HOUSE BILL NO. 303

IN THE LEGISLATURE OF THE STATE OF ALASKA

THIRTY-THIRD LEGISLATURE - SECOND SESSION

BY REPRESENTATIVE CARPENTER

Introduced: 1/31/24
Referred: Finance

A BILL

FOR AN ACT ENTITLED

"An Act relating to the duties of the Alaska Retirement Management Board; relating to the duties of the Board of Trustees of the Alaska Permanent Fund Corporation; and providing for an effective date."

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

*** Section 1.** AS 37.10.220(a) is amended to read:

(a) The board shall

(1) hold regular and special meetings at the call of the chair or of at least five members; meetings are open to the public, and the board shall keep a full record of all its proceedings;

(2) after reviewing recommendations from the Department of Revenue, adopt investment policies for each of the funds entrusted to the board;

(3) determine the appropriate investment objectives for the defined benefit plans established under the teachers' retirement system under AS 14.25 and the public employees' retirement system under AS 39.35;

(4) assist in prescribing the policies for the proper operation of the systems and take other actions necessary to carry out the intent and purpose of the systems in accordance with AS 37.10.210 - 37.10.390;

(5) provide a range of investment options and establish the rules by which participants can direct their investments among those options with respect to accounts established under

(A) AS 14.25.340 - 14.25.350 (teachers' retirement system defined contribution individual accounts);

(B) AS 39.30.150 - 39.30.180 (State of Alaska Supplementary Annuity Plan);

(C) AS 39.35.730 - 39.35.750 (public employees' retirement system defined contribution individual accounts); and

(D) AS 39.45.010 - 39.45.060 (public employees' deferred compensation program);

(6) establish the rate of interest that shall be annually credited to each member's individual contribution account in accordance with AS 14.25.145 and AS 39.35.100 and the rate of interest that shall be annually credited to each member's account in the health reimbursement arrangement plan under AS 39.30.300 - 39.30.495; the rate of interest shall be adopted on the basis of the probable effective rate of interest on a long-term basis, and the rate may be changed from time to time;

(7) adopt a contribution surcharge as necessary under AS 39.35.160(c);

(8) coordinate with the retirement system administrator to have an annual actuarial valuation of each retirement system prepared to determine system assets, accrued liabilities, and funding ratios and to certify to the appropriate budgetary authority of each employer in the system

(A) an appropriate contribution rate for normal costs; and

(B) an appropriate contribution rate for liquidating any past service liability; in this subparagraph, the appropriate contribution rate for liquidating the past service liability of the defined benefit retirement plan under AS 14.25.009 - 14.25.220 or the past service liability of the defined benefit retirement plan under AS 39.35.095 - 39.35.680 must be determined by a level percent of pay method based on amortization of the past service liability for a closed term of 25 years;

(9) review actuarial assumptions prepared and certified by a member of the American Academy of Actuaries and conduct experience analyses of the retirement systems not less than once every four years, except for health cost assumptions, which shall be reviewed annually; the results of all actuarial assumptions prepared under this paragraph shall be reviewed and certified by a second member of the American Academy of Actuaries before presentation to the board;

(10) contract for an independent audit of the state's actuary not less than once every four years;

(11) contract for an independent audit of the state's performance consultant not less than once every four years;

(12) obtain an external performance review to evaluate the investment policies of each fund entrusted to the board and report the results of the review to the appropriate fund fiduciary;

(13) by the first day of each regular legislative session, report to the governor, the legislature, and the individual employers participating in the state's retirement systems on the financial condition of the systems in regard to

(A) the valuation of trust fund assets and liabilities;

(B) current investment policies adopted by the board;

(C) a summary of assets held in trust listed by the categories of investment;

(D) the income and expenditures for the previous fiscal year;

(E) the return projections for the next calendar year;

(F) one-year, three-year, five-year, and 10-year investment performance for each of the funds entrusted to the board; and

(G) other statistical data necessary for a proper understanding of the financial status of the systems;

(14) submit quarterly updates of the investment performance reports to the Legislative Budget and Audit Committee;

(15) develop an annual operating budget; [AND]

(16) administer pension forfeitures required under AS 37.10.310 using the procedures of AS 44.62 (Administrative Procedure Act)**<u>;</u>**

<u>(17) broadcast each board meeting live and make a recording of the broadcast publicly available on the board's Internet website within seven days after the meeting and for at least 10 years after the date of the meeting;</u>

<u>(18) publish on the board's Internet website the report provided by a firm or service provider authorized to vote shares under AS 37.10.225(d), and, before a proxy vote, the expected vote of shares</u>.

*** Sec. 2.** AS 37.10 is amended by adding a new section to read:

Sec. 37.10.225. Defined benefit pension plans. (a) In exercising its duties with respect to a defined benefit retirement plan, the board shall

(1) act solely in the pecuniary interest of plan members and beneficiaries, provide pecuniary benefits to members and beneficiaries, and defray reasonable administrative expenses;

(2) apply the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent person in a like position who is familiar with those matters would exercise in the conduct of an enterprise of like character and with like aims;

(3) maintain diversification among investments to minimize risk of large losses unless, under the circumstances, it is clearly prudent not to do so;

(4) vote all shares held directly or indirectly by or on behalf of the plan solely in the pecuniary interest of members.

(b) In exercising its duties with respect to a defined benefit retirement plan, the board may not

(1) rely on nonpecuniary factors when

(A) evaluating an investment; or

(B) evaluating or exercising a right appurtenant to an investment;

(2) promote a nonpecuniary benefit or goal;

(3) rely on an environmental, social, corporate governance, or other similar consideration as a pecuniary factor, unless

(A) the consideration presents economic risk or opportunity that a qualified investment professional would consider material under generally accepted investment theories;

(B) the board relies on a prudent assessment of risk and return when weighing the consideration;

(C) the board examines the level of diversification, degree of liquidity, and the potential risk and return of the consideration compared with available alternative investments that would play a similar role in the plan portfolio, including an evaluation of whether the plan can achieve greater returns through investments that rank poorly on the consideration;

(4) vote shares held directly or indirectly by or on behalf of the plan to further nonpecuniary environmental, social, political, ideological, or other benefits or goals.

(c) Each trustee shall agree in writing to act based only on pecuniary factors when exercising duties related to a defined benefit retirement plan, including when voting shares or proxies.

(d) The board may follow the recommendations of or delegate authority to vote shares held directly or indirectly or on behalf of the plan to a proxy advisory firm or similar service provider only if the firm or service provider agrees in writing to follow proxy voting guidelines consistent with the board's obligation to vote shares held directly or indirectly by or on behalf of the plan solely in the pecuniary interest of members. A firm or service provider authorized to vote shares under this subsection shall report an expected vote to the board not later than 14 days before voting shares, tabulate total votes annually, and provide an annual vote report to the board. The report must include a vote caption, the plan's vote, the recommendation of company management, and the firm or service provider's recommendation if any.

(e) In this section,

(1) "material," when used to qualify a risk or return, means a risk or return in which there is a substantial likelihood that a reasonable investor would attach importance when evaluating the potential financial risks or returns of an existing or prospective investment or when exercising or declining to exercise any right

appurtenant to securities; "material" does not include

(A) furthering nonpecuniary, environmental, social, political, ideological, or other goals or objectives;

(B) a portion of a risk or return that primarily relates to events that involve a high degree of uncertainty regarding their occurrence and are systemic, general, or not investment-specific in nature;

(2) "nonpecuniary" includes an action taken or factor considered by the board with a purpose to further environmental, social, political, or ideological goals;

(3) "pecuniary" means materially affecting the financial risk or financial return of an investment based on appropriate investment horizons consistent with plan investment objectives and funding policy.

*** Sec. 3.** AS 37.10 is amended by adding a new section to read:

Sec. 37.10.320. Investment relationship report. (a) The board shall, not later than November 1 of each year, submit a report to the Department of Revenue describing investment relationships maintained by each retirement system.

(b) The report must include

(1) for each limited partnership that the system is affiliated with,

(A) the name of the limited partnership;

(B) the date the system first affiliated with the limited partnership;

(C) the amount of capital the system committed and contributed to the limited partnership and the amount that the limited partnership distributed;

(D) costs or fees the system paid or owed the limited partnership during the previous fiscal year;

(E) the annualized rate of return on capital invested in the limited partnership;

(F) an evaluation of the partnership performance against a passive benchmark.

(2) for each investment manager and consulting firm that the system contracts with for investment management services,

(A) the net value of the assets managed under the contract;

(B) the nature of services provided;

(C) gross fiscal year performance;

(D) net fiscal year performance;

(E) management fees, performance fees, carried interest fees, or any other fees charged to the system.

*** Sec. 4.** AS 37.13.050 is amended by adding a new subsection to read:

(d) A member shall agree in writing to comply with the requirement under AS 37.13.120 to act based only on pecuniary factors when engaging with an investment adviser representative as defined in AS 45.56.900 and when voting shares or proxies.

*** Sec. 5.** AS 37.13 is amended by adding a new section to read:

Sec. 37.13.075. Meetings. In addition to the requirements of AS 44.62.310 - 44.62.319 (Open Meetings Act), the board shall keep a full record of all of its proceedings, and on the board's Internet website broadcast live audio and video of each meeting of the board, archive meeting audio and video for not less than 10 years, and upload a link to archived video and audio not later than seven days after a meeting.

*** Sec. 6.** AS 37.13.120(a) is amended to read:

(a) The board shall adopt regulations specifically designating the types of income-producing investments eligible for investment of fund assets. **The board shall act solely in the pecuniary interest of the fund, provide pecuniary benefits to the fund, and defray reasonable administrative expenses.** When adopting regulations authorized by this section or managing and investing fund assets, the **corporation shall apply the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent person in a like position who is familiar with those matters would exercise in the conduct of an enterprise of like character and with like aims** [PRUDENT-INVESTOR RULE SHALL BE APPLIED BY THE CORPORATION. THE PRUDENT-INVESTOR RULE AS APPLIED TO INVESTMENT ACTIVITY OF THE FUND MEANS THAT THE CORPORATION SHALL EXERCISE THE JUDGMENT AND CARE UNDER THE

CIRCUMSTANCES THEN PREVAILING THAT AN INSTITUTIONAL INVESTOR OF ORDINARY PRUDENCE, DISCRETION, AND INTELLIGENCE EXERCISES IN THE DESIGNATION AND MANAGEMENT OF LARGE INVESTMENTS ENTRUSTED TO IT, NOT IN REGARD TO SPECULATION, BUT IN REGARD TO THE PERMANENT DISPOSITION OF FUNDS, CONSIDERING PRESERVATION OF THE PURCHASING POWER OF THE FUND OVER TIME WHILE MAXIMIZING THE EXPECTED TOTAL RETURN FROM BOTH INCOME AND THE APPRECIATION OF CAPITAL].

* **Sec. 7.** AS 37.13.120(c) is amended to read:

(c) The board shall maintain [A REASONABLE] diversification among investments **<u>to minimize risk of large losses</u>** unless, under the circumstances, it is clearly prudent not to do so. The board shall invest the assets of the fund in in-state investments to the extent that in-state investments are available and if the in-state investments

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

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

* **Sec. 8.** AS 37.13.120 is amended by adding new subsections to read:

(f) The board shall vote all shares held directly or indirectly by or on behalf of the fund solely in the pecuniary interest of the fund.

(g) The board may not

(1) rely on nonpecuniary factors when

(A) evaluating an investment; or

(B) evaluating or exercising a right appurtenant to an investment;

(2) promote nonpecuniary benefits or goals;

(3) rely on an environmental, social, corporate governance, or other similar consideration as a pecuniary factor, unless

(A) the consideration presents economic risk or opportunity that a qualified investment professional would consider material under generally accepted investment theories;

(B) the board relies on a prudent assessment of risk and return when weighing the consideration;

(C) the board examines the level of diversification, degree of liquidity, and the potential risk and return of the consideration compared with available alternative investments that would play a similar role in the fund portfolio, including an evaluation of whether the fund can achieve greater returns through investments that rank poorly on the consideration;

(4) vote shares held directly or indirectly by or on behalf of the fund to further nonpecuniary environmental, social, political, ideological, or other benefits or goals;

(5) follow the recommendations of or delegate authority to vote shares held directly or indirectly or on behalf of the fund a proxy advisory firm or similar service provider unless the firm or service provider agrees in writing to follow proxy voting guidelines consistent with the board's obligation to vote shares held directly or indirectly by or on behalf of the fund solely in the pecuniary interest of the fund.

(h) The board may follow the recommendations of or delegate authority to vote shares held directly or indirectly or on behalf of the fund to a proxy advisory firm or similar service provider only if the firm or service provider agrees in writing to follow proxy voting guidelines consistent with the board's obligation to vote shares held directly or indirectly by or on behalf of the fund solely in the pecuniary interest of the fund. A firm or service provider authorized to vote shares under this subsection shall report an expected vote to the board not later than 14 days before voting shares, tabulate total votes annually, and provide an annual vote report to the board. The report must include a vote caption, the fund's vote, the recommendation of company management, and the firm or service provider's recommendation if any. The board shall publish, on the board's Internet website, the reports provided under this subsection and, before a proxy vote, the expected vote of shares.

(i) In this section,

(1) "material," when used to qualify a risk or return, means a risk or return in which there is a substantial likelihood that a reasonable investor would attach importance when evaluating the potential financial risks or returns of an existing or

prospective investment or when exercising or declining to exercise any right appurtenant to securities; "material" does not include

(A) furthering nonpecuniary, environmental, social, political, ideological, or other goals or objectives;

(B) a portion of a risk or return that primarily relates to events that involve a high degree of uncertainty regarding their occurrence and are systemic, general, or not investment-specific in nature;

(2) "nonpecuniary" includes an action taken or factor considered by the board with a purpose to further environmental, social, political, or ideological goals;

(3) "pecuniary" means materially affecting the financial risk or financial return of an investment based on appropriate investment horizons consistent with fund investment objectives and funding policy.

* **Sec. 9.** AS 37.13.170 is amended by adding new subsections to read:

(b) The board shall, not later than November 1 of each year, submit a report to the Department of Revenue describing investment relationships maintained by the fund.

(c) The report under (b) of this section must include

(1) for each limited partnership that the fund is affiliated with,

(A) the name of the limited partnership;

(B) the date the fund first affiliated with the limited partnership;

(C) the amount of capital the fund committed and contributed to the limited partnership and the amount that the limited partnership distributed;

(D) costs or fees the fund paid or owed the limited partnership during the previous fiscal year;

(E) the annualized rate of return on capital investments in the limited partnership;

(F) an evaluation of the partnership performance against comparable passive benchmark;

(2) for each investment manager and consulting firm that the fund

contracts with for investment management services,

(A) the net value of the assets managed under the contract;

(B) the nature of services provided;

(C) gross fiscal year performance;

(D) net fiscal year performance;

(E) management fees, performance fees, carried interest fees, or any other fees charged to the fund.

* **Sec. 10.** This Act takes effect immediately under AS 01.10.070(c).