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Referred: State Affairs
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BY THE RULES COMMITTEE BY
REQUEST OF THE GOVERNOR

1 IN THE SENATE

2 SENATE BILL NO. 226

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 management of the Alaska Permanent
7 Fund; and providing for an effective date."

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

9 * Section 1. AS 37 is amended by adding a new chapter to read:

10 CHAPTER 13. ALASKA PERMANENT FUND.

11 Sec. 37.13.010. ALASKA PERMANENT FUND. (a) Under art. IX, sec.
12 15, of the Alaska Constitution, there is established, as a separate
13 fund in the Department of Revenue, the Alaska Permanent Fund.

14 Sec. 37.13.020. PURPOSE OF THE PERMANENT FUND. The permanent
15 fund is to provide a means of conserving a portion of the state's
16 revenues from mineral resources for the benefit of Alaskans. The
17 permanent fund is not to be depleted but rather maintained in income-
18 producing investments to provide a continuing stream of benefits to
19 Alaskans.

20 Sec. 37.13.030. COMPOSITION OF THE PERMANENT FUND. (a) The
21 permanent fund consists of at least 25 per cent of all mineral lease
22 rentals, royalties, royalty sale proceeds, federal mineral revenue
23 sharing payments, and bonuses received through FY 1981, and will at
24 the beginning of FY 1982 increase to at least 75 per cent of all
25 mineral lease rentals, royalties, royalty sale proceeds, and federal
26 mineral revenue sharing payments, and 100 per cent of the bonuses
27 received by the state. The commissioner of revenue shall deposit
28 money from these sources in the permanent fund at least once each
29 month.

1 (b) Income from investment of the permanent fund does not become
2 a part of the permanent fund and must be deposited in the general
3 fund, except that income in the following amounts may be retained in
4 the fund and used as indicated:

5 (1) the amount appropriated to pay the corporation's operat-
6 ing and administrative expenses, under AS 37.13.100;

7 (2) any amount allocated to a reserve account established
8 under AS 37.13.180.

9 (c) All of the revenues dedicated to the Alaska Permanent Fund
10 by the 1976 amendment to article IX of the Alaska Constitution shall
11 be administered as a trust fund and invested by the commissioner of
12 revenue as prescribed by AS 37.10.065. Any money deposited in the
13 Alaska Permanent Fund in addition to that revenue must be allocated to
14 the Alaska Permanent Fund Corporation and invested as prescribed by
15 this chapter.

16 Sec. 37.13.040. ALASKA PERMANENT FUND CORPORATION. (a) There
17 is established the Alaska Permanent Fund Corporation. The corporation
18 is a public corporation and government instrumentality in the Depart-
19 ment of Revenue but has a legal existence independent of and separate
20 from the state. The purpose of the corporation is to manage and
21 invest the money from the Alaska Permanent Fund allocated to it in
22 accordance with this chapter.

23 (b) The corporation has all powers necessary to carry out the
24 purposes of this chapter including but not limited to the following:

- 25 (1) sue and be sued;
26 (2) adopt a seal;
27 (3) have perpetual succession;
28 (4) adopt and amend policies and operational procedures
29 which are not inconsistent with this chapter;

- 1 (5) make and execute contracts and other instruments;
2 (6) in its own name, own, exchange, transfer, lease, rent,
3 convey, acquire, or dispose of by other means real and personal pro-
4 perty.

5 Sec. 37.13.050. INVESTMENT OF THE PERMANENT FUND. (a) The
6 corporation's allocation from the Alaska Permanent Fund must be invested
7 in income-producing investments of the following types, which invest-
8 ments must conform to the purposes set out in AS 37.13.020:

9 (1) obligations of, or obligations insured or guaranteed
10 by, the United States or an agency or instrumentality of the United
11 States;

12 (2) obligations secured by reserves paid in by the United
13 States or an agency or instrumentality of the United States or obli-
14 gations of corporations in which the United States is a shareholder or
15 member;

16 (3) certificates of deposit or their equivalent issued by
17 United States domestic banks, savings and loan institutions or credit
18 unions which are insured by the United States or an agency or instru-
19 mentality of the United States and secured as to the payment of princi-
20 pal and interest in accordance with Alaska law;

21 (4) corporate investment-grade securities;

22 (5) banker's acceptances drawn on and accepted by United
23 States banks which each have a combined capital and surplus aggregating
24 at least \$100,000,000;

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

27 (7) real estate mortgage securities insured by or guaranteed
28 by the United States or an agency or instrumentality of the United
29 States;

1 (8) conventional real estate mortgages secured by real
2 estate in the state or other collateral allowed under this chapter;

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

6 (10) fixed-term certificates of debenture of federally
7 insured credit unions not to exceed 10 per cent of each credit union's
8 shares.

9 (b) The corporation may make other types of investments which
10 are not freely traded on a recognized market only as expressly autho-
11 rized by law.

12 (c) The director may enter into contracts providing for invest-
13 ment, custody, safekeeping, and management of securities and execution
14 of transactions.

15 Sec. 37.13.060. GUARANTEES OF INDEBTEDNESS. The corporation
16 may, from its income from the fund and for a reasonable fee, guarantee
17 construction of electric generating and related transmission facilities
18 which have been recommended by the Alaska Power Authority as to reli-
19 ability and technical feasibility, which have the lowest cost to the
20 consumer of available alternatives, which have been approved by the
21 investment committee as to the financial condition of the borrower,
22 and which have the final approval of the executive oversight committee,
23 and the guarantee for which has been submitted as a proposition at a
24 statewide election and been approved by a majority of those voting on
25 the question. The aggregate of all guarantees may not exceed 100 per
26 cent of the total assets of the corporation.

27 Sec. 37.13.070. RATE OF INTEREST. The rate of interest charged
28 by the corporation on investments made under AS 37.13.040 must at all
29 times be at least equal to the market rate of interest applicable to

1 the kind of investment, less an appropriate servicing fee.

2 Sec. 37.13.080. POLICY BOARD. (a) There is established the
3 Alaska Permanent Fund Policy Board, consisting of the commissioner of
4 commerce and economic development, the commissioner of revenue, and
5 five members to be appointed by the governor who serve at his pleasure.
6 The five appointed members must be Alaska residents and may not be
7 employees of the state. Their term of office is four years, and they
8 may be reappointed. Terms must be staggered. Initial terms are one
9 year for one member, two years for two members, three years for one
10 member, and four years for one member.

11 (b) The commissioner of revenue shall serve as the chairman of
12 the policy board.

13 (c) A quorum for the transaction of policy board business con-
14 sists of at least four members. Decisions of the board must be made
15 by a majority of the appointed members. The provisions of AS 44.62.310
16 and 44.62.312 apply to meetings of the board.

17 (d) Appointed members of the policy board are not entitled to
18 compensation as such but are entitled to per diem and travel allowances
19 as provided by law for members of state boards and commissions.

20 Sec. 37.13.090. DUTIES OF THE POLICY BOARD. The policy board
21 shall:

22 (1) appoint the director and other members of the investment
23 committee;

24 (2) select an independent outside auditor and receive and
25 publish all audit reports;

26 (3) review and publish financial statements audited by
27 independent outside auditors;

28 (4) review and approve the annual investment program based
29 on the credit assessment of the State of Alaska as established in AS

1 37.13.190(3), the budget for the forthcoming year, and the financial
2 plan for the following three years;

3 (5) present a report on the annual investment program, the
4 financial plan for the following three years and any other information
5 considered to be of interest to the executive oversight committee by
6 December 1 annually;

7 (6) determine, without approving or disapproving the
8 investment itself, whether a specific investment or kind of investment
9 is consistent with the provisions of this chapter;

10 (7) set the remuneration and other terms of employment of
11 the director and the remuneration of the investment committee on a
12 daily basis;

13 (8) hold public hearings on the investment program and
14 submit its findings to the executive oversight committee and the
15 legislature at the beginning of each regular session.

16 Sec. 37.13.100. LEGISLATIVE DIRECTIVE. The legislature may
17 express any preference or emphasis it desires to be placed among
18 investment categories designated in AS 37.13.050(a) by concurrent
19 resolution, consistent with the purposes and principles prescribed by
20 AS 37.13.020 and 37.13.190.

21 Sec. 37.13.110. EXECUTIVE OVERSIGHT COMMITTEE. There is estab-
22 lished the Permanent Fund Executive Oversight Committee, consisting of
23 the governor, the commissioner of commerce and economic development,
24 the commissioner of revenue, the director of the division of policy
25 development and planning, and the director of the division of budget
26 and management. The governor, or, in his absence, the commissioner of
27 revenue, is the chairman.

28 Sec. 37.13.120. DUTIES OF THE EXECUTIVE OVERSIGHT COMMITTEE.
29 The executive oversight committee shall review and either approve or

1 revise and approve the corporation's annual investment program and
2 present it to the legislature no later than the 20th day of each
3 regular session.

4 Sec. 37.13.130. OPERATIONAL BUDGET. The annual operating budget
5 for the corporation must be prepared and administered in accordance
6 with the Executive Budget Act (AS 37.07). Appropriations must be made
7 for the budget from income earned by the corporation from investment
8 of the money allocated to it from the Alaska Permanent Fund.

9 Sec. 37.13.140. CORPORATION DIRECTOR. The director of the
10 corporation is to be appointed by the policy board and serve at its
11 pleasure. The director

12 (1) is responsible for the day-to-day business of the
13 corporation and the organization, appointment, promotion, and discharge
14 of the staff which is in the exempt service under AS 39.25;

15 (2) shall establish and maintain adequate and appropriate
16 organizational, operating, and financial controls;

17 (3) is responsible for making investments except that the
18 director may delegate this authority under the provisions of AS 37.13.-
19 050(b);

20 (4) prepare reports as specified in AS 37.13.170, 37.13.-
21 190(3), and 37.13.200.

22 Sec. 37.13.150. INVESTMENT COMMITTEE. (a) There is established
23 the Alaska Permanent Fund Corporation investment committee consisting
24 of the permanent fund corporation director, who shall serve as chairman,
25 and four public members appointed by the policy board. All public
26 members must be Alaska residents for at least three years, may not be
27 state employees, and must be persons of recognized competence and wide
28 experience in investment, finance, or other business management related
29 fields. Their term of office is four years and they may be reappointed.

1 Terms must be staggered. Initial terms are one year for one member,
2 two years for two members and three years for one member. Members of
3 the investment committee serve at the pleasure of the policy board.

4 (b) A quorum for the transaction of investment committee business
5 consists of at least three members. Decisions of the committee must
6 be made by a majority of the members. The provisions of AS 44.62.310
7 and 44.62.312 do not apply to meetings of the committee.

8 (c) Members of the committee are entitled to per diem and travel
9 allowances as provided by law for members of state boards and com-
10 missions.

11 Sec. 37.13.160. DUTIES OF THE INVESTMENT COMMITTEE. The invest-
12 ment committee:

13 (1) has sole responsibility to approve all investment pro-
14 posals, except that the committee may establish criteria for invest-
15 ments that may be approved by the director;

16 (2) shall set standards for the origination, administration,
17 and collection of loans.

18 Sec. 37.13.170. INITIAL DETERMINATIONS. Within 30 days after
19 the beginning of the legislative session following enactment of this
20 chapter, the governor shall submit a report compiled by the director
21 and approved by the policy board and the oversight committee to the
22 legislature. This report must:

23 (1) evaluate the capital markets serving Alaska;

24 (2) specify and discuss resources and methods other than
25 the permanent fund available to mitigate inefficiencies, if any are
26 found, in Alaskan capital markets; and

27 (3) recommend additional investment categories to be included
28 in the list of eligible investments established in AS 37.13.040, if it
29 is found that the permanent fund corporation is the best mechanism for

1 correcting these inefficiencies; those recommendations must conform to
2 the purposes established in AS 37.13.020 and the operating principles
3 established in AS 37.13.190.

4 Sec. 37.13.180. RESERVES. The executive oversight committee
5 shall establish reserve accounts from income earned by the corporation
6 to preserve the principal of the permanent fund allocated to the
7 corporation, consistent with sound financial practices.

8 Sec. 37.13.190. OPERATIONAL PRINCIPLES. The operations of the
9 corporation must be conducted in accordance with the following princi-
10 ples:

11 (1) the corporation shall give preference to investments
12 within the state to the extent that they have a risk level no higher
13 than, and an expected yield equivalent to, alternative investment
14 opportunities;

15 (2) the prudent-man rule of investments is applicable; in
16 making investments, the staff and the investment committee shall
17 exercise the judgment and care under the circumstances then prevailing
18 which an institutional investor of ordinary prudence, discretion, and
19 intelligence exercises in the management of investments entrusted to
20 it not in regard to speculation but in regard to the permanent disposi-
21 tion of funds, considering the probable income from them as well as
22 probable safety of capital;

23 (3) the corporation shall prepare an annual analysis of the
24 state's capital markets, and may recommend additional investment cate-
25 gories to be included in the list of eligible investments established
26 in AS 37.13.050 if it is found that the permanent fund corporation is
27 the best mechanism for correcting market inefficiencies; those recom-
28 mendations shall conform to the purposes established in AS 37.13.020;
29 and its investment program shall be based, to the extent consistent

1 with the fund's purposes and operational principles, on correcting
2 shortages and inefficiencies in those capital markets;

3 (4) The corporation shall only undertake its financing on
4 terms and conditions which take into account the participation of
5 other investors, the risks being undertaken by the corporation, and
6 the terms and conditions normally obtained by private investors from
7 similar financing; the legislature may appropriate funds for subsidizing
8 categories of investments which it determines to be of such high
9 priority that special terms and conditions are appropriate; the amount
10 and timing of subsidies must be such that the rate of return to the
11 corporation remains the market rate;

12 (5) the corporation shall seek to maintain a reasonable
13 diversification in its investments;

14 (6) for those investments which are not freely traded on a
15 recognized market, the corporation may not consider investment proposals
16 unless the applicant or originating financial institution has submitted
17 a detailed proposal to the corporation staff, and the staff has pre-
18 pared a written report recommending the investment after a study of
19 its merits;

20 (7) nothing in this section prevents the corporation, in
21 the event of actual or threatened default on any of the permanent fund
22 investments, actual or threatened insolvency of the enterprise in
23 which the investment has been made, or other situations which, in the
24 opinion of the corporation threaten to jeopardize the investment, from
25 taking the action and exercising the rights it considers necessary for
26 the protection of its interest;

27 (8) when more than two per cent of the aggregate of all
28 loans purchased from a financial institution becomes delinquent for 90
29 days, the corporation shall discontinue purchasing loans from that

1 financial institution until the delinquency is reduced to less than
2 two per cent.

3 Sec. 37.13.200. REPORTS AND PUBLICATIONS. (a) The commissioner
4 of revenue and the corporation shall each publish in easily understood
5 language a separate annual report to the governor, legislature, and
6 the public. Each report must include financial statements audited by
7 independent outside auditors, a statement of the amount of money
8 received by the commissioner and by the corporation from each source
9 during the period covered, a statement of the commissioner's and the
10 corporation's investments including an appraisal at market value, a
11 description of their respective investment activities during the
12 period covered by the report, and any other information the commissioner
13 or corporation believes would be of interest to the governor, the
14 legislature, and the public. The annual income statement and balance
15 sheet for the entire fund must be published in at least one newspaper
16 in each judicial district. The income statement and balance sheet for
17 the two fiscal years preceding the publication of the election pamphlet
18 under AS 15.57 must be included in that pamphlet. The corporation may
19 also publish other reports it considers desirable to carry out its
20 purpose.

21 Sec. 37.13.210. CONFLICT-OF-INTERESTS POLICIES. The director
22 and staff of the corporation, and the members of the policy board and
23 the investment committee shall comply with the requirements of the
24 Conflict of Interest Act (AS 39.50) and the director, staff, and
25 members of the investment committee shall disqualify themselves from
26 voting on any investment in which they have a financial interest.

27 Sec. 37.13.220. CONFIDENTIALITY OF INFORMATION. (a) Information
28 furnished the corporation by an applicant for a loan or investment
29 which discloses the particulars of the applicant's business or affairs

1 is not a matter of public record. The information must be kept confi-
2 dential except when its production is required for a criminal investi-
3 gation or court proceeding. These restrictions do not prohibit the
4 release or publication of the information in a manner that prevents
5 the identification of a particular applicant.

6 (b) Nothing in this section prevents the corporation from dis-
7 closing the terms and conditions of individual investments as public
8 information.

9 * Sec. 2. AS 37.10.065(c) is repealed.

10 * Sec. 3. This Act takes effect immediately in accordance with AS 01.-
11 10.070(c).

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