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1 IN THE SENATE

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2

SENATE BILL NO. 197

3

IN THE LEGISLATURE OF THE STATE OF ALASKA

4

SIXTEENTH LEGISLATURE - FIRST SESSION

5

A BILL

6 For an Act entitled: "An Act relating to management and investment of  
7 state retirement funds."

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

9 \* Section 1. AS 14.25.035(d) is amended to read:

10 (d) The commissioner of administration shall report to the board  
11 concerning the condition and administration of the system. The reports  
12 shall be distributed to the members of the system. The Board of Trust-  
13 ees of the Alaska Permanent Fund Corporation [COMMISSIONER OF REVENUE]  
14 shall provide reports to the board on the condition and investment  
15 performance of the teachers' retirement trust fund.

16 \* Sec. 2. AS 14.25.180 is amended to read:

17 Sec. 14.25.180. MANAGEMENT AND INVESTMENT OF FUND. (a) The  
18 Board of Trustees of the Alaska Permanent Fund Corporation [COMMIS-  
19 SIONER OF REVENUE] is the treasurer of the system and the fiduciary of  
20 the fund. In managing the fund, the board of trustees [COMMISSIONER OF  
21 REVENUE] shall

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

24 (2) determine the appropriate investment objectives for the  
25 fund;

26 (3) establish investment policies aimed at achieving the  
27 objectives; and

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

1 (b) The board of trustees [COMMISSIONER OF REVENUE] may invest  
2 the fund on the basis of probable total rate of return without regard  
3 to the distinction between principal and income or to the generation  
4 of income.

5 (c) In carrying out investment duties under this chapter, the  
6 board of trustees [COMMISSIONER OF REVENUE] has the same powers and  
7 duties in regard to the teacher's retirement trust fund as are pro-  
8 vided in AS 37.13.120 and 37.13.125 [AS 37.10.071, EXCEPT THAT THE  
9 STANDARD OF PRUDENCE THAT THE COMMISSIONER MUST OBEY UNDER AS 37.10.-  
10 071(c) SHALL BE IN REGARD TO THE MANAGEMENT OF LARGE TRUST INVESTMENTS  
11 RATHER THAN LARGE INVESTMENTS].

12 \* Sec. 3. AS 22.25.048(c) is amended to read:

13 (c) The Board of Trustees of the Alaska Permanent Fund Corpora-  
14 tion [COMMISSIONER OF REVENUE] is the treasurer of the system and the  
15 fiduciary of the fund and has the same powers and duties under this  
16 section in regard to the judicial retirement trust fund as are pro-  
17 vided in AS 14.25.180.

18 \* Sec. 4. AS 26.05.228(c) is amended to read:

19 (c) The Board of Trustees of the Alaska Permanent Fund Corpora-  
20 tion [COMMISSIONER OF REVENUE] is the treasurer of the system and the  
21 fiduciary of the fund and has the same powers and duties under this  
22 section in regard to the fund as are provided under AS 14.25.180.

23 \* Sec. 5. AS 36.30.850(b) is amended to read:

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

28 (1) grants;

29 (2) contracts for professional witnesses to provide for

1 professional services or testimony relating to existing or probable  
2 lawsuits in which the state is or may become a party;

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

5 (4) contracts for medical doctors and dentists;

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

8 (6) disposals under AS 38.05;

9 (7) contracts for the preparation of ballots under AS 15.-  
10 15.030;

11 (8) acquisitions or disposals of property and other con-  
12 tracts relating to airports under AS 02.15.070, 02.15.090, and 02.15.-  
13 091;

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

15 (10) disposals of obsolete material or equipment under  
16 AS 35.20.060;

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

19 (12) contracts of the Department of Fish and Game for  
20 flights that involve specialized flying and piloting skills and are  
21 not point-to-point;

22 (13) purchases of income-producing assets for the state  
23 treasury or a public corporation of the state; [.]

24 (14) operation of the state boarding school established under  
25 AS 14.16, if the State Board of Education or the commissioner of  
26 education adopts regulations for use by the state boarding school in  
27 procurement and contracting;

28 (15) a contract that is a delegation, in whole or in part, of  
29 investment powers held by the commissioner of revenue under

1 [AS 14.25.180,] AS 14.40.400, AS 14.42.200, 14.42.210, AS 18.56.095,  
2 [AS 22.25.048, AS 26.05.228,] AS 37.10.070, 37.10.071, AS 37.14.010 -  
3 37.14.050 or 37.14.200 - 37.14.270 [AS 37.14, OR AS 39.35.080];

4 (16) a contract that is a delegation, in whole or in part, of  
5 investment powers of the Board of Trustees of the Alaska Permanent  
6 Fund Corporation under AS 14.25.180, AS 22.25.048, AS 26.05.228,  
7 AS 37.13, AS 37.14.110 - 37.14.170, or AS 39.35.080; or

8 (17) the purchase of books, book binding services, newspa-  
9 pers, periodicals, audio-visual materials, network information ser-  
10 vices access, approval plans, professional memberships, archival  
11 materials, objects of art, and items for museum or archival acquisi-  
12 tion having cultural, historical, or archaeological significance; in  
13 this paragraph

14 (A) "approval plans" means book selection services in  
15 which current book titles meeting an agency's customized specifi-  
16 cations are provided to the agency subject to the right of the  
17 agency to return those books that do not meet with the agency's  
18 approval;

19 (B) "audio-visual materials" means nonbook prerecorded  
20 materials, including records, tapes, slides, transparencies,  
21 films, filmstrips, cassettes, videos, compact discs, laser discs,  
22 and items that require the use of equipment to render them  
23 usable;

24 (C) "archival materials" means the noncurrent records  
25 of an agency that are preserved after appraisal because of their  
26 value;

27 (D) "network information services" means a group of  
28 resources from which cataloging information, holdings records,  
29 inter-library loans, acquisitions information, and other

1 reference resources can be obtained.

2 \* Sec. 6. AS 37.10.071(d) is amended to read:

3 (d) In exercising investment, custodial, or depository powers or  
4 duties under this section, the commissioner or a designee of the  
5 commissioner is liable for a breach of a duty that is assigned or  
6 delegated under this section, or under [AS 14.25.180,] AS 14.40.-  
7 400(b), or AS 37.10.070 [, AS 37.14.110(c), 37.14.160, 37.14.170, OR  
8 AS 39.35.080]. However, the commissioner or the commissioner's desig-  
9 nee is not liable for a breach of a duty that has been delegated to  
10 another person if the delegation is prudent under the applicable  
11 standard of prudence set out in statute or if the duty is assigned by  
12 law to another person, except to the extent that the commissioner or  
13 designee

14 (1) knowingly participate in, or knowingly undertakes to  
15 conceal, an act or omission of another person, knowing that the act or  
16 omission is a breach of that person's duties under this chapter;

17 (2) by failure to comply with this section in the adminis-  
18 tration of specific responsibilities, enables another person to commit  
19 a breach of duty; or

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

23 \* Sec. 7. AS 37.10.071(f) is amended to read:

24 (f) In this section, "commissioner of revenue" or "commissioner"  
25 means

26 (1) the commissioner of revenue for investments under  
27 [AS 14.25.180 OR] AS 37.10.070; or

28 (2) the person or body provided by law to manage the invest-  
29 ments, for investments not subject to [AS 14.25.180 OR] AS 37.10.070.

1 \* Sec. 8. AS 37.13 is amended by adding a new section to read:

2       Sec. 37.13.125.    INVESTMENT RESPONSIBILITIES FOR RETIREMENT  
3 FUNDS. (a) The board shall manage and invest the assets of the  
4 teachers' retirement system under AS 14.25.180, the judicial retire-  
5 ment system under AS 22.25.048, the Alaska National Guard and Alaska  
6 Naval Militia retirement system under AS 26.05.228, and the public  
7 employees' retirement system under AS 39.35.080 in accordance with  
8 this section.

9       (b) Except as provided in this section, in managing and invest-  
10 ing the assets of the retirement funds, the board has the same respon-  
11 sibilities as are set out for managing and investing the Alaska perma-  
12 nent fund assets in AS 37.13.120. The following differences apply to  
13 the board's investment and management powers:

14           (1) in addition to the domestic corporate debt securities  
15 approved under AS 37.13.120(g)(8), the board may invest in nondomestic  
16 corporate debt securities of comparable quality;

17           (2) in addition to the short-term domestic corporate prom-  
18 issory notes approved under AS 37.13.120(g)(9), the board may invest  
19 in nondomestic corporate promissory notes of comparable quality; the  
20 interest on nondomestic corporate promissory notes may be payable in  
21 either United States dollars or nondomestic currencies;

22           (3) in addition to the certificates of deposit, term depos-  
23 its, and bankers' acceptances issued by a United States bank or trust  
24 company that are approved under AS 37.13.120(g)(19), the board may  
25 invest in certificates of deposit, term deposits, or bankers' accep-  
26 tances that are issued by a nondomestic bank or trust company and may  
27 invest in certificates, deposits, and acceptances that are denominated  
28 in United States or nondomestic currency; in addition to the other  
29 factors the board may consider in evaluating the issuing bank or trust

1 company, the board may consider the retained earnings of the issuing  
2 bank or trust company;

3 (4) subject to the limitations contained in AS 37.13.-  
4 120(g), the board may invest retirement fund assets at the competitive  
5 national market rates or prices that are applicable to each investment  
6 in

7 (A) securities of nondomestic governments and nondomestic  
8 government agencies, the principal of which, or interest  
9 on which, is payable in either United States dollars or nondomestic  
10 currencies; and

11 (B) securities of nondomestic corporations, including  
12 common and preferred stock, whose dividends, if any, may be  
13 payable in either United States dollars or nondomestic currencies.  
14

15 (c) The board may enter into future contracts for the sale of  
16 nondomestic currencies, only for the purpose of hedging an existing  
17 equivalent ownership position in these investments.

18 (d) The limitations established in AS 37.13.120(i) apply to the  
19 investment of the assets of the retirement funds except for the limitation  
20 that corporate stocks and debt securities under AS 37.13.-  
21 120(g)(8), (9), and (18) not exceed 50 percent of the total investments  
22 of the fund and the limitation that foreign certificates of  
23 deposit or the equivalent under AS 37.13.120(g)(19) not exceed 20  
24 percent of the fund. Instead, the securities of nondomestic governments,  
25 nondomestic government agencies, and nondomestic corporations  
26 under (b)(1) and (4) of this section and AS 37.13.120(g)(8); domestic  
27 corporate stocks and debt securities under (b)(1) of this section and  
28 AS 37.13.120(8) and (18); and short-term nondomestic corporate promissory  
29 notes under (b)(2) of this section may not exceed 50 percent of

1 the total investments of the fund. In addition, all certificates of  
2 deposit, term deposits, and bankers' acceptances, whether foreign or  
3 domestic, may not exceed 20 percent of the fund.

4 \* Sec. 9. AS 37.14.110(c) is amended to read:

5 (c) The Board of Trustees of the Alaska Permanent Fund Corpora-  
6 tion [COMMISSIONER OF REVENUE] shall determine the net income of the  
7 fund in accordance with investment accounting principles and in a  
8 manner that preserves the distinction between principal and income and  
9 that excludes capital gains or losses realized on principal. The  
10 principal of the fund and the capital gains or losses realized on  
11 principal shall be perpetually retained in the fund for investment  
12 purposes.

13 \* Sec. 10. AS 37.14.120(a) is amended to read:

14 (a) There is created in the Department of Revenue the Public  
15 School Fund Advisory Board composed of the commissioner of education,  
16 three members elected by the Board of Education from among its member-  
17 ship, and the executive director of the Alaska Permanent Fund Corpo-  
18 ration [THE COMMISSIONER OF REVENUE].

19 \* Sec. 11. AS 37.14.140 is amended to read:

20 Sec. 37.14.140. UTILIZATION OF INCOME. The net income of the  
21 fund may not be appropriated for a purpose other than the support of  
22 the state public school program. The Board of Trustees of the Alaska  
23 Permanent Fund Corporation [COMMISSIONER OF REVENUE] shall invest  
24 realised net income that has not been appropriated or that has been  
25 appropriated but not expended until the income is appropriated and  
26 expended.

27 \* Sec. 12. AS 37.14.160 is amended to read:

28 Sec. 37.14.160. DUTIES OF THE BOARD OF TRUSTEES OF THE ALASKA  
29 PERMANENT FUND CORPORATION [COMMISSIONER OF REVENUE]. The Board of

1 Trustees of the Alaska Permanent Fund Corporation [COMMISSIONER OF  
2 REVENUE] is the treasurer of the trust fund created in AS 37.14.110  
3 and shall

4 (1) exercise the powers and duties established in AS 14.-  
5 25.180(c);

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

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

10 (4) provide reports to the board established under AS 37.-  
11 14.120 on the condition and investment performance of the fund.

12 \* Sec. 13. AS 37.14.170 is amended to read:

13 Sec. 37.14.170. INVESTMENTS. The Board of Trustees of the  
14 Alaska Permanent Fund Corporation [COMMISSIONER OF REVENUE] is the  
15 fiduciary of the trust fund and shall invest the fund to provide  
16 increasing net income over long-term periods to the fund's income  
17 beneficiaries. The board of trustees [COMMISSIONER] may invest the  
18 money in the fund on the basis of probable total rate of return to  
19 promote the long-term generation of income. In managing the trust  
20 fund, the board of trustees [COMMISSIONER] shall

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

23 (2) determine the appropriate investment objectives;

24 (3) establish investment policies to achieve the objec-  
25 tives; and

26 (4) act only in regard to the financial interests of the  
27 fund's beneficiaries.

28 \* Sac. 14. AS 39.30.095(d) is amended to read:

29 (d) If the commissioner of administration determines that there

1 is more money in the fund than the amount needed to pay premiums or  
2 benefits for the current fiscal year, the surplus, or so much of it as  
3 the commissioner of administration considers advisable, may be in-  
4 vested by the commissioner of revenue in accordance with (f) - (h) of  
5 this section [IN THE SAME MANNER AS RETIREMENT FUNDS ARE INVESTED  
6 UNDER AS 14.25.180].

7 \* Sec. 15. AS 39.30.095 is amended by adding new subsections to read:

8 (f) In managing the surplus, the commissioner of revenue shall

9 (1) consider the status of the investments of the surplus  
10 and the fund's liabilities on both a current and a probable future  
11 basis;

12 (2) determine the appropriate investment objectives for the  
13 surplus;

14 (3) establish investment policies aimed at achieving the  
15 objectives; and

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

18 (g) The commissioner of revenue may invest the surplus on the  
19 basis of probable total rate of return without regard to the distinc-  
20 tion between principal and income or to the generation of income.

21 (h) In carrying out investment duties under this section, the  
22 commissioner of revenue has the same powers and duties in regard to  
23 the surplus as are provided in AS 37.10.071, except that the standard  
24 of prudence that the commissioner must obey under AS 37.10.071(c)  
25 shall be in regard to the management of large trust investments rather  
26 than large investments.

27 \* Sec. 16. AS 39.35.020 is amended to read:

28 Sec. 39.35.020. ADMINISTRATION. The commissioner of administra-  
29 tion is responsible for the administration of the system and for

1 carrying out this chapter. In addition the commissioner shall  
2 (1) maintain the accounts of the system;  
3 (2) make payments for the various purposes specified;  
4 (3) submit periodic reports or statements of account that  
5 are needed;  
6 (4) issue a statement of account to an employee requesting  
7 it showing the amount of the employee's contributions to the system;  
8 (5) as soon as possible after the close of each fiscal  
9 year, and not later than six months after the close of each  
10 fiscal year, send to the governor, the legislature, and the board  
11 an annual statement on the operations of the system containing  
12 (A) a balance sheet;  
13 (B) a statement of income and expenditures for the  
14 year;  
15 (C) a report on an actuarial valuation of its assets  
16 and liabilities;  
17 (D) a summary of assets held in the pension fund  
18 listed by the categories of investment, as provided by the Board  
19 of Trustees of the Alaska Permanent Fund Corporation [COMMISSION-  
20 ER OF REVENUE];  
21 (E) other statistical financial data that are neces-  
22 sary for a proper understanding of the financial condition of the  
23 system and the result of its operations;  
24 (6) establish a public employees retirement trust fund in  
25 which the assets of the system shall be deposited and held;  
26 (7) engage an independent certified public accountant to  
27 conduct an annual audit of the system's accounts and the annual report  
28 of the system's financial condition and activity;  
29 (8) report to the board concerning the condition and

1 administration of the system and distribute the report to the members  
2 of the system.

3 \* Sec. 17. AS 39.35.080 is amended to read:

4 Sec. 39.35.080. DUTIES OF THE BOARD OF TRUSTEES OF THE PERMA-  
5 NENT FUND CORPORATION [COMMISSIONER OF REVENUE]. The Board of Trust-  
6 ees of the Alaska Permanent Fund Corporation [COMMISSIONER OF REVENUE]  
7 is the treasurer of the system and the fiduciary of the fund. The  
8 board of trustees [COMMISSIONER] has the same powers and duties estab-  
9 lished under this chapter in regard to the fund as are provided in  
10 AS 14.25.035(d) and 14.25.180.