

12213

HOUSE

L&C

1 beneficiary of the deed of trust; "mortgage lender" does not include a subsequent  
2 purchaser of a mortgage loan or an interest in a mortgage loan that is originated by a  
3 licensee under this chapter;

4 (14) "mortgage lender license" means a license issued under this  
5 chapter to operate as a mortgage lender;

6 (15) "mortgage lender licensee" means a person who holds a mortgage  
7 lender license;

8 (16) "mortgage license" means a mortgage lender license or a  
9 mortgage broker license;

10 (17) "mortgage licensee" means a mortgage lender licensee or a  
11 mortgage broker licensee;

12 (18) "mortgage loan"

13 (A) means a loan made to an individual if the proceeds are to  
14 be used primarily for personal, family, or household purposes and if the loan is  
15 secured by a mortgage or deed of trust on an interest in a residential owner-  
16 occupied property for one to four family units located in the state and  
17 regardless of where the loan is made;

18 (B) includes the renewal or refinancing of a loan;

19 (C) does not include loans

20 (i) or extensions of credit to buyers of real property for  
21 a part of the purchase price of the property by persons selling the  
22 property owned by them;

23 (ii) to persons related to the lender by blood or  
24 marriage;

25 (iii) to persons who are employees of the lender; or

26 (iv) made primarily for a business, commercial, or  
27 agricultural purpose of the borrower or for construction of residential  
28 property;

29 (19) "operate" means do business, offer to provide, or provide;

30 (20) "originator"

31 (A) means a natural person who, for compensation or gain, or

1 in the expectation of compensation or gain, directly or indirectly, by telephone,  
2 by electronic means, by mail, or in person

3 (i) interviews the consumer in connection with the  
4 consumer's application for a mortgage loan;

5 (ii) accepts or offers to accept an application for a  
6 mortgage loan from a potential borrower;

7 (iii) solicits or offers to solicit a mortgage loan for a  
8 potential borrower;

9 (iv) negotiates or offers to negotiate the terms or  
10 conditions the terms or conditions of a mortgage loan with or for a  
11 borrower or potential borrower; or

12 (v) issues or offers to issue to borrowers, potential  
13 borrowers, or the representatives of borrowers or potential borrowers,  
14 mortgage loan commitments, interest rate agreements, interest rate  
15 guarantees, prequalification letters, or commitments to finance up to a  
16 stated amount of the value of real property, or 90-percent letters to  
17 finance up to a stated amount of the value of real property;

18 (B) does not include employees of a mortgage licensee, or  
19 employees of a person who is exempt from licensure under AS 06.60.015, who  
20 perform clerical duties in connection with mortgage loan transactions, collect  
21 financial information and other related documents that are part of the  
22 application process, order verifications of employment, verifications of  
23 deposits, requests for mortgage payoffs, and other loan verifications,  
24 appraisals, inspections, or engineering reports, or perform the functions of a  
25 mortgage loan processor, at the direction of and subject to the supervision of  
26 the mortgage licensee, a mortgage originator, or the person exempt from  
27 licensure.

28 (21) "originator license" means a license issued to a person to operate  
29 as an originator;

30 (22) "originator licensee" means a person who holds an originator  
31 license;

1 (23) "program administration fee" means the fee described under  
2 AS 06.60.800(a);

3 (24) "records" includes books, accounts, papers, files, and other  
4 records;

5 (25) "residential property" means improved real property used or  
6 occupied, or intended to be used or occupied, for residential purposes.

7 Sec. 06.60.995. **Short title.** This chapter may be known as the Mortgage  
8 Lending Regulation Act.

9 \* Sec. 3. AS 09.38.015 is amended by adding a new subsection to read:

10 (e) Money held in an escrow account under AS 06.60.360 is exempt.

11 \* Sec. 4. AS 09.38.065(a) is amended to read:

12 (a) Subject to AS 06.60.360(c), and notwithstanding  
13 [NOTWITHSTANDING] other provisions of this chapter,

14 (1) a creditor may make a levy against exempt property of any kind to  
15 enforce a claim for

16 (A) child support;

17 (B) unpaid earnings of up to one month's compensation or the  
18 full-time equivalent of one month's compensation for personal services of an  
19 employee; or

20 (C) state or local taxes;

21 (2) a creditor may make a levy against exempt property to enforce a  
22 claim for

23 (A) the purchase price of the property or a loan made for the  
24 express purpose of enabling an individual to purchase the property and used  
25 for that purpose;

26 (B) labor or materials furnished to make, repair, improve,  
27 preserve, store, or transport the property; and

28 (C) a special assessment imposed to defray costs of a public  
29 improvement benefiting the property; and

30 (3) a creditor may make a levy against exempt property of any kind to  
31 enforce the claim of a victim, including a judgment of restitution on behalf of a victim

1 of a crime or a delinquent act, if the claim arises from conduct of the debtor that  
2 results in a conviction of a crime or an adjudication of delinquency, except that the  
3 debtor is entitled to an exemption in property

4 (A) not to exceed an aggregate value of \$3,000 chosen by the  
5 debtor from the following categories of property:

6 (i) household goods and wearing apparel reasonably  
7 necessary for one household;

8 (ii) books and musical instruments, if reasonably held  
9 for the personal use of the debtor or a dependent of the debtor; and

10 (iii) family portraits and heirlooms of particular  
11 sentimental value to the debtor; and

12 (B) not to exceed an aggregate value of \$2,800 of the debtor's  
13 implements, professional books, and tools of the trade.

14 \* Sec. 5. AS 44.62.330(a) is amended by adding a new paragraph to read:

15 (47) Department of Commerce, Community, and Economic  
16 Development relating to mortgage lending under AS 06.60.

17 \* Sec. 6. AS 44.64.030(a)(5) is amended to read:

18 (5) AS 06 (banks, [AND] financial institutions, and fund claims),  
19 except as provided otherwise by AS 06.60.590;

20 \* Sec. 7. AS 45.50.471(b) is amended by adding a new paragraph to read:

21 (52) violating AS 06.60.010 - 06.60.380 (mortgage lending  
22 regulation);

23 \* Sec. 8. AS 45.50.481 is amended by adding a new subsection to read:

24 (c) The exemption in (a)(1) of this section does not apply to an act or  
25 transaction regulated under AS 06.60.

26 \* Sec. 9. The uncodified law of the State of Alaska is amended by adding a new section to  
27 read:

28 TRANSITION: LICENSING OF CURRENT MORTGAGE LENDERS AND  
29 MORTGAGE BROKERS. Notwithstanding AS 06.60.010, enacted by sec. 2 of this Act, a  
30 person who is engaging in activities for which a license is required under AS 06.60, enacted  
31 by sec. 2 of this Act, immediately before the effective date of AS 06.60 is not required to

1 comply with the licensing requirements of AS 06.60 until March 1, 2009. In this section,  
2 "license" has the meaning given in AS 06.60.990, enacted by sec. 2 of this Act.

3 \* **Sec. 10.** The uncodified law of the State of Alaska is amended by adding a new section to  
4 read:

5       **TRANSITION: REGULATIONS.** The Department of Commerce, Community, and  
6 Economic Development may proceed to adopt regulations necessary to implement the  
7 changes made by this Act. The regulations take effect under AS 44.62 (Administrative  
8 Procedure Act), but not before July 1, 2008.

9 \* **Sec. 11.** Section 10 of this Act takes effect immediately under AS 01.10.070(c).

10 \* **Sec. 12.** Except as provided in sec. 11 of this Act, this Act takes effect July 1, 2008.

# Alaska State Legislature

**Chairman**  
State Affairs Committee

**Vice-Chairman**  
Economic Development, Trade & Tourism  
Committee

**Member**  
Judiciary Committee  
Joint Armed Services Committee

**Finance Subcommittees**  
Corrections  
Labor and Workforce Development  
Military and Veterans' Affairs  
Public Safety



*A Communication From*  
**REPRESENTATIVE BOB LYNN**  
**District 31 Anchorage**

**E-Mail:** Representative\_Bob\_Lynn@legis.state.ak.us  
**"Bob Lynn's Alaska Blog"** RepBobLynnBlog.com

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Anchorage, AK 99501-2133

Phone: (907) 269-0205  
Fax: (907) 269-0207

## Sponsor Statement

### HB 162

Alaska is the last state not to license and regulate residential mortgage lending. As a result, the Alaska Division of Banking and Securities has no authority to investigate the more than 20 complaints and over 50 phone calls it receives weekly about questionable lending practices. As it is, the division lacks regulatory authority to protect Alaska consumers from fraud, questionable lending, or mortgage brokering practices. While the state can sue to stop questionable practices in court, a regulatory framework creates a level playing field that benefits all industry participants and consumers.

Increased access to internet lending in recent years has contributed even further to the growing number of complaints and has caused the U.S. Congress to seek ways to strengthen consumer protection in the largest single investment most people will make in their entire lifetime.

Recognizing this problem, Alaska Mortgage Bankers Association and the Alaska Association of Mortgage Brokers has been working with the Alaska Division of Banking and Securities to develop legislation to balance protection of Alaska's consumers while insuring sufficient access.

During the past two years the Alaska Division of Banking and Securities has worked closely with leading Alaska mortgage lending groups to develop this legislation. The regulating of Alaska's mortgage lending industry is supported by the Alaska Division of Banking and Securities, the Alaska Mortgage Bankers Association, the Alaska Mortgage Brokers Association, the Independent Lenders of Alaska, the Alaska Realtors Association, and Alaska Housing Finance Corporation (AHFC). In addition, The American Association of Retired Peoples (AARP) has stated they are pleased with the legislation.

HB 162 will grant the Division of Banking enough licensing and regulatory authority to begin addressing the growing number of complaints from Alaska's homebuyers.

This legislation is a good first step toward addressing some of the issues faced by Alaska's mortgage consumers. This effort to establish accountability in the mortgage lending industry in Alaska is vital and past due. Your support of this legislation is respectfully requested.



The Mortgage Network, LLC

1752 Tongass Avenue • Ketchikan, Alaska 99901 • (907) 225-5626 • FAX (907) 247-2428

**Facsimile Cover Sheet**

**DATE: 3.27.07**

**TO: House Labor and Commerce Committee**

**Cc: Rep. Lynn, fax: 907.465.4316**

**FROM: Greg Harsha**

**FAX #: 907.465.3835**

**NUMBER OF PAGES (including this cover sheet): 5**

**RE: HB 0162a**

**COMMENTS:**

**Attached are my notes regarding HB 162 version HB 0162a. I was able to express some of my concerns to the House Labor and Commerce Committee meeting March 13, 2007 at 3:00pm.**

**Feel free to contact me with any questions.**

**Sincerely Yours,**

**Greg Harsha,**  
**President**  
**The Mortgage Network, LLC**

**If you have not received all pages or received this fax by mistake, please call (907) 225-5626.**

HB 0162a

March 27, 2007

Statement from Greg Harsha of The Mortgage Network, LLC, 1752 Tongass Ave., Ketchikan, Alaska 99901, (907) 225-5626, regarding HB 0162a:

Sec. 06.60.010 Page 2, lines 9-16

The paragraph, which I presume is to express that the holder of a Mortgage License, would not also need to hold an Originator's License fails to express this to me. I believe this part needs reworked.

Sec. 06.60.020 Page 3, lines 22-31  
Page 4, lines 1-14

If a Mortgage Licensee can originate loans, then a Mortgage Licensee should have fingerprints required, just as an originator is required. Also, a licensee for a Mortgage License should be an individual, not a company, agency, or other legal entity.

Sec. 06.60.025 Page 4, lines 15-24

An application for an Originator's license should have an investigation. Therefore, a written consent for an investigation would be required, as in the proposed Mortgage Licensee requirements. In Oregon, background checks of originators are the responsibility of the licensed Mortgage Broker.

Additionally, any person who acts as a mortgage loan originator in the state, regardless of where they are employed, should be subject to the same requirements. If not, loan originators are more likely to seek employment at those entities free from this legislation. That would make for an unfair advantage to exempt entities hiring and retaining loan originators.

Sec. 06.60.030 Page 4, lines 25-27

As above, this part does not specify whether it is for an applicant for a Mortgage License or an applicant for an Originator License. If for both, then the written consent to an investigation requirement (Sec. 06.60.020(9)) needs to apply to an applicant for an Originator License (Sec. 06.60.025.)

Sec. 06.60.035

Page 4, lines 28-31  
Page 5, lines 1-6

Investigation fees charged to an applicant by the state should have a cap, perhaps \$250.00.

Sec. 06.60.040

Page 5, lines 7-15

A passing score of 75 is arbitrary considering that there is no test created yet from which to extrapolate a passing score. If a Mortgage Licensee can originate loans, he should also require a test of competency.

Sec. 06.60.100

Page 11, line 25-26

There is no delineation in this proposed bill that presents a difference between a Mortgage Licensee licensed to act as a Mortgage Broker as opposed to a Mortgage Licensee licensed to act as a Mortgage Lender. There is no different requirement nor differences expressed in this bill.

Sec. 06.60.110

Page 11, line 29-31  
Page 12, line 1-3

What is the goal of this disclosure? It would be fair for a Licensee to know how this disclosure may be viewed by the State so that the licensee may make proper decisions regarding location.

Sec. 06.60.130

Page 12, line 18-28

If the Mortgage Licensee is licensed as an individual, then this section can be simplified to the degree that the department only need be made aware of what company the Mortgage Licensee is working for.

Sec. 06.60.135

Page 13, line 4-15

As a mortgage broker, I have never received a mortgage payment for a mortgage loan. I have never sold a mortgage loan. I have never prepared a mortgage loan note, and the only Truth-in-Lending I ever supply will always be preliminary. (I can get

copies of the mortgage loan note, and the final Truth-in-Lending from the borrower, after the loan has closed.)

The fees we receive in connection with a loan will always be on the HUD-1 Settlement Statement that the lender directs the settlement agent to create. All the lenders we have contracts with are federally chartered banks.

Sec. 06.60.250

Page 17, line 25-31  
Page 18, 1-13

Why can't an in-state licensee enjoy the same cost savings afforded to an out-of-state Licensee as in Sec. 06.60.140, by making their records available at a location that preempts the Licensee from paying expensive travel costs to places like Ketchikan, Alaska.

Sec. 06.60.350

Page 21, line 7-27

It can be inferred from this section that a Mortgage Licensee may refinance a mortgage loan for a borrower after 12 months from the date a mortgage loan closed if it is not beneficial to the borrower.

Also, what prevents a different entity from refinancing a mortgage loan within 12 months from the date a mortgage loan closed if it is not beneficial to the borrower?

This legislation as written means to prevent those two events from occurring but is not effective legislation against it.

Sec. 06.60.800  
and  
Sec. 06.60.810

Page 30, line 9-30

There should never be a "program administration fee", nor should there ever be a "program authorization fee" as proposed by these sections.

Not all Deeds of Trust recorded are associated with this program, so to charge an Alaskan consumer a fee to subsidize a program that has nothing to do with their financing is not fair.

Nor is it fair to charge one class of Alaskan (Customer obtaining financing through a Mortgage Licensee licensed as a Mortgage Broker) a fee and not another (Customer obtaining financing through a federally chartered bank).

If this were to be the case, I would have to disclose to all of my clients that they have \$10.00 more in closing costs because they elected to obtain financing through my office versus Wells Fargo.

There appears to be ample opportunity for the State to collect fees for the administration of this program. The State will receive \$2750.00 in fees over the first 10 years from me that I never paid before. Also, each of my originators will pay the same amount over the same time period. So that is an additional \$8,250.00 the state receive in that same 10-year period.

Of course the monetary burden on the Mortgage Licensee and the Originator licensee does not stop there with the bond and education requirements, which I am in agreement with.

I strongly disagree with this section of legislation.

Sec. 06.60.990

Page 33, line12-29

There is no definition of a "Mortgage Broker License" nor of a "Mortgage Broker Licensee."

3/23/07

I appreciate the opportunity to give testimony on the mortgage licensing bill.

The opinions expressed herein are not the official position of any organization, but my own personal opinions.

First I would like to give you a little background information on myself so that you may better understand my views.

I have been a resident of Alaska since 1959. I went to school here and served in the Alaska National Guard. Since 1977 I have been involved in the real estate industry. I have been a real estate broker, investor and developer. For the last 20 years I have been in the mortgage loan business. I have been a loan originator, manager in charge of production for one of Alaska's largest lenders as well as the manager in charge of all their branch offices.

I am a member of the Predatory Lending Task Force in Anchorage representing the Alaska Association of Mortgage Brokers. I sit on their Advisory Board and I am on their Education and Legislative Committees.

Presently I'm the owner of a small mortgage brokerage business and have two originators working with me.

I am a founding member and a past President of the Alaska Association of Mortgage Brokers (AKAMB). I serve as the Committee Chair for membership, and I am a member of the Legislative Committee for AKAMB.

In addition, I am the President-Elect of the Western Regional Mortgage Brokers Lenders Conference (WRMBLC). WRMBLC is an organization of fourteen western states that puts on an educational program each year for people in the mortgage loan industry to receive education, get up to date information from national leading experts, and a face-to-face expo with the nation's top mortgage lenders. This event has over 4,000 attendees with over 300 exhibitors.

As you can ascertain from the above information, I am a long time Alaskan with deep ties to our state. As such, I am very interested in the long term care of the mortgage industry in our state.

To that end, I was part of a small group of people that wanted to start an organization to promote professionalism, high ethics, and licensing of the mortgage industry in Alaska. We organized and started AKAMB as an affiliate of the National Association of Mortgage Brokers (NAMB) because they espouse the same things we desire. NAMB has a Code of Ethics that all must adhere to in order to become a member, as well as Professional Designations that can be earned through their educational classes.

I am presently hold the only "Certified Mortgage Consultant" designation from the National Association of Brokers, in Alaska.

As some of you may remember, there was bill introduced last year that would have licensed mortgage companies only. That bill died in the House.

So in the fall of 2006, the Alaska Association of Mortgage Brokers, the Alaska Mortgage Bankers Association, and the Division of Banking and Securities joined forces and decided to get together and work on a bill that would license mortgage companies *and* mortgage originators. The result of many hours of hard work was the introduction of HB-162. Thank you, Representative Lynn, for sponsoring this important bill. We are also working with the Department of Law on some technical issues on some of the verbage.

For your information, our state is the last to license mortgage operations in the country.

One of the most important components of the bill is the licensing of mortgage originators. They should be subject to a background check, testing for competency, and subject to continuing education requirements. An Originator must also work for a licensed entity in order to perform their duties.

As far as a client is concerned, the mortgage conduit looks all the same to them. It makes no difference to them if they are with a mortgage lender, bank or broker. They want a loan for their new home. This is arranged by talking to an originator, usually in person, sometimes by phone, to get the terms they want. The mortgage loan business is a "people" business. The best way to control it is to license the "people" (originators) involved.

By licensing the industry, we are able to protect the public from unscrupulous operators. If the originator is subject to licensure and does not perform legally, his/her license can be taken away. That affects their ability to earn a living. That is effective control. Along with that, the mortgage company they work for could also lose their license if they do not properly monitor their originators.

Competency testing ensures that all mortgage originators have the knowledge to perform their duties and not injure the borrower. The testing would establish minimum guidelines for knowledge that all originators would be required to master in order to become licensed. Originators should have a basic knowledge of RESPA\*, TILA\*, FHA\*, Regulation Z\*, title insurance, escrow, and credit issues.

Continuing education required for license renewal ensures that the public will be dealing with originators who obtain and maintain current information regarding the mortgage loan process.

Background checks would protect the residents in the State of Alaska from bad apples moving to our state and going into the business.

HB-162

3/23/07

Just last year it was disclosed that a mortgage originator for a very large national mortgage company was indicted on federal charges regarding his business practices. That person had previously had their license revoked from the state of Wisconsin in March of 2002. If our licensing policy been in effect at the time this person came to Alaska, this person would never had the opportunity to originate loans in Alaska, and the public would have been protected.

The residents of this state deserve a bill that will to protect them from unscrupulous companies and originators. By having a bill that effectively addresses those issues, the residents of our state for the first time will have the protections they deserve and avenues to pursue if damaged.

I appreciate your concern and attention to this bill and would be happy to entertain any questions you may have. Please call me at 907-250-9000.

Respectfully Submitted,

John Martin,  
Certified Mortgage Consultant™  
Anchorage, Alaska

\*These items are federal laws and regulations pertaining to mortgage loans.



## Fax Cover Sheet

Alaska State Office  
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1-866-227-7447 toll free  
[ak@aarp.org](mailto:ak@aarp.org)

3601 "C" Street,  
Suite 1420

Anchorage, AK  
99503

TO:	REPRESENTATIVE	FROM:	
	KURT OLSON	PAT LUBY	
		PHONE:	907-762-3314
CONF. ANY:		DATE:	
FAX NUMBER:	907-465-3835	# PAGES:	

AARP is a nonprofit, nonpartisan membership organization dedicated to making life better for people 50 and over. We provide information and resources; engage in legislative, regulatory and legal advocacy; assist members in serving their communities; and offer a wide range of unique benefits, special products, and services for our members. These include *AARP The Magazine*, published bimonthly; *AARP Bulletin*, our monthly newspaper; *Segunda Juventud*, our quarterly newspaper in Spanish; *Live and Learn*, our quarterly newsletter for National Retired Teachers Association members; and our Web site, [www.aarp.org](http://www.aarp.org). We have staffed offices in all 50 states, the District of Columbia, Puerto Rico, and the U.S. Virgin Islands.



April 11, 2007

The Honorable Kurt Olson, Chair  
House Labor and Commerce Committee  
Alaska State Capitol, Room 408  
Juneau, Alaska 99801-1182

HB 162 (Lynn)—Concerns

Dear Chair Olson:

On behalf of the AARP members in Alaska, we encourage you and your colleagues on the House Labor and Commerce Committee to consider some issues raised by one of our attorneys who specializes in consumer issues about HB 162, authored by Representative Bob Lynn.

AARP supports licensure and we appreciate that lenders as well as brokers are included in this bill.

We don't support licensure that is designed to avoid imposition of laws prohibiting predatory loan practices. Both licensure and concrete prohibitions on predatory lending are essential. Our attorney noted that there is one prohibition included in the bill, on page 21, that loans cannot be "flipped" without some benefit to the borrower. She noted that the clause is weaker than in other predatory lending laws in other states. If the bill is going to address predatory lending practices, we would like to submit our "model" bill which would indicate other topics that ought to be included. As you know, the media is currently putting a spotlight on predatory lending practices.

Civil penalties for a licensee violation are capped at \$10,000 per violation and appear to be destined for the general fund instead of the victim, who may have already lost his house by virtue of foreclosure on a predatory loan. We believe the cap should be significantly higher.

There does not appear to be an express private right of action in the bill. Reference is made to other remedies available elsewhere in state code but no private right of action is specified in the bill. We believe it should be, even though the Attorney General is empowered to pursue restitution, if he chooses (which is not always the case), for the

injured borrower. It appears that the Department of Commerce has the discretion to engage the Attorney General and will not bring in the AG's office unless the Department makes a preliminary determination that the licensee is in violation of the law. Since Department Directors come and go with administration changes, we feel the AG ought to have original jurisdiction.

The statute of limitations is two years from the occurrence. The standard in most states is three years from discovery. We recommend this change. (Some states extend it even further, considering that home ownership is generally the largest investment for an individual.)

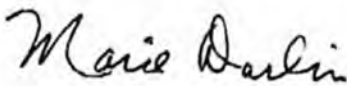
Claims against a single originator are capped at \$50,000 irrespective of actual damages to the borrower and will be "apportioned" among all aggrieved borrowers. This should be much stronger.

We believe HB 162 could offer much more consumer protection. We would be glad to have our attorneys in our Washington headquarters work with you and your Committee and Representative Lynn to strengthen the bill.

Should you have any questions about our position, please feel free to contact me (586-3637) or Patrick Luby, AARP Advocacy Director (907-762-3314).

Thank you for your consideration.

Sincerely,



Marie Darlin, Coordinator  
AARP Capital City Task Force  
415 Willoughby Avenue, Apt. 506  
Juneau, AK 99801  
586-3637 (voice)  
463-3580 (fax)

CC: Vice-Chair Mark Neuman  
Representative Carl Gatto  
Representative Gabrielle LeDoux  
Representative Jay Ramras  
Representative Bob Buch  
Representative Berta Gardner  
Representative Bill Stoltze



March 7, 2007

To: Representative Bob Lynn  
State Capitol Rm. 104  
Juneau, AK 99801-1182

From: Terri Weary, President  
Alaska Association of Mortgage Brokers  
Anchorage, AK 99515

Re: HB 162 The Mortgage Licensing Bill

I am writing this letter to express our support of HB 162 on behalf of the Alaska Association of Mortgage Brokers. (AKAMB)

AKAMB, in conjunction with the Alaska Mortgage Bankers Association (AMBA) and the Division of Banking, have been working diligently to introduce legislation that regulates our industry, creates a level playing field, and, most importantly, provides much needed consumer protection.

House Bill 162 is the answer!!

Alaska is one of a few States that does not require licensing, continuing education, competency testing or registration of Mortgage Loan Originators.

Alaska is the only State that does not require licensing of Mortgage Companies.

Our combined goal is to provide much needed consumer protection from unscrupulous, unethical, or unregulated mortgage companies and Mortgage Loan Originators.

HB 162 accomplishes this goal!!

It is our combined commitment to work tirelessly to effect the passage and implementation of this long overdue consumer protection legislation.

We appreciate all the efforts of you and your staff and we look forward to working closely with you to make a difference.

Cordially,

Terri Weary  
President, Alaska Association of Mortgage Brokers

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

March 6, 2007

Representative Bob Lynn  
State Capitol, Room 104  
Juneau, Alaska 99801-1182  
ATTN: Representative Lynn  
FAXED: 907-465-4316

RE: HB162/SB102

Dear Representative Lynn,

As President of Alaska Mortgage Bankers Association, I can't begin to tell you just how long this organization has been working on a Licensing Bill for the State of Alaska. Momentum has increased and our Association along with the Alaska Association of Mortgage Brokers and the Division of Banking have worked very closely in making a licensing bill a reality.

The Alaska Mortgage Bankers Association would like to express our support for HB162/SB102. This bill collaboration with the Alaska Association of Mortgage Brokers and we feel this letter provide the consumer of the State of Alaska with the much needed protection they do not current have under our present system. Alaska is the only State that does not require licensing of Mortgage Companies and is one of just a few states that don't require licensing and or continuing education for Mortgage Loan Originators.

It is my sincere commitment to work in accomplishing Mortgage Lending Licensing and Mortgage Originator Licensing this session. AMBA appreciates your and your staff's efforts and look forward to continuing to work closely in overcoming this challenge.

Sincerely



Kevin M. Brecland  
President  
Alaska Mortgage Bankers Association  
907-222-8823 direct line  
907-743-9623 fax  
[www.akmba.org](http://www.akmba.org)  
[breclandk@residentialmtg.com](mailto:breclandk@residentialmtg.com)

cc: John Carman, Legislative Committee Chair, Alaska Mortgage Bankers Association

HB 162

Explanation of Amendment K.2

Offered By:

**Concerns from AFSA – American Financial Services Association**

At the heart of this is the language relating to the licensing of individual employees and exclusive agents of lending firms. Licensing individuals of large, multi-state mortgage lenders can impose substantial costs and administrative burdens for both lenders and regulators. In the lenders' case, these costs are, of course, passed on to the borrowers in the form of fees. In the case of the regulators, the added burden could well be detrimental to compliance activities.

Sensible state licensing of lending companies themselves renders the need to license individual employees unnecessary, and is our proposed solution in the substitution language that we will make available to you. This does away with the need to cover the likes of collections personnel, call-center employees and loan processors/underwriters with individual licenses, cutting down the bureaucratic and fiscal burden. This approach takes into account the fact that large mortgage lenders operating in multiple states have existing programs and policies in place for pre-employment screening, background checks, in-house training, education and compliance commensurate with the significant reputational damage that employee misconduct could cause.

We ask that you consider the immense difference between large multi-state lenders and independent mortgage brokers who often confine their business activities to a single state. We do not oppose licensing for loan originators who work on behalf of independent mortgage brokers.

Though we have other concerns about aspects of the bill, we ask for our substitute language, which would establish Alaska State licensing for mortgage companies but not for their employees or exclusive agents, to be incorporated into HB 162. We believe that this is the best way to protect consumers in Alaska from far-reaching and damaging unintended consequences.

AMENDMENT

OFFERED IN THE HOUSE

TO: HB 162

1 Page 2, line 20:

2 Delete "(b)"

3 Insert "(c)"

4

5 Page 2, line 25, following "bank,":

6 Insert "bank holding company,"

7

8 Page 2, line 26, following "institution,":

9 Insert "savings and loan association,"

10

11 Page 3, following line 18:

12 Insert a new subsection to read:

13 "(b) This chapter does not apply to an individual who operates as a mortgage  
14 lender, a mortgage broker, or an originator if the individual is employed by, or is  
15 under an exclusive contract with, a person eligible for an exemption under (a)(3) of  
16 this section, and if the person eligible for an exemption under (a)(3) of this section

17 (1) applies for and maintains a mortgage license;

18 (2) signs a statement provided by the department under which the  
19 person eligible for an exemption under (a)(3) of this section accepts responsibility for  
20 ensuring that the individual operates in compliance with this chapter;

21 (3) maintains a bond or other security that is satisfactory to the  
22 department, that is in an amount required by the department, and that may be used by  
23 the department, the Department of Law, or a person who suffers loss because of the

1 individual's violation of this chapter to reimburse a person for the individual's  
2 violation of this chapter; and

3 (4) files a registration form with the department to obtain an exemption  
4 for the individuals who are employed by, or are under exclusive contracts with, the  
5 person covered by (a)(3) of this section; the department shall determine the form and  
6 content of the registration form."

7

8 Reletter the following subsection accordingly.

**HB**

**163**

**BAXTER BRUCE & SULLIVAN P.C.**

PROFESSIONAL CORPORATION

P.O. BOX 32819  
JUNEAU, ALASKA 99803  
(907) 789-3166 (Telephone)  
(907) 789-1913 (Facsimile)  
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FRED J. BAXTER  
DANIEL G. BRUCE  
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Z. KENT SULLIVAN  
KATHIEEN A. FREDERICK  
STANLEY P. FIELDS  
MARIE Y. MARX

March 27, 2007

Representative Jay Ramras, Chairman  
House Judiciary Committee  
State Capitol, Room 118  
Juneau, Alaska 99801-1182

Re: HB 195

Dear Chairman Ramras:

Thank you for introducing HB 195. I would respectfully request that you consider amending the bill in a minor, noncontroversial way to address an issue that appears to have been overlooked.

For a number of years, I have been working in the area of forming and representation of business entities in the State of Alaska. Recently, I represented an Alaska LLC that wanted to serve as a registered agent for a condominium association. However, due to an apparent oversight, Alaska law does not allow LLCs to serve as registered agents, despite the fact that corporations are allowed to serve as registered agents.<sup>1</sup>

<sup>1</sup> Alaska's statute relating to corporation registered agents is AS 10.06.150. That section provides as follows:

**Sec. 10.06.150. Registered office and registered agent.** A corporation shall continuously maintain in this state a registered agent and a registered office. The registered office may be the same as the place of business of the corporation. The registered agent may be either an individual resident of this state, whose business office is the same as the registered office, or a domestic or foreign corporation authorized to transact business in this state whose business office is the same as the registered office.

Alaska's statute relating to limited liability registered agents is AS 10.06.150. That section provides as follows:

**Sec. 10.50.055. Registered office and registered agent.** A limited liability company shall continuously maintain in this state a registered agent and a registered office. The registered office may be the same as the office of the company. The registered agent may be either an individual resident of this state, whose business office is the same as the registered office, or a domestic or foreign corporation authorized to transact business in this state whose business office is the same as the registered office.

Apparently, when the LLC registered agent statute was enacted, it was done by simply copying verbatim the corporate registered agent statute. The problem is that because the corporate registration statute predates the creation of LLCs, the both registration statutes have omitted reference to allowing LLCs to serve as registered agents, despite the fact that no legal basis exists for doing so. From a legal perspective, there is no policy reason to

We consulted with the Alaska Division of Corporations and they confirmed this legal position. We note that no good policy reason exists to differentiate between a corporation and an LLC in the context of allowing a corporation to be a registered agent, and not an LLC. As presently provided, the law allows either an individual or corporation to serve as a registered agent for corporations or LLCs. AS 10.50.055; AS 10.06.150.

Alaska's statutes allowing the formation of LLCs were developed after the body of corporation law was added, and work well as far as operation and accountability to the public. Omitting LLCs as an entity capable of serving as registered agents, when both must comply with strict requirements imposed by the state, serves no public policy purpose.

Therefore, we respectfully request that you ask for a hearing on HB 195 in the House Labor and Commerce Committee as soon as possible in order to address this issue. In addition, we request that you offer an amendment to HB 195 that would allow LLCs to serve as registered agents. Two amendments to AS 10.50 and AS 10.06 that would accomplish these goals are set forth below:

**Sec. 5.** AS 10.50.055 is amended to read:

**Sec. 10.50.055. Registered office and registered agent.** A limited liability company shall continuously maintain in this state a registered agent and a registered office. The registered office may be the same as the office of the company. The registered agent may be either an individual resident of this state, whose business office is the same as the registered office, or a domestic or foreign corporation or limited liability company authorized to transact business in this state whose business office is the same as the registered office.

**Sec. 6.** AS 10.06.150 is amended to read:

**Sec. 10.06.150. Registered office and registered agent.** A corporation shall continuously maintain in this state a registered agent and a registered office. The registered office may be the same as the place of business of the corporation. The registered agent may be either an individual resident of this state, whose business office is the same as the

---

allow corporations to serve as registered agents but not LLCs. Instead, this appears to simply have been an oversight which occurred as a result of copying a statute which came into existence before LLCs were created.

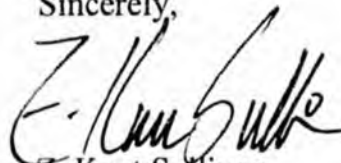
Representative Jay Ramras  
March 27, 2007  
Page 3

registered office, or a domestic or foreign corporation or limited liability company authorized to transact business in this state whose business office is the same as the registered office.

Please note that the first amendment relates to the LLC statutes and would seem to be easily added to HB 195. The second amendment offered below is important, but amends the corporation statutes. As such, it may require a simple title amendment to the bill. Nevertheless, while it appears that the bill may have been suggested by the administration, from a technical perspective, both amendments should be addressed by the legislature.

If you have any questions, or if you would like further information on this matter, please let me know.

Sincerely,



Z. Kent Sullivan

C: Representative Kurt Olson, Chairman, Labor and Commerce Committee  
Representative Neuman, Vice Chairman, Labor and Commerce Committee  
Commissioner Emil Notti, Department of Commerce, Community & Economic Development  
Representative Gabrielle LeDoux  
Mr. Rick Urion, Director, Division of Corporations, Business and Professional Licensing  
Ms. Sally Saddler, Legislative Liaison, Department of Commerce, Community & Economic Development  
John Bitney, Legislative Liaison, Office of the Governor  
Ms. Deborah Behr, Department of Law

# FISCAL NOTE

**STATE OF ALASKA**  
**2007 LEGISLATIVE SESSION**

Fiscal Note Number: 1  
 Bill Version: HB 163  
 ( ) Publish Date: 3/29/2007

Revision Date/Time (Note if correction): \_\_\_\_\_ Dept. Affected: Revenue  
 Title Property Foreclosures and Executions RDU Alaska Housing Finance Corp.  
 Component Operations  
 Sponsor Representative Ramras  
 Requester \_\_\_\_\_ Component No. 110

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

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2008	FY 2009	FY 2010	FY 2011	FY 2012	FY 2013
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>

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

<b>CHANGE IN REVENUES ( )</b>						
-------------------------------	--	--	--	--	--	--

**FUND SOURCE** (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
<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 (FY2007) cost: 0.0

Mark this box (X) if funding for this bill is included in the Governor's FY 2008 budget proposal:

**POSITIONS**

Full-time						
Part-time						
Temporary						

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

As written, HB 163 is not anticipated to have a fiscal effect on the operations of the Alaska Housing Finance Corporation.

Prepared by: Bryan Butcher, Director, Govt. Relations/Public Affairs Phone 907-330-8445  
 Division Alaska Housing Finance Corporation Date/Time \_\_\_\_\_  
 Approved by: \_\_\_\_\_ Date 3/29/2007  
 Agency \_\_\_\_\_

# FISCAL NOTE

**STATE OF ALASKA**  
**2007 LEGISLATIVE SESSION**

Fiscal Note Number: HB163-LAW-CFB-3-29-0  
 Bill Version: HB 163  
 ( ) Publish Date: \_\_\_\_\_

Revision Date/Time (Note if correction): \_\_\_\_\_ Dept. Affected: Law  
 Title An Act relating to property foreclosures and RDU Civil  
executions Component Commercial & Fair Business  
 Sponsor REPRESENTATIVE(s) RAMRAS  
 Requester House Labor & Commerce Component No. \_\_\_\_\_

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

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2008	FY 2009	FY 2010	FY 2011	FY 2012	FY 2013
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>

<b>CAPITAL EXPENDITURES</b>						
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<b>CHANGE IN REVENUES ( )</b>						
-------------------------------	--	--	--	--	--	--

**FUND SOURCE** (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
<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 (FY2007) cost: 0.0

Mark this box (X) if funding for this bill is included in the Governor's FY 2008 budget proposal:

**POSITIONS**

Full-time						
Part-time						
Temporary						

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

The bill is intended to streamline and update various processes associated with non-judicial foreclosures, including mandated internet notice of foreclosure, and acceptance of telephonic and email bids. There is no anticipated financial impact on the Department of Law.

Prepared by: Robert Meiners, Admin. Services Manager  
 Division Administrative Services Division  
 Approved by: Robert Meiners for Talis Colberg, Attorney General  
 Agency Department of Law

Phone 465-5427  
 Date/Time 3/29/07 1:49 PM  
 Date 3/29/2007

# Alaska State Legislature

**Session:**

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Juneau, Alaska 99801-1182  
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## Representative Jay Ramras House District 10

*Chair, House Judiciary Committee • Member, House Labor & Commerce Committee • Member, House Oil & Gas Committee • Member, House Military & Veteran Affairs Committee*

### Sectional HB 163 Property Foreclosures and Executions

✓ **Section 1. AS 09.35.140.** Amends AS 09.35.140 to delete the requirements that a notice of the sale of personal property be posted at a post office.

✓ **Section 2. AS 09.35.140 –** Adds a new subsection to AS 09.35 (execution on property) to require the notice of the sale of real property on execution also be given to an Internet website. Describes the requirements that the Internet website must meet to qualify. Does not require this notice unless there is a qualifying Internet website.

**Section 3** Amends AS 09.35.142 to allow an Internet website owner to bring a court action to establish that he website qualifies under AS 09.35.140(b). Makes a conforming change to cross-reference.

**Section 4.** Amends AS 34.20.070(b) to adjust to 90 days the minimum length of time that must elapse between recording a notice of default on a deed of trust and holding the foreclosure sale. Sets a limit of five days (before a foreclosure sale) when certain defaults on a deed of trust may be cured by a specific payment.

**Section 5.** Amends AS 34.20.070(c) to require that possession be actual physical possession where possession is required for certain persons to be entitled to receive a notice of default for foreclosure sale. Changes a term used in this subsection.

**Section 6.** Adds new subsection to AS 34.20.070 (foreclosure by trustee).

Proposed 34.20.070(e) establishes when a person who holds a lien or nonpossessory property interest that can be inferred from an inspection of the property is entitled to receive a notice of default for a foreclosure sale.

Proposed 34.20.070(f) allows a trustee additional time (after recording) to deliver the notice of default when the trustee delivers the notice personally to the property or to an occupant of the property. Allows the trustee to place the notice on the property or as close as practicable to the property under certain conditions.

Proposed sec 34.20.070(g) states that an affidavit signed by a trustee or another person who delivered notice personally under sec. 34.20.070(f) is prima facie evidence that the trustee complied with sec. 34.20.070(f). Establishes a conclusive presumption

(as evidenced by the affidavit) after one year unless a court action is filed within the year to challenge the foreclosure for failure to comply with sec. 34.20.070(f)

Proposed sec. 34.20.070(h) establishes how a trustee may satisfy the notice requirements for a person known by the trustee to be deceased and for whom the trustee or the deed of trust beneficiary knows a personal representative has been appointed.

Proposed sec. 34.20.070(i) establishes how a trustee may satisfy the notice requirements for a person known by the trustee to be deceased and for whom the trustee or the deed of trust beneficiary know that a personal representative has been appointed for the deceased person.

Proposed sec. 34.20.070(j) states that an heir or devisee of a deceased person must challenge a foreclosure sale within three months if alleging non-receipt of notice and if the trustee gave notice as required by (h) – (i).

Proposed sec. 34.20.070(k) describes the persons who may bring a court action to enjoin a foreclosure sale. Includes the attorney general.

Proposed sec. 34.20.070(l) states that when a court injunction action meets certain conditions, a court may impose conditions that it considers appropriate to protect the deed of trust beneficiary.

Proposed sec. 34.20.070(m) defines certain terms for AS 34.20.070

**Section 7.** Requires that the proceeds from a foreclosure sale be placed in escrow until disbursed. Allows a trustee to accept foreclosure bids by telephone, the Internet, and electronic mail if certain conditions are met.

**Section 8.** Allows the attorney or another agent of the trustee to conduct the sale. Allows the trustee to set reasonable rules for the conduct of the sale. Adds language that conforms the deed delivery requirements to the new provision in sec. 34.20.070(g) allowing the trustee to rescind the sale under certain circumstances.

**Section 9.** Limits the postponement of a foreclosure sale to not more than 12 months unless a new notice of sale is given. Establishes that postponement for up to 12 months does not provide a basis for challenging the validity of the foreclosure because of how long the foreclosure has been pending.

**Section 10.** Adds new subsection to AS 34.20.080(foreclosure sale).

Proposed sec. 34.20.080(f) indicates how any cash proceeds of the sale are to be distributed after delivery of a deed.

Proposed sec. 34.20.080(g) allows a trustee to withhold delivery of the deed for up to five days, prohibits the trustee from issuing the deed under certain conditions, and describes what the trustee must do when rescinding the sale.

Proposed sec. 34.20.080(h) allows the trustee to reschedule a rescinded sale, establishes a minimum time that must elapse after the rescinded sale before the new sale may be held, and establishes the notice procedure that the trustee must follow for the rescheduled sale.

Proposed sec. 34.20.080(i) establishes that if a sale is not rescinded it completely terminates the rights of the trust deed grantor of the property.

**Section 11.** Allows the attorneys for the beneficiaries or their successors in interest to execute and acknowledge the substitution of a trustee for certain trust needs.

**Section 12.** Adds a requirement to the contents of a trustee substitution for the situation when the substitution is executed by the attorneys for the beneficiaries or their successors in interest.

**Section 13.** Adds a new section.

Proposed sec. 34.20.125(a) requires a trustee to provide a surety bond before performing trustee duties under a deed of trust foreclosure.

Proposed sec. 34.20.125(b) requires the bond to be terminable at any time by the surety by complying with certain requirements, indicates when the bond terminates, and indicates that the surety is not liable after termination for more than the face amount of the bond. States that a revision of the amount of the bond is not cumulative.

Proposed sec. 34.20.125(c) prohibits a person whose bond has been terminated under (b) from acting as a trustee until the person obtains another bond.

Proposed sec. 34.20.125(d) requires a trustee to file evidence of a bond each year with the Department of Commerce, Community, and Economic Development. Requires the department to verify that the evidence is satisfactory, keep an updated list of bonded trustees, and make the evidence and the list available to the public. Allows the department to charge the trustee a reasonable fee for the verification and maintenance of records.

Proposed sec. 34.20.125(e) exempts certain persons from the bonding requirements.

Proposed sec. 34.20.125(f) defines "department" for this section.

# Alaska State Legislature

**Session:**

State Capitol, Room 118  
Juneau, Alaska 99801-1182  
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## Representative Jay Ramras House District 10

*Chair, House Judiciary Committee • Member, House Labor & Commerce Committee • Member, House Oil & Gas Committee • Member, House Military & Veteran Affairs Committee*

### Sponsor Statement

## HB 163 - Property Foreclosures and Executions

Alaska's statutes on non judicial foreclosure of real property are antiquated, ambiguous and unclear, and therefore, prone to unnecessary litigation. House Bill 163 clarifies the present statutory language, by simplifying and modernizing the foreclosure process. The suggested changes benefit lenders, borrowers and title insurance companies by bringing clarity and certainty to the foreclosure process.

HB 163 would improve many aspects of the foreclosure process as they appear in Title 34. Some of these changes are:

- Clarifies how proceeds from a foreclosure auction are to be disbursed
- Assures that foreclosure trustees are fiscally responsible by imposing reasonable bond requirements
- Creates deadlines to deter chilled bidding and unnecessary delays
- Allows trustees to nullify sales when mistakes are made that negatively affect the integrity of the sale
- Sets up procedures to follow involving a deceased borrower
- Creates common-sense rules to govern times and methods for posting foreclosure properties
- Creates internet publication procedures to help ensure that bidders learn of foreclosure auctions
- Defines when one's rights are terminated in the foreclosure process
- Allows acceptance of foreclosure auction bids via email, internet, and telephone for greater accessibility

Passage of HB 163 will streamline and simplify the foreclosure language in Alaska statutes and provide for a more open, accessible and fair auction process, benefiting borrowers, lenders, and title insurers, as well as reducing unnecessary litigation.

# LEGAL SERVICES

DIVISION OF LEGAL AND RESEARCH SERVICES  
LEGISLATIVE AFFAIRS AGENCY  
STATE OF ALASKA

(907) 465-3867 or 465-2450  
FAX (907) 465-2029  
Mail Stop 3101

State Capitol  
Juneau, Alaska 99801-1182  
Deliveries to: 129 6th St., Rm. 329

## MEMORANDUM

February 19, 2007

**SUBJECT:** Bill relating to real property foreclosures, executions, and deeds of trust (Work Order No. 25-LS0630\A)

**TO:** Representative Jay Ramras  
Attn: Jane Pierson

**FROM:** *tb* Theresa Bannister  
Legislative Counsel

This memo accompanies a draft of the bill described above.

1. Constitutional issue. In AS 09.35.140(b), the requirement that the Internet site have an office in the state may raise constitutional interstate commerce and privileges and immunities issues because it discriminates against out-of-state businesses that operate Internet sites but do not have offices in this state. It is not clear that this is a serious problem, but I wanted you to be aware of the possibility. The purpose of the requirement may be important. To allow for some needed oversight by the state in this matter would be considered a legitimate purpose. However, to give Alaska an economic advantage in this situation would not be considered a legitimate purpose.
2. Remedy for website. Do you want to amend AS 09.35.142 to allow websites to bring a court action to establish that they are eligible?
3. Affidavit of delivery. In the subsection on the affidavit of delivery (sec. 34.20.070(g)), it is not clear whether the presumption applies only if an affidavit of delivery has been prepared.
4. Conclusive presumption. In the subsection on the affidavit of delivery (sec. 34.20.070(g)), I suggest making the delivery presumption a "rebuttable" presumption rather than a conclusive presumption, because it is possible that a situation might occur where a situation like fraud or inadvertence would justify rebutting the presumption.
5. Right to enjoin foreclosure. Under sec. 34.20.070(k), do you want to allow an heir or devisee to bring an action to enjoin a foreclosure?

Representative Jay Ramras  
February 19, 2007  
Page 2

6. Record title. I believe that it would be a good idea to define "record title," which occurs in sec. 34.20.080(f)(3). I realize that the term is understood by the people in the field, but we try to draft statutes so that the average person can understand them.

7. Penalty. In the new bond requirement language (sec. 34.20.125), did you want to add a penalty for a person who conducts a deed of trust sale without the bond?

8. Bond provisions. In sec. 34.20.125(b), what does "remains in force" mean? Does it mean that the bond remains in operation after termination to cover events occurring before the termination? If so, I suggest that the provision be redrafted to say that, rather than using "remains in force." And what does "cumulative" in the final sentence mean? How would the final sentence be applied?

If I may be of further assistance, please advise.

TLB:med  
07-108.med

Enclosure

25-LS0630M  
Bannister  
3/27/07

**CS FOR HOUSE BILL NO. 163( )**  
**IN THE LEGISLATURE OF THE STATE OF ALASKA**  
**TWENTY-FIFTH LEGISLATURE - FIRST SESSION**

**BY**

**Offered:**  
**Referred:**

**Sponsor(s): REPRESENTATIVE RAMRAS**

**A BILL**  
**FOR AN ACT ENTITLED**

1 **"An Act relating to real property foreclosures, to the sale of property on execution, and**  
2 **to deeds of trust."**

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

4 **\* Section 1. AS 09.35.140 is amended to read:**

5 **Sec. 09.35.140. Notice of sale on execution.** Before the sale of property on  
6 execution, notice of the sale shall be given as follows:

7 (1) notice of the sale of personal property is given by posting a written  
8 or printed notice of the time and place of sale in three public places within five miles  
9 of the place where the sale is to be held, not less than 10 days before the day of sale;  
10 **[ONE OF THE NOTICES SHALL BE POSTED AT THE POST OFFICE NEAREST**  
11 **TO THE PLACE WHERE THE SALE IS TO TAKE PLACE;]**

12 (2) notice of the sale of real property is given by posting a similar  
13 notice particularly describing the property, including the property's street address if  
14 there is a street address for the property, not less than 30 days before the day of sale in

1 three public places, as provided in (1) of this section, and publishing a copy of the  
2 notice four times, once a week for four successive weeks in a newspaper of general  
3 circulation published nearest to the place of sale; an inaccuracy in the street address  
4 may not be used to set aside a sale if the legal description is correct; in this paragraph,  
5 "newspaper of general circulation" means a publication that

6 (A) is published in newspaper format;

7 (B) is distributed at least once a week for at least 50 weeks  
8 each year within the judicial district, excluding a period when publication is  
9 interrupted by a labor dispute or by a natural disaster or other casualty that the  
10 publisher cannot control; and has a total paid circulation or paid distribution of  
11 at least 500 copies, or 10 percent of the total population of the judicial district,  
12 whichever is less; in this subparagraph, "judicial district" means the judicial  
13 district where the place of sale is located;

14 (C) holds a second class mailing permit from the United States  
15 Postal Service;

16 (D) is not published primarily to distribute advertising; and

17 (E) is not intended primarily for a particular professional or  
18 occupational group.

19 \* Sec. 2. AS 09.35.140 is amended by adding new subsections to read:

20 (b) In addition to the notice required by (a) of this section, notice of the sale of  
21 real property on execution shall be given by publishing a notice of the sale on an  
22 Internet website beginning at least 45 days before the date of the sale. The notice must  
23 be published on at least 30 days, including at least 10 of the last 15 days before the  
24 actual date of the sale. Giving notice under this subsection is not required unless there  
25 is an Internet website that qualifies under (c) of this section.

26 (c) To qualify as an Internet website on which notices of sale may be  
27 published under (b) of this section, an Internet website must

28 (1) be available to any person;

29 (2) be completely free to the public for viewing and not require a  
30 subscription;

31 (3) be used primarily to advertise real property under foreclosure;

1 (4) have been in continuous operation for more than one year;

2 (5) have a viewership of at least 5,000 different visitors each month  
3 that is verified by an independent audit; and

4 (6) have an office in the state and the office has staff that includes a  
5 senior management person.

6 \* Sec. 3. AS 09.35.142 is amended to read:

7 **Sec. 09.35.142. Action to establish newspaper or Internet website status.** A  
8 person who owns a publication may bring an action under AS 22.10.020(g) to  
9 establish that the publication is a newspaper of general circulation under  
10 **AS 09.35.140(a)(2)** [AS 09.35.140(2)]. **A person who owns an Internet website**  
11 **may bring an action under AS 22.10.020(g) to establish that the Internet website**  
12 **qualifies as an Internet website on which notices of sale may be published under**  
13 **AS 09.35.140(b).**

14 \* Sec. 4. AS 34.20.070(b) is amended to read:

15 (b) Not less than 30 days after the default and not less than **90 days** [THREE  
16 MONTHS] before the sale, the trustee shall record in the office of the recorder of the  
17 recording district in which the trust property is located a notice of default setting out  
18 (1) the name of the trustor, (2) the book and page where the trust deed is recorded or  
19 the serial number assigned to the trust deed by the recorder, (3) a description of the  
20 trust property, including the property's street address if there is a street address for the  
21 property, (4) a statement that a breach of the obligation for which the deed of trust is  
22 security has occurred, (5) the nature of the breach, (6) the sum owing on the  
23 obligation, (7) the election by the trustee to sell the property to satisfy the obligation,  
24 and (8) the date, time, and place of the sale. An inaccuracy in the street address may  
25 not be used to set aside a sale if the legal description is correct. At any time **up to five**  
26 **days** before the sale, if the default has arisen by failure to make payments required by  
27 the trust deed, the default may be cured by payment of the sum in default other than  
28 the principal that would not then be due if no default had occurred, plus attorney fees  
29 or court costs actually incurred by the trustee due to the default. If, under the same  
30 trust deed, notice of default under this subsection has been recorded two or more times  
31 previously and the default has been cured under this subsection, the trustee may elect

1 to refuse payment and continue the sale.

2 \* **Sec. 5.** AS 34.20.070(c) is amended to read:

3 (c) Within 10 days after recording the notice of default, the trustee shall mail a  
4 copy of the notice by certified mail to the last known address of each of the following  
5 persons or their legal representatives: (1) the trustor [GRANTOR] in the trust deed;  
6 (2) the successor in interest to the trustor [GRANTOR] whose interest appears of  
7 record or of whose interest the trustee or the beneficiary has actual notice, or who is in  
8 actual physical possession of the property; (3) any other person actually in physical  
9 possession of [OR OCCUPYING] the property; (4) any person having a lien or  
10 interest subsequent to the interest of the trustee in the trust deed, where the lien or  
11 interest appears of record or where the trustee or the beneficiary has actual notice of  
12 the lien or interest. The notice may be delivered personally instead of by mail.

13 \* **Sec. 6.** AS 34.20.070 is amended by adding new subsections to read:

14 (e) In (c) of this section, if the existence of a lien or nonpossessory interest can  
15 only be inferred from an inspection of the real property, the person holding the lien or  
16 nonpossessory interest is not entitled to notice under this subsection unless the lien or  
17 nonpossessory interest appears of record or a written notice of the lien or  
18 nonpossessory interest has been given to the beneficiary or trustee before the  
19 recording of the notice of default.

20 (f) If the trustee delivers notice personally under (c) of this section to the  
21 property or to an occupant of the property, the trustee may, notwithstanding (c) of this  
22 section, deliver the notice up to 20 days after the notice of default is recorded. If there  
23 is not a structure on the property and a person is not present on the property at the time  
24 of delivery, the trustee may place the notice on the property, or as close as practicable  
25 to the property if

26 (1) there is not a practical road access to the property; or

27 (2) access to the property is restricted by gates or other barriers.

28 (g) If the trustee or other person who delivered notice under (f) of this section  
29 signs an affidavit for the delivery, the affidavit is prima facie evidence that the trustee  
30 complied with (f) of this section. After one year from the delivery, as evidenced by the  
31 affidavit, the trustee is conclusively presumed to have complied with (f) of this section

1 unless, within one year from the delivery, an action has been filed in court to contest  
2 the foreclosure based on failing to comply with (f) of this section.

3 (h) If a person who is entitled to receive notice by mail under (c) of this  
4 section is known by the beneficiary or trustee to be deceased, the trustee may satisfy  
5 the notice requirements of (c) of this section by mailing the notice to the last known  
6 address of the deceased person and to the personal representative of the deceased  
7 person if the beneficiary or trustee knows that a personal representative has been  
8 appointed for the deceased person.

9 (i) If a person who is entitled to receive notice by mail under (c) of this section  
10 is known by the beneficiary or trustee to be deceased but the trustee and the  
11 beneficiary do not know that a personal representative has been appointed for the  
12 deceased person, the trustee may satisfy the notice requirements of (c) of this section  
13 by

14 (1) mailing the notice to the heirs and devisees of the deceased person

15 (A) whose names and addresses are known to the beneficiary or  
16 trustee; or

17 (B) who have recorded a notice of their interest in the property;

18 and

19 (2) publishing and posting the notice of the foreclosure as provided by  
20 law for the sale of real property on execution, except that the notice must be titled "To  
21 the Heirs or Devisees of (insert the name of the deceased person)" and include in the  
22 body of the notice a list of the names of the persons who are known by the beneficiary  
23 or trustee to be the heirs and devisees of the deceased person.

24 (j) If notice is given as required by (h) and (i) of this section, an heir or  
25 devisee of the deceased person may not challenge the foreclosure on the ground that  
26 the heir or devisee did not receive notice of the sale, unless the heir or devisee  
27 challenges the foreclosure on this ground within three months after the sale.

28 (k) A person may bring an action in court to enjoin a foreclosure on real  
29 property only if the person is the trustor of the deed of trust under which the real  
30 property was foreclosed, a guarantor of the obligation that the real property is  
31 securing, a person who has an interest in the real property that has been recorded, a

1 person who has a recorded lien against the real property, an heir to the real property, a  
2 devisee of the real property, or the attorney general acting under other legal authority.

3 (l) If a person brings an action under (k) of this section to stop a sale of real  
4 property, and if the sale is being brought because of a default in the performance of a  
5 nonmonetary obligation required by the deed of trust that the real property is securing,  
6 the court may impose on the person the conditions that the court determines are  
7 appropriate to protect the beneficiary.

8 (m) In this section, "devisee," "heir," and "personal representative" have the  
9 meanings given in AS 13.06.050.

10 \* Sec. 7. AS 34.20.080(a) is amended to read:

11 (a) The sale authorized in AS 34.20.070 shall be made under the terms and  
12 conditions and in the manner set out in the deed of trust. **The proceeds from a sale**  
13 **shall be placed in escrow until they are disbursed.** However, the sale shall be made

14 (1) at public auction held at the front door of a courthouse of the  
15 superior court in the judicial district where the property is located, unless the deed of  
16 trust specifically provides that the sale shall be held in a different place, **except that a**  
17 **trustee may also accept bids by telephone, the Internet, and electronic mail if the**  
18 **trustee has taken reasonable steps to ensure that the bidding methods using the**  
19 **telephone, the Internet, or electronic mail are fair, accessible, and designed to**  
20 **result in money that is immediately available for disbursement;** and

21 (2) after public notice of the time and place of the sale has been given  
22 in the manner provided by law for the sale of real property on execution.

23 \* Sec. 8. AS 34.20.080(b) is amended to read:

24 (b) The attorney for the trustee **or another agent of the trustee** may conduct  
25 the sale and act in the sale as the auctioneer for the trustee. **The trustee may set**  
26 **reasonable rules and conditions for the conduct of the sale.** Sale shall be made to  
27 the highest and best bidder. The beneficiary under the trust deed may bid at the  
28 trustee's sale. **Except as provided by (g) of this section, the [THE] trustee shall**  
29 **execute and deliver to the purchaser a deed to the property sold.**

30 \* Sec. 9. AS 34.20.080(e) is amended to read:

31 (e) The trustee may postpone sale of all or any portion of the property by

1 delivering to the person conducting the sale a written and signed request for the  
2 postponement to a stated date and hour. The person conducting the sale shall publicly  
3 announce the postponement to the stated date and hour at the time and place originally  
4 fixed for the sale. This procedure shall be followed in any succeeding postponement,  
5 but the foreclosure may not be postponed for more than 12 months unless a new  
6 notice of the sale is given under (a)(2) of this section. A sale may be postponed for  
7 up to 12 months from the sale date stated in the notice of default under  
8 AS 34.20.070(b) without providing a basis for challenging the validity of the  
9 foreclosure process because of the length of time the foreclosure has been  
10 pending.

11 \* Sec. 10. AS 34.20.080 is amended by adding new subsections to read:

12 (f) After delivery of a deed under (b) of this section, the trustee shall distribute  
13 any cash proceeds of the sale in the following order to

14 (1) the beneficiary of the deed of trust being foreclosed until the  
15 beneficiary is paid the full amount that is owed under the deed of trust to the  
16 beneficiary;

17 (2) the persons who held, at the time of the sale, recorded interests,  
18 except easements, in the property, that were subordinate to the foreclosed deed of  
19 trust; the distribution under this paragraph shall be made according to the priority of  
20 the recorded interest, and a recorded interest with a higher priority shall be satisfied  
21 before distribution is made to the recorded interest that is next lower in priority;  
22 however, if a person holds a recorded interest that is an assessment, the person is  
23 entitled only to the amount of the assessment that was due at the time of the sale; in  
24 this paragraph, "recorded interest" means an interest, including a lease, recorded under  
25 AS 40.17;

26 (3) the trustor in the trust deed if the trustor is still the owner of the  
27 property at the time of the foreclosure sale, but, if the trustor is not still the owner of  
28 the property at the time of the foreclosure sale, then to the trustor's successor in  
29 interest whose interest appears of record at the time of the foreclosure sale.

30 (g) The trustee may withhold delivery of the deed under (b) of this section for  
31 up to five days after the sale. If, during the five days, the trustee determines that the

1 sale should not have proceeded, the trustee may not issue the deed but shall

2 (1) inform the beneficiary, the otherwise successful bidder, and the  
3 trustor of the trust deed or the trustor's successor in interest that the sale is rescinded;  
4 and

5 (2) return to the otherwise successful bidder money received from the  
6 otherwise successful bidder as a bid on the property; return of this money is the  
7 otherwise successful bidder's only remedy if the trustee withholds delivery of the deed  
8 under (b) of this section.

9 (h) If a trustee rescinds a sale under (g) of this section and the obligation  
10 secured by the deed of trust remains in default, the trustee may, at the request of the  
11 beneficiary, reschedule the sale for a date that is not less than 45 days after the date of  
12 the rescinded sale. Not less than 30 days before the rescheduled sale date, the trustee  
13 shall

14 (1) mail notice of the rescheduled sale date by certified mail to the last  
15 known address of each of the persons identified by AS 34.20.070(c); and

16 (2) publish and post the notice of the rescheduled sale date as provided  
17 by law for the sale of real property on execution.

18 (i) Unless a sale is rescinded under (g) of this section, the sale completely  
19 terminates the rights of the trustor of the trust deed in the property.

20 \* Sec. 11. AS 34.20.120(a) is amended to read:

21 (a) The trustee under a trust deed upon real property given to secure an  
22 obligation to pay money and conferring no duties upon the trustee other than the duties  
23 that are incidental to the exercise of the power of sale conferred in the deed may be  
24 substituted by recording in the mortgage records of the recording district in which the  
25 property is located a substitution executed and acknowledged by

26 (1) all the beneficiaries under the trust deed, or their successors in  
27 interest; or

28 (2) the attorneys for all of the beneficiaries or the attorneys for all  
29 of the beneficiaries' successors in interest.

30 \* Sec. 12. AS 34.20.120(b) is amended to read:

31 (b) The substitution must contain

1 (1) the date of execution of the trust deed;

2 (2) the names of the trustee, trustor, and beneficiary, and, if the  
3 substitution is executed by the attorney for the beneficiary or successor in  
4 interest to the beneficiary, the name, address, and Alaska Bar Association  
5 identification number of the attorney;

6 (3) the book and page where the trust deed is recorded or the serial  
7 number assigned to the trust deed by the recorder;

8 (4) the name of the new trustee; and

9 (5) an acknowledgment signed and acknowledged by the trustee  
10 named in the trust deed of a receipt of a copy of the substitution, or an affidavit of  
11 service of a copy of it.

12 \* Sec. 13. AS 34.20 is amended by adding a new section to read:

13 **Sec. 34.20.125. Trustee bond required.** (a) Before performing the duties of a  
14 trustee under AS 34.20.070 and 34.20.080, a person shall obtain a surety bond in the  
15 amount of \$250,000 to protect the trustors and beneficiaries of trust deeds against  
16 fraud or defalcation by the trustee in the performance of the duties.

17 (b) The bond required by (a) of this section must be a bond that is terminable  
18 at any time by the surety by sending written notice by first class United States mail to  
19 the obligee and the principal at the address for each that is last known by the surety,  
20 and to the department. The bond terminates when 45 days have expired after the date  
21 the notice is mailed. The surety is not liable for an act or omission of the principal that  
22 occurs after the termination. The surety is not liable after the termination for more than  
23 the face amount of the bond, regardless of the number of claims made against the bond  
24 or the number of years the bond remains in force. A revision of the amount of the  
25 bond is not cumulative.

26 (c) If a bond terminates under (b) of this section, the person who obtained the  
27 bond under (a) of this section may not act as a trustee until the person obtains another  
28 bond under (a) of this section.

29 (d) Each year, a trustee shall file evidence of the bond with the department.  
30 The department shall verify that the evidence is satisfactory to indicate the existence  
31 of the bond, keep an updated list of trustees who are bonded, and make the evidence

1 and the list available to the public for inspection. The department may charge the  
2 trustee a reasonable fee for verifying the existence of the bond and maintaining the  
3 records required by this subsection.

4 (e) The bonding requirements of this section do not apply to  
5 (1) a title insurance company authorized under AS 21.66 to transact a  
6 title insurance business in this state; or

7 (2) a title insurance limited producer who is licensed as required by  
8 AS 21.66.270.

9 (f) In this section, "department" means the Department of Commerce,  
10 Community, and Economic Development.



**First American  
Title Insurance Company**

**BRYAN S. MERRELL**  
REGIONAL COUNSEL

March 12, 2007

**Re: Senate Bill 18 "An Act relating to property foreclosures and executions; and amending Rule 65, Alaska Rules of Civil Procedure."**

**House Bill 163 "An Act relating to real property foreclosures, executions, and deeds of trust."**

To Whom It May Concern:

This letter is written in support of Senate Bill 18 and its companion bill, HB 163, relating to Deeds of Trust and Foreclosures.

I am Regional Counsel for First American Title Insurance Company. First American is the leading title insurer in the United States, and here in Alaska. I am an 18-year member of the Alaska Bar, and a former long time resident of Alaska. In my capacity as an in-house attorney for First American, I have had many occasions to be involved in non-judicial foreclosure related issues and controversies, as First American has produced title insurance products related to such foreclosures, and acted as trustee in many cases as well.

SB 18/HB 163 would clarify a large number of issues relative to non-judicial foreclosure actions. It would fill in gaps in the current statutes relative to procedure. It would clarify issues which Alaska Supreme Court opinions over the years have made unclear. The result of passage of the bill would be a clearer pattern of conduct for the parties to the foreclosure, which should result in less litigation and higher bidding for the properties involved in the process. I urge your yes vote for the bill, and would be happy to answer any questions you may have regarding it.

Very truly yours,

FIRST AMERICAN TITLE INSURANCE CO.

Bryan S. Merrell  
Regional Counsel

2101 Fourth Avenue, Suite 800, Seattle, WA 98121

TEL 206.728.0400 • TOLL FREE 800.526.7544 • DIRECT 206.448.6281

bmerrell@firstam.com • www.firstam.com

# **AlaskaUSA** Federal Credit Union®

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March 12, 2007

Mr. Stephen Routh  
Routh & Crabtree, APC  
3000 A Street, Suite 200  
Anchorage, AK 99503

Re: Senate Bill 18 – “An Act relating to property foreclosures and executions; and amending Rule 65, Alaska Rules of Civil Procedure.”  
House Bill 163 – “An Act related to real property foreclosures, executions, and deeds of trust.”

Dear Mr. Routh:

Thank you for alerting us to this legislation. We think the changes proposed in the above-referenced bills are well thought out, necessary, and will benefit borrowers, financial institutions, and title agents.

We are pleased to support this legislation.

Sincerely,



William B. Eckhardt  
President

WELLS  
FARGO

March 12, 2007

Stephen Routh  
Routh Crabtree, apc  
3000 A Street Suite 200  
Anchorage, AK 99503

Re: Senate Bill 18 "An Act relating to property foreclosures and executions;  
and amending Rule 65, Alaska Rules of Civil Procedure."


House Bill 163 "An Act relating to real property foreclosures, executions,  
and deeds of trust."

Dear Stephen:

Wells Fargo is pleased to support this bill. It will benefit all parties to the foreclosure process including borrowers, lenders, trustees, and title agents. We believe that the changes are timely, necessary, and well-conceived.

Thanks again for bringing this bill to our attention. We are pleased to support it.

Sincerely,



Richard Strutz  
Regional President

**Alaska Mortgage Bankers Association  
P.O. Box 9-2691  
Anchorage, Alaska 99503**

March 9, 2007

Re: Senate Bill 18 *"An Act relating to property foreclosures and executions; and amending Rule 65, Alaska Rules of Civil Procedure."*

House Bill 163 *"An Act relating to real property foreclosures, executions, and deeds of trust."*

Stephen Routh  
Routh Crabtree, apc  
3000 A Street Suite 200  
Anchorage, AK 99503

Dear Stephen;

The Alaska Mortgage Bankers Association is pleased to support this bill. We believe it will benefit borrowers, lenders, title agents, and trustees alike. The changes proposed are well-thought out, timely, and necessary. They also enjoy wide support among the real estate community.

Thanks as well for explaining the bill at our meeting on February 15, 2007. We appreciated your presentation, as well as answering questions directly from our members.

Thanks again for bringing this bill to our attention. We are pleased to support it.

Sincerely,

*Kevin M. Breeland*

Kevin M. Breeland  
President  
Alaska Mortgage Bankers Association  
P.O. Box 9-2691  
Anchorage, Alaska 99509-2691  
907-222-8823 direct  
907-743-9623 fax  
[breelandk@residentialmtg.com](mailto:breelandk@residentialmtg.com)  
[www.akmba.org](http://www.akmba.org)

**Kirk Wickersham**  
**280 W. 34<sup>th</sup> Ave.**  
**Anchorage, Alaska 99503**

**561-3726**

**February 10, 2007**

**Re: SB 18**

**Dear Members of the Legislature,**

**I am a real estate lawyer, real estate broker and title insurance licensee.**

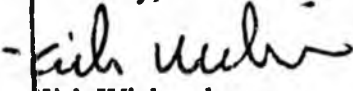
**I have had the opportunity to review SB 18, which updates the provisions of Alaska's foreclosure law.**

**The most outstanding provision is the requirement for publication on the Internet. This will improve dissemination of the sale information to the general public, and thus it should increase the number of bids above the offset bid.**

**Bids above the offset bid are in everyone's interest. The debtor receives the net proceeds of the sale. The lender does not have to take title, renovate and market the property. And the successful bidder is obviously happy.**

**I encourage you to adopt this bill. It is my understanding that, if adopted, this bill will become a model for legislation in other states. Please contact me if you have any questions.**

**Sincerely,**

  
**Kirk Wickersham**



# ALASKA CREDIT UNION LEAGUE

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February 21, 2007

Stephen Routh  
Routh Crabtree, apc  
3000 A Street Suite 200  
Anchorage, AK 99503

Re: SB 18-An Act relating to property foreclosures and executions.

Dear Mr. Routh:

Thank you for alerting us to this legislation. We think the changes proposed in the bill are well thought-out, necessary, and will benefit borrowers, financial institutions, and title agents.

We are pleased to support this legislation.

Sincerely,

Robert M. Teachworth  
President



**HB**

**168**

## HEAVY AIRCRAFT CARGO APRON

### \*PROJECT DESCRIPTION\*:

Work under this project will include the design and construction of a new 26.5 acre cargo apron area at the south end of the west ramp and extension of Taxiway "A" approximately 1,000 feet to provide access. The apron will accommodate four B-747 on concrete hardstands. Ancillary work will include the construction of fencing, access roads, snow storage areas and subsurface drainage systems.

### \*PROJECT JUSTIFICATION\*:

Transient heavy aircraft parking is provided on the apron south of the terminal building. Recent inspections of the pavement in this area determined that the apron has reached the end of its design life and requires rehabilitation or total reconstruction. In addition, two of the existing four hardstands penetrate the FAR Part 77 transition surface.

Also, three of the four existing four hardstands will be rendered inoperable this summer due to the southern expansion and construction of the passenger terminal resulting from the Terminal Area Development Project. The remaining old hardstand will be operationally conflicted when during passenger operations on the south end of the passenger terminal.

The project site is in an un-developed area of the airport and it is anticipated that these improvements will permit the private development of underutilized land by providing access to the airside from these properties. This development will expand the potential revenue base for airport operations by opening additional lease acreage, affording warehousing opportunities, and assuring short and long-term heavy aircraft parking.

LEGEND

TEMPORARY  
RUNWAY WIDENING

EXISTING AIRPORT  
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ALASKA DEPARTMENT OF TRANSPORTATION AND PUBLIC FACILITIES  
NORTHERN REGION DESIGN AND CONSTRUCTION AVIATION  
FAIRBANKS INTERNATIONAL AIRPORT  
LARGE AIRCRAFT CARGO APRON  
DRAWING NO. 3-2

DATE  
BY

DATE

STATE OF ALASKA  
DEPARTMENT OF TRANSPORTATION AND PUBLIC FACILITIES  
NORTHERN REGION DESIGN AND CONSTRUCTION AVIATION  
APPROVED: \_\_\_\_\_ DATE \_\_\_\_\_  
PATRICIA S. BELLER, P.E. DESIGN GROUP CHIEF

DATE

PLANS DEVELOPED BY:  
PDC, INC.

FAIRBANKS INTERNATIONAL AIRPORT  
NEAR TERM IMPROVEMENTS  
ENVIRONMENTAL ASSESSMENT  
A.L.P. NO. 3-03-0088-XI/02214 & 02488  
LARGE AIRCRAFT  
CARGO APRON

DRAWING NO.  
3-2



# Alaska State Legislature



## HOUSE TRANSPORTATION COMMITTEE

### House Bill 168: DOT and RR Land Swap

House Bill 168 would authorize the Alaska Railroad Corporation (ARRC) to exchange approximately ten acres of land with the Department of Transportation and Public Facilities (DOTPF) to accommodate two DOTPF projects. The Parks Highway Improvement project in Wasilla and the Heavy Aircraft Cargo Apron project at the Fairbanks International Airport both require an adjustment to the Alaska Railroad's track and right-of-way lands. This legislation ensures that all the appropriate titles to property can be in place for both of these important DOTPF projects.

The Alaska Railroad Corporation Act, Alaska Statute 42.40.285, requires Legislative approval for the ARRC to "exchange, donate, sell or otherwise convey its entire interest in land".

#### **Section 1: Parks Highway Improvement Project**

Section 1 conveys approximately 6.3 acres of ARRC property adjacent to the Parks Highway to DOTPF. The widening and lane improvements to the Parks Highway required relocation of a portion of the Alaska Railroad mainline in the vicinity of Wasilla Lake. DOTPF acquired the necessary property south of the existing 200-foot Alaska Railroad right-of-way. The ARRC was able to relocate its tracks to this property just south of its original alignment. Once the railroad was relocated, DOTPF was able to complete construction of the improvements to the Parks Highway. The project is complete.

#### **Section 2: Fairbanks International Airport Heavy Aircraft Cargo Apron**

Section 2 would convey approximately 3.3 acres of ARRC property to DOTPF to accommodate construction of the new Heavy Aircraft Cargo Apron. Fairbanks International Airport is 43<sup>rd</sup> in the nation for the amount of landed weight, serves nearly a million passengers and has 17 airlines operating at the facility. Replacing the currently inadequate heavy aircraft cargo apron located next to the airport terminal is part of the planned construction upgrade and expansion of the Fairbanks International Airport. Of the four current aircraft parking positions, two interfere with the taxiway and create a potential safety risk. Expansion of the terminal will create additional interference with the third parking position. To eliminate a potential safety hazard and accommodate the airport expansion, the DOTPF is planning to construct a new heavy aircraft cargo apron on ARRC property adjacent to the airport. This proposed land exchange of approximately 3.3 acres will allow for the construction of a heavy aircraft cargo apron that will provide parking for four large cargo planes and be designed to handle the weight and size of the largest cargo planes. DOTPF must have a legally sufficient title interest to property in order to comply with Federal Aviation Administration (FAA) grant assurances and funding participation requirements. Construction of this project will begin this summer.

## HEAVY AIRCRAFT CARGO APRON

### \*PROJECT DESCRIPTION\*:

Work under this project will include the design and construction of a new 26.5 acre cargo apron area at the south end of the west ramp and extension of Taxiway "A" approximately 1,000 feet to provide access. The apron will accommodate four B-747 on concrete hardstands. Ancillary work will include the construction of fencing, access roads, snow storage areas and subsurface drainage systems.

### \*PROJECT JUSTIFICATION\*:

Transient heavy aircraft parking is provided on the apron south of the terminal building. Recent inspections of the pavement in this area determined that the apron has reached the end of its design life and requires rehabilitation or total reconstruction. In addition, two of the existing four hardstands penetrate the FAR Part 77 transition surface.

Also, three of the four existing four hardstands will be rendered inoperable this summer due to the southern expansion and construction of the passenger terminal resulting from the Terminal Area Development Project. The remaining old hardstand will be operationally conflicted when during passenger operations on the south end of the passenger terminal.

The project site is in an un-developed area of the airport and it is anticipated that these improvements will permit the private development of underutilized land by providing access to the airside from these properties. This development will expand the potential revenue base for airport operations by opening additional lease acreage, affording warehousing opportunities, and assuring short and long-term heavy aircraft parking.

**PARKS HIGHWAY - WASILLA**  
**PROJECT SUMMARY STATEMENT**

The Parks Highway is a rural interstate highway that provides a connection between the major cities of Anchorage, Wasilla and Fairbanks. This project, located between the intersection with the Glenn Highway and the City of Wasilla, is the primary highway between Anchorage and Wasilla. This portion of the Parks Highway was originally constructed in 1971 and 1972 as a two-lane rural highway. In 1996, the highway was widened between Palmer-Wasilla Highway and Crusey Street to four lanes. This project reconstructed the portion of the Parks Highway between Seward Meridian Parkway and Crusey Street.

The recent project is the third segment of the Parks Highway reconstruction from the Glenn Highway through the City of Wasilla's central business district. This project reconstructed the Parks Highway from Seward Meridian Parkway (Seward Meridian) to Crusey Street. This section of the Parks Highway is located within a commercial district of the City of Wasilla. To be consistent with the adjacent commercial development, the character of the highway changes at Seward Meridian from a high-speed (55 mph) rural highway to an intermediate speed (45 mph) urban highway providing access at specified locations. The project includes frontage roads improved or constructed adjacent to, and parallel with, the Parks Highway, as appropriate for access to adjoining properties.

The Department constructed a five-lane highway: two lanes northbound and two lanes southbound with a median two-way left turn lane. Additional improvements include: reconstructed or new two-lane, two-way, frontage roads; a grade-separated interchange at Seward Meridian Parkway; a continuous pathway on the highway's north side; relocation of approximately  $\frac{3}{4}$  of a mile of railroad track; and highway and intersection illumination. This 3.4 mile segment transitions from the four lane divided highway to the east to a lower-speed segment passing through the center of Wasilla. The Department completed construction of the project in 2006.

The total project cost is approximately \$55,697,000.



# FISCAL NOTE

**STATE OF ALASKA**  
**2007 LEGISLATIVE SESSION**

Fiscal Note Number: \_\_\_\_\_  
 Bill Version: HB168-DOT-CO-03-02-07  
 ( ) Publish Date: \_\_\_\_\_

Revision Date/Time (Note if correction): \_\_\_\_\_ Dept. Affected: DOT&PF  
 Title Land Transfers Alaska RR & DOTPF RDU Admin and Support (3330)  
 Component Commissioner's Office  
 Sponsor House Transportation Committee  
 Requester H TRA Component No. 530

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

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2008	FY 2009	FY 2010	FY 2011	FY 2012	FY 2013
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>

<b>CAPITAL EXPENDITURES</b>						
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<b>CHANGE IN REVENUES ( )</b>						
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**FUND SOURCE** (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
<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 (FY2007) cost: 0.0  
 Mark this box (X) if funding for this bill is included in the Governor's FY 2008 budget proposal:

**POSITIONS**

Full-time						
Part-time						
Temporary						

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

This bill has no financial impact on DOT&PF

Prepared by: Mary Siroky Phone 465-4772  
 Division Commissioner's Office Date/Time 3/02/07 3:50pm  
 Approved by: John MacKinnon Date 3/2/2007  
 Agency Department of Transportation and Public Facilities

# FISCAL NOTE

**STATE OF ALASKA**  
**2007 LEGISLATIVE SESSION**

Fiscal Note Number: HB 168-COM-ARRC-03-01-07  
 Bill Version: HB 168  
 ( ) Publish Date: \_\_\_\_\_

Revision Date/Time (Note if correction): \_\_\_\_\_

Dept. Affected: Commerce

Title: Land Transfers Alaska RR and DOTPF

RDU \_\_\_\_\_

Component: Alaska Railroad Corporation

Sponsor: Transportation

Requester: Transportation

Component No. \_\_\_\_\_

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

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2008	FY 2009	FY 2010	FY 2011	FY 2012	FY 2013
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>

<b>CAPITAL EXPENDITURES</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>
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<b>CHANGE IN REVENUES ( )</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>
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**FUND SOURCE** (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
<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 (FY2007) cost: 0.0

Mark this box (X) if funding for this bill is included in the Governor's FY 2008 budget proposal:

**POSITIONS**

Full-time						
Part-time						
Temporary						

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

This legislation would authorize the Alaska Railroad Corporation (ARRC) to exchange approximately ten acres of land with the Department of Transportation and Public Facilities (DOTPF) to accommodate two DOTPF projects. The Alaska Railroad Corporation (ARRC) is a public corporation supported by revenues generated through its freight, passenger and real estate services. ARRC does not receive state funding for operations or capital improvements.

Prepared by: Wendy Lindskoog, Assistant Vice President, Corporate Affairs

Phone 907.265.2498

Division: Alaska Railroad Corporation

Date/Time 3/1/07 2:54 PM

Approved by: Emil Notti, Commissioner

Date 3/1/2007

Agency: Commerce, Community, and Economic Development



**HB**

**170**



# ALASKA STATE LEGISLATURE

## HOUSE LABOR & COMMERCE COMMITTEE

REP. KURT OLSON

Chairman  
State Capitol, Room 17  
Juneau, AK 99801-1182  
(907) 465-2693 FAX 465-3835

Rep Mark Neuman, V-Chair    Rep. Carl Gatto  
Rep. Jay Ramras                Rep. Berta Gardner  
Rep. Gabrielle LeDoux        Rep. Bob Buch

### Sponsor Statement

#### HB 170 Insurance

HB 170 relates to the accreditation of the Division of Insurance and includes other minor clarifying changes to the insurance code.

The Bill requires that insurers submit an audit report to the Director each year and other internal control reports if required by the Director. The Certified Public Accountant performing audit services for the insurer must be qualified and independent and must register with the Director. The bill also prohibits a person from making false or misleading statements to an auditor. This reporting is an accreditation standard and is required in order to be uniform with other states and maintain accreditation of the Division of Insurance.

HB 170 puts requirements on custodians of insurer assets. It specifies who may act as a custodian and requires they be approved by the Director. The bill specifies how clearing corporations may hold assets. All custodial agreements must be in writing and in compliance with requirements of the Director. These rules are necessary for the secure control of assets of an insurer and will be accreditation requirements.

The bill also clarifies language in several sections by adopting wording that is consistent with similar wording in other sections, removing unnecessary notarization requirements, and clarifying definitions.

**Insurance Legislation  
HB 170 – Version M  
Sectional Analysis by the  
Department of Commerce, Community and Economic Development  
Division of Insurance**

**Section 1. AS 21.09.200 Insurer annual audited financial report.**

These sections require the insurer to engage a certified public accountant to conduct an annual audit and submit reports to the division.

Subsection (g) specifies that the audit report filing is due by June 1 of each year unless the director exempts the insurer based on financial or organizational hardship or extends the due date based on a showing by the insurer that they have met standards for an extension given in regulations. The director may require an insurer to file the audit report before June 1 for good cause and 90 days advance notice to the insurer. The audit report must be prepared by a qualified independent certified public accountant and the insurer must notify the director of the auditor engaged to conduct the audit.

Subsection (h) requires the insurer to file a written report on any unremediated material weaknesses in internal control over financial reporting which are noted during the audit. The filing must be no later than 60 days after the filing of the audit report.

Subsection (i) says that the director may adopt regulations to require the insurer to file a report on internal control over financial reporting. The internal control report shall be filed on the date specified by the director.

Subsection (j) says that any additional information the director requires to supplement the reports required in subsection (h) and (i) must also be filed by the date specified by the director. The filed reports on internal control are confidential documents.

Subsection (k) requires that an audit committee shall be designated in accordance with regulations. The audit committee will hire the qualified independent certified public accountant registered with the division to conduct the annual audit and shall monitor services performed by the certified public accountant. If no audit committee is designated by the insurer, the whole governing board of the insurer is deemed to be the audit committee.

Subsection (l) requires the certified public accountant to notify the audit committee or governing board of the insurer in writing that the insurer has misstated its financial condition as reported to the director or that the insurer does not meet minimum capital and surplus requirements of statute. An insurer receiving such a report shall forward a copy to the director. The certified public accountant shall forward the report to the director unless the insurer provides evidence that the report has been forwarded to the director.

**Section 2. AS 21.09.270(f) Retaliatory fee exclusions.**

Subsection (f) is amended to relocate the reference to the location of the definition of health care insurer to just after the first mention of health care insurer in the subsection.

**Section 3. AS 21.21.410 Custodian of insurer assets.**

This section specifies new requirements for custodians of the assets of an insurance company.

Subsection (a) specifies that a custodian may only be a bank, trust company, securities firm or clearing corporation who is properly authorized by the insurer and approved by the director.

Subsection (b) allows that when securities are deposited with a clearing corporation the certificates representing securities of the same class of the same issuer may be merged and held in bulk in the name of the nominee of the clearing corporation with any other securities deposited by any person, regardless of ownership of such securities. Certificates representing securities of small denominations may be merged into one or more certificates of larger denominations. The records of a custodian must at all times show which securities are held for which insurer accounts including when the securities are in a clearing corporation through the custodian. Securities may be transferred by bookkeeping entry on the books of the clearing corporation without physical delivery.

Subsection (c) requires that a custodial agreement between an insurer and the custodian be in writing and authorized by a resolution of the board of directors of the insurer or an authorized committee of the board. The terms of the agreement must comply with requirements of the director as adopted in regulations.

**Section 4. AS 21.34.030(a) Workers' compensation written in the surplus lines market.**

The amendment to Subsection (a) changes the written document requirement from a directive by the director to an order of the director when allowing workers compensation insurance to be written by a nonadmitted insurer.

**Section 5. AS 21.34.170 Monthly report of surplus lines broker.**

The amendment to subsection (a) is to remove the need for the monthly report to be verified with a notarization.

**Section 6. AS 21.34.900 (9) Definition of wet marine and transportation insurance.**

The amendment to paragraph (9) is to clarify that only one or more of the described coverages may be present to have insurance defined as wet marine and transportation insurance. All of the described coverages need not be present to be wet marine and transportation insurance.

**Section 7. AS 21.36.060 Materially false or misleading statements.**

The addition of subsection (c) prohibits a person from making or causing to be made materially false or misleading statements or omitting or causing another to omit any material fact necessary to make other statements made not misleading to an accountant in connection with a report required under AS 21.09.200.

The addition of subsection (d) prohibits a person from taking action to coerce, manipulate, mislead or fraudulently influence an accountant performing an audit under AS 21.09.200 if the person knew or should have known that the action would make the financial statement materially misleading.

**Section 8. AS 21.42.405 High deductible health plan.**

This new section specifies in subsection (a) that a health care insurer may have deductible or copayment requirements on health care insurance plans that qualify as high deductible health plans.

Subsection (b) specifies that the meaning of "high deductible health plan" is as is given in the Internal Revenue Code at 26.U.S.C. 223.

**Section 9. AS 21.55.220(f) Premium Tax Credit.**

The amendment to subsection (f) specifies that the premium tax credit given in this subsection for payments by an insurer to the Comprehensive Health Insurance Association is not to be included in the calculation of retaliatory fee in AS 21.09.270. The calculation of the retaliatory fee is not to negate the effect on an insurer of this premium tax credit to lower taxes owed.

**Section 10. AS 21.79.040 Alaska Life and Health Insurance Guaranty Association member insurer.**

The amendment to subsection (a) clarifies that a member insurer as defined in AS 21.79.900 is a member as a condition of the insurer's authority to transact insurance in Alaska.

**Section 11. AS 21.79.900 Definition of member insurer.**

The amendment to paragraph (10) clarifies that a member insurer is one that is licensed to transact in Alaska the kinds of insurance covered by the Alaska Life and Health Insurance Guaranty Association.

**Section 12. AS 21.89.070 Premium Tax Credit.**

A new subsection is added to clarify that a premium tax credit that is earned by a gift to a college allowed in AS 21.39.070(a) is not to be included in the calculation of retaliatory fee in AS 21.09.270. The calculation of the retaliatory fee is not to negate the effect on an insurer of this premium tax credit to lower taxes owed.

**Section 13. AS 21.89.075 Premium Tax Credit.**

A new subsection is added to clarify that a premium tax credit that is earned by a gift to the Alaska Fire Standards Council allowed in AS 21.89.075 is not to be included in the calculation of retaliatory fee in AS 21.09.270. The calculation of the retaliatory fee is not to negate the effect on an insurer of this premium tax credit to lower taxes owed.

**Section 14. Regulations.**

The director may adopt regulations necessary to implement this act but the regulations may not take effect prior to the effective date of the statutory changes.

**Section 15. Effective date.**

The effective date of Section 1 and 3 regarding the filing of an annual audit report by an insurer and the custodian of insurer assets is January 1, 2008 except that subsection (i) of AS 21.09.200 in Section 1 of the bill regarding the filing of a report from management describing internal control over financial reporting will be effective on December 31, 2010 and subsection (k) of AS 21.09.200 in Section 1 of the bill regarding the designation of an audit committee by an insurer will be effective on January 1, 2010.

**Section 16. Effective date.**

The authority in Section 14 to adopt regulations to implement this act takes effect immediately.

**Section 17. Effective date.**

All sections of the act are effective on July 1, 2007, except Sections 15 and 16 that specify different effective dates for Section 1, 3 and 14.

## **Insurance Legislation**

### **Sectional Analysis by the Department of Commerce, Community and Economic Development Division of Insurance**

#### **Section 1. AS 21.09.195 Registration for annual preparer of an insurer's audited financial report.**

This section has been added to require the director to establish a system of registration of certified public accounts who will be conducting audits on Alaska insurance companies.

#### **Section 2. AS 21.09.200 Insurer annual audited financial report.**

These sections require the insurer to engage a certified public accountant to conduct an annual audit and submit reports to the division.

Subsection (g) specifies that the audit report filing is due by June 1 of each year unless the director exempts the insurer based on financial or organizational hardship or extends the due date based on a showing by the insurer that they have met standards for an extension given in regulations. The director may require an insurer to file the audit report before June 1 for good cause and 90 days advance notice to the insurer. The audit report must be prepared by a qualified independent certified public accountant registered with the director.

Subsection (h) requires the insurer to file a written report on any unremediated material weaknesses in internal control over financial reporting which are noted during the audit. The filing must be no later than 60 days after the filing of the audit report.

Subsection (i) says that the director may require for good cause that the insurer file a report on internal control over financial reporting. The internal control report shall be filed on the date specified by the director.

Subsection (j) says that any additional information the director requires to supplement the reports required in subsection (h) and (i) must also be filed by the date specified by the director. The filed reports on internal control are confidential documents.

Subsection (k) requires that an audit committee shall be designated in accordance with regulations. The audit committee will hire the qualified independent certified public accountant registered with the division to conduct the annual audit and shall monitor services performed by the certified public accountant. If no audit committee is designated by the insurer, the whole governing board of the insurer is deemed to be the audit committee.

Subsection (l) requires the certified public accountant to notify the audit committee or governing board of the insurer in writing that the insurer has misstated its financial condition as reported to the director or that the insurer does not meet minimum capital and surplus requirements of statute. An insurer receiving such a report shall forward a copy to the director. The certified public accountant shall forward the report to the director unless the insurer provides evidence that the report has been forwarded to the director.

**Section 3. AS 21.21.410 Custodian of Insurer Assets.**

This section specifies new requirements for custodians of the assets of an insurance company.

Subsection (a) specifies that a custodian may only be a bank, trust company, securities firm or clearing corporation who is properly authorized by the insurer and approved by the director.

Subsection (b) allows that when securities are deposited with a clearing corporation the certificates representing securities of the same class of the same issuer may be merged and held in bulk in the name of the nominee of the clearing corporation with any other securities deposited by any person, regardless of ownership of such securities.

Certificates representing securities of small denominations may be merged into one or more certificates of larger denominations. The records of a custodian must at all times show which securities are held for which insurer accounts including when the securities are in a clearing corporation through the custodian. Securities may be transferred by bookkeeping entry on the books of the clearing corporation without physical delivery.

Subsection (c) requires that a custodial agreement between an insurer and the custodian be in writing and authorized by a resolution of the board of directors of the insurer or an authorized committee of the board. The terms of the agreement must comply with requirements of the director as adopted in regulations.

**Section 4. AS 21.34.030(a) Workers' compensation written in the surplus lines market.**

The amendment to Subsection (a) changes the written document requirement from a directive by the director to an order of the director when allowing workers compensation insurance to be written by a nonadmitted insurer.

**Section 5. AS 21.34.170 Monthly report of surplus lines broker.**

The amendment to subsection (a) is to remove the need for the monthly report to be verified with a notarization.

**Section 6. AS 21.34.900 (9) Definition of wet marine and transportation insurance.**

The amendment to paragraph (9) is to clarify that only one or more of the described coverages may be present to have insurance defined as wet marine and transportation insurance. All of the described coverages need not be present to have wet marine and transportation insurance.

**Section 7. AS 21.36.060 Materially false or misleading statements.**

The addition of subsection (c) prohibits a person from making or causing to be made materially false or misleading statements or omitting or causing another to omit any material fact necessary to make other statements made not misleading to an accountant in connection with a report required under AS 21.09.200.

The addition of subsection (d) prohibits a person from taking action to coerce, manipulate, mislead or fraudulently influence an accountant performing an audit under AS 21.09.200 if the person knew or should have known that the action would make the financial statement materially misleading.

**Section 8. AS 21.79.040 Alaska Life and Health Insurance Guaranty Association member insurer.**

The amendment to subsection (a) clarifies that a member insurer as defined in AS 21.79.900 is a member as a condition of the insurer's authority to transact insurance in Alaska.

**Section 9. AS 21.79.900 Definition of member insurer.**

The amendment to paragraph (10) clarifies that a member insurer is one that is licensed to transact in Alaska the kinds of insurance covered by the Alaska Life and Health Insurance Guaranty Association.

**Section 10. Regulations.**

The director may adopt regulations necessary to implement this act but the regulations may not take effect prior to July 1, 2007.

**Section 11. Effective date.**

The effective date of Section 3 regarding the custodian of insurer assets is January 1, 2008.

**Section 12. Effective date.**

The authority in Section 10 to adopt regulations to implement this act takes effect immediately.

**Section 13. Effective date.**

All sections of the act are effective on July 1, 2007, except Section 11 and 12 that specify different effective dates for sections 3 and 10.

# FISCAL NOTE

**STATE OF ALASKA**  
**2007 LEGISLATIVE SESSION**

Fiscal Note Number: HB170-COM-INS-03-21-07  
 Bill Version: HB 170  
 () Publish Date: \_\_\_\_\_

Revision Date/Time (Note if correction): \_\_\_\_\_

Dept. Affected: Commerce

Title Insurance

RDU Insurance (116)

Component Insurance

Sponsor Labor & Commerce by Request

Requester House Labor & Commerce

Component No. 354

**Expenditures/Revenues**

(Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2008	FY 2009	FY 2010	FY 2011	FY 2012	FY 2013
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>

<b>CAPITAL EXPENDITURES</b>						
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<b>CHANGE IN REVENUES ( )</b>						
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**FUND SOURCE**

(Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
<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 (FY2007) cost: 0.0

Mark this box (X) if funding for this bill is included in the Governor's FY 2008 budget proposal:

**POSITIONS**

Full-time						
Part-time						
Temporary						

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

This legislation addresses various provisions relating to audit reports filed by insurers, writing workers compensation insurance, defining certain types of insurance, making false or misleading statements on insurance audits and being members of the Alaska Life and Health Insurance Guaranty Association. It does not have a financial impact the operations of the division.

Prepared by: Linda S. Hall, Director

Division: insurance

Approved by: Emil R. Notti, Commissioner

Agency: Commerce, Community, and Economic Development

Phone 907.269.7900

Date/Time 3/21/07 11:11 AM

Date 3/21/2007

**HB**

**172**



# ALASKA STATE LEGISLATURE

## HOUSE LABOR & COMMERCE COMMITTEE

REP. KURT OLSON

Chairman  
State Capitol, Room 17  
Juneau, AK 99801-1182  
(907) 465-2693 FAX 465-3835

Rep Mark Neuman, V-Chair  
Rep. Jay Ramras  
Rep. Gabrielle LeDoux

Rep. Carl Gatto  
Rep. Berta Gardner  
Rep. Bob Buch

### SPONSOR STATEMENT

#### HB 172

HB 172 will exempt commercial refuse service, the collection and disposal of refuse materials using dumpsters and wheel containers with a capacity of one cubic yard or more, from rate regulation by the Regulatory Commission of Alaska (RCA).

Removing rate regulation from commercial refuse service will allow flexibility in setting rates which will promote innovation as to rates and services and will reduce costs for commercial customers. Flexibility in setting rates should also assist commercial refuse utilities and commercial customers in developing integrated waste stream recycling, diversion and disposal systems.

Removing rate regulation should reduce the cost and administrative burden associated with the generation, review and maintenance of tariffs. This in turn should encourage more entrants into the commercial refuse market, benefiting commercial customers overall.

Removal of commercial refuse rate regulation will promote the public good by allowing the RCA to utilize the resources now devoted to commercial rate regulation to more pressing consumer issues. Rate deregulation will not prevent the RCA from continuing to police the commercial refuse market. The RCA will retain the right to modify, suspend or revoke a commercial refuse utility Certificate of Public Convenience and Necessity for good cause shown. The Commission will also retain jurisdiction to address and resolve customer disputes and claims that a particular company is acting improperly.

Alaska has a vibrant, knowledgeable commercial community capable of evaluating the services and rates offered by commercial refuse utilities. Rate deregulation will allow market forces to set rates and drive service innovation.

# FISCAL NOTE

**STATE OF ALASKA**  
**2007 LEGISLATIVE SESSION**

Fiscal Note Number: HB172-COM-RCA-04-30-07  
 Bill Version: HB 172  
 (S) Publish Date: \_\_\_\_\_

Revision Date/Time (Note if correction): \_\_\_\_\_ Dept. Affected: Commerce  
 Title Public Utility Exemption: Refuse RDU Regulatory Commission of Alaska (399)  
 Component Regulatory Commission of Alaska  
 Sponsor House Labor & Commerce  
 Requester House Labor & Commerce Component No. 2417

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

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2008	FY 2009	FY 2010	FY 2011	FY 2012	FY 2013
Personal Services	(205.6)	(205.6)	(205.6)	(205.6)	(205.6)	(205.6)
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
<b>TOTAL OPERATING</b>	<b>(205.6)</b>	<b>(205.6)</b>	<b>(205.6)</b>	<b>(205.6)</b>	<b>(205.6)</b>	<b>(205.6)</b>
<b>CAPITAL EXPENDITURES</b>						
<b>CHANGE IN REVENUES (1141)</b>	<b>(205.6)</b>	<b>(205.6)</b>	<b>(205.6)</b>	<b>(205.6)</b>	<b>(205.6)</b>	<b>(205.6)</b>

**FUND SOURCE** (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
1141 RCA Receipts	(205.6)	(205.6)	(205.6)	(205.6)	(205.6)	(205.6)
<b>TOTAL</b>	<b>(205.6)</b>	<b>(205.6)</b>	<b>(205.6)</b>	<b>(205.6)</b>	<b>(205.6)</b>	<b>(205.6)</b>

Estimate of any current year (FY2007) cost: 0.0

Mark this box (X) if funding for this bill is included in the Governor's FY 2008 budget proposal:

**POSITIONS**

Full-time	-2	-2	-2	-2	-2	-2
Part-time						
Temporary						

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

This legislation would exempt commercial refuse service providers from economic regulation by the RCA. This exemption could be eliminated if the subscribers representing 25 percent of a utility's gross commercial refuse service revenues petition the RCA for regulation. This legislation would only impact refuse providers with annual gross revenues over \$300.0; refuse utilities with \$300.0 or less in annual gross revenues are currently exempt from economic regulation under AS 42.05.711(i) unless the subscribers representing 25 percent of a utility's gross revenues petition the RCA for regulation.

Alaskan refuse providers grossing over \$300.0 annually reported 29.4 million dollars in annual revenues from commercial refuse service in 2006, resulting in in RCC payments of approximately \$205.6 during FY 2006.

The RCA's budget is funded through (RCC) and direct charge mechanisms, with a current statutory RCC cap of 0.7%. The RCC is recalculated each year and allows the agency to recover its operating costs through an assessment on revenues of regulated utilities and pipeline carriers. Utilities exempt from economic regulation by the RCA do not pay RCCs, but may be required to pay the actual costs of services provided by the RCA.

Prepared by: Kate Giard, Chair  
 Division: Regulatory Commission of Alaska  
 Approved by: Emil Notti, Commissioner  
 Agency: Commerce, Community, and Economic Development

Phone 907.276.6222  
 Date/Time 4/30/07 6:03 PM  
 Date 4/30/2007

R-06-10

R.C.A.  
RECEIVED  
07 FEB -7 PH 1:05



Regulatory Commission of Alaska  
701 W. 8<sup>th</sup> Avenue, Ste 300  
Anchorage, Alaska 99501  
Chairman-Kate Giard  
FAX 276-0160

Dear Ms. Giard:

The Anchorage Home Builders Association is writing you in support of deregulation with regards to the refuse industry.

History has demonstrated that there is no benefit to regulation; industry is able to operate effectively without regulation. Deregulation allows for more competitors to operate on an even playing field and the competitive bidding process is not slowed waiting for the commission to approve special contracts. This change it would free up the RCA to focus on higher priority issues.

We appreciate your consideration of our viewpoint and if we can be of any further assistance in this matter, please contact us.

Sincerely,

*Eric Schach*  
*President*  
*Anchorage Home Builders Association*

**"Building Better Places to Live, Work and Play"**

**ANCHORAGE HOME BUILDERS ASSOCIATION, INC.**

8301 Schoon Street, Suite 200 • Anchorage, AK 99518 • (907) 522-3605 • Fax (907) 522-3757





# Municipality of Anchorage

P.O. Box 190850 • Anchorage, Alaska 99519-0850 • Telephone: (907) 843-4481 • Fax: (907) 843-4499 <http://www.muni.org>

Mayor Mark Begich

Office of the Mayor

February 8, 2007

Commissioners  
Regulatory Commission of Alaska

RE: Docket R-06-10

On January 10, 2007, Alaska Pacific Environmental Services Anchorage, LLC d/b/a Alaska Waste ("Alaska Waste") filed comments with the Regulatory Commission of Alaska ("Commission") requesting support for their proposal to amend Alaska law to exempt commercial refuse service from economic regulation. In Order No. 4 dated January 19, 2007 the Commission invited comment on Alaska Waste's proposal.

The Municipality of Anchorage (MOA) does not object to this proposal, based on its understanding set out below.

AS 29.35.050 authorizes the Municipality to provide by ordinance for residential and commercial refuse services within its boundaries. The Anchorage Municipal Code, Section 26.70.030, requires use of the municipal collection and disposal system within the former City of Anchorage boundaries (subject to exceptions authorized by the MOA. The Commission has recognized this municipality in its certificate of public convenience and necessity and other proceedings. I note that the portions of AS 42.05 regarding certificates would not be affected by the proposed amendment.

If a bill is introduced in the Alaska Legislature containing this amendment, the Municipality will track the language through the committee process to ensure that its refuse utility operations remain unaffected.

I appreciate the opportunity to comment.

Sincerely,

Mark Begich  
Mayor

cc: Jon Rubini, Alaska Waste

*Community, Security, Prosperity*

R.C.A.  
RECEIVED

Sagaya Corporation  
2525 Blueberry Road, Suite #106  
Anchorage, AK 99503

07 FEB -8 PM 3: 36

February 8, 2007

Via Facsimile and Hand Delivery  
Regulatory Commission of Alaska  
701 West Eighth Avenue, Suite 300  
Anchorage, AK 99501

Re: R-06-10, Order NO. 4

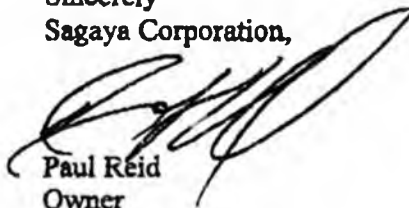
Dear Commissioners:

The purpose of this letter is to represent the support of Sagaya Corporation for the proposal to exempt commercial refuse haulers from regulation by the RCA.

The commercial refuse hauling industry is a competitive business in Anchorage. We feel that Sagaya Corporation, as well as many other businesses, would be enhanced and benefit from an unregulated, competitive commercial refuse hauler marketplace. As a result of exemption of this service, our business will be able to choose a service across all available companies which we feel is to our benefit. As a commercial customer and successful business operator we are capable of selecting a provider and managing this type of service and value the ability to do so. Due to the relatively minimal infrastructure involved and low cost of entry, protection from refuse hauling monopolies by government is not required nor necessary.

As a consumer, having a choice allows us to control price and quality as we deem necessary. I strongly encourage the Commission to focus its energy on the other more pressing issues and deregulate the commercial refuse service.

Sincerely  
Sagaya Corporation,



Paul Reid  
Owner

R.C.A.  
RECEIVED

07 FEB -8 PM 3:10

Entech Alaska, LLC  
440 E. 100th Avenue  
Anchorage, Alaska 99515

February 7, 2007

Regulatory Commission of Alaska  
701 West Eighth Avenue, Suite 300  
Anchorage, AK 99501

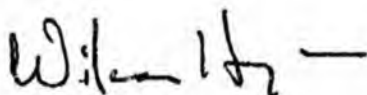
RE: R-06-10, Order NO. 4

Dear Commissioners:

The purpose of this letter is to forward the support of Entech Alaska LLC for the proposal to exempt commercial refuse haulers from regulation by the RCA.

The commercial refuse hauling industry can be a very competitive business in Anchorage. Our business, Entech Alaska LLC, in addition to many others, can enjoy the benefits of an unregulated, competitive commercial refuse hauler marketplace. We will be able to shop price and service across all available companies, not just the few that choose not to serve many. Most commercial customers are successful business operators who are very capable of selecting a provider and managing this type of service. Because there is relatively minimal infrastructure involved and a low cost of entry, the protection from refuse hauling monopolies by government is not required. From the perspective of a consumer, having a choice allows us to control price and quality. I encourage the Commission to focus its energy on its other more pressing issues and deregulate the commercial refuse service.

Sincerely,



Wilson Hughes  
Member



# Freedom Refuse

(907)244-3041

R.C.A.  
RECEIVED  
07 FEB - 7 PM 1:26

February 5, 2007

Regulatory Commission of Alaska  
701 West Eighth Avenue, Suite 300  
Anchorage, Alaska 99501

RE: R-06-10, Order NO. 4

Dear Commissioners:

When I first started Freedom Refuse, Waste Management would use predatory pricing practices. As I would approach potential customers with my rates, Waste Management (WM) would offer these customers substantial price reductions. Among other methods, they would do this by dropping the rent on the container completely or reclassifying their refuse type to a lower class. Even though WM was able to substantially slow down my growth rate, the tariff kept them from being able to put me out of business.

The consumer deserves to be able to expect to pay the same rate as his competitor for the same refuse service. Allowing the big businesses to charge drastically different rates depending on who their competition has approached is unfair to the consumers that are competing with each other. The tariff helps reduce this.

The cost of administering this program could be reduced by allowing each refuse company to change their tariff just by giving a 30 day notice and eliminating the justification process. (This is how it used to be and it worked well) This keeps it fair for the consumer and competitors and reduces the administration costs.

Freedom Refuse is opposed to total deregulation in the interest of fair competition and fair consumer practices.

Thanks for your consideration in this matter,

Don N. Hanks, Owner  
P. O. Box 772058  
Eagle River, Alaska 99577



**Alaskans for Litter  
Prevention and Recycling  
Keeping Alaska Beautiful**

R.C.A.  
RECEIVED

07 FEB -8 PM 3: 12

February 7, 2007

Regulatory Commission of Alaska  
701 W. 8<sup>th</sup> Ave.  
Anchorage, AK 99501

RE: R-06-10, Order No. 4

Dear Commissioners,

The purpose of this letter is to offer ALPAR's support for the proposal to exempt commercial refuse providers from regulation by your commission.

The deregulation of commercial rates will allow providers to create differential pricing on disposal to encourage and promote recycling, which benefits the recycling industry, the environment and extends the life of landfills. As Anchorage moves forward with efforts to provide enhanced recycling services and options, the necessity of variable rates that provide incentives to recycling will be key building a more integrated and sustainable system.

Deregulation would free up time and resources that businesses could devote to higher priorities such as customer service and marketing. It would seem that the issue of public interest is sufficiently served through the proposed clause that would allow 25 percent of the provider's customers to petition the RCA to reinstate regulation.

For the above reasons, I believe the best interests of customers, refuse haulers, and the commission would be served by deregulation.

Sincerely,

Mary Fisher  
Executive Director

- EX. UTIVE DIRECTOR  
Mary Fisher
- EXECUTIVE COMMITTEE
- Scott Smith, President  
General Manager  
Anchorage Metals Group
- Roger Driley, 1st Vice President  
General Manager  
Pepsi Cola Bottling Company
- Ken Pryvinsky, 2nd Vice President  
Division VP & General Manager  
Horizon Lines of Alaska
- Joe Gully, Secretary  
District Manager  
Carrs / Selsville Divisa
- Jeff Lowenthal, Treasurer  
Partner  
Lewis & Lowenthal
- Jimmy Doyle, Past President  
Vice President  
Weaver Brothers, Inc.
- BOARD OF DIRECTORS
- Michael Beck  
Sr. Vice President  
The Rowe Group
- Michael Brewster  
Home Regional Supervisor, Alaska  
Fred Meyer
- Karen Casanova  
Executive Director  
Alaska Air Carriers Association
- Ken Carter  
Production Director  
Anchorage Daily News
- Craig Gates  
Senior Manager, Marketing  
Alaska White
- \* Don Grassie  
Vice President & General Manager  
K & L Distributors, Inc.
- \* Walker John  
Vice President / General Manager  
Alaska Distributors
- Tom Johnston  
State of Alaska DOT & PF
- George Lowry  
Alaska Director  
Totem Ocean Trailer Express
- \* Bill Odow  
Executive Vice President  
Odorn Corp.
- Brian Potvin  
Sales Manager  
Lynden Transport, Inc.
- Sam Skilling  
Executive Director  
Green Star
- \* Keith Sopp  
Media Sales Manager  
GCI
- Tom Turner  
David Wigglesworth  
Municipality of Anchorage
- \* Past President
- HONORARY  
LIFETIME MEMBERS
- \* Tom Cox
- \* Mark Williams  
Audrey Lee
- \* Charlie Myers



**ASSOCIATED GENERAL CONTRACTORS of ALASKA**

February 5, 2007

Regulatory Commission of Alaska  
701 West Eighth Avenue, Suite 300  
Anchorage, Alaska 99501

Re: R-06-10, Order No. 4

R.C.A.  
RECEIVED  
07 FEB - 7 PM 1:04

To whom it may concern:

The Associated General Contractors of Alaska recognizes that regulation of public utilities provides a useful function and a necessary public protection in many instances. In the opinion of AGC, however, regulation does not seem to be necessary for the commercial refuse hauling industry because it is not a conventional public utility service. As significant infrastructure is not required, this business provides an opportunity for competition with relatively modest capital investments. Many AGC members have ample hauling options for their offices and jobsites including hauling their own refuse.

In reality, the current regulatory requirements may be a barrier to entry for the smaller companies and become a limiting factor to growth. If firms are able to get burdensome and expensive regulatory approval process, they are faced with the on-going the reporting requirements. This would seem to be an additional operating expense that seems unnecessary, provides little consumer protection, and drives up the cost of service.

AGC believes it is in the best interests of commercial customers, refuse haulers, and your commission to cease deregulation of commercial refuse service.

Sincerely,

Richard Cattanach  
Executive Director

ANCHORAGE  
8005 SCHOON STREET • ANCHORAGE, AK 99518  
TELEPHONE (907) 561-5354 • FAX (907) 562-6118  
<http://alaska.agc.org>  
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FAIRBANKS  
P.O. BOX 60005 • FAIRBANKS, AK 99706  
TELEPHONE (907) 452-1809 • FAX (907) 456-8599  
Email: [fairbanksagc@acsalaska.net](mailto:fairbanksagc@acsalaska.net)

ALASKA CENTER FOR THE ENVIRONMENT  
807 G Street Suite 100  
Anchorage Alaska 99501

February 8, 2007

Regulatory Commission of Alaska  
701 West Eighth Avenue, Suite 300  
Anchorage, Alaska 99501

Re: RCA request for Public Comments on R-06-10

Commissioners:

I am writing to support the request for economic deregulation submitted by Alaska Waste for commercial refuse activities.

Alaska Center for the Environment (ACE) is Alaska's largest state-based conservation group, with over 7,000 members. ACE has been very active in promoting recycling in Anchorage for most of its 35 year existence. We founded Anchorage's first recycling center, and have worked with city and private entities over the years to improve services to the community.

While consumer protection is a primary concern and a valuable role that the RCA plays in many important sectors, a couple of unique factors related to Alaska Waste's proposal have convinced me that it is in the community's best interest and merits support.

Regarding the potential for price manipulation and other negative outcomes of deregulation, I find the clause in Alaska Waste's proposal which provides for re-regulation to be satisfactory:

Notwithstanding AS 42.05.712 (b) and (g), if subscribers representing 25 percent of the gross revenue of the utility petition the commission for regulation, the utility is subject to the provisions of this chapter ..

I would also note that Alaska Waste's predecessor, Waste Management, was not subject to regulation; and this lack of regulation did not produce the types of problems that would be of concern in this case.

More importantly, however, I understand that this proposal is an important step to provide flexibility to Alaska Waste in helping Anchorage move toward integrated waste management. Most communities of our size have sophisticated commercial and residential recycling, reduction and reuse programs. They are often able to offer these services by using their equipment, staff and rate setting in a coordinated fashion to move customers to reduce and recycle. An integrated waste and recycling program will require that major haulers like Alaska Waste to have flexibility, creativity, and the ability to structure incentives to make a community-wide recycling effort successful.

In summary, I urge the Commission to support economic deregulation of Alaska Waste. Thank you for your consideration.

Sincerely,

Randy Virgin  
Executive Director