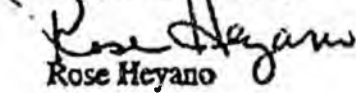


ALASKA LEGISLATURE COMMITTEE FILES 1997-1998 8672

9636 SENATE LABOR & COMMERCE

In closing I would like to emphasize the importance of supporting the ASMI program, the continuation of a 1% assessment used worldwide; and to encourage the legislatures to provide the match that the ASMI program needs for their export marketing grant. I strongly support the passage of this bill with the above mentioned changes and encourage our State legislator to do the same. Thank you for your time.

Respectfully yours,

  
Rose Heyano

cc: Representative Ivan M. Ivan  
Representative Jeannette A. James  
Representative Carl E. Moses  
Representative Richard Foster

Author: GregoryMcIntosh@compuserve.com (Greg McIntosh) at CC2MHS1  
Date: 2/9/98 5:34 PM  
Priority: Normal  
TO: vina.jenning@DCED.ASMI  
Subject: Copy of: Attached Letter

----- Message Contents -----

----- Forwarded Message -----

From: Greg McIntosh, 74603,1714  
TO: Barbara Belknap, INTERNET:alaska\_seafood@commerce.state.ak.us  
Barbara Belknap, INTERNET:Barbara\_Belknap@commerce.state.ak.us  
DATE: 2/9/98 9:30 AM

RE: Copy of: Attached Letter

Barb-

Can you use this? Still on the road. Greg

February 9, 1998

McIntosh Marine, Inc.  
Post Office Box 6404  
Halibut Cove, AK 99603  
February 6, 1998

The Honorable Bill Hudson  
State Capitol  
Room 108  
Juneau, AK 99801

Dear Mr. Hudson:

I understand the House and the Senate may soon be discussing the merits of the 1% tax, used to fund the Alaska Seafood Marketing Institute (ASMI). I encourage you and your colleagues to act responsibly and fund ASMI in order that it may continue to contribute to and enhance the State's economic base. Let me be a bit more specific.

As one of the founders of Arctic Alaska Seafoods, Inc., developers of the award winning (1997 Symphony of Salmon, Governor's Export Award, 1997), "Pinks in a Pouch" value-added salmon products, I can assure you the product would not be experiencing the success it presently enjoys were it not for ASMI's marketing efforts. This breakthrough process, that provides jobs by allowing canneries to continue production throughout the winter, was introduced into the Federal School Lunch Program, in part by the efforts of Claudia Hogue and her ASMI colleagues. As you know, full employment at Alaska's canneries means economic stability in coastal communities. Economic stability means work for fishermen; work for fishermen means timely payment of loans; timely payment of loans means more efficient banking. ASMI's makes sense. Allowing ASMI to founder, by not continuing or increasing its funding, would not be good business.

Those of us who have spent time and money in an effort to bring Alaska's fishery resources up to full utilization appreciate and rely upon ASMI's marketing abilities. We encourage the House and Senate to act responsibly and continue to provide mechanisms that will ensure ASMI's continued success. A guarantee of funding will allow ASMI staff to market Alaska's fine seafood products, rather than market itself to the Legislature for funding.

Sincerely,

Greg McIntosh

Gregory S. McIntosh  
President  
McIntosh Marine, Inc.

**PETERSBURG CHAMBER OF COMMERCE  
RESOLUTION 98-01**

A Resolution of the Petersburg Chamber of Commerce urging the honorable Tony Knowles, Governor of Alaska State and the Alaska State Legislature to support the seafood marketing efforts of our State.

**Whereas**, commercial fishing is a major industry within our region; and

**Whereas**, the City of Petersburg's local business and residential community is largely involved in the active production of seafood; and

**Whereas**, the economic well being of Petersburg is largely dependent upon the stability of prices and the increase of healthy markets for seafood; and

**Whereas**, the State of Alaska has established vital marketing efforts to increase consumption in traditional domestic markets

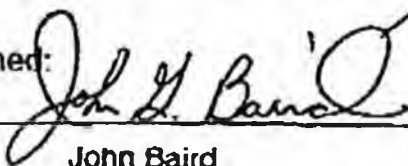
**THEREFORE BE IT RESOLVED:**

\* The Petersburg Chamber of Commerce requests that Alaska State continue its support of seafood marketing efforts by fully funding the Alaska Seafood Marketing Institute (ASMI)

\* Further, we request that the Governor urge and support the passage of legislation extending the 1% Salmon Harvester Assessment, for salmon marketing programs at the Alaska Seafood Marketing Institute

Passed and Approved by the Petersburg Chamber of Commerce Board of Directors, this 12<sup>th</sup> day of FEBRUARY, 1998

Signed:

  
\_\_\_\_\_  
John Baird

President, Board of Directors

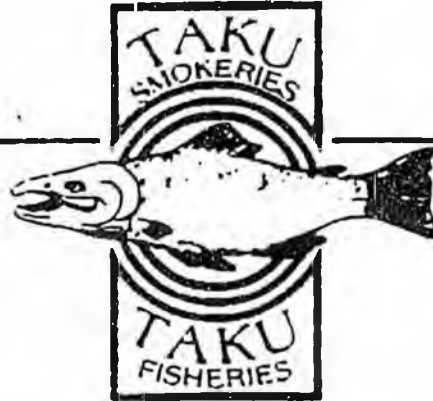
Attest:

  
\_\_\_\_\_  
Gerald A. Plank

Director

Representative Bill Hudson  
Alaska State Legislature  
State Capitol  
Juneau, Alaska 99801-1182

February 4, 1997



via fax @ 465-2273

Dear Representative Hudson,

I would like to thank you for introducing HB 73, " An Act extending the termination of the salmon marketing programs of the Alaska Seafood Marketing Institute and the marketing assessment, and providing for an effective date " I strongly support the passage of this Bill. Please feel free to use my letter as public testimony.


In light of competition from the farmed salmon industry, Alaska's Salmon industry has, at least on the short term, lost much ground. We can accept this and do nothing about it, or, we can get smart and attempt to design marketing programs to help us compete in this rapidly evolving marketplace. This second option takes a bit of money as well as a unified and organized effort, like ASMI, to take the lead role.

The ASMI annual budget is over \$10,000,000. Processors make the largest contribution (approximately 3.7M) to this budget with their .03% assessment on the value of all fishery resources purchased. Fishermen contribute slightly less, approximately 3.4M, with their 1% assessment on salmon. The Federal government matches 6 to 1 the \$550,000 appropriated by the State Legislature.

We need ASMI now more than we did 10 years ago when there were very few farmed fish on the market and Alaska's salmon was "king". This is not the case today. We are now entering the "era of ASMI". We have invested in ASMI for over fifteen years, and ASMI, through its successes and failures, has learned a lot about marketing salmon. While global salmon supply has doubled so has salmon consumption and much of this growth in consumption can be directly attributed to ASMI's marketing efforts. It is important now that the State show unity with the industry and continue its support of the ASMI program.

I need not emphasize the importance of this industry on the Alaskan economy. It would be a disaster to allow legislators, who lack in understanding of the huge impacts of this industry, dictate policy which would permanently alter the wild salmon industries' ability to compete. Thank you for your time.

Respectfully yours,

  
Sandro Lane, President  
Taku Smokerie's

550 South Franklin Street  
Juneau, AK 99601  
(907) 463-4617

February 6, 1998

Representative Bill Hudson  
Capital Building, Room 208  
Juneau, AK 99801

Dear Representative Hudson,

I am writing to you as a Juneau seafood processor who depends upon the marketing support of the Alaska Seafood Marketing Institute. I support the passage of House Bill No. 73, extending the 1% salmon marketing assessment that provides the majority of the funding for domestic marketing programs of the Alaska Seafood Marketing Institute.

The Alaska seafood industry is at a crossroads. Expanding supplies and competitive marketing across the globe have caused depressed prices and economic damage to many Alaska residents and communities who depend upon the industry.

It is not an exaggeration to say that the failure to pass this tax will mean the dissolution of the Alaska Seafood Marketing Institute and, with it, the strong marketing presence Alaska has in the marketplace.

The Alaska seafood industry is the number one private employer in Alaska, generating revenues second only to the oil industry. More than 700 processing facilities of all sizes operate in Alaska, employing nearly 70,000 full-time and seasonal workers. Almost 50,000 people harvest fish commercially in Alaska annually.

Thank you for your efforts to protect the voice of the industry in world markets by maintaining our marketing programs for Alaska seafood.

Sincerely,

Eric R. Norman  
Gen. Mgt.  
Taku Fisheries

ERIC NORMAN

# Petersburg Vessel Owners Association

P.O. Box 232  
Petersburg, Alaska 99833  
Phone (907) 772-9323 Voice and Fax

January 26, 1998

Representative Bill Hudson  
Chair, Committee on Resources  
Alaska State Capitol  
Juneau, AK 99801-1182

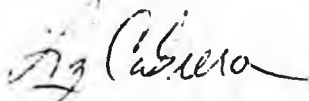
Dear Representative Hudson:

We are writing in support of H.B. 73, an act extending the termination dates of the salmon marketing programs of the Alaska Seafood Marketing Institute and the salmon marketing assessment.

We are supporting reauthorization of the 1% marketing assessment because we recognize ASMI's work as essential to maintaining our share of the domestic salmon market. Over the years, ASMI has developed programs which are having measurable results on the sale of our seafood products. It would be shortsighted of us to believe we could improve upon our current position without a strong marketing effort directed at the seafood consumer. ASMI's programs can only serve to bolster the seafood industry's position in what has become a highly competitive marketplace and we support your efforts to continue these programs.

Thank you for introducing and working on this important piece of legislation.

Sincerely,



Liz Cabrera  
Director

JAN 28 1998

cc: Senator Robin Taylor  
Representative Ben Grussendorf  
ASMI  
UFA

February 1, 1998

Representative Bill Hudson  
State Capitol - Room 108  
Juneau, AK 99801-1182

Re 1% Salmon Tax

Dear Rep Hudson,

My family and I are commercial fishermen in Bristol Bay. We own three limited entry permits for salmon and run a family fishing business. We are writing you in support of legislation to continue the 1% marketing tax on salmon.

My wife and I, have worked with marketing salmon in the Lower 48 and have witnessed the increase of sales of salmon in grocery stores because of the efforts of ASMI. We believe that fishermen working with ASMI can make a difference in the amount of wild salmon sold in the Lower 48 grocery chains. ASMI once strongly supported a Fisherman in the Stores Program, whereby, Alaskan fishermen could help promote their products directly to the public. Mary Gore, Sen. Miller's aide was in charge of this program. We believe it was very successful and also developed a strong support among fishermen for the 1% tax.

A change in leadership of ASMI brought with it a change of philosophy concerning the Fisherman in the Stores Program. From a high of 116 fishermen going outside to promote their products the program was cut to almost zero. My family's effort to bring about a change of direction went unheeded by the director. I understand the frustration of Senator Donley and we certainly supported the efforts by some legislators to get a change in the leadership of ASMI.

We now have a very competent and personable new director in Barbara Belknap. We are confident that she will be able to work with the ASMI Board to bring about necessary changes in marketing strategies. But, she needs your and our support to do this, as well as the help of the 1% tax to provide her with a program budget.

With the erosion of the Japanese yen and the increase of farmed salmon effecting our markets, it is now more important than ever for fishermen to support the 1% tax to help promote salmon in the U.S.

We hope that you will be supportive in our efforts with ASMI.

Thank you.

Bill and Diane Kuhlmann  
P O Box 770891  
Eagle River, Alaska 99577  
Tel 907-694-2426  
FAX 907-694-2435

**HB**

**83**

A M E N D M E N T

OFFERED IN THE SENATE

TO: CSHB 83(STA)

1 Page 2, line 14:

2 Delete "Adoption"

3 Insert "Application"

4 Page 2, line 15, following "requirements.":

5 Insert "(a)"

6 Page 2, line 18:

7 Delete "section"

8 Insert "subsection"

9 Page 2, following line 19:

10 Insert a new subsection to read:

11 "(b) A person operating a commercial motor vehicle for the purpose of  
12 hauling a commercial boat may not be required to comply with 49 C.F.R. 393.40,  
13 regulating commercial motor vehicle brake systems, if the commercial motor vehicle

14 (1) is operated on a highway, vehicular way, or a public parking place  
15 in the state that is not connected by a land highway or vehicular way to the land-  
16 connected state highway system; and

17 (2) has a gross vehicle weight rating or gross combination weight  
18 rating that does not exceed 26,000 pounds."

1 AS 01.10.070(c)."

2 Page 4, line 7:

3 Delete "\*\*Sec. 9. This"

4 Insert "\*\*Sec. 10. Except as provided in sec. 9 of this Act, this"

REPRESENTATIVE  
TERRY MARTIN  
VICE-CHAIRMAN  
BUDGET & AUDIT COMMITTEE  
MEMBER  
HOUSE FINANCE COMMITTEE

# Alaska State Legislature



MAY 15 - JAN 15 258-8169  
716 W. 5TH, SUITE 650  
ANCHORAGE, AK 99504  
JAN 15 - MAY 15 465-3783  
STATE CAPITOL  
JUNEAU, AK 99801-1182

## Sponsor Statement

### CS HB 83 (STA)

An Act relating to commercial vehicle inspections; efd.

House Bill 83 was originally introduced in response to a recommendation by the Ombudsman that the requirement to have a commercial motor vehicle inspected by the state be reduced from twice a year to once a year. This recommendation was made because the State Troopers do not have adequate manpower to do the inspections twice a year.

Testimony in the House Transportation Committee and the House State Affairs Committee, particularly from representatives of the Alaska State Troopers and the Alaska Trucking Association, supported the changes found in CS HB 83 (STA).

These changes essentially repeal the state-run inspection program (which had not been implemented due to lack of funding and manpower) and officially adopt the federal regulations under which commercial vehicles are currently inspected. Under the federal program, inspections are conducted either by a qualified in-house mechanic or by contracting with a garage or other repair facility which employs a mechanic qualified to conduct the inspections. A record of inspections and repairs is required to be kept in the vehicle as well as at the facility where the inspection was done.

Peace officers and other authorized officials will continue be authorized to conduct random inspections and review a vehicle's records, issue citations and red-tag an unsafe vehicle to keep it off the highway until it is repaired.

The State Affairs CS also incorporates the effects of EO 98, which transferred the administration of the state's commercial motor vehicle inspection programs to DOT&PF. The CS changes the statutory reference from AS 28.32 to AS 19.10, to conform with EO 98.



## Sectional Analysis

### CS HB 83 (Trans)

An Act relating to commercial vehicle inspections; efd.

Sec. 1 eliminates the semi-annual inspection requirement, official vehicle inspection stations, and a requirement to display a current sticker of inspection on the vehicle. Instead, an annual inspection is required, and a vehicle owner or operator will have to show proof of the inspection upon demand by an authorized official.

Sec. 2 replaces the never-implemented state-run inspection program with one that meets federal guidelines, in which the inspections are conducted by in-house mechanics or at a qualified garage. This section also allows for audits of inspection records at any time by peace officers or other authorized personnel.

Sec. 3 adopts federal commercial vehicle inspection regulations that were in effect on October 31, 1996 as the basic requirements of the state program. The section also defines "interstate" as used in the federal regulations, to include "intrastate" trucking operations.

Sec. 4 makes a violation of this statute (except for AS 19.10.365) a civil offense, not a criminal offense, authorizing fines of up to \$20,000.

Sec. 5 establishes a maximum fine for violation of AS 19.10.365 (compliance with federal inspection regulations by inspectors) at \$500.

Sec. 6 allows a person who is charged with a violation of the state law to use as a defense the fact that the action is allowed under federal law.

Sec. 7 makes changes to the definition of "commercial motor vehicle" to clarify that it is used for "commercial purposes."

Sec. 8 repeals the following: AS 19.10.060(c), which requires adoption of regulations adequate to avoid losing federal funds; 19.10.320, pertaining to state inspection stations; 19.10.330, pertaining to certification of commercial vehicle inspectors; 19.10.350, relating to falsely representing to be an official inspection station; 19.10.360, relating to counterfeit certificates of inspection; and 19.10.370, directing the commissioner to adopt regulations.

Sec. 9 provides an effective date of July 1, 1997.

# FISCAL NOTE

No. 3

Bill Version: CSHB 83(STA)

(H) Publish Date: 3/26/97

**STATE OF ALASKA  
1997 LEGISLATIVE SESSION**

Revision Date: 3/21/97 Dept. Affected: DOT&PF  
 Title: "An Act relating to commercial vehicle inspections; and providing for an effective date." BRU: Engineering and Operations  
 Component: Engineering and Operations  
 Sponsor: Representative Martin  
 Requester: State Affairs COMPONENT SERIAL NO. 547

**Expenditures/Revenues (Thousands of Dollars)**

OPERATING EXPENDITURES	FY 98	FY 99	FY 00	FY 01	FY 02	FY 03
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

CAPITAL EXPENDITURES						
----------------------	--	--	--	--	--	--

CHANGE IN REVENUES ( )						
------------------------	--	--	--	--	--	--

**FUND SOURCE (Thousands of Dollars)**

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1006 FEDERAL						
Other						
<b>TOTAL</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

Estimate of any current year (FY97) cost: \$ 0.0

**POSITIONS**

FULL-TIME						
PART-TIME						
TEMPORARY						

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

The proposed bill will not have a fiscal impact on the Department of Transportation and Public Facilities.

Prepared by: Mike Downing, P.E., Director  
 Division: Engineering and Operations  
 Approved by: Joseph L. Perkins  
 Agency: Department of Transportation and Public Facilities

Phone: 465-2960  
 Date: 3/21/97  
 Date: 3/21/97

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# FISCAL NOTE

No - 2

**STATE OF ALASKA**  
**1997 LEGISLATIVE SESSION**

**BILL NO:** Bill Version: CSHB 83(STA)  
(H) Publish Date: 3/26/97

Revision Date: 03/10/97 Dept. Affected: Public Safety  
Title: Commercial Vehicle Inspections BRU: Alaska State Troopers  
Sponsor: Rep. Martin Component: Commercial Vehicle Enforcement  
Requestor: H.STA COMPONENT SERIAL NO. 1235

**EXPENDITURES/REVENUES: (Thousands of Dollars) (inflation not included)**

OPERATING	FY 98	FY 99	FY 00	FY 01	FY 02	FY 03
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
<b>TOTAL OPERATING</b>	-0-	-0-	-0-	-0-	-0-	-0-
<b>CAPITAL</b>	-0-	-0-	-0-	-0-	-0-	-0-
<b>CHANGE IN REVENUES ( )</b>	-0-	-0-	-0-	-0-	-0-	-0-
Revenue Code						

**FUNDING: (Thousands of Dollars)**

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program						
1006 GF/MHTIA						
Other						
<b>TOTAL</b>	-0-	-0-	-0-	-0-	-0-	-0-

Estimate of current year (FY 97) impact: \$ \_\_\_\_\_

**POSITIONS:**

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

ANALYSIS: (Attach a separate page if necessary.)

This bill would not have any significant fiscal impact on AST.

Prepared By: Capt. Ted M. Bachman Phone: 269-5650  
Division: Alaska State Troopers Date: 03/10/97  
Approved by Commissioner: Ronald L. Otte Date: 3/10/97  
Agency: Department of Public Safety

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Rev 1/95 **COMMITTEE COPY**

# FISCAL NOTE

No. 1

Version: CSHB 83(TRA)

**STATE OF ALASKA**  
**1997 LEGISLATIVE SESSION**

**BILL NO:** (H) Publish Date: 2/12/97

Revision Date: 1/31/97

Dept. Affected: Public Safety

Title: Commercial Vehicle Inspections

BRU: Alaska State Troopers

Component: Detachments

Sponsor: Representative Martin

Requestor: House Transportation

**COMPONENT SERIAL NO.** 0799

**EXPENDITURES/REVENUES: (Thousands of Dollars) (inflation not included)**

OPERATING	FY 98	FY 99	FY 00	FY 01	FY 02	FY 03
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
<b>TOTAL OPERATING</b>	-0-	-0-	-0-	-0-	-0-	-0-

CAPITAL	-0-	-0-	-0-	-0-	-0-	-0-
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CHANGE IN REVENUES ( ) Revenue Code	-0-	-0-	-0-	-0-	-0-	-0-
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**FUNDING: (Thousands of Dollars)**

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program						
1006 GF/MHTIA						
Other						
<b>TOTAL</b>	-0-	-0-	-0-	-0-	-0-	-0-

Estimate of current year (FY 97) impact: \$ \_\_\_\_\_

**POSITIONS:**

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

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

This bill will not have a fiscal impact on the Division of Alaska State Troopers.

Prepared By: Lt. Dan Lowden

Phone: 269-5412

Division: Alaska State Troopers

Date: January 31, 1997

Approved by Commissioner: *Ronald L. Otte*

Date: 2/3/97

Agency: Ronald L. Otte, Department of Public

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**Fiscal Note**

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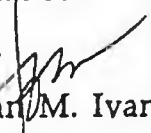
# Alaska State Legislature

Official Business

State Capitol  
Juneau, AK 99801-1182

## MEMORANDUM

TO: John Quartuccio  
Dept. of Transportation

FROM: Tom Wright, Staff   
Representative Ivan M. Ivan

DATE: April 17, 1997

RE: Boat Trailer Brake Requirements

The community of Dillingham is requesting an exemption from FMC Safety Regulation 393.40 (Brakes) regarding commercial boat hauling trailers on state and local highways. The commercial fishing community believes this regulation will create a financial hardship for trailer owners.

According to local boat trailer owners, the cost of outfitting boat hauling trailers with the required braking systems range from \$5,000 to \$15,000. Beyond the installation of braking systems, the cost of maintaining brakes that are being submerged in salt water is excessive.

The community and local businesses safety record in transporting vessels on local highways is excellent. According to information I have received, there have been no accidents in the last decade. All vessel transports are conducted under strict adherence to trip permit requirements, the use of pilot cars, commercial towing attachments and safety chains.

What we would propose is an exemption from this federal regulation for those communities that are not connected to the state's main road system or are not connected to a road system in general and not lose federal funds by adopting legislation or regulations to exempt these trailers. Examples of these communities not connected to another road system would be Dillingham, Cordova, Unalaska, Bethel, Nome, etc.

Any assistance or guidance you may be able to provide is appreciated. Time is of the essence, especially if legislation is necessary to repeal regulations or enact legislation, since the session is within the final 30 days.

Thanks for your help. Please call me at 1-800-323-4942 if you need further information or have further questions.



Office of Senator Frank Murkowski  
Fax Transmission

Fax: (202) 224-5301 • Voice: (202) 224-6665

TO: Honorable Ivan M. Ivan  
Alaska House of Representatives  
ATTENTION PAT WALKER

FROM: Bill Woolf  
Office of Senator Frank Murkowski

PAGES : 6 including this cover

MESSAGE:

Here is the material I've received from FHWA. It includes a memo from Paul Brennan, the chief of the standards section of the Motor Carriers Bureau, in which he confirms that the federal government would be unlikely to object if the State government asked for an exemption, and a copy of the relevant part of the federal regulations.

Note that the relevant section is section 3: In that section is a 26,000 pound cut-off. I asked about what that meant, and Brennan said that for a gross combined Gross Vehicle Weight Rating (GVWR) of less than 26,000 pounds, the State would be free to grant an exemption even without federal approval. Hope this helps.

4/17/97

Memo to: Bill Wolf  
Office of Senator Murkowski

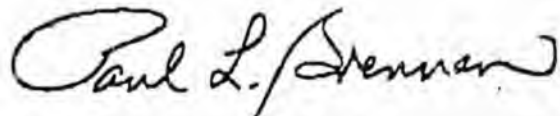
RE: Boat trailers

We would consider the transportation of fishing boats by trailer within the State of Alaska intrastate transportation, and therefore not subject to U.S. DOT jurisdiction and the Federal Motor Carrier Safety Regulations.

To qualify for Motor Carrier Safety Assistance Program funding, however, a State must agree to adopt as its own regulations that are the same as or compatible with the FMCSR. For intrastate transportation, compatibility is defined as within the Tolerance Guidelines (49 CFR Part 350, Appendix C, attached).

The Tolerance Guidelines would require the State to request a variance before granting an exemption to avoid jeopardizing MCSAP funding. In the past, however, States have granted exemptions in their laws without realizing they were then incompatible with the FMCSR, and the FHWA considered requests for variances retroactively. We would undertake an expedited review of any such request.

Finally, it appears from the documents submitted with the Senator's letter that the Public Safety Commission in Alaska opposed such an exemption. Since that would probably be the agency requesting a variance from us, that would present a problem.



Director, Office of Motor Carrier  
Research & Standards

OPTIONAL FORM 39 (7-87)

FAX TRANSMITTAL

# of pages > 2

Mr. Bill Wolf	Paul Brennan
Off. of Sen. Murkowski	Phone # 202/418-8306
224-5301	202/366-8842
FORM 7540-01-317-7390	GENERAL SERVICES ADMINISTRATION

Title 49--Transportation  
CHAPTER III--FEDERAL HIGHWAY ADMINISTRATION,  
SUBCHAPTER B--FEDERAL MOTOR CARRIER SAFETY REGULATIONS  
PART 350--COMMERCIAL MOTOR CARRIER SAFETY ASSISTANCE PROGRAM  
Appendix C to Part 350--Tolerance Guidelines for Adopting Compatible  
State Rules and Regulations  
(CFR; revised as of 10/01/92  
-----

APPENDIX C TO PART 350--TOLERANCE GUIDELINES FOR ADOPTING  
COMPATIBLE STATE RULES AND REGULATIONS

1. INTRODUCTION, PURPOSE AND RULES OF CONSTRUCTION

The goal of the Federal Highway Administration (FHWA) is to encourage all States to ultimately adopt motor carrier safety and hazardous materials transportation rules and regulations identical in all respects to those requirements set forth in Federal laws and regulations, applicable to both interstate and intrastate commerce. Recognizing that there are circumstances unique to each State which may require special attention in that particular State, FHWA has concluded that certain circumstances may warrant limited deviations from the Federal standards where the Federal regulations do not apply.

The purpose of this appendix is to set forth the limits within which a State's deviations to variances in adopting motor carrier safety and hazardous materials rules may extend and still be considered compatible for funding purposes under 49 CFR 350. These limits or tolerances are applicable for this purpose to those State rules and regulations applicable where the U.S. Department of Transportation does not have jurisdiction.

2. TOLERANCE GUIDELINES FOR STATE RULES AND REGULATIONS WHERE THE U.S. DEPARTMENT OF TRANSPORTATION ALSO HOLDS JURISDICTION

(a) States shall not be required to adopt 49 CFR parts 394, 398, 399, 107, 171.15, 171.16 and 177.807 as applicable to either interstate or intrastate commerce. A State is not required to adopt 49 CFR part 178 only if the State can still enforce the standards contained therein.

(b) State rules must be applicable to the same extent as the Federal Motor Carrier Safety and Hazardous Materials Regulations except where deviation may be allowed by part 355 of this subchapter

and this appendix.

### 3. TOLERANCE GUIDELINES FOR STATE RULES AND REGULATIONS WHERE THE U.S. DEPARTMENT OF TRANSPORTATION REGULATIONS DO NOT APPLY

(a) State rules must be applicable to the same extent as the Federal Motor Carrier Safety and Hazardous Materials Regulations except where deviation may be allowed by parts 350 and 355 of this subchapter and this appendix.

(b) States may exempt from all or part of their regulations commercial motor vehicles with a GVWR of 26,000 pounds or less. However, vehicles with a GVWR of 26,000 pounds or less may not be exempted from either the motor carrier safety regulations or hazardous materials regulations if the vehicle is used to transport hazardous materials requiring a placard or if the vehicle is designed to transport more than 15 passengers, including the driver.

(c) States may not exempt from regulation motor carriers based on the type of carriage being performed (i.e., for-hire, private, etc.).

(d) Exemptions granted to certain industries by a State prior to April 1988 and accepted by FHWA may remain valid. Although industry exemptions are strongly discouraged, a State may request and FHWA may approve such an exemption after the State has submitted to the FHWA documentation which will allow evaluation of the following or similar information:

(1) Type and scope of the industry exemption requested;

(2) Type and scope of regulatory exemption requested;

(3) Accident information related to that specific industry--ratio, frequency, comparative figures, etc.;

(4) Percentage of industry affected--number of vehicles, mileage traveled, number of companies involved, etc.;

(5) Inspection information--number of violations per inspection, out-of-service information, etc.;

(6) Other regulations enforced by other State agencies not participating in the MCSAP;

(7) Commodity transported--i.e., hazardous materials, livestock, grain, etc.;

(8) Similar exemptions granted;

(9) Reason exemption is needed;

(10) Projected effect on safety;

(11) The State's economic environment and its ability to compete in foreign and domestic markets.

(e) Regulatory exemptions based on the distance a motor carrier or driver operates from their home terminal are not deemed to be compatible. This prohibition does not apply to those exemptions already contained in the Federal Motor Carrier Safety Regulations nor to the extension of the mileage radius exemption contained in 49 CFR 395.8(l) from 100 to 150 miles.

(f) States are strongly encouraged to apply the identical regulatory and enforcement schemes to both interstate and intrastate carriers as set forth in the Federal Motor Carrier Safety Regulations when regulating drivers' hours of service. However, certain limited tolerances where the U.S. Department of Transportation's hours of service regulations do not apply are allowed. Specifically, an expansion of the 10-hour driving rule to a 12-hour driving limit, provided that the total period of time spent driving and on duty not driving is not extended to more than 16 hours and an increase in the 70 hour rule to 70 hours in 7 consecutive days or 80 hours in 8 consecutive days will be considered compatible.

(g) Drivers operating not subject to the jurisdiction of the U.S. Department of Transportation may drive if they are at least 18 years old.

(h) States may provide grandfather clauses in their rules and regulations if such exemptions are uniform or in substantial harmony with the Federal standards and provide an orderly transition to full regulatory adoption at a later date.

(i) The States may qualify any driver engaged wholly in intrastate commerce who is adversely affected by current State medical standards, upgraded to be consistent with part 391, even if the States adopted those medical standards in the past. Drivers identified through March 31, 1993, as not meeting the upgraded State standards may also be qualified. Such a driver may remain qualified after March 31, 1993, as long as an examining physician determines during the biennial medical examination that existing medical or physical conditions that would otherwise render the driver not qualified under Federal standards have not significantly worsened or another non-qualifying medical or physical condition has not developed.

It should be noted that the FHWA still considers the physical qualification standards in part 391 to be the minimum standards that

contribute significantly to commercial motor vehicle operational safety. The FHWA continues to encourage States to adopt these minimum standards as their own and to use this grandfathering option judiciously to respond to legitimate hardships. This policy should in no way be interpreted as discrediting the medical standards adopted in part 391.

This guideline will not preclude a State's adoption of or continuation of a waiver program which can be demonstrated to be based on sound medical judgment combined with appropriate performance standards causing no adverse effect on safety.

## PROPOSED STATE SAFETY REGULATIONS EXEMPTION

### "DILLINGHAM COMMERCIAL BOAT TRAILERS"

The community of Dillingham is requesting exemption from FMC Safety Regulation 393.40 (Brakes) regarding commercial boat hauling trailers on State and Local highways. The community feels that adherence to this regulation creates a hardship for commercial fishers in Dillingham for the following reasons:

- 1) Bids to outfit personal commercial boat hauling trailers with required braking systems range from \$5,000.00 to \$15,000.00. This is a cost that is unfair to force on local fishers who are already experiencing low salmon prices and low production. Beyond installation of braking systems, the cost of maintaining brakes that are being submerged in salt water is excessive.
- 2) The community and local businesses safety record in transporting vessels on local highways is excellent (0 accidents for the last decade). This safety record is a direct consequence of local transport companies, community fishers with personal trailers and local agencies working together to operate under reasonable regulations. All vessel transports are conducted under strict adherence to trip permit requirements, the use of pilot cars, commercial towing attachments and safety chains. Brakes on trailers will not improve this safety record.
- 3) Precedence for granting exemptions to brake requirements has already been established for farm equipment and plywood haulers. Commercial fishing vessels, involved in the harvesting of a natural resource, need to be transported twice a year (to and from the water). Granting an exemption for transporting a vessel two times in a year is not unreasonable.

Joe Hougen  
Peter Pan Seafoods  
(206) 727-7266

# STATE OF ALASKA

TONY KNOWLES, GOVERNOR

## DEPARTMENT OF PUBLIC SAFETY

OFFICE OF THE COMMISSIONER

P.O. BOX 111200  
JUNEAU, ALASKA 99811-1200  
PHONE: (907) 465-4322  
FAX: (907) 465-4362

February 25, 1997

The Honorable Ivan Ivan  
Alaska State Legislature  
State Capitol (MS-3100)  
Juneau, AK 99801-1182

Dear Representative Ivan:

I recently met with you and members of your staff to discuss the "boat trailer" situation as well as commercial vehicle enforcement in general in the Dillingham area. The City Manager and Chief of Police of Dillingham participated by telephone in the meeting.

During the meeting you expressed interest in determining whether safety regulations regarding commercial trailers, specifically the issue of brakes, could be waived. The answer to the question would appear to be no, if the trailer is being used on public roadways which is the situation, as I understand it, in Dillingham. The Federal Motor Carrier Safety Regulations (FMSCR), have been adopted by the state and apply on all public roadways. The Federal Highway Administration (FHA) has interpreted various pertinent laws regarding public roadways. The Code of Federal Regulations, Title 23 (23CFR), Part 470, Section 103 (B)(3) reads "*Public roadways means any road under the jurisdiction of a public agency and opened to public travel.*" In addition, the federal government issued an interpretation, (*Interpretation # 95.50*) that indicates "*A public road is any road under the jurisdiction of a public agency and open to public travel or any road on private property that is open to public travel.*" It appears that whether the state attempted to waive current law or passed a law exempting the trailers, we would be in violation of federal regulations, thereby jeopardizing millions of dollars in federal highway aid money.

According to personnel assigned to the AST Commercial Vehicle Enforcement unit, they have approached the federal agencies before, at the request of legislators, seeking this type of special exemption for various areas of the state and the requests have been denied.

The Honorable Ivan Ivan

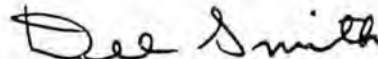
February 25, 1997

Page 2

Finally, the Department of Public Safety does not feel it would be beneficial to Alaskans, regardless of the federal funds issue, to waive safety regulations intended to prevent injuries and death on our public roadways. It is doubtful we even have the legal authority to do so. We understand the fiscal impact these laws may have on your constituents; however, we are not allowed to grant special exemptions for certain commercial vehicles anywhere in the state. I believe this letter covers the issues discussed in your office.

Please feel free to contact me if you have any questions.

Sincerely,



Del Smith  
Deputy Commissioner

cc: Commissioner Ronald L. Otte

Colonel Glenn Godfrey, Director  
Alaska State Troopers

Sergeant Brad Brown, "G" Detachment  
Alaska State Troopers

Sandy Perry-Provost  
Special Assistant

Gust K. Wahl  
P.O. Box 949  
Dillingham, Alaska 99576  
Jan 20, 1997

Representative Ivan Ivan  
State Capitol Building  
Juneau, Alaska 99801-1162

Dear Representative Ivan,

Congratulations on your re-election.

As you know our boat hauling service for the commercial fisherman has been greatly hampered. If the situation stands I will lose 50% of my boat moving business that took me 11 years to develop.

The restrictions are unworkable.

- (1) It is very costly to put brakes on my boat moving trailer
- (2) Brakes won't work very long and will become a road hazard in itself because of salt water
- (3) My business is too small to support more than one pilot car and driver on a full time basis and it is very hard to track down a second car and driver (Quick, safe service is a key to being competitive).
- (4) Moving boats at 20 mph is more of a hazard. (Cars pass illegally more often than 35 mph)
- (5) Since the pilot car has constant communication with the tow vehicle, the brake lights, tail lights and turn signals are an extension of the boat move. I feel boat trailer lights are not needed for commercial boat movers.

I have moved boats for 11 years on the highway without having as much as a close call.

I also drove a belly dump gravel hauler many years and I know that I can stop quicker with a boat on my trailer than I can with a belly dump trailer loaded with gravel.

Your help in rectifying this matter before the boat moving season beginning in April will be greatly appreciated.

Your Constituent,

Gust K. Wahl / Swanwick Creek  
Boat Mover

cc: Senator Lyman Hoffman

**HB**

**116**

# SENATE COMMITTEE REPORT

DATE: 4/21/97

FURTHER:

DATE TURNED IN TO OFFICE: 3-6-98

Labor and Commerce Committee considered

HOUSE BILL NO. 135

"An Act relating to dental licensing; extending the termination date of the Board of Dental Examiners; and providing for an effective date."

and recommends:

- be replaced with SEN CS HB 135 (LHC)
- adopt previous \_\_\_\_\_ CS \_\_\_\_\_
- attached amendment(s)
- adopt Letter of Intent by \_\_\_\_\_ Committee
- further referral to the \_\_\_\_\_ Committee

- Senate Bill:**
- same title
  - new title
- House Bill:**
- same title
  - technical change
  - new: SCR# \_\_\_\_\_

SIGNING DQ PASS	DP	OTHER RECOMMENDATIONS	NR	DNP	AM
<i>Tim Kelly</i>	✓				
<i>[Signature]</i>	✓				
CHAIR: <i>Bruce A. Leman</i>	✓	CHAIR:			

**NEW FISCAL NOTE(S):**

Department	Date	Zero	Fiscal

FN forthcoming  
(requested)

**PREVIOUS FISCAL NOTE(S):\***

Department	Date	Zero	Fiscal
<del>Commerce</del>			

APPROPRIATION -- no fiscal note

\*Include fiscal notes accompanying Governor's bill

# Alaska Independent Insurance Agents & Brokers, Inc.

P.O. Box 241846  
Anchorage, AK 99524-1846

Phone: (907) 349-2500  
Fax: (907) 349-1300

## FAX

DATE: April 21, 1997

( ) Page(s)

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TO: SENATOR LOREN LEMAN

FROM: DAVE GWALTNEY  
AIIAB, INC.

FAX: 907/349-1300

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RE: HB116 CLARIFICATION

DEAR SENATOR:

It has come to my attention that proponents of HB116 have been mis-stating our Association's stand on this legislation.

**AIIAB is not in favor of the legislation as it currently stands, nor have we ever supported the legislation. As currently proposed, the legislation endangers Alaskan Workers and establishes yet another assured "State-funded" bail-out.**

Please find attached two documents, a letter to representatives of the Homebuilder's Association from last December and our Association's position paper. Despite the assertion there have been "meetings" between our organizations whereby we have shifted our position, this is the last correspondence we have had.

Our association is well aware of the political ramifications of this legislation and the exceptional grass-roots efforts made by the Homebuilder's Association.

These issues, however, have no relation to the fact that this is a bad bill. We've all heard tales of "special interest" groups that railroad our legislature – this will be yet another example if passed under its current form.

We respectfully ask you to take a moment's pause to consider the following:

- The current funding represents approximately 10% of what the Division of Insurance establishes as minimum self-insurance guidelines;
- The Division of Insurance opposes HB116 and consistently testifies against it;
- The Division of Workers' Compensation opposes HB116 and consistently testifies against it;
- To our understanding, there is not one-single insurance-knowledgeable entity that supports this legislation.

When every single related professional organization opposes this bill, profit and not-for-profit, private and public sector, is it really in the best interest of the Alaskan consumer to support this special interest?

Our association has heretofore stopped short of being quite so "blunt." We now feel, however, that time is short and it is important to focus on the facts, not politics.

Please feel free to contact me personally (or Linda Hall, Past-president) if you have other questions and concerns. Please ask for "proof" of financial assertions and allegations. Please ask for names and dates for alleged "meetings." And please consider the financial repercussions to an injured Alaskan Worker versus a special interest group whose only purpose is to increase profits.

Respectfully submitted,

Dave Gwaltney

(AIIAB LETEERHEAD)

December 15, 1997

Ms. Robin Ward, Vice-president  
Mr. Steve Wisdom, Past-president  
Mr. Bill Taylor, Director  
Mr. Alan Wilson, Treasurer  
Alaska State Home Builders Association  
341 West Tudor Road, Suite 102  
Anchorage, Alaska 99503

re: Alaska Independent Insurance Agents & Brokers, Inc. (AIIAB)  
Board of Directors meeting

Dear Business Associates:

On behalf of the membership and Board of Directors of AIIAB, please accept our thanks for your attendance at our December Board meeting in Anchorage on December 6, 1997.

We were very pleased to welcome you to our meeting. Our discussions subsequent to your departure were very optimistic. We believe, as I believe you do, that the key to a workable business and legislative environment is open communication and discussion. This meeting between your Workers' Compensation Team Members and our Board of Directors was a valuable, positive step toward protecting Alaska's home-building workers and the business climate of Alaskan contractors and the insurance industry.

Our Board was very pleased to hear that some twelve-of-fourteen Division of Insurance concerns had been addressed in revised plan provisions. Since most of the Division's concerns mirrored ours, we feel that support of your program may be possible at some point in the future. We must, however, stop short of program endorsement and actually remain opposed to the proposed legislation given three outstanding concerns:

- Financial provisions for initiation;
- Consumer safeguards as relate to understanding Joint and Several liability; and
- Program check-and-balance control as relate to audits and classification.

In an effort to help identify our concerns toward our common goals, please allow me to expand slightly on these issues:

Our largest concern deals with the establishment of financial viability and asset assignment for the purposes of initial program liquidity.

As you are aware, the State of Alaska already provides statutory provision for reciprocals, requiring initial liquid capitalization of \$5,000,000. It is our understanding that you feel this capitalization is onerous and unreasonable, and have therefore proposed a capitalization of \$1,000,000, only 20% of the limit deemed appropriate by the State Division of Insurance and their actuarial research team.

Our feeling, as insurance professionals dealing daily with claims and actuarial considerations, is that the limit previously established by our legislature is reasonable given the potential life changing effects on injured workers. Further, this limit was established several years ago when both inflation and medical costs had not eroded the \$5,000,000 figure as it has today. By simply maintaining the originally established financial guideline, \$5,000,000 actually represents a decrease in required capital as compared with the original requirement.

Our concerns are amplified by the assignment of assets of \$1,000,000 in lieu of liquid capital. As you noted during our Board meeting, assignment of assets is not uncommon to Home Builders. On the contrary, you noted the entire asset base of most contractors may be pledged for bonding and lending considerations. As bonding agents we recognize this assertion as fact. *In order to protect injured workers, we feel the guaranteed assignment of any asset must be both liquid and free of any other encumbrance in order to assure timely and complete benefit payment.*

Our second concern deals with the education of participating members. Although many of the general contractors are familiar with the term "joint and several liability," it has been the experience of many agents in our association that a majority of your members do not fully understand the implication of this burden. We have not taken our stand on this issue without reviewing our concerns with many parties, including members of your organization. I have personally discussed the issue with several "supporters" of your program that had no idea of this provision or what it could mean to their personal wealth.

Obviously, the contractual obligations of this provision would need to be fully disclosed and understood by any participant, particularly in the program's initial phase. It is our feeling, once again, that this may directly tie to financial issues in that contractors with substantial asset base, well in excess of \$1,000,000, are more likely to understand this concept than smaller or fledgling home builders.

Our last concern, dealing with audit and accountability, is more easily dealt with and ranks far behind the financial concerns.

Most of our association members have dealt with both general and subcontractors for many years. One of the key elements in the success and/or failure of the builder/insurance producer relationship is proper classification and rating. It is common to hear "horror-stories" about producers which have classified General Contractors as, for example, Cabinet Installers (since that may be their primary trade) only to find a potentially bankrupting audit to follow when the risk is properly reclassified as single-or-multi-family construction. It is our hope that these audit and classification issues may be dealt with by industry professionals, or designees of the Division, whom are familiar with these concerns and may therefore aid in avoiding actuarially adverse selection and maintain financial viability.

If these three concerns are addressed and the resolution is acceptable to our membership at large, we will be pleased to transfer our opposition to your proposed legislation to support, and will utilize our resources to our mutual benefit.

In closing, I would like to re-emphasize a point made in our December 6<sup>th</sup> meeting. Your organization has graciously indicated a willingness to allow our association members to market your product. As "salespersons," we would indeed be short-sighted if we failed to capitalize on another opportunity for revenue. The implication that this offering may change if we did not support your program was not lost on us, either.

MADE: 05/22/90 1:00 PM

If your favored medical provider counseled against a certain treatment or drug, or if your favorite mechanic indicated a particular vehicle would not be suitable for you, *even if they would profit from such a sale*, wouldn't you be willing to give their counsel credibility? We simply ask for the same, professional consideration of these issues in hopes of a timely, mutually beneficial resolution.

Most sincerely,

David E. Gwaltney  
Legislative Chairperson  
Alaska Independent Insurance Agents & Brokers, Inc.

cc: Marianne Burke, Director, Division of Insurance  
Paul Grozzi, Director, Division of Workers' Compensation

ALASKA INDEPENDENT INSURANCE AGENTS AND BROKERS, INC. (AIIAB)  
POSITION PAPER

HOUSE BILL No. 116  
SENATE BILL NO. 95

**OPPOSED**

The Alaska Independent Insurance Agents and Brokers, Inc., express opposition to this bill for the following reasons:

- **Current insurance law provides for the creation of self-insurance programs. This bill requests a lower-threshold of financial responsibility for these groups. The threshold, after application of inflation and possible devaluation of fixed versus liquid assets, may represent as little as 10% of the "reasonable and prudent" limit established by the Division of Insurance approximately fifteen years ago.**
- **The issue of joint and several liability is complex for most insurance consumers and may cause an increase in individual bankruptcies given the inadequate funding of the program. Given the larger, more viable participants are more familiar with this concept and will likely avoid participation, adverse selection against the program would likely occur; and**
- **Safeguards for reasonable and prudent application of rates, classifications, and audit procedures have not been addressed.**

Other considerations:

- **Proponents of this bill have consistently asserted that a single, for-profit insurance company is their only opposition. In truth, in addition to our organization and numerous insurance companies, the Division of Insurance and the Division of Workers' Compensation have both testified in opposition of the Bill.**
- **Alaska currently enjoys a very favorable Workers' Compensation insurance climate with decreasing premiums, numerous available markets, and improving claims statistics.**

The AIIAB offers these observations as evidence that, although self-insurance groups may be very beneficial to certain organizations, the true concern of Workers' Compensation issues is not the commerce related to trade organizations but protection of an injured worker. Adoption of this Bill in its current form would protect the interest and economy of the sponsoring organization while severely jeopardizing indemnification of an injured worker.

For additional information and explanation please contact:

Alice Federenko, Executive Director, AIIAB (907) 349-2500  
Mike Venneberg, President, AIIAB (907) 747-8625  
Dave Gwaltney, Legislative Chair, (800) 478-6006

# Alaska State Legislature

## Senate




Official Business

State Capitol  
Juneau, AK. 99801-1182

### Senate Labor & Commerce Committee

### Memo

TO: Senator Mackie, Vice Chairman  
Senator Miller (x 2 copies)  
Senator Kelly  
Senator Hoffman

FROM: Annette Kreitzer, Aide to   
Senate Labor & Commerce Committee

DATE: March 17, 1998

RE: Requested information on HB 116: Workers' Compensation Self-Insurance

---

Committee members requested that HB 116 be evaluated by an independent, national organization. The Department of Labor, division of worker's compensation, submitted the legislation to two entities:

National Council on Compensation Insurance, Inc.  
Oswego Towne Square  
Nine Monroe Parkway, Suite 140  
Lake Oswego, OR 97035

and

Department of Consumer & Industry Services  
Bureau of Workers' Disability Compensation  
PO Box 30016  
Lansing, MI 48909

You have already received a copy of the National Council on Compensation Insurance review. Attached is a copy of the Bureau of Workers' Disability Compensation.

cc: Representative Pete Kott  
Ms. Judy Erickson (via fax: 586-1987)  
Mr. Charlie Miller  
Senator Robin Taylor, Senate Judiciary Committee



State of Michigan  
John Engler, Governor

Department of Consumer & Industry Services  
Kathleen M. Wilbur, Director

Bureau of Workers' Disability Compensation  
7150 Harris Drive  
P.O. Box 30018  
Lansing, Michigan 48909  
(517) 322-1106

March 11, 1998

Mr. Richard Austerman  
Alaska Workers' Compensation Division  
P.O. Box 25512  
Juneau, Alaska 99802-5572

Dear Mr. Austerman:

RE: Review of Group Self-Insurance Bill

I have reviewed the proposed language for group self-insurance in your state with several members of my staff involved with the regulation of group self-insurance programs. Based on the way the bill is presently written, I would answer no to all three of the questions posed: Is there adequate protection for injured employees? Is there adequate capitol to fund the group? Is there adequate protection in the event that a group becomes insolvent?

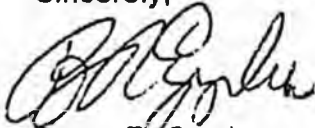
In Michigan, we require group self-insurance funds to collect enough money from their members to completely fund the loss fund on any aggregate excess contract that is purchased and pay all administrative expenses of running the program. If you allow a group from day one to start with an actuary predicting the losses, and if the actuary is wrong, you will end up in an assessment mode in the first year of operation of a group fund. Florida allowed that type of operation and had to go to the insurance industry for a \$5 million bail out to pay for claims of several insolvent group funds. Both specific and aggregate excess insurance is a definite requirement of all group fund programs. We would never allow a group fund to substitute designated depository securities in lieu of excess insurance. We've had situations where the reserves on one claim in the group fund exceeded \$8 million. Securities are not a good substitute for specific excess insurance. The provision that binds you to not allowing a group fund to terminate a certificate of approval unless that group is able to insure or reinsure all incurred workers' comp obligations, sets up a situation where an insolvent group will continue to incur liability and will not have the money to go out and reinsure their obligations. It will not allow you to limit the liability because the group will have to continue to operate and you will not be allowed to terminate their authority. This is a no win situation. If a group is declared insolvent, the best thing that can happen is to immediately allow each of their members to obtain fully insured coverage. This mitigates the ongoing liability of the group and you still have the provision of assessments where you go after the individual employer members for the prior liability of the group through the assessment process.

Allowing a group fund to terminate or cancel an employer's membership and then giving them 10 days beyond that date in which to advise you, automatically sets up a situation where an employer will be uninsured for a minimum of 10 days. We require at least 20 days prior notice before a member can be terminated from the group. This allows the member to either seek coverage in the voluntary market or get coverage through the assigned risk program and does not set up a situation of a member being uninsured.

The language in this bill that allows a member to take their deposit with them when they leave the group if the group at that time does not have a deficiency or insolvency, is also poor language. If you have a group that is on the verge of insolvency, you are going to have the majority of the members leave and grab their deposit from the guarantee fund before they leave. When the group is finally declared insolvent there will be little to no money left in the guarantee fund to help satisfy the outstanding obligation.

These are the major problems I see with this language that lead to our answer of no the three questions you asked. If you can get an audience with the individuals dealing with this legislation, we would be happy to share with you some additional suggestions we have on less major items that would make this much better legislation.

Sincerely,



Bruno R. Czyrka  
Deputy Director

# FISCAL NOTE

**STATE OF ALASKA**  
**1998 LEGISLATIVE SESSION**

**BILL NO.** SCS CSHB 116(L&C)

Revision Date (Note if correction): \_\_\_\_\_  
 Title: Workers' Compensation Self Insurance Group  
 Sponsor: Representative Kott  
 Requestor: Senate JUD

Department Affected: Labor  
 BRU: Workers' Compensation  
 Component: Workers' Compensation

**COMPONENT SERIAL NO.** 344

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

OPERATING	FY 99	FY 00	FY 01	FY 02	FY 03	FY 04
PERSONAL SERVICES	37.5	37.5	37.5	37.5	37.5	37.5
TRAVEL						
CONTRACTUAL	7.0	1.1	1.1	1.1	1.1	1.1
SUPPLIES						
EQUIPMENT	5.0					
LAND & STRUCTURES						
GRANTS & CLAIMS						
MISCELLANEOUS						
<b>TOTAL OPERATING</b>	<b>49.5</b>	<b>38.6</b>	<b>38.6</b>	<b>38.6</b>	<b>38.6</b>	<b>38.6</b>

<b>CAPITAL</b>						
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<b>CHANGE IN REVENUE FUND SOURCE #</b>						
--	--	--	--	--	--	--

**FUNDING:** (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	49.5	38.6	38.6	38.6	38.6	38.6
1005 GF/Program Receipt						
1006 GF/MHTIA						
Other (Specify Type)						
<b>TOTAL</b>	<b>49.5</b>	<b>38.6</b>	<b>38.6</b>	<b>38.6</b>	<b>38.6</b>	<b>38.6</b>

**POSITIONS:**

FULL-TIME	1	1	1	1	1	1
PART-TIME						
TEMPORARY						

Estimate of current year (FY98) impact: \$ 0.0

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

This bill proposes amending AS 21 by adding chapter 47, "Workers' Compensation Self Insurance Groups". See attached for the impact to Workers' Compensation.

Prepared by: Paul Grossl, Director *Paul Grossl* Phone: 465-2790  
 Division: Workers' Compensation Date: 3/11/98  
 Approved by Commissioner: Tom Cashen, Commissioner *Tom Cashen*  
 Agency: Department of Labor Date: 3/11/98

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**SCS CSHB 116(L&C) Analysis:**

The provisions of this bill applies to workers' compensation self insured groups. Under this bill the Division of Insurance would issue a certificate of approval to those persons who qualify for self-insurance coverage. Security from the self insurers would be deposited with the Division of Insurance and assigned to the Workers' Compensation Division to hold in trust, collect and transmit accruing interest to the depositor, and keep the Division of Insurance apprised of individual or group status changes within the self insured group.

A new position would be required to track all securities assigned; establish individual trust, monitor interest accrued and disbursed to the depositor, prepare form letters of status change and keep the Division of Insurance apprised of any status changes within the self insured groups.

One staff month of programming time will be required to develop computerized programs to interface with the Division of Insurance and to track self insurer and individual changes within each self insurance group.

The figures representing office furniture and equipment assume that some items may be available through Surplus Property at reduced costs.

**Line 100 Personal Services**

1 Administrative Clerk III	
Salary & Benefits	\$37.5

**Line 300 Contractual Services**

DP Programming (FY99 one time )	5.9
Postage	0.5
DP Operations	0.4
Printing form letters	<u>0.2</u>
	7.0

**Line 500 Equipment**

(One time set up costs)	
Computer	3.5
Office Furniture/Equipment	<u>1.5</u>
	5.0

Total	\$49.5
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01/30/98

Position Information Inquiry/Update

Prior 10:43:21  
Yr Actual Budgeted

Position: 07-07#020	Project: 0	Salary:	0	26,268.00	
Comp: 07-06-07-10-01-00	Region:	Benefits:	0	11,188.73	
Scenario: 7	FY: 99	COLA %: 0.000	Total:	0	37,456.73

-----  
Actuals not available (Status: UNKNOWN ) FLSA: | Retirement Code: A  
-----

00/00/00	Step: B for 12.0 months & Step: C for 0.0 months (total: 12.00 )
0	Merit Date; use merit defaults? N ( 0.0 @ & 0.0 @ )
	Class/Sched Prefix: 2 Schedule: 2A (actual: )
	Bargaining Unit: GG Range: 10 (actual: )
	Location Code: AWA Place: JUNEAU
	Job Class Code: P1135 Title: ADMINISTRATIVE CLERK III
	Seasonal Indic.: F Type: -

-----  
Optional Override Salary Rates:

Monthly Rate: 0.00 for 0.0 months & rate of 0.00 for 0.0 months  
 Hourly Rate: 0.00 for 0.0 months Frozen at this rate? (Y/N): N

Press ENTER to update record; enter # or use PF key to go to another screen:  
 1=Premium pay info    2=Funding info    4=Code Translations    6=Calculations  
 7=MISC NEW POS DATA    8=Detail Report    12=Exit w/o update    Selection: 0\_

# FISCAL NOTE

STATE OF ALASKA  
1998 LEGISLATIVE SESSION

BILL NO. SCS CSHB 116 (L & C)

Revision Date ( 3/5/98 ) Dept. Affected Commerce & Economic Development  
 Title An Act relating to workers' compensation BRU Insurance  
self-insurance Component Insurance  
 Sponsor Representative Kott  
 Requester Senate Labor and Commerce Component Serial No. 354

**Expenditures/Revenues** (Thousands of Dollars)

OPERATING EXPENDITURES	FY 99	FY 00	FY 01	FY 02	FY 03	FY 04
Personal Services	72.0	72.0	73.0	73.0	74.0	74.0
Travel	1.5	1.5	1.6	1.6	1.7	1.7
Contractual	2.0	2.0	2.1	2.1	2.2	2.2
Supplies	1.5	1.5	1.6	1.6	1.7	1.7
Equipment	5.0					
Land & Structures						
Grants & Claims						
Miscellaneous						
<b>TOTAL OPERATING</b>	<b>82.0</b>	<b>77.0</b>	<b>78.3</b>	<b>78.3</b>	<b>79.6</b>	<b>79.6</b>

<b>CAPITAL EXPENDITURES</b>						
-----------------------------	--	--	--	--	--	--

<b>CHANGE IN REVENUES ( )</b>	<b>0.0</b>	<b>(47.0)</b>	<b>(47.0)</b>	<b>(47.0)</b>	<b>(47.0)</b>	<b>(47.0)</b>
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**FUND SOURCE** (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	66.2	56.7	58.0	58.0	59.3	59.3
1005 GF/Program Receipts	15.8	20.3	20.3	20.3	20.3	20.3
1037 GF/Mental Health						
Other (Specify Type)						
<b>TOTAL</b>	<b>82.0</b>	<b>77.0</b>	<b>78.3</b>	<b>78.3</b>	<b>79.6</b>	<b>79.6</b>

Estimate of any current year (FY98) cost: 0.0

**POSITIONS**

Full-time	1	1	1	1	1	1
Part-time						
Temporary						

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

The division estimates that 20 groups will be formed and pay application fees of \$2,500 in FY 99. No annual continuation fees would be paid. Expenditures are based on the addition of one full time Financial Examiner II, with normal associated costs for equipment, supplies etc.

Prepared by Marianne K. Burke, Director *Marianne K. Burke* Phone 465-2515  
 Division Insurance Date 3/5/98  
 Approved by Commissioner Deborah B. Sedwick *Deborah B. Sedwick* Date 3/5/98  
 Agency Commerce and Economic Development

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# STATE OF ALASKA

## DEPARTMENT OF LABOR

### DIVISION OF WORKERS' COMPENSATION

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Changes made in (S) Ltc

0-LS0463\Q

SENATE CS FOR CS FOR HOUSE BILL NO. 116(L&C)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTIETH LEGISLATURE - SECOND SESSION

BY THE SENATE LABOR AND COMMERCE COMMITTEE

Offered:

Referred:

Sponsor(s): REPRESENTATIVES KOTT, Hudson, Foster, Berkowitz, Hodgins, Kelly, Dyson, Davis, Phillips, Kohring, Ogan, Green, Elton

SENATORS Donley, Ellis

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to workers' compensation self-insurance."

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

3 \* Section 1. AS 21 is amended by adding a new chapter to read:

4 Chapter 47. Workers' Compensation Self-insurance Groups.

5 Sec. 21.47.010. Scope. The provisions of this chapter apply to workers'  
6 compensation self-insurance groups. This chapter does not apply to public employees  
7 or governmental entities. A workers' compensation self-insurance group that is issued  
8 a certificate of approval by the director may not be considered to be an insurer or an  
9 insurance company and is not subject to the provisions of the insurance laws of this  
10 title except as otherwise provided in this chapter.

11 Sec. 21.47.020. Authority to act as a workers' compensation self-insurance  
12 group. A person may not act as a workers' compensation self-insurance group unless  
13 the person has been issued a certificate of approval by the director.

14 Sec. 21.47.030. Required qualifications. (a) A proposed workers'  
15 compensation self-insurance group shall file with the director an application for a

1 certificate of approval accompanied by a nonrefundable filing fee established by the  
2 director under AS 21.06.250. The application must include the group's name, location  
3 of its principal office, date of organization, name and address of each member, and  
4 other information that the director may reasonably require, together with the following:

- 5 (1) proof of compliance with the provisions of (b) of this section;  
6 (2) a copy of the group's articles of association, if any;  
7 (3) a copy of agreements with the administrator and with any service  
8 company;  
9 (4) a copy of the bylaws of the proposed group;  
10 (5) a copy of the agreement between the group and each member  
11 securing the payment of workers' compensation benefits; the agreement must include  
12 a provision for payment of assessments as provided under AS 21.47.170;  
13 (6) designation of the initial board of trustees and administrator;  
14 (7) the address in this state where the books and records of the group  
15 shall be maintained at all times;  
16 (8) a pro forma financial statement on a form acceptable to the director  
17 showing the financial ability of the group to pay the workers' compensation obligations  
18 of its members;  
19 (9) proof of the group's qualification under 26 U.S.C. 501(c)(6) and  
20 exemption from taxation under 26 U.S.C. 501(a); and  
21 (10) proof of payment to the group by each member of not less than  
22 25 percent of that member's first year estimated annual net premium on a date  
23 prescribed by the director; payment shall be considered to be part of the first year  
24 premium payment of a member if the proposed group is granted a certificate of  
25 approval.

26 (b) To obtain and to maintain its certificate of approval, a workers'  
27 compensation self-insurance group shall meet the following requirements, as well as  
28 other requirements established by law:

- 29 (1) a combined net worth of all members of the group of at least  
30 \$1,000,000;  
31 (2) security in the amount of \$450,000 that shall be provided by either

1 cash, a surety bond, security deposit, or financial security endorsement or any  
2 combination of cash, bond, deposit, or endorsement; if a surety bond is used to meet  
3 the security requirement, it shall be issued by a corporate surety company authorized  
4 to transact business in this state; if a security deposit is used to meet the security  
5 requirement, securities shall be limited to bonds or other evidences of indebtedness  
6 issued, assumed, or guaranteed by the United States of America, or by an agency or  
7 instrumentality of it; certificates of deposit in a federally insured bank; shares or  
8 savings deposits in a federally insured savings and loan association or credit union; or  
9 any bond or security issued by a state of the United States of America and backed by  
10 the full faith and credit of the state; securities shall be deposited with the director and  
11 assigned to and made negotiable by the commissioner of labor under a trust document  
12 acceptable to the director; interest accruing on a negotiable security shall be collected  
13 and transmitted to the depositor, provided the depositor is not in default; a financial  
14 security endorsement, issued as part of an acceptable excess insurance contract, may  
15 be used to meet all or part of the security requirement; the cash, bond, security deposit,  
16 or financial security endorsement must be

17 (A) for the benefit of the state solely to pay workers'  
18 compensation claims and associated expenses; and

19 (B) payable upon the failure of the group to pay workers'  
20 compensation benefits that it is legally obligated to pay;

21 (3) specific and aggregate excess insurance in a form, in an amount,  
22 and by an insurance company acceptable to the director; the director may establish  
23 minimum requirements for the amount of specific and aggregate excess insurance  
24 based on size differences among groups, types of employment, years in existence, and  
25 other relevant factors, and may permit a group to meet this requirement by placing in  
26 a designated depository securities of the type referred to in (2) of this subsection;

27 (4) an estimated annual standard premium of at least \$500,000 during  
28 a group's first year of operation; in subsequent years, the annual standard premium  
29 must be at least \$750,000;

30 (5) an indemnity agreement jointly and severally binding the group and  
31 each member of the group to meet the workers' compensation obligations of each

1 member; the indemnity agreement must be in a form prescribed by the director and  
 2 must include minimum uniform substantive provisions prescribed by the director;  
 3 subject to the director's approval, a group may add other provisions needed because  
 4 of its particular circumstances;

5 (6) in a form and amount prescribed by the director, a fidelity bond and  
 6 an errors and omissions insurance policy for the administrator and trustees; and

7 (7) in a form and amount prescribed by the director, a fidelity bond and  
 8 an errors and omissions insurance policy for the service company; the director may  
 9 also require the service company providing claim services to furnish a performance  
 10 bond in a form and amount prescribed by the director.

11 (c) A group shall notify the director of any change in the information required  
 12 to be filed under (a) of this section or in the manner of its compliance with (b) of this  
 13 section not later than 30 days after the change.

14 (d) The director shall

15 (1) evaluate the information provided by the application required to be  
 16 filed under (a) of this section to assure that gaps in funding do not exist and that funds  
 17 necessary to pay workers' compensation benefits will be available on a timely basis;

18 (2) act upon a completed application for a certificate of approval within  
 19 60 days; if, because of the number of applications, the director is unable to act upon  
 20 an application within this period, the director may have an additional 60 days to act  
 21 on an application;

22 (3) issue to the group a certificate of approval upon finding that the  
 23 proposed group has met all requirements, or the director shall issue an order refusing  
 24 the certificate setting out reasons for refusal upon finding that the proposed group does  
 25 not meet all requirements of this chapter.

26 **Sec. 21.47.035. Premium tax.** A group is subject to the premium tax imposed  
 27 on domestic insurers under AS 21.09.210(b)(1).

28 **Sec. 21.47.040. Certificate of approval; termination.** (a) A certificate of  
 29 approval issued by the director to a workers' compensation self-insurance group  
 30 authorizes the group to provide workers' compensation benefits as required under  
 31 AS 23.30. The certificate of approval remains in effect until terminated at the request

1 of the group or revoked by the director under AS 21.47.190.

2 (b) The director may not grant the request of a group to terminate its  
3 certificate of approval unless the group has insured or reinsured all incurred workers'  
4 compensation obligations with an authorized insurer under an agreement filed with and  
5 approved in writing by the director. Workers' compensation obligations must include  
6 both known claims and associated expenses and claims incurred but not reported and  
7 associated expenses. Subject to the approval of the director, a group may merge with  
8 another group engaged in the same or similar type of business only if the resulting  
9 group assumes in full all obligations of the merging groups. The director may hold  
10 a hearing on the merger and shall hold a hearing if any party, including a member of  
11 either group, requests a hearing.

12 **Sec. 21.47.050. Examinations.** The director may examine the affairs,  
13 transactions, accounts, records, and assets and liabilities of a group as often as the  
14 director requires. The expense of an examination shall be assessed against the group  
15 in the same manner that an insurer is assessed for an examination.

16 **Sec. 21.47.060. Board of trustees: membership, powers, duties, and**  
17 **prohibitions; accounts.** (a) A group shall be operated by a board of trustees of not  
18 less than five persons whom the members of a group elect for stated terms of office.  
19 At least two-thirds of the trustees shall be employees, officers, or directors of members  
20 of the group. The group's administrator, service company, or an owner, officer,  
21 employee of, or another person affiliated with the administrator or service company  
22 may not serve on the board of trustees of the group. A trustee shall be a resident of  
23 this state or an officer of a corporation authorized to do business in this state. The  
24 board of trustees of a group shall ensure that all claims are paid promptly and take all  
25 necessary precautions to safeguard the assets of the group. A trustee shall observe the  
26 standards in dealing with the assets of the group that would be observed by a prudent  
27 person dealing with the property of another, and, if the trustee has special skills or is  
28 named trustee on the basis of representations of special skills or expertise, the trustee  
29 is under a duty to use those skills.

30 (b) The board of trustees shall

31 (1) be responsible for all money collected or disbursed from the group

1 and segregate all money into a claims fund account and an administrative fund  
2 account; at least 70 percent of the net premium shall be placed into a designated  
3 depository for the sole purpose of paying claims, allocated claims expenses,  
4 reinsurance or excess insurance, and special fund contributions, including second injury  
5 and other loss related funds; this shall be called the "claims fund account"; the  
6 remaining net premium shall be placed into a designated depository for the payment  
7 of taxes, general regulatory fees and assessments, and administrative costs; this shall  
8 be called the "administrative fund account"; the director may approve an administrative  
9 fund account of more than 30 percent and a claims fund account of less than 70  
10 percent only if the group shows to the director's satisfaction that

11 (A) more than 30 percent is needed for an effective safety and  
12 loss control program; or

13 (B) the group's aggregate excess insurance attaches at less than  
14 70 percent;

15 (2) maintain minutes of its meetings and make the minutes available  
16 to the director;

17 (3) designate an administrator to carry out the policies established by  
18 the board of trustees and delineate in the written minutes of its meetings the areas of  
19 authority the board of trustees delegates to the administrator;

20 (4) retain an independent certified public accountant to prepare the  
21 statement of financial condition required under AS 21.47.100.

22 (c) The board of trustees may not

23 (1) extend credit to individual members for payment of a premium  
24 except under a payment plan approved by the director; or

25 (2) borrow money from the group or in the name of the group, except  
26 in the ordinary course of business, without first advising the director of the nature and  
27 purpose of the loan and obtaining prior approval from the director.

28 **Sec. 21.47.070. Group membership; termination; liability.** (a) An  
29 employer joining a workers' compensation self-insurance group after the group has  
30 been issued a certificate of approval shall (1) submit an application for membership  
31 to the board of trustees or its administrator; and (2) enter into the indemnity agreement

1 required under AS 21.47.030(b)(5); membership may not take effect earlier than each  
2 member's date of approval. An application for membership and approval of the  
3 application shall be maintained as a permanent record by the board of trustees.

4 (b) Individual membership in a group is subject to cancellation by the group  
5 under the bylaws of the group. In addition, individual members may elect to terminate  
6 their participation in the group. The group shall notify the director and the division  
7 of workers' compensation regarding the termination or cancellation of a membership.  
8 Notice shall be given within 10 days after the termination or cancellation.

9 (c) The group shall pay all workers' compensation benefits for which a  
10 member incurs liability during its period of membership. A member who elects to  
11 terminate its membership or is cancelled by a group remains liable for any workers'  
12 compensation obligations of the group and its members that were incurred during the  
13 cancelled or terminated member's period of membership.

14 (d) A group member is not relieved of its workers' compensation liabilities  
15 incurred during its period of membership except through payment by the group or the  
16 member of workers' compensation benefits required under AS 23.30.

17 (e) The insolvency or bankruptcy of a member does not relieve the group or  
18 another member of liability for the payment of any workers' compensation benefits  
19 incurred during the insolvent or bankrupt member's period of membership.

20 **Sec. 21.47.080. Service companies.** (a) A service company or its employees,  
21 officers, or directors may not be an employee, officer, or director of, or have either a  
22 direct or indirect financial interest in, an administrator. An administrator or its  
23 employees, officers, or directors may not be an employee, officer, or director of, or  
24 have either a direct or indirect financial interest in, a service company.

25 (b) A service contract must state that unless the director permits otherwise, the  
26 service company shall handle, to conclusion, all workers' compensation claims and  
27 other obligations incurred during the contract period.

28 **Sec. 21.47.090. Licensing of agent.** Except for a salaried employee of a  
29 group, its administrator, or its service company, a person soliciting membership for a  
30 workers' compensation self-insurance group must be licensed as provided under  
31 AS 21.27.

1           **Sec. 21.47.100. Financial statements and other reports.** (a) A group shall  
 2 submit to the director a statement of the financial condition of the group that is  
 3 annually audited by an independent certified public accountant on or before the last  
 4 day of the sixth month following the end of the group's fiscal year. Upon request, the  
 5 director shall allow a 60 day extension of the deadline described in this subsection.  
 6 The financial statement must be on a form prescribed by the director and must include  
 7 actuarially appropriate reserves, known as liabilities, for

- 8                   (1) known claims and associated expenses;  
 9                   (2) claims incurred but not reported and associated expenses;  
 10                   (3) unearned premiums; and  
 11                   (4) bad debts.

12           (b) The actuarial opinion required under (a) of this section shall be given by  
 13 a member of the American Academy of Actuaries or other qualified loss reserve  
 14 specialist as defined in the annual statement adopted by the National Association of  
 15 Insurance Commissioners.

16           (c) A person may not make an untrue statement of a material fact, or omit to  
 17 state a material fact necessary in order to make the statement made. in light of the  
 18 circumstances under which it is made, not misleading, in connection with the  
 19 solicitation of membership in a group.

20           (d) The director may prescribe the format and frequency of other required  
 21 reports including payroll audit reports, summary loss reports, and quarterly financial  
 22 statements.

23           **Sec. 21.47.110. Required second injury contribution.** A group is subject to  
 24 the required contribution provisions of the second injury fund under AS 23.30.040.  
 25 If an employee of a member of a group suffers a compensable injury, the member  
 26 shall contribute to the second injury fund as required under AS 23.30.040.

27           **Sec. 21.47.120. Misrepresentation prohibited.** A person may not make a  
 28 material misrepresentation or omission of a material fact in connection with the  
 29 solicitation of membership of a group.

30           **Sec. 21.47.130. Rates and reporting of rates.** (a) A workers' compensation  
 31 self-insurance group shall adhere to the uniform classification system, uniform

1 experience rating plan, and manual rules designated by the director.

2 (b) Premium contributions to the group shall be determined by applying the  
3 manual rates and rules to the appropriate classification of a member. Premium  
4 contributions shall be adjusted by a member's experience credit or debit. Subject to  
5 approval by the director, the premium contributions may also be reduced by an  
6 advance premium discount reflecting the group's expense levels and loss experience.

7 (c) Notwithstanding (b) of this section, a group may apply to the director for  
8 permission to make its own rates. Rates established under this subsection shall be  
9 based on at least five years of the group's experience.

10 (d) A group shall use the premium rates designated by the director plus an  
11 additional amount representing the member's portion of estimated expenses. A group  
12 may contract with an advisory organization approved by the director for assistance in  
13 developing appropriate rates.

14 (e) A group shall be audited at least annually by an auditor acceptable to the  
15 director to verify proper classifications, experience rating, payroll, and rates. A report  
16 of the audit shall be filed with the director in a form acceptable to the director. A  
17 group or a member of a group may request a hearing on objections to the  
18 classifications. If the director determines that as a result of an improper classification  
19 a member's premium contribution is insufficient, the director shall order the group to  
20 assess that member an amount equal to the deficiency. If the director determines that  
21 as a result of an improper classification a member's premium is excessive, the director  
22 shall order the group to refund to the member the excess premium collected. The  
23 audit required under this subsection shall be at the expense of the group.

24 **Sec. 21.47.140. Refunds.** (a) If approved by the director, money for a fiscal  
25 year in excess of the amount necessary to fund all obligations for that fiscal year may  
26 be declared to be refundable by the board of trustees not less than 12 months after the  
27 end of the fiscal year.

28 (b) A member shall be given a written description of the refund plan at the  
29 time of application for membership. A refund for any fiscal year shall be paid only  
30 to those employers who remain participants in the group for the entire fiscal year.

31 **Sec. 21.47.150. Premium payment; reserves.** (a) A group shall establish to

1 the satisfaction of the director a premium payment plan; the plan must include payment  
 2 of the balance of each member's annual premium in monthly <sup>quarterly</sup> installments.

3 (b) A group shall establish and maintain actuarially appropriate loss reserves  
 4 that must include reserves

5 (1) for known claims and associated expenses;

6 (2) for claims incurred but not reported and associated expenses; and

7 (3) consisting of a deposit by each member of at least 25 percent of  
 8 that member's estimated annual premium before the start of the group's fiscal year;  
 9 a deposit made under this paragraph is in addition to the payment required under  
 10 AS 21.47.030(a)(10) and shall be refunded to a member who leaves the group if the  
 11 group does not have a deficiency and is not insolvent.

12 (c) A group shall establish and maintain bad debt reserves based on the  
 13 historical experience of the group or other groups.

14 **Sec. 21.47.160. Workers' compensation self-insurance guaranty fund.** A  
 15 group shall establish a workers' compensation self-insurance guaranty fund. The  
 16 purpose of the fund is to prevent insolvency and to allow a group to discharge its legal  
 17 liabilities and other obligations. In addition to any other deposit requirement under  
 18 this chapter, each member of the group shall make a one time only deposit of five  
 19 percent of that member's estimated annual premium before the start of the member's  
 20 first fiscal year with the group. A deposit made under this section shall be refunded  
 21 to a member who leaves the group if the group does not have a deficiency and is not  
 22 insolvent.

23 **Sec. 21.47.170. Deficits and insolvencies.** (a) If the assets of a group are at  
 24 any time insufficient to enable the group to discharge its legal liabilities and other  
 25 obligations and to maintain the reserves required of it under this chapter, it shall  
 26 immediately make up the deficiency or levy an assessment upon the group members  
 27 for the amount needed to make up the deficiency.

28 (b) In the event of a deficiency in any fiscal year, the deficiency shall be made  
 29 up immediately, either from

30 (1) surplus from a fiscal year other than the current fiscal year;

31 (2) administrative funds;

1 (3) funds collected under AS 21.47.150(b)(3);

2 (4) funds collected under AS 21.47.160;

3 (5) assessment of the membership, if ordered by the group and funds  
4 described under (3) and (4) of this subsection are exhausted; or

5 (6) an alternate method that the director may approve or direct.

6 (c) The director shall be notified before a transfer of surplus funds from one  
7 fiscal year to another. If a group fails to assess its members or to otherwise make up  
8 a deficit within 30 days, the director shall order the group to make up the deficit.

9 (d) If a group fails to make the required assessment of its members within 30  
10 days after the director orders it to do so, or if the deficiency is not fully made up  
11 within 60 days after the date on which the assessment is made, or within a longer  
12 period of time that is specified by the director, the group shall be considered to be  
13 insolvent.

14 (e) In the event of the liquidation of a group, the director shall levy an  
15 assessment upon its members in an amount the director determines to be necessary to  
16 discharge all liabilities of the group, including the reasonable cost of liquidation.

17 **Sec. 21.47.180. Penalties.** (a) After notice and opportunity for a hearing, the  
18 director may impose a civil penalty on a person or group found to be in violation of  
19 any provision of this chapter. The civil penalty may not exceed \$500 for each act or  
20 violation and may not exceed \$5,000 in the aggregate.

21 (b) After notice and opportunity for a hearing, the director may issue an order  
22 requiring a person or group to cease and desist from engaging in an act or practice  
23 found to be in violation of any provision of this chapter.

24 (c) Upon a finding, after notice and opportunity for a hearing, that a person  
25 or group has knowingly violated a cease and desist order, the director may

26 (1) impose a civil penalty of not more than \$5,000 for each act or  
27 violation of the order not to exceed an aggregate amount of \$25,000; or

28 (2) revoke the group's certificate of approval or any insurance license  
29 held by the person.

30 (d) In this section, "knowingly" has the meaning given in AS 11.81.900.

31 **Sec. 21.47.190. Revocation of certificate of approval.** (a) After notice and

1 opportunity for a hearing, the director may revoke a group's certificate of approval if  
2 the group

3 (1) is found to be insolvent;

4 (2) fails to pay any premium tax, regulatory fee or assessment, or  
5 special fund contribution imposed upon the group; or

6 (3) fails to comply with any of the provisions of this chapter or with  
7 any lawful order of the director within the time prescribed.

8 (b) In addition to (a) of this section, the director may revoke a group's  
9 certificate of approval if, after notice and opportunity for hearing, the director finds  
10 that

11 (1) a certificate of approval that was issued to the group was obtained  
12 by fraud;

13 (2) there was a material misrepresentation in the application for the  
14 certificate of approval; or

15 (3) the group or its administrator has misappropriated, converted,  
16 illegally withheld, or refused to pay over upon proper demand any money that belongs  
17 to a member, an employee of a member, or a person otherwise entitled to it, and that  
18 has been entrusted to the group or its administrator in its fiduciary capacities.

19 **Sec. 21.47.200. Other provisions applicable.** The following provisions of law  
20 are applicable to a workers' compensation self-insurance group as if the group were  
21 an insurer:

22 (1) authority granted to the director under AS 21.06.120, 21.06.140 -  
23 21.06.160, and 21.06.180 - 21.06.230;

24 (2) service of process provisions under AS 21.09.180 and 21.09.190;

25 (3) requirements imposed under AS 21.12.010 - 21.12.090;

26 (4) investment practices required under AS 21.21;

27 (5) administration of deposit requirements under AS 21.24;

28 (6) provisions applicable to producers, agents, administrators, brokers,  
29 adjusters, and managers under AS 21.27.405, 21.27.410, 21.27.420, 21.27.440 and  
30 21.27.460;

31 (7) unfair trade practice provisions under AS 21.36;

1 (8) provisions applicable to reciprocal and cooperative insurers under  
2 AS 21.75.130, 21.75.135, and 21.75.270;

3 (9) provisions applicable to rehabilitation and liquidation under  
4 AS 21.78.

5 **Sec. 21.47.500. Definitions.** In this chapter,

6 (1) "administrator" means an individual, partnership, or corporation  
7 engaged by a workers' compensation self-insurance group's board of trustees to carry  
8 out the policies established by the group's board of trustees and to provide day-to-day  
9 management of the group;

10 (2) "insolvent" or "insolvency" means the inability of a workers'  
11 compensation self-insurance group to pay its outstanding lawful obligations as the  
12 obligations mature in the regular course of business, as may be shown either by an  
13 excess of its required reserves and other liabilities over its assets or by its not having  
14 sufficient assets to reinsure all of its outstanding liabilities after paying all accrued  
15 claims owed by the group;

16 (3) "net premium" means premium derived from standard premium  
17 adjusted by an advance premium discount;

18 (4) "service company" means a person that provides services not  
19 provided by the administrator, including

20 (A) claims adjustment;

21 (B) safety engineering;

22 (C) compilation of statistics and the preparation of premium,  
23 loss, and tax reports;

24 (D) preparation of required self-insurance reports;

25 (E) development of members' assessments and fees; and

26 (F) administration of a claim fund;

27 (5) "standard premium" means the premium derived from the manual  
28 rates adjusted by experience modification factors but before advance premium  
29 discounts;

30 (6) "workers' compensation self-insurance group" or "group" means a  
31 not-for-profit association that has qualified as a trade organization under 26 U.S.C.

1 501(c)(6) (Internal Revenue Code) and is exempt from taxation under 26 U.S.C. 501(a)  
2 (Internal Revenue Code), and consists of 10 or more employers who have been  
3 engaged in the same or similar type of business in this state for at least three years,  
4 who are members of the same bona fide trade or professional association that has been  
5 in existence for not less than five years, and who enter into agreements to pool their  
6 liabilities for workers' compensation benefits in this state.

# Alaska State Legislature

## Senate



Official Business

Senate Labor & Commerce Committee

State Capitol  
Juneau, AK. 99801-1182

### Memo

TO: Mike Ford, Legal Counsel  
Legislative Research and Legal Services  
via fax: X 2029 this page only

FROM: Annette Kreitzer, Aide to  
Senate Labor & Commerce Committee  
PH: X 3844

DATE: March 3, 1998

RE: L&C Committee Substitute for HB 116: Worker's Compensation

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The L&C Committee heard Work Draft LS0463\P, adopted it and the following amendments. Please prepare a final L&C Committee Substitute incorporating these amendments:

1) Amendment #1  
Page 14, lines 1-6. This group must consist of 10 or more employers who have been employers in the state of Alaska for the preceding three years prior to being able to join the association. They must have been in the business or trade related to the association they wish to join for the preceding three years before being able to apply.

EXPLANATION: Currently, this version of the bill says that a "group" consists of 10 or more employers engaged in the same or similar type of business, and they have to have been members of the same bona fide trade or association in existence for not less than five years. This amendment does not change the trade or professional association requirements, but augments that by requiring that any business that seeks to be a part of a "group" has to have been in that business in Alaska three years previous to that business applying to be part of a "group"; and the business activity for those three years must be consistent with the "group" that the employer wants to join.

- 2) Amendment #2  
Page 4, Line 6: following "administrator" insert and trustees
- 3) Amendment #3  
Page 10, Line 2: Delete [OR QUARTERLY]

Please call me if you have questions.

~~DIFFERENT THAN SB95~~

0-LS0463VP

Ford

(S)L&C CHANGE TO CS HB 116 (FIN)

2/16/98

SENATE CS FOR CS FOR HOUSE BILL NO. 116(L&C)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTIETH LEGISLATURE - SECOND SESSION

BY THE SENATE LABOR AND COMMERCE COMMITTEE

Offered:

Referred:

Sponsor(s): REPRESENTATIVES KOTT, Hudson, Foster, Berkowitz, Hodgins, Kelly, Dyson, Davis, Phillips, Kohring, Ogan, Green, Elton

SENATORS Donley, Ellis

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to workers' compensation self-insurance."

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

3 \* Section 1. AS 21 is amended by adding a new chapter to read:

4 Chapter 47. Workers' Compensation Self-insurance Groups.

5 Sec. 21.47.010. Scope. The provisions of this chapter apply to workers'  
6 compensation self-insurance groups. This chapter does not apply to public employees  
7 or governmental entities. A workers' compensation self-insurance group that is issued  
8 a certificate of approval by the director may not be considered to be an insurer or an  
9 insurance company and is not subject to the provisions of the insurance laws of this  
10 title except as otherwise provided in this chapter.

11 Sec. 21.47.020. Authority to act as a workers' compensation self-insurance  
12 group. A person may not act as a workers' compensation self-insurance group unless  
13 the person has been issued a certificate of approval by the director.

14 Sec. 21.47.030. Required qualifications. (a) A proposed workers'  
15 compensation self-insurance group shall file with the director an application for a

1 certificate of approval accompanied by a nonrefundable filing fee established by the  
2 director under AS 21.06.250. The application must include the group's name, location

3 of its principal office, date of organization, name and address of each member, and  
4 other information that the director may reasonably require, together with the following:

5 (1) proof of compliance with the provisions of (b) of this section;

6 (2) a copy of the group's articles of association, if any;

7 (3) a copy of agreements with the administrator and with any service  
8 company;

9 (4) a copy of the bylaws of the proposed group;

10 (5) a copy of the agreement between the group and each member  
11 securing the payment of workers' compensation benefits; the agreement must include  
12 a provision for payment of assessments as provided under AS 21.47.170;

13 (6) designation of the initial board of trustees and administrator;

14 (7) the address in this state where the books and records of the group  
15 shall be maintained at all times;

16 (8) a pro forma financial statement on a form acceptable to the director  
17 showing the financial ability of the group to pay the workers' compensation obligations  
18 of its members;

19 (9) proof of the group's qualification under 26 U.S.C. 501(c)(6) and  
20 exemption from taxation under 26 U.S.C. 501(a); and

21 (10) proof of payment to the group by each member of not less than  
22 25 percent of that member's first year estimated annual net premium on a date  
23 prescribed by the director; payment shall be considered to be part of the first year  
24 premium payment of a member if the proposed group is granted a certificate of  
25 approval.

26 (b) To obtain and to maintain its certificate of approval, a workers'  
27 compensation self-insurance group shall meet the following requirements, as well as  
28 other requirements established by law:

29 (1) a combined net worth of all members of the group of at least  
30 \$1,000,000;

31 (2) security in the amount of \$450,000 that shall be provided by either

1 ~~cash~~ a surety bond, security deposit, or financial security endorsement or any  
2 combination of ~~cash~~ bond, deposit, or endorsement; if a surety bond is used to meet  
3 the security requirement, it shall be issued by a corporate surety company authorized  
4 to transact business in this state; if a security deposit is used to meet the security  
5 requirement, securities shall be limited to bonds or other evidences of indebtedness  
6 issued, assumed, or guaranteed by the United States of America, or by an agency or  
7 instrumentality of it; certificates of deposit in a federally insured bank; shares or  
8 savings deposits in a federally insured savings and loan association or credit union; or  
9 any bond or security issued by a state of the United States of America and backed by  
10 the full faith and credit of the state; securities shall be deposited with the director and  
11 assigned to and made negotiable by the commissioner of labor under a trust document  
12 acceptable to the director; interest accruing on a negotiable security shall be collected  
13 and transmitted to the depositor, provided the depositor is not in default; a financial  
14 security endorsement, issued as part of an acceptable excess insurance contract, may  
15 be used to meet all or part of the security requirement; the cash, bond, security deposit,  
16 or financial security endorsement must be

17 (A) for the benefit of the state solely to pay workers'  
18 compensation claims and associated expenses; and

19 (B) payable upon the failure of the group to pay workers'  
20 compensation benefits that it is legally obligated to pay;

21 (3) specific and aggregate excess insurance in a form, in an amount,  
22 and by an insurance company acceptable to the director; the director may establish  
23 minimum requirements for the amount of specific and aggregate excess insurance  
24 based on size differences among groups, types of employment, years in existence, and  
25 other relevant factors, and may permit a group to meet this requirement by placing in  
26 a designated depository securities of the type referred to in (2) of this subsection;

27 (4) an estimated annual standard premium of at least ~~\$300,000~~ during  
28 a group's first year of operation; in subsequent years, the annual standard premium  
29 must be at least ~~\$750,000~~;

30 (5) an indemnity agreement jointly and severally binding the group and  
31 each member of the group to meet the workers' compensation obligations of each

1 member; the indemnity agreement must be in a form prescribed by the director and  
2 must include minimum uniform substantive provisions prescribed by the director;  
3 subject to the director's approval, a group may add other provisions needed because  
4 of its particular circumstances;

5 (6) in a form and amount prescribed by the director, a fidelity bond and  
6 an errors and omissions insurance policy for the administrator; and

7 (7) in a form and amount prescribed by the director, a fidelity bond and  
8 an errors and omissions insurance policy for the service company; the director may  
9 also require the service company providing claim services to furnish a performance  
10 bond in a form and amount prescribed by the director.

11 (c) A group shall notify the director of any change in the information required  
12 to be filed under (a) of this section or in the manner of its compliance with (b) of this  
13 section not later than 30 days after the change.

14 (d) The director shall

15 (1) evaluate the information provided by the application required to be  
16 filed under (a) of this section to assure that gaps in funding do not exist and that funds  
17 necessary to pay workers' compensation benefits will be available on a timely basis;

18 (2) act upon a completed application for a certificate of approval within  
19 60 days; if, because of the number of applications, the director is unable to act upon  
20 an application within this period, the director may have an additional 60 days to act  
21 on an application;

22 (3) issue to the group a certificate of approval upon finding that the  
23 proposed group has met all requirements, or the director shall issue an order refusing  
24 the certificate setting out reasons for refusal upon finding that the proposed group does  
25 not meet all requirements of this chapter.

26 ~~Sec. 21.47.035. Premium tax. A group is subject to the premium tax imposed~~  
27 ~~on domestic insurers under AS 21.09.210(b)(1).~~

28 Sec. 21.47.040. Certificate of approval; termination. (a) A certificate of  
29 approval issued by the director to a workers' compensation self-insurance group  
30 authorizes the group to provide workers' compensation benefits as required under  
31 AS 23.30. The certificate of approval remains in effect until terminated at the request

1 of the group or revoked by the director under AS 21.47.190.

2 (b) The director may not grant the request of a group to terminate its  
3 certificate of approval unless the group has insured or reinsured all incurred workers'  
4 compensation obligations with an authorized insurer under an agreement filed with and  
5 approved in writing by the director. Workers' compensation obligations must include  
6 both known claims and associated expenses and claims incurred but not reported and  
7 associated expenses. Subject to the approval of the director, a group may merge with  
8 another group engaged in the same or similar type of business only if the resulting  
9 group assumes in full all obligations of the merging groups. The director may hold  
10 a hearing on the merger and shall hold a hearing if any party, including a member of  
11 either group, requests a hearing.

12 **Sec. 21.47.050. Examinations.** The director may examine the affairs,  
13 transactions, accounts, records, and assets and liabilities of a group as often as the  
14 director requires. The expense of an examination shall be assessed against the group  
15 in the same manner that an insurer is assessed for an examination.

16 **Sec. 21.47.060. Board of trustees: membership, powers, duties, and**  
17 **prohibitions; accounts.** (a) A group shall be operated by a board of trustees of not  
18 less than five persons whom the members of a group elect for stated terms of office.  
19 At least two-thirds of the trustees shall be employees, officers, or directors of members  
20 of the group. The group's administrator, service company, or an owner, officer,  
21 employee of, or another person affiliated with the administrator or service company  
22 may not serve on the board of trustees of the group. A trustee shall be a resident of  
23 this state or an officer of a corporation authorized to do business in this state. The  
24 board of trustees of a group shall ensure that all claims are paid promptly and take all  
25 necessary precautions to safeguard the assets of the group. ~~A trustee shall observe the~~  
26 ~~standards in dealing with the assets of the group that would be observed by a prudent~~  
27 ~~person dealing with the property of another, and, if the trustee has special skills or is~~  
28 ~~named trustee on the basis of representations of special skills or expertise, the trustee~~  
29 ~~is under a duty to use those skills.~~

30 (b) The board of trustees shall

31 (1) be responsible for all money collected or disbursed from the group

1 and segregate all money into a claims fund account and an administrative fund  
2 account; at least 70 percent of the net premium shall be placed into a designated  
3 depository for the sole purpose of paying claims, allocated claims expenses,  
4 reinsurance or excess insurance, and special fund contributions, including second injury  
5 and other loss related funds; this shall be called the "claims fund account"; the  
6 remaining net premium shall be placed into a designated depository for the payment  
7 of taxes, general regulatory fees and assessments, and administrative costs; this shall  
8 be called the "administrative fund account"; the director may approve an administrative  
9 fund account of more than 30 percent and a claims fund account of less than 70  
10 percent only if the group shows to the director's satisfaction that

11 (A) more than 30 percent is needed for an effective safety and  
12 loss control program; or

13 (B) the group's aggregate excess insurance attaches at less than  
14 70 percent;

15 (2) maintain minutes of its meetings and make the minutes available  
16 to the director;

17 (3) designate an administrator to carry out the policies established by  
18 the board of trustees and delineate in the written minutes of its meetings the areas of  
19 authority the board of trustees delegates to the administrator;

20 (4) retain an independent certified public accountant to prepare the  
21 statement of financial condition required under AS 21.47.100.

22 (c) The board of trustees may not

23 (1) extend credit to individual members for payment of a premium  
24 except under a payment plan approved by the director; or

25 (2) borrow money from the group or in the name of the group, except  
26 in the ordinary course of business, without first advising the director of the nature and  
27 purpose of the loan and obtaining prior approval from the director.

28 **Sec. 21.47.070. Group membership; termination; liability.** (a) An  
29 employer joining a workers' compensation self-insurance group after the group has  
30 been issued a certificate of approval shall (1) submit an application for membership  
31 to the board of trustees or its administrator; and (2) enter into the indemnity agreement

1 required under AS 21.47.030(b)(5); membership may not take effect earlier than each  
2 member's date of approval. An application for membership and approval of the  
3 application shall be maintained as a permanent record by the board of trustees.

4 (b) Individual membership in a group is subject to cancellation by the group  
5 under the bylaws of the group. In addition, individual members may elect to terminate  
6 their participation in the group. The group shall notify the director and the division  
7 of workers' compensation regarding the termination or cancellation of a membership.  
8 Notice shall be given within 10 days after the termination or cancellation.

9 (c) The group shall pay all workers' compensation benefits for which a  
10 member incurs liability during its period of membership. A member who elects to  
11 terminate its membership or is cancelled by a group remains liable for any workers'  
12 compensation obligations of the group and its members that were incurred during the  
13 cancelled or terminated member's period of membership.

14 (d) A group member is not relieved of its workers' compensation liabilities  
15 incurred during its period of membership except through payment by the group or the  
16 member of workers' compensation benefits required under AS 23.30.

17 (e) The insolvency or bankruptcy of a member does not relieve the group or  
18 another member of liability for the payment of any workers' compensation benefits  
19 incurred during the insolvent or bankrupt member's period of membership.

20 **Sec. 21.47.080. Service companies.** (a) A service company or its employees,  
21 officers, or directors may not be an employee, officer, or director of, or have either a  
22 direct or indirect financial interest in, an administrator. An administrator or its  
23 employees, officers, or directors may not be an employee, officer, or director of, or  
24 have either a direct or indirect financial interest in, a service company.

25 (b) A service contract must state that unless the director permits otherwise, the  
26 service company shall handle, to conclusion, all workers' compensation claims and  
27 other obligations incurred during the contract period.

28 **Sec. 21.47.090. Licensing of agent.** Except for a salaried employee of a  
29 group, its administrator, or its service company, a person soliciting membership for a  
30 workers' compensation self-insurance group must be licensed as provided under  
31 AS 21.27.

1           **Sec. 21.47.100. Financial statements and other reports.** (a) A group shall  
2 submit to the director a statement of the financial condition of the group that is  
3 annually audited by an independent certified public accountant on or before the last  
4 day of the sixth month following the end of the group's fiscal year. ~~Upon request, the~~

5 ~~director shall allow a 60 day extension of the deadline described in this subsection.~~

6 The financial statement must be on a form prescribed by the director and must include  
7 actuarially appropriate reserves, known as liabilities, for

- 8           (1) known claims and associated expenses;  
9           (2) claims incurred but not reported and associated expenses;  
10          (3) unearned premiums; and  
11          (4) bad debts.

12           (b) The actuarial opinion required under (a) of this section shall be given by  
13 a member of the American Academy of Actuaries or other qualified loss reserve  
14 specialist as defined in the annual statement adopted by the National Association of  
15 Insurance Commissioners.

16           (c) A person may not make an untrue statement of a material fact, or omit to  
17 state a material fact necessary in order to make the statement made, in light of the  
18 circumstances under which it is made, not misleading, in connection with the  
19 solicitation of membership in a group.

20           (d) The director may prescribe the format and frequency of other required  
21 reports including payroll audit reports, summary loss reports, and quarterly financial  
22 statements.

23           **Sec. 21.47.110. Required second injury contribution.** A group is subject to  
24 the required contribution provisions of the second injury fund under AS 23.30.040.  
25 If an employee of a member of a group suffers a compensable injury, the member  
26 shall contribute to the second injury fund as required under AS 23.30.040.

27           **Sec. 21.47.120. Misrepresentation prohibited.** A person may not make a  
28 material misrepresentation or omission of a material fact in connection with the  
29 solicitation of membership of a group.

30           **Sec. 21.47.130. Rates and reporting of rates.** (a) A workers' compensation  
31 self-insurance group shall adhere to the uniform classification system, uniform

1 experience rating plan, and manual rules designated by the director.

2 (b) Premium contributions to the group shall be determined by applying the  
3 manual rates and rules to the appropriate classification of a member. Premium  
4 contributions shall be adjusted by a member's experience credit or debit. Subject to  
5 approval by the director, the premium contributions may also be reduced by an  
6 advance premium discount reflecting the group's expense levels and loss experience.

7 (c) Notwithstanding (b) of this section, a group may apply to the director for  
8 permission to make its own rates. Rates established under this subsection shall be  
9 based on at least five years of the group's experience.

10 (d) A group shall use the premium rates designated by the director plus an  
11 additional amount representing the member's portion of estimated expenses. A group  
12 may contract with an advisory organization approved by the director for assistance in  
13 developing appropriate rates.

14 (e) A group shall be audited at least annually by an auditor acceptable to the  
15 director to verify proper classifications, experience rating, payroll, and rates. A report  
16 of the audit shall be filed with the director in a form acceptable to the director. A  
17 group or a member of a group may request a hearing on objections to the  
18 classifications. If the director determines that as a result of an improper classification  
19 a member's premium contribution is insufficient, the director shall order the group to  
20 assess that member an amount equal to the deficiency. If the director determines that  
21 as a result of an improper classification a member's premium is excessive, the director  
22 shall order the group to refund to the member the excess premium collected. The  
23 audit required under this subsection shall be at the expense of the group.

24 **Sec. 21.47.140. Refunds.** (a) ~~If approved by the director,~~ money for a fiscal  
25 year in excess of the amount necessary to fund all obligations for that fiscal year may  
26 be declared to be refundable by the board of trustees not less than 12 months after the  
27 end of the fiscal year.

28 (b) A member shall be given a written description of the refund plan at the  
29 time of application for membership. A refund for any fiscal year shall be paid only  
30 to those employers who remain participants in the group for the entire fiscal year.

31 **Sec. 21.47.150. Premium payment; reserves.** (a) A group shall establish to

1 the satisfaction of the director a premium payment plan; the plan must include ~~payment~~  
2 ~~of the balance of each member's annual premium in monthly~~ or quarterly ~~installments.~~

3 (b) A group shall establish and maintain actuarially appropriate loss reserves  
4 that must include reserves

5 (1) for known claims and associated expenses;

6 (2) for claims incurred but not reported and associated expenses; and

7 (3) ~~consisting of a deposit by each member of at least 25 percent of~~  
8 ~~that member's estimated annual premium before the start of the group's fiscal year;~~  
9 ~~a deposit made under this paragraph is in addition to the payment required under~~  
10 ~~AS 21.47.030(a)(10) and shall be refunded to a member who leaves the group if the~~  
11 ~~group does not have a deficiency and is not insolvent.~~

12 (c) A group shall establish and maintain bad debt reserves based on the  
13 historical experience of the group or other groups.

14 ~~Sec. 21.47.160. Workers' compensation self-insurance guaranty fund. A~~  
15 ~~group shall establish a workers' compensation self-insurance guaranty fund. The~~  
16 ~~purpose of the fund is to prevent insolvency and to allow a group to discharge its legal~~  
17 ~~liabilities and other obligations. In addition to any other deposit requirement under~~  
18 ~~this chapter, each member of the group shall make a one time only deposit of five~~  
19 ~~percent of that member's estimated annual premium before the start of the member's~~  
20 ~~first fiscal year with the group. A deposit made under this section shall be refunded~~  
21 ~~to a member who leaves the group if the group does not have a deficiency and is not~~  
22 ~~insolvent.~~

23 Sec. 21.47.170. Deficits and insolvencies. (a) If the assets of a group are at  
24 any time insufficient to enable the group to discharge its legal liabilities and other  
25 obligations and to maintain the reserves required of it under this chapter, it shall  
26 immediately make up the deficiency or levy an assessment upon the group members  
27 for the amount needed to make up the deficiency.

28 (b) In the event of a deficiency in any fiscal year, the deficiency shall be made  
29 up immediately, either from

30 (1) surplus from a fiscal year other than the current fiscal year;

31 (2) administrative funds;

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(3) funds collected under AS 21.47.150(b)(3);

(4) funds collected under AS 21.47.160;

(5) assessment of the membership, if ordered by the group and funds described under (3) and (4) of this subsection are exhausted; or

(6) an alternate method that the director may approve or direct.

(c) The director shall be notified before a transfer of surplus funds from one fiscal year to another. If a group fails to assess its members or to otherwise make up a deficit within 30 days, the director shall order the group to make up the deficit.

(d) If a group fails to make the required assessment of its members within 30 days after the director orders it to do so, or if the deficiency is not fully made up within 60 days after the date on which the assessment is made, or within a longer period of time that is specified by the director, the group shall be considered to be insolvent.

(e) In the event of the liquidation of a group, the director shall levy an assessment upon its members in an amount the director determines to be necessary to discharge all liabilities of the group, including the reasonable cost of liquidation.

**Sec. 21.47.180. Penalties.** (a) After notice and opportunity for a hearing, the director may impose a civil penalty on a person or group found to be in violation of any provision of this chapter. The civil penalty may not exceed \$500 for each act or violation and may not exceed \$5,000 in the aggregate.

(b) After notice and opportunity for a hearing, the director may issue an order requiring a person or group to cease and desist from engaging in an act or practice found to be in violation of any provision of this chapter.

(c) Upon a finding, after notice and opportunity for a hearing, that a person or group has knowingly violated a cease and desist order, the director may

(1) impose a civil penalty of not more than \$5,000 for each act or violation of the order not to exceed an aggregate amount of \$25,000; or

(2) revoke the group's certificate of approval or any insurance license held by the person.

(d) In this section, "knowingly" has the meaning given in AS 11.81.90.

**Sec. 21.47.190. Revocation of certificate of approval.** (a) After notice and

1 opportunity for a hearing, the director may revoke a group's certificate of approval if  
2 the group

3 (1) is found to be insolvent;

4 (2) fails to pay any premium tax, regulatory fee or assessment, or  
5 special fund contribution imposed upon the group; or

6 (3) fails to comply with any of the provisions of this chapter or with  
7 any lawful order of the director within the time prescribed.

8 (b) In addition to (a) of this section, the director may revoke a group's  
9 certificate of approval if, after notice and opportunity for hearing, the director finds  
10 that

11 (1) a certificate of approval that was issued to the group was obtained  
12 by fraud;

13 (2) there was a material misrepresentation in the application for the  
14 certificate of approval; or

15 (3) the group or its administrator has misappropriated, converted,  
16 illegally withheld, or refused to pay over upon proper demand any money that belongs  
17 to a member, an employee of a member, or a person otherwise entitled to it, and that  
18 has been entrusted to the group or its administrator in its fiduciary capacities.

19 **Sec. 21.47.200. Other provisions applicable.** The following provisions of law  
20 are applicable to a workers' compensation self-insurance group as if the group were  
21 an insurer:

22 (1) authority granted to the director under AS 21.06.120, 21.06.140 -  
23 21.06.160, and 21.06.180 - 21.06.230;

24 (2) service of process provisions under AS 21.09.180 and 21.09.190;

25 (3) requirements imposed under AS 21.12.010 - 21.12.090;

26 (4) investment practices required under AS 21.21;

27 (5) administration of deposit requirements under AS 21.24;

28 (6) provisions applicable to producers, agents, administrators, brokers,  
29 adjusters, and managers under AS 21.27.405, 21.27.410, 21.27.420, 21.27.440 and  
30 21.27.460;

31 (7) unfair trade practice provisions under AS 21.36;

1 (8) provisions applicable to reciprocal and cooperative insurers under  
2 AS 21.75.130, 21.75.135, and 21.75.270;

3 (9) provisions applicable to rehabilitation and liquidation under  
4 AS 21.78.

5 **Sec. 21.47.500. Definitions.** In this chapter,

6 (1) "administrator" means an individual, partnership, or corporation  
7 engaged by a workers' compensation self-insurance group's board of trustees to carry  
8 out the policies established by the group's board of trustees and to provide day-to-day  
9 management of the group;

10 (2) "insolvent" or "insolvency" means the inability of a workers'  
11 compensation self-insurance group to pay its outstanding lawful obligations as the  
12 obligations mature in the regular course of business, as may be shown either by an  
13 excess of its required reserves and other liabilities over its assets or by its not having  
14 sufficient assets to reinsure all of its outstanding liabilities after paying all accrued  
15 claims owed by the group;

16 (3) "net premium" means premium derived from standard premium  
17 adjusted by an advance premium discount;

18 (4) "service company" means a person that provides services not  
19 provided by the administrator, including

20 (A) claims adjustment;

21 (B) safety engineering;

22 (C) compilation of statistics and the preparation of premium,  
23 loss, and tax reports;

24 (D) preparation of required self-insurance reports;

25 (E) development of members' assessments and fees; and

26 (F) administration of a claim fund;

27 (5) "standard premium" means the premium derived from the manual  
28 rates adjusted by experience modification factors but before advance premium  
29 discounts;

30 (6) "workers' compensation self-insurance group" or "group" means a  
31 not-for-profit association that has qualified as a trade organization under 26 U.S.C.

1 501(c)(6) (Internal Revenue Code) and is exempt from taxation under 26 U.S.C. 501(a)  
2 (Internal Revenue Code), and consists of 10 or more employers who are engaged in  
3 the same or similar type of business, who are members of the same bona fide trade or  
4 professional association that has been in existence for not less than five years, and who  
5 enter into agreements to pool their liabilities for workers' compensation benefits in this  
6 state.

**REQUIREMENTS FOR SELF-INSURED EMPLOYER:**

The requirements for qualifying as a self-insurer are set out in regulation 8 AAC 46.010 -- .900.

- . A completed application must be filed at least 90 days before the desired effective date.
- . Audited financial statements for the three most recent fiscal or calendar years must be submitted.
- . A parent company guarantee must be provided for a majority or wholly owned subsidiary.
- . Claims must be adjusted within Alaska.
- . Employer must have a minimum of 100 employees.
- . Employer must have a net worth of at least \$5,000,000.
- . Both specific and aggregate excess insurance is required.
- . If required, a minimum security deposit for a new self-insurer would be \$300,000. For a renewing self-insurer the minimum security deposit is \$300,000 or 125% of outstanding, accrued workers' compensation obligations, whichever is higher.
- . Employer must have been in business within Alaska for at least five years (may be waived).

Additionally, a self-insurer is required to file, or have their adjuster file, an annual report showing the amount of all payments paid on all claims during a calendar year.

03/03/98 13:47:12 LEGISLATIVE TELECONFERENCE NETWORK SYSTEM  
MESSAGE FROM: LIOCJEN IN ANCHORAGF

LTN1120  
JNU

RE TCN: 80373 SCHEDULED FOR:03/03/98 13:30 TO 15:00  
SPONSOR: SENATE LABOR & COMMERCE PURPOSE: PUBLIC HEARING

MESSAGE TEXT: ROBIN WARD (OF3) IS ON LINE IN ANCH TO  
TESTIFY ON HB 116

03/03/98  
14:07:24

LEGISLATIVE TELECONFERENCE NETWORK SYSTEM  
PARTICIPANT LIST (ALL PARTICIPANTS)  
TCN:80373 SCHEDULED FOR:03/03/98 13:30 TO 15:00  
PUBLIC HEARING SENATE LABOR & COMMERCE

LTN1150  
BY:KEN  
FOR:KEN

LOCATION:KENAI LIO  
HB 116 MS.  
HB 116 MR.

PATRICIA VINCENT  
WESLEY KELLER

KENAI PEN BULDR TESTIFY  
KENAI PEN BULDR TESTIFY

*~~2. + more I don't have name for yet~~*

03/03/98 13:43:39 LEGISLATIVE TELECONFERENCE NETWORK SYSTEM  
MESSAGE FROM: LIOCJEN IN ANCHORAGE

LTN1120  
JNU

RE TCN: 80373 SCHEDULED FOR:03/03/98 13:30 TO 15:00  
SPONSOR: SENATE LABOR & COMMERCE PURPOSE: PUBLIC HEARING

MESSAGE TEXT: ✓MICHAEL HINCEN AND MARTIN PIHL ARE IN  
CO TO T ON HB 116 (OF 2 FROM KETCHIKAN)

03/03/98  
14:04:41

LEGISLATIVE TELECONFERENCE NETWORK SYSTEM  
PARTICIPANT LIST (ALL PARTICIPANTS)  
TCN:80373 SCHEDULED FOR:03/03/98 13:30 TO 15:00  
PUBLIC HEARING SENATE LABOR & COMMERCE

LTN1150  
BY:KEN  
FOR:KEN

LOCATION:KENAI LIO  
HB 116 MS. ✓

PATRICIA

VINCENT

KENAI PEN BULDR TESTIFY



# HB 116 Requests from Committee Members

Jo Gross,

(Kelly) 1) Outside, National expert to review legislation  
AK to fix bill

(Kelly) 2) Div. of Ins: Statistics on insurance co's profit  
margin: Homebuilders have stated 22-37% Is Justice?

(Kelly, to man) 3) to Dick Block: More in-depth analysis of  
to 3 options already available to Homebuilders

Div. of Ins.

(Kelly) 4) Provision in bill for E+O insurance for Administrator  
what about for Justice, also?

(Kelly/James) 5) Div. of Ins. for JT + General liability a sticking  
point for the Division?

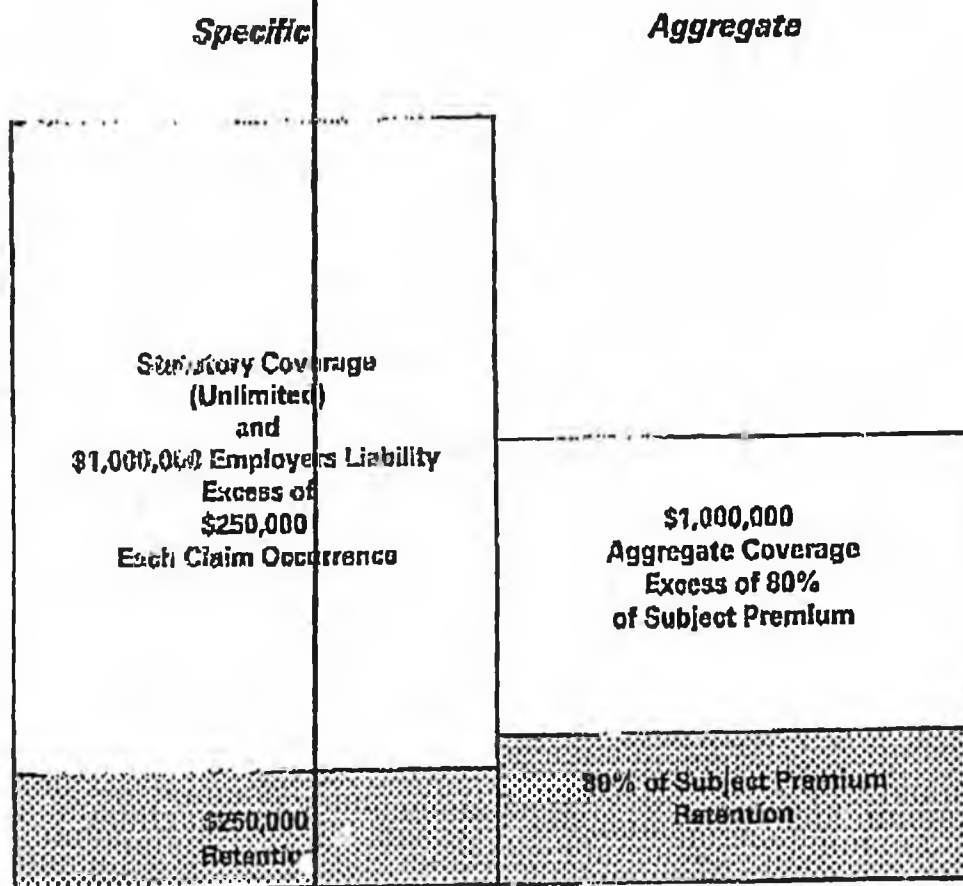
(Mackay) 6) to Pete Kott/Gross: want an example using an injured  
worker, what is the process to get relief vs what  
would happen currently under W.C.?

Info by 2/26 for possible releasing 3/3.

Alaska State Home Builders Association

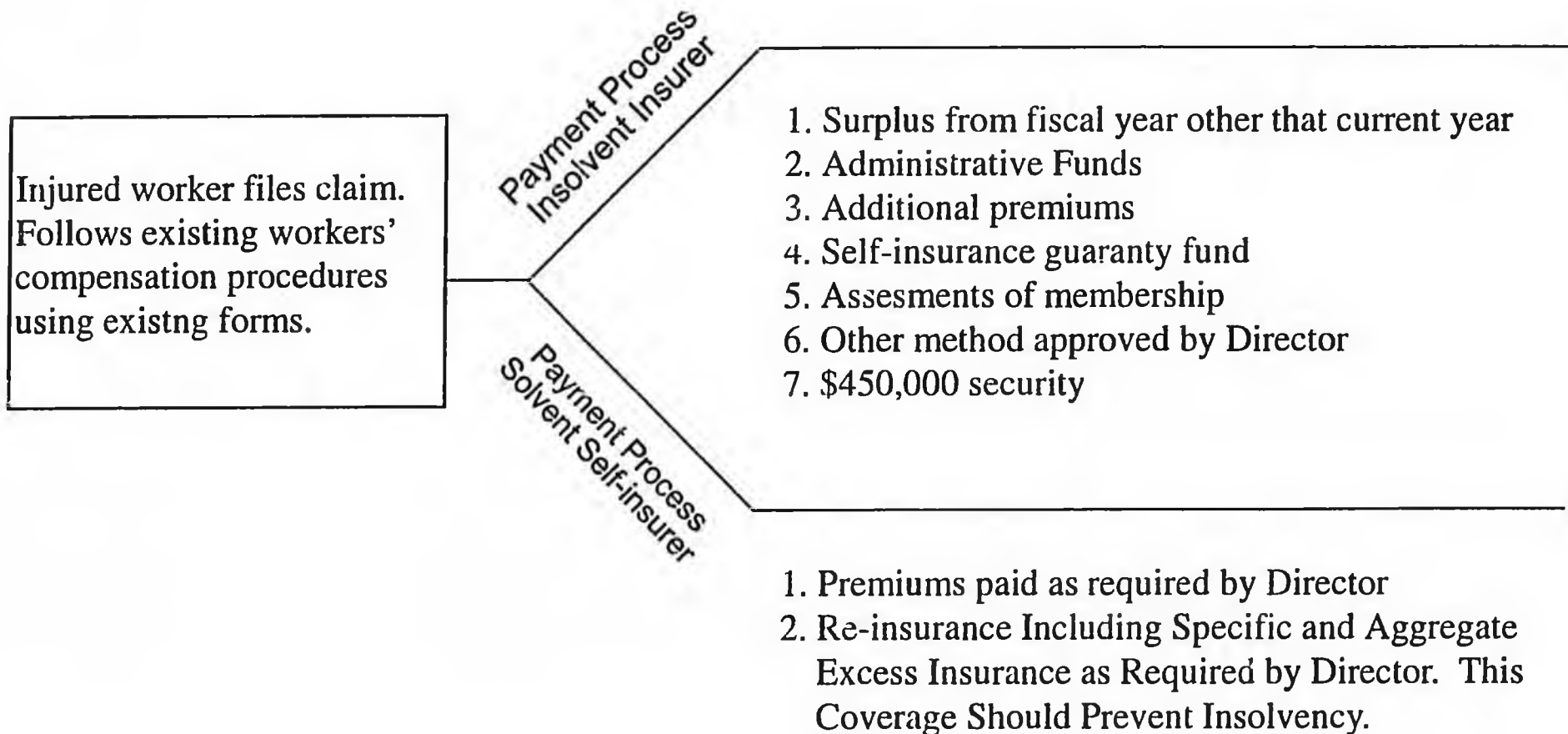
	1992	1993	1994	1995	1996
<b>Ac General Contracting</b>					
Medical Payments	18,679.75	1,476.12	18,064.54	564.00	0.00
Indemnity Payments	14,217.97	220.00	12,920.10	7,649.00	17,653.00
Other Payments	11,003.83	0.00	785.58	12,949.00	4,105.00
<b>total</b>	<b>43,901.55</b>	<b>1,696.12</b>	<b>31,770.22</b>	<b>21,162.00</b>	<b>21,758.00</b>
<b>Alaska Best Plumbing &amp; Heating</b>					
Medical Payments	1,697.00	615.00	1,768.00		
Indemnity Payments	1,941.00	0.00	0.00		
Other Payments	118.00	2.00	0.00		
<b>total</b>	<b>3,756.00</b>	<b>617.00</b>	<b>1,768.00</b>		
<b>Alaska Construction &amp; Erectors</b>					
Medical Payments	1,153.00	1,794.55	5,078.38	0.00	
Indemnity Payments	0.00	0.00	2,902.26	0.00	
Other Payments	0.00	4,748.29	21,530.93	8,256.33	
<b>total</b>	<b>1,153.00</b>	<b>6,542.84</b>	<b>29,511.57</b>	<b>8,256.33</b>	
<b>Alaska Homes Inc.</b>					
Medical Payments				206.00	
Indemnity Payments				0.00	
Other Payments				0.00	
<b>total</b>				<b>206.00</b>	
<b>Alcan Builders</b>					
Medical Payments	651.11	818.86	498.42	607.00	1,779.00
Indemnity Payments	0.00	0.00	0.00	0.00	227.00
Other Payments	0.00	0.00	0.00	7.00	25.00
<b>total</b>	<b>651.11</b>	<b>818.86</b>	<b>498.42</b>	<b>614.00</b>	<b>2,031.00</b>
<b>Ben Inc</b>					
Medical Payments			2,904.96		
Indemnity Payments			212.70		
Other Payments			3.90		
<b>total</b>			<b>3,121.56</b>		
<b>Aurora Builders</b>					
Medical Payments				6,559.00	80.00
Indemnity Payments				3,138.00	0.00
Other Payments				196.00	0.00
<b>total</b>				<b>9,893.00</b>	<b>80.00</b>
<b>Batir Creative Builders</b>					
Medical Payments	434.00	131.00	481.00	257.00	
Indemnity Payments	0.00	0.00	0.00	0.00	
Other Payments	0.00	0.00	0.00	0.00	
<b>total</b>	<b>434.00</b>	<b>131.00</b>	<b>481.00</b>	<b>257.00</b>	
<b>Reachy Construction</b>					
Medical Payments				588.00	939.00
Indemnity Payments				0.00	0.00
Other Payments				7.00	3.00
<b>total</b>				<b>595.00</b>	<b>942.00</b>
<b>Deo-Plus Builders</b>					
Medical Payments	14,346.68	3,592.00	2,486.00	2,432.00	236.00
Indemnity Payments	2,042.00	8,100.00	0.00	7,400.00	0.00
Other Payments	513.00	537.00	1,200.00	2,492.00	398.00
<b>total</b>	<b>16,901.68</b>	<b>12,229.00</b>	<b>3,686.00</b>	<b>12,324.00</b>	<b>634.00</b>
	<b>\$66,797.34</b>	<b>\$22,034.82</b>	<b>\$70,836.77</b>	<b>\$53,317.33</b>	<b>\$25,445</b>

# HOME BUILDERS OF ALASKA SELF-INSURED FUND PROPOSED REINSURANCE PROGRAM STRUCTURE



Proposed Cost based on Subject Premium of \$500,000: \$50,000 - \$75,000  
(being a 10% to 15% rate)

# HB 116 Workers' Compensation Self-insurance Group Process





National  
Council on  
Compensation  
Insurance, Inc.

February 27, 1998

Richard Austerman  
State of Alaska  
Department of Labor  
Workers Compensation Division

Re: HB 118

Dear Richard:

Per your request of February 18, 1998 we have reviewed the above legislation. First, however, let me state that NCCI, as a workers compensation statistical, data and research organization, does not take position on this legislation or other public policy decisions. Our comments below are based on a limited review of the proposed legislation due to the compressed time frame.

- ◆ The bill appears to provide adequate protection for employees, however, the ultimate test will be how quickly and efficiently the claims are processed, how soon injured workers are returned to work, the effectiveness of safety and loss control programs, the adequacy of the reserves and availability of funds to pay not only claimants but medical providers.
- ◆ The bill calls for an annual audit by an independent CPA, and an actuarial opinion to be offered on claims, reserves, premiums, etc. It would be stronger if the bill mandated that actuarial certification of the reserves was made, as opposed to an opinion.
- ◆ Any self insured group should be required to belong to an authorized rating organization that is developing and filing rules for use in Alaska. The legislation requires that they use uniform classifications, experience rating and manual rules and membership in a rating organization will help guarantee that those are followed.
- ◆ The legislation does not contain any provision for reporting data to the director, other than annual financial statements of the group. The group should be required to report individual employer data consistent with other workers compensation insurers, to an authorized rating organization. Without it, uniform experience ratings will be impossible to produce. Additionally, this will aid in maintaining continuity for an employer who may be a member of a group for a year or two and then return to the private marketplace. Without uniform data reporting, that information may be lost creating a problem for future experience ratings. Finally, without the data being reported in a standard format, it may be difficult to meet the requirements of Section 21.47.130 (e).

Oswego Towne Square, Nine Monroc Parkway, Suite 140, Lake Oswego, Oregon 97035  
Telephone: 503-636-6232, Facsimile: 503-636-5771

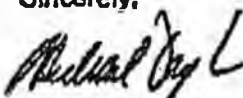
Richard Austerman  
February 27, 1998  
Page 2

- A one time payment of 5% of each member's premium to establish a guarantee fund seems inadequate and may not provide complete protection in the case of a catastrophic loss. One suggestion to improve this might be a requirement of annual 5% deposits until such time as the fund reaches a 1 to 1 premium to surplus ratio. You may also wish to consider not allowing a refund of this amount if a member leaves the group which would help the fund achieve and maintain greater solvency.
- Alaska law has numerous rules governing domestic insurers investments - the same or similar regulations should be applied to the self insured groups.
- Section 21.47.130, Rates and Reporting of Rates, might be better stated. Part (b) talks about manual rates, while (d) refers to rates designated by the director, or developed by the group with the help of an advisory organization. It might be clearer if these were combined into one subsection addressing what rates are to be used and how they are to be applied.

Finally, attached is a display of other states' provisions regarding group self insurance. Due to the limited time available, it is summary information only, however, please let us know if you need specifics or additional details on a particular state and we will be glad to provide it to you.

Richard, I trust this information is beneficial, however, please feel free to contact me if you have any questions or need additional information.

Sincerely,

  
Michael Taylor  
Director