

SENATE BILL NO. 39

IN THE LEGISLATURE OF THE STATE OF ALASKA

SEVENTEENTH LEGISLATURE - FIRST SESSION

BY SENATOR POURCHOT

Introduced: 1/21/91

Referred: L&C, Judiciary and Finance

A BILL**FOR AN ACT ENTITLED**

1 "An Act relating to the permanent fund and the Alaska Permanent Fund Corporation; and
2 providing for an effective date."

3 **BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

4 * **Section 1.** AS 37.13.010(a) is amended to read:

5 (a) Under art. IX, sec. 15 of the state constitution, there is established as a separate fund
6 the Alaska permanent fund. The [ALASKA PERMANENT] fund principal consists of

7 (1) 25 percent of all mineral lease rentals, royalties, royalty sale proceeds, net
8 profit shares under AS 38.05.180(f) and (g), and federal mineral revenue sharing payments
9 received by the state from mineral leases issued on or before December 1, 1979, and 25 percent
10 of all bonuses received by the state from mineral leases issued on or before February 15, 1980;

11 (2) 50 percent of all mineral lease rentals, royalties, royalty sale proceeds, net
12 profit shares under AS 38.05.180(f) and (g), and federal mineral revenue sharing payments
13 received by the state from mineral leases issued after December 1, 1979, and 50 percent of all
14 bonuses received by the state from mineral leases issued after February 15, 1980;

1 (3) interest earned by the state on money described in (1) and (2) of this
2 subsection before that money is deposited in the fund;

3 (4) any other money appropriated to or otherwise allocated by law to the
4 [ALASKA PERMANENT] fund.

5 * Sec. 2. AS 37.13.010(b) is amended to read:

6 (b) Payments due the Alaska permanent fund under (a) of this section shall be made to
7 the fund on the day the amount due to the fund reaches at least \$5,000,000 and at least once
8 each month.

9 * Sec. 3. AS 37.13.020 is amended to read:

10 Sec. 37.13.020. FINDINGS. The people of the state, by constitutional amendment, have
11 required the placement of at least 25 percent of all mineral lease rentals, royalties, royalty sale
12 proceeds, and federal mineral revenue sharing payments and bonuses received by the state into
13 a permanent fund. The legislature finds with respect to the fund [ALASKA PERMANENT
14 FUND CORPORATION] that

15 (1) the fund [CORPORATION] should provide a means of conserving a portion
16 of the state's revenue from mineral resources to benefit all generations of Alaskans;

17 (2) the fund's [CORPORATION'S] goal should be to maintain safety of principal
18 while maximizing total return;

19 (3) the fund [CORPORATION] should be used as a savings device managed to
20 allow the maximum use of disposable income from the fund [CORPORATION] for purposes
21 designated by law.

22 * Sec. 4. AS 37.13.030 is amended to read:

23 Sec. 37.13.030. PURPOSE. It is the purpose of this chapter to provide a mechanism for
24 the management and investment of those [PERMANENT] fund assets by [ALLOCATED TO]
25 the Alaska Permanent Fund Corporation in a manner consistent with the findings in
26 AS 37.13.020.

27 * Sec. 5. AS 37.13.040 is amended to read:

28 Sec. 37.13.040. ALASKA PERMANENT FUND CORPORATION. There is established
29 the Alaska Permanent Fund Corporation. The corporation is a public corporation and government
30 instrumentality in the Department of Revenue managed by the board of trustees. The purpose
31 of the corporation [BOARD] is to manage and invest the assets of the permanent fund

1 [CORPORATION] in accordance with this chapter.

2 * Sec. 6. AS 37.13.110(b) is amended to read:

3 (b) If a member of the board or an employee of the corporation acquires, owns, or
4 controls an interest, direct or indirect, in an entity or project in which fund [CORPORATION]
5 assets are invested, the member shall immediately disclose the interest to the board. The
6 disclosure is a matter of public record and shall be included in the minutes of the board meeting
7 next following the disclosure.

8 * Sec. 7. AS 37.13.120(a) is amended to read:

9 (a) The prudent-man rule shall be applied by the board in the management and
10 investment of [ALASKA PERMANENT] fund assets. The prudent-man rule as applied to
11 investments of the fund [CORPORATION] means that in making investments the board shall
12 exercise the judgment and care under the circumstances then prevailing that an institutional
13 investor of ordinary prudence, discretion, and intelligence exercises in the management of large
14 investments entrusted to it not in regard to speculation but in regard to the permanent disposition
15 of funds, considering probable safety of capital as well as probable income.

16 * Sec. 8. AS 37.13.120(b) is amended to read:

17 (b) The fund [CORPORATION] assets shall only be used for income-producing
18 investments.

19 * Sec. 9. AS 37.13.120(e) is amended to read:

20 (e) The corporation may not borrow money [FUNDS] or guarantee from principal of the
21 [ALASKA PERMANENT] fund the obligations of others.

22 * Sec. 10. AS 37.13.120(g) is amended to read:

23 (g) Subject to the limitations contained in this section, the board may invest fund
24 [CORPORATION] assets at the competitive national market rates or prices that are applicable
25 to each investment only in

26 (1) obligations of, or obligations insured by or guaranteed by, the United States
27 or agencies or instrumentalities of the United States;

28 (2) obligations secured by reserves paid in by the United States or agencies or
29 instrumentalities of the United States or obligations of corporations in which the United States
30 is a shareholder or member;

31 (3) certificates of deposit and term deposits of United States domestic banks that

1 are members of the Federal Deposit Insurance Corporation and that may be readily sold in a
2 secondary market at prices reflecting fair value or that are fully secured at all times as to
3 payment of principal and interest as described in (m) of this section;

4 (4) [CERTIFICATES OF DEPOSIT AND TERM DEPOSITS OF FEDERALLY
5 CHARTERED SAVINGS AND LOAN ASSOCIATIONS IN ALASKA THAT MAY BE
6 READILY SOLD IN A SECONDARY MARKET AT PRICES REFLECTING FAIR VALUE
7 OR THAT ARE FULLY SECURED AT ALL TIMES AS TO PAYMENTS OF PRINCIPAL
8 AND INTEREST AS DESCRIBED IN (m) OF THIS SECTION;

9 (5) CERTIFICATES OF DEPOSIT AND TERM DEPOSITS OF STATE
10 CHARTERED SAVINGS AND LOAN ASSOCIATIONS IN ALASKA THAT MAY BE
11 READILY SOLD IN A SECONDARY MARKET AT PRICES REFLECTING FAIR VALUE
12 OR THAT ARE FULLY SECURED AT ALL TIMES AS TO PAYMENTS OF PRINCIPAL
13 AND INTEREST AS DESCRIBED IN (m) OF THIS SECTION;

14 (6) CERTIFICATES OF DEPOSIT AND TERM DEPOSITS OF MUTUAL
15 SAVINGS BANKS IN ALASKA THAT MAY BE READILY SOLD IN A SECONDARY
16 MARKET AT PRICES REFLECTING FAIR VALUE OR THAT ARE FULLY SECURED AT
17 ALL TIMES AS TO PAYMENTS OF PRINCIPAL AND INTEREST AS DESCRIBED IN (m)
18 OF THIS SECTION;

19 (7) FIXED-TERM CERTIFICATES OF INDEBTEDNESS OF FEDERALLY
20 INSURED CREDIT UNIONS IN ALASKA THAT MAY BE READILY SOLD IN A SECON-
21 DARY MARKET AT PRICES REFLECTING FAIR VALUE OR THAT ARE FULLY
22 SECURED AT ALL TIMES AS TO PAYMENTS OF PRINCIPAL AND INTEREST AS
23 DESCRIBED IN (m) OF THIS SECTION;

24 (8) domestic corporate debt securities that are rated AA or better by a nationally
25 recognized rating service, or nondomestic corporate debt securities of comparable quality;

26 (5) [(9)] short-term

27 (A) domestic corporate promissory notes of the highest ratings assigned
28 by a nationally recognized rating service; [,] or

29 (B) nondomestic corporate promissory notes of comparable quality, the
30 interest on which may be payable in either United States dollars or nondomestic
31 currencies;

1 (6) [(10)] bankers' acceptances drawn on and accepted by United States banks
2 each of which has a combined capital and surplus aggregating at least \$200,000,000;

3 (7) [(11)] repurchase agreements, the securities underlying the agreements being
4 any of the items in (1) - (6) [(1) - (3) AND (8) - (10)] of this subsection;

5 (8) [(12)] THE GUARANTEED PORTION OF FEDERAL SMALL BUSINESS
6 ADMINISTRATION LOANS;

7 (13) THE PORTION OF FIRST LIEN REAL ESTATE MORTGAGES
8 GUARANTEED BY THE FEDERAL VETERANS ADMINISTRATION;

9 (14)] the portions of business and industrial loans made under the Rural
10 Development Act of 1972 that are guaranteed by the Farmers Home Administration;

11 (9) [(15)] the guaranteed portion of Farmers Home Administration loans;

12 (10) [(16)] notes secured by mortgages granting a first lien on [COMMERCIAL
13 OR] residential real estate improved by completed buildings if the mortgages are insured by a
14 private mortgage insurance corporation that is authorized to do business in this state [ALASKA]
15 and has combined capital and surplus aggregating at least \$20,000,000, and if loan-to-value ratios
16 do not exceed [75 PERCENT FOR COMMERCIAL MORTGAGES AND] 90 percent [FOR
17 RESIDENTIAL MORTGAGES]; however,

18 [(A) MORTGAGE INSURANCE IS NOT NECESSARY FOR
19 COMMERCIAL LOANS HAVING LOAN-TO-VALUE RATIOS OF LESS THAN 50
20 PERCENT AND THE MINIMUM COVERAGE OF OTHER COMMERCIAL LOANS
21 SHALL BE 10 PERCENT FOR THOSE HAVING A LOAN-TO-VALUE RATIO OF
22 50 - 60 PERCENT AND 15 PERCENT FOR THOSE HAVING A LOAN-TO-VALUE
23 RATIO GREATER THAN 60 PERCENT BUT NO MORE THAN 75 PERCENT; AND

24 (B)] mortgage insurance is not necessary for residential loans having a
25 loan-to-value ratio of less than 70 percent and the minimum coverage of other residential
26 loans shall be 10 percent for those having a loan-to-value ratio greater than 70 percent
27 but less than 90 percent and 20 percent for those having a loan-to-value ratio of 90
28 percent;

29 (11) [(17)] NOTES SECURED BY MORTGAGES GRANTING A FIRST LIEN
30 ON COMMERCIAL REAL ESTATE IMPROVED BY COMPLETED BUILDINGS IF THE
31 ORIGINATING FINANCIAL INSTITUTION RETAINS AT LEAST 25 PERCENT OF THE

1 MORTGAGE UNTIL MATURITY;

2 (18) preferred and common stock of corporations incorporated in the United
3 States;

4 (12) [(19)] certificates of deposit, term deposits, or bankers' acceptances, that are
5 issued by a United States or nondomestic bank or trust company located outside of the United
6 States and are denominated in United States or nondomestic currency, if either (A) they may be
7 readily sold in a secondary market at prices reflecting fair value, or (B) the issuing bank or trust
8 company has capital, surplus, and retained earnings at the date of issue equaling at least
9 \$500,000,000; investments made under this paragraph are not subject to the collateral
10 requirements for domestic certificates under (m) of this section;

11 (13) [(20)] equity interests in, and debt obligations secured by mortgages granting
12 a first lien on, real estate improved by completed and substantially rented buildings and located
13 in the United States, if these investments are made

14 (A) in a corporation, partnership, trust, or other entity in which, at the
15 conclusion of each investment transaction, at least 60 percent of the beneficial ownership
16 interests are held by other institutional investors, and which is organized and operated for
17 the purpose of making real estate investments by a bank, insurance company, or other
18 manager of institutional funds that has had at least five years of experience in the
19 management of real estate investments of institutional investors; or

20 (B) with corporations, partnerships, trusts, or entities in which, at the
21 conclusion of each investment transaction, at least 60 percent of the beneficial
22 ownership interests in the co-investing entity or entities as a whole are held by
23 institutional investors, if

24 (i) at the time of investment the fund has no more than
25 a 40 percent beneficial ownership interest in the real estate invested in as a
26 whole;

27 (ii) the rights and obligations of the fund are
28 substantially similar to those of the other institutional investors, except for the
29 percentage interest in the property; and

30 (iii) the property is managed and operated by an entity
31 that has had at least five years of experience in the management of real estate

1 investments of institutional investors [IN CONJUNCTION WITH AND ON
2 SUBSTANTIALLY THE SAME TERMS AS AN ENTITY DESCRIBED IN (A)
3 OF THIS PARAGRAPH];

4 (14) [(21)] securities of non-domestic governments and non-domestic government
5 agencies, the principal of, or interest on, which is payable in either United States dollars or non-
6 domestic currencies;

7 (15) [(22)] securities of non-domestic corporations, including common and
8 preferred stock, whose dividends, if any, may be payable in either United States dollars or non-
9 domestic currencies;

10 (16) taxable municipal or state debt securities that are rated "AA" or better
11 by a nationally recognized rating service;

12 (17) shares in a money market or short-term investment fund that has either
13 collateral securities of a type authorized elsewhere in this section as acceptable collateral
14 or securities of similar quality to those authorized elsewhere in this section as acceptable
15 collateral.

16 * Sec. 11. AS 37.13.120(i) is amended to read:

17 (i) The [ALASKA PERMANENT] fund may at no time own more than five percent of
18 the voting stock of a corporation. Domestic stocks, except for bank and insurance company
19 stocks, must be listed at the date of purchase on an exchange registered with the Securities and
20 Exchange Commission. At the time of each investment, the aggregate investment of the fund in
21 each stated category of investment may not exceed the following stated percentage of the total
22 investments of the fund:

23 (1) mortgages under (g)(10) [(g)(16)] of this section - 15 percent;

24 (2) real estate investments under (g)(13) [(g)(20)] of this section - 15 percent;

25 (3) certificates of deposit, term deposit, or bankers' acceptances under (g)(12)
26 [(g)(19)] of this section - 20 percent;

27 (4) securities of nondomestic governments, nondomestic government agencies, and
28 nondomestic corporations under (g)(4), (14), and (15) [(g)(8), (21), AND (22)] of this section,
29 domestic corporate stocks and debt securities under (g)(4) [(g)(8)] and (11) [(18)] of this section,
30 and short-term nondomestic corporate promissory notes under (g)(5)(B) [(g)(9)(B)] of this section
31 - 50 percent.

1 * **Sec. 12.** AS 37.13.120(j) is amended to read:

2 (j) The assets of the [ALASKA PERMANENT] fund may not be used for the purchase
3 of bonds of a corporation, upon which any regular interest payment has been defaulted within
4 five years before purchase, except bonds never in default but which have been outstanding for
5 less than five years.

6 * **Sec. 13.** AS 37.13.120(k) is amended to read:

7 (k) The board shall establish and from time to time as necessary modify guidelines for
8 the investment of the assets of the **fund** [CORPORATION]. Before adoption of any guidelines
9 the guidelines shall be reported to the Legislative Budget and Audit Committee for review and
10 comment.

11 * **Sec. 14.** AS 37.13.120(l) is amended to read:

12 (l) The board shall invest the assets of the **fund** [CORPORATION] in in-state
13 investments to the extent in-state investments are available if the in-state investments

14 (1) have a risk level and expected yield comparable to alternate investment
15 opportunities; and

16 (2) are included in the list of permissible investments in (g) of this section.

17 * **Sec. 15.** AS 37.13.120(m) is amended to read:

18 (m) Certificates of deposit or the equivalent instruments that are not of a quality that may
19 be readily sold in a secondary market at prices reflecting fair value must be secured by a pledge
20 as collateral of

21 (1) investments authorized for the [ALASKA PERMANENT] fund under (g)(1),
22 (2), (4), or (8) - (10) [(8), OR (12) - (17)] of this section;

23 (2) [OR BY A PLEDGE AS COLLATERAL OF] obligations of the state or
24 instrumentalities of the state that are rated at least "A" by a major bond rating service and have
25 a demonstrated secondary market, which investments or obligations have value at least equal to
26 the face value of the certificate of deposit;

27 (3) the guaranteed portion of Federal Small Business Administration loans;

28 (4) the portion of first lien real estate mortgages guaranteed by the federal
29 Department of Veterans Affairs; or

30 (5) notes secured by mortgages granting a first lien on commercial or
31 residential real estate improved by completed buildings if the originating financial

1 institution retains at least 25 percent of the mortgage until maturity. [THE BOARD MAY
2 REQUIRE SUBSTITUTION OF COLLATERAL IN ORDER TO ENSURE CONTINUED
3 SATISFACTION OF THE REQUIREMENTS SET OUT IN THIS SUBSECTION.]

4 * **Sec. 16.** AS 37.13.120 is amended by adding a new subsection to read:

5 (n) The board may require substitution of collateral in order to ensure continued
6 satisfaction of the requirements set out in (m) of this section.

7 * **Sec. 17.** AS 37.13.140 is amended to read:

8 Sec. 37.13.140. INCOME. Net income of the fund [CORPORATION] shall be computed
9 annually as of the last day of the fiscal year in accordance with generally accepted accounting
10 principles, excluding any unrealized gains or losses. Income available for distribution equals 21
11 percent of the net income of the fund [CORPORATION] for the last five fiscal years, including
12 the fiscal year just ended, but may not exceed net income of the corporation for the fiscal year
13 just ended plus the balance in the earnings reserve account described in AS 37.13.145.

14 * **Sec. 18.** AS 37.13.145 is amended to read:

15 Sec. 37.13.145. DISPOSITION OF INCOME. (a) At the end of each fiscal year, an
16 amount sufficient to offset the effect of inflation on principal of the [ALASKA PERMANENT]
17 fund during that year [, AS MEASURED BY THE CHANGE IN THE CALENDAR YEAR
18 AVERAGE UNITED STATES CONSUMER PRICE INDEX FOR ALL URBAN CONSUMERS]
19 shall be transferred by the corporation from net income as defined in AS 37.13.140, excluding
20 income on the earnings reserve account [IN THE ALASKA PERMANENT FUND], to the
21 principal of the [ALASKA PERMANENT] fund for reinvestment. The corporation shall
22 calculate the amount to transfer to the principal under this subsection by determining the
23 average rate of inflation for the previous fiscal year as measured by the change in the
24 calendar year average United States Consumer Price Index for all urban consumers and
25 applying that rate to the value of the principal of the fund on the last day of the previous
26 fiscal year.

27 (b) After the transfer under (a) of this section, the [THE] balance of the income
28 available for distribution under AS 37.13.140 shall be transferred to the earnings reserve account
29 in the [ALASKA PERMANENT] fund. Money in the earnings reserve account shall be invested
30 in investments authorized under AS 37.13.120. Income from the investment of the earnings
31 reserve account shall be treated as an addition to that account.

1 * **Sec. 19.** AS 37.13.150 is amended to read:

2 Sec. 37.13.150. CORPORATION BUDGET. The revenue generated by the fund's
3 [CORPORATION'S] investments must be identified as the source of the operating budget of the
4 corporation in the state's operating budget under AS 37.07 (Executive Budget Act). The
5 unexpended balance of the corporation's annual operating budget does not lapse at the end of the
6 fiscal year but shall be treated as income under AS 37.13.140.

7 * **Sec. 20.** AS 37.13.160 is amended to read:

8 Sec. 37.13.160. AUDITS. The Legislative Budget and Audit Committee may provide
9 for an annual post audit and annual operational and performance evaluations of the fund's
10 [CORPORATION'S] investments and investment programs.

11 * **Sec. 21.** AS 37.13.170 is amended to read:

12 Sec. 37.13.170. REPORTS AND PUBLICATIONS. By September 30 of each year, the
13 board shall publish a report of the fund [CORPORATION] for distribution to the governor,
14 legislature, and the public. The report shall be written in easily understandable language. The
15 report must include financial statements audited by independent outside auditors, a statement of
16 the amount of money received by the [ALASKA PERMANENT] fund from each investment
17 during the period covered, a statement of investments of the fund [CORPORATION] including
18 an appraisal at market value, a description of fund [CORPORATION] investment activity during
19 the period covered by the report, a comparison of the fund [CORPORATION] performance with
20 the intended goals contained in AS 37.13.020, an examination of the impact of the investment
21 criteria of this chapter on the fund [CORPORATION] portfolio with recommendations of any
22 needed changes, and any other information the board believes would be of interest to the
23 governor, the legislature, and the public. The annual income statement and balance sheet of the
24 fund [CORPORATION] shall be published in at least one newspaper in each judicial district. The
25 income statement and balance sheet for the two fiscal years preceding the publication of the
26 election pamphlet under AS 15.58 shall be included in that pamphlet.

27 * **Sec. 22.** AS 37.13.180 is amended to read:

28 Sec. 37.13.180. TAX EXEMPTION. The corporation and the fund are [IS] exempt
29 from all taxes and assessments in the state. All security instruments issued by the corporation
30 or the fund, their transfer, and their income are exempt from all taxes and assessments in the
31 state.

1 * **Sec. 23.** AS 37.13.190 is amended to read:

2 Sec. 37.13.190. **POLITICAL ACTIVITIES.** The resources of the corporation or the fund
3 may not be used to finance or influence political activities.

4 * **Sec. 24.** AS 37.13.210 is amended by adding a new paragraph to read:

5 (3) "fund" means the Alaska permanent fund established under art. IX, sec. 15,
6 Constitution of the State of Alaska.

7 * **Sec. 25.** This Act takes effect July 1, 1991.