CS FOR SENATE BILL NO. 39 (JUDICIARY)

IN THE LEGISLATURE OF THE STATE OF ALASKA

SEVENTEENTH LEGISLATURE - FIRST SESSION

BY THE SENATE JUDICIARY COMMITTEE

Offered: 5/6/91
Referred: Finance

Sponsor(s): SENATOR POURCHOT

A BILL

FOR AN ACT ENTITLED

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(4) certificates of deposit and term deposits of federally chartered savings and loan associations in Alaska [THAT MAY BE READILY SOLD IN A SECONDARY MARKET AT PRICES REFLECTING FAIR VALUE OR] that are fully secured at all times as to payments of principal and interest as described in (m) of this section;

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

(6)] certificates of deposit and term deposits of mutual savings banks in Alaska [THAT MAY BE READILY SOLD IN A SECONDARY MARKET AT PRICES REFLECTING FAIR VALUE OR] that are fully secured at all times as to payments of principal and interest as described in (m) of this section;

(6) [(7)] fixed-term certificates of indebtedness of federally insured credit unions in Alaska [THAT MAY BE READILY SOLD IN A SECONDARY MARKET AT PRICES REFLECTING FAIR VALUE OR] that are fully secured at all times as to payments of principal and interest as described in (m) of this section;

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

(8) [(9)] short-term

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

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

(9) [(10)] bankers' acceptances drawn on and accepted by United States banks

each of which has a combined capital and surplus aggregating at least $200,000,000;

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

(11) [(12) THE GUARANTEED PORTION OF FEDERAL SMALL BUSINESS ADMINISTRATION LOANS;

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

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

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

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

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

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

(14) [(17) NOTES SECURED BY MORTGAGES GRANTING A FIRST LIEN ON COMMERCIAL REAL ESTATE IMPROVED BY COMPLETED BUILDINGS IF THE ORIGINATING FINANCIAL INSTITUTION RETAINS AT LEAST 25 PERCENT OF THE MORTGAGE UNTIL MATURITY;

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

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

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

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

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

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

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

(iii) the property is managed and operated by an entity that has had at least five years of experience in the management of real estate investments of institutional investors [IN CONJUNCTION WITH AND ON

SUBSTANTIALLY THE SAME TERMS AS AN ENTITY DESCRIBED IN (A) OF THIS PARAGRAPH];

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

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

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

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

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

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

(1) mortgages under **(g)(13)** [(g)(16)] of this section - 15 percent;

(2) real estate investments under **(g)(16)** [(g)(20)] of this section - 15 percent;

(3) certificates of deposit, term deposit, or bankers' acceptances under **(g)(15)** [(g)(19)] of this section - 20 percent;

(4) securities of nondomestic governments, nondomestic government agencies, and nondomestic corporations under **(g)(7), (17), and (18)** [(g)(8), (21), AND (22)] of this section, domestic corporate stocks and debt securities under **(g)(7)** [(g)(8)] and **(14)** [(18)] of this section, and short-term nondomestic corporate promissory notes under **(g)(8)(B)** [(g)(9)(B)] of this section - 50 percent.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(5) notes secured by mortgages granting a first lien on commercial or residential real estate improved by completed buildings if the originating financial institution retains at least 25 percent of the mortgage until maturity. [THE BOARD MAY

1 REQUIRE SUBSTITUTION OF COLLATERAL IN ORDER TO ENSURE CONTINUED
2 SATISFACTION OF THE REQUIREMENTS SET OUT IN THIS SUBSECTION.]
3 * **Sec. 16.** AS 37.13.120 is amended by adding a new subsection to read:
4 (n) The board may require substitution of collateral in order to ensure continued
5 satisfaction of the requirements set out in (m) of this section.
6 * **Sec. 17.** AS 37.13.140 is amended to read:
7 Sec. 37.13.140. INCOME. Net income of the **fund includes income of the earnings**
8 **reserve account established under AS 37.13.145. Net income of the fund** [CORPORATION]
9 shall be computed annually as of the last day of the fiscal year in accordance with generally
10 accepted accounting principles, excluding any unrealized gains or losses. Income available for
11 distribution equals 21 percent of the net income of the **fund** [CORPORATION] for the last five
12 fiscal years, including the fiscal year just ended, but may not exceed net income of the **fund**
13 [CORPORATION] for the fiscal year just ended plus the balance in the earnings reserve account
14 described in AS 37.13.145.
15 * **Sec. 18.** AS 37.13.145 is repealed and reenacted to read:
16 DISPOSITION OF INCOME. (a) The earnings reserve account is established as a
17 separate account in the fund. Income from the fund shall be deposited by the corporation into
18 the account as soon as it is received. Money in the account shall be invested in investments
19 authorized under AS 37.13.120.
20 (b) At the end of each fiscal year, the corporation shall transfer from the earnings reserve
21 account to the dividend fund established under AS 43.23.045 50 percent of the income available
22 for distribution under AS 37.13.140. However, income earned on money awarded after trial in
23 State v. Amerada Hess, et al., 1JU-77-847 Civ. (Superior Court, First Judicial District) shall be
24 treated in the same manner as other income of the permanent fund, except that it is not available
25 for distribution to the dividend fund, and shall be annually deposited into the principal of the
26 permanent fund.
27 (c) After the transfer under (b) of this section, the corporation shall transfer from the
28 earnings reserve account to the principal of the fund an amount sufficient to offset the effect of
29 inflation on principal of the fund during that fiscal year. The corporation shall calculate the
30 amount to transfer to the principal under this subsection by
31 (1) computing the average of the monthly United States Consumer Price Index

1 for all urban consumers for each of the two previous calendar years;
2 (2) computing the percentage change between the first and second calendar year
3 average; and
4 (3) applying that rate to the value of the principal of the fund on the last day of
5 the fiscal year just ended.
6 * **Sec. 19.** AS 37.13.150 is amended to read:
7 Sec. 37.13.150. CORPORATION BUDGET. The revenue generated by the **fund's**
8 [CORPORATION'S] investments must be identified as the source of the operating budget of the
9 corporation in the state's operating budget under AS 37.07 (Executive Budget Act). The
10 unexpended balance of the corporation's annual operating budget does not lapse at the end of the
11 fiscal year but shall be treated as income under AS 37.13.140.
12 * **Sec. 20.** AS 37.13.160 is amended to read:
13 Sec. 37.13.160. AUDITS. The Legislative Budget and Audit Committee may provide
14 for an annual post audit and annual operational and performance evaluations of the **fund's**
15 [CORPORATION'S] investments and investment programs.
16 * **Sec. 21.** AS 37.13.170 is amended to read:
17 Sec. 37.13.170. REPORTS AND PUBLICATIONS. By September 30 of each year, the
18 board shall publish a report of the **fund** [CORPORATION] for distribution to the governor,
19 legislature, and the public. The report shall be written in easily understandable language. The
20 report must include financial statements audited by independent outside auditors, a statement of
21 the amount of money received by the [ALASKA PERMANENT] fund from each investment
22 during the period covered, a statement of investments of the **fund** [CORPORATION] including
23 an appraisal at market value, a description of **fund** [CORPORATION] investment activity during
24 the period covered by the report, a comparison of the **fund** [CORPORATION] performance with
25 the intended goals contained in AS 37.13.020, an examination of the impact of the investment
26 criteria of this chapter on the **fund** [CORPORATION] portfolio with recommendations of any
27 needed changes, and any other information the board believes would be of interest to the
28 governor, the legislature, and the public. The annual income statement and balance sheet of the
29 **fund** [CORPORATION] shall be published in at least one newspaper in each judicial district. The
30 income statement and balance sheet for the two fiscal years preceding the publication of the
31 election pamphlet under AS 15.58 shall be included in that pamphlet.

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

2 Sec. 37.13.180. TAX EXEMPTION. The corporation **and the fund are** [IS] exempt
3 from all taxes and assessments in the state. All security instruments issued by the corporation
4 **or the fund**, their transfer, and their income are exempt from all taxes and assessments in the
5 state.

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

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

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

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

12 * **Sec. 25.** AS 43.23.025(a) is amended to read:

13 (a) By October 1 of each year the commissioner shall determine the value of each
14 permanent fund dividend for that year by

15 (1) determining the total amount available for dividend payments, which equals

16 (A) the amount of income of the Alaska permanent fund transferred to the
17 dividend fund under **AS 37.13.145(b)** [AS 43.23.045(b)] during the current year;

18 (B) plus the unexpended and unobligated balances of prior fiscal year
19 appropriations that lapse into the dividend fund under AS 43.23.045(d);

20 (C) less the amount necessary to pay dividends from the dividend fund in
21 the current year under AS 43.23.055(3) and (7);

22 (D) less the amount necessary to pay dividends from the dividend fund
23 due to eligible applicants who, as determined by the department, filed for a previous
24 year's dividend by the filing deadline but who were not included in a previous year's
25 dividend computation;

26 (E) less appropriations from the dividend fund during the current year,
27 including amounts to pay costs of administering the dividend program and the hold
28 harmless provisions of AS 43.23.075;

29 (2) determining the number of individuals eligible to receive a dividend payment
30 for the current year; and

31 (3) dividing the amount determined under (1) of this section by the amount

1 determined under (2) of this section.

2 * Sec. 26. AS 43.23.045(b) is repealed.

3 * Sec. 27. This Act takes effect July 1, 1991.