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1 IN THE HOUSE

BY RANDOLPH AND ROGERS

2 HOUSE BILL NO. 642

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 TWELFTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act establishing the Alaska natural resource trust;
7 and providing for an effective date."

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

9 * Section 1. POLICY, PURPOSES, AND FINDINGS. (a) It is the duty and
10 policy of the state with respect to the natural resources belonging to it
11 and the income derived from them to provide for their discovery, use, owner-
12 ship, and development for the maximum benefit of its people.

13 (b) The purpose of this Act is to transfer part of Alaska's natural
14 resource wealth to individual Alaskans in the form of income-producing
15 assets.

16 (c) The legislature finds that

17 (1) the continuous accumulation of wealth by state government has
18 resulted in bloated budgets, increasing dependence of Alaskans on government
19 programs, and the stifling of the private sector economy;

20 (2) a mechanism by which the state distributes a portion of its
21 natural resource revenues to individual Alaskans will promote individual
22 freedom of choice and stimulate private sector development through thousands
23 of individual consumer choices.

24 * Sec. 2. AS 37 is amended by adding a new chapter to read:

25 CHAPTER 40. ALASKA NATURAL RESOURCE TRUST.

26 ARTICLE 1. NATURAL RESOURCE TRUST ESTABLISHED.

27 Sec. 37.40.010. NATURAL RESOURCE TRUST ESTABLISHED. The Alaska
28 natural resource trust is established in the Department of Revenue to
29 carry out the purposes of this chapter.

1 Sec. 37.40.020. TRUSTEE. The commissioner of revenue or his
2 agent or designee is the trustee of the trust established in AS 37.40.-
3 010 and shall

4 (1) act as the official custodian of the securities and cash
5 belonging to the trust;

6 (2) receive transfers and appropriations of cash and securi-
7 ties to the trust;

8 (3) invest and reinvest the principal of the trust in accor-
9 dance with AS 37.10.070;

10 (4) collect interest, dividends, and royalties earned on
11 assets, securities and investments of the trust;

12 (5) provide for the distribution of share certificates in
13 the trust to eligible beneficiaries; and

14 (6) determine and make distributions of trust income to the
15 beneficiaries of the trust.

16 Sec. 37.40.030. PURPOSE. The purpose of the trust is to provide
17 an efficient and practical means of permitting each certificate holder
18 to receive his pro rata share of the proceeds attributable to the
19 natural resource interests conveyed to the trust. This purpose is
20 realized by collecting and retaining the cash proceeds of royalties and
21 other natural resource interests and distributing that cash, net of
22 expenses and liabilities of the trust, to the certificate holders pro
23 rata on a quarterly basis.

24 Sec. 37.40.040. TRUST ASSETS. The assets of the trust consist of
25 the interests in natural resources of the state conveyed to the trust
26 under AS 37.40.050.

27 Sec. 37.40.050. CONVEYANCE. (a) The commissioner of natural
28 resources shall convey to the trust the state's interest in income from
29 natural resources, including royalties and the proceeds from the sale

1 or lease of state land.

2 (b) The conveyance to the trust is subject to the prior obliga-
3 tions of the state to make payments from the royalty interest to the
4 Alaska permanent fund and the Alaska Native Fund under sec. 9(b) of the
5 Alaska Native Claims Settlement Act (P.L. 92-203 43 U.S.C. 1601 et
6 seq.) The conveyance is also subject to the rights and obligations of
7 the lessor and lessee of the leases and properties described in (a) of
8 this section including the right to a reduction in royalty as authorized
9 by AS 38.05.180(j), the right to enter into storage or exchange agree-
10 ments concerning royalty under AS 38.05.180(1), the right to elect to
11 take royalty in kind or in value as authorized by AS 38.05.182. The
12 commissioner of natural resources may not otherwise encumber the inter-
13 ests conveyed to the trust under (a) of this section.

14 (c) If at the time of conveyance an interest is subject to con-
15 tracts of sale, the conveyance must expressly identify the contracts
16 and state that the conveyance is subject to them and does not limit the
17 state's rights, duties, and obligations under them.

18 (d) The interests conveyed under this section include the interest
19 of the state in the net proceeds from a sale, exchange, or other dis-
20 position of natural resources taken in kind from the properties
21 described in (a) of this section.

22 Sec. 37.40.060. NO POWER TO ENGAGE IN BUSINESS. Unless authorized
23 by law, the trustee may not, in his capacity as trustee under the
24 trust, acquire an oil and gas lease, a mineral interest, or a royalty
25 other than the interests conveyed under AS 37.40.050 or acquire any
26 other asset or engage in a business.

27 Sec. 37.40.070. LIABILITY OF TRUSTEE. The trustee's standard of
28 care and liability shall be determined under AS 13.36.

29 Sec. 37.40.080. COMPENSATION OF TRUSTEE. The trustee shall be

1 compensated for his expenses in administering the trust but may not
2 receive other compensation for his services.

3 Sec. 37.40.090. PAYMENT OF LIABILITIES. The trustee may use all
4 money received by him in the payment of all liabilities of the trust,
5 including but not limited to, expenses, taxes, liabilities incurred of
6 all kinds, compensation for his expenses, and compensation to persons
7 employed by him. If a liability is contingent or uncertain in amount
8 or is not currently due and payable, the trustee may establish a
9 temporary cash reserve for payment. The trustee may not pay any
10 liability of the trust with money set aside for the payment of a
11 quarterly distribution amount unless there is no other available money
12 in the trust estate and the trustee is satisfied that on the distribu-
13 tion date there will be sufficient money to pay the quarterly distribu-
14 tion amount. If money set aside for payment of a quarterly distribution
15 is used, the amount used shall be treated as a liability of the trust
16 and shall bear interest at the average rate obtained for the investment
17 of other trust assets.

18 ARTICLE 2. TERMINATION OF TRUST AND LIQUIDATION.

19 Sec. 37.40.100. DURATION, REVOCATION, AND TERMINATION OF TRUST.

20 (a) The trust is irrevocable. The trust is terminable only as provided
21 in this section and continues until so terminated.

22 (b) The trust shall terminate upon the termination of the produc-
23 tion of income from the assets that have been transferred to and re-
24 tained by the trust.

25 Sec. 37.40.110. LIQUIDATION. Upon termination of the trust, the
26 trustee shall proceed to liquidate and wind up the affairs of the
27 trust. For the purpose of liquidating and winding up the affairs of
28 the trust at its termination, the trustee shall continue to act and
29 exercise each power until his duties have been fully performed and the

1 trust estate has been finally distributed. The trustee shall, as
2 promptly as possible, distribute the cash in the trust estate according
3 to the respective interests and rights of the certificate holders,
4 after paying, satisfying and discharging all of the liabilities of the
5 trust; or, when necessary, setting up reserves in amounts the trustee
6 in his discretion considers appropriate for contingent liabilities.
7 Upon making final distribution to the certificate holders, the trustee
8 is under no further liability except as provided in AS 13.36.

9 ARTICLE 3. BENEFICIAL INTERESTS.

10 Sec. 37.40.120. CREATION OF BENEFICIAL SHARES AND CERTIFICATES.
11 The ownership of the units shall be evidenced by certificates in sub-
12 stantially the following form:

13 CERTIFICATE OF BENEFICIAL INTEREST

14 IN

15 ALASKA NATURAL RESOURCE TRUST

16 Created by, issued under, and subject to the Alaska Natural
17 Resource Trust Indenture dated as of _____

18 THIS CERTIFIES THAT _____ is the
19 owner of _____ units of beneficial interest ("units") in the
20 Alaska Natural Resource Trust created and established under the terms
21 of the Indenture by and between the State of Alaska, as Trustor, and
22 _____, as Trustee, a duplicate
23 original of which Indenture is, for the information of all concerned,
24 held by the Trustee at its office. The Indenture is referred to and
25 made a part of this Certificate for all purposes, and the owner of this
26 Certificate by accepting the Certificate consents to, and becomes bound
27 by, all the terms and provisions of the Indenture. The units repre-
28 sented by this Certificate are transferable on the books of the Trustee
29 by the holder in person, by duly authorized attorney, or by a request

1 to transfer made by certified mail, upon surrender of this Certificate,
2 properly endorsed, to the Trustee.

3 WITNESS the seal of the Trustee and the signature of its duly
4 authorized officer.

5 DATED _____

6 _____, TRUSTEE

7
8 By _____

9 Authorized Officer

10
11 By _____

12 Authorized Officer

13 Sec. 37.40.130. NUMBER OF UNITS ISSUED. (a) The commissioner
14 shall determine the total number of units to be distributed.

15 (b) The value of assets contributed to the trust is the conserva-
16 tively appraised value of the assets. A conservatively appraised value
17 for assets is a value determined by generally accepted appraisal methods
18 and shall be calculated using

19 (1) estimates of resource production volumes having an accu-
20 racy confidence level of 75 percent or greater;

21 (2) an assumed rate of increase in future world prices for
22 resources not exceeding the general rate of price inflation in the
23 United States; and

24 (3) a discount rate reflecting the judgment of private in-
25 vestors as to the expected rate of return before payment of taxes re-
26 quired to justify incremental investments in the exploration and de-
27 velopment of resources comparable to those committed to the trust.

28 Sec. 37.40.140. ELIGIBILITY. (a) To be eligible to receive a
29 unit distributed under AS 37.40.150, an individual must

1 (1) be a resident of the state on the eligibility date
2 established in the portfolio plan under which the unit is distributed;

3 (2) apply to the department within one year of the eligibility
4 date; and

5 (3) submit with the application a signed, sworn certifica-
6 tion that he was a resident of the state on the eligibility date and
7 other proof of residency as the commissioner may require, including

8 (A) evidence that he was registered to vote in Alaska
9 on the eligibility date;

10 (B) an Alaska driver's license, or a resident hunting,
11 fishing, or trapping license, issued on or before the eligibility
12 date, and valid on the eligibility date;

13 (C) evidence that, on the eligibility date, he had
14 telephone or utility service at a residence in the state listed in
15 his name or in the name of a spouse, or, if the individual is a
16 minor, in the name of a parent or guardian;

17 (D) an affidavit of one or more individuals having
18 personal knowledge concerning his residency on the eligibility
19 date; and

20 (E) other documentary evidence of residency acceptable
21 to the commissioner.

22 (b) An individual is presumed to be a resident of the state on
23 the eligibility date if he provides at least two items specified in
24 (a)(3) of this section.

25 (c) The department shall prescribe and furnish a form for applica-
26 tions and for certification of residency.

27 Sec. 37.40.150. DISTRIBUTION OF BENEFICIAL CERTIFICATES. The
28 trustee shall determine the total number of units each eligible indi-
29 vidual is entitled to obtain from the trust by dividing the entire

1 number of units established under AS 37.40.130 by the total number of
2 eligible individuals established under AS 37.40.140.

3 Sec. 37.40.160. TRANSFERABILITY OF UNITS. An eligible individual
4 who has received a unit in the trust under this chapter may not be
5 required to return, sell, or otherwise relinquish that unit as a result
6 of ceasing to be a resident. Units are freely transferable and may be
7 sold, given, assigned, transferred, or otherwise conveyed regardless
8 of residency.

9 Sec. 37.40.170. EXECUTION OF CERTIFICATES. All certificates
10 shall be signed by the trustee or an authorized agent of the trustee.

11 Sec. 37.40.180. REGISTRATION AND TRANSFER OF UNITS. The units
12 may be transferred by the certificate holders in accordance with AS 37.-
13 40.160 and this section. The units shall be transferable as against
14 the trustee only on the records of the trustee upon the surrender of
15 certificates and compliance with reasonable regulations that he may
16 prescribe. A service charge may not be made for a transfer of a unit.
17 Until a transfer, the trustee may treat the individual listed as owner
18 of any certificate on the records of the trustee as the owner of the
19 units evidenced by them and is not charged with notice of any claim or
20 demand respecting a certificate or the interest represented by another
21 party. A transfer of a unit shall, as to the trustee, transfer to the
22 transferee as of the close of business on the date of transfer all of
23 the right, title, and interest of the transferor in and to the bene-
24 ficial interest. The death of a certificate holder does not entitle
25 the transferee to an account or valuation for any purpose, but the
26 transferee succeeds to all rights of the deceased certificate holder
27 under this chapter upon proper proof of title satisfactory to the
28 trustee.

29 Sec. 37.40.190. DETERMINATION OF OWNERSHIP OF CERTIFICATES. In

1 the event of a disagreement between persons claiming to be a transferee
2 of a certificate holder, the trustee is entitled at his option to
3 refuse to recognize the claims so long as the disagreement continues.
4 In so refusing, the trustee may elect not to make delivery or other
5 disposition of the interest represented by the certificate involved, or
6 any part of it, or of any sum or sums of money accrued or accruing
7 under it, and, in so doing, the trustee is not liable to any person for
8 the failure or refusal of the trustee to comply with the conflicting
9 claim and the trustee is entitled to continue to refuse to act until

10 (1) the rights of the adverse claimants have been adjudicated
11 by a final judgment of a court assuming and having jurisdiction of the
12 parties and the interest and money involved; or

13 (2) all differences have been adjusted by valid agreement
14 between the parties and the trustee has been notified in writing signed
15 by all of the interested parties.

16 ARTICLE 4. ACCOUNTING AND DISTRIBUTION.

17 Sec. 37.40.200. FISCAL YEAR AND ACCOUNTING METHOD. The trustee
18 shall adopt the fiscal year of the state, and shall maintain the books
19 of the trust in accordance with generally accepted accounting princi-
20 ples.

21 Sec. 37.40.210. DISTRIBUTIONS. (a) The trustee shall determine
22 the quarterly distribution amount for each quarter and on the quarterly
23 record date for that quarter shall establish a cash reserve equal to
24 that amount. During the months of January, April, July, and October of
25 each year, the trustee shall, for each of the immediate preceding three
26 months, distribute pro rata the quarterly distribution amount for that
27 quarter, together with interest earned on that amount from the quarter-
28 ly record date for that quarter to the payment date, to the certificate
29 holder on the quarterly record date for that quarter.

1 (b) The quarterly distribution amount shall be the amount deter-
2 mined by the trustee equal to the excess, if any, of

3 (1) the cash received during a calendar quarter from the
4 sale of minerals, leases of state land, and royalties, plus any decrease
5 in a cash reserve established by the trustee for the payment of a
6 liability of the trust plus any other cash receipts of the trust during
7 the quarter other than interest earned on the quarterly distribution
8 amount for any other quarter over

9 (2) the liabilities of the trust paid during that quarter
10 plus the amount of any cash reserve established or increased by the
11 trustee for the payment of future or contingent liabilities of the
12 trust.

13 (c) The quarterly record date for each shall be the close of
14 business on the last business day of the quarter.

15 Sec. 37.40.220. CALCULATION OF THE INDIVIDUAL CERTIFICATE DISTRI-
16 BUTION. The individual certificate distribution amount shall be deter-
17 mined by dividing the total quarterly distribution amount by the total
18 certificates as determined in AS 37.40.130. The dividend shall be paid
19 to each individual holder of a certificate.

20 Sec. 37.40.230. TAX REPORTING. For tax purposes, the trustee
21 shall file returns and statements as in his judgment are required to
22 comply with applicable provisions of law and to permit each certificate
23 holder to correctly report his share of the income and deductions of
24 the trust.

25 Sec. 37.40.240. AUTHORITY TO PARTICIPATE IN MARKET. (a) If the
26 commissioner determines that an efficient public market does not exist
27 for the sale of units, he may buy, sell, and trade in units for the
28 purpose of establishing a market.

29 (b) In this section, "efficient public market" means a market in

1 which the units distributed under this chapter have a readily ascer-
2 tainable market value and in which they may be bought or sold readily
3 without unnecessary or unreasonable transaction costs.

4 Sec. 37.40.250. REPORTS TO CERTIFICATE HOLDERS. At the end of
5 each calendar quarter, the trustee shall mail to each person who was a
6 certificate holder of record on a quarterly record date during that
7 quarter a report which shows, in reasonable detail, the assets, liabili-
8 ties, receipts and disbursements of the trust for the quarter. Within
9 90 days following the end of each fiscal year, the trustee shall mail
10 to each person who was a certificate holder of record for a date to be
11 selected by the trustee, an annual report containing financial state-
12 ments audited by a nationally recognized firm of independent public
13 accountants selected by the trustee.

14 ARTICLE 5. GENERAL PROVISIONS.

15 Sec. 37.40.260. INSPECTION OF TRUSTEE'S BOOKS. A certificate
16 holder and his authorized agents, attorneys, and auditors have the
17 right during reasonable business hours to examine, inspect, and make
18 audits of the trust and the records of the trustee in reference to the
19 trust including the names and addresses of the holders of certificates.

20 Sec. 37.40.270. REPORT. The trustee shall annually file with the
21 governor and the legislature by the convening of each regular legisla-
22 tive session a report of the activities of the trust for the preceding
23 year.

24 Sec. 37.40.280. WAIVER. The provisions of AS 38.05.125, 38.05.-
25 183, and AS 38.06 do not apply to a conveyance under this chapter.

26 Sec. 37.40.290. DEFINITIONS. In this chapter,

27 (1) "beneficial interest" means an equitable interest in
28 cash of the trust estate including without limitation the proceeds from
29 the sale of natural resources, proceeds from the conversion of royalties

1 to cash, and proceeds from the sale or lease of state land, but does
2 not include any legal or equitable title in or to natural resources,
3 royalties, or land;

4 (2) "certificate" means a certificate issued by the trustee
5 evidencing ownership of one or more units;

6 (3) "certificate holder" means the owner of a certificate as
7 reflected on the books of the trustee;

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

9 (5) "conveyance" means the transfer to the trust by the
10 state of an interest in natural resources, royalties, or sales or
11 leases of state land;

12 (6) "department" means the Department of Revenue;

13 (7) "eligible individual" means an individual who is a
14 resident as of an eligibility date determined by the commissioner;

15 (8) "eligibility date" means the effective date of this Act;

16 (9) "individual" means a natural person;

17 (10) "natural resources" means minerals and their by-products
18 and other renewable and nonrenewable resources but does not include
19 fish or fisheries products or timber or timber products;

20 (11) "resident" means an individual who maintains a permanent
21 place of abode in the state with the intention of making the state his
22 permanent place of residence and who resides in the state continuously
23 except for temporary purposes only and with the intent of returning; a
24 person may not be considered to have gained a residence solely by
25 reason of his presence and he may not lose it solely by reason of his
26 absence while in the civil or military service of this state or of the
27 United States or by reason of his absence because of marriage to a
28 person engaged in the civil or military service of this state or the
29 United States; a person may not be considered to lose his residence

1 while a student at an educational institution, while in an institution
2 at public expense, while confined in prison, while engaged in the
3 navigation of waters of this state, of the United States, or of the
4 high seas, or while residing on an Indian or military reservation; a
5 minor takes the residence of his parent or of his legal guardian; a
6 married woman may establish her own residence and does not presump-
7 tively take the residence of her husband;

8 (12) "royalties" means the royalties conveyed to the trust
9 under this chapter;

10 (13) "trust" means the Alaska natural resource trust created
11 by and administered under the terms of this chapter and the trust
12 indenture;

13 (14) "trustee" means the entity serving as trustee of the
14 trust and includes any successor trustee;

15 (15) "trust estate" means the assets held by the trustee
16 under the trust and includes both income and principal;

17 (16) "trust indenture" means the trust indenture originally
18 executed by the commissioner of revenue or his designee under this
19 chapter, and any amendments or supplements to it;

20 (17) "unit" means an undivided fractional interest in the
21 beneficial interest.

22 * Sec. 3. AS 37.11.010 - 37.11.090 are repealed.

23 * Sec. 4. This Act takes effect immediately in accordance with AS 01.10.-
24 070(c).