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1 IN THE SENATE

BY THE FINANCE COMMITTEE

2 HOUSE CS FOR SENATE BILL NO. 161

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 nonrenewable resource revenues; to  
7 legislative oversight; and providing for an effective  
8 date."

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

10 \* Section 1. FINDINGS. The legislature finds that there is a substantial  
11 need for oversight of the performance of those agencies of the state which  
12 perform lending or investment functions since those functions do not receive  
13 the detailed review to which other expenditures of public money are subject,  
14 and therefore the knowledge necessary for sound legislation in this area is  
15 not readily available. There is a need for legislative oversight which will  
16 provide information on the policy and performance of these agencies, the  
17 extent to which the agencies conform to statutory intent, and the impact of  
18 their performance on the economy and the state treasury.

19 \* Sec. 2. AS 24.20 is amended by adding new sections to read:

20 Sec. 24.20.156. PURPOSES. The purposes of the Legislative Budget  
21 and Audit Committee include

22 (1) monitoring and reporting

23 (A) the performance of the agencies of the state which  
24 perform lending or investment functions,

25 (B) the extent to which the performance of these agen-  
26 cies has contributed to the fiscal, financial, economic and social  
27 improvement of the state and its citizens,

28 (C) the extent to which these agencies and the executive  
29 have prepared and coordinated short and long term economic, fiscal,

1 investment and financial planning;

2 (2) holding these agencies accountable to statutory intent in  
3 their performance by recommending, where appropriate, changes in policy  
4 to the agencies or changes in legislation to the legislature;

5 (3) annually reviewing the extent of capitalization of the  
6 investment funds of the state and alternative investment policy for the  
7 general fund surplus and recommending needed legislation.

8 Sec. 24.20.206. DUTIES. The Legislative Budget and Audit Commit-  
9 tee shall

10 (1) report to the legislature its recommendations relating to  
11 the confirmation of suggested appointees to the Board of Trustees of the  
12 Alaska Permanent Fund Corporation and the Board of Trustees of the  
13 Alaska Renewable Resources Corporation;

14 (2) annually review the long-range operating plans of all  
15 agencies of the state which perform lending or investment functions;

16 (3) review periodic reports from all agencies of the state  
17 which perform lending or investment functions;

18 (4) present a complete report of investment programs, plans,  
19 performance, and policies of all agencies of the state which perform  
20 lending or investment functions to the legislature within 30 days after  
21 the convening of each regular session;

22 (5) present to the legislature within 30 days after the con-  
23 vening of each regular session a review of the report of the governor  
24 under AS 37.07.020(d) with recommendations for any needed legislation;

25 (6) in conjunction with the finance committee of each house  
26 recommend annually to the legislature the investment policy for the  
27 general fund surplus and for the income from the permanent fund;

28 (7) provide for an annual post audit and annual operational  
29 and performance evaluation of the Alaska Permanent Fund Corporation in-

1 vestments and investment programs.

2 Sec. 24.20.209. RECORDS. The Legislative Budget and Audit Commit-  
3 tee shall keep a complete file of all reports presented to it and all  
4 reports presented by it to the legislature or to a legislative commit-  
5 tee.

6 \* Sec. 3. AS 24.20.201(a) is amended by adding new paragraphs to read:

7 (8) hold public hearings on the confirmation of the members  
8 of the Board of Trustees of the Alaska Permanent Fund Corporation, and  
9 the members of the Board of Trustees of the Alaska Renewable Resources  
10 Corporation;

11 (9) make recommendations concerning the structure and operat-  
12 ing practices of all agencies of the state which perform lending or  
13 investment functions;

14 (10) enter into and enforce all contracts necessary or desira-  
15 ble for the functions of the committee.

16 \* Sec. 4. AS 37.07.020 is amended by adding a new subsection to read:

17 (d) The governor shall annually, before the convening of the  
18 legislature, report to the legislature through the Legislative Budget  
19 and Audit Committee the long-range fiscal and economic consequences of

20 (1) alternate levels of capitalization of the investment  
21 funds of the state; and

22 (2) alternative investment policy for the general fund sur-  
23 plus.

24 \* Sec. 5. AS 37 is amended by adding a new chapter to read:

25 CHAPTER 13. ALASKA PERMANENT FUND.

26 Sec. 37.13.010. ALASKA PERMANENT FUND. (a) Under art IX, sec. 15  
27 of the state constitution, there is established as a separate fund the  
28 Alaska permanent fund. The Alaska permanent fund consists of

29 (1) 50 per cent of mineral lease bonuses remaining after

1 deduction of any amounts allocated

2 (A) to the Alaska Native Fund under the Alaska Native  
3 Claims Settlement Act and implementing state legislation; and

4 (B) in AS 37.11.020 to the Alaska renewable resources  
5 development fund;

6 (2) 25 per cent of all mineral lease rentals, royalties,  
7 royalty sale proceeds, and federal mineral revenue sharing payments  
8 received by the state from mineral leases issued on or before July 1,  
9 1979;

10 (3) 50 per cent of all mineral lease rentals, royalties,  
11 royalty sale proceeds, and federal mineral revenue sharing payments  
12 received by the state from mineral leases issued after July 1, 1979; and

13 (4) any other money appropriated or otherwise allocated by  
14 law to the Alaska permanent fund.

15 (b) Payments due the Alaska permanent fund under (a) of this  
16 section shall be made to the fund once each month.

17 (c) The Alaska permanent fund shall be managed by the Alaska  
18 Permanent Fund Corporation established in this chapter.

19 Sec. 37.13.020. FINDINGS. The people of the state, by constitu-  
20 tional amendment, have required the placement of at least 25 per cent of  
21 all mineral lease rentals, royalties, royalty sale proceeds, and federal  
22 mineral revenue sharing payments and bonuses received by the state into  
23 a permanent fund. The legislature finds with respect to the Alaska  
24 Permanent Fund Corporation that

25 (1) the corporation should provide a means of conserving a  
26 portion of the state's revenues from mineral resources to benefit all  
27 generations of Alaskans;

28 (2) the corporation's goal should be to maintain safety of  
29 principal while maximizing total return;

1 (3) the corporation should be used as a savings device  
2 managed to allow the maximum use of disposable income from the corpora-  
3 tion as needed for purposes designated by law.

4 Sec. 37.13.030. PURPOSE. It is the purpose of this chapter to  
5 provide a mechanism for the management and investment of those permanent  
6 fund assets allocated to the Alaska Permanent Fund Corporation in a  
7 manner consistent with the findings established in AS 37.13.020.

8 Sec. 37.13.040. ALASKA PERMANENT FUND CORPORATION. There is  
9 established the Alaska Permanent Fund Corporation. The corporation is a  
10 public corporation and government instrumentality in the Department of  
11 Revenue managed by a board of trustees but has a legal existence inde-  
12 pendent of and separate from the state. The purpose of the board is to  
13 manage and invest the assets of the corporation in accordance with this  
14 chapter.

15 Sec. 37.13.050. COMPOSITION OF BOARD OF TRUSTEES. (a) The Board  
16 of Trustees of the Alaska Permanent Fund Corporation consists of five  
17 members appointed by the governor and confirmed by a majority of the  
18 members of the legislature in joint session.

19 (b) The board shall annually elect a chairman from among its  
20 members.

21 Sec. 37.13.060. TERM OF OFFICE. The members of the board shall be  
22 appointed for terms of three years, and they may be reappointed subject  
23 to reconfirmation by a majority of the members of the legislature in  
24 joint session. Terms shall be staggered. Initial terms shall be two  
25 members serving for one year, two members serving for two years, and one  
26 member serving for three years.

27 Sec. 37.13.070. REMOVAL AND VACANCIES. (a) The governor may  
28 remove a member of the board from office by and with the consent of a  
29 majority of the members of the legislature in joint session. A removal

1 by the governor shall be in writing and state the reason for removal.  
2 If the legislature is not in session, the governor may suspend a member  
3 of the board. Upon suspension, a vacancy is not created but the board  
4 member may not participate in board business and may not be counted for  
5 purposes of establishing a quorum. The joint session shall be held  
6 within 30 days from the date of removal if the removal occurs while the  
7 legislature is in session or within 30 days of convening of the legis-  
8 lature if the legislature is not in session. If the legislature refuses  
9 to consent to his removal, the board member shall be reinstated to his  
10 position.

11 (b) A vacancy on the board shall be promptly filled by appointment  
12 by the governor and confirmation by a majority of the members of the  
13 legislature in joint session, and an appointee to fill a vacancy shall  
14 hold office for the balance of the term for which his predecessor on the  
15 board was appointed. If a vacancy arises on the board while the legis-  
16 lature is not in session, the governor may appoint an interim board  
17 member who shall exercise all powers of a permanent board member until  
18 such time as the legislature in joint session fails to confirm the  
19 appointment of the interim board member.

20 (c) A vacancy on the board does not impair the authority of a  
21 quorum of the board to exercise all the powers and perform all the  
22 duties of the board.

23 Sec. 37.13.080. QUALIFICATIONS OF BOARD OF TRUSTEES. (a) No  
24 individual may be appointed to the board who has not been a resident of  
25 the state for at least three years.

26 (b) No member of the board may hold any other state or federal  
27 office, position or employment, either elective or appointive, except as  
28 a member of the armed forces of the United States or of this state.

29 (c) At least three members of the board shall have recognized

1 competence and wide experience in finance, investments, or other busi-  
2 ness management-related field.

3 Sec. 37.13.090. QUORUM. Three members of the board constitute a  
4 quorum for the transaction of business and the exercise of the powers  
5 and duties of the board.

6 Sec. 37.13.100. COMPENSATION OF TRUSTEES. Members of the board  
7 receive an honorarium of \$250 for each meeting day if they attend the  
8 meeting and are entitled to per diem and travel allowances as provided  
9 by law for members of state boards and commissions.

10 Sec. 37.13.110. EMPLOYMENT OF PERSONNEL. The board may employ and  
11 determine the salary of an executive director. The executive director  
12 may, with the approval of the board, select and employ additional staff  
13 as necessary. No employee of the corporation, including the executive  
14 director, may be a member of the board. The executive director and all  
15 other employees of the board are in the exempt service under AS 39.25.

16 Sec. 37.13.120. CONFLICTS OF INTEREST. (a) Members of the board  
17 and the executive director are subject to the provisions of AS 39.50.

18 (b) If a member or employee acquires, owns or controls an in-  
19 terest, direct or indirect, in an entity or project in which corporation  
20 assets are invested, he shall immediately disclose the interest to the  
21 board. The disclosure is a matter of public record and shall be in-  
22 cluded in the minutes of the board meeting next following the disclo-  
23 sure.

24 Sec. 37.13.130. POWERS AND DUTIES. (a) The prudent-man rule  
25 shall be applied by the board in the management and investment of per-  
26 manent fund assets. The prudent-man rule as applied to investments of  
27 the corporation means that in making investments the board shall exer-  
28 cise the judgment and care under the circumstances then prevailing which  
29 an institutional investor of ordinary prudence, discretion, and intel-

1       ligence exercises in the management of large investments entrusted to it  
2       not in regard to speculation but in regard to the permanent disposition  
3       of funds, considering probable safety of capital as well as probable  
4       income.

5               (b) The corporation assets shall only be used for income-producing  
6       investments.

7               (c) The board shall maintain a reasonable diversification among  
8       corporation investments unless under the circumstances it is clearly  
9       prudent not to do so.

10              (d) The board shall submit long-range and quarterly investment  
11       reports to the Legislative Budget and Audit Committee.

12              (e) The corporation may not borrow funds or guarantee from princi-  
13       pal of the fund the obligations of others.

14              (f) The board may enter into and enforce all contracts necessary,  
15       convenient or desirable for purposes of the corporation.

16              (g) Subject to the limitations in (h) and (i) of this section, the  
17       board may invest corporation assets in

18                      (1) obligations of, or obligations insured by or guaranteed  
19       by, the United States or agencies or instrumentalities of the United  
20       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       which are secured as to the payment of principal and interest in accor-  
28       dance with Alaska law and for which a generally recognized secondary  
29       market exists;

1 (4) corporate debt securities which are rated AA or better by  
2 a nationally recognized rating service;

3 (5) short-term corporate promissory notes of the highest  
4 rating assigned by a nationally recognized rating service;

5 (6) bankers' acceptances drawn on and accepted by United  
6 States banks each of which have a combined capital and surplus aggrega-  
7 ting at least \$200,000,000;

8 (7) repurchase agreements, the securities underlying the  
9 agreements being any of the items in (1) - (5) of this subsection;

10 (8) the guaranteed portion of Federal Small Business Admini-  
11 stration loans;

12 (9) the portion of first lien real estate mortgages guaran-  
13 teed by the Federal Veterans Administration;

14 (10) the portions of business and industrial loans made under  
15 the Rural Development Act of 1972 which are guaranteed by the Farmer's  
16 Home Administration;

17 (11) the guaranteed portion of Farmer's Home Administration  
18 loans.

19 (h) Investments under (g)(4) of this section may not exceed 25 per  
20 cent of the total investments of the fund. Investments under (g)(8) -  
21 (11) of this section may not exceed in the aggregate 25 per cent of the  
22 total investments of the fund.

23 (i) No portion of the assets of the fund may be used for the pur-  
24 chase of bonds of a corporation, upon which any regular interest payment  
25 has been defaulted within five years before purchase, except bonds never  
26 in default but which have been outstanding for less than five years.

27 (j) The board shall establish and from time to time as necessary  
28 modify guidelines for the investment of the assets of the corporation.  
29 Before adoption of any guidelines the guidelines shall be reported to

1 the Legislative Budget and Audit Committee for review and comment.

2 (k) The board may invest corporation assets in in-state invest-  
3 ments if the in-state investments

4 (1) have a risk level and expected yield comparable to  
5 alternate investment opportunities; and

6 (2) are included in the list of permissible investments in  
7 (g) of this section.

8 Sec. 37.13.140. GAINS AND LOSSES. At the end of each fiscal year,  
9 the total amount of losses on the sales of securities, not offset by  
10 gains on the sales of securities during that year, shall be computed,  
11 with a portion of these losses to be deducted each fiscal year from the  
12 income and the resulting amount of income added to the principal of the  
13 fund. Losses taken on the sales of securities shall be accumulated over  
14 a period equal to the average remaining life of the securities sold,  
15 unless these losses are offset by gains on future sales of securities.  
16 In any fiscal year in which the gains on the sales of securities exceed  
17 the losses on the sales of securities, the excess shall be added to the  
18 principal of the fund.

19 Sec. 37.13.150. INCOME. The interest received in a year is the  
20 income of the corporation for that year. The income available for  
21 disbursement shall be determined on an averaging basis. For the first  
22 five years, income will be the simple averaging of the annual current  
23 return at cost. Subsequently, there will be a moving average current  
24 return, in which the latest fiscal year will replace the oldest year.  
25 The income available for disbursement will be the lesser of the latest  
26 fiscal year's income, or the average annual current income for the past  
27 five fiscal years of the fund at cost, and after adjustment for capital  
28 losses charged to that fiscal year.

29 Sec. 37.13.160. BOARD BUDGET. The board's operating budget is

1 from the general fund and is subject to the Executive Budget Act (AS  
2 37.07).

3 Sec. 37.13.170. AUDITS. The Legislative Budget and Audit Commit-  
4 tee shall provide for an annual post audit and annual operational and  
5 performance evaluations of the corporation's investments and investment  
6 programs.

7 Sec. 37.13.180. REPORTS AND PUBLICATIONS. No later than Septem-  
8 ber 30 of each year, the board shall publish a report of the corporation  
9 for distribution to the governor, legislature, and the public. The  
10 report shall be written in easily understandable language. The report  
11 must include financial statements audited by independent outside audi-  
12 tors, a statement of the amount of money received by the permanent fund  
13 from each investment during the period covered, a statement of corpora-  
14 tion investments including an appraisal at market value, a description  
15 of corporation investment activity during the period covered by the  
16 report, a comparison of the corporation performance with the intended  
17 goals contained in AS 37.13.020, an examination of the impact of the  
18 investment criteria of this chapter on the corporation portfolio with  
19 recommendations of any needed changes and any other information the  
20 board believes would be of interest to the governor, the legislature,  
21 and the public. The annual income statement and balance sheet of the  
22 corporation shall be published in at least one newspaper in each judi-  
23 cial district. The income statement and balance sheet for the two  
24 fiscal years preceding the publication of the election pamphlet under  
25 AS 15.57 shall be included in that pamphlet. The board may also publish  
26 other reports it considers desirable to carry out its purpose.

27 Sec. 37.13.190. TAX EXEMPTION. The corporation is exempt from all  
28 taxes and assessments in the state. All security instruments issued by  
29 the corporation, their transfer, and their income are exempt from all

1 taxes and assessments in the state.

2 Sec. 37.13.200. POLITICAL ACTIVITIES. The resources of the cor-  
3 poration may not be used to finance or influence any political activi-  
4 ties.

5 Sec. 37.13.210. PUBLIC ACCESS TO INFORMATION. Information in the  
6 possession of the corporation is a public record, except that infor-  
7 mation which discloses the particulars of the business or affairs of a  
8 private enterprise or investor is confidential and is not a public  
9 record. Confidential information may be disclosed only for the purposes  
10 of an official law enforcement investigation or when its production is  
11 required in a court proceeding. These restrictions do not prohibit the  
12 publication of statistics presented in a manner that prevents the iden-  
13 tification of particular reports, items, persons, or enterprises.

14 Sec. 37.13.220. DEFINITIONS. In this chapter,

15 (1) "board" means the Board of Trustees of the Alaska Per-  
16 manent Fund Corporation;

17 (2) "corporation" means the Alaska Permanent Fund Corpora-  
18 tion.

19 \* Sec. 6. AS 39.25.110 is amended by adding a new paragraph to read:

20 (22) members of the board of trustees, the executive director,  
21 and staff of the Alaska Permanent Fund Corporation.

22 \* Sec. 7. AS 39.50.200(9) is amended by adding a new subparagraph to  
23 read:

24 (QQ) Board of Trustees and executive director of the  
25 Alaska Permanent Fund Corporation.

26 \* Sec. 8. TRANSITION. The commissioner of revenue shall transfer all  
27 funds of the Alaska permanent fund to the Alaska Permanent Fund Corporation  
28 established by this Act after request for transfer is made by the board of  
29 trustees of the corporation.

- 1 \* Sec. 9. AS 37.10.065(c) is repealed.  
2 \* Sec. 10. AS 37.10.065(a) and (b) are repealed.  
3 \* Sec. 11. Section 10 of this Act takes effect upon transfer of the funds  
4 of the Alaska permanent fund to the Alaska Permanent Fund Corporation as  
5 provided in sec. 8 of this Act. The remainder of this Act takes effect  
6 July 1, 1979.  
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