

1 IN THE HOUSE

BY THE RULES COMMITTEE BY
REQUEST OF THE GOVERNOR

2

HOUSE BILL NO. 365

3

IN THE LEGISLATURE OF THE STATE OF ALASKA

4

FIFTEENTH LEGISLATURE - SECOND SESSION

5

A BILL

6 For an Act entitled: "An Act relating to delegation of responsibilities of
7 the Alaska Permanent Fund Corporation Board of Trust-
8 ees; relating to liability of the Alaska Permanent
9 Fund Corporation, its board, and its employees; and
10 providing for an effective date."

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

12 * Section 1. AS 37.13 is amended by adding new sections to read:

13 Sec. 37.13.105. ALLOCATION AND DELEGATION OF RESPONSIBILITIES;
14 LIABILITY. (a) The board may allocate its duties among the members
15 of the board and may delegate to employees of the corporation any of
16 the board's responsibilities with respect to the corporation.

17 (b) If the board allocates its responsibilities among its mem-
18 bers or delegates responsibilities to the corporation's employees, and
19 if the allocation or delegation meets the standard set in AS
20 37.13.120(a), then no member of the board is responsible for duties
21 allocated to another member of the board, or delegated to a corpo-
22 ration employee, except to the extent that the board member

23 (1) participates knowingly in, or knowingly undertakes to
24 conceal, an act or omission of the other member or of the employee,
25 knowing that the act or omission is a breach of a member's duties
26 under this chapter;

27 (2) by his or her failure to comply with AS 37.13.120(a) in
28 the administration of that member's specific responsibilities, enables
29 the other member or the employee to commit a breach of duties; or

1 (3) has knowledge of a breach of duties by the other member
2 or an employee, unless he or she makes reasonable efforts under the
3 circumstances to remedy the breach.

4 (c) The board may enter into one or more contracts with one or
5 more investment managers, to invest part or all of the assets of the
6 Alaska permanent fund. To the extent that the board enters into such
7 a contract in a manner that meets the standard set in AS 37.13.120(a),
8 the board is not liable for an act or omission of an investment manag-
9 er in carrying out its investment responsibilities, nor is the board
10 under an obligation to invest or otherwise manage assets of the Alaska
11 permanent fund which are subject to the management of such an invest-
12 ment manager.

13 (d) For purposes of (c) of this section, "investment manager"
14 means an entity

15 (1) that has the power to manage, acquire, or dispose of
16 assets such as those of the Alaska permanent fund; and

17 (2) that is

18 (A) registered as an investment adviser under 15
19 U.S.C. 80b-1 -- 80b-21 (Investment Advisers Act of 1940);

20 (B) a bank, as defined in 15 U.S.C. 80b-1 -- 80b-21
21 (Investment Advisers Act of 1940);

22 (C) an insurance company qualified to perform services
23 described in (1) of this subsection under the laws of more than
24 one state; or

25 (D) a manager of institutional funds which has had at
26 least five years of experience in the management of real estate
27 investment of institutional investors.

28 (e) The state shall defend and indemnify the board, and any of
29 its employees to whom responsibility has been delegated, against

1 liability arising from acts or omissions of the board or such an
2 employee, to the extent that the act or omission is not the result of
3 gross negligence, intentional or reckless disregard of duties, or
4 fraud.

5 Sec. 37.13.125. LIMITED LIABILITY TRUST. (a) The board may
6 create, by written instrument, one or more trusts to hold assets of
7 the corporation. The written trust instrument must provide

8 (1) that the trustees of the trust are the board;

9 (2) that, subject to (4) of this subsection, the trustees
10 have the same rights and duties, as trustees, as the board has;

11 (3) that the corporation is the sole beneficiary of the
12 trust, and may at any time

13 (A) revoke the trust,

14 (B) cause the trust's income or corpus, or both, to be
15 distributed to the corporation upon demand by the corporation,

16 (C) dismiss the trust's investment adviser following
17 reasonable notice, and

18 (D) sell its interest in the trust to any organization
19 permitted under 26 U.S.C. 501(c)(25) (Internal Revenue Code, as
20 amended as of 1986) to own such an interest;

21 (4) that the trust is organized for the exclusive purposes
22 of

23 (A) holding general or limited partnership interests
24 in partnerships owning, primarily, real estate investments,

25 (B) acquiring real property and holding title to, and
26 collecting income from, the property, and

27 (C) remitting to the corporation the entire income,
28 less expenses, from those interests or that property; and

29 (5) other provisions that the board considers necessary or

1 advisable to carry out the purposes of this chapter.

2 (b) The board is empowered to transfer assets of the corporation
3 it deems appropriate and which the trust is authorized to hold, to a
4 trust created under (a) of this section.

5 (c) The provisions of AS 37.13.120 apply to the investment and
6 management of assets of a trust created under (a) of this section.

7 (d) The exemption granted by AS 37.13.180 applies to a trust
8 created under (a) of this section.

9 (e) Third parties shall look solely to the property of a trust
10 created under (a) of this section for satisfaction of claims arising
11 in connection with the affairs of that trust, including claims arising
12 out of or in connection with assets transferred to that trust by the
13 corporation. The corporation, as the beneficiary of a trust created
14 under (a) of this section, is not subject to personal liability to a
15 third party in connection with the property or affairs of such a
16 trust, except that the corporation might be liable to a third party in
17 an amount up to the value of any trust assets distributed to it after
18 a liability of the trust arose, to the extent that trust assets are
19 insufficient to satisfy the trust's liability. No trustee or employee
20 of a trust created under (a) of this section is subject to personal
21 liability, and the state shall defend and indemnify the board and its
22 employees against liability, for an action or omission of the trustees
23 or the employees to the extent that the acts or omissions are not the
24 result of gross negligence, intentional or reckless disregard of
25 duties, or fraud. A written instrument creating an obligation of a
26 trust created under (a) of this section must provide that the obliga-
27 tions under that instrument are not personally binding upon, nor may a
28 person resort to, the property of the corporation or the trustees,
29 officers, employees, and agents of the trust, but that the trust

1 property or a specific portion of it only is bound and a person shall
2 look solely to that trust property for satisfaction of claims of any
3 nature arising in connection with the affairs of that trust.

4 * Sec. 2. This Act takes effect immediately under AS 01.10.070(c).