The HIAA precept on whole groups: the same plan must be made available to all eligible employees of the firm, including high risk employees and new adds and (b) Pre-existing conditions: if a person was covered by (or satisfied preexisting condition exclusions under) the previous employer-based plan, the new employer-based plan must waiver preexisting condition requirements for those conditions.

FINANCING SOURCES

First tier assessments should be capped at four percent of small employer market premium. For second tier financing, HIAA should be open to a range of alternative broad sources of financing that might be achievable in a given state.

LIST OF BILL SECTION HEADINGS

SB 242

Department of Commerce & Economic Development / POSITION PAPER

SB 242: "An Act relating to health insurance for small employers; and providing for an effective date."

The department is in favor of this legislation.

One of the more challenging issues facing this country and Alaska is the ever-increasing number of people unable to afford or even find health care insurance. Persons going from one employer to another who have acquired a medical condition find themselves, in too many cases, uninsurable.

Certain underlying conditions need to be met to satisfy public expectations of a health insurance market that can continue to be provided by private health insurers. These include: guaranteed access to coverage; coverage for entire groups, renewability of coverage; limits on pricing; and continuity of coverage. This legislation addresses these issues by establishing a reinsurance mechanism comprised of all entities writing health care coverages in Alaska. Through this mechanism, coverage is made available that provides that the preexisting conditions restriction is applicable to a person only one time. Once a covered person has satisfied the plans preexisting condition restriction, he or she would not have to again face the restrictions when changing employers or insurance company. The plan contained in the bill assures availability of coverage, prevents picking and choosing of employees in a group, assures renewability and places a cap on premium increases.

This legislation gives the private health care insurance system an opportunity to address these challenges.

Asst. Comm.

Glenn A. Olds, Commissioner

Date: 4-18-91

GAO/DK/dgl9415D
041891b

FISCAL NOTE

STATE OF ALASKA
1991 LEGISLATIVE SESSION

BILL NO. SB 242

Revision Date: 4/5/91
Department Affected: Commerce & Economic Dev.
Title: An Act relating to health insurance for small employers
BRU: Insurance
Component: Operations
Sponsor: Senator Collins
Requestor: Senator Collins
COMPONENT SERIAL NO. 0354

Expenditures/Revenues: (Thousands of Dollars)

OPERATING	FY 92	FY 93	FY 94	FY 95	FY 96	FY 97
PERSONAL SERVICES	0					
TRAVEL	6.0	1.5	1.5	1.5	1.5	1.5
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	6.0	1.5	1.5	1.5	1.5	1.5
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of current year impact:

ANALYSIS: (Attach a separate page if necessary.)

In the first year, a substantial number of meetings with industry will be required to assure that the operations of the association are satisfactorily established. Eight meetings are anticipated in the first year and two per year thereafter.

Prepared By: Donald P. Koch, Chief of Market Surveillance Phone: 465-2577
Division: Insurance Date: 4/18/91
Approved by Commissioner: Glenn A. Olds Asst. Comm.
Agency: Department of Commerce & Economic Development Date: 4-18-91

Distribution (by preparer): Legislative Finance, Legislative Sponsor, Requestor, OMB, & Impacted Agency(ies).

Rev 10/90
DPK/dq19419D/041891a

SB

247

ALASKA STATE LEGISLATURE SENATE
SENATOR RICHARD I. ELIASON

PRESIDENT OF THE SENATE
LABOR & COMMERCE COMMITTEE
RESOURCES COMMITTEE
RULES COMMITTEE
CHAIRMAN, SPECIAL COMMITTEE ON DOMESTIC & INTERNATIONAL COMMERCIAL FISHERIES

P.O. BOX 641
SITKA, ALASKA 99835

P.O. BOX V
JUNEAU, ALASKA 99811
(907) 465-4910

FAX (907) 465-4928

MEMORANDUM

TO: Senator Drue Pearce, Chair
Senate Labor and Commerce Committee

FROM: Senator Dick Eliason

DATE: April 17, 1991

RE: SB 247 - Relating to the plumbing, mechanical, and boiler standards of the state

I respectfully request a hearing in the Senate Labor and Commerce Committee to take testimony on Senate Bill 247, "Relating to the plumbing, mechanical, and boiler standards of the state."

This legislation adopts the 1991 Editions' of the Uniform Plumbing Code and the Uniform Mechanical Code as the plumbing and mechanical standards of the state. In addition, SB 247 upgrades the boiler code to allow automatic utility hot water heaters to be used for combined potable water and space heating. The safety specifications established by the Department of Labor that must be met are outlined in this legislation.

Thank you very much for your consideration of this request.

FISCAL NOTE

STATE OF ALASKA
1991 LEGISLATIVE SESSION

BILL NO : SSSB 247

Revision Date:
Title: "An Act relating to the plumbing and boiler standards of the state."
Sponsor: Senator Ellason
Requestor: Senate Labor & Commerce

Department Affected: Labor
BRU: Labor Standards & Safety
Component: Mechanical Inspection
COMPONENT SERIAL NO. 346

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 92	FY 93	FY 94	FY 95	FY 96	FY 97
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND&STRUCTURES						
GRANTS,CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

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

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of current year impact: None

ANALYSIS: (Attach a separate page if necessary)

Prepared by: Bob Libbey, Director
Division: Labor Standards & Safety
Phone : 264-2452
Date : 4/30/91

Approved by Commissioner: Nancy Bear Usera
Agency: Department of Labor
Date: 4/30/91

Distribution (by preparer): Legislative Finance, Legislative Sponsor, Requestor, OMB, & Impacted Agency(ies).

ALASKA MUNICIPAL LEAGUE

217 Second Street, Suite 200 • Juneau, Alaska 99801 • Tel (907) 586-1325, Fax (907) 463-5480

April 30, 1991

Position Paper

SB 247 - Updating the Plumbing Code

The Alaska Municipal League supports SB 247 which would adopt the 1991 edition of the Uniform Plumbing Code as the minimum plumbing code for the State of Alaska, and that allows a municipality to adopt and enforce codes that are at least as strict as the code.

Quoting from the AML's 1991 Policy Statement:

> "The League supports the adoption of the national plumbing codes as the standards for Alaska." (page 47)

By adopting the the 1991 edition of the Uniform Plumbing Code as the minimum plumbing code, the state can eliminate the conflicts that now exist among state and local building code officials, expedite municipal capital projects and private construction projects, and reduce construction costs.

Attached is City and Borough of Juneau Resolution No. 1505 on the same subject.

Attachment

sab6:pos.plumb

Presented by: The Manager
Introduced: 04/15/91
Drafted by: B.J.B.

RESOLUTION OF THE CITY AND BOROUGH OF JUNEAU, ALASKA

Serial No. 1505

A RESOLUTION URGING THE ALASKA LEGISLATURE TO ADOPT SENATE BILL NO. 247 WHICH WOULD ADOPT THE 1991 EDITION OF THE UNIFORM PLUMBING CODE AS THE MINIMUM PLUMBING CODE FOR THE STATE OF ALASKA.

WHEREAS, the 1979 Edition of the Uniform Plumbing Code is now the minimum plumbing code for the State of Alaska, and

WHEREAS, many municipalities in Alaska have adopted more recent editions of the Uniform Plumbing Code, and

WHEREAS, conflicts now exist among state and local building code officials due to state enforcement of the 1979 Uniform Plumbing Code, particularly with regard to the use of plastic pipe, and

WHEREAS, this conflict has affected municipal capital improvement projects as well as private construction projects, and

WHEREAS, the widespread and safe use of plastic piping materials in Alaska will lower both public and private sector construction costs and increase the resistance of plumbing systems to corrosion and freeze-thaw damage, and

WHEREAS, the Alaska Municipal League and many Alaskan professional associations, including the fire chiefs, firefighters, building officials, homebuilders, and architects have indicated support for the adoption by the state of the most recent Uniform Plumbing Code, and

WHEREAS, Senate Bill No. 247 would adopt the 1991 Edition of the Uniform Plumbing Code as the minimum plumbing code for the State of Alaska, and

WHEREAS, the City and Borough of Juneau Low Income Housing Task Force reviewed this issue and recommended that the Assembly adopt a resolution urging the Alaska Legislature to adopt the 1991 Uniform Plumbing Code, including the provisions on plastic pipe;

NOW, THEREFORE, BE IT RESOLVED BY THE ASSEMBLY OF THE CITY AND BOROUGH OF JUNEAU, ALASKA:

1. That the Assembly urges the Alaska Legislature to adopt Senate Bill No. 247 which would adopt the 1991 Edition of the Uniform Plumbing Code, including the provisions relating to plastic pipe, as the minimum plumbing code for the State of Alaska.

2. Effective Date. This resolution shall be effective immediately upon adoption.

Adopted this 15th day of April, 1991.

Mayor

Attest:

Clerk

United Association of Journeymen and Apprentices of the
Plumbing and Pipe Fitting Industry
PLUMBERS & STEAMFITTERS LOCAL UNION NO. 367
610 W. 54TH AVENUE • ANCHORAGE, ALASKA 99518
DARRELL SMITH, BUSINESS MANAGER
PHONE (907) 562-2810

April 23, 1991

Dick Eliason, Senator
State of Alaska
P.O. Box "V"
Juneau, Alaska. 99811

Re: Senate Bill #247. An Act relating to the Plumbing, Mechanical and Boiler Standards of the State of Alaska.

Dear Senator Eliason:

The purpose of this letter is to support the quick passage of SB #247. This Local Union has been critical of previous Nationally established Plumbing Codes and their adoption in Alaska. We have received and reviewed the "NEW" Code standards and feel they are in the best interests of the State and should be adopted.

We also have received the "NEW" Boiler Code upgrade's and feel this will also bring the State of Alaska into line with the new technology of heating systems already in use in other States.

Again, I would encourage your support of this Bill.

If I may be of further assistance on this matter, please advise.

Respectfully,

Darrell F. Smith
Business Manager
U.A. Local 367

International Conference of Building Officials

Alaska Southeast Chapter

POSITION PAPER IN SUPPORT OF SPONSOR SUBSTITUTE FOR SENATE BILL 247 "AN ACT RELATING TO THE PLUMBING AND BOILER STANDARDS OF THE STATE."

Our membership supports the adoption of construction safety codes in a timely manner. The 1991 version of the Uniform Plumbing Code (UPC) adopted by this Act will clearly serve the best interests of Alaskan residents.

P O Box 211411 Auke Bay, AK. 99821

SENATE COMMITTEE REPORT
FIRST COMMITTEE OF REFERRAL

DATE: 4/8/91
4/29/91--SSSB 247

FURTHER:

Date of 5-Day Notice: 4-25-91
(in accordance with Uniform Rule 23)

DATE TURNED INTO OFFICE: _____

L&C Committee considered SSSB 247

Plumbing and boiler standards of the state; efd.

and recommended:

[ ] replace with _____ CS _____ [ ] same title [ ] new title

[ ] attached amendment(s)

[ ] _____ letter of intent adopted

[ ] do pass

[ ] do not pass

[ ] no recommendation

[✓] individual recommendations

[ ] further referral to _____

ATTACHES NEW FISCAL NOTE(S):

Department(s)/Date:

[ ] fiscal note(s) _____

Department(s)/Date:

[✓] zero fiscal note(s) LABOR / 4-30-91

[ ] appropriation-no fiscal note

[ ] Governor's bill w/fiscal note

SIGNING DO ~~PASS~~:

Pat Thibaudeau

Eleanor Callison

Rick Halford

OTHER RECOMMENDATIONS:

Lane Peach - do pass

Chair: Signature and Recommendation

MAY 6 1991

biaa
Affiliated with NAHB

May 3, 1991

The Honorable Drue Pearce
The Senate
Alaska State Legislature
P O Box V (MS 3100)
Juneau, AK 99811

Dear Senator Pearce:

I am writing on behalf of the Building Industry Association of Anchorage concerning Senate Bill No. 247, a bill for an act entitled "An Act relating to the plumbing, mechanical, and boiler standards of the state." I would encourage your consideration of waiting to pass this bill out of committee until the proposed standards are available for and have gone through a review process.

The homebuilders in our Association are quite active in the Municipality of Anchorage's code review process. They are very cognizant of the process and the debate any code changes undergo to be adopted. They are also aware that changes are usually not sweeping nor necessarily impractical, so the idea of adopting the 1991 edition of the Uniform Plumbing Code, the 1991 edition of the Uniform Swimming Pool, Spa, and Hot Tub Code, and the 1991 edition of the Uniform Solar Energy Code is not inherently one we oppose.

It has, however, always been the practice to adopt any code or revision to a code only after that code has been read and reviewed by committees of individuals affected by given regulations. This gives interested parties an opportunity to clarify what is meant by any changes and to ascertain whether or not adaptations to local conditions will need to be made. This process makes any code more workable and often more in line with the intent of the regulation.

While the above-mentioned codes have all been adopted by the International Association of Plumbing and Mechanical Officials, copies of the codes to read and to review are not yet available, not even for the code officials who will need to enforce them. The Municipality of Anchorage is even now putting together the committees which will review these and several other codes in their entirety and in depth. This review process will be complete by the end of the summer. We urge you to wait on passing SB 247 until this can be accomplished and informed opinions about the codes involved may be made available to you.

Very truly,

Mary K. Webb
Executive Officer

Building Industry Association of Anchorage, Inc.
7801 Schoon, Unit E • Anchorage, Alaska 99518 • (907) 522-3605

SB

250

APR 2 3 1991

Alaska State Legislature

SENATOR JIM DUNCAN

P.O. BOX V JUNEAU, ALASKA 99811-3100

(907) 465-4766

COMMITTEES:
VICE CHAIR – FINANCE
VICE CHAIR – STATE AFFAIRS
RULES
BUDGET & AUDIT
ETHICS REFORM

MEMORANDUM

TO: Senator Drue Pearce, Chair
Senate Labor and Commerce Committee

FROM: Senator Jim Duncan

DATE: April 22, 1991

SUBJECT: Hearing schedule for Senate Bill 250.

I would like to request that you schedule Senate Bill 250, "relating to the certification of real estate appraisers; and providing for an effective date," for a hearing at your earliest convenience.

SB 250 will add another classification to the list of certified appraisers in Alaska. It provides for the creation of an Institutional Real Estate Appraiser classification to do appraisals of institutional property.

I thank you in advance for your favorable consideration of this request.

SENATE COMMITTEE REPORT
FIRST COMMITTEE OF REFERRAL

DATE: 4/12/91

FURTHER:

Date of 5-Day Notice: 5-2-91
(in accordance with Uniform Rule 23)

DATE TURNED INTO OFFICE: ______

L&C Committee considered SB 250

Certification of real estate appraisers; efd.

and recommended:

[ ] replace with ______ CS ______ [ ] same title [ ] new title

[ ] attached amendment(s)

[ ] ______ letter of intent adopted

[ ] do pass

[ ] do not pass

[ ] no recommendation

[✓] individual recommendations

[ ] further referral to ______

ATTACHES NEW FISCAL NOTE(S):

Department(s)/Date: Department(s)/Date:

[ ] fiscal note(s) ______

[✓] zero fiscal note(s) Comm/4-17-91

[ ] appropriation-no fiscal note

[ ] Governor's bill w/fiscal note

SIGNING DO PASS:

Rick Halford
Virginia Collins

OTHER RECOMMENDATIONS:

Chair: Signature and Recommendation
Do Pass

Department of Commerce & Economic Development / POSITION PAPER

SB 250: **"An Act relating to the certification of real estate appraisers; and providing for an effective date."**

SB 250 creates a new certification category for institutional real estate appraisers by amending the real estate appraiser statutes (AS 08.87). The bill requires individuals who are employed full-time by a financial institution to obtain a certificate issued by the Board of Real Estate Appraisers, as proof of satisfying educational and testing requirements in compliance with federal law.

The institutional real estate appraiser certificate is valid only during the period in which the individual is employed full-time by a financial institution in Alaska. Under this category, individuals who perform real estate appraiser services for a financial institution must meet limited qualifications consisting primarily of educational and testing requirements, and not necessarily the experience requirements mandated for general or residential real estate appraisers.

Section 3 of the bill repeals and reenacts AS 08.87.110(e) to clarify the "limited certification" provision by replacing the section with specific language identifying the federal mandates.

Since SB 250 attempts to clarify and bring the real estate appraiser statutes closer into compliance with the federal mandates, the department supports passage of this bill.

Glenn A. Olds, Commissioner

Date: 4-18-91

GAO/JS/dgl9417D
041891b

STATE OF ALASKA
1991 LEGISLATIVE SESSION

BILL NO. SB 250

Revision Date: _____ Department Affected: Commerce & Economic Dev.

Title: Relating to the certification of real estate appraisers;... BRU: Occupational Licensing

Component: Administration

Sponsor: Rep. Navarre

Requestor: Rep. Navarre COMPONENT SERIAL NO. 0 3 5 6

Expenditures/Revenues: (Thousands of Dollars)

OPERATING	FY 92	FY 93	FY 94	FY 95	FY 96	FY 97
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0	0	0	0	0	0
CAPITAL						
REVENUE	**	**	**	**	**	**

FUNDING: (Thousands of Dollars)

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

POSITIONS:

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

Estimate of current year impact: None

ANALYSIS: (Attach a separate page if necessary.) SB 250 creates a separate licensing category for institutional real estate appraisers. New funds are not required to implement this bill. **Revenue will be generated from application and license fees however, at this time, we are unable to provide an estimate until we have some idea of the numbers of individuals who would be affected by the bill.

Prepared By: Jennifer Strickler, Admin. Officer Phone: 465-2144

Division: Occupational Licensing Date: 4-17-91

Approved by Commissioner: Glenn A. Olds Asst. Comm.

Agency: Commerce and Economic Development Date: 4-18-91

Distribution (by preparer): Legislative Finance, Legislative Sponsor, Requestor, OMB, & Impacted Agency(ies).

Rev 10/90

ALASKA MORTGAGE BANKERS ASSOCIATION
P.O. BOX 9-2691 / ANCHORAGE, ALASKA 99509-2691

April 16, 1991

Senator Jim Duncan
Alaska State Senate
P. O. Box V
Juneau, Alaska 99811

Re: Senate Bill 250

Dear Senator Duncan:

Our Association appreciates your introduction of SB 250. We support passage of the bill, which will correct some technical problems in the present statute.

If we can be of any assistance, please call me at 257-3442.

Sincerely,

Lucille Stietz
Chair, Legislative Committee

ALASKA CHAPTER
OF THE

APPRAISAL INSTITUTE

April 18, 1991

The Honorable Jim Duncan
The Senate of Alaska
3111 "C" Street
Anchorage, Alaska 99501

RE: Senate Bill 250

Dear Senator Duncan:

The newly organized Alaska Chapter of the Appraisal Institute, which encompasses 180 appraisers, wishes to inform you of our support of Senate Bill 250.

At our March meeting the proposed framework of this bill was discussed at length and was endorsed by an overwhelming majority. We feel this to be a significant piece of legislation that will positively affect our profession.

We look forward to working with you on this bill.

Sincerely,

William A. Larick,
President, Alaska Chapter
of the Appraisal Institute

WAL/llt

P.O. Box 91055 • Anchorage, Alaska 99509

SB

251

Department of Commerce
& Economic Development / POSITION PAPER

SB 251: "An Act relating to regulation of securities held by insurers; and providing for an effective date."

The Alaska Legislature passed the limits on investments contained in AS 21.21 for the purpose of promoting the safety and soundness of the Alaskan domestic insurance industry. Various pieces of AS 21.21 prevent an Alaskan insurer from concentrating its investments in one particular type of investment. Concentration in particular investment vehicles is unsafe. If that vehicle suffers problems, an insurer may become insolvent. As an example, the reader is referred to Executive Life Insurance Company's, domiciled in California, concentration of investment in junk bonds.

A number of years ago, the federal government, in an effort to provide a larger market for its agencies' mortgage backed securities, passed legislation calling for a preemption at the state level of all legislation which was designed to limit the level for mortgage backed securities to which all state regulated financial entities were allowed to invest. This federal legislation provided a certain number of years for the states individually to opt out of the loosening of mortgage backed security investment restrictions. SB 251 is Alaska's legislation designed to opt out of this federal preemption.

The reader should note that this federal legislation was passed several years prior to the current general collapse of real estate values that has occurred in the lower contiguous forty-eight states.

The Division of Insurance supports the passage of SB 251. Alaska does not wish to have its standards lowered by the action of others.

Asst. Comm.

Glenn A. Olds, Commissioner

Date: 4-16-91

GAO/EWF/JB/dgl9395D
041591a

FISCAL NOTE

STATE OF ALASKA
1991 LEGISLATIVE SESSION

BILL NO. SB 251

Revision Date: 4/12/91
Department Affected: Commerce & Economic Dev.
Title: Regulation of securities held by insurers
BRU: Insurance
Component: Operations
Sponsor: Senate Labor & Commerce
Requestor: Senate Labor & Commerce
COMPONENT SERIAL NO. 0 2 5 4

Expenditures/Revenues: (Thousands of Dollars)

OPERATING	FY 92	FY 93	FY 94	FY 95	FY 96	FY 97
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0	0	0	0	0	0
CAPITAL	0	0	0	0	0	0
REVENUE	0	0	0	0	0	0

FUNDING: (Thousands of Dollars)

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

POSITIONS:

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

Estimate of current year impact:

ANALYSIS: (Attach a separate page if necessary.)

No financial impact on the division.

Prepared By: Joan Brown, Administrative Officer
Phone: 465-2597
Division: Insurance
Date: 4-16-91
Approved by Commissioner: Glenn A. Olds Asst Comm.
Agency: Department of Commerce & Economic Development
Date: 4-16-91

Distribution (by preparer): Legislative Finance, Legislative Sponsor, Requestor, OMB, & Impacted Agency(ies).

MEMORANDUM

State of Alaska

TO: Senator Drue Pearce
Chairman, Labor & Commerce Committee
Alaska State Senate

DATE: May 15, 1991

FILE NO.:

THRU:

TELEPHONE NO.: (907) 465-2500

SUBJECT: HCS SB 251(L&C)

FROM: Larry Galloway
Assistant Commissioner
Department of Commerce
and Economic Development

SB 251 passed the Senate with your much appreciated floor management. The Bill has been modified in the House. This bill is currently in House Rules and calendaring is expected shortly. The changes made do not impair the Bill which is urgently needed this session. It accomplishes the same thing as the Senate version. We would very much appreciate your assistance in seeking Senate concurrence with the House amendments.

The principal difference between the two versions is that the House version is more specific concerning the Alaska statutes applicable to the securities to be regulated. Incidentally, our concerns on the federal preemption of regulation of this area are not unwarranted. There has been a recent insolvency directly related to this type of investment. Its a good example of what can happen when too many of the insurer's "eggs are in one basket."

Should you have any questions, Don Koch (465-2577) in the Division of Insurance is the person handling this Bill in this Department. Thank you for your help on this Bill.

Keep for concurrence.

Business Insurance, April 15, 1991

Utah insurer's failure triggered by GNMAs

By DOUGLAS McLEOD

PROVO, Utah—The president of Southern American Insurance Co. last year considered replacing some of the insurer's assets with Government National Mortgage Assn. securities at the same time a Utah insurer he founded was collapsing because its GNMA investments could not be verified.

Commercial Surety & Insurance Corp. was ordered liquidated Jan. 7 by a Utah judge after state insurance regulators were unable to confirm that the insurer actually held $4.8 million in GNMAs that formed the bulk of its assets (*BI*, Feb. 4).

Victor Borcherds, Southern American's president, had proposed a similar infusion of GNMAs for his company but dropped the idea after the Utah Insurance Department warned him about the difficulty of confirming ownership of the securities.

GNMA, an agency of the U.S. Department of Housing and Urban Development, guarantees principal and interest payments to holders of mortgage-backed securities.

The securities are often held in "book entry" form, meaning that no actual certificates change hands. This makes it difficult to confirm ownership, since the financial institutions that keep records of securities transfers are often unwilling to disclose investors' holdings to state regulators.

The GNMAs were offered to both Commercial Surety and Southern American by Robert H. Wyshak & Associates Ltd.

Commercial Surety was formed by Mr. Borcherds and Robert V. Murton in November 1987, shortly before Mr. Borcherds agreed to buy Southern American from The Crump Cos. Inc. (see story, page 1). However, Commercial Surety was not licensed until 1989.

Mr. Borcherds, originally Commercial Surety's chairman, had planned to assign ownership of Southern American to Commercial Surety, merging the two companies or making Southern American a Commercial Surety subsidiary, documents filed with the Tennessee Insurance Department show.

The merger never took place, though. Mr. Borcherds resigned from Commercial Surety in early 1989 and operated Southern American as an independent company.

Mr. Murton—who also was a Southern American senior vp until his resignation in 1989—continued to operate Commercial Surety with various titles, including president and vp. Mr. Murton could not be reached to comment on Commercial Surety's operations.

Commercial Surety was licensed in Utah in August 1989. Its stock was issued to Mr. Murton in consideration for a bond portfolio that capitalized the company, Utah department documents say.

A dispute later arose over ownership of the bond portfolio, though, and Mr. Murton agreed to recapitalize Commercial Surety with new assets, the documents say.

Mr. Murton and Commercial Surety Vp Mark C. Burdge then formed a new company, Burdge Murton Capital Corp., to acquire assets to contribute to the insurer.

The new assets Burdge Murton presented for the Utah department's approval in August 1990 were $4.0 million in "negotiable registered trust receipts" evidencing ownership of a pool of GNMA securities, according to Utah department documents.

The trust receipts had been issued to Burdge Murton by Wyshak & Associates, which acted as custodian for the GNMAs. Mr. Wyshak told Insurance Department officials the securities were "readily available and accessible" to Commercial Surety, and regulators approved the recapitalization on Aug. 31, documents show.

When the Utah department later tried to confirm that Commercial Surety actually owned the instruments, it hit a dead end.

Mr. Wyshak, the department found, did not have the GNMAs in his possession. Instead, he provided regulators with a copy of an account statement showing that Dallas-based Fidelity Asset Management Ltd., unrelated to Boston-based Fidelity Investments, held 100% of the $4.0 million GNMA pool.

Fidelity Asset Management purportedly held the securities on behalf of the Gwendolyn Demond Trust, which maintained an account at another institution, Los Angeles-based Interbank Financial Ltd., Insurance Department documents say.

Interbank also did not have possession of the GNMAs, and Utah regulators' calls to Fidelity were not returned, documents say.

Gwendolyn Demond is the mother-in-law of George Eggleston, an associate of Mr. Wyshak's who also was in contact with the Utah department on Commercial Surety's GNMA holdings, Mr. Wyshak and others say.

Mr. Eggleston currently is on probation after pleading guilty in U.S. District Court in Los Angeles in 1982 to federal mail fraud charges related to a tax shelter scheme.

Mr. Eggleston served jail time after the guilty plea but was released in 1988 and remains on probation until 1993, said David Sann, Mr. Eggleston's probation officer with the U.S. Probation Office in Santa Ana, Calif.

Attempting to trace ownership of the GNMAs by the pool number on the trust receipts, Utah regulators found that New York-based Participants Trust Corp. actually held the purported Commercial Surety GNMAs for the benefit of six financial institutions.

Participants Trust would not identify the six institutions, but it told the Utah department that the largest single holding in the pool was about $1.2 million and that it would be unusual for one institution to own 100% of any pool.

On Oct. 31, the Utah department demanded that Commercial Surety deliver the GNMAs or an equal amount of cash to a federally insured bank by Nov. 2. The insurer failed to comply with this demand, though, prompting regulators to issue a cease-and-desist order.

Several days later, Mr. Wyshak and Mr. Eggleston also failed to produce the GNMAs or substitute securities as they had promised regulators they would, Insurance Department documents say.

Mr. Wyshak referred questions on this story to Mr. Eggleston, who could not be reached.

Commercial Surety was placed under state supervision Nov. 7, and a Utah judge granted the Utah department's petition to liquidate the insurer two months later.

Commercial Surety wrote about $860,000 in surety bond premiums and related fees in 1990. The company was found insolvent by about $1.5 million as of Oct. 31, 1990.

Before Commercial Surety ran into trouble with its GNMA investments, Mr. Borcherds had negotiated a similar GNMA infusion with Mr. Wyshak to resolve Utah regulators' objections to a Southern American unit's heavy investment in mortgage loans.

Southern American withdrew the GNMA proposal, though, after the Utah department warned Mr. Borcherds last October—amid the search for Commercial Surety's purported GNMAs—that the securities would not be approved without confirmation of their ownership and value, said Billy W. Loveladv, the department's chief examiner.

Mr. Borcherds confirmed that he withdrew the GNMA proposal, but he said he was already having doubts about the deal before being warned by Utah regulators.

"We wasted two damn months on that," he said of the proposal. ■

1075V DRUE -

RE: SB 251 CHANGES

THE HOUSE CHANGE MAKES DIRECT REFERENCE TO THE STATUTES GOVERNING INVESTMENT BY INSURANCE COMPANIES.

NO SUBSTANTIVE CHANGES IN THE BILL.

Alaska State Legislature
HOUSE OF REPRESENTATIVES
Office of the Chief Clerk

MESSAGE TO THE SENATE

May 18, 1991

Mr. President:

The House has passed SENATE BILL NO. 251 with the following amendment:

HOUSE CS FOR SENATE BILL NO. 251 (L&C)
"An Act relating to regulation of securities held by insurers; and providing for an effective date."

and it is transmitted for consideration.

ØEN

ck to concur

Peace

CHIEF CLERK OF THE HOUSE

Alaska State Legislature

Senator Drue Pearce, Chair
Senator Virginia Collins, Vice Chair
Senator Dick Eliason
Senator Rick Halford
Senator Jay Kerttula

WHILE IN JUNEAU
P.O. BOX V
JUNEAU, ALASKA 99811
(907) 465-3844

3111 C STREET, SUITE 150
ANCHORAGE, ALASKA 99504
(907) 561-2018

SENATE LABOR AND COMMERCE COMMITTEE

TO: ALL SENATORS

FROM: Senator Drue Pearce, Chair
Labor & Commerce Committee

DATE: April 27, 1991

RE: SB 251 - "An Act relating to regulation of securities held by insurers; and providing for an effective date."

AS 21.21 was amended last session to set limits on investments by the Alaskan domestic insurance industry. The intent of that legislation was to prevent an Alaskan insurer from concentrating its investments in a single type of investment. A diverse investment policy helps insure total solvency should a single investment type fail.

In order to increase the market for federal agency mortgage backed securities, congress passed legislation a few years ago that would allow an insurer to concentrate their investments in federal agency backed mortgages. The states were provided a window period to adopt statute that allowed the state's investment policies to override this federal policy.

Given the recent collapse of real estate values in the Lower 48, Alaska's diverse investment policy is preferential to a policy that would allow an insurer to concentrate in a single type of investment.

SB 251 allows the state's diverse investment policy to prevail.

I urge your support.

SENATE COMMITTEE REPORT
FIRST COMMITTEE OF REFERRAL

DATE: 4/12/91 FURTHER:

Date of 5-Day Notice: 4-11-91
(in accordance with Uniform Rule 23)

DATE TURNED INTO OFFICE: _____

L&C Committee considered SB 251

Regulation of securities held by insurers; efd.

and recommended:

[ ] replace with _____ CS _____ [ ] same title [ ] new title

[ ] attached amendment(s)

[ ] _____ letter of intent adopted

[ ] do pass

[ ] do not pass

[ ] no recommendation

[✓] individual recommendations

[ ] further referral to _____

ATTACHES NEW FISCAL NOTE(S):

Department(s)/Date:

[ ] fiscal note(s) _____

Department(s)/Date:

[✓] zero fiscal note(s) _____
Commerce / 4-16-91

[ ] appropriation-no fiscal note

[ ] Governor's bill w/fiscal note

SIGNING DO PASS:

OTHER RECOMMENDATIONS:

C

Chair: Signature and Recommendation

April 2, 1991

Drue -

Re: Junk Bond Investments

Dave Walsh brought this over this morning. He says a loop hole in state law may allow insurance companies to place over 5% of their investments in "junk bonds". This would close that loop hole.

The state has known about this potential for the last seven years and has taken no action. This is the last year we can take action. Dave only became aware of the situation in the last couple of weeks.

Dave knows of no one who opposes this action.

Should I have it drafted?

Rod

DRAFT #1 3-26-91 04:00

IN THE LEGISLATURE OF THE STATE OF ALASKA

SEVENTEENTH LEGISLATURE - FIRST SESSION

A BILL

For an Act entitled: "An Act for the purpose of preventing federal preemption of state limitations on investments by insurance companies"

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

* Section 1. The federal preemption provided in the Secondary Mortgage Market Enhancement Act of 1984, 15 U.S.C. Section 77r-1 does not apply to prohibitions or limitations on the purchase of, holding of, or investment in securities by persons transacting the business of insurance in Alaska under AS 21.

* Section 2. This Act takes effect immediately.

0153N

Public Law 98-440
98th Congress

An Act

To amend the Securities Exchange Act of 1934 with respect to the treatment of mortgage backed securities, to increase the authority of the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation, and for other purposes.

Oct. 3, 1984
[S. 2040]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Secondary Mortgage Market Enhancement Act of 1984".

Secondary Mortgage Market Enhancement Act of 1984
12 USC 1701 note.

TITLE I--SECURITIES LAWS AMENDMENTS

MORTGAGE RELATED SECURITY

Banks and banking
Real property
Personal property.

SEC. 101. Section 3(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)) is amended by adding the following new paragraph at the end thereof:

"(41) The term 'mortgage related security' means a security that is rated in one of the two highest rating categories by at least one nationally recognized statistical rating organization, and either:

"(A) represents ownership of one or more promissory notes or certificates of interest or participation in such notes (including any rights designed to assure servicing of, or the receipt or timeliness of receipt by the holders of such notes, certificates, or participations of amounts payable under, such notes, certificates, or participations), which notes:

"(i) are directly secured by a first lien on a single parcel of real estate, including stock allocated to a dwelling unit in a residential cooperative housing corporation, upon which is located a dwelling or mixed residential and commercial structure, or on a residential manufactured home as defined in section 603(6) of the National Manufactured Housing Construction and Safety Standards Act of 1974, whether such manufactured home is considered real or personal property under the laws of the State in which it is to be located; and

42 USC 5402.

"(ii) were originated by a savings and loan association, savings bank, commercial bank, credit union, insurance company, or similar institution which is supervised and examined by a Federal or State authority, or by a mortgagee approved by the Secretary of Housing and Urban Development pursuant to sections 203 and 211 of the National Housing Act, or, where such notes involve a lien on the manufactured home, by any such institution or by any financial institution approved for insurance by the Secretary of Housing and

12 USC 1709, 1715b.

51-139 O - 84 (466)

12 USC 1703.

Urban Development pursuant to section 2 of the National Housing Act; or

"(B) is secured by one or more promissory notes or certificates of interest or participations in such notes (with or without recourse to the issuer thereof) and, by its terms, provides for payments of principal in relation to payments, or reasonable projections of payments, on notes meeting the requirements of subparagraphs (A) (i) and (ii) or certificates of interest or participations in promissory notes meeting such requirements.

For the purpose of this paragraph, the term 'promissory note', when used in connection with a manufactured home, shall also include a loan, advance, or credit sale as evidence by a retail installment sales contract or other instrument.".

APPLICABILITY OF MARGIN REQUIREMENTS

SEC. 102. Section 7 of the Securities Exchange Act of 1934 (15 U.S.C. 78g) is amended by adding the following new subsection at the end thereof:

Credit. Prohibition

"(g) Subject to such rules and regulations as the Board of Governors of the Federal Reserve System may adopt in the public interest and for the protection of investors, no member of a national securities exchange or broker or dealer shall be deemed to have extended or maintained credit or arranged for the extension or maintenance of credit for the purpose of purchasing a security, within the meaning of this section, by reason of a bona fide agreement for delayed delivery of a mortgage related security against full payment of the purchase price thereof upon such delivery within one hundred and eighty days after the purchase, or within such shorter period as the Board of Governors of the Federal Reserve System may prescribe by rule or regulation.".

BORROWING IN THE COURSE OF BUSINESS

Prohibition.

SEC. 103. Section 8(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78h(a)) is amended by adding the following new sentence at the end thereof: "Subject to such rules and regulations as the Board of Governors of the Federal Reserve System may adopt in the public interest and for the protection of investors, no person shall be deemed to have borrowed within the ordinary course of business, within the meaning of this subsection, by reason of a bona fide agreement for delayed delivery of a mortgage related security against full payment of the purchase price thereof upon such delivery within one hundred and eighty days after the purchase, or within such shorter period as the Board of Governors of the Federal Reserve System may prescribe by rule or regulation.".

MORTGAGE RELATED SECURITIES AS COLLATERAL

SEC. 104. Section 11(d)(1) of the Securities Exchange Act of 1934 (15 U.S.C. 78k(d)(1)) is amended by—

(1) inserting "(i)" between "of" and "any"; and

(2) inserting the following immediately after "thirty-five days after such purchase": "or (ii) any mortgage related security against full payment of the entire purchase price thereof upon such delivery within one hundred and eighty days after such

purchase, or within such shorter period as the Commission may prescribe by rule or regulation".

INVESTMENT BY DEPOSITORY INSTITUTIONS

SEC. 105. (a) Section 5(c)(1) of the Home Owner's Loan Act of 1933 (12 U.S.C. 1464(c)(1)) is amended by adding at the end thereof the following:

"(S) MORTGAGE BACKED SECURITIES.—Investments in securities that—

"(i) are offered and sold pursuant to section 4(5) of the Securities Act of 1933 (15 U.S.C. 77d(5)); or

"(ii) are mortgage related securities (as that term is defined in section 3(a)(41) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(41))), subject to such regulations as the Board may prescribe, including regulations prescribing minimum size of the issue (at the time of initial distribution) or minimum aggregate sales prices, or both.".

Ante, p. 1689.

(b) Section 107 of the Federal Credit Union Act (12 U.S.C. 1757) is amended—

(1) by redesignating paragraph (15) as paragraph (16); and

(2) by inserting after paragraph (14) the following:

"(15) to invest in securities that—

"(A) are offered and sold pursuant to section 4(5) of the Securities Act of 1933 (15 U.S.C. 77d(5)); or

"(B) are mortgage related securities (as that term is defined in section 3(a)(41) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(41))), subject to such regulations as the Board may prescribe, including regulations prescribing minimum size of the issue (at the time of initial distribution) or minimum aggregate sales prices, or both;".

(c) Section 5136 of the Revised Statutes (12 U.S.C. 24) is amended by adding at the end of paragraph Seventh the following: "The limitations and restrictions contained in this paragraph as to an association purchasing for its own account investment securities shall not apply to securities that (A) are offered and sold pursuant to section 4(5) of the Securities Act of 1933 (15 U.S.C. 77d(5)); or (B) are mortgage related securities (as that term is defined in section 3(a)(41) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(41))), subject to such regulations as the Comptroller of the Currency may prescribe, including regulations prescribing minimum size of the issue (at the time of initial distribution) or minimum aggregate sales prices, or both.".

PREEMPTION OF STATE LAW

SEC. 106. (a)(1) Any person, trust, corporation, partnership, association, business trust, or business entity created pursuant to or existing under the laws of the United States or any State shall be authorized to purchase, hold, and invest in securities that are— 15 USC 77r-1

(A) offered and sold pursuant to section 4(5) of the Securities Act of 1933,

(B) mortgage related securities (as that term is defined in section 3(a)(41) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(41))), or

(C) securities issued or guaranteed by the Federal Home Loan Mortgage Corporation or the Federal National Mortgage Association,

to the same extent that such person, trust, corporation, partnership, association, business trust, or business entity is authorized under any applicable law to purchase, hold or invest in obligations issued by or guaranteed as to principal and interest by the United States or any agency or instrumentality thereof.

(2) Where State law limits the purchase, holding, or investment in obligations issued by the United States by such a person, trust, corporation, partnership, association, business trust, or business entity, such securities that are—

(A) offered and sold pursuant to section 4(5) of the Securities Act of 1933, 15 USC 77d.

(B) mortgage related securities (as that term is defined in section 3(a)(41) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(41))), or *Ante*, p. 1689.

(C) securities issued or guaranteed by the Federal Home Loan Mortgage Corporation or the Federal National Mortgage Association,

shall be considered to be obligations issued by the United States for purposes of the limitation.

Prohibitions.

(b) The provisions of subsection (a) shall not apply with respect to a particular person, trust, corporation, partnership, association, business trust, or business entity or class thereof in any State that, prior to the expiration of seven years after the date of the enactment of this Act, enacts a statute that specifically refers to this section and either prohibits or provides for a more limited authority to purchase, hold, or invest in such securities by any person, trust, corporation, partnership, association, business trust, or business entity or class thereof than is provided in subsection (a). The enactment by any State of any statute of the type described in the preceding sentence shall not affect the validity of any contractual commitment to purchase, hold, or invest that was made prior thereto and shall not require the sale or other disposition of any securities acquired prior thereto.

Exemption.

(c) Any securities that are offered and sold pursuant to section 4(5) of the Securities Act of 1933 or that are mortgage related securities (as that term is defined in section 3(a)(41) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(41))) shall be exempt from any law of any State with respect to or requiring registration or qualification of securities or real estate to the same extent as any obligation issued by or guaranteed as to principal and interest by the United States or any agency or instrumentality thereof. Any State may, prior to the expiration of seven years after the date of the enactment of this Act, enact a statute that specifically refers to this section and requires registration or qualification of any such security on terms that differ from those applicable to any obligation issued by the United States.

Statute enactment period.

TITLE II—SECONDARY MORTGAGE MARKET PROGRAMS

LIMITATIONS ON PARTICIPATION AGREEMENTS

SEC. 201. (a) The sixth sentence of section 302(b)(2) of the Federal National Mortgage Association Charter Act is amended to read as follows: "The corporation shall establish limitations governing the maximum original principal obligation of conventional mortgages 12 USC 1717

that are purchased by it; in any case in which the corporation purchases a participation interest in such a mortgage, the limitation shall be calculated with respect to the total original principal obligation of the mortgage and not merely with respect to the interest purchased by the corporation.".

(b) The fifth sentence of section 305(a)(2) of the Federal Home Loan Mortgage Corporation Act is amended to read as follows: "The Corporation shall establish limitations governing the maximum original principal obligation of conventional mortgages that are purchased by it; in any case in which the Corporation purchases a participation interest in such a mortgage, the limitation shall be calculated with respect to the total original principal obligation of the mortgage and not merely with respect to the interest purchased by the Corporation.". 12 USC 1454

AUTHORITY OF FEDERAL HOME LOAN MORTGAGE CORPORATION TO PURCHASE LOANS ON MANUFACTURED HOMES

SEC. 202. (a) Section 302(d) of the Federal Home Loan Mortgage Corporation Act is amended by inserting after "located" the following: "or a manufactured home that is personal property under the laws of the State in which the manufactured home is located". 12 USC 1451.

(b) Section 302(h) of the Federal Home Loan Mortgage Corporation Act is amended by adding at the end thereof the following new sentence: "The term 'residential mortgage' also includes a loan or advance of credit secured by a mortgage or other lien on a manufactured home that is the principal residence of the borrower, without regard to whether the security property is real, personal, or mixed.".

(c) Section 302 of the Federal Home Loan Mortgage Corporation Act is amended by adding at the end thereof the following new subsection:

"(l) The term 'mortgage insurance program' includes, in the case of a residential mortgage secured by a manufactured home, any manufactured home lending program under title I of the National Housing Act.". 12 USC 1702.

PURCHASE OF SECOND MORTGAGES

SEC. 203. (a) Section 302(b) of the Federal National Mortgage Association Charter Act is amended by adding at the end thereof the following new paragraph: Secured loans. 12 USC 1717.

"(5)(A) The corporation is authorized to purchase, service, sell, lend on the security of, and otherwise deal in (i) until October 1, 1987, conventional mortgages that are secured by a subordinate lien against a one- to four-family residence that is the principal residence of the mortgagor; and (ii) until October 1, 1985, conventional mortgages that are secured by a subordinate lien against a property comprising five or more family dwelling units. If the corporation, pursuant to paragraphs (1) through (4), shall have purchased, serviced, sold, or otherwise dealt with any other outstanding mortgage secured by the same residence, the aggregate original amount of such other mortgage and the mortgage authorized to be purchased, serviced, sold, or otherwise dealt with under this paragraph shall not exceed the applicable limitation determined under paragraph (2). Expiration dates.

"(B) The corporation shall establish limitations governing the maximum original principal obligation of conventional mortgages Principal limitations.

described in subparagraph (A). In any case in which the corporation purchases a participation interest in such a mortgage, the limitation shall be calculated with respect to the total original principal obligation of such mortgage described in subparagraph (A) and not merely with respect to the interest purchased by the corporation. Such limitations shall not exceed (i) with respect to mortgages described in subparagraph (A)(i), 50 per centum of the single-family residence mortgage limitation determined under paragraph (2); and (ii) with respect to mortgages described in subparagraph (A)(ii), the applicable limitation determined under paragraph (2).

Prohibitions.

"(C) No subordinate mortgage against a one- to four-family residence shall be purchased by the corporation if the total outstanding indebtedness secured by the property as a result of such mortgage exceeds 80 per centum of the value of such property unless (i) that portion of such total outstanding indebtedness that exceeds such 80 per centum is guaranteed or insured by a qualified insurer as determined by the corporation; (ii) the seller retains a participation of not less than 10 per centum in the mortgage; or (iii) for such period and under such circumstances as the corporation may require, the seller agrees to repurchase or replace the mortgage upon demand of the corporation in the event that the mortgage is in default. The corporation shall not issue a commitment to purchase a subordinate mortgage prior to the date the mortgage is originated, if such mortgage is eligible for purchase under the preceding sentence only by reason of compliance with the requirements of clause (ii) of such sentence.".

12 USC 1454.

(b)(1) Section 302(h) of the Federal Home Loan Mortgage Corporation Act is amended—

(A) in the first sentence, by striking out "first"; and

(B) by striking out "The maximum principal obligation" and all that follows through "associations." and inserting in lieu thereof the following: "Such term shall also include other secured loans that are secured by a subordinate lien against a property as to which the Corporation may purchase a residential mortgage as defined under the first sentence of this subsection.".

Expiration dates.

(2) Section 305(a) of such Act is amended by adding at the end thereof the following new paragraph:

12 USC 1454.

"(4)(A) The Corporation is authorized to purchase, service, sell, lend on the security of, and otherwise deal in (i) until October 1, 1987, residential mortgages that are secured by a subordinate lien against a one- to four-family residence that is the principal residence of the mortgagor; and (ii) until October 1, 1985, residential mortgages that are secured by a subordinate lien against a property comprising five or more family dwelling units. If the Corporation shall have purchased, serviced, sold, or otherwise dealt with any other outstanding mortgage secured by the same residence, the aggregate original amount of such other mortgage and the mortgage authorized to be purchased, serviced, sold, or otherwise dealt with under this paragraph shall not exceed the applicable limitation determined under paragraph (2).

Principal limitations.

"(B) The Corporation shall establish limitations governing the maximum original principal obligation of such mortgages. In any case in which the Corporation purchases a participation interest in such a mortgage, the limitation shall be calculated with respect to the total original principal obligation of such mortgage secured by a subordinate lien and not merely with respect to the interest pur-

chased by the Corporation. Such limitations shall not exceed (i) with respect to mortgages described in subparagraph (A)(i), 50 per centum of the single-family residence mortgage limitation determined under paragraph (2); and (ii) with respect to mortgages described in subparagraph (A)(ii), the applicable limitation determined under paragraph (2).

"(C) No subordinate mortgage against a one- to four-family residence shall be purchased by the Corporation if the total outstanding indebtedness secured by the property as a result of such mortgage exceeds 80 per centum of the value of such property unless (i) that portion of such total outstanding indebtedness that exceeds such 80 per centum is guaranteed or insured by a qualified insurer as determined by the Corporation; (ii) the seller retains a participation of not less than 10 per centum in the mortgage; or (iii) for such period and under such circumstances as the Corporation may require, the seller agrees to repurchase or replace the mortgage upon demand of the Corporation in the event that the mortgage is in default. The Corporation shall not issue a commitment to purchase a subordinate mortgage prior to the date the mortgage is originated, if such mortgage is eligible for purchase under the preceding sentence only by reason of compliance with the requirements of clause (iii) of such sentence.". Prohibitions.

AUTHORITY OF FEDERAL HOME LOAN MORTGAGE CORPORATION TO PURCHASE STATE AGENCY INSURED MORTGAGE LOANS

SEC. 204. Section 302(i) of the Federal Home Loan Mortgage Corporation Act is amended by striking out "a State or any agency or instrumentality of either" and inserting in lieu thereof "any of its agencies or instrumentalities". 12 USC 1451.

MULTIFAMILY MORTGAGE LOAN-TO-VALUE RATIO

SEC. 205. (a) The second sentence of section 302(b)(2) of the Federal National Mortgage Association Charter Act is amended by inserting after "mortgage" the first place it appears the following: "secured by a property comprising one- to four-family dwelling units". 12 USC 1717.

(b) The first sentence of section 305(a)(2) of the Federal Home Loan Mortgage Corporation Act is amended by inserting after "mortgages" the first place it appears the following: "secured by a property comprising one- to four-family dwelling units". 12 USC 1454.

LIMITATIONS ON PURCHASE OF CONVENTIONAL MORTGAGES ON MULTIFAMILY PROPERTIES

SEC. 206. (a) Section 302(b)(2) of the Federal National Mortgage Association Charter Act is amended by striking out the penultimate sentence and inserting in lieu thereof the following: "With respect to mortgages secured by property comprising five or more family dwelling units, such limitations shall not exceed 125 per centum of the dollar amounts set forth in section 207(c)(3) of this Act, except that such limitations may be increased by the corporation (taking into account construction costs) to not to exceed 240 per centum of such dollar amounts in any geographical area for which the Secretary of Housing and Urban Development determines under such section that cost levels require any increase in the dollar amount limitations under such section.". *Ante*, p. 1692. 12 USC 1713.

(b) Section 305(a)(2) of the Federal Home Loan Mortgage Corporation Act is amended by striking out the penultimate sentence and inserting in lieu thereof the following: "With respect to mortgages secured by property comprising five or more family dwelling units, such limitations shall not exceed 125 per centum of the dollar amounts set forth in section 207(c)(3) of the National Housing Act, except that such limitations may be increased by the Corporation (taking into account construction costs) to not to exceed 240 per centum of such dollar amounts in any geographical area for which the Secretary of Housing and Urban Development determines under such section that cost levels require any increase in the dollar amount limitations under such section.".

12 USC 1454.

12 USC 1713

BOARD OF DIRECTORS OF FEDERAL NATIONAL MORTGAGE ASSOCIATION

SEC. 207. The first sentence of section 308(b) of the Federal National Mortgage Association Charter Act is amended to read as follows: "The Federal National Mortgage Association shall have a board of directors, which shall consist of eighteen persons, five of whom shall be appointed annually by the President of the United States, and the remainder of whom shall be elected annually by the common stockholders.".

President of U.S.
12 USC 1723.

ANNUAL REPORT OF SECRETARY OF HOUSING AND URBAN DEVELOPMENT ON ACTIVITIES OF FEDERAL NATIONAL MORTGAGE ASSOCIATION

SEC. 208. Section 309(h) of the Federal National Mortgage Association Charter Act is amended by striking out the last two sentences and inserting in lieu thereof the following: "Pursuant to the authority provided in this subsection, the Secretary shall, not later than June 30 of each year, report to the Congress on the activities of the corporation under this title.".

12 USC 1723a.

PERIOD FOR APPROVAL OF ACTIONS OF FEDERAL NATIONAL MORTGAGE ASSOCIATION

SEC. 209. Section 309 of the Federal National Mortgage Association Charter Act is amended by adding at the end thereof the following new subsection:

12 USC 1723a.

"(i) If the Federal National Mortgage Association submits to the Secretary of Housing and Urban Development, after the date of the enactment of the Secondary Mortgage Market Enhancement Act of 1984, a request for approval or other action under this title, the Secretary shall, not later than the expiration of the forty-five-day period following the submission of such request, approve such request or transmit to the Congress a report explaining why such request has not been approved. Such period may be extended for an additional fifteen-day period if the Secretary requests additional information from the corporation. If the Secretary fails to transmit such report to the Congress within such forty-five-day period or sixty-day period, as the case may be, the corporation may proceed as if such request had been approved.".

Report.

Ante, p. 1689.

Extension.

FEDERAL HOME LOAN MORTGAGE CORPORATION GUARANTEE OF MORTGAGE-BACKED SECURITIES ISSUED BY OTHERS

SEC. 210. Section 306 of the Federal Home Loan Mortgage Corporation Act is amended by adding at the end thereof the following new subsection: 97 Stat. 198. 12 USC 1455. Prohibition.

"(h) The Corporation may not guarantee mortgage-backed securities or mortgage related payment securities backed by mortgages not purchased by the Corporation.".

PREFERRED STOCK OF FEDERAL HOME LOAN MORTGAGE CORPORATION

SEC. 211. Section 306(f) of the Federal Home Loan Mortgage Corporation Act is amended— 12 USC 1455.

(1) by inserting before the period at the end of the last sentence the following: ", and shall not be entitled to vote with respect to the election of any member of the Board of Directors"; and

(2) by adding at the end thereof the following new sentence: "Such preferred stock, or any class thereof, may have such terms as would be required for listing of preferred stock on the New York Stock Exchange, except that this sentence does not apply to any preferred stock, or class thereof, the initial sale of which is made directly or indirectly by the Corporation exclusively to any Federal Home Loan Bank or Banks.".

STUDY OF PREPAYMENT PENALTIES AND THE SECONDARY MORTGAGE MARKET

SEC. 212. Not later than one hundred and eighty days after the date of the enactment of this Act, the Secretary of Housing and Urban Development, following consultation with the Board of Directors of the Federal National Mortgage Association, the Board of Directors of the Federal Home Loan Mortgage Corporation, the President of the Government National Mortgage Association, the Board of Governors of the Federal Reserve System, the Federal Home Loan Bank Board, the Comptroller of the Currency, and the National Credit Union Administration Board, shall submit to the Congress a report regarding mortgage prepayment penalties and their impact on secondary mortgage market activities. Such report shall include— Report.

(1) a review of State laws and regulations regarding prepayment penalties;

(2) an evaluation of the impact of prepayment penalties on the ability to attract investors to the secondary mortgage market;

(3) an analysis of existing authority for lenders to offer mortgage instruments containing prepayment penalties; and

(4) a proposal for federally standardized mortgage instruments that would contain prepayment penalties in combination with features that would be attractive to prospective purchasers of homes, including below-market interest rates and prohibitions on nonrisk related settlement charges normally incurred by homeowners upon refinancing.

AUTHORITY OF SECRETARY OF HOUSING AND URBAN DEVELOPMENT REGARDING FEDERAL NATIONAL MORTGAGE ASSOCIATION OBLIGATIONS

SEC. 213. (a) The second sentence of section 309(b) of the Federal National Mortgage Association Charter Act is amended by inserting "before October 1, 1985," after "corporation".

Ante, p. 1696

(b) The last sentence of section 311 of the Federal National Mortgage Association Charter Act is amended by inserting after "issuances" the following: "by the Association and all issuances of stock, and debt obligations convertible into stock, by the corporation".

12 USC 1723c

Approved October 3, 1984.

LEGISLATIVE HISTORY—S. 2040 (H.R. 4557):

HOUSE REPORT No. 98-994, Pt. 1, accompanying H.R. 4557 (Comm. on Energy and Commerce).
SENATE REPORT No. 98-293 (Comm. on Banking, Housing, and Urban Affairs).
CONGRESSIONAL RECORD:
Vol. 129 (1983): Nov. 17, considered and passed Senate.
Vol. 130 (1984): Feb. 9, earlier passage vitiated; considered and passed Senate.
Sept. 11, considered and passed House, amended.
Sept. 26, Senate concurred in House amendment.

○

WORK ORDER REQUEST FORM W.O. [17] LS-1187

KEYWORDS: INSURANCE ASSIGNED: Ford

INVESTMENTS

REQUEST FOR: New Bill TAKEN BY: Barnes

SUBJECT: Limitations on Investments by Insurance Co's

REQUESTED FOR: SC SL&C BY: Rod Mourant PHONE: 465-3844

DELIVER TO: Sen. Pearce, Cap 101

INSTRUCTIONS: Draft bill relating to federal preemption of state limitations on investments by insurance companies.

OBTAIN	SPECIAL DRAFTING INSTRUCTIONS ATTACHED [ ] AUTHORIZED TO CONFER WITH _____ RETURN _____ _____ TO REQUESTOR APPROVED: X DIRECTOR, LEGAL SERVICES
REVIEWED _____ IN 04/09/91 DUE _____ TYPED: Draft _____ Date _____ Final _____ Date _____ PROOFED _____ DELIVERED _____	SPECIAL INSTRUCTIONS to TYPING/PROOFING Request for DRAFT

Sponsor

TO: Mike Ford, Legislative Counsel
Legal Services Division

FROM: Rod R. Mourant, Legislative Aide
Senate Labor & Commerce Committee

DATE: April 9, 1991

RE: Legislation - Investment Limitations

Mike, please draft the attached with the appropriate statutory references. The measure is self explanatory. Please show Senate Labor & Commerce as the sponsor.

Thanks.

Attachment

DRAFT #1 3-26-91 04:00

IN THE LEGISLATURE OF THE STATE OF ALASKA

SEVENTEENTH LEGISLATURE - FIRST SESSION

A BILL

For an Act entitled: "An Act for the purpose of preventing federal preemption of state limitations on investments by insurance companies"

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

* Section 1. The federal preemption provided in the Secondary Mortgage Market Enhancement Act of 1984, 15 U.S.C. Section 77r-1 does not apply to prohibitions or limitations on the purchase of, holding of, or investment in securities by persons transacting the business of insurance in Alaska under AS 21.

* Section 2. This Act takes effect immediately.

0153N

SB

262

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: Representative Davide Finkelstein, Chair
House Labor & Commerce Committee

FROM: Senator Drue Pearce

DATE: May 16, 1991

RE: CSSB 262 (L&C), Relating to altering administrative employees overtime wages

CSSB 262 would make our Alaska Statutes consistent with federal regulations regarding overtime wages for management employees. The bill was introduced at the request of hotel and restaurant owners and operators. It comes as a result of a compromise worked out between employees and management, therefore organized labor has adopted a neutral policy toward the legislation.

Alaska is the only state which requires management employees to spend at least 80% of their time in administrative functions before being exempted from overtime pay requirements. Currently most states match federal regulations which only require 60% of time spent on management duties.

In the Labor & Commerce Committee an extra safeguard was made for low income management to ensure that their income was not further diluted by an inability to collect overtime. In order to qualify under the new percentages of this legislation, a management employee must make two times minimum wage.

These requirements have a great impact on the hotel/restaurant industry, where most management employees also "work the line". It is very difficult, if not impossible to meet this hourly requirement. Consequently, many employers and management employees are working in violation of the current law.

Passing this legislation will alleviate these discrepancies. I urge your individual support.

Thank you.

FISCAL NOTE

No. 1

STATE OF ALASKA
1991 LEGISLATIVE SESSION

BILL Version: SB 262

(S) Publish Date: 5/10/91

Revision Date:

Department Affected: Labor

Title: "An Act relating to coverage of certain executive... under... minimum wage..."

BRU: Labor Standards & Safety

Component: Wage & Hour

Sponsor: Senate Labor & Commerce

Requestor: Senate Labor & Commerce

COMPONENT SERIAL NO. 345

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 92	FY 93	FY 94	FY 95	FY 96	FY 97
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND&STRUCTURES						
GRANTS,CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

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

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of current year impact: None

ANALYSIS: (Attach a separate page if necessary)

Changes in CSSB 262 (LLC) have no fiscal impact. This fiscal note is appropriate.

5-8-91 RLM

date Comte Aide (initial)

Prepared by: Bob Libbey, Director Phone: 264-2452

Division: Labor Standards & Safety Date: 5/2/91

Approved by Commissioner: Nancy Bear Usera

Agency: Department of Labor Date: 5/2/91

Distribution (by preparer): Legislative Finance, Legislative Sponsor, Requestor, OMB, & Impacted Agency(ies).

Alaska State Legislature

Senator Drue Pearce, Chair
Senator Virginia Collins, Vice Chair
Senator Dick Eliason
Senator Rick Halford
Senator Jay Kerttula

WHILE IN JUNEAU
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(907) 465-3844

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ANCHORAGE, ALASKA 99504
(907) 561-2018

SENATE LABOR AND COMMERCE COMMITTEE

MEMORANDUM

TO: Members of the Committee

FROM: Senator Drue Pearce Pearce

DATE: May 6, 1991

RE: SB 262, Relating to altering administrative employees overtime wages

SB 262 would make our Alaska Statutes consistent with federal regulations regarding overtime wages for administrative employees. The bill was introduced at the request of hotel and restaurant owners and operators. It comes as a result of a compromise worked out between employees and management, therefore organized labor has adopted a neutral policy toward the legislation.

Alaska is the only state which requires management employees to spend at least 80% of their time in administrative functions to be exempted from overtime pay requirements. Currently most states match federal regulations which only require 60% of time spent on management duties.

These requirements have a great impact on the hotel/restaurant industry, where most management employees also "work the line". It is very difficult, if not impossible to meet this hour requirement. Consequently, many employers and management employees are working in violation of the current law.

Passing this legislation will alleviate these discrepancies. I urge your individual support.

Thank you.

Alaska State Legislature

SENATOR BETTYE FAHRENKAMP
CHAIRMAN, LEGISLATIVE COUNCIL
CHAIRMAN, ADMINISTRATIVE REGULATION
REVIEW COMMITTEE
119 N. CUSHMAN STREET, SUITE 201
FAIRBANKS, ALASKA 99701
OFFICE (907) 452-4882
HOME (907) 456-2899

Senate

WHILE IN JUNEAU
P.O. BOX V
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CAPITOL, ROOM 125
OFFICE (907) 465-3834
HOME (907) 780-6027

May 17, 1991

MEMORANDUM

TO: Chairman David Finkelstein
House Labor and Commerce Committee Members

FROM: Sen. Bettye Fahrenkamp

re: SB 262, Altering Administrative Employees Overtime Wage Laws.

At the request of the hotel/restaurant operators, I helped draft Senate Bill 262, which would bring Alaska statutes in line with federal regulations regarding overtime wages for administrative employees. SB 262 was introduced by the Senate Labor and Commerce Committee and passed the Senate recently by an 18-0 vote.

This bill is a compromise worked out between organized labor, hotel/restaurant management and the Department of Labor. *Some have characterized SB 262 as an anti-labor bill. I have been given assurances by Mano Frey (President, AFL-CIO) and Harriet Lawler (Business Manager for the hotel workers union) that they do not view it as such.* Rather, SB 262 corrects an inconsistency between state and federal law.

Currently Alaska is the only state which requires management employees to spend at least 80% of their time (most match federal regs. which require only 60%) in administrative functions to be exempted from overtime pay requirements. For many hotel/restaurant managers who help work "on the line" during peak work loads, this is a difficult, if not impossible requirement to meet.

Consequently, many employers and management employees in Alaska are are knowingly or unknowingly working in violation of the current law.

For administrative employees benefit, SB 262 mandates that they be paid **at least twice the minimum wage** if they are to be exempted from overtime laws.

Also, because of the section of statute being amended, employers will now be required to keep track of the hours the administrative employee spends in management versus line functions. **Because this function is currently the responsibility of the employee (most of whom are unaware of these requirements,) few are claiming or getting paid for overtime.**

For a good number of years I have been a strong advocate for organized labor in this legislature. During that time we have increased the demands upon businesses and their owners one hundred fold--from increased wages to improved work conditions to better workers' compensation coverage. ***This proposal is a moderate request by management which gives them some breathing room and does not adversely affect organized labor.***

Given the compromise process which has already occurred, I respectfully request the passage of SB 262 from House Labor and Commerce Committee. Thank you for your consideration and assistance.

7-LS1142\D.1
Cramer
05/06/91

AMENDMENT

OFFERED IN THE SENATE BY SENATOR PEARCE

TO: SB 262

Page 2, line 23, after "**activities**":

Insert "**and so long as the employee earns at least twice the minimum wage for the employee's regular hours of work**"

SENATE COMMITTEE REPORT

FIRST COMMITTEE OF REFERRAL

DATE: 4/22/91 FURTHER:

Date of 5-Day Notice: 5-2-91
(in accordance with Uniform Rule 23)

DATE TURNED INTO OFFICE: _____

Labor and Commerce Committee considered SB 262

Coverage of certain executive or administrative employees of retail or service establishments under the state minimum wage laws; efd.

and recommended:

[✓] **replace with** _____ **CS** SB 262 (L+C) [ ] **same title** [✓] **new title**

[ ] **attached amendment(s)**

[ ] _____ **letter of intent adopted**

[ ] **do pass**

[ ] **do not pass**

[ ] **no recommendation**

[✓] **individual recommendations**

[ ] **further referral to** _____

ATTACHES NEW FISCAL NOTE(S):

Department(s)/Date:	Department(s)/Date:
[ ] fiscal note(s) _____	[✓] zero fiscal note(s) LABOR/5-2-91
[ ] appropriation-no fiscal note	[ ] Governor's bill w/fiscal note

SIGNING DO PASS:

OTHER RECOMMENDATIONS:

True, Price, do Pass

Chair: Signature and Recommendation

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: Representative Davide Finkelstein, Chair
House Labor & Commerce Committee

FROM: Senator Drue Pearce

DATE: May 16, 1991

RE: CSSB 262 (L&C), Relating to altering administrative employees overtime wages

CSSB 262 would make our Alaska Statutes consistent with federal regulations regarding overtime wages for management employees. The bill was introduced at the request of hotel and restaurant owners and operators. It comes as a result of a compromise worked out between employees and management, therefore organized labor has adopted a neutral policy toward the legislation.

Alaska is the only state which requires management employees to spend at least 80% of their time in administrative functions before being exempted from overtime pay requirements. Currently most states match federal regulations which only require 60% of time spent on management duties.

In the Labor & Commerce Committee an extra safeguard was made for low income management to ensure that their income was not further diluted by an inability to collect overtime. In order to qualify under the new percentages of this legislation, a management employee must make two times minimum wage.

These requirements have a great impact on the hotel/restaurant industry, where most management employees also "work the line". It is very difficult, if not impossible to meet this hourly requirement. Consequently, many employers and management employees are working in violation of the current law.

Passing this legislation will alleviate these discrepancies. I urge your individual support.

Thank you.

Bill No: Senate Bill No. 262 (L&C) **Date:** May 13, 1991

Title: "An Act relating to coverage of certain executive or administrative employees of retail or service establishments from the overtime requirements of the state minimum wage laws"

Contact: Eileen Plate 465-2700

Committee Substitute for Senate Bill 262 (L&C) seeks to align Alaska's overtime exemption criteria for executive/administrative employees in retail and service establishments more closely with the criteria applied under the Fair Labor Standards Act (FLSA).

The FLSA distinguishes executive/administrative employees in retail and service establishments from those similarly employed in other establishments. Specifically, for the purposes of exemption, the FLSA provides that employees in retail or service establishments are exempt if the employees spend at least 60% of their time performing executive/administrative duties. For employees in other establishments, the requirement is 80%.

Current Alaska law exempts bona fide executive and administrative employees from Alaska's Wage and Hour Act, which includes overtime laws; however, no differentiation is made between types of establishments. Departmental regulations require use of the 80% criteria "across-the-board" for determining whether or not an employee is a bona fide executive or administrative employee for overtime exemption purposes.

As permitted under the FLSA, under the provisions of this bill, the 60% work responsibility criteria would be used. Specifically, employees of retail or service establishments who spend at least 60% of their time each week performing executive/administrative duties would be exempt from Alaska's overtime law. The bill further stipulates that the exemption would be operative only if the executive/administrative employee earns at least twice the minimum wage, based upon a 40 hour work week. Presently, this would be $380 per week ($4.75/hr (minimum wage) x 2 x 40 hours).

Inasmuch as many retail and service establishments in Alaska (hotels and restaurants, for example) employ large numbers of lower paid workers, the wage floor provisions in the committee substitute mitigate the Department's concern regarding a relaxation of the overtime law.

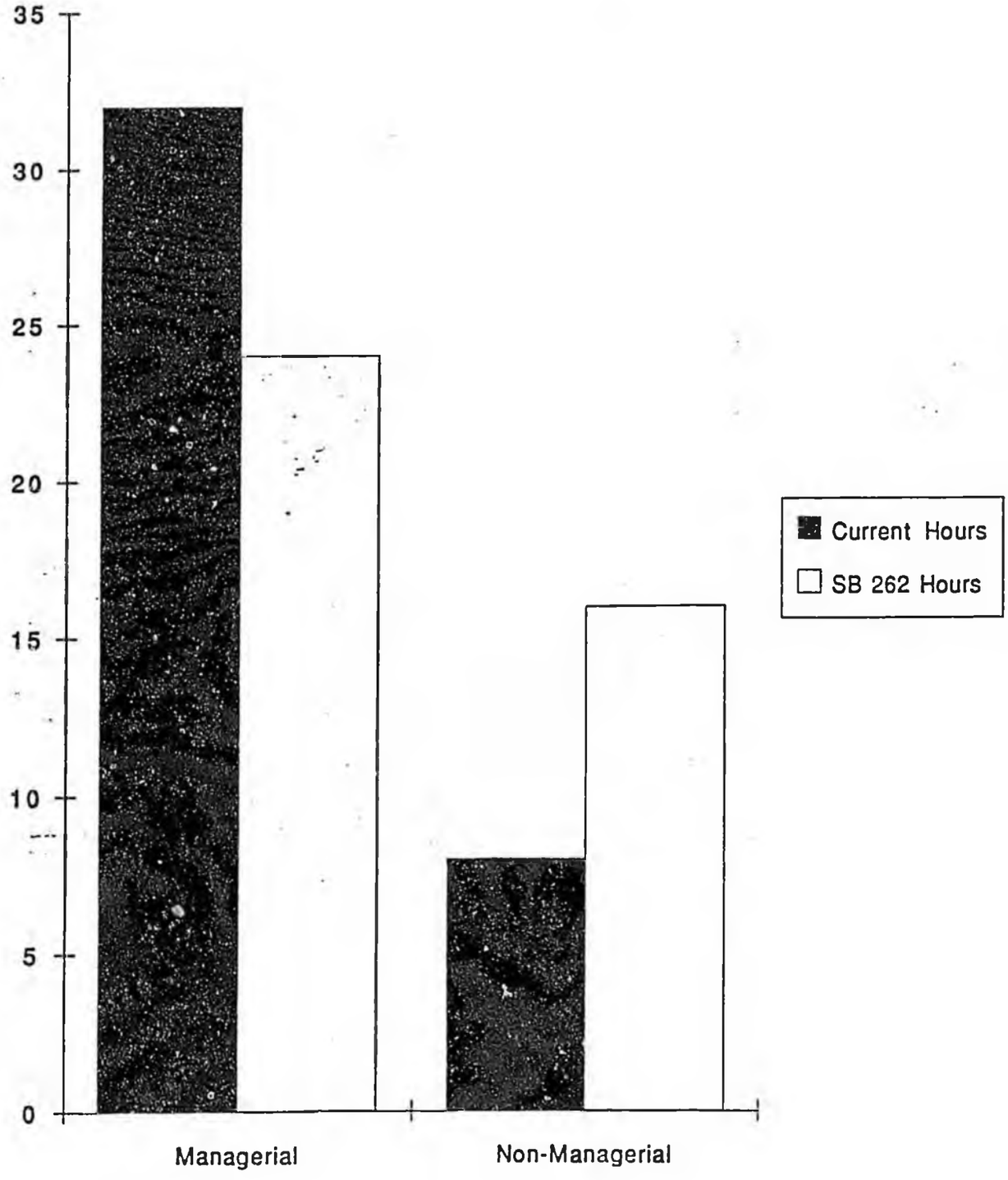
The provisions of this bill will not have a fiscal impact on the Department.

APPROVED:

Nancy Bear Usera, Commissioner
Department of Labor

POSITION PAPER/Department of Labor

SB 262 MANAGERIAL HOUR COMPARISON



Alaska Cabaret, Hotel,
Restaurant & Retailers Association

P.O. Box 100830 • Anchorage, Alaska 9951
601 K Street • (907) 276-3535 • Fax: (907) 272-3051

May 06, 1991

Alaska Senate Labor & Commerce Committee
Senator Drue Pearce, Chairman
Senator Virginia Collins, Vice-Chairman
Senator Dick Eliason
Senator Rick Halford
Senator Jay Kerttula

Dear Committee Members:

The Alaska Cabaret, Hotel, Restaurant and Retailers Association supports the intent of Senate Bill 262 and urges that this proposed legislation be enacted.

Thank you for your consideration of our position.

Yours truly,

Carol Wilson

Carol Wilson
Executive Director

ALASKA VISITORS ASSOCIATION

501 West Northern Lights, Suite 201 • Anchorage, Alaska 99503

Tel: (907) 276-6663 • Fax: (907) 258-4036

May 6, 1992

Senator Shirley Craft
Alaska State Legislature
P.O. Box V (MS 100)
Juneau, Alaska 99801

Dear Senator Craft:

The Alaska Visitors Association Government Relations Committee supports SB 262 which would reduce the percentage of time a management employee would be required to devote to actual management or administrative functions and allow for utilization of the employee for general operation purposes.

The visitor industry must be flexible in both managerial and operational hours due to the travel patterns established nation wide. This bill would allow us that necessary flexibility, would bring Alaska more in line with other states that are our competitors and finally allow Alaska to be consistent with federal guidelines.

We strongly encourage the passage of this bill.

Respectfully,

Bob Berto
President

Johne Binkley
Vice President

cc: Members, House Judiciary Committee
Members, AVA Govt Relations Committee

SB

270

CLASSES OF RESPONSE ACTION CONTRACTORS

I. Response Group - RAC actually controls the response for some period of time.

A. Alyeska Pipeline Service Company

Alyeska prepared an initial (72 hour) spill response plan and gave it to shippers with which Alyeska contracts for response. The initial response plan was to be incorporated into the shipper's contingency plan as ultimately approved by the state. Alyeska, by contract with the shipper, responds immediately, even without a request by the contingency plan holder. Alyeska remains as the lead responder and controls the response until the spiller takes over or the spill response is federalized. Alyeska only performs this function in Prince William Sound for TAPS traffic to and from the Valdez terminal.

II. Response/Resource Group - Cooperative organizations responding as a resource on behalf of members.

A. Cook Inlet Spill Prevention Response, Inc.

CISPRI is currently a 10-member cooperative providing spill response resources for its members. CISPRI is preparing a technical reference manual for use by its members. The co-op members are contingency plan holders who contract with CISPRI for response services that the spiller or plan holder directs. CISPRI operates in Cook Inlet.

B. Alaska Clean Seas

ACS is a cooperative similar to CISPRI. It currently has 13 members, most of whom are contingency plan holders. ACS developed a manual of services or response strategies that each member could incorporate into a contingency plan, such as procedures for in-situ burning or preparation of an equipment database. ACS provides response services on behalf of its members at the request of a member. ACS works as part of the unified response team which includes ACS employees, independent suppliers' employees, and village response teams. ACS operates in the North Slope.

III. Resource Suppliers - Companies which contract with

primary responder RACs or contingency plan holders to supply equipment and personnel.

A. VECO
B. VCRA
C. Martech

Each of these firms are independent contractors with a RAC or a contingency plan holder to provide additional response resources. Frequently, pre-spill contractual arrangements are made for those supplies and services. For instance, Alyeska and CISPRI contract with VECO for resources. Contracts can also be entered into on the spot during a spill response. These firms neither control the response nor direct contingency plan compliance.

IV. Pinch Hitters - "Minor" players performing specific tasks during response activities.

A. Contractual Services - These are individuals or groups which have a contractual arrangement in advance or on the spot to perform a discrete task as assigned. The contract can be with any of the other types of RACs or with the contingency plan holder or spiller. For example, Alyeska has contractual arrangements with fishing vessels to deploy boom and conduct oil containment activities during a spill response.

B. Volunteers - These are individuals or groups who assist on their own initiative or on request by some spill response participant.

SECTIONAL ANALYSIS

PROPOSED RESPONSE ACTION CONTRACTOR LEGISLATION

Section 1. Amends current law establishing strict liability for certain persons (persons who own or control oil or other hazardous substances) for damages to persons or property or natural resources. The amendments (1) clarify that the subsequent sections of the bill (secs. 3 and 4) take precedence over the "nothwithstanding" language in current law; and (2) delete the definition of "damage," which definition is revised and reinstated in section 2 of the bill.

Section 2. Adds a new subsection to the strict liability section (above), defining damages. The term is expanded to include damages for which a response action contractor (RAC) is immunized from liability by subsequent sections of the bill. Has the effect of clarifying that if a RAC is immunized from liability for an action by the bill, the liability for that action flows back to the spiller ← or owner of the oil.

Section 3. Amends current law dealing with hazardous substance RAC's to limit the applicability of the section to substances other than oil. Has the effect of retaining simple negligence as the standard for those responding to releases of hazardous substances other than oil. (Note that a RAC responding to a non-oil release may be strictly liable for damages in certain circumstances; for example, if the RAC's acts are "contrary to a response plan or order by a state or federal agency having jurisdiction over the release..."

Section 4. Creates a new section dealing with the liability of RAC's responding to the release of oil. Limits liability to acts of gross negligence or intentional misconduct, with certain exceptions. The exceptions are:

(1) The RAC is the spiller or owner of the oil;
(2) The RAC substantially deviated from a contingency plan that that RAC either prepared the C-plan or agreed to comply with the terms

of it, unless the federal or state on-scene coordinator ordered the deviation;

(3) The RAC's act or omission caused personal injury or death;

(4) The RAC's act or omission caused damage to personal property; or

(5) The RAC's act or omission occurred more than 30 days after the release.

States that if an RAC's liability is not limited (that is, if the act or omission falls within one of the exceptions above), the RAC is liable for acts of simple negligence. PROBLEM: This language may have an unintended effect: When the RAC is also the spiller, the language could be interpreted to set the liability standard at simple negligence instead of strict liability.

Defines "response action" to include only actions taken during mitigation and clean-up. Current law, applicable to both oil and other hazardous wastes, includes a broad spectrum of other activities such as planning, mapping and engineering in the definition. The bill would leave this definition unamended for hazardous substances other than oil, but limit the definition for oil.

Sections 5 and 6. Moves the definitions of "response action contract" and "response action contractor" from AS 46.03.823 (dealing, after amendment, only with response actions for hazardous substances other than oil) to the general definition section. Thus, the definitions would apply to both response action contractor sections.

Section 7. Sets up an interim review of response action contractor liability, with a report to the legislature by January 15, 1992. The structure of the review is left open for the committee/legislature to fill in as appropriate.

Section 8. Immediate effective date.