

Introduced: 2/8/79
Referred: Judiciary and
Finance

1 IN THE SENATE

BY SUMNER

2 SENATE BILL NO. 122

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 ELEVENTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act relating to the permanent fund; amending
7 Appellate Rule 45, Alaska Rules of Court Procedure; and
8 providing for an effective date."

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

10 * Section 1. AS 37.10.065(a) is amended to read:

11 (a) The Alaska Permanent Fund consists of 25 per cent of all
12 mineral lease rentals, royalties, royalty sale proceeds, federal mineral
13 revenue sharing payments and bonuses received by the state. The commis-
14 sioner of revenue shall deposit in the Alaska Permanent Fund 25 per cent
15 of the receipts from these sources at least once each month. The com-
16 missioner of revenue, unless otherwise instructed in accordance with
17 AS 37.10.110, shall invest the money in the Alaska Permanent Fund in
18 income-producing investments of the following types:

19 (1) obligations of, or obligations insured or guaranteed by,
20 the United States or agencies or instrumentalities of the United States;

21 (2) obligations secured by reserves paid in by the United
22 States or agencies or instrumentalities of the United States or obliga-
23 tions of corporations in which the United States is a shareholder or
24 member;

25 (3) certificates of deposit issued by United States domestic
26 banks which are members of the Federal Deposit Insurance Corporation and
27 secured as to the payment of principal and interest in accordance with
28 Alaska law;

29 (4) corporate investment-grade securities;

1 (5) bankers' acceptance drawn on and accepted by United
2 States banks which each have a combined capital and surplus aggregating
3 at least \$100,000,000;

4 (6) repurchase agreements, the securities underlying the
5 agreements being any of the items in (1) - (5) of this subsection;

6 (7) deposits of federally insured savings and loan associa-
7 tions not to exceed 10 per cent of each savings and loan association's
8 deposits exclusive of federal, state, and municipal deposits;

9 (8) fixed term certificates of debentures of federally in-
10 sured credit unions not to exceed 10 per cent of each credit union's
11 shares.

12 * Sec. 2. AS 37.10 is amended by adding new sections to read:

13 ARTICLE 5. PERMANENT FUND INCOME.

14 Sec. 37.10.110. DISTRIBUTION OF INCOME TO RESIDENTS. (a) No
15 later than June 30, 1981, the commissioner of revenue shall issue one
16 share of the Alaska Permanent Fund to each resident of the state, re-
17 gardless of age, who has been a resident continuously since July 1,
18 1980, and who, no later than February 1, 1981, has filed with the com-
19 missioner a statement of residency. The commissioner shall notify the
20 public of the availability of shares under this subsection and the
21 method for qualifying for shares. The notification shall be by publi-
22 cation in at least one newspaper of statewide circulation, by radio and
23 television announcements, and by other means the commissioner determines
24 to be appropriate and reasonable.

25 (b) One share issued under (a) of this section represents the
26 total principal amount of the permanent fund at the time of the annual
27 distribution of income under (c) of this section divided by the number
28 of shares issued.

29 (c) Beginning July 1, 1981, and annually thereafter, the commis-

1 sioner shall distribute the net income from general investments of the
2 permanent fund for the previous fiscal year to the qualified share-
3 holders in accordance with the procedures established by this section.

4 (d) The net income from general investments of the permanent fund
5 shall be distributed to shareholders in proportion to the amounts of
6 their shares which are in general investments. The amount or a part of
7 the amount represented by one share is considered to be in general
8 investments if the shareholder has not elected to direct under AS 37.-
9 10.120(a) the amount or part of the amount represented by the share.

10 (e) A share issued under this section is not transferable by sale,
11 donation, lien, judgment, devise, or any other method. Alienation of a
12 share is void as against public policy. Upon a shareholder's death or
13 the termination of his residency, his share lapses to the state and
14 shall be counted as a full share for the purposes of (b) of this sec-
15 tion. The lapsed share shall be invested for the state by the commis-
16 sioner in accordance with AS 37.10.065(a). Income of the lapsed share
17 shall be allocated to the general fund.

18 (f) Possession of a share imparts no right to ownership or posses-
19 sion of the principal of the permanent fund it represents; possession of
20 a share imparts only those rights specified in AS 37.10.110 - 37.10.150.

21 Sec. 37.10.120. DIRECTED INVESTMENTS. (a) Within 60 days after
22 the determination under (b) of this section of the amount of permanent
23 fund principal available to each shareholder for directed investments, a
24 shareholder may notify the commissioner of his election to direct the
25 investment of the available amount of permanent fund principal or a part
26 of it. The shareholder may direct investments to be made in any of the
27 investments listed by the commissioner in accordance with AS 37.10.150-
28 (b). The notification shall indicate the specific investments to be
29 made and the specific amounts to be invested. Unless the shareholder

1 notifies the commissioner otherwise, the commissioner shall consider any
2 investments directed by the shareholder from the previous determination
3 under (b) of this section as part of the shareholder's directions for
4 the current determination. The commissioner shall distribute net income
5 as it is received from investments made under this subsection to the
6 shareholder directing the investments.

7 (b) The amount of permanent fund principal for which the share-
8 holder may direct investments under this section shall be determined by
9 the commissioner when the principal of the permanent fund reaches
10 \$2 billion and at each \$1 billion increase in principal thereafter. The
11 amount of permanent fund principal available to a shareholder for
12 directed investments is equal to the value of one share, as determined
13 under AS 37.10.110(b), at the time the principal reaches \$2 billion and
14 at the time of each subsequent \$1 billion increase in principal, as
15 appropriate. The commissioner shall give public notice of the amount
16 available for directed investments by publication in at least one news-
17 paper of statewide circulation, by radio and television announcements,
18 and by any other means the commissioner determines to be reasonable and
19 appropriate.

20 (c) Upon receipt of notification provided in accordance with (a)
21 of this section, the commissioner or his designee shall make investments
22 of permanent fund principal in accordance with the notification.

23 (d) If the notification under (c) of this section is defective in
24 that it directs investment of an amount greater than that which is
25 available under (b) of this section to a shareholder, or in that it
26 contains directions which are unclear or which the commissioner or his
27 designee is not able to follow, the commissioner or his designee shall
28 make reasonable efforts to expeditiously inform the shareholder of the
29 defect. If the shareholder fails to revise his directions to cure the

1 defect or fails to notify the commissioner or his designee of the revi-
2 sion within the time period established in (a) of this section, or if
3 there is insufficient time to allow the commissioner or his designee to
4 inform the shareholder of the defect within the time period established
5 in (a) of this section, the shareholder's investment directions are
6 void, and the shareholder shall share in the distribution of income
7 under AS 37.10.110.

8 (e) If the notification under (c) of this section directs invest-
9 ment of an amount less than that which is available under (b) of this
10 section to a shareholder, the commissioner or his designee shall make
11 the investments specified in the notification, and the shareholder shall
12 receive, in addition to net income earned by the directed investments, a
13 proportionate share of the distribution of net income under AS 37.10.110
14 for the amount not invested by his direction.

15 (f) A shareholder may direct the commissioner or his designee to
16 sell an investment directed under (a) of this section at any time. The
17 shareholder may direct the investment of the principal recovered at the
18 sale in another eligible investment under (a) of this section or may
19 allow the principal recovered at the sale to be invested by the commis-
20 sioner in accordance with AS 37.10.065. If the shareholder decides to
21 allow investment by the commissioner in accordance with AS 37.10.065,
22 the shareholder may not direct any investments until the next determi-
23 nation under (a) of this section.

24 (g) The commissioner shall invest, in accordance with AS 37.10.-
25 065, and distribute the net income of, in accordance with AS 37.10.110,
26 any increase in permanent fund principal during periods between deter-
27 minations under (b) of this section.

28 **Sec. 37.10.130. DETERMINATION OF RESIDENCY.** (a) An individual
29 who applies for a share of the Alaska Permanent Fund must prove his

1 eligibility to the satisfaction of the commissioner. The commissioner
2 may not issue an individual a share or make a payment to an individual
3 until proof of that individual's eligibility sufficient to satisfy a
4 reasonable person has been made to the commissioner.

5 (b) Proof of eligibility may be from school attendance records,
6 state and local tax and licensing records, voter registration records,
7 birth and marriage certificates, selective service records, sworn affi-
8 davits from others having knowledge of an individual's residence, and
9 from other forms of documentary evidence which a reasonable person would
10 rely on in the conduct of his own affairs. An affidavit from an indi-
11 vidual without supporting evidence of eligibility is not satisfactory
12 proof of eligibility.

13 (c) Upon determination of an individual's eligibility for a share,
14 the commissioner shall, by first class mail, notify the individual of
15 that determination. If the individual is determined to be ineligible,
16 he shall be informed by certified mail, of the following:

17 (1) the reason for his ineligibility;

18 (2) that he may file additional proof and file a request for
19 a hearing before the commissioner to present proof of his eligibility;
20 and

21 (3) that the decision becomes final and unappealable 30 days
22 after receipt of the notification unless, within that time, the indivi-
23 dual files additional proof or files a request for a hearing before the
24 commissioner.

25 (d) If an individual does not file additional proof or file a
26 request for a hearing with the commissioner within 30 days after his
27 receipt of the commissioner's notice of the determination, the commis-
28 sioner's decision becomes final as to the period involved and there is
29 no further appeal. The time limit is jurisdictional.

1 (e) If an individual files additional proof or files a request for
2 a hearing with the commissioner within 30 days after he receives the
3 commissioner's notice of the determination and, after the additional
4 evidence has been considered or the hearing held, he is still determined
5 to be ineligible, he may appeal to the superior court within 30 days
6 after he receives notice of the final decision. The time limit is
7 jurisdictional, and no appeal may be brought after it has elapsed. In
8 considering the appeal, the superior court may review solely on the
9 record which was before the commissioner and must apply the reasonable
10 basis test to factual matters and its own judgment on the law. The same
11 standard of review applies if a further appeal is taken to the supreme
12 court.

13 Sec. 37.10.140. CONFIDENTIALITY. An investment made at the direc-
14 tion of a shareholder in accordance with AS 37.10.120(a) is confiden-
15 tial.

16 Sec. 37.10.150. REGULATIONS. The commissioner may adopt regula-
17 tions in accordance with the Administrative Procedure Act (AS 44.62) for
18 the administration and enforcement of AS 37.10.110 - 37.10.150, in-
19 cluding, but not limited to, regulations relating to the allocation of
20 permanent fund receipts to income and to principal.

21 Sec. 37.10.155. ELIGIBLE DIRECTED INVESTMENTS. (a) The commis-
22 sioner shall, by regulation, establish a list of at least 100 specific
23 investments which may be made at the direction of shareholders in accor-
24 dance with AS 37.10.120(a). The commissioner shall include in the list
25 only those investments which, in his opinion, accord with the prudent-
26 man rule.

27 (b) An investment of permanent fund principal made under AS 37.-
28 10.120(a) in an investment which is removed by the commissioner from the
29 list of eligible investments shall be redeemed by the commissioner or

1 his designee at the earliest possible time, and the commissioner or his
2 designee shall notify the shareholder at whose direction the investment
3 was made of the redemption. The shareholder may direct the commissioner
4 to reinvest the amount redeemed in eligible investments in accordance
5 with AS 37.10.120(d).

6 Sec. 37.10.160. DEFINITIONS. For the purposes of AS 37.10.110 -
7 37.10.160,

8 (1) "commissioner" means the commissioner of revenue;

9 (2) "directed investments" means investments of permanent
10 fund principal made by the commissioner of revenue or his designee under
11 the direction of a shareholder in accordance with AS 37.10.120(a);

12 (3) "general investments" means investments of permanent fund
13 principal made by the commissioner of revenue or his designee in accor-
14 dance with AS 37.10.065 but not under the direction of a shareholder in
15 accordance with AS 37.10.120(a);

16 (4) "net income" means total income to the Alaska Permanent
17 Fund reduced by costs directly related to the attainment of income;

18 (5) "prudent-man rule" means the investment policy requiring
19 exercise by the investor of the care, skill, and prudence in making
20 investment decisions which would be exercised by a reasonably prudent
21 person in managing his own property, taking into consideration maximum
22 profit and safety of principal;

23 (6) "resident" means an individual who maintains a permanent
24 place of abode in the state with the intention of making the state his
25 permanent place of residence and who resides in the state continuously
26 except for temporary purposes only and with the intent of returning; no
27 person may be considered to have gained a residence solely by reason of
28 his presence nor may he lose it solely by reason of his absence while in
29 the civil or military service of this state or of the United States or

1 of his absence because of marriage to a person engaged in the civil or
2 military service of this state or the United States; while a student at
3 an institution of learning; while in an institution or asylum at public
4 expense; while confined in public prison; while engaged in the naviga-
5 tion of waters of this state, of the United States, or of the high seas;
6 or while residing upon an Indian or military reservation; a minor takes
7 the residence of his parent or of his legal guardian; a married woman
8 shall establish her own residence and does not presumptively take the
9 residence of her husband;

10 (7) "shareholder" means a person to whom the commissioner of
11 revenue issues a share of the Alaska Permanent Fund under AS 37.10.110.

12 * Sec. 3. In sec. 2 of this Act, the enactment of AS 37.18.060(d) and (e)
13 has the effect of imposing a jurisdictional limitation on the operation of
14 Appellate Rule 45, Alaska Rules of Court Procedure, in that an appeal under
15 the rule (having to do with appeals from administrative decisions to the
16 superior court) must be brought from the commissioner's decisions as to
17 eligibility within 30 days or the court will have no jurisdiction to hear it.
18 This is an exercise of the legislature's authority over the jurisdiction of
19 the courts, but because it also effects an implied, narrow amendment to
20 Appellate Rule 45 by imposing this jurisdictional time limit instead of the
21 procedural time limit of the same duration which will continue to apply to
22 other appeals, this section has also been included.

23 * Sec. 4. This Act takes effect July 1, 1979.
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