

HOUSE BILL NO. 479

IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-THIRD LEGISLATURE - SECOND SESSION

BY REPRESENTATIVE KOHRING

Introduced: 2/16/04

Referred: House Special Committee on Education, Health, Education and Social Services, Finance

A BILL

FOR AN ACT ENTITLED

1 **"An Act establishing an education fund and a land endowment for public education;**
2 **and providing for an effective date."**

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

4 *** Section 1.** AS 37.14 is amended by adding new sections to read:

5 **Article 9. Education Fund.**

6 **Sec. 37.14.800. Education fund established.** (a) Under art. IX, sec. 18,
7 Constitution of the State of Alaska, the education fund is established as a separate fund
8 of the state.

9 (b) The principal of the fund consists of

10 (1) legislative appropriations to the fund;

11 (2) transfers of land to the fund; and

12 (3) gifts, bequests, and contributions of cash or other assets from a
13 person.

14 (c) The net income of the fund shall be determined by the commissioner of

1 revenue in accordance with investment accounting principles and in a manner that
2 preserves the distinction between principal and income.

3 **Sec. 37.14.810. Powers and duties of the commissioner of revenue.** The
4 commissioner of revenue is the treasurer of the fund and has the power and duty to

5 (1) act as official custodian of the cash and investments belonging to
6 the fund by securing adequate and safe custodial facilities;

7 (2) receive all items of cash and investments belonging to the fund;

8 (3) collect the principal and income from investments owned or
9 acquired by the fund and deposit the amounts in separate principal and income
10 accounts for the fund;

11 (4) invest and reinvest the assets of the fund as provided in this section
12 and as provided for the investment of funds under AS 37.14.170;

13 (5) exercise the powers of an owner with respect to the assets of the
14 fund;

15 (6) maintain accounting records of the fund in accordance with
16 investment accounting principles and with distinction between the principal and
17 income accounts of the fund;

18 (7) engage an independent firm of certified public accountants to
19 annually audit the financial condition of the fund's investments and investment
20 transactions;

21 (8) enter into and enforce contracts or agreements considered
22 necessary for the investment purposes of the fund;

23 (9) report to the board the condition and investment performance of the
24 fund;

25 (10) do all acts, whether or not expressly authorized, that the
26 commissioner of revenue considers necessary or proper in administering the assets of
27 the fund.

28 **Sec. 37.14.820. Administration of the fund; fund board established.** (a)
29 The fund shall be administered by the Education Fund Board.

30 (b) The Education Fund Board is established in the Department of Education
31 and Early Development. The board is composed of

- 1 (1) the governor or a designee of the governor;
- 2 (2) the commissioner of natural resources or the commissioner's
3 designee;
- 4 (3) the commissioner of education and early development or the
5 commissioner's designee; and
- 6 (4) four public members appointed by the governor; in appointing the
7 public members, the governor shall give a preference to persons who have experience
8 and expertise in
- 9 (A) education; or
- 10 (B) private sector resource development.

11 **Sec. 37.14.830. Powers and duties of the board.** When acting as
12 administrator of the fund, the board shall

- 13 (1) hold regular and special meetings it considers necessary; the board
14 may hold meetings by teleconference;
- 15 (2) have the care, control, and management of land selected by and
16 conveyed to the fund by the commissioner of natural resources under AS 37.14.850;
- 17 (3) keep audio tape recordings of each meeting of the board to be made
18 available on request; and
- 19 (4) submit to the governor and make available to the legislature by
20 February 1 each year a report describing
- 21 (A) expenditures made during the preceding fiscal year from
22 the fund that are derived from sales, leases, exchanges, or transfers of the land
23 of the fund or of interests in land of the fund that were selected by and
24 conveyed to the fund under AS 37.14.850; and
- 25 (B) the annual level of contributions to, income of, and
26 expenses of the fund.

27 **Sec. 37.14.840. Uses of fund principal and net income.** (a) The principal of
28 the fund shall be retained perpetually in the fund for investment as specified in
29 AS 37.14.810.

30 (b) The net income of the fund may be annually appropriated by the
31 legislature for the support of public elementary and secondary education and for

1 support of the University of Alaska.

2 **Sec. 37.14.850. Fund land from Statehood Act land selection conveyances.**

3 (a) The board may select and is entitled to receive the conveyance of 5,000,000 acres
 4 of land conveyed to the state under sec. 6(b) of the Alaska Statehood Act (P.L. 85-508,
 5 72 Stat. 339). The board shall annually submit a list of selections to the commissioner
 6 of natural resources. If there is disagreement between the board and the commissioner
 7 of natural resources about the land selected, the disagreement must be submitted to the
 8 governor, who shall make the final decision. The board and the governor shall
 9 annually and jointly submit to the legislature, within 30 days after the beginning of a
 10 regular legislative session, a list of the selections of land proposed to be conveyed to
 11 the fund under this section. Each list must contain not more than 25 percent of the
 12 total acres of land to which the fund is entitled after subtracting previous conveyances
 13 under this section, but not less than 25,000 acres or the remaining entitlement under
 14 this section, whichever is less. The legislature may by law approve or disapprove the
 15 list of selections submitted to it. A list of selections submitted shall be considered
 16 approved for conveyance to the fund if the legislature does not disapprove the list
 17 during the legislative session during which the list was submitted. If the amount of
 18 land to be conveyed exceeds the balance due the fund under this section, the fund shall
 19 set out the land to be conveyed in priority order. Land may not be selected if, on the
 20 date of its selection by the board, it

21 (1) has been reserved by law from the public domain;

22 (2) is land

23 (A) included in a five-year proposed oil and gas leasing
 24 program under AS 38.05.180(b); or

25 (B) leased under, or for which a lease application is pending
 26 under, AS 38.05.180(d) or 38.05.150;

27 (3) is subject to

28 (A) an oil, gas, or coal lease, or coal prospecting permit;

29 (B) a mining claim, offshore prospecting permit, a prospecting
 30 site, an upland mining lease, or a mining leasehold location;

31 (4) is necessary to carry out the purpose of an interagency land

1 management agreement; or

2 (5) is subject to conveyance under a land exchange or land settlement
3 agreement.

4 (b) Notwithstanding AS 38.05.125(a), the transfer of ownership and
5 management of land from the Department of Natural Resources to the fund under this
6 section includes the interest of the state in

7 (1) the coal, ores, minerals, fissionable materials, geothermal
8 resources, and fossils that may be in or on the land; and

9 (2) the oil and gas that may be in or on the land, but only as to land
10 that is selected by the board under this section on and after the date that is the fifth
11 anniversary of the effective date of this section.

12 (c) When the board selects the land to which it is entitled under this section,
13 selections must be made in parcels of 640 acres or larger unless the selection is an
14 isolated tract or the commissioner of natural resources finds it is in the best interest of
15 the state to convey less. When the fund becomes entitled to land under this section,
16 the commissioner of natural resources shall convey a document of interim conveyance
17 under (j) of this section or a patent to land.

18 (d) Notwithstanding any other provision of law, for land selected under (a) of
19 this section but not yet patented to the fund or for which a document of interim
20 conveyance has not been issued to the fund under this section,

21 (1) the commissioner of natural resources is authorized to enter into
22 contracts and grant leases, licenses, prospecting sites, claims, permits, rights-of-way,
23 or easements and any interim conveyance or patent shall be subject to the contract,
24 lease, license, prospecting site, claim, permit, right-of-way, or easement, except that
25 the authority granted the commissioner by this subsection

26 (A) is the authority that the commissioner otherwise would
27 have had under existing laws and regulations had the land not been selected by
28 the fund; and

29 (B) may be exercised only if the fund has concurred before the
30 action is taken by the commissioner;

31 (2) income from and management of the land is subject to

1 AS 37.14.880.

2 (e) Unless the governor provides otherwise under (a) of this section, the
3 governor may not include on a list of selections of land submitted to the legislature a
4 land selection made by the fund under this section if the commissioner of natural
5 resources determines that the proposed selection

6 (1) includes land for which, at the time of its selection under this
7 section,

8 (A) a municipality has made a selection under AS 29.65 unless
9 the land selection is, at a later date, rejected by the commissioner of natural
10 resources or relinquished by the municipality; or

11 (B) the commissioner reasonably believes the land may be
12 selected by a municipality under AS 29.65, but the commissioner may not
13 withhold under this subparagraph the conveyance of title to land selected by
14 the fund longer than three years after the date of the municipality's
15 incorporation; or

16 (2) includes land that, at the time of its selection under this section,

17 (A) is subject to an oil and gas exploration license; or

18 (B) the commissioner reasonably believes will be made part of
19 an oil and gas exploration license issued under AS 38.05.131 - 38.05.134; the
20 commissioner may not refuse to convey title to land to the fund under this
21 subparagraph for more than three years after its first selection by the fund.

22 (f) When land is conveyed to the fund under this section, the fund takes the
23 land subject to any possessory interest held by another person on the effective date of
24 the conveyance.

25 (g) In conveying land to the fund under this section, the commissioner of
26 natural resources shall give public notice that substantially complies with notice
27 requirements under AS 38.05.945(b) and (c) and provide for access under
28 AS 38.05.127, but other provisions of AS 38.04 and AS 38.05 do not apply.

29 (h) Land transferred to the fund under this section

30 (1) is subject to

31 (A) sec. 6(i) of the Alaska Statehood Act (P.L. 85-508, 72 Stat.

1 339);

2 (B) art. IX of the state constitution;

3 (C) AS 19.10.010;

4 (D) the payment requirements to the Alaska permanent fund
5 under AS 37.13.010(a) and (b); and

6 (E) the rights of the state under former 43 U.S.C. 932 (sec. 8,
7 Act of July 26, 1866, 14 Stat. 253);

8 (2) excludes any interest transferred to the state by quitclaim deed
9 dated June 30, 1959, under authority of the Alaska Omnibus Act, P.L. 86-70, 73 Stat.
10 141;

11 (3) based on a land selection filed by the fund on or after the effective
12 date of this section and until the day before the day that is the fifth anniversary of the
13 effective date of this section, is subject to reservation by the Department of Natural
14 Resources in perpetuity of all oil and gas that may be in or on the land, together with
15 the right to explore the land for oil and gas and to remove from the land all oil and gas
16 located in and on it.

17 (i) The fund shall bear all costs of selection, platting, surveying, and, except as
18 provided in (k) of this section, conveyance of the land that it selects under this section
19 and, subject to appropriation, shall reimburse the Department of Natural Resources for
20 the reasonable costs incurred by that department relating to that selection, platting,
21 surveying, and conveyance. As to land due the fund under (c) of this section,

22 (1) if the land has been surveyed, the boundaries of the land conveyed
23 must conform to the public land subdivisions established by the approved survey;

24 (2) if the land is unsurveyed, the commissioner shall survey the
25 exterior boundaries of the land to be conveyed without interior subdivision and shall
26 issue patent in terms of the exterior boundary survey within one year of the later of the
27 effective date of the approval by the legislature of the list containing the land or the
28 adjournment of the legislative session during which the list containing the land was
29 not disapproved by the legislature.

30 (j) For land due the fund under (c) of this section that is unsurveyed, pending
31 the survey of exterior boundaries and issuance of patent, the commissioner of natural

1 resources shall, within one year of the later of the effective date of the approval by the
 2 legislature of the list containing the land or the adjournment of the legislative session
 3 during which the list containing the land was not disapproved by the legislature,
 4 prepare and provide to the fund a document of interim conveyance for the land to be
 5 conveyed.

6 (k) Except as provided in AS 37.14.880(2), management of land conveyed to
 7 the fund by patent or by a document of interim conveyance vests with the fund from
 8 the date of recording of the patent or document of interim conveyance. The
 9 Department of Natural Resources shall pay the cost of recording all patents and
 10 documents of interim conveyance.

11 (l) The board may not make a land selection under this section after
 12 December 31, 2008.

13 **Sec. 37.14.860. Management and disposition of land.** (a) The board shall,
 14 by policy, establish procedures for mineral entry or location and mineral leasing on
 15 land selections made under AS 37.14.850 that are substantially similar to mineral
 16 entry, location, and leasing procedures for state land under AS 38.05.185 - 38.05.275.

17 (b) Notwithstanding other provisions of law, the board shall seek public
 18 comment on proposals for development, exchange, or sale of land selections made
 19 under AS 37.14.850. The board shall adopt policies that provide that the fund shall
 20 prepare an annual plan for management and disposition of fund land under this section
 21 and shall, not less than 60 days before scheduled approval by the board of the plan,

22 (1) make copies of the plan available at all legislative information
 23 offices and at other locations as the board may designate;

24 (2) publish a notice in newspapers of general circulation in the state
 25 that provides the public with information on the locations where the plan is available
 26 for public inspection;

27 (3) give notice to all legislators and to local governments with
 28 jurisdiction over the land affected by the proposal; and

29 (4) seek public comment on the annual plan before action by the board
 30 approving the plan.

31 **Sec. 37.14.870. Confidential records.** Notwithstanding AS 40.25.110 -

1 40.25.125 and 40.25.220, on a determination that it is in the best interest of the fund or
 2 on the request of the person who has provided the information, the board may keep the
 3 following confidential:

4 (1) the name of a person applying for the sale, lease, or other disposal
 5 of land or an interest in land conveyed to the fund under AS 37.14.850;

6 (2) before the announced time of opening of an offer to purchase,
 7 lease, or obtain a disposal of land conveyed to the fund under AS 37.14.850, the
 8 names of the participants and the terms of their offers;

9 (3) all geological, geophysical, engineering, architectural, sales,
 10 appraisal, gross receipts, net receipts, or other financial information relating to land or
 11 an interest in land conveyed to the fund under AS 37.14.850 and considered for or
 12 offered for disposal or currently subject to a contract;

13 (4) cost data and financial information submitted by an applicant in
 14 support of applications for bonds, leases, or other information in offerings and
 15 ongoing operations relating to management of land conveyed to the fund under
 16 AS 37.14.850;

17 (5) applications for rights-of-way or easements across land conveyed
 18 to the fund under AS 37.14.850; and

19 (6) requests for information about or applications by public agencies
 20 for land conveyed to the fund under AS 37.14.850 that is being considered for use for
 21 a public purpose.

22 **Sec. 37.14.880. Land subject to encumbrances and trespasses.** Except as
 23 provided in AS 37.14.850(b), for the land selected by the board under AS 37.14.850
 24 that is subject to a lease, license, contract, prospecting site, claim, sale, permit, right-
 25 of-way, or easement, or to trespass,

26 (1) if the lease, license, contract, prospecting site, claim, sale, permit,
 27 right-of-way, easement, or trespass

28 (A) existed before the selection of the land by the board, the
 29 general fund or permanent fund, as appropriate, the state is entitled to receive
 30 the income obtained from the lease, license, contract, prospecting site, claim,
 31 sale, permit, right-of-way, easement, or trespass for the duration of the term of

1 the lease, license, contract, prospecting site, claim, sale, permit, right-of-way,
 2 or easement, or of the trespass, and during any renewal of it that is authorized
 3 by the lease, license, contract, prospecting site, claim, sale permit, right-of-
 4 way, or easement, or by law;

5 (B) did not exist before the selection of the land by the board,

6 (i) the general fund or permanent fund, as appropriate,
 7 is entitled to receive the income obtained from the lease, license,
 8 contract, prospecting site, claim, sale, permit, right-of-way, or
 9 easement, or from trespass before the recording of the conveyance to
 10 the fund by the issuance of a document of interim conveyance or a
 11 patent;

12 (ii) the fund is entitled to receive the income obtained
 13 from the lease, license, contract, prospecting site, claim, sale, permit,
 14 right-of-way, or easement, or from trespass on the date of and after the
 15 recording of the conveyance to the fund by the issuance of a document
 16 of interim conveyance or a patent;

17 (2) the responsibility for the management of the land vests with the
 18 fund only upon conclusion of the term of the lease, license, contract, prospecting site,
 19 claim, sale, permit, right-of-way, or easement, and any renewal authorized by the
 20 lease, license, contract, prospecting site, claim, sale, permit, right-of-way, or easement,
 21 or by law, if the lease, license, contract, prospecting site, claim, sale, permit, right-of-
 22 way, or easement existed before the land's being selected by the board; if the lease,
 23 license, contract, prospecting site, claim, sale, permit, right-of-way, or easement was
 24 entered into after selection, then the responsibility for management vests with the fund
 25 on the date of recording of the conveyance of the land to the fund by a document of
 26 interim conveyance or patent.

27 **Sec. 37.14.890. Customary and traditional uses to be continued.** When
 28 land selected by the fund under AS 37.14.850 has been conveyed to it, before
 29 conveying or disposing of an interest in land to a third party, the fund shall manage the
 30 land in a manner that permits customary and traditional uses of the resources of that
 31 land to the maximum extent practicable.

1 **Sec. 37.14.899. Definitions.** In AS 37.14.800 - 37.14.899,

2 (1) "board" means the Education Fund Board;

3 (2) "fund" means the education fund established in art. IX, sec. 18,
4 Constitution of the State of Alaska.

5 * **Sec. 2.** AS 29.45.030(a) is amended to read:

6 (a) The following property is exempt from general taxation:

7 (1) municipal property, including property held by a public corporation
8 of a municipality, state property, property of the University of Alaska, **property of the**
9 **education fund**, or land that is in the trust established by the Alaska Mental Health
10 Enabling Act of 1956, P.L. 84-830, 70 Stat. 709, except that

11 (A) a private leasehold, contract, or other interest in the
12 property is taxable to the extent of the interest; however, an interest created by
13 a nonexclusive use agreement between the Alaska Industrial Development and
14 Export Authority and a user of an integrated transportation and port facility
15 owned by the authority and initially placed in service before January 1, 1999,
16 is taxable only to the extent of, and for the value associated with, those specific
17 improvements used for lodging purposes;

18 (B) notwithstanding any other provision of law, property
19 acquired by an agency, corporation, or other entity of the state through
20 foreclosure or deed in lieu of foreclosure and retained as an investment of a
21 state entity is taxable; this subparagraph does not apply to federal land granted
22 to the University of Alaska under AS 14.40.380 or 14.40.390, to other land
23 granted to the university by the state to replace land that had been granted
24 under AS 14.40.380 or 14.40.390, [OR] to land conveyed by the state to the
25 university under AS 14.40.365, **or to land conveyed by the state to the**
26 **education fund under AS 37.14.850**;

27 (C) an ownership interest of a municipality in real property
28 located outside the municipality acquired after December 31, 1990, is taxable
29 by another municipality; however, a borough may not tax an interest in real
30 property located in the borough and owned by a city in that borough;

31 (2) household furniture and personal effects of members of a

1 household;

2 (3) property used exclusively for nonprofit religious, charitable,
3 cemetery, hospital, or educational purposes;

4 (4) property of a nonbusiness organization composed entirely of
5 persons with 90 days or more of active service in the armed forces of the United States
6 whose conditions of service and separation were other than dishonorable, or the
7 property of an auxiliary of that organization;

8 (5) money on deposit;

9 (6) the real property of certain residents of the state to the extent and
10 subject to the conditions provided in (e) of this section;

11 (7) real property or an interest in real property that is exempt from
12 taxation under 43 U.S.C. 1620(d), as amended;

13 (8) property of a political subdivision, agency, corporation, or other
14 entity of the United States to the extent required by federal law; except that a private
15 leasehold, contract, or other interest in the property is taxable to the extent of that
16 interest;

17 (9) natural resources in place including coal, ore bodies, mineral
18 deposits, and other proven and unproven deposits of valuable materials laid down by
19 natural processes, unharvested aquatic plants and animals, and timber.

20 * **Sec. 3.** Section 3, ch. 117, SLA 2000, is repealed and reenacted to read:

21 Sec. 3. AS 29.45.030(a) is amended to read:

22 (a) The following property is exempt from general taxation:

23 (1) municipal property, including property held by a public corporation
24 of a municipality, state property, property of the University of Alaska, property of the
25 education fund, or land that is in the trust established by the Alaska Mental Health
26 Enabling Act of 1956, P.L. 84-830, 70 Stat. 709, except that

27 (A) a private leasehold, contract, or other interest in the
28 property is taxable to the extent of the interest; [HOWEVER, AN INTEREST
29 CREATED BY A NONEXCLUSIVE USE AGREEMENT BETWEEN THE
30 ALASKA INDUSTRIAL DEVELOPMENT AND EXPORT AUTHORITY
31 AND A USER OF AN INTEGRATED TRANSPORTATION AND PORT

1 FACILITY OWNED BY THE AUTHORITY AND INITIALLY PLACED IN
 2 SERVICE BEFORE JANUARY 1, 1999, IS TAXABLE ONLY TO THE
 3 EXTENT OF, AND FOR THE VALUE ASSOCIATED WITH, THOSE
 4 SPECIFIC IMPROVEMENTS USED FOR LODGING PURPOSES;]

5 (B) notwithstanding any other provision of law, property
 6 acquired by an agency, corporation, or other entity of the state through
 7 foreclosure or deed in lieu of foreclosure and retained as an investment of a
 8 state entity is taxable; this subparagraph does not apply to federal land granted
 9 to the University of Alaska under AS 14.40.380 or 14.40.390, to other land
 10 granted to the university by the state to replace land that had been granted
 11 under AS 14.40.380 or 14.40.390, to land conveyed by the state to the
 12 university under AS 14.40.365, or to land conveyed by the state to the
 13 education fund under AS 37.14.850;

14 (C) an ownership interest of a municipality in real property
 15 located outside the municipality acquired after December 31, 1990, is taxable
 16 by another municipality; however, a borough may not tax an interest in real
 17 property located in the borough and owned by a city in that borough;

18 (2) household furniture and personal effects of members of a
 19 household;

20 (3) property used exclusively for nonprofit religious, charitable,
 21 cemetery, hospital, or educational purposes;

22 (4) property of a nonbusiness organization composed entirely of
 23 persons with 90 days or more of active service in the armed forces of the United States
 24 whose conditions of service and separation were other than dishonorable, or the
 25 property of an auxiliary of that organization;

26 (5) money on deposit;

27 (6) the real property of certain residents of the state to the extent and
 28 subject to the conditions provided in (e) of this section;

29 (7) real property or an interest in real property that is exempt from
 30 taxation under 43 U.S.C. 1620(d), as amended;

31 (8) property of a political subdivision, agency, corporation, or other

1 entity of the United States to the extent required by federal law; except that a private
2 leasehold, contract, or other interest in the property is taxable to the extent of that
3 interest;

4 (9) natural resources in place including coal, ore bodies, mineral
5 deposits, and other proven and unproven deposits of valuable materials laid down by
6 natural processes, unharvested aquatic plants and animals, and timber.

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

9 CONDITIONAL EFFECT. This Act takes effect only if the voters at the 2004 general
10 election approve an amendment to the Constitution of the State of Alaska proposed by the
11 Twenty-Third Alaska State Legislature that creates an education fund for public education.

12 * **Sec. 5.** If this Act takes effect, it takes effect on the effective date of an amendment to the
13 Constitution of the State of Alaska proposed by the Twenty-Third Alaska State Legislature
14 that creates an education fund for public education.