

CS FOR HOUSE BILL NO. 215(FIN)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-FOURTH LEGISLATURE - FIRST SESSION

BY THE HOUSE FINANCE COMMITTEE

Offered: 4/15/05

Referred: Rules

Sponsor(s): REPRESENTATIVES ROKEBERG BY REQUEST, Berkowitz, Hawker

A BILL

FOR AN ACT ENTITLED

1 **"An Act relating to the investment responsibilities of the Alaska Permanent Fund**
2 **Corporation; relating to regulations proposed and adopted by the Board of Trustees of**
3 **the Alaska Permanent Fund Corporation and providing procedures for the adoption of**
4 **regulations by the board; and providing for an effective date."**

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

6 * **Section 1.** AS 37.13.120 is repealed and reenacted to read:

7 **Sec. 37.13.120. Investment responsibilities.** (a) The board shall adopt
8 regulations specifically designating the types of income-producing investments
9 eligible for investment of fund assets. When adopting regulations authorized by this
10 section or managing and investing fund assets, the prudent-investor rule shall be
11 applied by the corporation. The prudent-investor rule as applied to investment activity
12 of the fund means that the corporation shall exercise the judgment and care under the
13 circumstances then prevailing that an institutional investor of ordinary prudence,
14 discretion, and intelligence exercises in the designation and management of large

1 investments entrusted to it, not in regard to speculation, but in regard to the permanent
 2 disposition of funds, considering preservation of the purchasing power of the fund
 3 over time while maximizing the expected total return from both income and the
 4 appreciation of capital.

5 (b) The corporation may not borrow money or guarantee from principal of the
 6 fund the obligations of others, except as provided in this subsection. With respect to
 7 investments of the fund, the corporation may, either directly or through an entity in
 8 which the investment is made, borrow money if the borrowing is nonrecourse to the
 9 corporation and the fund.

10 (c) The board shall maintain a reasonable diversification among investments
 11 unless, under the circumstances, it is clearly prudent not to do so. The board shall
 12 invest the assets of the fund in in-state investments to the extent that in-state
 13 investments are available and if the in-state investments

14 (1) have a risk level and expected return comparable to alternate
 15 investment opportunities; and

16 (2) are eligible for investment of fund assets under (a) of this section.

17 (d) The corporation may enter into and enforce all contracts necessary,
 18 convenient, or desirable for managing the fund's assets and corporate operations,
 19 including contracts for future delivery to implement asset allocation strategies or to
 20 hedge an existing equivalent ownership position in an investment.

21 (e) Before adoption of a regulation under (a) of this section, the regulation, in
 22 electronic format, shall be provided to the Legislative Budget and Audit Committee
 23 for review and comment. The board shall submit investment reports to the committee
 24 at least quarterly.

25 * **Sec. 2.** AS 37.13 is amended by adding a new section to article 1 to read:

26 **Sec. 37.13.206. Regulations.** (a) The board may adopt regulations to carry
 27 out the purposes of this chapter and shall adopt regulations under AS 37.13.120(a).
 28 The provisions of AS 44.62 (Administrative Procedure Act) regarding the adoption of
 29 regulations do not apply to regulations of the corporation.

30 (b) The board may adopt regulations under this section by motion, by
 31 resolution, or in any other manner permitted by the bylaws of the corporation.

1 (c) Except as provided in (f) of this section, at least 15 days before the
2 adoption, amendment, or repeal of a regulation, the corporation shall give public
3 notice of the proposed action by

4 (1) publishing the notice in a newspaper of general circulation or trade
5 or industry publication that the corporation prescribes;

6 (2) posting the notice on the Alaska Online Public Notice System;

7 (3) furnishing the notice, by electronic format, to all legislators; and

8 (4) providing a copy of the notice to every person who has filed a
9 request for notice of proposed regulation with the corporation.

10 (d) The public notice must include a statement of the time, place, and nature of
11 the proceedings for the adoption, amendment, or repeal of the regulation and an
12 informative summary of the subject of the proposed action.

13 (e) On the date and at the time and place designated in the notice, the
14 corporation shall give each interested person or the person's authorized representative,
15 or both, the opportunity to present statements, arguments, or contentions in writing,
16 with or without opportunity to present them orally. The board may accept material
17 presented by any form of communication and shall consider all factual, substantive,
18 and other relevant matter presented to it before adopting, amending, or repealing a
19 regulation. A regulation adopted, amended, or repealed by the board may vary from
20 the informative summary specified in (d) of this section if the subject of the action
21 taken on the regulation remains the same and if the original notice of the proposed
22 action was written so as to ensure that members of the public are reasonably notified
23 of the subject of the proposed action in order for members of the public to determine
24 whether their interests could be affected by the board's proposed action on that subject.

25 (f) A regulation or order of repeal of a regulation under this section may be
26 made as an emergency regulation if, in the order of adoption, the board states the facts
27 constituting the emergency and makes a finding that the adoption of the regulation or
28 repeal is necessary for the immediate preservation of the orderly operation of the
29 corporation. The requirements of (c) - (e) of this section do not apply to the initial
30 adoption of an emergency regulation or repeal under this subsection; however, upon
31 adoption of an emergency regulation or repeal under this subsection, the corporation

1 shall, within 10 days after that adoption, comply with the notice procedures specified
 2 in (c) - (e) of this section. An emergency regulation or repeal adopted under this
 3 subsection does not remain in effect for more than 120 days unless, before the
 4 expiration of that period, the corporation complies with the procedures specified in (c)
 5 - (e) of this section.

6 (g) A regulation adopted under this section takes effect immediately upon its
 7 adoption by the board or at another time specified in the order of adoption. The
 8 regulation shall be submitted to the lieutenant governor for publication in the Alaska
 9 Administrative Code and register. Within 45 days after adoption of a regulation under
 10 this section, the corporation shall provide a copy of the adopted regulation to the chair
 11 of the Administrative Regulation Review Committee (AS 24.20.400).

12 * **Sec. 3.** AS 37.13.205 is repealed.

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

15 REGULATIONS. The Board of Trustees of the Alaska Permanent Fund Corporation
 16 may immediately adopt regulations under AS 37.13.206, added by sec. 2 of this Act,
 17 necessary to implement the changes made by sec. 1 of this Act. The regulations may not take
 18 effect before January 1, 2006.

19 * **Sec. 5.** Sections 2 - 4 of this Act take effect immediately under AS 01.10.070(c).

20 * **Sec. 6.** Section 1 of this Act takes effect January 1, 2006.