

SENATE BILL NO. 226

IN THE LEGISLATURE OF THE STATE OF ALASKA

THIRTY-FIRST LEGISLATURE - SECOND SESSION

BY SENATOR STEDMAN

Introduced: 2/24/20

Referred: Labor and Commerce, Finance

A BILL

FOR AN ACT ENTITLED

1 **"An Act providing a premium tax credit for flood insurance; relating to flood insurance**
2 **and reinsurance; relating to property insurance; establishing the Alaska Flood**
3 **Insurance Authority and fund; and providing for an effective date."**

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

5 * **Section 1.** AS 21.09.210(o) is amended to read:

6 (o) A qualified insurer is entitled to a premium tax credit under AS 21.55.220
7 **and AS 21.91.080(e).**

8 * **Sec. 2.** AS 21.39.030(a) is amended to read:

9 (a) Rates, including loss costs under AS 21.39.043 or any other provision of
10 law, shall be made in accordance with the following provisions:

11 (1) rates **may** [SHALL] not be excessive, inadequate, or unfairly
12 discriminatory;

13 (2) consideration shall be given to past and prospective loss experience
14 inside and outside this state; to the conflagration and catastrophe hazards; to a

1 reasonable margin for underwriting profit and contingencies; to dividends, savings, or
 2 unabsorbed premium deposits allowed or returned by insurers to their policyholders,
 3 members, or subscribers; to past and prospective expenses both countrywide and those
 4 specially applicable to this state; and to all other relevant factors inside and outside
 5 this state;

6 (3) the systems of expense provisions included in the rates for use by
 7 an insurer or group of insurers may differ from those of other insurers or **groups**
 8 [GROUP] of insurers to reflect the requirements of the operating methods of the
 9 insurer or group of insurers with respect to any kind of insurance, or with respect to a
 10 subdivision or combination thereof for which subdivision or combination separate
 11 expense provisions are applicable;

12 (4) risks may be grouped by classifications for the establishment of
 13 rates and minimum premiums; classification rates may be modified to produce rates
 14 for individual risks in accordance with rating plans that establish standards for
 15 measuring variations in hazards or expense provisions, or both; the standards may
 16 measure any differences among risks that can be demonstrated to have a probable
 17 effect **on** [UPON] losses or expenses;

18 (5) in the case of fire insurance rates, consideration may be given to
 19 the experience of the fire insurance business during a period of not more than the most
 20 recent five-year period for which experience is available;

21 (6) when there is an established program to inspect new and existing
 22 dwellings and the program has been certified by the director as likely to reduce the
 23 incidence of fires in inspected dwellings, then in any rate plan used in this state,
 24 dwellings that have been found by the inspection to meet the standards established by
 25 the program shall have credits applied to the rate in amounts approved by the director;

26 **(7) in the case of flood insurance rates, primary consideration**
 27 **must be given to actual historical flood and damage data of the property**
 28 **proposed to be insured.**

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

30 **Chapter 91. Alaska Flood Authority.**

31 **Sec. 21.91.010. Creation; membership; information from members.** The

Alaska Flood Authority is created to increase the availability of flood insurance in the state. The authority is a nonprofit incorporated legal entity. The membership of the authority consists of all insurers licensed to transact property insurance business in the state. As a condition of transacting property insurance business in the state, a member shall

(1) maintain membership in the authority;

(2) submit reports and provide information required by the board or the director to implement this chapter.

Sec. 21.91.020. Board; organization; report. (a) The board of the authority consists of

(1) three members selected by authority members, subject to approval by the director;

(2) two members selected by the director who represent consumers of property insurance required by the federal government to obtain flood insurance in a special flood hazard area;

(3) one member selected by the director who represents the private banking and mortgage industry in the state; and

(4) one member selected by the director who represents the Alaska Housing Finance Corporation.

(b) The director is a nonvoting ex officio member of the board. In approving members of the board under (a)(1) of this section, the director shall consider, among other things, whether all types of authority members are fairly represented.

(c) A member of the board serves for a term of three years and may be reappointed to an unlimited number of terms. The term of a board member shall continue until a successor is appointed.

(d) At authority meetings, an authority member is entitled to one vote in person or by proxy. At board meetings, a board member is entitled to one vote in person or by proxy.

(e) The authority may reimburse a member of the board for expenses incurred as a result of board activities but may not otherwise compensate a member of the board for services. The costs of conducting meetings of the authority and the board are

1 the responsibility of the members of the authority.

2 (f) On or before September 1 of each year, the board shall prepare a report
3 reviewing the operations of the previous year and deliver the report to the state's
4 congressional delegation, the governor, the senate secretary, and the chief clerk of the
5 house of representatives and notify the legislature that the report is available. In the
6 report, the board shall

7 (1) analyze the effectiveness of the operations of the authority and
8 reinsurance program under this chapter;

9 (2) evaluate the benefits of the reinsurance program under this chapter
10 as compared to 42 U.S.C. 4001 - 4129 (National Flood Insurance Act) for property
11 owners and communities in the state; and

12 (3) identify penalties or sanctions imposed or potentially imposed on
13 individuals and communities by the federal government under 42 U.S.C. 4001 - 4129
14 (National Flood Insurance Act).

15 **Sec. 21.91.030. Powers of the authority.** The authority may

16 (1) exercise the powers granted to insurers under the laws of the state;

17 (2) sue or be sued;

18 (3) enter into contracts with insurers, similar authorities in other states,
19 or other persons for the performance of administrative functions;

20 (4) establish administrative and accounting procedures for the
21 operation of the authority; and

22 (5) receive funds from sources other than members of the authority.

23 **Sec. 21.91.040. Duties of director; reinsurance program.** The director shall
24 formulate general policy and adopt regulations that are reasonably necessary to
25 administer this chapter. The regulations must

26 (1) establish a reinsurance program reinsuring real property and
27 improvements to real property in a special flood hazard area in the state;

28 (2) establish a reserve for payment of flood claims; and

29 (3) require the amount of the reserve for payment of flood claims to be
30 not less than the amount required by a private insurer participating in the National
31 Flood Insurance Program.

1 **Sec. 21.91.050. Plan of operation.** (a) The authority shall submit to the
 2 director a plan of operation and amendments necessary or suitable to ensure the fair,
 3 reasonable, and equitable administration of the authority. The plan of operation and
 4 amendments become effective upon approval in writing by the director. If the
 5 authority fails to submit a suitable plan of operation by January 1, 2022, or if the
 6 authority fails to submit suitable amendments to the plan at a subsequent time, the
 7 director may, after notice and hearing, adopt reasonable regulations necessary or
 8 advisable to carry out the provisions of this chapter. The regulations continue in force
 9 until modified by the director or superseded by a plan submitted by the authority and
 10 approved by the director.

11 (b) Each member of the authority shall comply with the plan of operation.

12 (c) The plan of operation must contain the following:

13 (1) procedures for the performance of all the powers and duties of the
 14 authority under this chapter;

15 (2) procedures for handling assets of the authority;

16 (3) the amount of reimbursement and method for reimbursing
 17 members of the board under AS 21.91.020(e);

18 (4) the regular places and times at which meetings of the board will
 19 take place;

20 (5) record-keeping procedures for all financial transactions of the
 21 authority, agents of the authority, and the board;

22 (6) a provision stating that a member of the authority aggrieved by a
 23 final action or decision of the authority may appeal to the director within 30 days after
 24 the action or decision is made;

25 (7) procedures for submitting board member selections to the director
 26 for approval;

27 (8) additional provisions necessary or proper for the execution of the
 28 powers and duties of the authority.

29 **Sec. 21.91.060. Administrative Procedure Act.** The authority is exempt from
 30 AS 44.62 (Administrative Procedure Act).

31 **Sec. 21.91.070. Tax exemption.** The authority is exempt from the payment of

1 fees and taxes levied by the state or any of its political subdivisions except taxes levied
2 on real or personal property.

3 **Sec. 21.91.080. Funding for authority and reinsurance program; premium**
4 **tax credit.** (a) Each member of the authority shall share the losses of a reinsurance
5 program established by regulation under AS 21.91.040 reinsuring real property and
6 improvements to real property within a special flood hazard area in the state. Each
7 member of the authority shall pay member dues and share in the operating and
8 administrative expenses incurred or estimated to be incurred by the authority incident
9 to the conduct of its affairs.

10 (b) A member's liability under this section is an amount equal to a member's
11 dues, as determined by the director, plus six percent of the total direct premium
12 written during the year ending on the preceding December 31 and paid for the
13 insurance of property located in the state after deducting from the total direct premium
14 income applicable cancellations, returned premiums, unabsorbed portions of any
15 deposit premium, all policy dividends, unabsorbed premiums refunded to
16 policyholders, refunds, savings, savings coupons, and other similar returns paid or
17 credited to policyholders with respect to their policies. Deductions may not be made of
18 cash surrender value of policies.

19 (c) The board shall make an annual determination of each member's liability
20 under (b) of this section, if any, and may make an annual fiscal year end assessment if
21 necessary to operate the authority and reinsurance program. The board may also
22 provide for interim assessments against the members as may be necessary to ensure
23 the financial capability of the authority in meeting the incurred or estimated operating
24 and administrative expenses of the authority until the authority's next annual fiscal
25 year end assessment. The board may not make an assessment that exceeds the
26 calculation under (b) of this section unless the total amount of member liability
27 calculated under this section is insufficient to operate the authority and reinsurance
28 program. The board may decline to levy an assessment against a member if the
29 assessment would be minimal.

30 (d) Payment of an assessment is due within 30 days after a member receives
31 written notice of a fiscal year end or interim assessment. If a member fails to pay a

1 fiscal year end or interim assessment as required in this subsection, (1) the member
 2 shall pay a civil penalty to the director in the amount of \$100 for each day the member
 3 fails to pay the required assessment, and (2) the director may revoke the member's
 4 certificate of authority. A member that no longer does business in the state remains
 5 liable for assessments until the board determines under (c) of this section that no
 6 assessment is due. Assessments paid by a member are a general expense of the
 7 member.

8 (e) A member may offset 50 percent of the amount of the assessment under
 9 this section as a premium tax credit, reducing the premium tax payable by the member
 10 under AS 21.09.210. The offset applies to the tax levied for the calendar year
 11 following an annual determination of each member's liability under (c) of this section.
 12 The offset may not reduce the premium tax payable by a member to less than zero or
 13 create a premium tax credit for the member. An unused offset may be carried over to
 14 the immediately following calendar year. An offset made under this subsection is not
 15 subject to AS 21.09.270.

16 (f) If the total amount of member liability calculated under (c) of this section
 17 is insufficient to satisfy a duly authorized claim against the reinsurance program under
 18 this chapter, the legislature may appropriate up to a total of \$10,000,000 in cash
 19 reserves of the Alaska Housing Finance Corporation to the Department of Commerce,
 20 Community, and Economic Development to satisfy the unpaid claim.

21 **Sec. 21.91.090. State not liable.** The state is not liable for acts or omissions of
 22 the authority under this chapter.

23 **Sec. 21.91.100. Board member civil and criminal immunity.** A member of
 24 the board may not be held civilly or criminally liable for an act or omission if the act
 25 or omission was in good faith and within the scope of the director's duties under this
 26 chapter.

27 **Sec. 21.91.110. Alaska flood insurance fund.** (a) The Alaska flood insurance
 28 fund is established in the general fund. The Department of Administration shall
 29 separately account for revenue collected under AS 21.91.080 and deposit proceeds
 30 into the fund. The Department of Administration shall retain in the fund interest
 31 earned on the fund.

(b) The legislature may appropriate the annual estimated balance in the fund to the Department of Commerce, Community, and Economic Development to operate the authority and fund the reinsurance program under this chapter.

(c) Payment for claims under the reinsurance program under this chapter is subject to appropriation.

(d) Money in the fund does not lapse.

(e) Nothing in this section creates a dedicated fund.

(f) Money in the fund may be invested in the same manner and on the same conditions as permitted for investment of money belonging to the state or held in the treasury under AS 37.10.070. Earnings on investments must be retained in the fund.

(g) If the total amount of revenue collected under AS 21.91.080 exceeds the amount necessary to operate the authority and fund the reinsurance program under this chapter, the legislature may appropriate up to 25 percent of the excess funds to the Department of Commerce, Community, and Economic Development to aid communities in the planning, design, and construction of flood mitigation measures or to match available federal funds for that purpose.

Sec. 21.91.900. Definitions. In this chapter,

(1) "authority" means the Alaska Flood Authority;

(2) "board" means the board of the authority;

(3) "property insurance" has the meaning given in AS 21.12.060;

(4) "special flood hazard area" means the land in a flood plain in a community subject to a chance of flooding in any given year of one percent or greater where federally mandated purchase of flood insurance applies.

* **Sec. 4.** AS 37.05.146(c) is amended by adding a new paragraph to read:

(80) assessments and civil penalties collected under AS 21.91.080.

* **Sec. 5.** The uncodified law of the State of Alaska is amended by adding a new section to read:

APPLICABILITY. Section 2 of this Act applies to an insurance policy or contract entered into or renewed on or after the effective date of sec. 2 of this Act.

* **Sec. 6.** The uncodified law of the State of Alaska is amended by adding a new section to read:

1 TRANSITION: REGULATIONS. The director of the division of insurance may adopt
2 regulations necessary to implement the changes made by this Act. The regulations take effect
3 under AS 44.62 (Administrative Procedure Act), but not before the effective date of the law
4 implemented by the regulations.

5 * **Sec. 7.** Section 6 of this Act takes effect immediately under AS 01.10.070(c).

6 * **Sec. 8.** Except as provided in sec. 7 of this Act, this Act takes effect July 1, 2021.