

1 IN THE HOUSE BY THE FINANCE COMMITTEE

2 HOUSE BILL NO. 547

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 the investment and management of
7 certain state funds; and providing for an effective
8 date."

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

10 * Section 1. AS 14.25.035(c) is repealed and reenacted to read:

11 (c) The board shall confer with the commissioner of adminis-
12 tration regarding the administration of the system and may make rec-
13 ommendations that it considers necessary.

14 * Sec. 2. AS 14.25.035(d) is repealed and reenacted to read:

15 (d) The commissioner of administration shall report to the board
16 concerning the condition and administration of the system. The re-
17 ports shall be distributed to the members of the system. The commis-
18 sioner of revenue shall provide reports to the board on the condition
19 and investment performance of the teachers' retirement trust fund.

20 * Sec. 3. AS 14.25.170 is amended to read:

21 Sec. 14.25.170. ADMINISTRATION. The commissioner of adminis-
22 tration is responsible for the administration of the retirement system
23 and for making the provisions of this chapter effective. The [AND
24 THE] powers and duties of the commissioner for this purpose include
25 [BUT ARE NOT LIMITED TO]

- 26 (1) maintaining the accounts of the system;
27 (2) making payments for the various purposes specified;
28 (3) submitting required [SUCH] periodic reports or state-
29 ments of account [AS MAY BE REQUIRED];

1 (4) establishing [PRESCRIBING] by regulation the rate of
2 interest that shall be credited to the individual contribution ac-
3 counts of teachers each year; the rate of interest shall be adopted on
4 the basis of the probable effective rate of interest on a long-term
5 basis, and the rate may be changed from time to time by subsequent
6 regulation;

7 (5) establishing a teachers' retirement trust fund in which
8 the assets of the system shall be deposited and held; and

9 (6) engaging an independent certified public accountant to
10 conduct an annual audit of the system's accounts and the annual report
11 of the system's financial condition and financial activity.

12 * Sec. 4. AS 14.25.180 is repealed and reenacted to read:

13 Sec. 14.25.180. INVESTMENT AND TREASURY. (a) The commissioner
14 of revenue is the treasurer of the system and the fiduciary of the
15 fund. In managing the fund, the commissioner of revenue shall

16 (1) consider the status of the fund's investments and the
17 system's liabilities on both a current and a probable future basis;

18 (2) determine the appropriate investment objectives for the
19 fund;

20 (3) establish investment policies aimed at achieving the
21 objectives; and

22 (4) act only in regard to the best financial interests of
23 the system's beneficiaries.

24 (b) The commissioner of revenue may invest the fund on the basis
25 of probable total rate of return without regard to the distinction
26 between principal and income or to the generation of income.

27 (c) In carrying out investment duties under this chapter, the
28 commissioner of revenue has the same powers and duties in regard to
29 the teachers' retirement trust fund as are provided in AS 37.10.071,

1 except that the standard of prudence that the commissioner must obey
2 under AS 37.10.071(c) shall be in regard to the management of large
3 trust investments rather than large investments.

4 * Sec. 5. AS 14.40.255 is amended to read:

5 Sec. 14.40.255. INVESTMENT OF SURPLUS MONEY. If the Board of
6 Regents determines that there is a surplus of money, received in the
7 form of state and federal appropriations, above the amount sufficient
8 to meet current and projected cash expenditure needs of the univers-
9 ity, the surplus must be invested as [IN THE SAME INSTRUMENTS] set out
10 in AS 37.10.071. Income [AS 37.10.070 APPROVED FOR INVESTMENT OF
11 STATE TREASURY SURPLUS. INTEREST INCOME] earned on investments made
12 under this section may be retained by the university and expended in
13 accordance with the Executive Budget Act (AS 37.07).

14 * Sec. 6. AS 14.40.400(a) is amended to read:

15 (a) The Department of Revenue shall establish a separate endow-
16 ment trust fund in which all money derived from the sale or lease of
17 the land granted under the Act of Congress approved January 21, 1929,
18 and in which all monetary gifts, bequests or endowments made to the
19 University of Alaska for the purpose of the fund, shall be held in
20 trust.

21 * Sec. 7. AS 14.40.400(b) is repealed and reenacted to read:

22 (b) The commissioner of revenue is the fiduciary of the trust
23 fund and shall account for and invest the fund as set out in AS 37.-
24 14.110(c), 37.14.160, and 37.14.170, except that the commissioner
25 shall report the condition and investment performance of the fund to
26 the Board of Regents.

27 * Sec. 8. AS 14.40.400(c) is amended to read:

28 (c) The net income from the trust fund shall be used exclusively
29 for the Agricultural College and School of Mines.

1 * Sec. 9. AS 14.40.400(e) is amended to read:

2 (e) The Department of Administration shall disburse the net
3 income from the trust fund upon vouchers approved by the president and
4 treasurer of the University of Alaska specifying the purpose for which
5 the money is to be used and showing it is to be used in conformity
6 with this section.

7 * Sec. 10. AS 14.42.200(8) is amended to read:

8 (8) invest or reinvest, subject to its contracts with
9 noteholders and bondholders, money held by the corporation as set out
10 in AS 37.10.071 [OBLIGATIONS OR OTHER SECURITIES AUTHORIZED FOR IN-
11 VESTMENTS OF THE COMMISSIONER OF REVENUE UNDER AS 37.10.070(a)];

12 * Sec. 11. AS 14.42.210(b) is amended to read:

13 (b) Money and other assets of the student loan fund may be used
14 to secure bonds of the corporation, invested in student loans and
15 investments under AS 37.10.071 [DESCRIBED IN AS 37.10.070(a)] and used
16 to purchase loans approved under AS 14.43.090 - 14.43.325, 14.43.600 -
17 14.43.700, or 14.43.710 - 14.43.790.

18 * Sec. 12. AS 18.26.170 is amended to read:

19 Sec. 18.26.170. INVESTMENTS BY AUTHORITY. Except as otherwise
20 provided by this chapter, the authority may invest any funds, not
21 needed to meet current cash expenditure needs, as set out in AS 37.-
22 10.071 [SECURITIES, OBLIGATIONS OR CERTIFICATES OF DEPOSIT APPROVED
23 FOR INVESTMENT OF THE STATE TREASURY SURPLUS UNDER AS 37.10.-
24 070(a)(1) - (4). THESE INVESTMENTS SHALL BE PURCHASED AT NO HIGHER
25 PRICE THAN THE OFFERING OR MARKET PRICE OF THEM AT THE TIME OF THE
26 PURCHASE].

27 * Sec. 13. AS 18.56.095(b) is amended to read:

28 (b) In addition to any other fees and charges that the corpo-
29 ration may charge on mortgage loans, it may collect or cause to be

1 collected on all mortgage loans made or purchased with the proceeds of
2 the sale of mortgage insurance bonds, either or both a special mort-
3 gage loan insurance commitment fee or a mortgage loan insurance premi-
4 um. The special mortgage loan insurance commitment fees and special
5 mortgage loan insurance premiums when received shall be deposited in
6 the mortgage insurance fund by the corporation, or by any mortgage
7 loan servicer, trustee, or agent designated by the corporation to
8 receive them, and shall be held, invested and, together with all
9 investment income derived from them, reinvested by the commissioner of
10 revenue as set out in AS 37.10.071 [INVESTMENTS AUTHORIZED UNDER
11 AS 37.10.070(a)], subject to any agreement with the corporation under
12 (a) of this section.

13 * Sec. 14. AS 22.25.048(a) is amended to read:

14 (a) The commissioner of administration shall establish a judi-
15 cial retirement trust fund for the judicial retirement system in which
16 the assets of the system are deposited and held. The commissioner
17 [AND] shall maintain accounts and records for the [JUDICIAL RETIRE-
18 MENT] system.

19 * Sec. 15. AS 22.25.048(c) is repealed and reenacted to read:

20 (c) The commissioner of revenue is the treasurer of the system
21 and the fiduciary of the fund and has the same powers and duties under
22 this section in regard to the judicial retirement trust fund as are
23 provided in AS 14.25.180.

24 * Sec. 16. AS 26.05.228(a) is amended to read:

25 (a) The commissioner of administration shall establish a mili-
26 tary retirement trust fund for the system in which the assets of the
27 system are deposited and held. The commissioner shall [AND] maintain
28 accounts and records for the system.

29 * Sec. 17. AS 26.05.228(c) is repealed and reenacted to read:

1 (c) The commissioner of revenue is the treasurer of the system
2 and the fiduciary of the fund and has the same powers and duties under
3 this section in regard to the fund as are provided under AS 14.25.180.

4 * Sec. 18. AS 36.30.850(b) is amended to read:

5 (b) This chapter applies to every expenditure of state funds,
6 irrespective of their sources, including federal assistance except as
7 otherwise specified in AS 36.30.890, by the state, acting through an
8 agency, under a contract, except that this chapter does not apply to

9 (1) grants;

10 (2) contracts for professional witnesses to provide for
11 professional services or testimony relating to existing or probable
12 lawsuits in which the state is or may become a party;

13 (3) contracts of the University of Alaska where the work is
14 to be performed substantially by students enrolled in the university;

15 (4) contracts for medical doctors and dentists;

16 (5) acquisitions or disposals of real property or interest
17 in real property, except as provided in AS 36.30.080;

18 (6) disposals under AS 38.05;

19 (7) contracts for the preparation of ballots under AS 15.-
20 15.030;

21 (8) acquisitions or disposals of property and other con-
22 tracts relating to airports under AS 02.15.070, 02.15.090, and 02.15.-
23 091;

24 (9) disposals of obsolete property under AS 19.05.060;

25 (10) disposals of obsolete material or equipment under
26 AS 35.20.060;

27 (11) agreements with providers of services under AS 47.07;
28 AS 47.08; AS 47.10; AS 47.17; AS 47.24; AS 47.25.195, and 47.25.310;

29 (12) contracts of the Department of Fish and Game for

1 flights that involve specialized flying and piloting skills and are
2 not point-to-point;

3 (13) purchases of income-producing assets for the state
4 treasury or a public corporation of the state; or

5 (14) a contract that is a delegation, in whole or in part,
6 of investment powers held by the commissioner of revenue under AS 14.-
7 25.180, AS 14.40.400, AS 14.42.200, 14.42.210, AS 18.56.095, AS 22.-
8 25.048, AS 26.05.228, AS 37.10.070, 37.10.071, AS 37.14, or AS 39.-
9 35.080.

10 * Sec. 19. AS 37.10.070 is repealed and reenacted to read:

11 Sec. 37.10.070. INVESTMENT OF RESIDUAL MONEY. (a) The commis-
12 sioner shall invest, as set out in AS 37.10.071, the money in the
13 state treasury above an amount sufficient to meet immediate expendi-
14 ture needs. In managing the invested assets, the commissioner shall

15 (1) consider the status of the assets and liabilities on
16 both a current and a probable future basis;

17 (2) determine the appropriate investment objectives;

18 (3) establish investment policies to achieve the objec-
19 tives; and

20 (4) act only in regard to the best financial interests of
21 the state.

22 (b) The commissioner may invest on the basis of probable total
23 rate of return without regard to the distinction between principal and
24 income and without regard to the generation of income.

25 (c) In this section, "commissioner" means the commissioner of
26 revenue.

27 * Sec. 20. AS 37.10 is amended by adding a new section to read:

28 Sec. 37.10.071. INVESTMENT POWERS AND DUTIES. (a) In making
29 investments under this section, the commissioner of revenue shall

1 (1) act as official custodian of cash and investments by
2 securing adequate and safe custodial facilities for them;

3 (2) receive all items of cash and investments;

4 (3) collect and deposit the principal of and income from
5 owned or acquired investments;

6 (4) invest and reinvest the assets in accordance with this
7 section;

8 (5) receive and spend appropriations to cover the cost of
9 the exercise of duties under this section;

10 (6) exercise the powers of an owner with respect to the
11 assets;

12 (7) perform all acts, not prohibited by this section,
13 whether or not expressly authorized, that the commissioner considers
14 necessary or proper in administering the assets;

15 (8) maintain accounting records in accordance with invest-
16 ment accounting principles;

17 (9) engage an independent certified public accountant to
18 conduct an annual audit of the financial condition and investment
19 transactions;

20 (10) enter into and enforce contracts or agreements con-
21 sidered necessary, convenient, or desirable for the investment pur-
22 poses of this section; and

23 (11) when choosing to acquire or dispose of investments,
24 secure competitive national or international market rates or prices,
25 or the equivalence of those rates or prices in the judgment of the
26 commissioner.

27 (b) Under this section, the commissioner or the commissioner's
28 designee may

29 (1) delegate investment, custodial, or depository authority

1 on a discretionary or nondiscretionary basis to officers or employees
2 of the state or to independent firms, banks, or trust companies, by
3 designation through appointments, contracts, or letters of authority;

4 (2) acquire or dispose of investments either directly,
5 indirectly, or through investment pools or trusts, by competitive or
6 negotiated agreements, contracts, or auctions, in public or private
7 markets;

8 (3) concentrate or diversify investments as the commis-
9 sioner considers appropriate to increase the probable total rate of
10 return or to decrease the overall exposure to potentially adverse
11 market value risks;

12 (4) protect the market value or the rate of return of the
13 investments by entering into forward agreements to buy or sell assets
14 at a future date as a hedge against existing held assets or as a
15 precommitment of future cash flows;

16 (5) lend assets, under an agreement and for a fee, against
17 deposited collateral of equivalent market value;

18 (6) borrow assets on a short-term basis, under an agreement
19 and for a fee, against the deposit of collateral consisting of other
20 assets in order to accommodate temporary cash or investment needs;

21 (7) hold investments in bearer or registered form in the
22 name of the state, a fund, or nominees authorized by the commissioner;

23 (8) utilize consultants, advisors, custodians, investment
24 services, and legal counsel for assistance in investment matters on
25 either a continuing or a limited-term basis and with or without com-
26 pensation;

27 (9) declare records to be confidential and exempt from
28 AS 09.25.110 and 09.25.120 if the records contain information that
29 discloses the particulars of the business or the affairs of a private

1 enterprise, investor, borrower, advisor, consultant, counsel, or
2 manager.

3 (c) In exercising investment, custodial, or depository powers or
4 duties under this section, the commissioner shall exercise the judg-
5 ment and care under the circumstances then prevailing that an institu-
6 tional investor of ordinary professional prudence, discretion, and
7 intelligence exercises in managing large investments with
8 consideration for the purpose of the fund, the investment objectives,
9 the continuing disposition of the fund's investments, and the probable
10 safety of the capital as well as the probable investment returns.

11 (d) In exercising investment, custodial, or depository powers or
12 duties under this section, the commissioner or a designee of the
13 commissioner is liable for a breach of a duty that is assigned or
14 delegated under this section, or under AS 14.25.180, AS 14.40.400(b),
15 AS 37.10.070, AS 37.14.110(c), 37.14.160, 37.14.170, or AS 39.35.080.
16 However, the commissioner or the commissioner's designee is not liable
17 for a breach of a duty that has been delegated to another person if the
18 delegation is prudent under the applicable standard of prudence set
19 out in statute or if the duty is assigned by law to another person,
20 except to the extent that the commissioner or designee

21 (1) knowingly participates in, or knowingly undertakes to
22 conceal, an act or omission of another person, knowing that the act or
23 omission is a breach of that person's duties under this chapter;

24 (2) by failure to comply with this section in the
25 administration of specific responsibilities, enables another person to
26 commit a breach of duty; or

27 (3) has knowledge of a breach of duty by another person,
28 unless the commissioner or designee makes reasonable efforts under the
29 circumstances to remedy the breach.

1 (e) The state shall defend and indemnify the commissioner or an
2 officer or employee of the state against liability under (d) of this
3 section to the extent that the alleged act or omission was performed
4 in good faith and was prudent under the applicable standard of
5 prudence.

6 (f) In this section, "commissioner" means the commissioner of
7 revenue.

8 * Sec. 21. AS 37.10.079(b) is amended to read:

9 (b) The commissioner of revenue may purchase bonds sold by
10 political subdivisions of the state if [:

11 (1) THEY HAVE BEEN SOLD IN ACCORDANCE WITH THE TERMS OF THE
12 NOTICE OF THEIR SALE SUBJECT ONLY TO DELIVERY OF THE BONDS WITH AN
13 APPROVING OPINION OF BOND COUNSEL TO THE EFFECT THAT THE BONDS ARE
14 VALID AND LEGALLY BINDING GENERAL OBLIGATIONS OF THE POLITICAL SUBDI-
15 VISION AND A STATEMENT TO THE EFFECT THAT NO LITIGATION IS THREATENED
16 OR PENDING WHICH AFFECTS THE VALIDITY OF THE BONDS; OR

17 (2)] the bond counsel nominated by the issuing political
18 subdivision in connection with the original offer for sale of the
19 bonds certifies that

20 (1) [(A) THAT] a lawsuit has been filed or is threatened
21 that [WHICH] challenges the corporate existence of the issuer or its
22 power to issue the bonds or to levy taxes to pay the bonds or other-
23 wise prevents a [THE] statement to the effect that no litigation is
24 threatened or pending that affects the validity of the bonds;

25 (2) [AS TO LITIGATION REFERRED TO IN (1) OF THIS SUB-
26 SECTION, (B) THAT] as a consequence of the filing of the suit, the
27 bonds cannot be sold or can only be sold at interest rates substan-
28 tially in excess of the interest rates the municipality would
29 otherwise reasonably expect to pay; [,] and

1 (3) [(C) THAT,] in the opinion of counsel [,] the
2 municipality is or will be pursuing all available means to establish
3 the validity of the bonds so that the lawsuit will be ultimately
4 determined so as to permit the delivery of the bonds with the
5 statement as to litigation referred to in (1) of this subsection.

6 * Sec. 22. AS 37.14.110(a) is amended to read:

7 (a) There is established as a separate endowment trust fund the
8 public school trust fund.

9 * Sec. 23. AS 37.14.110(c) is repealed and reenacted to read:

10 (c) The commissioner of revenue shall determine the net income
11 of the fund in accordance with investment accounting principles and in
12 a manner that preserves the distinction between principal and income
13 and that excludes capital gains or losses realized on principal. The
14 principal of the fund and the capital gains or losses realized on
15 principal shall be perpetually retained in the fund for investment
16 purposes.

17 * Sec. 24. AS 37.14.140 is repealed and reenacted to read:

18 Sec. 37.14.140. UTILIZATION OF INCOME. The net income of the
19 fund may not be appropriated for a purpose other than the support of
20 the state public school program. The commissioner of revenue shall
21 invest realized net income that has not been appropriated or that has
22 been appropriated but not expended until the income is appropriated
23 and expended.

24 * Sec. 25. AS 37.14.160 is repealed and reenacted to read:

25 Sec. 37.14.160. DUTIES OF THE COMMISSIONER OF REVENUE. The
26 commissioner of revenue is the treasurer of the trust fund created in
27 AS 37.14.110 and shall

28 (1) exercise the powers and duties established in
29 AS 14.25.180(c);

1 (2) deposit the principal and income from investments in
2 separate principal and income accounts for the fund;

3 (3) invest and maintain accounting records that distinguish
4 between the principal and income of the fund;

5 (4) provide reports to the board established under
6 AS 37.14.120 on the condition and investment performance of the fund.

7 * Sec. 26. AS 37.14.170 is repealed and reenacted to read:

8 Sec. 37.14.170. INVESTMENTS. (a) The commissioner of revenue
9 is the fiduciary of the trust fund and shall invest the fund to pro-
10 vide increasing net income over long-term periods to the fund's income
11 beneficiaries. The commissioner may invest the money in the fund on
12 the basis of probable total rate of return to promote the long-term
13 generation of income. In managing the trust fund, the commissioner
14 shall

15 (1) consider the status of the fund's capital and the
16 income generated on both a current and a probable future basis;

17 (2) determine the appropriate investment objectives;

18 (3) establish investment policies to achieve the objec-
19 tives; and

20 (4) act only in regard to the long-term financial interests
21 of the fund's beneficiaries.

22 * Sec. 27. AS 39.25.110 is amended by adding a new paragraph to read:

23 (25) investment officers in the Department of Revenue.

24 * Sec. 28. AS 39.30.095(a) is amended to read:

25 (a) The commissioner of administration shall establish the group
26 health and life benefits fund as a special account in the general fund
27 to provide for group life and health insurance under AS 39.30.090 and
28 39.30.160. The commissioner shall maintain accounts and records for
29 the fund. The fund consists of employer contributions, employee

1 contributions, appropriations from the legislature, and income [INTER-
2 EST] earned on investment of the fund as provided in (d) of this
3 section.

4 * Sec. 29. AS 39.30.095(d) is amended to read:

5 (d) If the commissioner of administration determines that there
6 is more money in the fund than the amount needed to pay premiums or
7 benefits for the current fiscal year, the surplus, or so much of it as
8 the commissioner of administration considers advisable, may be in-
9 vested by the commissioner of revenue in the same manner as retirement
10 funds are invested under AS 14.25.180 [AS 39.35.110].

11 * Sec. 30. AS 39.35.020 is amended to read:

12 Sec. 39.35.020. ADMINISTRATION. The commissioner of adminis-
13 tration is responsible for the administration of the system and for
14 carrying out this chapter. In addition the commissioner shall [HAS
15 THE FOLLOWING POWERS AND DUTIES:]

16 (1) maintain the accounts of the system;

17 (2) make payments for the various purposes specified;

18 (3) submit periodic reports or statements of account that
19 are needed;

20 (4) issue a statement of account to an employee requesting
21 it showing the amount of the employee's contributions to the system;

22 (5) as soon as possible after the close of each fiscal
23 year, and not later than six months after the close of each fiscal
24 year, send to the governor, the legislature, and the board an annual
25 statement on the operations of the system containing

26 (A) a balance sheet;

27 (B) a statement of income and expenditures for the
28 year;

29 (C) a report on an actuarial valuation of its assets

1 and liabilities;

2 (D) [REPEALED

3 (E)] a summary [LIST] of assets held in the pension
4 fund listed by the categories of investment, as provided by the
5 commissioner of revenue [INVESTMENTS OWNED];

6 (E) [(F)] other statistical financial data that are
7 necessary for a proper understanding of the financial condition
8 of the system and the result of its operations;

9 (6) establish a public employees retirement trust fund in
10 which the assets of the system shall be deposited and held;

11 (7) engage an independent certified public accountant to
12 conduct an annual audit of the system's accounts and the annual report
13 of the system's financial condition and activity. [REPEALED]

14 * Sec. 31. AS 39.35.080 is repealed and reenacted to read:

15 Sec. 39.35.080. DUTIES OF THE COMMISSIONER OF REVENUE. The
16 commissioner of revenue is the treasurer of the system and the fidu-
17 ciary of the fund. The commissioner has the same powers and duties
18 established under this chapter in regard to the fund as are provided
19 in AS 14.25.180.

20 * Sec. 32. AS 44.83.386 is amended to read:

21 Sec. 44.83.386. INVESTMENT OF FUND. The Department of Revenue
22 shall invest the money in the fund in accordance with AS 37.10.070,
23 37.10.071, and 37.10.075. The Department of Revenue shall provide
24 money in the fund to the authority only after costs have been incurred
25 or amounts in the fund have been otherwise obligated under contracts
26 for the acquisition and construction of a project. Amounts that have
27 been obligated, but for which costs have not yet been incurred, may be
28 segregated by the Department of Revenue or transferred to the
29 authority only with the prior approval or agreement of the

1 commissioner of revenue. Income [INTEREST] received on money that is
2 segregated or transferred under this section must be deposited in the
3 general fund.

4 * Sec. 33. AS 44.88.155(c) is amended to read:

5 (c) Money and other assets of the enterprise development account
6 may be used to secure bonds of the authority issued to finance the
7 purchase of loans for projects and shall be held and invested by the
8 authority in accordance with AS 37.10.071 [THE TYPES OF INVESTMENTS
9 DESCRIBED IN AS 37.10.070(a) AND AS 39.35.110(a)(9) AND (14)] or shall
10 be used to purchase loans for projects.

11 * Sec. 34. AS 18.55.375; AS 21.88.210(d); AS 26.15.060; AS 37.10.080;
12 AS 37.14.130(3); AS 39.25.120(c)(13); AS 39.35.110; AS 45.95.030, 45.95.-
13 040(b); and AS 45.98.050(b) are repealed.

14 * Sec. 35. This Act takes effect immediately under AS 01.10.070(c).