

ALASKA LEGISLATURE COMMITTEE FILES 1993-1994 8672

7924 HOUSE LABOR & COMMERCE

185

	VIRGINIA	WISCONSIN
Availability	Guaranteed issue.* §38.2-3431(D) (*1993 HB 2353 amendments awaiting Governor's signature)	Guaranteed issue (1992 A 655) §635.26
Group Size	2-23 for primary small group, 2-50 for small group §38.2-3431(B)	2-25 §635.20(12)a
Individual Policies	Subject if any portion of the premiums or benefits is paid by the employer, if the employee is reimbursed or if the plan is treated as part of a program for the purpose of the US Internal Revenue Code. §38.2-3431(A)	Applies to individual policies §635.02(8)
Case Characteristics	Based on a community rate subject to demographic rating including age, gender and geography. May not use claim experience, health status or duration.*	Relevant demographics of small employer as considered by carrier in determination of premiums; claims experience, health status, and duration of coverage are not case characteristics §6305.05(2)(3), 635.18(4)
Rating Restrictions	Premium rates charged by a small employer may deviate above or below the community rate by no more than 20% for claim experience, health status and duration only during a rating period for such groups within similar demographics for the same or similar coverage. Rating factors, including case characteristics will be applied consistently with respect to all primary small employers in similar demographics. Adjustments in rates for claims experience, health status and duration from issue may not be applied individually.*	Premium rates for small employer plans with similar case characteristics may not vary from the midpoint rate for those small employers by more than 35% of that midpoint rate §635.05(1)
Transitional Period	No provision	3 years
Annual Rating	No provision	Trend plus 15% plus changes in case characteristics §635.05(2)2
Renewability	Guaranteed renewable except "for cause" §38.2-3432(B)	Guaranteed renewable except "for cause" §635.07
Whole Groups	Prohibits carriers from excluding individuals because of health status §38.2-3432(1)(3)	Insurer must offer coverage to the entire group §635.25(2)
Continuity of Coverage	Preexisting condition limitation of 12 months; time shall be credited to a person covered under previous individual or group coverage in the small employer market of equal or greater value if coverage was continuous 30 days prior to new coverage, exclusive of applicable waiting periods. Late enrollees may be excluded for 18 months. §38.2-3432(1)(3)	Preexisting condition limitation of 12 months; credit shall be given to individuals who were previously covered by qualifying coverage if the coverage was continuous 30 days prior to the new coverage, exclusive of applicable waiting periods §635.17
Reinsurance Type	No provision	Reinsurance type and assessments shall be studied by the Health Insurance Board §635.23
Reinsurance Price	No provision	No provision
Cost Sharing	No provision	No provision
Assessments	No provision	No provision
Other		
Effective Date	April 1, 1994	Day after publication

	WYOMING
Availability	Guaranteed issue §26-19-306
Group Size	2-25 §26-19-302(xciii)
Individual Policies	Does not apply to individual policies which are subject to approval for policy form §26-19-303
Case Characteristics	Relevant demographics of small employer as considered by carrier in determination of premiums; claims experience, health status, and duration of coverage are not case characteristics §26-19-303(vi)
Rating Restrictions	Index rate for one class of business shall not exceed the index rate for any other class of business by more than 20%; for a class of business, the premium rates charged small employers with similar case characteristics shall not vary from the index rate by more than 25% §26-19-304
Transitional Period	3 years §26-19-304(a)viii
Revel Rating	Trend plus 15% plus changes in case characteristics §26-19-304(a)iii(B)
Renewability	Guaranteed renewable except "for cause" §26-19-305
Whole Groups	Insurers are required to offer coverage to the entire group §26-19-306(c)vi
Continuity of Coverage	Preexisting condition limitation of 12 months; credit shall be given for time person was previously covered if previous coverage was continuous 30 days prior to new coverage, exclusive of applicable waiting periods, or for a person who becomes unemployed and are provided coverage if the person obtains employment and coverage within 60 days §26-19-306(e)i
Reinsurance Type	Prospective/mandatory §26-19-307
Reinsurance Price	Whole Group: 150% Individual: 500% §26-19-307(k).ii
Cost Sharing	\$5,000 §26-19-307(l)x,v
Assessments	Not to exceed 5% of the total small group premiums §26-19-307(n)A
Other	
Effective Date	No earlier than March 31, 1993

WASH. POST 3/14/93

JANE BRYANT QUINN

A 'Community' Approach To Cutting Health Costs

Health insurers like to think they're part of the answer to the high cost of health care. But they're actually part of the problem.

They've figured out ways to "cherry-pick" the insurance market—keeping the healthy, who don't file many medical claims, while throwing sick people overboard.

Big-company health plans usually aren't affected. But small companies and individuals have been taking it in the teeth. If one person in a small group gets sick, rates may rise by 50 percent or 100 percent for everyone.

President Clinton's health care reforms are certain to address this issue. In the meantime, a majority of the states are trying out ideas of their own.

The egalitarian solution is a pricing system known as "community rating." This is how health insurance used to be priced, and how some Blue Cross/Blue Shield plans are still priced. In setting rates, the healthy are averaged with the sick. Everyone gets the same or a similar rate (although people are sometimes grouped by geographical area, family size or other specific characteristics).

Community rating is often coupled with "guaranteed issue"—meaning that the insurers have to accept all applicants, regardless of health.

Five states are in the process of introducing community rates. Two—New York and New Jersey—aim to make premiums uniform within specified groupings, for example for everyone living in the same geographical area. In the others—Oregon, Maine and Vermont—limited rate variation is allowed, although rates can't be increased for those in poor health. The laws in New York and New Jersey cover individual policies as well as small-group plans. The others cover only small groups.

For buyers of individual insurance, community rating could lead to problems. Everyone is averaged together, so younger or healthier people may have to pay more to help cover the claims of the sick. As a result, larger numbers of healthy people may decide not to buy. "I think you should rate separately for children, for young adults and for old adults," said Deborah Chollet, director of the Center for Insurance Research at Georgia State University.

Instead of going all the way to community rating, 25 states have recently passed "rate banding" laws for small-group insurance (small groups are often defined as groups of up to 25, but sometimes up to 50). These laws stop insurers from hitting small companies with excessive price increases when one employee or dependent comes down with a costly illness.

Under rate banding, a small company's health insurance premiums have to be set within a fixed range. Rates can rise in line with the trend in each insurer's medical claims costs, now increasing at around 15 percent annually (that covers increased use of medical services, as well as rising prices for health care). But a company with an employee who's grievously ill typically cannot be charged any more than 15 percent above average.

For a company paying below the average, there might still be a sizable premium increase in the first year that a worker falls ill. But small companies wouldn't take a 50 percent or 100 percent hit. Furthermore, their premium increases would soon fall back to the medical trend rate.

Rate-banding states allow several bands that separate people by circumstances such as age and health. So rates among different types of employer groups can vary by more than 15 percent. Still, the law stops aggressive insurers from picking off the best risks and dumping the rest.

States with rate banding usually tie it to guaranteed-issue—forcing the insurers to take all comers. So small companies with, say, one sick employee can still get a policy for all.

Rate-banded group insurance should not be as expensive for younger or healthy people as community-rated policies might become, said Chris Petersen, assistant general counsel for the Health Insurance Association of America. That's because there are many more healthy people than sick ones. If more small companies buy insurance, they'll increase the number of healthy people in the pool, relative to the number of sick ones. So overall, rates shouldn't have to climb a lot, he said.

Although these programs make insurance pricing more predictable, they don't solve the affordability problem. But consider them fingers in the dike until the country figures out how to pay for basic care for everyone.

Also appeared in
NY Daily News 3/14



Health Insurance Association of America

March 24, 1993

The Honorable Cynthia Toohey
Cochairperson, House HESS Committee
Alaska State House of Representatives
Juneau, Alaska 99811

Re: SSHB 12

Dear Representative Toohey:

Thank you for taking time to discuss with me the small employer health insurance reforms contained in SSHB12. As we discussed, it is not possible to determine what the premium will be for the standard or basic plans in Alaska, until the Health Benefits Committee, as established by SSHB12, recommends the benefits to the Alaska Small Employer Reinsurance Association.

However, to give you a frame of reference as to what other states' standard and basic plans include, and what one insurance carrier charges in another state, I asked an HIAA member company to price a specific example: a five employee group, comprised of 3 males and two females all age 40 with employee coverage only (no dependents) for the average geographic rate in Florida. The premiums for this example were \$84/month/employee for the basic plan and \$145/month/employee for the standard plan.

These rates are not be reflective for Alaska as the rates will vary by: the type of benefits determined by the Alaska Health Benefits Committee and Alaska Reinsurance Association, by carrier, by age, gender, family composition, industry, the geographic region within the state and for the difference in health care provider costs. Each carrier will set its own premium rates for the benefits determined for the basic and standard plans, therefore, any given carrier may be above or below other carrier's rates for the same type of coverage.

Attached is a copy of the Florida basic and standard plans for both indemnity carriers and HMOs. If I can be of any additional assistance in answering your or the committee members' questions about the small employer health market reforms, please do not hesitate to contact me.

Sincerely,

A handwritten signature in cursive script that reads "Jan Andrea Meisels".
Jan Andrea Meisels
Legislative Director

JAM/bhs
attachment

FLORIDA SMALL GROUP INDEMNITY DESIGNS

	<u>STANDARD PLAN</u>	<u>BASIC PLAN</u>
Maternity Services	Same as Any Other Illness, (80/20)	Same as Any Other Illness, (60/40)
Infertility and Sterilization Services	Not Covered	Not Covered
Prescription Drugs	80/20 Coinsurance	Not Covered
Maximum Copay Out-of-Pocket Limit	\$2,000 Per Person With a Two Person Limit	\$4,800 Per Person With a Two Person Limit
Annual Deductible	\$500 Per Person	\$250 Per Person
Maximum Annual Limit	3 Person Limit	3 Person Limit
Annual Calendar Year Maximum Benefit	N/A	\$50,000
Lifetime Policy Maximum	\$1,000,000	N/A

FLORIDA SMALL GROUP INDEMNITY DESIGNS

	<u>STANDARD PLAN</u>	<u>BASIC PLAN</u>
Physician Services		
-Primary Care Physician Office Visits	80/20 Coinsurance	60/40 Coinsurance - However, first \$150 in physician office services, (including lab tests) will be paid without coinsurance or deductible application.
-Specialist Consultation, Diagnosis, and Treatment		
-Other Outpatient Nonsurgical Physician Care		
-Periodic Physical Exams (Maximum 1/CY)		
-Surgical Care In Physician's Office (Carriers may limit non-surgical back treatments to ten visits)		
Hospital Services		
-Emergency Care through Primary Care Physician's Office	80/20 Coinsurance	60/40 Coinsurance
-Emergency Care Services through Emergency Room Hospital ER visit (waived if admitted or if other safe and adequate care is not available)	\$25 Copay Per Visit	\$25 Copay Per Visit
Ancillary Services		
-Home Health Care	80/20 Coinsurance	Not Covered
-Ambulance	80/20 Coinsurance	60/40 Coinsurance
-Skilled Nursing Facility (Maximum 100 days lifetime)	80/20 Coinsurance	Not Covered
-Durable Medical Equipment	80/20 Coinsurance	60/40 Coinsurance - (These services may be included in case management)
Mental and Nervous Disorders		
-Inpatient Annual Maximum Inpatient Benefit	80/20 Coinsurance \$5,000	60/40 Coinsurance \$500
-Outpatient Visit Maximum Number of Outpatient Visits	80/20 Coinsurance With a Maximum Allowable Charge of \$50 20 Visits/CY	60/40 Coinsurance With a Maximum Charge of \$50 5 Visits/CY
-Lifetime Maximum	\$20,000	
Alcoholism and Chemical Dependency		
-Inpatient Detoxification (as medically appropriate)	Not Covered	Not Covered
-Outpatient Visits	Not Covered	Not Covered

FLORIDA SMALL GROUP HMO PLAN DESIGNS

	<u>STANDARD PLAN</u>	<u>BASIC PLAN</u>
Maternity Services	Same as Any Other Illness	Same as Any Other Illness
Infertility and Sterilization Services	Not Covered	Not Covered
Prescription Drugs	\$ 7 Copay for Generic Drugs/ \$ 14 Copay for Brand Name Drugs	Not Covered
Maximum Copay Out-of-Pocket Limit	200% of the Total Annual Premium	200% of the Total Annual Premium



Health Insurance Association of America

March 24, 1993

The Honorable Cynthia Toohey
Cochairperson, House HESS Committee
Alaska State House of Representatives
Juneau, Alaska 99811

Re: SSHB 12

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These rates are not be reflective for Alaska as the rates will vary by: the type of benefits determined by the Alaska Health Benefits Committee and Alaska Reinsurance Association, by carrier, by age, gender, family composition, industry, the geographic region within the state and for the difference in health care provider costs. Each carrier will set its own premium rates for the benefits determined for the basic and standard plans, therefore, any given carrier may be above or below other carrier's rates for the same type of coverage.

Attached is a copy of the Florida basic and standard plans for both indemnity carriers and HMOs. If I can be of any additional assistance in answering your or the committee members' questions about the small employer health market reforms, please do not hesitate to contact me.

Sincerely,


Jan Andrea Meisels
Legislative Director

JAM/bhs
attachment

FLORIDA SMALL GROUP HMO PLAN DESIGNS

	<u>STANDARD PLAN</u>	<u>BASIC PLAN</u>
Physician Services		
(All must be provided by or authorized by Primary Care Physician)		
-Primary Care Physician Office Visits	\$ 10 Copay Per Visit	\$ 10 Copay Per Visit
-Specialist Consultation, Diagnosis, and Treatment	\$ 10 Copay Per Visit	\$ 20 Copay Per Visit
-Other Outpatient Nonsurgical Physician Care	\$ 10 Copay Per Visit	\$ 20 Copay Per Visit
-Periodic Physical Exams (Maximum 1/CY)	No Charge	No Charge
-Surgical Care in Physician's Office	\$ 25 Copay Per Procedure	\$ 50 Copay Per Procedure
(Carriers may limit non-surgical back treatments to ten visits)		
Hospital Services		
-Inpatient Care at Participating Hospitals (including all general services and semi-private room)	\$100 Per Day, days 1-5 Balance Paid at 100%	\$250 Per Day, days 1-5 Balance Paid at 100%
-Outpatient Surgical Care	\$ 50 Copay Per Procedure Covered in Full	\$100 Copay Per Procedure Covered in Full
-Outpatient Non-Surgical Care (including x-ray and lab)	Covered in Full	Covered in Full
-Preadmission Testing		
Emergency Services		
-Emergency Care through Primary Care Physician's Office	\$ 10 Copay Per Visit	\$ 10 Copay Per Visit
-Emergency Care Services through Emergency Room		
In Service Area Hospital ER Visit (waived if admitted)	\$ 25 Copay Per Visit	\$ 50 Copay Per Visit
Out of Service Area Hospital ER Visit	\$ 50 Copay Per Visit	\$100 Copay Per Visit
Andillary Services		
-Home Health Care	\$ 10 Copay Per Visit	Not Covered
-Ambulance	\$ 25 Copay	\$ 25 Copay
-Skilled Nursing Facility (Maximum 100 days lifetime)	\$ 20 Copay Per Day	Not Covered
-Durable Medical Equipment	No Charge	No Charge
Mental and Nervous Disorders		
-Inpatient (Maximum 10 days/CY) Maximum Inpatient Days Covered	\$100 Per Day 10 Days/CY	\$250 Per Day 3 Days/CY
-Outpatient Visit Maximum Number of Outpatient Visits	\$ 10 Copay Per Visit 20 Visits/CY	\$ 20 Copay Per Visit 5 Visits/CY
Alcoholism and Chemical Dependency		
-Inpatient Detoxification (as medically appropriate)	Not Covered	Not Covered
-Outpatient Visits	Not Covered	Not Covered

217 Second Street, Suite 201
Juneau, Alaska 99801
(907) 586-2323
FAX (907) 463-5515



March 30, 1993

The Honorable Bill Hudson
Chairman, House Labor and
Commerce Committee
Alaska State Legislature
State Capitol
Juneau, AK 99801-1182

Dear Representative Hudson:

There is no problem as troublesome to the business community in Alaska and throughout the nation, as the concern for providing affordable health insurance for employees and employers. As is recognized in SSHB 12, the problem is particularly acute for the very small employer.

The Alaska State Chamber of Commerce continues to be on record in support of the intent of SSHB 12. We have reviewed the bill and it seems to be very straightforward and reasonable in terms of its content. While the technical issues in insurance are beyond our scope, we feel that the structure as proposed in SSHB 12 would solve the problem of availability of insurance and we are very supportive.

Thank you for your concern and your willingness to initiate a positive approach to solving a portion of the insurance problems facing the private sector, especially small business.

Sincerely,

A handwritten signature in cursive script, appearing to read "Jamie Parsons", is written over the typed name below.

Jamie Parsons
President

SMALL GROUP MARKET REFORM

SPONSOR SUBSTITUTE FOR HOUSE BILL 12

PRESENTED BY

GORDON E. EVANS

ALASKA HOUSE LABOR AND COMMERCE COMMITTEE

April 6, 1993

My name is Gordon Evans and I represent the Health Insurance Association of America ("HIAA"), which is a trade association of the nation's leading commercial health insurance companies which provide health insurance for approximately 95 million Americans. HIAA actively supports HB 12.

The escalating spiral of health care costs continues to plague our society. The cost of health care has risen at a rate that is matched by no other item represented in our economy. All aspects of medical care, including the private health insurance market as well as the Medicaid and Medicare programs, have been affected by this phenomena.

The small employer market provides one of the most vivid examples of how health care cost inflation continues to afflict our financing system. Faced with unrelenting demands to hold down health care costs, insurers and employers have intensified the search for ways to moderate premium increases. Leaving high risk individuals out of group coverage has been one such method. The "excessive employer churning" that newspaper accounts often bring to our attention is largely a function of employers seeking the lowest available rate. Many small employers complain that the presence of a high-risk individual in their group has made it impossible to obtain coverage at any price.

This dynamic is complicated further by the tumultuous labor market of a small employer. Small employers -- those with 2 to 25 employees -- are far more likely than larger organizations to go in and out of business. Also, employees of small firms are more likely to change jobs. Employee turnover among small, insured firms is about 23 percent annually and is twice that level for small employers without coverage. These factors contribute to the reluctance of such employers to offer coverage.

As the complexities of the small employer market have grown, and the likelihood of individuals being separated from the financing system has increased, there is a growing perception that even if they have coverage, they stand a reasonable chance of losing it if they change employers, or if they have poor claims experience.

Mr. Chairman, we have now reached the point where substantial small employer market changes are needed if we are to serve the longer-term interests of small employers and meet the concerns of policymakers. Thus far 24 other states have enacted small group market reform which includes similar reforms as reflected in HB 12. The essence of HB 12 is to make certain changes in the market so that it provides substantially more predictability and protection to the purchasers of coverage.

Let me emphasize that to work, these changes will have to apply to all players in the small employer market -- insurance companies, medical service plans, multiple employer welfare associations, etc. All competing entities in the small employer market, insurers as well as non-insured benefit plans, would have to be bound by the same rules in order to prevent any company or segment of the market from being placed at a disadvantage. The reforms included in HB 12 ensure fair access to and continuity of coverage for small employers and their employees.

The issues embraced in HB 12, which incidentally is based on the National Association of Insurance Commissioners' (NAIC) Model Act, include:

-- **Guaranteed Availability.** All small employer groups would be able to obtain private health insurance regardless of the health risk they present.

-- **Coverage of Whole Groups.** Coverage would be made available to entire employer groups. Neither employers nor insurers could exclude from a group's coverage individuals who present high medical risks.

-- Renewability of Coverage. At renewal time, employer groups and/or individuals within these groups would be assured that their coverage would not be cancelled because their health had deteriorated or because of claims made.

-- Continuity of Coverage (or Portability). Once a person is covered in the small employer market and has satisfied a plan's initial pre-existing condition restrictions, he or she would not be faced with meeting those restrictions again in the event that they change jobs, or their employer changes carriers.

-- Premium Pricing Limits. There would be specific limits on how much an insurance carrier's rates could vary for employer groups of similar composition -- similar demography, geography, and benefit plan design. Insurers would retain the right to medically underwrite for purposes of assessing risk and setting rates, but not to exclude individuals from coverage in a group plan.

How do you make it work? To give effect to these reforms, HB 12 authorizes creation of a private not-for-profit Small Employer Health Reinsurance Association. Reinsurance means to insure again. Without the Reinsurance Association these reforms are not achievable. Under reinsurance, the primary

insurer -- the one which writes the policy -- can elect to purchase insurance from a reinsurer to cover all or part of the loss which the group policyholder is protected against. The reinsurer is, in a sense, a silent partner of the original insurer. Reinsurance enables an insurer to accept a greater variety of risks -- to treat all individuals in a group the same way -- all members of a group would have the same benefits. The reinsurer stands behind the insurer and simply reimburses for claims associated with certain reinsured individuals. This allows the insurer to spread high risks broadly through the private market rather than concentrated in one small employer group.

Besides the small group market reforms discussed above, one of the most effective means to obtain cost control is to improve our health delivery and financing system through effective managed care programs. Managed care has proved it can control costs. Provisions including aspects of managed care may be incorporated into the small employer health plans which will be developed by the Small Employer Health Reinsurance Board.

HB 12 would also exempt small employer health plans from state laws which mandate coverage of specific benefits or services rendered by certain providers.

It is definitely not business as usual in the health insurance industry. HB 12 will assure that no small employer, and no employee of a small employer, will be turned down for health insurance because of poor health. This legislation will restore the concept of pooling risk across large groups, greatly limiting how much of the cost of poor health must be borne by the individual employer. Further, it will moderate significantly the sometimes drastic premium increases now experienced by small employers at renewal time and reduce the incentive for employers to change carriers frequently.

Finally, Mr. Chairman, I would note that the Health Resources and Access Task Force, created by the last legislature, specifically recommended enactment of this legislation as part of a short term strategy to improve access to health care coverage in the state. All of you received copies of that Task Force report early this session.

Thank you for the opportunity to present HIAA's views on HB 12.

ALASKA STATE

HOSPITAL & NURSING HOME

ASSOCIATION

April 6, 1993

Representative Bill Hudson, Chair
House Labor & Commerce Committee
State Capitol
Juneau, AK 99801-1182

Re: Support HB 12; Small Employer Health Insurance

Dear Representative Hudson:

ASHNHA, representing community hospitals and nursing homes across the state, asks your support for HB 12, the small employer health insurance bill.

HB 12 is a very constructive step in correcting one part of our health care costs and access problem. It opens up the small employer insurance market at no cost to the state. Combined with SB 74 enacted in 1992 for the uninsurable, the Legislature will have taken two constructive steps in making health insurance available to individuals and small businesses that cannot find or afford health insurance.

People need health insurance now, and should not have to wait another two or three years before Congressional or State health reform is enacted and implemented.

Please support HB 12.

Sincerely,



Harlan R. Knudson
President/CEO

HB

14

HOUSE COMMITTEE REPORT

(7)
Date Referred: January 11, 1993

FURTHER REFERRALS:

State Affairs
Finance

Date of Committee Action: 4/1/93

The LABOR AND COMMERCE Committee considered:

HB 14

HOUSE BILL NO. 14

APPROP: BIDCO FUND

"An Act making an appropriation for capitalization of the BIDCO fund; and providing for an effective date."

RECOMMENDATIONS: CS HB 14 the same title
be replaced with _____ a new title

have attached amendments(s)

do pass

do not pass

no recommendations

individual recommendations

additional referral to the _____ Committee

ADOPTS: _____ letter of Intent

ATTACHES NEW FISCAL NOTE(S): _____ (Dept)

APPROVES PREVIOUS: _____ (Dept/Date)

fiscal impact Revenue

fiscal note(s) _____

zero fiscal note _____

zero fiscal note(s) _____

SIGNING DO PASS	DP	OTHER RECOMMENDATIONS	DNP	NR	AM
<i>John Sutton</i>	<input checked="" type="checkbox"/>	<i>Orlando J. ...</i>		<input checked="" type="checkbox"/>	
<i>Bill Hudson</i>	<input checked="" type="checkbox"/>	<i>Joseph ...</i>		<input checked="" type="checkbox"/>	
<i>William ...</i>	<input checked="" type="checkbox"/>				
<i>Bill Hudson</i>	<input checked="" type="checkbox"/>				

Bill Hudson
CHAIRMAN'S SIGNATURE

ALASKA STATE LEGISLATURE

3111 C STREET
ANCHORAGE, ALASKA 99501
(907) 561-2039
FAX: (907) 561-1691

STATE CAPITOL
JL NEAU, ALASKA 99801-1182
(907) 465-3875
FAX: 907-465-2294



MINORITY WHIP
CHAIR
CHILDREN'S CAUCUS
HEALTH, EDUCATION
& SOCIAL SERVICES
STATE AFFAIRS
ECONOMIC TASK
FORCE

REPRESENTATIVE BETTYE DAVIS
DISTRICT 21

MEMORANDUM

TO: REP. BILL HUDSON, CHAIR
HOUSE LABOR & COMMERCE COMMITTEE

FR: REP. BETTYE DAVIS *BD*

DT: MARCH 13, 1993

RE: SCHEDULING OF HB 14

I respectfully request that HB 14, "An Act making an appropriation for the capitalization of the BIDCO" be scheduled at your earliest convenience. I have attached a copy of the bill, sponsor statement and pertinent background information for your review.

If you have any questions, please feel free to contact me or Renee Chatman of my staff at x3875. Thank you.



ALASKA STATE LEGISLATURE

3111 C STREET
ANCHORAGE, ALASKA 99503
(907) 561-2039
FAX: (907) 561-1691

STATE CAPITOL
JUNEAU, ALASKA 99801-1182
(907) 465-3875
FAX: 907-465-2294



MINORITY WHIP
CHAIR
CHILDREN'S CAUCUS
HEALTH, EDUCATION
& SOCIAL SERVICES
STATE AFFAIRS
ECONOMIC TASK
FORCE

REPRESENTATIVE BETTYE DAVIS

DISTRICT 21

SPONSOR STATEMENT

House Bill 14- 'Making an appropriation for capitalization of the BIDCO program. '

Last year, I sponsored legislation creating Business Development Industrial Corporations (BIDCOs) in Alaska. BIDCOs, modeled after a successful Michigan program, provide financing, management and technical assistance to small to medium-sized business, with an emphasis on minority and rural businesses. They address a gap for companies with financing needs that are deemed too risky for traditional bank lending, but do not provide the potential for high rates of return sought by traditional venture funds. This bill was signed into law on June 25, 1992.

HB 14 appropriates \$10 million dollars from the earnings reserve of the Alaska Science and Technology endowment to initially fund the BIDCO fund.

In an effort to encourage capital sources to invest and lend money to BIDCOs, the program will be licensed and regulated by the Department of Commerce. This system is designed to prevent fraud, conflict of interest and mismanagement, and to promote competent management, accurate record keeping and appropriate communication with shareholders. In addition, the Alaska Science and Technology program will help assist BIDCOs in raising substantial private investment.

BIDCO's are one of the best opportunities for growth and expansions of small, rural and minority businesses in Alaska. I hope you will join me in support of capitalizing this important economic program.



HOUSE BILL NO. 14
IN THE LEGISLATURE OF THE STATE OF ALASKA
EIGHTEENTH LEGISLATURE - FIRST SESSION

BY REPRESENTATIVES B.DAVIS, Brown

Introduced: 1/11/93

Referred: Labor & Commerce, State Affairs, Finance

Funding Information:	General Fund	\$	-0-
	Other Funds		<u>10,000,000</u>
			\$10,000,000

A BILL

FOR AN ACT ENTITLED

1 "An Act making an appropriation for capitalization of the BIDCO fund; and
2 providing for an effective date."

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

4 * Section 1. The sum of \$10,000,000 is appropriated from the earnings reserve of the
5 Alaska science and technology endowment to the BIDCO fund (AS 37.17.210) for
6 capitalization of the fund.

7 * Sec. 2. The appropriation made by this Act is for capitalization of an assistance fund and
8 does not lapse.

9 * Sec. 3. This Act takes effect immediately under AS 01.10.070(c).

FISCAL NOTE

STATE OF ALASKA
 _993 LEGISLATIVE SESSION

BILL NO. HB 14

Revision Date: _____ Dept. Affected: Department of Revenue
 Title: Appropriation for Capitalization of the BIDCO Fund BRU: AK Science & Technology Foundation
 Component: _____
 Sponsor: Bettye Davis
 Requestor: Bettye Davis COMPONENT SERIAL NO. 1019

Expenditures/Revenues: (Thousands of Dollars)

OPERATING	FY94	FY95	FY96	FY97	FY98	FY99
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS	10,000.00					
TOTAL OPERATING	10,000.00					
CAPITAL						
REVENUE FUND SOURCE:	10,000.00					

FUNDING: (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1006 GF/MHTIA 1025/51375						
Other SCI/TECH Endowment Income	0.00					
TOTAL	0.00					

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of current year (FY93) Impact: \$ N/A

ANALYSIS: (Attach a separate page if necessary)

While the bill appropriates \$10 million from ASTF income—there are and will be insufficient funds to fund this appropriation from ASTF earnings.

Prepared by: Paula Rasmus-Dede Phone: (907) 272-4333
 Division: AK Science & Technology Foundation Date: 3/5/93
 Approved by Commissioner: [Signature] Date: 2/11/93
 Agency: Department of Revenue

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Analysis

Assumptions: That the appropriation of \$10 million from fund 1025/51375 will not severely impact the operations and granting capability of ASTF. This is not the case. ASTF projects an estimated balance on July 1, 1993, of between \$3.5 million and \$5 million. The FY94 ASTF grants and operating budget is \$9,609,000. The projected income on the ASTF endowment in FY94 is \$7 million to \$8 million. This amount is adequate to fund the operations and grants of ASTF for FY94.

This presumes that no other appropriations are made from the endowment earnings other than those requested for ASTF operating and grants and that the ASTF endowment, upon which interest income is dependent is not reduced from its current level of \$101,037,000.

There are currently other bills pending which would appropriate funds from the ASTF endowment earnings.

Program Summary

1. This fiscal note does not fund any additional positions.
2. This fiscal note does not justify major expenditure items.
3. The \$10 million from the earnings of the ASTF endowment will exceed the available funds. Using the high projections supplied by the Alaska Permanent Fund Corporation ASTF will have \$5 million in interest income available on July 1, 1993. The high projection for earnings on the ASTF endowment for FY94 is \$8 million. This results in a total interest income of \$13 million through FY94. The ASTF FY94 budget request for operating and grants expenses is \$9,609,000 this would have an appropriate balance of \$3,391,000 in interest income generated through FY94.

There are currently other bills pending which would appropriate funds from ASTF endowment earnings, further depleting endowment earnings and the interest earning capabilities of ASTF.

4. **Section Cost Analysis**—The total cost of HB14 is \$10,000,000 plus interest income generated on the \$10 million.

Economic Impact—This appropriation would seriously impact the Alaska Science and Technology Foundation. The potential impact would be that ASTF could not award grants in FY94, the basic mission of the foundation, and the current operating expense of the foundation would be seriously jeopardized.

ALASKA STATE LEGISLATURE

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REPRESENTATIVE BETTYE DAVIS

DISTRICT 14 SEAT B • EAST ANCHORAGE • MULDOON

S P O N S O R S T A T E M E N T

I appreciate the opportunity to address this committee regarding Committee Substitute for Sponsor Substitute for HB 536.

CSSSHB 536 is an important step in implementing a new approach to promoting economic development by helping to create a more comprehensive and effective private business financing infrastructures. The bill would make possible the creation in Alaska of a new type of licensed and regulated private financial institutions, called Bidcos. The bill is modeled after a program in Michigan which has already resulted in the create of an industry of 9 Bidcos in that state, with others in the process of being formed.

Bidcos provide financing assistance and management assistance to businesses, especially small and medium-sized businesses. They are organized to address a gap for companies with financing needs that are too risky for bank lending, but do not provide the potential for super high rates of return sought by traditional venture funds.

Banks normally finance businesses by providing straight loans, normally with interest rates not exceeding several percentage points above prime. Venture capital funds typically make equity investment in companies with explosive growth potential and the potential to go public or be acquired within 5 years. This gives the venture capital fund the opportunity to share, expeditiously and to a high degree, in the upside success of it portfolio companies. By contrast, Bidcos typically invest in companies in the form of subordinated debt, receiving current interest income, and they compensate for the risk they take by sharing, to a modest degree, in the upside success of a company through a revenue participation or warrants.

The Polaris Fund, which has one of its offices in Alaska, is a good example of a traditional venture capital fund. The Polaris Fund's brochure indicates that its purpose is to provide equity capital to young companies, and states that when the fund invests in a company, the fund seeks, as a minimum objective, 10 times its money back within 5 years. The Polaris Fund provides an

important source of capital for high risk equity investments in companies with explosive growth potential. Nevertheless, this type of company is a very small part of the market.

Bidcos are designed to address a different part of the market. Bidcos invest in family-owned or closely held companies with good growth potential and the potential to provide a good return to their investor, but which are not likely to grow so rapidly as to go public or be acquired and provide the kinds of returns sought by traditional venture capital funds.

The first part of CSSSHB 536 provides a system for the Department of Commerce and Economic Development to license and regulate one or more Bidcos. This is modeled after Michigan's licensing and regulation statute for Bidcos. The licensing and regulation system is designed to encourage capital sources to invest in and lend money to Bidcos because they can take comfort in the fact that they are investing in or lending to a licensed and regulated, private financial institution. The system of licensing, regulation and enforcement is designed to prevent fraud, conflict of interest, and mismanagement, and to promote competent management, accurate record keeping, and appropriate communication with shareholders.

To obtain a license, a Bidco must satisfy various standards relating to the competency and good character of its officers and directors, the adequacy of its business plan, and the sufficiency of its capitalization. Once licensed, a Bidco is subject to annual examinations by the Department, with the Department having a enforcement mechanisms such as cease and desist orders to correct violations or stop unsafe or unsound acts.

The second part of the bill provides for a program whereby the Alaska Science and Technology Foundation would provide financial assistance to help catalyze the formation of one or more Bidcos in Alaska. This program is similar to a program implemented in Michigan by a state agency called the Michigan Strategic Fund.

The financial assistance provided by the Alaska Science and Technology Foundation would help capitalize the Bidco and would assist the Bidco in raising substantial private investment. The Foundation's assistance would be in the form of a loan to the Bidco, and would use a formula whereby the principal and interest owed by the Bidco to the Foundation could be reduced, in accordance with the performance of the Bidco in financing business in Alaska which actually create jobs and increase their sales. The Foundation is instructed by the bill to implement the program in a manner designed to encourage the provision of financing by Bidcos to businesses throughout the state, and to provide special incentives to encourage the inclusion of financings for businesses located in distressed areas, including distressed rural areas, and the financing of minority-owned businesses.

New financing mechanism for small business should fill gap

By Fuse Ragsdale
Alaska Journal of Commerce

Alaska has stepped to the forefront of states adopting a new creative financing strategy for helping small businesses solve chronic money troubles without resorting to direct funding.

The financing mechanism, known as a "Bidco," was shepherded through the final days of the 1992 legislative session by its lone sponsor, Rep. Bettye Davis, D-Anchorage.

One Hickel administration official described the new Bidco law, HB536, last week as one of the most revolutionary steps the state has ever taken to encourage business growth.

Modeled after a wildly successful program in Michigan, the Alaska statute calls for a program that enables the creation of one or more private financial institutions that earn their daily bread lending money to viable small businesses banks deem too risky.

"The Bidco is the result of the state and the private sector doing business together because Bidcos are privately run with some state funding," said Davis in an interview. "It's one step below bank financing. Its standards are lower for borrowers so its risks are higher."

Proponents say an Alaska Bidco would provide the opportunity for growth and expansion for "mom and pop" businesses and fill the gap between seed capital and bank financing for startup companies.

The Alaska Department of Commerce and Economic Development, which will oversee the licensing and regulation of Bidcos, is currently designing the struc-



Photo by Margaret Bauman

Rep. Bettye Davis, D-Anchorage

ture of the program with the help of Alaska Science and Technology Foundation officials.

The law calls for the new program to encourage the creation of institutions that meet the borrowing needs of minorities and rural Alaskans as well as the general business community while earning as much as 25 percent annual return on its investments.

The Bidcos typically target family-owned or closely held companies with

Continued on Page 7

Mammoth owner faces federal payroll tax trial

By Margaret Bauman
Alaska Journal of Commerce

A California businessman who owned two Alaska trucking firms was to go on trial today on a 101-count indictment involving alleged failure to pay federal payroll taxes totaling \$4.7 million.

Donald C. Klein was indicted May 1 by a federal grand jury in Fresno, Calif., on 49 counts of failing to account for and pay employee withholding taxes, 49 counts of filing false quarterly payroll tax returns and three counts of making false statements to the Internal Revenue Service.

Klein was arrested May 1 and freed on \$50,000 bond, the U.S.

Attorney's office said.

Klein was identified in the indictment as an officer of Mammoth of Alaska, Inc., Progressive Transport, Inc., Mammoth of California, Inc., doing business as Mammoth Freight Lines, and Kandi Co., Inc. Bill Almeida, also of Fresno, and an owner of Mammoth, was not named in any of the indictments, according to the U.S. Attorney's office.

Klein went to prison in 1989 after pleading guilty to two

counts of filing false tax forms. He served two years of a four-year sentence before being paroled.

Almeida and Klein began operating in Anchorage as Mammoth of Alaska in the 1970s.

Almeida, 63, who was in Anchorage June 12 when employees of Mammoth of Alaska and Progressive Transport received their final paychecks, never mentioned Klein's troubles with authorities. He blamed deregulation of the trucking industry for much of the firm's

Donald C. Klein was indicted by a federal grand jury on 49 counts of failing to account for and pay employee withholding taxes...

troubles.

"I fought it for the last 12 years. They regulated the cost of transportation out of the hands of trucking people ... and put no rules on transportation, so now the shipper makes the prices," he said.

Almeida said he opened the doors of Mammoth of Alaska in 1973 at the invitation of Fluor Alaska. "Our best years were 1974 to about 1977," he said. The years 1978 through 1981 provided a difficult pe-

Continued on Page 2

Bettye Davis guides Legislature to Bidco funds

Continued from Page 1

good growth prospects and the potential to provide a good return to investors but are not likely to grow rapidly enough to attract the attentions of venture capitalists such as the Polaris Fund.

"This is not a cheap money program. A Bidco loan might be prime plus 2 percentage points, but if the company succeeds, the return could grow to 20 percent to 25-percent," said Steve Rohde, a Washington, D.C.-based finance consultant who designed the Michigan program and assisted Davis in designing the legislation. "By contrast, a venture capital firm would expect a 50 percent to 60 percent return on a compounded basis."

Once the nuances of the program's structure are resolved, the state plans to request proposals from the private sector to establish a licensed, regulated Bidco. The entity likely will resemble its Michigan predecessors, which provide subordinated loans to businesses and compensate for the extra risk by participating in the upside success of their borrowers through revenue participation or warrants.

The key to Bidcos is they also provide expert management assistance along with the money to borrowers that enables them to grow, proponents say.

"It fills a technical knowledge gap. It's called 'smart money' and there's not much of that in Alaska," said John Sibert, executive director of AS&TF. "Often just getting money is dangerous for startup companies. Money that brings with it expertise is good for business."

The potentially powerful concept of Bidcos would have fizzled in Juneau this year without the hard work and political savvy of Davis, say Sibert and others, including Kaleem Nuriddin, vice president of the African American Business Council.

The Council had promoted the idea

of Bidcos for several years without much success until they took their case to Davis, who heretofore was known for championing education and children's issues.

"I think this is important for small business in Alaska, but Rep. Davis did the work and she deserves the credit," Nuriddin said.

Davis said Sibert also helped her draft the bill with input from the Michigan experts, and despite numerous efforts to interest fellow House members in the legislation, none joined her as a co-sponsor. Still, she managed to get cooperation from several committee heads who either moved it out of their committees or waived it on to the next step in the legislative process. When the bill came to the House floor, 33 lawmakers voted for it, three were off the floor and two, Rep. Eugene Kubina, D-Valdez, and Rep. Mike Navarre, R-Kenai, voted against it.

On the Senate side, Davis said she picked up support from Sen. Arliss Sturgulewski, R-Anchorage, and several others. But she only had five days to get the bill through the Senate.

"So I went to Sen. Drug Pearce, R-Anchorage, who was chairman of the Labor & Commerce Committee, and she advised me to go to the Senate Finance Committee for a waiver because her committee planned to pass the bill," Davis said. "But when it reached the Senate floor, they made a change, and it went back to the House and didn't come up for a vote until 20 minutes before midnight on the closing day of the session."

Davis said getting the bill through the Legislature was a close call, but she learned that talking to both sides throughout the session rather than discounting political opponents can pay off.

"People said Sen. Rick Halford, R-Chugiak, was difficult, but I found he was very helpful even though he is a

Republican," she said. "They called me superwoman, but it was just a matter of not giving up and doing the work needed to make it happen."

Davis said her goal now is to help find \$10 million to initially fund the Bidco program by next year and ultimately to work for its growth to a \$100 million lending mechanism.

Michigan's program, so far, has invested \$21 million of state money in its 10 Bidcos, which have attracted \$35 million from private investment, said Rohde, a partner in Hansen, McQuat, Hamrin & Rohde in Washington, D.C. An 11th Bidco is now being created in Michigan.

"It is important to understand that the state does not control the investment," Rohde said. "Bidcos are private lenders. It is a way for the state to tap into private capital and talent, and it adds a strong element of market discipline. Bidcos become to some degree partners in the companies they invest in."

To obtain a license, a Bidco must satisfy various standards relating to the competency and good character of its officers and directors, the adequacy of its business plan and the sufficiency of its capitalization. Once licensed, a Bidco is subject to annual examination by the Commerce Department, with the Department having an enforcement mechanism such as cease and desist orders to correct violations or stop unsafe or unsound acts.

The second part of the bill provides for AS&TF to provide financial assistance to help catalyze the formation of the Bidcos. The Foundation's assistance would be in the form of a loan to the Bidco, and would use a formula whereby the principal and interest owed by the Bidco to the Foundation could be reduced, in accordance with the performance of the Bidco in financing business in Alaska which actually create jobs and increase sales.

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AIDEA looks to rural areas

By the Alaska Journal of Commerce

Areas far from the major centers of Alaska commerce are expected to benefit from two recent moves by the Alaska Industrial Development and Export Authority.

AIDEA board members voted unanimously at a recent meeting to approve resolutions directing AIDEA staff to work with two other state agencies to develop regulations and a detailed business and operating plan to provide loan guarantees in rural areas.

The move supports state Senate legislation establishing a rural economic development initiative fund. Senate Bill 238, a legislative priority of Gov. Walter J. Hickel, passed both houses unanimously.

The fund shares a common mission with AIDEA and our business assistance program, said William "Riley" Snell, acting executive director of AIDEA. "They share mutual goals to provide financing assistance to rural businesses, to create private sector

mately \$2.5 million in rural financing with AIDEA's participation as a guarantor of private sector financing.

"An AIDEA investment into the fund may possibly be a lower risk that investing in a shopping center in an urban area," said Ron Garzini, assistant commissioner of the Department of Commerce and Economic Development. "Rural areas are not as affected by fluctuations in the oil industry as are urban areas."

AIDEA's business loan guarantee program, including a streamlined approval program for unsecured loans of \$50,000 or less, has been underutilized.

"We asked the Legislature to make changes to the program to encourage banks to use it to assist new or rural business," Snell said. Senate Bill 226, signed into law this spring, raised the limit for unsecured loan guarantees from \$50,000 to \$75,000 and made modifications to the interest rate provisions.

"Our purpose is not to take business away from financial institutions," said Riley. "AIDEA's mission is to

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DATE: 4-1-93

Please accept the enclosed original(s) of written testimony
for the H L + C teleconference hearing that was
scheduled on 4-1-93.

A copy of this testimony was transmitted to your committee via
fax on 4-1-93.

Thank you,



Alaska State Legislature

Please enter into the record my testimony to the House Labor & Commerce
 committee name
 committee on HB 14 BIDCO, dated 4-1-93
 bill/subject

My name is Randy Smith, with Rainbow Mining and Development Corporation in Wasilla, Alaska. After 4 years of proving up our mining claims and having a good repore with the State agencyies we are now at a standstill. Obtaining funding for our project has been a tough assignment. We now have a proposal into Aslaka Science and Technology, and are awaiting their answer. We have contacted the Rural Development Initiative Fund and we were told to make an application to a bank , and if we were turned down they would write a letter of rejection so that we could then apply to the Rural Development Initiative Fund for their help.

I'm starting to wonder if the State of Alaska is concerned about helping Alaskan's start up businesses. Outside interests and businesses don't

seem to have much trouble in pursuing their objective in obtaining help they are requesting but then again these are big businesses that are applying. How about the small companies?, don't they really count? We have a plan that could put 30 to 40 people to work and I'm sure there are 5 to 10 more small businesses that could do the same thing.

I was going over the State of Alaska's "STRATEGIC" plan by the Alaska Department of Commerce and Economic Development pamphlet (" POSITIONING ALASKA FOR THE 21ST CENTURY"). This was done in 1991, Glenn Olds being Comminnioner. It's 5 missions are:

- (1). IMPROVE climate for understanding and doing business with the State, encouraging and supporting economic development , commerce, and international trade.

Signed: Randy Smith
 Testifier

Rainbow Mining & Development
 Representing (Optional)

PO Box 697 Palmer 99645
 Address

373-5363

Phone No.



Alaska State Legislature

Please enter into the record my testimony to the House Labor & Commerce
committee name
committee on HB 14 BIDCO, dated 4-1-93
bill/subject

- (2). DISCOVER, encourage, and enhance new economic opportunities.
- (3). FACILITATE infrastructures that are essential to the growing of quality public/private partnerships.
- (4). CREATE new, practical, effective models for interpreting and selling ALASKA'S unique role, resources, and services to/for the world.
- (5). FOSTER economic development through the growth of trade between ALASKA, the other states and foreign countries.

This all sounds good for alaska, but lets get out of the snails pace. The State seems to be so willing to put bondd proposals together for the larger outside companies who want to come to Alaska and say they could provide 120 jobs or so, but what if the State could help 10 or 20 small businesses to get started? Where could this go as far as jobs?

We have seen a lot of failure in State loan/grant programs and I'm sure the mining industry being one of them, but lets go forward and help "ALASKANS" to build. We, have a very good marketable product that we want to start manufacturing in Alaska that has world class appeal that could provide a lot of jobs. We just need financial help in getting this going.

We have gotten more favorable attention from the lower 49 states as far as investors are concerned than we have in Alaska. We would like to keep our corporation "All ALASKAN".

In summation, I would like to take from a piece that "ALFRED NORTH WHITEHEAD" had written more than 50 years ago. Mr. Whitehead described the uniqueness of contemporary technological civilization very succinctly: He wrote that our sociological theories, our practical maxims of business, our political economy, and our doctrines of education are derived from an unbroken tradition of great thinkers and of practical examples from the age of Plato in the 5th century before CHRIST to the end of the last century. The whole of this tradition is warped by the vicious assumption that each generation will substantially live amid the conditions governing the lives of its fathers and will transmit those conditions to mould with equal force, the lives of it's children.

"We are living in the first period of human history for which this assumption is false".

Thank you

Page 2 of 2



LAWS OF ALASKA

1992

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Chapter No.
133

AN ACT

Relating to certain business development corporations.

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

THE ACT FOLLOWS ON PAGE 1

Approved by the Governor: June 25, 1992

Actual Effective Date: September 23, 1992

AN ACT

1 Relating to certain business development corporations.

2

3

4 * Section 1. AS 10 is amended by adding a new chapter to read:

5

CHAPTER 13. BIDCOS.

6

ARTICLE 1. PURPOSES AND LICENSING.

7

Sec. 10.13.010. PURPOSES. The purposes of this chapter are to

8

(1) promote economic development by encouraging the formation of one or more
9 BIDCOs to help meet the financing assistance and management assistance needs of businesses
10 in the state;

11

(2) establish a system of licensing, regulation, and enforcement to enable a
12 BIDCO to satisfy the eligibility requirements for participating in programs that further the
13 purposes of the BIDCO;

14

(3) encourage capital sources to invest in and lend money to BIDCOs by
15 providing for BIDCOs a system of licensing, regulation, and enforcement designed to prevent

Chapter 133

1 fraud, conflict of interest, and mismanagement, and to promote competent management, accurate
2 record keeping, and appropriate communication with shareholders;

3 (4) safeguard the general reputation of BIDCOs in order to increase the
4 confidence of prospective equity investors in and prospective debt sources for BIDCOs.

5 Sec. 10.13.020. QUALIFICATIONS FOR BIDCO LICENSE. The department shall issue
6 a license to operate as a BIDCO to a corporation that is incorporated under AS 10.06, or that has
7 been issued a certificate of authority under AS 10.06 to transact business in the state, and that
8 submits an application to the department, if the department determines that

9 (1) the applicant has the net worth required under AS 10.13.040;

10 (2) the directors, officers, and controlling persons of the applicant satisfy the
11 criteria under AS 10.13.030;

12 (3) it is reasonable to believe that the corporation will comply with this chapter;

13 (4) the applicant has a reasonable promise of being a viable, ongoing BIDCO,
14 satisfying the basic objectives of the corporation's business plans, and achieving long-term
15 financial success.

16 Sec. 10.13.030. APPLICATION PROCEDURE. When applying for a license, an
17 applicant shall provide the information required by the department in the form required by the
18 department. The information must include information on the directors, officers, and controlling
19 persons of the applicant, the applicant's business plan, including at least 10 years of detailed
20 financial projections and other relevant information, and additional information considered
21 relevant by the department.

22 Sec. 10.13.040. REQUISITE NET WORTH. (a) In order to receive a license, an
23 applicant must demonstrate to the satisfaction of the department that the applicant has raised
24 sufficient capital so that

25 (1) the net worth of the BIDCO is expected to be adequate, in the context of its
26 business plan, to support the BIDCO's management team and to achieve an appropriate spreading
27 of the risk involved in the BIDCO's provisions of financing assistance; and

28 (2) the BIDCO has a reasonable promise of being a viable, ongoing BIDCO,
29 satisfying the basic objectives of its business plan and achieving long-term financial success.

30 (b) Unless the BIDCO receives a loan under AS 37.17.200 - 37.17.390, the department
31 may not establish a minimum net worth for a BIDCO under this section of less than \$1,500,000.

1 If the BIDCO, as part of its initial capitalization, receives a loan under AS 37.17.200 - 37.17.390,
2 the minimum net worth of the BIDCO may be \$500,000, excluding organization costs paid for
3 or owed by the BIDCO.

4 Sec. 10.13.050. CRITERIA FOR DIRECTORS, OFFICERS, AND CONTROLLING
5 PERSONS. (a) A license may only be issued if the department determines that each director,
6 officer, and controlling person of the applicant is

7 (1) of good character and sound financial standing;

8 (2) competent to perform the director's or officer's functions for the applicant;

9 and

10 (3) when considered collectively with the other directors, officers, and controlling
11 persons, adequate to manage the business of the applicant as a BIDCO.

12 (b) The department may determine that a director, officer, or controlling person of an
13 applicant is not of good character. Bases the department may use to make that determination
14 include proof that the director, officer, or controlling person, or a director or officer of a
15 controlling person has

16 (1) had an administrative sanction imposed under 31 U.S.C. 3801 - 3812 (Program
17 Fraud Civil Remedies Act of 1986) for an offense under 15 U.S.C. 645; or

18 (2) been convicted of a crime involving fraud or dishonesty, including a
19 conviction for an offense under 15 U.S.C. 645; in this paragraph, "conviction" includes a
20 conviction based on a guilty plea or plea of nolo contendere.

21 Sec. 10.13.060. DETERMINATION OF FUTURE NONCOMPLIANCE. The department
22 may determine that it is not reasonable to believe that an applicant would comply with this
23 chapter if licensed. Bases the department may use to make that determination include proof that
24 the applicant has been convicted of a crime involving fraud or dishonesty, including a conviction
25 based on a guilty plea or plea of nolo contendere.

26 Sec. 10.13.070. DENIAL OF APPLICATION. If the department denies a license the
27 department shall provide the applicant with a written statement explaining the reasons for the
28 denial.

29 Sec. 10.13.080. DISPLAY OF LICENSE. A licensee shall post the license in a
30 conspicuous place in the licensee's principal office.

31 Sec. 10.13.090. TRANSFER OR ASSIGNMENT OF LICENSE PROHIBITED. A

Chapter 133

1 licensee may not transfer or assign its license.

2 Sec. 10.13.100. SURRENDER OF LICENSE. (a) Upon approval by a two-thirds vote
3 of its board of directors and after complying with (b) and (c) of this section, a licensee may apply
4 to the department to have the department accept the surrender of the licensee's license. If the
5 department determines that the requirements of this section have been satisfied, the department
6 shall approve the application unless the department determines that the purpose of the application
7 is to evade a current or prospective action by the department under AS 10.13.700 - 10.13.830.

8 (b) Not less than 60 days before filing an application under (a) of this section, a licensee
9 shall notify all of its shareholders and creditors of its intention to file the application. Each
10 creditor shall be notified of the right to comment to the department. Each shareholder shall be
11 notified of the right to file with the licensee an objection to the proposed surrender of the license
12 within the 60-day period and shall be advised that, if the shareholder files an objection, the
13 shareholder may also send a copy of the objection to the department.

14 (c) If shareholders representing 20 percent of the outstanding voting securities of the
15 licensee file an objection with the licensee, the licensee may not proceed with the application
16 unless the application is approved by a vote of shareholders representing two-thirds of the
17 outstanding voting securities of the licensee.

18 ARTICLE 2. CORPORATE MATTERS.

19 Sec. 10.13.120. CORPORATE NAME. (a) The corporate name of a licensee must
20 include the word "BIDCO" or "Bidco." A licensee may not transact business under a name other
21 than its corporate name.

22 (b) Before being issued a license, a corporation that proposes to apply for a license or
23 that applies for a license may perform, under a name that indicates that the corporation is a
24 corporation licensed under this chapter, the acts necessary to apply for and obtain a license and
25 otherwise prepare to begin business as a licensee. The corporation may not represent that it is
26 a licensee until after the license has been obtained.

27 Sec. 10.13.130. BOARD OF DIRECTORS. (a) The board of directors of a licensee
28 must have at least seven directors.

29 (b) The board of directors shall hold at least one meeting each calendar quarter.

30 Sec. 10.13.140. NOTICE OF OFFICER AND DIRECTOR CHANGES. Within 30 days
31 of each of the following events, the licensee shall notify the department in writing of the event

1 and provide any additional information that the department requires:

- 2 (1) the death, resignation, or removal of a director or officer;
- 3 (2) the election of a director; or
- 4 (3) the appointment of an officer.

5 Sec. 10.13.150. DIVIDENDS. (a) A licensee may not pay or obligate itself to pay a
6 cash dividend or dividend in kind to the licensee's shareholders unless the payment is consistent
7 with a dividend policy that has been adopted by the licensee and approved by the department.

8 (b) When approving dividend policies under this section, the department shall consider
9 the special characteristics of BIDCOs and the diverse range of dividend policies that are
10 potentially appropriate for a BIDCO, without allowing the licensee to engage in unsafe or
11 unsound acts that could threaten the viability of the licensee as an ongoing BIDCO by eroding
12 its capital base.

13 (c) The department may at any time withdraw a previous approval of a dividend policy
14 if the department determines that the withdrawal is necessary to prevent unsafe or unsound acts.

15 Sec. 10.13.160. STOCK BUY-BACK. A licensee may not buy back or obligate itself
16 to buy back a share of equity interest from a shareholder without the prior approval of the
17 department.

18 **ARTICLE 3. TRANSACTION OF BUSINESS.**

19 Sec. 10.13.170. OFFICES. (a) A licensee shall maintain at least one office in this state.

20 (b) A licensee may not maintain an office outside this state.

21 (c) The location of each office of a licensee must be reasonably accessible to the public.

22 (d) A licensee shall post in a conspicuous place at each of the licensee's offices a sign
23 that bears the corporate name of the licensee.

24 (e) If a licensee establishes, relocates, or closes an office, the licensee shall give the
25 department written notice within 30 days of the event.

26 Sec. 10.13.180. BUSINESS OF LICENSEE. A licensee may not engage in a business
27 other than providing financing assistance and management assistance to businesses.

28 Sec. 10.13.190. GENERAL POWERS. In addition to the other powers given by this
29 chapter and the powers conferred on the licensee by the laws under which it is incorporated that
30 are not inconsistent with this chapter, a licensee may

- 31 (1) borrow money and otherwise incur indebtedness for the licensee's purposes,

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1 including the issuing of corporate bonds, debentures, notes, and other evidence of indebtedness;
2 a licensee's indebtedness may be secured or unsecured, and may involve equity features,
3 including provisions for conversion to stock and warrants to purchase stock;

4 (2) make contracts;

5 (3) incur and pay necessary and incidental operating expenses;

6 (4) purchase, receive, hold, lease, acquire, sell, convey, mortgage, pledge, or
7 otherwise acquire or dispose of real or personal property, and the rights and privileges that are
8 incidental and appurtenant to the transactions, if the real or personal property is for the licensee's
9 use in operating the licensee's business or if the real or personal property is acquired by the
10 licensee from time to time in satisfaction of debts or the enforcement of obligations;

11 (5) make donations for charitable, educational, research, or similar purposes;

12 (6) provide financing assistance and management assistance to businesses and
13 establish the terms and conditions of the assistance;

14 (7) implement a reasonable and prudent policy for conserving and investing the
15 licensee's money before the money is used to provide financing assistance to businesses or to pay
16 the expenses of the licensee;

17 (8) exercise the incidental powers that are necessary, convenient, or reasonably
18 related to providing financing assistance and management assistance to businesses.

19 Sec. 10.13.200. FINANCING ASSISTANCE FORM, TERMS, AND CONDITIONS. A
20 licensee may determine the form, terms, and conditions for the financing assistance that it will
21 provide.

22 Sec. 10.13.210. FINANCING ASSISTANCE ALLOWED. The financing assistance that
23 a licensee may provide includes

24 (1) loans;

25 (2) purchase of debt instruments;

26 (3) straight equity investments including the purchase of common stock or
27 preferred stock;

28 (4) debt with equity features including warrants to purchase stock, convertible
29 debentures, or receipt of a percent of net income or sales;

30 (5) royalty-based financing;

31 (6) debt guarantees;

1 (7) property leasing.

2 Sec. 10.13.220. PARTICIPATION IN GOVERNMENTAL PROGRAMS. (a) A licensee
3 may participate in a federal, state, or local government program for which the licensee is eligible
4 and that has as the program's function the provision or facilitation of financing assistance or
5 management assistance to businesses.

6 (b) If a licensee participates in a program referred to in (a) of this section, the licensee
7 shall comply with the requirements of the program.

8 Sec. 10.13.230. SCOPE OF MANAGEMENT ASSISTANCE. When providing
9 management assistance, a licensee may provide management advice, management services,
10 technical advice, and technical services.

11 Sec. 10.13.240. LIMITATION TO PURPOSES OF BUSINESS. Financing assistance
12 and management assistance provided by a licensee to a business may only be for the business
13 purposes of the business.

14 Sec. 10.13.250. CONTROL OF OTHER BUSINESSES. A licensee may not hold control
15 of another business, except as provided under AS 10.13.260 - 10.13.280. In this section,
16 "licensee" includes the licensee in concert with a director, officer, controlling person, or affiliate
17 of the licensee.

18 Sec. 10.13.260. CONTROL OF ASSISTED BUSINESS. (a) A licensee that has
19 provided financing assistance to a business may acquire and hold control of the business to the
20 extent it becomes necessary to protect the licensee's interest as a creditor of, or investor in, the
21 business.

22 (b) Unless the department approves a longer period, a licensee holding control of a
23 business under this section shall divest itself of the control as soon as practicable, or within five
24 years after acquiring the interest, whichever is sooner.

25 (c) Within 30 days after a licensee exercises its authority to acquire and hold control of
26 a business under this section, the licensee shall notify the department of the action. The
27 notification must include the reasons why it is necessary for the licensee to acquire and hold
28 control of the business and the length of time the licensee anticipates that it may be necessary
29 to hold control of the business.

30 Sec. 10.13.270. CONTROL OF BUSINESS PROVIDING FINANCING ASSISTANCE
31 AND MANAGEMENT ASSISTANCE. With the approval of the department, a licensee may

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1 acquire and hold control of another business that is engaged only in the business of providing
2 financing assistance and management assistance to businesses.

3 Sec. 10.13.280. CONTROL OF OTTIER BUSINESSES. (a) With the approval of the
4 department, a licensee may acquire and hold control of a business not otherwise allowed under
5 AS 10.13.250 - 10.13.270.

6 (b) The department may not approve an application under (a) of this section unless the
7 department determines that

8 (1) the acquisition and control will not cause the amount of the licensee's
9 investments in businesses covered by this section to exceed 15 percent of the assets of the
10 licensee; and

11 (2) in the department's judgment the approval will promote the purposes of this
12 chapter.

13 (c) An approval under (a) of this section may not be for a period of more than three
14 years, unless the department determines that a longer period is necessary and consistent with the
15 purposes of this chapter.

16 Sec. 10.13.285. "HOLD CONTROL" DEFINED. In AS 10.13.250 - 10.13.280, "hold
17 control" means to directly or indirectly own, of record or beneficially, 50 percent or more of a
18 business's outstanding voting equity interests.

19 Sec. 10.13.290. BUSINESS PRACTICE STANDARD. (a) A licensee shall transact its
20 business in a safe and sound manner and shall maintain itself in a safe and sound condition.

21 (b) In determining whether a licensee is transacting business in a safe and sound manner,
22 the department may not consider the risk of providing financing assistance to a business, unless
23 the department determines that the risk is great enough to demonstrate gross mismanagement
24 when compared with the return that can be realistically expected.

25 (c) Notwithstanding the other provisions of this section, the department may

26 (1) if the amount of the financing assistance is unduly large in relation to the total
27 assets or the total shareholder equity of the licensee, determine that a licensee's financing
28 assistance to a single business or group of affiliated businesses violates (a) of this section or
29 constitutes an unsafe or unsound act;

30 (2) require that a licensee maintain a reserve in the amount of anticipated losses;

31 (3) require that a licensee have in effect a written financing assistance policy

1 approved by the licensee's board of directors, including credit evaluation and other matters; the
 2 department may not require that a licensee adopt a financing assistance policy that contains
 3 standards that prevent the licensee from exercising needed flexibility in evaluating and structuring
 4 financing assistance to businesses on an individual basis.

5 **Sec. 10.13.300. DISCLOSURE OF POTENTIAL CONFLICT OF INTEREST.** A person
 6 shall disclose a potential conflict of interest that occurs in a transaction in the financing
 7 documents of the transaction or, if the transaction does not involve financing assistance, in
 8 another appropriate document, if the person

- 9 (1) participates in a decision of a licensee relating to the transaction; and
 10 (2) knows of a potential conflict of interest involving the transaction.

11 **Sec. 10.13.310. TERMS WHERE POTENTIAL CONFLICT OF INTEREST IS**
 12 **INVOLVED.** If a licensee provides financing assistance to a business or engages in another
 13 business transaction, and if the assistance or transaction involves a potential conflict of interest,
 14 the terms and conditions under which the licensee provides the assistance or engages in the
 15 transaction may not be less favorable to the licensee than the terms and conditions that would
 16 be required by the licensee in the ordinary course of business if the assistance or transaction did
 17 not involve a potential conflict of interest.

18 **Sec. 10.13.320. POTENTIAL CONFLICTS OF INTEREST DEFINED.** (a) In
 19 AS 10.13.300 - 10.13.310, licensee transactions that involve a potential conflict of interest include

20 (1) providing financing assistance to a principal shareholder of the licensee, to a
 21 person controlled by a principal shareholder of the licensee, or to a director, officer, partner,
 22 relative, controlling person, or affiliate of a principal shareholder of the licensee;

23 (2) providing financing assistance to a business to which one or more of the
 24 following provides or plans to provide contemporaneous financing assistance:

25 (A) a principal shareholder of the licensee;

26 (B) a director, officer, partner, relative, controlling person, or affiliate of
 27 a principal shareholder of a licensee;

28 (C) an affiliate of a principal shareholder of a licensee; or

29 (D) a person controlled by a principal shareholder of the licensee;

30 (3) providing financing assistance to a business that has or is expected to have
 31 a substantial business relationship with another business that has a director, officer, or controlling

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1 person who is also

2 (A) a director, officer, or controlling person of the licensee; or

3 (B) the spouse of a director, officer, or controlling person of the licensee;

4 (4) providing financing assistance to a business if the business, or a director,
5 officer, or controlling person of the business contemporaneously has lent or will lend money to
6 an associate of the licensee;

7 (5) providing financing assistance for the purchase of property of an associate or
8 principal shareholder of the licensee;

9 (6) selling or otherwise transferring an asset of the licensee to an associate or
10 principal shareholder of the licensee.

11 (b) In this section, "relative" means a parent, child, sibling, spouse, grandparent,
12 grandchild, nephew, niece, aunt, or uncle, or a relative of the same degree through marriage.

13 ARTICLE 4. MERGERS AND ACQUISITIONS.

14 Sec. 10.13.400. ACQUIRING CONTROL OF A LICENSEE. A person may not acquire
15 control of a licensee without the prior approval of the department.

16 Sec. 10.13.410. APPLICATION TO ACQUIRE CONTROL. (a) The department shall
17 approve an application to acquire control of a licensee under AS 10.13.400 if the department
18 determines that

19 (1) the applicant and the directors and officers of the applicant are of good
20 character and sound financial standing;

21 (2) it is reasonable to believe that the applicant will comply with this chapter; and

22 (3) the plans, if any, of the applicant to make a major change in the business,
23 corporate structure, or management of the licensee are not detrimental to the safety and soundness
24 of the licensee.

25 (b) If, after notice and a hearing, the department determines that the criteria for approval
26 in (a) of this section have not been satisfied, the department shall deny the application.

27 Sec. 10.13.420. DETERMINATIONS. (a) When the department is reviewing an
28 application under AS 10.13.410, the department may determine that an

29 (1) applicant or a director or officer of an applicant is not of good character if the
30 person has been convicted of a crime involving fraud or dishonesty, including a conviction based
31 on a guilty plea or plea of nolo contendere;

1 (2) applicant's plan to make a major change in the management of a licensee is
2 detrimental to the safety and soundness of the licensee if the plan provides for a person to
3 become a director or officer of the licensee and the person has been convicted of a crime
4 involving fraud or dishonesty, including a conviction based on a guilty plea or plea of nolo
5 contendere.

6 (b) The conditions described in (a) of this section are not the only conditions upon which
7 the department may determine that an applicant or a director or an officer of an applicant is not
8 of good character or that an applicant's plan to make a major change in the management of a
9 licensee is detrimental to the safety and soundness of the licensee.

10 Sec. 10.13.430. MERGER. A licensee may not merge with another corporation unless
11 the merger is approved by the department, and, if the licensee is not the surviving corporation,
12 the surviving corporation is a licensee.

13 Sec. 10.13.440. PURCHASE. A licensee may not purchase all or substantially all of the
14 business of another person unless the purchase is approved by the department.

15 Sec. 10.13.450. SALE. A licensee may not sell all or substantially all of the licensee's
16 business or of the business of an office of the licensee to another person unless the purchaser is
17 a licensee and the sale is approved by the department.

18 Sec. 10.13.460. DEPARTMENT APPROVAL. The department may not approve a
19 merger, purchase, or sale under AS 10.13.430 - 10.13.450 unless the department determines that

20 (1) the merger, purchase, or sale will be safe and sound with respect to the
21 acquiring licensee;

22 (2) upon consummation of the merger, purchase, or sale, it is reasonable to
23 believe that the acquiring licensee will comply with this chapter;

24 (3) the merger, purchase, or sale will not have a major detrimental effect on
25 competition in the providing of financial assistance or management assistance to businesses, or,
26 if there will be a detrimental effect, the merger, purchase, or sale is necessary in the interests of
27 the safety and soundness of a party to the merger, purchase, or sale, or is otherwise, on balance,
28 in the public interest.

29 **ARTICLE 5. REGULATION, REPORTING, AND EXAMINATION.**

30 Sec. 10.13.470. ADMINISTRATION. The department shall administer this chapter. The
31 department may issue orders and may adopt regulations that, in the opinion of the department,

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1 are necessary to execute, enforce, and achieve the purposes of this chapter. Adoption of
2 regulations under this chapter is subject to AS 44.62 (Administrative Procedure Act).

3 Sec. 10.13.480. **CONDITIONS OF ORDER OR LICENSE.** When the department issues
4 an order or license under this chapter, the department may impose conditions that the department
5 determines are necessary to carry out the purposes of this chapter.

6 Sec. 10.13.490. **DECLARATORY RULINGS.** The department may provide to an
7 interested person a declaratory ruling on a provision of this chapter.

8 Sec. 10.13.500. **JUDICIAL REVIEW.** A final order, decision, license, or other official
9 act of the department under this chapter is subject to judicial review by the superior court under
10 the applicable rules of court.

11 Sec. 10.13.510. **INVESTIGATIONS.** The department may make public or private
12 investigations inside or outside the state that the department considers necessary to determine
13 whether to approve an application for a license, to determine whether a person has violated or
14 is about to violate this chapter, to aid in the enforcement of this chapter, or to aid in issuing an
15 order or adopting a regulation under this chapter.

16 Sec. 10.13.520. **INVESTIGATIVE POWERS.** For the purposes of an investigation,
17 examination, or other proceeding under this chapter, the department may administer oaths and
18 affirmations, subpoena witnesses, compel the attendance of witnesses, take evidence, and require
19 the production of books, papers, correspondence, memoranda, agreements, and other documents
20 or records that the department considers relevant or material to the proceeding.

21 Sec. 10.13.530. **FAILURE TO COMPLY.** If a person fails to comply with a subpoena
22 issued by the department under this chapter or to testify with respect to a matter covered by this
23 chapter, the superior court may issue an order requiring the attendance of the person and the
24 giving of testimony or production of evidence.

25 Sec. 10.13.540. **SERVICE OF PROCESS.** If the department is authorized to make
26 service of process in connection with a noncriminal administrative proceeding under this chapter,
27 the department may make the service by registered or certified mail.

28 Sec. 10.13.550. **FEES.** A person shall pay the department

- 29 (1) \$2,500 for filing an application for a license;
30 (2) \$1,250 for filing an application for approval to acquire control of a licensee;
31 (3) \$1,250 for filing an application for approval for a merger, purchase, or sale

1 under AS 10.13.430 - 10.13.460; if two or more applications relating to the same merger,
2 purchase, or sale are filed, the fee for filing each application is the figure resulting from dividing
3 \$1,250 by the number of the applications;

4 (4) \$2,500 each calendar year at the time established by the department, if the
5 person is a licensee;

6 (5) a fee established by the department for the examination of a licensee or a
7 subsidiary of a licensee; the fee shall be paid within 30 days after receiving a statement from the
8 department; a fee established under this paragraph must include

9 (A) the proportionate part of the salaries and cost of employee benefits of
10 the examiners while conducting the examination and while preparing the examination
11 report; and

12 (B) the transportation costs and per diem costs of each examiner while
13 away from the examiner's duty station.

14 Sec. 10.13.560. **FEE PAYMENT AND REFUNDS.** A fee for filing an application with
15 the department shall be paid at the time the application is filed with the department and is not
16 refundable.

17 Sec. 10.13.570. **RECORD AND REPORT REQUIREMENTS.** (a) A licensee shall make
18 and keep books, accounts, and other records in the form and manner, at the place, and for the
19 period of time that the department establishes.

20 (b) A licensee, affiliate of a licensee, and a subsidiary of a licensee shall file with the
21 department the reports that the department requires. A report must be in the form and contain
22 the information that the department requires.

23 (c) The department may require by order that a licensee include an asset on the licensee's
24 books and records at a valuation that represents the current value of the asset.

25 (d) Not later than 90 days after the close of the calendar year, or a longer period if
26 established by the department, a licensee shall file with the department an audit report containing

27 (1) financial statements, including a balance sheet, statement of income or loss,
28 statement of changes in capital accounts, and statement of changes in financial position for, or
29 as of the end of, the calendar year, prepared with an audit by an independent certified public
30 accountant in accordance with generally accepted accounting principles;

31 (2) a report, certificate, or opinion of the independent certified public accountant

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1 who performs the audit, stating that the financial statements were prepared in accordance with
2 generally accepted accounting principles; and

3 (3) other information that the department may require.

4 **Sec. 10.13.580. RECORDS AND REPORTS KEPT BY OTHERS.** (a) If a person other
5 than a licensee makes or keeps all or part of the books, accounts, or other records of the licensee,
6 this chapter applies to the person with respect to the books, accounts, and other records to the
7 same extent as if the person were the licensee.

8 (b) If a person other than an affiliate or subsidiary of a licensee makes or keeps all or
9 part of the books, accounts, or other records of the affiliate or subsidiary, this chapter applies to
10 the person with respect to the books, accounts, and other records to the same extent as if the
11 person were the affiliate or subsidiary.

12 (c) If the department considers it expedient, the department may require a licensee to
13 obtain the approval of the department before permitting another person to make or keep all or
14 part of the books, accounts, or other records of the licensee.

15 **Sec. 10.13.590. INFORMATION ON ECONOMIC DEVELOPMENT EFFECT.** Each
16 year the department shall publish and provide to the legislature information on the effect of this
17 chapter on promoting economic development in the state. The information must include
18 aggregate statistics on

19 (1) the number and dollar amount of the financing assistance made by licensees
20 to businesses; the amounts shall be organized into broad categories based on the types of industry
21 involved; the standard industrial classification manual may be used for the categories;

22 (2) the number and dollar amount of the financing assistance made by licensees
23 to minority-owned businesses and to businesses owned by women; and

24 (3) estimates of the number of jobs created or retained.

25 **Sec. 10.13.600. EXAMINATION OF LICENSEES AND SUBSIDIARIES.** (a) The
26 department may at any time examine a licensee or a subsidiary of a licensee. Licensure under
27 this chapter constitutes implied consent to examination by the department.

28 (b) The department shall examine a licensee at least once during each calendar year.

29 (c) At the department's request the following persons shall provide to the department the
30 books, accounts, and records of a licensee or a licensee's subsidiary and shall otherwise facilitate
31 the department's examination of the licensee to the fullest extent possible:

1 (1) a director, officer, or employee of a licensee being examined by the
2 department;

3 (2) a director, officer, or employee of a subsidiary of a licensee being examined
4 by the department;

5 (3) a person having custody of the books, accounts, or records of a licensee being
6 examined by the department;

7 (4) a person having custody of the books, accounts, or records of a subsidiary of
8 a licensee being examined by the department.

9 (d) The department may retain a certified public accountant, attorney, appraiser, or other
10 person to assist the department in the examination of a licensee or a subsidiary of a licensee if
11 the department determines that the assistance is necessary. Within 10 days after receipt of a
12 statement from the department, the licensee being examined shall pay the fees of a person
13 retained by the department under this subsection.

14 **ARTICLE 6. PROHIBITED ACTIVITIES.**

15 **Sec. 10.13.610. MISREPRESENTATION.** (a) Except as otherwise provided in
16 AS 10.13.120, a person transacting business in the state who is not a licensee may not knowingly
17 use a name or title that indicates that the person is a BIDCO or otherwise represent that the
18 person is a BIDCO or a licensee.

19 (b) A licensee may not knowingly misrepresent the meaning or effect of its licen.

20 **Sec. 10.13.620. INSPECTION OR COPYING REFUSAL.** A person having custody of
21 all or part of the books, accounts, or other records of a licensee may not knowingly refuse to
22 allow the department, upon request, to inspect or make copies of the records.

23 **Sec. 10.13.630. FINANCING ASSISTANCE TO ASSOCIATES OF LICENSEE.** A
24 licensee may not directly or indirectly provide financing assistance to an associate of the licensee.

25 **Sec. 10.13.640. FINANCING ASSISTANCE TO DISCHARGE OBLIGATION TO**
26 **ASSOCIATE OF LICENSEE.** A licensee may not directly or indirectly provide financing
27 assistance to discharge, or to free money for use in discharging, part or all of an obligation to
28 an associate of the licensee. This section does not apply to a transaction of an associate of a
29 licensee in the normal course of the associate's business involving a line of credit or financing
30 assistance with a term of not more than five years.

31 **Sec. 10.13.650. CONTEMPORANEOUS FINANCING ASSISTANCE.** (a) If the terms

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1 on which a licensee provides financing assistance to a business are less favorable to the licensee
2 than the terms on which an associate of the licensee provides financing assistance to the business,
3 the licensee may not directly or indirectly provide the assistance to the business within one year
4 before or after the associate provides assistance.

5 (b) If the financing assistance provided by the licensee's associate is of a different kind
6 from the financing assistance provided by the licensee, the burden is on the licensee to prove that
7 the terms on which the licensee provided the financing assistance were at least as favorable to
8 the licensee as the terms on which the associate provided the assistance.

9 (c) This section does not apply

10 (1) if the associate is a controlling person of the licensee and is also the only
11 shareholder of the licensee;

12 (2) if the associate is a subsidiary of the licensee;

13 (3) to a transaction of an associate of a licensee in the normal course of the
14 associate's business involving either a line of credit or financing assistance with a term of not
15 more than five years.

16 Sec. 10.13.660. COMPENSATION OF ASSOCIATE. (a) An associate of a licensee
17 may not directly or indirectly receive from a person to whom the licensee provides financing
18 assistance

19 (1) compensation in connection with the providing of the financing assistance; or

20 (2) other things of value for procuring, influencing, or attempting to procure or
21 influence the licensee's action with respect to providing the financing assistance.

22 (b) This section does not apply to the receipt of fees by an associate of a licensee for
23 bona fide services performed by the associate if

24 (1) the associate, with the consent and knowledge of the person to whom the
25 financing assistance is provided, is designated by the licensee to perform the services;

26 (2) the services are appropriate and necessary under the circumstances;

27 (3) the fees for the services are approved as reasonable by the licensee; and

28 (4) the fees for the services are collected by the licensee, and the licensee pays
29 the associate.

30 Sec. 10.13.670. EXEMPTIONS. (a) If the department finds that the exemption is in the
31 public interest and that the regulation of the person or transaction is not necessary for the

1 purposes of this chapter, the department may exempt a person or transaction from AS 10.13.630 -
2 10.13.660 for the purposes of a particular transaction.

3 (b) The exemption may be unconditional or upon specified terms and conditions and for
4 specified periods.

5 ARTICLE 7. ENFORCEMENT.

6 Sec. 10.13.700. INJUNCTION AND ENFORCED COMPLIANCE. If, in the opinion
7 of the department, a person has violated this chapter, or if there is reasonable cause to believe
8 that a person is about to violate this chapter, the department may bring an action in superior court
9 to enjoin the violation or to enforce compliance with this chapter. Upon a proper showing, a
10 restraining order, preliminary or permanent injunction, or writ of mandamus shall be granted, and
11 a receiver or a conservator may be appointed for the defendant or the defendant's assets.

12 Sec. 10.13.710. CEASE AND DESIST ORDERS FOR UNLICENSED PERSONS. If
13 the department finds that a person has violated or that there is reasonable cause to believe that
14 the person is about to violate AS 10.13.120(b) or 10.13.610(a), the department may order the
15 person to cease and desist from the violation unless and until the person is issued a license under
16 this chapter.

17 Sec. 10.13.720. CEASE AND DESIST ORDERS FOR VIOLATIONS BY LICENSEES.
18 After notice and a hearing, if the department determines that a licensee or a subject person of a
19 licensee has violated or is violating, or that there is reasonable cause to believe that the licensee
20 or subject person is about to violate this chapter, the department may order the licensee or subject
21 person to cease and desist from the action. The order may require the licensee or subject person
22 to take affirmative action to correct a condition resulting from the action.

23 Sec. 10.13.730. CEASE AND DESIST ORDERS FOR UNSAFE AND UNSOUND
24 ACTS. After notice and a hearing, if the department determines that a licensee or subject person
25 of a licensee has engaged in or that there is a reasonable cause to believe that the licensee or
26 subject person is about to engage in an unsafe or unsound act with respect to the business of the
27 licensee, the department may order the licensee or subject person to cease and desist from the
28 action. The order may require the licensee or subject person to take affirmative action to correct
29 a condition resulting from the action.

30 Sec. 10.13.740. OTHER CEASE AND DESIST ORDERS. If the department determines
31 that a factor set out in AS 10.13.720 - 10.13.730 is true with respect to a licensee or subject

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1 person of a licensee and that the action or violation is likely to cause the insolvency or
2 substantial dissipation of the assets or earnings of the licensee, is likely to seriously weaken the
3 condition of the licensee, or is likely to otherwise seriously prejudice the interests of the licensee
4 before the completion of proceedings conducted under AS 10.13.720 - 10.13.730, the department
5 may order the licensee or subject person to cease and desist from the action or violation. The
6 order may require the licensee or subject person to take affirmative action to correct a condition
7 resulting from the action or violation.

8 **Sec. 10.13.750. REMOVAL AND SUSPENSION ORDERS IN CASES OF VIOLATION**
9 **OR BREACH OF DUTY.** (a) The department may issue an order removing a subject person
10 of a licensee from office with the licensee and prohibiting the subject person from further
11 participating in any manner in the conduct of the business of the licensee if the department
12 determines after notice and a hearing that

13 (1) the person has violated this chapter or another applicable law, has engaged
14 in an unsafe or unsound act with respect to the business of the licensee, or has engaged in an act
15 that constitutes a breach of the person's fiduciary duty;

16 (2) the act, violation, or breach of fiduciary duty has caused or is likely to cause
17 substantial financial loss or other damage to the licensee, has seriously prejudiced or is likely to
18 seriously prejudice the interest of the licensee, or the person has received financial gain by reason
19 of the act, violation, or breach of fiduciary duty; and

20 (3) the act, violation, or breach of fiduciary duty involves dishonesty on the part
21 of the person, demonstrates the person's gross negligence with respect to the business of the
22 licensee, or demonstrates the person's willful disregard for the safety and soundness of the
23 licensee.

24 (b) The department may issue an order removing a subject person of the licensee from
25 office with the licensee and prohibiting the subject person from further participating in any
26 manner in the conduct of the business of the licensee, except with the prior consent of the
27 department if, after notice and a hearing, the department determines that, by engaging or
28 participating in an act with respect to a financial or other business institution that resulted in
29 substantial financial loss or other damage, the subject person of a licensee demonstrated

30 (1) dishonesty or a willful or continuing disregard for the safety and soundness
31 of the financial or other business institution; and

1 (2) unfitness to continue as a subject person of the licensee or to participate in
2 conducting the business of the licensee.

3 (c) The department may immediately issue an order suspending a subject person of a
4 licensee from the person's office, if any, with the licensee and prohibiting the subject person
5 from further participating in any manner in the conduct of the business of the licensee except
6 with the consent of the department, if the department determines that

7 (1) the factors in (a) or (b) of this section are true with respect to the person; and

8 (2) an immediate order is necessary to protect the interests of the licensee or the
9 public.

10 (d) In this section, "office" means, when used with respect to a licensee, the position of
11 director, officer, or employee of the licensee or of a subsidiary of the licensee.

12 Sec. 10.13.76(i). REMOVAL AND SUSPENSION ORDERS IN CASES OF
13 INDICTMENT OR CONVICTION. (a) If the department determines that a subject person of
14 a licensee has been indicted by a grand jury or has been bound over for trial by a court for a
15 crime involving dishonesty or breach of trust, and that the continuation of the person as a subject
16 person of the licensee may threaten the interests of the licensee or may threaten to impair public
17 confidence in the licensee, the department may issue an order suspending the person from the
18 person's office, if any, with the licensee and prohibiting the person from further participating in
19 any manner in the conduct of the business of the licensee until the person's charge has been
20 disposed of.

21 (b) If the department determines that a subject person or former subject person of a
22 licensee to whom an order was issued under (a) of this section, or another subject person of a
23 licensee, has been convicted of a crime involving dishonesty or breach of trust, and that the
24 continuation or resumption of the person as a subject person of the licensee may threaten the
25 interests of the licensee, the department may issue an order suspending or removing the person
26 from the person's office, if any, with the licensee and prohibiting the person from further
27 participating in any manner in the conduct of the business of the licensee, except with the prior
28 consent of the department.

29 (c) The failure to convict a subject person who is charged with a crime involving
30 dishonesty or breach of trust does not prevent the department from issuing an order to the person
31 under another provision of this chapter.

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1 (d) In this section, "office" has the meaning given in AS 10.13.750.

2 Sec. 10.13.770. HEARINGS ON ORDERS. (a) Within 30 days after an order is issued
3 under AS 10.13.710, 10.13.740, 10.13.750(c), or 10.13.760, the licensee or subject person of a
4 licensee to whom the order is directed may file with the department an application for a hearing
5 on the order.

6 (b) If the department fails to begin a hearing within 15 business days after the application
7 is filed or within a longer period to which the licensee or subject person consents, the order shall
8 be considered rescinded.

9 (c) After the hearing, the department shall affirm, modify, or rescind the order.

10 (d) A person to whom an order is issued under this section may apply to the department
11 to modify or rescind the order. The department may not modify or rescind the order unless the
12 department determines that it is in the public interest to do so and that it is reasonable to believe
13 that the person will comply with this chapter.

14 (e) The right of a licensee or subject person to whom an order is issued under
15 AS 10.13.710, 10.13.740, 10.13.750(c), or 10.13.760 to an interlocutory review of the order is
16 not affected by the failure of the licensee or subject person to apply to the department for a
17 hearing on the order issued under this section.

18 Sec. 10.13.780. DISCLOSURE TO SHAREHOLDERS. If the department determines
19 that the results of a department communication or order addressed to the licensee or to a subject
20 person of the licensee should be disclosed to the licensee's shareholders, the department may
21 require the licensee to make the disclosure in the form and manner determined by the department.

22 Sec. 10.13.790. MEETINGS OF DIRECTORS AND SHAREHOLDERS CALLED BY
23 DEPARTMENT. (a) If the department considers it expedient, the department may call a
24 meeting of the board of directors or of the shareholders of a licensee.

25 (b) The department shall send notification of the time, place, and purpose of the meeting
26 not less than five days before the meeting to each director, if a directors' meeting, or to each
27 shareholder, if a shareholders' meeting, either by personal service or by registered or certified
28 mail sent to the person's last known address as shown in the records of the department.

29 (c) The licensee shall pay the notice and meeting expenses for a meeting of shareholders
30 called under (a) of this section.

31 Sec. 10.13.800. ORDERS RESTRICTING ADDITIONAL FINANCING ASSISTANCE.

1 (a) The department may issue an order directing a licensee to refrain from providing additional
 2 financing assistance to businesses if, in the opinion of the department, the order is necessary to
 3 protect the interests of the licensee or the public, and if, after notice and a hearing, the
 4 department determines that

5 (1) the licensee or a controlling person, subsidiary, or affiliate of the licensee has
 6 violated this chapter or another applicable law;

7 (2) the licensee is conducting the licensee's business in an unsafe and unsound
 8 manner;

9 (3) the licensee is in a condition that makes it unsafe or unsound for the licensee
 10 to transact business;

11 (4) the licensee has ceased to transact business as a BIDCO;

12 (5) the licensee is insolvent;

13 (6) the licensee has suspended payment of the licensee's obligations, has made
 14 an assignment for the benefit of the licensee's creditors, or has admitted in writing the licensee's
 15 inability to pay the licensee's debts as the debts become due;

16 (7) the licensee has applied for an adjudication of bankruptcy, reorganization,
 17 arrangement, or other relief under a bankruptcy, reorganization, insolvency, or moratorium law,
 18 an involuntary petition in bankruptcy against the person has not been dismissed in 90 days, or
 19 a person has applied for the relief under the law against a licensee and the relief has been granted
 20 or the licensee has by an affirmative act approved of or consented to the action; or

21 (8) a fact or condition exists that would have been grounds for denying the
 22 licensee a license if the fact or condition had existed when the licensee applied for the license.

23 (b) If the department determines that a factor in (a) of this section is true with respect
 24 to a licensee and that it is necessary for the protection of the interests of the licensee or the
 25 public that the department immediately prevent the licensee from providing additional financing
 26 assistance to businesses, the department may issue the order without a hearing.

27 (c) If the department consents, a licensee that has been the subject of an order under (a)
 28 or (b) of this section may resume providing financing assistance to businesses under the
 29 conditions that the department prescribes.

30 (d) A person to whom an order is issued under (a) or (b) of this section may apply to
 31 the department to modify or rescind the order. The department may not grant the application

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1 unless the department determines that it is in the interest of the public to do so and that it is
2 reasonable to believe that the person will comply with this chapter.

3 Sec. 10.13.810. TAKING POSSESSION OF LICENSEE. (a) If the department finds
4 that a factor in AS 10.13.800 is true with respect to a licensee and that it is necessary for the
5 protection of the interests of the licensee or of the public, the department may take immediate
6 possession of the property and business of the licensee and appoint a conservator for the licensee.

7 (b) The department may appoint as conservator one of the employees of the division of
8 banking, securities, and corporations of the department or another competent and disinterested
9 person. The division shall be reimbursed out of the assets of the conservatorship for all money
10 expended by the division in connection with the conservatorship. Upon the approval of the
11 department, the expenses of the conservatorship paid for by the division shall be paid out of the
12 assets of the licensee. Payment of the division expenses shall take priority over other payments
13 from the assets and shall be fully paid before a final distribution is made.

14 (c) Under the direction of the department, the conservator shall take possession of the
15 books, records, and assets of the licensee and shall take other action that is necessary to conserve
16 the assets of the licensee or to ensure payment of obligations of the licensee pending further
17 disposition of the licensee's business.

18 (d) At an appropriate time, the department may terminate the conservatorship and permit
19 the licensee to resume the transaction of the licensee's business subject to the terms, conditions,
20 restrictions, and limitations the department prescribes.

21 Sec. 10.13.820. RECEIVERSHIP. (a) The department may apply to the superior court
22 for the appointment of a receiver for a licensee, if the department determines that the licensee
23 should be liquidated because

24 (1) the licensee is insolvent;

25 (2) the licensee has suspended payment of the licensee's obligations, has made
26 an assignment for the benefit of the licensee's creditors, or has admitted in writing the licensee's
27 inability to pay the licensee's debts as the debts become due;

28 (3) the licensee has applied for an adjudication of bankruptcy, reorganization,
29 arrangement, or other relief under a bankruptcy, reorganization, insolvency, or moratorium law;

30 (4) a person has applied for the relief described under (3) of this subsection
31 against a licensee and the licensee has by an affirmative act approved of or consented to the

1 action or the relief has been granted; or

2 (5) the licensee is in a condition that makes it unsafe or unsound for the licensee
3 to transact business.

4 (b) If a receiver is appointed under (a) of this section, the receiver shall liquidate the
5 property and business of the licensee.

6 Sec. 10.13.830. CIVIL PENALTY. (a) If after notice and a hearing the department finds
7 that a person has violated this chapter, the department may order the person to pay to the
8 department a civil penalty in the amount the department specifies. The civil penalty may not
9 exceed \$1,000 for each violation, or in the case of a continuing violation, \$1,000 for each day
10 the violation continues.

11 (b) This section does not apply to an act committed or omitted in good faith in
12 conformity with an order, regulation, declaratory ruling, or written interpretative opinion of the
13 department, even if the order, regulation, declaratory ruling, or written interpretative opinion is
14 later amended, rescinded, or repealed, or determined by judicial or other authority to be invalid.

15 (c) The provisions of (a) of this section are in addition to, and not alternative to, the
16 other provisions of this chapter that authorize the department to issue orders or to take other
17 action on account of a violation of this chapter.

18 **ARTICLE 8. GENERAL PROVISIONS.**

19 Sec. 10.13.850. CONSTRUCTION OF CHAPTER. This chapter shall be liberally
20 construed to accomplish its purposes.

21 Sec. 10.13.860. APPLICATION OF ADMINISTRATIVE PROCEDURE ACT TO
22 PROCEEDINGS. A proceeding under AS 10.13.830 is subject to AS 44.62 (Administrative
23 Procedure Act). Except as otherwise provided in this chapter, other proceedings and actions
24 under this chapter are exempt from AS 44.62.

25 Sec. 10.13.870. APPEALS. A final order of an administrative proceeding under
26 AS 10.13.710 - 10.13.760, 10.13.800, 10.13.810, or 10.13.830 may be appealed to the superior
27 court.

28 Sec. 10.13.880. PROVISIONS OF LICENSEE'S INCORPORATION. Except as
29 otherwise provided in this section, the provisions of the law under which a licensee is
30 incorporated apply to the licensee. If a provision of the licensee's incorporating law conflicts
31 with a provision of this chapter, this chapter controls.

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1 Sec. 10.13.890. ASSOCIATES. (a) In AS 10.13.300 - 10.13.320 and 10.13.630 -
2 10.13.660, a person who is an associate within six months before or after a licensee provides
3 financing assistance shall be considered to be an associate as of the date the licensee provides
4 the assistance.

5 (b) If a licensee, in order to protect the licensee's interests, designates a person to serve
6 as a director of, officer of, or in a management capacity of a business to which the licensee
7 provides financial assistance, the person may not, on that account, be considered to be an
8 associate under AS 10.13.300 - 10.13.310 or 10.13.630 - 10.13.660. This subsection does not
9 apply if the person has, directly or indirectly, another financial interest in the business or if the
10 person, at any time before the licensee provides the financing assistance, served as a director of,
11 officer of, or in another capacity in the management of the business for a period of 30 days or
12 more.

13 Sec. 10.13.900. OTHER LICENSES. A corporation that is licensed under this chapter
14 may apply for and be issued a license under another law of the state, federal government, or of
15 another state in the United States unless the transaction of business by the corporation as a
16 licensee under the other license would violate this chapter or would be contrary to the purposes
17 of this chapter.

18 Sec. 10.13.910. EXEMPTION. A licensee is not subject to the provisions of AS 06.

19 Sec. 10.13.920. AUTHORITY OF DEPARTMENT. The provisions of this chapter
20 relating to conflicts of interest do not limit the authority of the department to determine that an
21 act involves a conflict of interest and is therefore an unsafe or unsound act.

22 Sec. 10.13.930. CONFIDENTIALITY. (a) The commissioner, deputies, and other
23 employees of the department may not disclose information acquired by them in the discharge of
24 their duties under this chapter except to the extent disclosure of the information is required by
25 law, other than the public records provisions of AS 09.25.110 - 09.25.220, or is required by court
26 order.

27 (b) Notwithstanding (a) of this section, the department may disclose information that is
28 confidential under (a) of this section if the department determines that disclosure of the
29 information is necessary to promote the public interest. This subsection does not authorize the
30 disclosure of information acquired by the department in the course of an examination of a
31 licensee.

1 (c) Notwithstanding (a) of this section, the department may furnish information that is
2 confidential under (a) of this section to the Alaska Science and Technology Foundation
3 established under AS 37.17.010 if the information is related to a BIDCO that has received
4 assistance under AS 37.17.200 - 37.17.390 or to a person who is seeking assistance under
5 AS 37.17.200 - 37.17.390.

6 (d) A BIDCO may provide to a current or prospective creditor or shareholder of the
7 BIDCO a copy of an examination report on the BIDCO made by the department under this
8 chapter.

9 Sec. 10.13.990. DEFINITIONS. In this chapter,

10 (1) "affiliate" means, if used with respect to a nonnatural person, a person who
11 controls the nonnatural person, who is controlled by the nonnatural person, or who is controlled
12 by a person who also controls the nonnatural person;

13 (2) "associate" means, if used with respect to a licensee,

14 (A) a controlling person, director, or officer of the licensee;

15 (B) a director, officer, or partner of a person referred to in (A) of this
16 paragraph;

17 (C) a person who controls, is controlled by, or is under common control
18 with a person referred to in (A) of this paragraph, directly or indirectly through an
19 intermediary;

20 (D) a close relative of a person referred to in (A) of this paragraph; in this
21 subparagraph, "close relative" means a parent, child, sibling, or spouse, or a relative of
22 the same degree through marriage;

23 (E) a person of which a person referred to in (A) - (D) of this paragraph
24 is a director or officer;

25 (F) a person in which a person referred to in (A) - (D) of this paragraph,
26 or a combination of the persons acting in concert, owns or controls, directly or indirectly,
27 a 20 percent or greater equity interest;

28 (J) "BIDCO" means a corporation that is licensed under this chapter to provide
29 financial and management assistance to businesses;

30 (K) "business" means a person who transacts or proposes to transact business on
31 a regular and continual basis;

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1 (5) "control" means, if used with respect to a specific person, the power to direct
2 or cause the direction of, directly or indirectly through an intermediary, the management and
3 policies of the person, through the ownership of voting interests, by contract other than a
4 commercial contract for goods or nonmanagement services, or by other means; a natural person
5 is not considered to control another person solely because the natural person is a director, officer,
6 or employee of the other person; a person is rebuttably presumed to control a corporation if the
7 person directly or indirectly owns of record, holds beneficially with power to vote, or holds
8 proxies with discretionary authority to vote, 20 percent or more of the then outstanding voting
9 securities issued by a corporation;

10 (6) "controlling person" means, if used with respect to a specific person, a person
11 who controls the specific person, directly or indirectly through an intermediary;

12 (7) "corporate name" means the name of a corporation in its articles of
13 incorporation;

14 (8) "department" means the Department of Commerce and Economic
15 Development;

16 (9) "insolvent" means not paying debts in the ordinary course of business, not
17 paying debts as they become due, or liabilities exceeding assets;

18 (10) "interests of the licensee" includes the interests of the shareholders of the
19 licensee;

20 (11) "license" means a license issued under this chapter;

21 (12) "licensee" means a corporation that is licensed under this chapter;

22 (13) "officer" means

23 (A) with respect to a corporation, a person appointed or designated as an
24 officer of the corporation by or under applicable law or the corporation's articles of
25 incorporation or bylaws, or a person who performs with respect to the corporation the
26 functions usually performed by an officer of a corporation;

27 (B) with respect to a specific person other than a natural person or a
28 corporation, a person who performs for the specific person the functions usually
29 performed by an officer of a corporation for a corporation;

30 (14) "order" means an approval, consent, authorization, exemption, denial,
31 prohibition, or requirement applicable to a specific case and issued by the department, including

1 a license condition and an agreement made by a person with the department under this chapter;

2 (15) "person" includes a government and an agency of a government; when used
3 with respect to acquiring control of or controlling a specific person, "person" includes a
4 combination of two or more persons acting in concert;

5 (16) "principal shareholder" means a person who owns, directly or indirectly, of
6 record or beneficially, securities representing 10 percent or more of the outstanding voting
7 securities of a corporation;

8 (17) "subject person" means

9 (A) a controlling person, subsidiary, or affiliate of a licensee;

10 (B) a director, officer, or employee of a licensee or of a controlling
11 person, subsidiary, or affiliate of a licensee;

12 (C) another person who participates in the conduct of the business of a
13 licensee; or

14 (D) if used with respect to a licensee, a company or business of which the
15 licensee holds control under AS 10.13.260 - 10.13.280.

16 Sec. 10.13.995. **SHORT TITLE.** This chapter may be cited as the Alaska BIDCO Act.

17 * Sec. 2. AS 37.17 is amended by adding new sections to read:

18 **ARTICLE 2. BIDCO ASSISTANCE PROGRAM.**

19 Sec. 37.17.200. **PURPOSES OF BIDCO ASSISTANCE PROGRAM.** The purposes of
20 AS 37.17.200 - 37.17.390 include

21 (1) assisting in the formation and capitalization of one or more BIDCOs that have
22 a highly qualified management team and a good business plan, and that are designed to operate
23 in a profit-oriented, market-disciplined manner, with excellent prospects for long-term financial
24 success and viability;

25 (2) promoting economic development by providing a new source of risk capital
26 and management assistance for businesses, especially small and medium sized businesses, in
27 geographic areas throughout the state, including businesses in rural areas and distressed areas,
28 and including minority owned businesses;

29 (3) using state resources to attract other capital resources; and

30 (4) promoting the successful operation of BIDCOs.

31 Sec. 37.17.210. **BIDCO FUND.** The BIDCO fund is established in the Alaska Science

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1 and Technology Foundation. The fund consists of appropriations made to the fund by the
2 legislature and repayments of loans made under AS 37.17.200 - 37.17.390.

3 Sec. 37.17.220. USE OF MONEY IN BIDCO FUND. (a) From the money in the
4 BIDCO fund, the foundation may make loans or other financial assistance, as authorized under
5 AS 37.17.220 - 37.17.390, to assist in the formation, capitalization, and operation of corporations
6 that are licensed under AS 10.13.

7 (b) The foundation may not authorize new financial assistance under AS 37.17.200 -
8 37.17.390 after June 30, 1995, without the approval of the legislature.

9 Sec. 37.17.230. BIDCO CAPITALIZATION LOANS. A BIDCO capitalization loan for
10 the initial capitalization of a BIDCO shall be made under the terms and conditions that the
11 foundation determines to be appropriate and that are consistent with AS 37.17.200 - 37.17.390.

12 Sec. 37.17.240. LOAN COMMITMENT CONDITIONS. (a) When issuing a
13 commitment to make a BIDCO capitalization loan, the foundation shall make the loan closing
14 contingent on

15 (1) the BIDCO receiving a license under AS 10.13, which may occur
16 simultaneously with the loan closing;

17 (2) the BIDCO satisfying the capitalization requirements of AS 37.17.250; and

18 (3) other conditions that the foundation may impose.

19 (b) The foundation may not issue a loan commitment under this section unless the
20 foundation determines that the prospective BIDCO satisfies high quality evaluation standards as
21 determined by the foundation. The evaluation standards must include the following findings:

22 (1) the loan is likely to substantially promote the purposes of AS 37.17.200 -
23 37.17.390;

24 (2) the BIDCO's prospective management team is highly qualified to manage the
25 BIDCO;

26 (3) the BIDCO's business plan is a good business plan that, together with the
27 management team, promotes confidence in the prospects for the long-term financial success and
28 viability of the BIDCO; and

29 (4) if the foundation issues a loan commitment to the BIDCO, it is probable that
30 the BIDCO will be able to satisfy the capitalization requirements of AS 37.17.250.

31 Sec. 37.17.250. INITIAL CAPITALIZATION OF BIDCO. (a) The initial capitalization

1 of a BIDCO to which the foundation makes a BIDCO capitalization loan must include

2 (1) at least \$500,000 in equity investment in the BIDCO, in addition to any
3 organization costs paid for or owed by the BIDCO;

4 (2) the BIDCO capitalization loan; and

5 (3) additional capital in an amount required by the foundation and on terms and
6 conditions acceptable to the foundation; the additional capital may be in the form of debt, grants,
7 equity investment in addition to the minimum equity investment requirement of \$500,000 under
8 (1) of this subsection, or a combination of debt, grants, and the equity investment.

9 (b) The minimum equity investment under (a)(1) of this section must be fully received
10 by the BIDCO before or at closing of the BIDCO capitalization loan. The BIDCO capitalization
11 loan shall be fully disbursed to the BIDCO at closing. The additional capital shall also be fully
12 disbursed at closing; however, if the foundation is satisfied that there is a firm commitment for
13 the additional capital on terms acceptable to the foundation, that the source for the additional
14 capital will deliver on the firm commitment, and that the documents evidencing the additional
15 capital have been executed and include terms acceptable to the foundation, the additional capital
16 may be disbursed to the BIDCO on a phased-in basis on terms acceptable to the foundation.

17 Sec. 37.17.260. SUBORDINATION OF BIDCO CAPITALIZATION LOAN. A BIDCO
18 capitalization loan may be subordinated to the additional capital required under
19 AS 37.17.250(a)(3).

20 Sec. 37.17.270. BIDCO CAPITALIZATION LOAN PAYMENT AND INTEREST. (a)
21 A BIDCO capitalization loan must be structured so that the full amount of the principal is due
22 in a lump sum at the end of the loan term.

23 (b) Interest on a BIDCO capitalization loan accrues during the loan term and is due at
24 the end of the loan term.

25 Sec. 37.17.280. BIDCO CAPITALIZATION LOAN CREDITS. (a) A BIDCO
26 capitalization loan must include a formula that allows the BIDCO to earn credits to reduce the
27 interest and principal owed on the loan. The formula shall be based on increasing jobs and sales
28 in some or all of the businesses financed by the BIDCO and on sustaining the increases. To the
29 extent the foundation determines appropriate, the foundation may also provide credits in situations
30 where the BIDCO clearly demonstrates to the foundation that jobs would have been lost if the
31 BIDCO had not provided financing assistance.

1 (b) The foundation shall establish procedures and guidelines for the certification by the
2 foundation of credits earned by a BIDCO under this section, including the circumstances under
3 which the foundation may deny the credits. Within the guidelines, the specific decisions
4 regarding the granting or denial of the credits are left to the discretion of the foundation.

5 Sec. 37.17.290. IMPLEMENTATION OF BIDCO CAPITALIZATION LOAN
6 PROGRAM. (a) The foundation shall implement the program for making BIDCO capitalization
7 loans under AS 37.17.200 - 37.17.390 in a manner designed to encourage financing assistance
8 by BIDCOs to businesses throughout the state. Through the use of one or more formulas
9 designed under AS 37.17.280, the foundation shall provide special incentives to encourage the
10 financing of businesses located in distressed areas, including distressed rural areas, and the
11 financing of minority owned businesses. In this subsection, "minority owned business" means
12 a business that is owned, controlled, and operated by an individual who is a member of a
13 minority and in which more than 50 percent of the net profit or loss attributable to the business
14 accrues to a member of a minority; in this paragraph, "member of a minority" includes a person
15 who is black, Hispanic, or Alaska Native.

16 (b) When determining under (a) of this section whether an area is distressed or how
17 distressed an area is, the foundation may use, individually or in combination, factors that may
18 include unemployment, poverty, lack of access to the state highway system, lack of access to a
19 marine transportation system, or other factors the foundation determines to be appropriate.

20 Sec. 37.17.300. TERMS OF BIDCO CAPITALIZATION LOANS. When determining
21 the amount or range of amount for a BIDCO capitalization loan, the term to maturity of the loan,
22 the interest rate for the loan, the additional capital requirements for the loan, and the formula for
23 earning credits under the loan, the foundation shall consider the following objectives:

24 (1) that the BIDCO will have adequate capitalization to support a highly qualified
25 management team, to implement a business plan that, when combined with the management team,
26 will promote confidence in the prospects of the BIDCO for long-term financial success and
27 viability, and to otherwise promote the purposes of AS 37.17.200 - 37.17.390;

28 (2) that the additional capital requirement is in an amount that encourages the
29 BIDCO to raise as much capital as feasible from sources other than the BIDCO capitalization
30 loan, without unduly hindering the ability of the BIDCO to become operational;

31 (3) that the formula for earning credits under AS 37.17.280, combined with the

1 other terms and conditions of the loan will be designed so that with a reasonable performance
2 by the BIDCO, the BIDCO will be able to earn sufficient credits to reduce the amount of
3 principal and interest owed on the loan to zero by or before the end of the loan term; and

4 (4) that the formula for earning credits under AS 37.17.280, combined with the
5 other terms and conditions of the loan, is sufficiently challenging that the special incentives
6 provided by the credits allowed under AS 37.17.280 remain in effect for the longest feasible time
7 during the loan term as is consistent with meeting the other objectives identified in this section.

8 **Sec. 37.17.310. ACCESS TO MEETINGS AND INFORMATION.** While a BIDCO loan
9 is outstanding and the obligations of the BIDCO to the foundation remain undischarged, the
10 BIDCO shall allow the foundation to have a representative present at all meetings of the
11 BIDCO's board of directors and of the BIDCO's shareholders, to receive all notices and
12 information sent to the board of directors or the shareholders, to have the same access to
13 information about the BIDCO as the directors have and as the shareholders have, and to receive
14 additional reports or information from the BIDCO that the foundation reasonably requests.

15 **Sec. 37.17.320. BIDCO OPERATION LIMITATION.** While a BIDCO loan is
16 outstanding and the obligations of the BIDCO to the foundation remain undischarged, the BIDCO
17 may not provide financing assistance to businesses located outside the state. If a business
18 assisted by the BIDCO has multi-state or multi-national operations, the location of the business
19 is where the largest economic benefit of the financing assistance transaction made by the BIDCO
20 to the business is likely to occur.

21 **Sec. 37.17.330. SURRENDER OF BIDCO LICENSE.** While a BIDCO loan is
22 outstanding and the obligations of the BIDCO to the foundation are not discharged, the BIDCO
23 may not surrender its license under AS 10.13 without the written consent of the foundation.

24 **Sec. 37.17.340. CLOSING ASSISTANCE.** If determined by the foundation to be
25 advisable, the foundation may use money in the BIDCO fund to provide assistance to a person
26 to complete the tasks necessary for the person to achieve a closing on a BIDCO capitalization
27 loan. The foundation may provide the assistance on the terms and conditions that the foundation
28 determines appropriate.

29 **Sec. 37.17.350. CONFIDENTIALITY.** In order to promote the purposes of
30 AS 37.17.2(x) - 37.17.390, the foundation may establish policies under which it will keep
31 confidential proprietary information submitted to the foundation by an applicant for a loan or

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1 other financial assistance under AS 37.17.200 - 37.17.390 and by a BIDCO that has received a
2 loan or other financial assistance under AS 37.17.200 - 37.17.390. The information that is
3 determined to be confidential under this section is not a public record under AS 09.25.110 -
4 09.25.220.

5 Sec. 37.17.360. SUBSEQUENT LOANS. If the foundation determines that a BIDCO,
6 after receiving a BIDCO capitalization loan, has performed well financially and in promoting the
7 purposes of AS 37.17.200 - 37.17.390, and if more than four years have elapsed since the loan
8 was made, the foundation may make an additional loan to the BIDCO, on the terms and
9 conditions that the foundation considers appropriate.

10 Sec. 37.17.390. DEFINITIONS. In AS 37.17.200 - 37.17.390,

11 (1) "additional capital" means the additional capital required under
12 AS 37.17.250(a)(3);

13 (2) "BIDCO" means a corporation licensed under AS 10.13;

14 (3) "BIDCO capitalization loan" means a loan made under AS 37.17.230 for the
15 initial capitalization of a BIDCO;

16 (4) "BIDCO loan" means a BIDCO capitalization loan or a subsequent loan made
17 under AS 37.17.360;

18 (5) "foundation" means the Alaska Science and Technology Foundation
19 established under AS 37.17.010.

20 * Sec. 3. AS 06.05.270(a) is amended to read:

21 (a) In addition to loans and acquisitions expressly authorized by this chapter, a state bank
22 may deal in, underwrite, and invest in for its own account

23 (1) direct or guaranteed obligations of the United States, either directly or in the
24 form of securities of, or other interests in, an open-end management type investment company
25 or investment trust registered under 15 U.S.C. 80a-1 - 80a-64 (Investment Company Act of
26 1940), if

27 (A) the portfolio of the investment company or investment trust is limited
28 to obligations of the United States government and repurchase agreements fully
29 collateralized by the obligations; and

30 (B) the investment company or investment trust takes delivery of the
31 collateral directly or through an authorized custodian;

- 1 (2) general obligations of the State of Alaska and its political subdivisions;
- 2 (3) general obligations of a state of the United States or its political subdivisions;
- 3 (4) revenue obligations of the State of Alaska or its political subdivisions subject
- 4 to the limitation of (b) of this section;
- 5 (5) revenue obligations of a state of the United States or its political subdivisions
- 6 subject to the limitation of (b) of this section;
- 7 (6) obligations of instrumentalities of the United States government including, but
- 8 not limited to Federal Intermediate Credit Banks, Federal Land Banks, the Federal National
- 9 Mortgage Association, and Banks for Cooperatives;
- 10 (7) commercial paper of prime or equivalent quality as rated by a recognized
- 11 national rating service subject to the limitation of (b) of this section;
- 12 (8) secured corporate obligations rated within the three highest grades of a
- 13 national rating service subject to the limitation of (b) of this section;
- 14 (9) obligations of the International Bank for Reconstruction and Development, the
- 15 Inter-American Development Bank, or the African Development Bank, subject to the limitation
- 16 of (b) of this section;
- 17 (10) stock in the Federal National Mortgage Association, a Federal Reserve Bank,
- 18 or a Federal Home Loan Bank;
- 19 (11) the stocks, bonds, and other securities of
- 20 (A) a corporation licensed under AS 10.13; or
- 21 (B) a corporation attempting to become licensed under AS 10.13 if the
- 22 corporation intends to use the proceeds to fulfill the tasks necessary to become
- 23 licensed under AS 10.13.

24 * Sec. 4. AS 06.05.270(b) is amended to read:

- 25 (b) A state bank may not underwrite or invest for its own account an amount exceeding
- 26 15 percent of its combined capital, surplus and undivided profits in any one issue of securities
- 27 authorized in (a)(4) and (5) of this section or with any one obligor of the securities authorized
- 28 in (a)(7), (8), ~~(9)~~, and (11) of this section.

29 * Sec. 5. AS 06.15.240 is amended to read:

30 Sec. 06.15.240. INVESTMENTS AUTHORIZED. Subject to the provisions of this

31 chapter and regulations under this chapter, a mutual bank may invest in

1 (1) obligations of the United States and those for which the faith of the United
2 States is pledged to provide for the payment of the interest and principal, obligations for which
3 annual contributions to be paid under (PURSUANT TO) contract by the United States
4 government or any of its instrumentalities in accordance with an Act of Congress entitled the
5 "Housing Act of 1949," are pledged as security for the payment of the interest and principal, and
6 obligations of any agency of the United States;

7 (2) obligations of any state of the United States and those for which the faith of
8 any state of the United States is pledged to provide for the payment of the interest and principal;

9 (3) obligations of a city, village, town, county, department, agency, district,
10 authority, commission or other public body of any state of the United States, subject to the
11 exercise of the same degree of care and prudence that persons prompted by self-interest generally
12 exercise in their own affairs;

13 (4) any property improvement note issued under the provisions of Title I of the
14 National Housing Act and any other real property improvement note in a principal amount not
15 in excess of \$15,000, not including interest;

16 (5) obligations of the Dominion of Canada or provinces of the Dominion of
17 Canada payable in United States funds;

18 (6) the stocks, bonds, and other securities of

19 (A) a corporation licensed under AS 10.13; or

20 (B) a corporation attempting to become licensed under AS 10.13 if the
21 corporation intends to use the proceeds to fulfill the tasks necessary to become
22 licensed under AS 10.13.

23 * Sec. 6. AS 06.25.170 is amended to read:

24 Sec. 06.25.170. PURCHASE AND SALE OF SECURITIES. A trust company may
25 purchase, invest in and sell stocks, bills of exchange, bonds and mortgages and other securities.
26 When money or security for money is borrowed or received on deposit, or for investment, the
27 bonds or obligations of the trust company may be given, but it may not issue bills to circulate
28 as money. In this section, "stocks, bills of exchange, bonds, mortgages, and other securities"
29 include the stocks, bills of exchange, bonds, mortgages, and other securities of

30 (1) a corporation licensed under AS 10.13; or

31 (2) a corporation attempting to become licensed under AS 10.13 if the

1 corporation intends to use the proceeds to fulfill the tasks necessary to become licensed
 2 under AS 10.13.

3 * Sec. 7. AS 06.30.610 is amended to read:

4 Sec. 06.30.610. INVESTMENTS IN SECURITIES. An association may invest in the
 5 following securities:

6 (1) obligations of, or guaranteed as to principal and interest by, the United States
 7 or this state without limitation;

8 (2) stock of a Federal Home Loan Bank of which it is eligible to be a member
 9 and in obligations or consolidated obligations of any Federal Home Loan Bank;

10 (3) stock or obligations of the Federal Savings and Loan Insurance Corporation;

11 (4) stock or obligations of a national mortgage association or its successor;

12 (5) demand, time, or savings deposits with a bank or trust company whose
 13 deposits are insured by the Federal Deposit Insurance Corporation;

14 (6) stock or obligations of any corporation or agency of the United States or this
 15 state, or in deposits of the corporation or agency [THEREWITH] to the extent that the
 16 corporation or agency assists in furthering or facilitating the association's purposes or powers;

17 (7) savings accounts of an association operating under this chapter and of a
 18 federal savings and loan association;

19 (8) evidence of indebtedness that is a general obligation of a city, town, village,
 20 school district, or other municipal or political subdivision of this state;

21 (9) other stocks, securities, or obligations that the commissioner approves and
 22 places on a published list; an association investing in securities listed by the commissioner is not
 23 required to dispose of the securities if at a later time the commissioner removes the securities
 24 from the list;

25 (10) the stocks, bonds, and other securities of

26 (A) a corporation licensed under AS 10.13; or

27 (B) a corporation attempting to become licensed under AS 10.13 if the
 28 corporation intends to use the proceeds to fulfill the tasks necessary to become
 29 licensed under AS 10.13.

30 * Sec. 8. AS 06.45.060(7) is amended to read:

31 (7) invest its funds

Chapter 133

- 1 (A) in loans exclusively to members;
- 2 (B) in obligations of the United States or securities fully guaranteed as to
3 principal and interest by the United States;
- 4 (C) in loans to other credit unions in the total amount not exceeding 25
5 percent of its paid-in and unimpaired capital and surplus in accordance with regulations
6 adopted by the commissioner;
- 7 (D) in shares or accounts of savings and loan associations or mutual
8 savings banks that are insured by the Federal Savings and Loan Insurance Corporation
9 or the Federal Deposit Insurance Corporation;
- 10 (E) in obligations issued by banks for cooperatives, federal land banks,
11 federal intermediate credit banks, federal home loan banks, the Federal Home Loan Bank
12 Board, or a corporation designated in 31 U.S.C. 9101 as a wholly owned federal
13 government corporation; in obligations, participations, or other instruments of or issued
14 by or fully guaranteed as to principal and interest by the Federal National Mortgage
15 Association or the Government National Mortgage Association; in mortgages, obligations,
16 or other securities that [WIHCII] are or have been sold by the Federal Home Loan
17 Mortgage Corporation under 12 U.S.C. 1454 or 12 U.S.C. 1455 (Federal Home Loan
18 Mortgage Corporation Act) [SECS. 305 OR 306 OF THE FEDERAL HOME LOAN
19 MORTGAGE CORPORATION ACT]; or in obligations or other instruments or securities
20 of the Student Loan Marketing Association;
- 21 (F) in participation certificates evidencing beneficial interests in
22 obligations, or in the right to receive interest and principal collections from obligations,
23 that [WIHCII] have been subjected by one or more federal agencies to a trust or trusts
24 for which an executive department, agency, or instrumentality of the United States or its
25 head has been named to act as trustee;
- 26 (G) in shares or deposits of a central credit union in which such
27 investments are authorized by the board of directors of the credit union making the
28 investment;
- 29 (H) in shares, share certificates, or share deposits of federally insured
30 credit unions;
- 31 (I) in the shares, stocks, or obligations of another organization providing

1 services that are associated with the routine operations of credit unions, up to one percent
 2 of the total paid-in and unimpaired capital and surplus of the credit union with the
 3 approval of the commissioner; [AND]

4 (J) in the capital stock of the National Credit Union Central Liquidity
 5 Facility; and

6 (K) in the stocks, bonds, and other securities of

7 (i) a corporation licensed under AS 10.13; or

8 (ii) a corporation attempting to become licensed under
 9 AS 10.13 if the corporation intends to use the proceeds to fulfill the tasks
 10 necessary to become licensed under AS 10.13;

11 * Sec. 9. AS 37.10.085(a) is amended to read:

12 (a) Except as provided in (c) or (d) of this section, neither the state nor a political
 13 subdivision of the state may

14 (1) make a subscription to the capital stock of a corporation;

15 (2) lend its credit for the use of a corporation; or

16 (3) borrow money for the use of a corporation.

17 * Sec. 10. AS 37.10.085 is amended by adding a new subsection to read:

18 (d) This section does not apply to

19 (1) the financial assistance program established under AS 37.17.200 - 37.17.390;

20 or

21 (2) investments of the assets of the public employees' retirement system
 22 established under AS 39.35 or the teachers' retirement system established under AS 14.25, to the
 23 extent the investments are made in the stocks, bonds, and other securities of

24 (A) a corporation licensed under AS 10.13; or

25 (B) a corporation attempting to become licensed under AS 10.13 if the
 26 corporation intends to use the proceeds to fulfill the tasks necessary to become licensed
 27 under AS 10.13.

28 * Sec. 11. AS 37.17.010(b) is amended to read:

29 (b) The purposes [PURPOSE] of the foundation are [IS] to

30 (1) promote and enhance through basic and applied research: economic
 31 development and technological innovation in Alaska; public health; telecommunications; and

Chapter 133

- 1 sustained growth and development of Alaskan scientific and engineering capabilities;
- 2 (2) implement the BIDCO assistance program under AS 37.17.200 - 37.17.390.

FISCAL NOTE

STATE OF ALASKA
1993 LEGISLATIVE SESSION

BILL NO. HB14

Revision Date: April 1, 1993

Dept. Affected: Revenue

Title: Appropriation for Capitalization
of the BIDCO Fund

BRU: AK Sci & Tech Fndtn

Component: AK Sci & Tech Fndtn

Sponsor: Bettye Davis

Requestor: Bettye Davis

COMPONENT SERIAL NO. 1009

Expenditures/Revenues:

(Thousands of Dollars)

OPERATING	FY94	FY95	FY96	FY97	FY98	FY99
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS	3,000.00	3,000.00	4,000.00			
TOTAL OPERATING	3,000.00	3,000.00	4,000.00			

CAPITAL						
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REVENUE FUND SOURCE:	3,000.00	3,000.00	4,000.00			
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FUNDING:

(Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other Sci/Tech Endowment Income	3,000.00	3,000.00	4,000.00			
TOTAL	3,000.00	3,000.00	4,000.00			

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of current year (FY93) impact: \$ N/A

ANALYSIS: (Attach a separate page if necessary)

See Attached Analysis

Prepared by:

Patricia Gasmus DeDe

Phone: (907) 272-4333

Division:

AK Science & Technology Foundation

Date: 4/1/93

Approved by Commissioner:

[Signature]

Date: 4/1/93

Agency:

Department of Revenue

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Analysis

Assumptions:

That the appropriation of \$3 million from fund 1025/51375 will not severely impact the operations and granting capacity of ASTF. This is true only if additional legislative appropriations of ASTF funds do not occur. It is impossible to predict the outcome of other pending legislation. If additional legislation does not pass, under the expenditures outlined in this fiscal note, ASTF could fund the BIDCO capitalization over a three-year period and maintain ASTF grants and operations from ASTF endowment income.

This presumes that no other appropriations are made from the endowment earnings other than those requested for ASTF operating and grants and that the ASTF endowment, upon which interest income is dependent, is not reduced from its current level of \$101,037,000. There are currently other bills pending which would appropriate funds from the ASTF endowment earnings.

Program Summary

1. This fiscal note does not fund any additional positions.
2. This fiscal note does not justify major expenditure items.
3. The basis for the estimate of available ASTF interest income is based on current earning activities of the fund based on an endowment of \$101,037,000. Using the high projections supplied by the Alaska Permanent Fund Corporation, ASTF will have \$5 million in interest income available on July 1, 1993. The high projection for earnings on the ASTF endowment for FY94 is \$8 million. This results in a total interest income of \$13 million through FY94. The ASTF FY94 budget request for operating and grants expenses is \$9,609,000; this would leave an approximate balance of \$3,400,000 in interest income generated through FY94.

There are currently other bills pending which would appropriate funds from ASTF endowment earnings, further depleting endowment earnings and the interest earning capabilities of ASTF.

4. **Section Cost Analysis**—The total cost of HB14 is \$3,000,000 in FY94, \$3,000,000 in FY95, and \$4,000,000 in FY96. Total cost during FY94 is limited to \$3,000,000.

Economic Impact—This revised fiscal note is offered as a way to capitalize the BIDCO fund without seriously impacting ASTF's ability to award grants and conduct business in FY94, FY95, and FY96. If other legislative appropriations pass which utilize ASTF endowment income, the potential impact would be that ASTF could not award grants in FY94, the basic mission of the foundation, and the current operating expense of the foundation would be seriously jeopardized.

HB

19

**POSITION PAPER
DEPARTMENT OF ADMINISTRATION**

Bill Number : HB 19 L&C

Karen Boorman
**Contact: Karen Boorman, Executive Director
Alaska Public Offices Commission**

Phone: 276-4176 Date: March 4, 1993

Bill Title: "An Act relating to election campaigns, regulation of lobbying, conflict of interest, and the Alaska Public Offices Commission; and providing for an effective date."

This bill, if enacted, would:

- a) exempt candidates' campaigns of under \$1,000 from reporting requirements;
- b) limit how campaign funds may be disbursed;
- c) prohibit use of public funds by state agencies or municipalities to support or oppose an election or ballot proposition;
- d) prohibit certain uses of campaign funds;
- e) allow APOC to adopt regulations for identification of communications;
- f) put time limits on fund raising of legislative candidates;
- g) change due date of year-end reports to February 15 and require zero reports;
- h) close a 2 day reporting gap;
- i) expand civil penalties for the Campaign Disclosure, Lobbying and Conflict of Interest Laws;
- j) reduce the number of lobbying reports required to be filed or prepared;
- k) prohibit lobbyists from using state property;
- l) require candidates for the legislature to disclose additional information on some sources of income and loans.

The Commission generally supports this legislation. Comments are limited to those sections where the Commission has suggestions or concerns.

Section 1. AS.15.13.040(a)(3). The Commission suggests contributions in excess of \$100 in the aggregate be raised to in excess of \$250 [\$100] in the aggregate in order to be consistent with individual contributor reporting requirements.

AS 15.13.040(b)(2). The Commission requests that reporting threshold for contributions to groups be raised from "in excess of \$100" to be "in excess of \$250." (b) Each group shall make a full report upon a form prescribed by the commission, listing (1) the name and address of each officer and director; (2) the aggregate amount of all contributions make to it; and, for all contributions in excess of \$250 [\$100] in the aggregate a year, the name, address, principal occupation, and employer of the contributor, and the date and amount contributed by each contributor; and (3) the date and amount of all contributions made by it and all expenditures made, incurred, or authorized by it.

The Commission requests the addition of a new section AS.15.13.040(h) which would reduce the reporting requirement on accrued expenditures. (h) Accrued expenditures that in the aggregate total \$1,000 or less a year per payee or account need not be included in the report of expenditures required under (a) and (b)(3) of this section. However, if an unreported accrued expenditure is not paid within 90 days after it is incurred, it becomes a contribution and must be reported as required by this section and AS.15.13.110. For purposes of this subsection, "accrued expenditures" means expenses incurred but not yet paid.

Section 4. AS.15.13.042(b). The Commission believes 60 days may be too short a period of time to close out an active or large campaign and suggests 120 days.

AS.15.13.042(b)(9). Does this provision allow a candidate to transfer funds to any candidate's legal defense or election challenge fund or only his or her own?

AS.15.13.042(d). The Commission requests clarification on subsection (d). This subsection states that nonmonetary assets of up to \$2,500 may be kept by a candidate if the candidate is not a member of the legislature. Is this for personal benefit or future campaign use? If the candidate is a member of the legislature, are they prohibited from keeping nonmonetary assets or is there no limit to what can be kept?

The Commission requests amendments to AS.15.13.070(b) and (c) as follows:

(b) A contribution over \$250 [\$100] may not be made in cash or by cash payment unless a written receipt is obtained and filed with the commission.

(c) An expenditure over \$250 [\$100] may not be made in case or by cash payment unless a written receipt is obtained and filed with the commission.

Section 5. AS.15.13.077. The Commission does not support this provision for several reasons:

a. The Commission anticipates that significant time and energy will be spent in complaints and reviewing the content of campaign literature to determine if it is in support or opposition to a ballot proposition and is factual.

b. It is unclear as to who will be punished and how, if this provision is violated. Will one state agency pay another a fine, for example? This would seem to only reallocate state general funds.

c. Current regulation 2 AAC 50.360 requires municipalities, including school districts, to report funds spent when a municipality seeks to influence the outcome of an election. State entities are not required to report public funds spent.

d. The current emphasis of the statute and regulations is disclosure of information. If a prohibition on the use of public funds is necessary, the Commission requests that it be limited to funds to support or oppose the election of a candidate.

Section 7. AS.15.13.100. The Commission is unclear as to what problem this amendment would correct. If the amendment is accepted the title will need to be changed to Contributions And Expenditures Before Filing.

Section 8. AS. 15.13.102(6). This section prohibits the use of campaign funds to pay fines incurred as a candidate unless it is as a result of another person acting on behalf of the candidate under circumstances where "the candidate did not know of those actions." AS.15.13.060(f) assigns responsibility to a candidate for performance of a treasurer if "the candidate knew or had reason to know of the default or violation." The Commission believes the standard for determining responsibility should be the same in both cases.

Sec. 15.13.104(d). The Commission believes that determining whether liabilities exceed assets in a candidate's campaign treasury on the day of the election may not be realistic. If the purpose is to limit fund-raising after the election, except to expunge debt, perhaps fund-raising should be limited to the amount of the debt and the determination of debt be tied to the due date of the 10 day post election report.

Section 24. AS 39.50.020. Legislative directors should be deleted from this section of the Conflict of Interest Law as they are now covered under the financial disclosure requirements of AS.24.60.200.

Section 26. AS 39.50.030(b)(1). The Commission believes the threshold for reporting sources of income should be raised from over \$100 to over \$1000. If changed, this would be consistent with requirements for legislators and legislative directors under AS.24.60.200. Legislators and legislative directors are covered under AS.24.60.200 and should be removed from 39.50.030(b)(1). Line 3, page 16 should read... the amount of income received from the source, not by the source.

Current law requires that candidates for the legislature and other filers, (governor, Lt. governor, executive branch officials, judicial officers, boards & commission members, and municipal officials) except incumbent legislators and legislative directors file Conflict of Interest Statements naming sources of income over \$100. Incumbent legislators must report under AS.24.60.200 more detailed information about sources of income over \$1000 and in some cases, the amount of income. As proposed AS.39.50.031(b) would create a third category of filer, a non-incumbent candidate for the legislature. Although the intent of this amendment appears to be the establishment of consistent standards among candidates for the legislature it would actually create two standards for legislative candidates and result in three financial disclosure manuals, three sets of forms and most likely cause confusion among all filers. In addition, the added disclosure requirements for non-incumbent legislative candidates may discourage new candidates from running.

AS.39.50.030(b)(6), page 16, line 24. The Commission recommends raising the threshold for reporting loans from more than \$500 to more than \$1000. This would then be consistent with legislative ethics financial disclosure under AS 24.60.200(3). Legislators and legislative directors should be deleted from this section as they are similarly covered under AS.24.60.200. As previously stated, the inclusion of candidates for the legislature in this section creates a third category of filer for reporting loans thereby increasing the complexity for filing and administration of the requirements.

AS.39.50.030(b)(9)(B). This description of gift is an improvement over no description in the current statute but includes a provision (9)(B) which is inconsistent with AS.24.60.200(4) the reporting of gifts by legislators. Since AS.24.60.200 includes by reference the reporting requirements of AS.39.50.030, the commission recommends deleting (9)(B) or amending AS.24.60.200(4) to avoid conflicting statutory requirements.

Section 27. Delete this section if legislators and legislative directors are removed from AS.39.50 as they are covered by AS.24.60.200 and candidates for the legislature are not required to file at the same standard as incumbent legislators.

Section 33. AS.39.50.200(a)(7). The definition of legislative directors can be deleted as legislative directors file financial disclosure statements under AS.24.60.200. Also, this definition is not consistent with the definition of legislative director in AS.24.60.990(a)(9).

FISCAL NOTE

STATE OF ALASKA
1993 LEGISLATIVE SESSION

BILL NO. HB 19 L&C

Revision Date: _____ Department Affected: Administration
 Title: An Act relating to election campaigns, regulation of lobbying, conflict of interest, and the APOC. BRU: Alaska Public Offices Commission
 Component: Alaska Public Offices Commission
 Sponsor: Finkelstein
 Requestor: _____ COMPONENT SERIAL NO.

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EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 94	FY 95	FY 96	FY 97	FY 98	FY 99
PERSONAL SERVICES	0	90.8	79.5	81.6	83.8	86.1
TRAVEL	0	3.0	3.0	3.0	3.0	3.0
CONTRACTUAL	0	2.5	10.0	10.0	10.0	10.0
SUPPLIES	0	0	0	0	0	0
EQUIPMENT	0	1.2	0	0	0	0
LAND & STRUCTURES	0	0	0	0	0	0
GRANTS, CLAIMS	0	0	0	0	0	0
MISCELLANEOUS	0	0	0	0	0	0
TOTAL OPERATING	0	97.5	92.5	94.6	96.8	99.1

CAPITAL	0	0	0	0	0	0
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REVENUE FUND SOURCE:	0	0	0	0	0	0
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FUNDING: (Thousands of Dollars)

GENERAL FUND	0	97.5	92.5	94.6	96.8	99.1
FEDERAL FUNDS	0	0	0	0	0	0
OTHER FUND SOURCE:	0	0	0	0	0	0
TOTAL	0	97.5	92.5	94.6	96.8	99.1

POSITIONS:

FULL-TIME	0	2	1	1	1	1
PART-TIME	0	(1)	(1)	(1)	(1)	(1)
TEMPORARY	0	0	0	0	0	0

Estimate of current year impact: 0

ANALYSIS: (Attach a separate page if necessary.)

See Attached Narrative

Prepared By: Karen Boorman, Executive Director Phone: (907) 276-4176
 Division: Alaska Public Offices Commission Date: March 4, 1993
 Approved by Commissioner: Nancy Bear Usery
 Agency: Administration Date: 3/11/93

FISCAL NOTE

STATE OF ALASKA
1993 Legislative Session

BILL NO HB 19 L & C

HB 19
APOC Estimated Costs
FY 95
(July, 1994 - June, 1995)

Personnel:

Associate Coordinator--Range 18A (Begin Jan., 1995)	\$ 29,654
* Regulations Specialist II--Range 16A (Begin July, 1994)	52,134
Clerk IV--Range 9A - Juneau (Begin Jan., 1995) (Upgrade from Clerk III, six months)	9,054
	<hr/>
	\$ 90,843

Travel:

Training	\$ 3,000
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Contractual Services:

* Notice and printing of proposed regulation Training material	\$ 2,500
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** Legal Fees

Hearings, Witness Fees, Subpoenas, Transcripts	\$ 10,000
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Equipment:

* Computer equipment	\$ 1,200
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* Funding for Regulations Specialist, notice and printing for regulations, and equipment is for FY '95 only.

** Complaint investigation funds (legal fees) will be necessary beginning in FY '96.

Personal Services projected to increase at 3 percent per year for merit increases.

FISCAL NOTE

STATE OF ALASKA
1993 LEGISLATIVE SESSION

BILL NO. HB 19

This bill includes several provisions which will create new prohibitions on campaign finance activity by State and municipal candidates. It also establishes new financial disclosure requirements for some public officials. The Alaska Public Offices Commission (APOC) will administer these provisions and investigate and adjudicate alleged violations. This bill also expands the scope of civil penalties for three of the laws APOC enforces, makes year-end reports mandatory and closes a two-day reporting gap before elections.

The campaign finance provisions restrict the ways surplus funds may be disbursed, allow for establishment of legal defense and election challenge funds, impose time limits on fund raising, restrict the use of public funds to influence the outcome of elections and limit campaign activity by candidates with respect to lobbyists. The lobbying provisions restrict lobbyists' use of State property or resources. The financial disclosure provisions require legislative candidates to disclose more detailed information on their loans and sources of income that have a substantial interest in legislative, administrative or political action, or are from a lobbyist, or a person who has a contract with the State for more than \$10,000 annually.

The commission anticipates it will incur start up costs as it prepares to assume its duties of administering and enforcing these new provisions. Staff must revise forms, manuals and training materials as well as prepare new regulations for commission review. Existing staff cannot undertake all of these activities, so new positions would be required.

The commission will receive many ongoing requests for advice about interpretation of the laws, including questions such as whether a draft group may fund raise before the date allowed for legislators, whether a legislative candidate must provide more detailed financial disclosure concerning a client, and whether a local government or school district is properly using public funds to influence the outcome of a ballot proposition. Staff will need extra funds to prepare for the first election in which candidates must comply with the provisions regarding disbursement of campaign surplus and prohibited uses of campaign funds and the stricter financial disclosure requirements of legislative candidates. Training sessions around the state to help those impacted will be necessary.

The bill makes all violations of the Campaign Disclosure, Conflict of Interest and Lobbying Laws APOC administers subject to civil penalties in addition to criminal penalties. This is a more cost effective penalty process for less egregious violations than the criminal penalty process which can require a lengthy and costly complaint hearing process and substantial involvement from the Department of Law and potentially the courts.

It is expected that several complaints will be filed each year alleging that a candidate,

lobbyist or public entity has violated one of these provisions. Potential complaints include allegations that a candidate filed incomplete financial disclosure information, or conducted fund raising too soon or too late, and that a municipality used public funds to support a ballot proposition. It is reasonable to expect that one complaint each year will proceed to public hearing. This expense cannot be absorbed from funds currently budgeted.

The commission will need to hold at least one hearing in FY 95 to adopt regulations. The expenses of such a hearing are not funded within the FY 95 budget.

In order to meet the mandates of the new provisions, the commission will need to add a professional staff member (Associate Coordinator--Range 18) to investigate complaints, and provide compliance advice. For the first year, a paraprofessional staff member (Regulations Specialist II--Range 16) will be necessary to draft regulations, develop manuals, revise forms and conduct training.

The commission's current office space and furniture in Anchorage can accommodate the new positions. Additional computer equipment will be necessary (printer and keyboard), however.

The Juneau office will have to provide compliance advice, assist in investigations, and process civil penalties under the new provisions. In order to meet this need and provide assistance to the lobbying administrator without creating the need for additional office space, furniture and equipment by adding additional positions, the commission requests upgrading of the current part-time Clerk III position to a full-time, year round Clerk IV position.

A detailed breakdown of the costs associated with administration and enforcement of this bill is attached. The effective date of the bill is January 1, 1995.

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FISCAL NOTE

STATE OF ALASKA
1994 LEGISLATIVE SESSION

BILL NO. HB 33

Revision Date: December 15, 1993
Title: Convening of legislature in Matanuska-Susitna Valley

Dept. Affected: Fish and Game
BRU: CFMD, Sub, Hab, Boards, SF, WC, Admin & Support, CFEC

Sponsor: Carney, Willis
Requestor: _____

Component: Fish Mgt/Develp, Sub, Hab, Boards, SF, WC, Admin

COMPONENT SERIAL NO. 1941, 1942, 464, 473, 477, 479, 482, 483, 486, 471

Expenditures/Revenues

(Thousands of Dollars)

	FY 95	FY 96	FY 97	FY 98	FY 99	FY 00
OPERATING EXPENDITURES						
PERSONAL SERVICES	94.3	98.7	103.0	108.1	113.5	119.2
TRAVEL	160.0	162.7	165.5	168.4	176.9	185.8
CONTRACTUAL	35.3	36.0	36.8	37.6	39.5	41.5
SUPPLIES	3.5	3.6	3.6	3.6	3.8	4.0
EQUIPMENT	0.0	0.0	0.0	0.0	0.0	0.0
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	293.1	301.0	308.9	317.7	333.7	350.5

CAPITAL EXPENDITURES	0.0	0.0	0.0	0.0	0.0	0.0
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CHANGE IN REVENUES ()						
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FUND SOURCE

(Thousands of Dollars)

	FY 95	FY 96	FY 97	FY 98	FY 99	FY 00
1002 Federal Receipts	6.9	7.2	7.6	7.9	8.3	8.7
1003 GF Match						
1004 GF	279.3	286.6	293.7	301.9	317.1	333.1
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other	6.9	7.2	7.6	7.9	8.3	8.7
TOTAL	293.1	301.0	308.9	317.7	333.7	350.5

Estimate of any current year (FY 94) cost: \$ None

POSITIONS

	FY 95	FY 96	FY 97	FY 98	FY 99	FY 00
FULL-TIME						
PART-TIME	3	3	3	3	3	3
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)
See Attached

Prepared By: Kevin Brooks *Kevin Brooks*
Division: Administration
Approved by Commissioner: *[Signature]*
Agency: Alaska Department of Fish and Game

Phone: 465-5999
Date: December 15, 1993
Date: December 15, 1993

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HB 33

Convening of legislature in Matanuska-Susitna Valley

Analysis from Department of Fish and Game:

Movement of the Alaska State Legislature to the Matanuska-Susitna Valley would require several additional parttime positions for the Department of Fish and Game. One of these positions would be a Legislative Liaison, located in the Matanuska-Susitna Valley approximately eight months of the year. The majority of the costs incurred would be in travel. Travel to and from the Matanuska-Susitna Valley by all divisions would be required to maintain contact and provide timely information to the legislature, and to answer questions and to maintain continuity on issues and policy relating to specific issues under legislative consideration. Additional costs will be incurred in establishment and ongoing costs of temporary office, copier/fax/phone expenses, provision of computers and other necessary office equipment, lease space costs, etc.

FISCAL NOTE

STATE OF ALASKA
1993 LEGISLATIVE SESSION

BILL NO : HB 33

Revision Date: _____
Title: "An Act relating to the location of the
convening of the legislature ..."
Sponsor: Representatives Carney, Willis
Requestor: House Labor & Commerce

Department Affected: Labor
BRU: All
Component: All
COMPONENT SERIAL NO. All

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 94	FY 95	FY 96	FY 97	FY 98	FY 99
PERSONAL SERVICES						
TRAVEL		48.4	50.8	53.4	56.0	58.8
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	48.4 *	50.8 *	53.4 *	56.0 *	58.8 *

CAPITAL						
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REVENUE FUND SOURCE:						
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FUNDING: (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF		48.4	50.8	53.4	56.0	58.8
1005 GF/Program Receipt						
1006 GF/MHTIA						
Other						
TOTAL	0.0	48.4 *	50.8 *	53.4 *	56.0 *	58.8 *

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of current year (FY93) impact: \$ None

ANALYSIS: (Attach a separate page if necessary)

We estimate that departmental employees would make a total of 48 trips to the Municipality of Anchorage to testify at finance committee meetings and hearings on department legislation. At an average cost of \$575 per trip (\$444 air fare and \$131 per diem), we estimate the total travel costs would be \$27.6 per year. It is assumed that other legislation which may require department testimony will be done telephonically. In addition the Department's Legislative Liaison would have to be stationed in Anchorage at a cost of \$18.5 for per diem and transportation. This fiscal note assumes an effective date of July 1, 1994. (* Assumes 5% inflation increase)

Prepared by: Arbe Williams, Special Assistant Phone: 465-2700
Division: Commissioner's Office Date: 2/9/93

Approved by Commissioner: Charles W. Mahlen *[Signature]* Date: 2/9/93
Agency: Department of Labor

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Department of Labor
 Backup to HB 33
 Moving the legislature to Anchorage

2/9/93

Estimate for Legislature in Anchorage (2 day trips assumed)	Number of Trips	Trips at \$575
Division personnel 2 appearance each before House & Senate		
Admin Svcs	4	
Work Comp	4	
Labor Stnd	4	
Empl Sec	4	
Admin Dir & Comrn 3 appearances each before House & Senate (sub-comm, full comm, CIP)	12	
Departmental Legislation 5 bills, 2 comm, House & Senate	20	
TRIP TOTAL	48	27,600
Special Asst to Anch for 5 months		
4 round trip Juneau/Anch/Juneau		1,776
5 months transportation costs .		1,500
5 months per diem		14,250
Miscellaneous costs (all staff)		1,000
GRAND TOTAL		46,126
2 day trip cost:		
Air fare	444	
Per Diem	95	
Food	36	
Total	575	