

HOUSE CS FOR CS FOR SENATE BILL NO. 39 (JUDICIARY)

IN THE LEGISLATURE OF THE STATE OF ALASKA

SEVENTEENTH LEGISLATURE - SECOND SESSION

BY THE HOUSE JUDICIARY COMMITTEE

Offered: 2/12/92

Referred: Finance

Sponsor(s): SENATORS POURCHOT, Sturgulewski, Menard

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 36.30.850(b)(16) is amended to read:

5 (16) a contract that is a delegation, in whole or in part, of investment powers or
6 fiduciary duties of the Board of Trustees of the Alaska Permanent Fund Corporation under
7 AS 37.13;

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

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

11 (1) 25 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 on or before December 1, 1979, and 25 percent
14 of all bonuses received by the state from mineral leases issued on or before February 15, 1980;

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

5 (3) interest earned on money described in (1) and (2) of this subsection while
6 the money is held in trust, escrow, or otherwise before receipt of the money by the state:

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

9 * Sec. 3. AS 37.13.010(b) is amended to read:

10 (b) Payments due the Alaska permanent fund under (a) of this section shall be made to
11 the fund within three banking days after the day the amount due to the fund reaches at least
12 \$3,000,000 and at least once each month.

13 * Sec. 4. AS 37.13.020 is amended to read:

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

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

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

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

26 * Sec. 5. AS 37.13.030 is amended to read:

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

31 * Sec. 6. AS 37.13.040 is amended to read:

1 Sec. 37.13.040. ALASKA PERMANENT FUND CORPORATION. There is established
2 the Alaska Permanent Fund Corporation. The corporation is a public corporation and government
3 instrumentality in the Department of Revenue managed by the board of trustees. The purpose
4 of the corporation [BOARD] is to manage and invest the assets of the permanent fund and
5 other funds designated by law [CORPORATION] in accordance with this chapter.

6 * Sec. 7. AS 37.13.080 is amended to read:

7 Sec. 37.13.080. QUORUM AND VOTING. Four members of the board constitute a
8 quorum for the transaction of business and the exercise of the powers and duties of the board.
9 action may be taken only upon affirmative vote of a majority of the full membership of the
10 board.

11 * Sec. 8. AS 37.13.110(b) is amended to read:

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

17 * Sec. 9. AS 37.13.120(a) is amended to read:

18 (a) The prudent-investor [PRUDENT-MAN] rule shall be applied by the board in the
19 management and investment of [ALASKA PERMANENT] fund assets. The prudent-investor
20 [PRUDENT-MAN] rule as applied to investments of the fund [CORPORATION] means that in
21 making investments the board shall exercise the judgment and care under the circumstances then
22 prevailing that an institutional investor of ordinary prudence, discretion, and intelligence exercises
23 in the management of large investments entrusted to it not in regard to speculation but in regard
24 to the permanent disposition of funds, considering probable safety of capital as well as probable
25 income.

26 * Sec. 10. AS 37.13.120(b) is amended to read:

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

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

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

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

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

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

7 (2) obligations secured by reserves paid in by the United States or agencies or
8 instrumentalities of the United States or obligations of corporations in which the United States
9 is a shareholder or member;

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

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

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

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

27 (6) [(7)] fixed-term certificates of indebtedness of federally insured credit unions
28 in Alaska [THAT MAY BE READILY SOLD IN A SECONDARY MARKET AT PRICES
29 REFLECTING FAIR VALUE OR] that are fully secured at all times as to payments of principal
30 and interest as described in (m) of this section;

31 (7) [(8)] domestic corporate debt securities that are rated A [AA] or better by a

1 nationally recognized rating service, or nondomestic corporate debt securities of comparable
2 quality;

3 (8) [(9)] short-term

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

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

9 (9) [(10)] bankers' acceptances drawn on and accepted by United States banks
10 each of which has a combined capital and surplus aggregating at least \$200,000,000;

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

13 (11) [(12)] THE GUARANTEED PORTION OF FEDERAL SMALL BUSINESS
14 ADMINISTRATION LOANS;

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

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

19 (12) [(15)] the guaranteed portion of Farmers Home Administration loans;

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

26 [(A) MORTGAGE INSURANCE IS NOT NECESSARY FOR
27 COMMERCIAL LOANS HAVING LOAN-TO-VALUE RATIOS OF LESS THAN 50
28 PERCENT AND THE MINIMUM COVERAGE OF OTHER COMMERCIAL LOANS
29 SHALL BE 10 PERCENT FOR THOSE HAVING A LOAN-TO-VALUE RATIO OF
30 50 - 60 PERCENT AND 15 PERCENT FOR THOSE HAVING A LOAN-TO-VALUE
31 RATIO GREATER THAN 60 PERCENT BUT NO MORE THAN 75 PERCENT; AND

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

6 (14) [(17) NOTES SECURED BY MORTGAGES GRANTING A FIRST LIEN
7 ON COMMERCIAL REAL ESTATE IMPROVED BY COMPLETED BUILDINGS IF THE
8 ORIGINATING FINANCIAL INSTITUTION RETAINS AT LEAST 25 PERCENT OF THE
9 MORTGAGE UNTIL MATURITY;

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

12 (15) [(19) certificates of deposit, term deposits, or bankers' acceptances, that are
13 issued by a United States or nondomestic bank or trust company located outside of the United
14 States and are denominated in United States or nondomestic currency, if either (A) they may be
15 readily sold in a secondary market at prices reflecting fair value, or (B) the issuing bank or trust
16 company has capital, surplus, and retained earnings at the date of issue equaling at least
17 \$500,000,000; investments made under this paragraph are not subject to the collateral
18 requirements for domestic certificates under (m) of this section;

19 (16) [(20) equity interests in, and debt obligations secured by mortgages granting
20 a first lien on, real estate improved by completed and substantially rented buildings and located
21 in the United States, if these investments are made

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

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

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

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

7 (iii) the property is managed and operated by an entity
8 that has had at least five years of experience in the management of real estate
9 investments of institutional investors [IN CONJUNCTION WITH AND ON
10 SUBSTANTIALLY THE SAME TERMS AS AN ENTITY DESCRIBED IN (A)
11 OF THIS PARAGRAPH];

12 (17) [(21)] securities of nondomestic governments and nondomestic government
13 agencies, the principal of, or interest on, which is payable in either United States dollars or
14 nondomestic currencies;

15 (18) [(22)] securities of nondomestic corporations, including common and
16 preferred stock, whose dividends, if any, may be payable in either United States dollars or
17 nondomestic currencies;

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

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

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

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

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

- 1 (2) real estate investments under ~~(g)(16)~~ [(g)(20)] of this section - 15 percent;
- 2 (3) certificates of deposit, term deposit, or bankers' acceptances under (g)(15)
- 3 [(g)(19)] of this section - 20 percent;
- 4 (4) securities of nondomestic governments, nondomestic government agencies, and
- 5 nondomestic corporations under (g)(7), (17), and (18) [(g)(8), (21), AND (22)] of this section,
- 6 domestic corporate stocks [AND DEBT SECURITIES] under (g)(14) [(G)(8) AND (18)] of this
- 7 section, and short-term nondomestic corporate promissory notes under (g)(8)(B) [(g)(9)(B)] of
- 8 this section - 50 percent;
- 9 (5) domestic corporate debt securities that are rated A and nondomestic
- 10 corporate debt securities of comparable quality under (g)(7) of this section - five percent.

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

12 (j) The assets of the [ALASKA PERMANENT] fund may not be used for the purchase

13 of bonds of a corporation, upon which any regular interest payment has been defaulted within

14 five years before purchase, except bonds never in default but which have been outstanding for

15 less than five years.

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

17 (k) The board shall establish and from time to time as necessary modify guidelines for

18 the investment of the assets of the fund [CORPORATION]. Before adoption of any guidelines

19 the guidelines shall be reported to the Legislative Budget and Audit Committee for review and

20 comment.

21 * **Sec. 16.** AS 37.13.120(l) is amended to read:

22 (l) The board shall invest the assets of the fund [CORPORATION] in in-state

23 investments to the extent in-state investments are available if the in-state investments

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

25 opportunities; and

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

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

28 (m) Certificates of deposit or the equivalent instruments that are not of a quality that may

29 be readily sold in a secondary market at prices reflecting fair value must be secured by a pledge

30 as collateral of

31 (1) investments authorized for the [ALASKA PERMANENT] fund under (g)(1),

1 (2), (4), or (8) - (10) [(8), OR (12) - (17)] of this section;

2 (2) [OR BY A PLEDGE AS COLLATERAL OF] obligations of the state or
3 instrumentalities of the state that are rated at least "A" by a major bond rating service and have
4 a demonstrated secondary market;

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

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

8 (5) notes secured by mortgages granting a first lien on commercial or
9 residential real estate improved by completed buildings if the originating financial
10 institution retains at least 25 percent of the mortgage until maturity [, WHICH
11 INVESTMENTS OR OBLIGATIONS HAVE VALUE AT LEAST EQUAL TO THE FACE
12 VALUE OF THE CERTIFICATE OF DEPOSIT. THE BOARD MAY REQUIRE
13 SUBSTITUTION OF COLLATERAL IN ORDER TO ENSURE CONTINUED SATISFACTION
14 OF THE REQUIREMENTS SET OUT IN THIS SUBSECTION].

15 * **Sec. 18.** AS 37.13.120 is amended by adding a new subsection to read:

16 (n) Investments or obligations pledged as collateral under (m) of this section must have
17 value at least equal to the face value of the certificates of deposit being secured. The board may
18 require substitution of collateral in order to ensure continued satisfaction of the requirements set
19 out in (m) of this section.

20 * **Sec. 19.** AS 37.13.140 is amended to read:

21 Sec. 37.13.140. INCOME. Net income of the fund includes income of the earnings
22 reserve account established under AS 37.13.145. Net income of the fund [CORPORATION]
23 shall be computed annually as of the last day of the fiscal year in accordance with generally
24 accepted accounting principles, excluding any unrealized gains or losses. Income available for
25 distribution equals 21 percent of the net income of the fund [CORPORATION] for the last five
26 fiscal years, including the fiscal year just ended, but may not exceed net income of the fund
27 [CORPORATION] for the fiscal year just ended plus the balance in the earnings reserve account
28 described in AS 37.13.145.

29 * **Sec. 20.** AS 37.13.145 is repealed and reenacted to read:

30 DISPOSITION OF INCOME. (a) The earnings reserve account is established as a
31 separate account in the fund. Income from the fund shall be deposited by the corporation into

1 the account as soon as it is received. Money in the account shall be invested in investments
2 authorized under AS 37.13.120.

3 (b) At the end of each fiscal year, the corporation shall transfer from the earnings reserve
4 account to the dividend fund established under AS 43.23.045 50 percent of the income available
5 for distribution under AS 37.13.140.

6 (c) After the transfer under (b) of this section, the corporation shall transfer from the
7 earnings reserve account to the principal of the fund an amount sufficient to offset the effect of
8 inflation on principal of the fund during that fiscal year. The corporation shall calculate the
9 amount to transfer to the principal under this subsection by

10 (1) computing the average of the monthly United States Consumer Price Index
11 for all urban consumers for each of the two previous calendar years;

12 (2) computing the percentage change between the first and second calendar year
13 average; and

14 (3) applying that rate to the value of the principal of the fund on the last day of
15 the fiscal year just ended.

16 (d) Notwithstanding (b) of this section, income earned on money awarded in or received
17 as a result of State v. Amerada Hess, et al., 1JU-77-847 Civ. (Superior Court, First Judicial
18 District), including settlement, summary judgment, or adjustment to a royalty-in-kind contract that
19 is tied to the outcome of this case, or interest earned on the money, or on the earnings of the
20 money shall be treated in the same manner as other income of the Alaska permanent fund, except
21 that it is not available for distribution to the dividend fund, and shall be annually deposited into
22 the principal of the Alaska permanent fund.

23 * Sec. 21. AS 37.13.150 is amended to read:

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

29 * Sec. 22. AS 37.13.160 is amended to read:

30 Sec. 37.13.160. AUDITS. The Legislative Budget and Audit Committee may provide
31 for an annual post audit and annual operational and performance evaluations of the fund's

1 [CORPORATION'S] investments and investment programs.

2 * Sec. 23. AS 37.13.170 is amended to read:

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

18 * Sec. 24. AS 37.13.180 is amended to read:

19 Sec. 37.13.180. TAX EXEMPTION. The corporation and the fund are [IS] exempt
20 from all taxes and assessments in the state. All security instruments issued by the corporation
21 or the fund, their transfer, and their income are exempt from all taxes and assessments in the
22 state.

23 * Sec. 25. AS 37.13.190 is amended to read:

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

26 * Sec. 26. AS 37.13.210 is amended by adding a new paragraph to read:

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

29 * Sec. 27. AS 43.23.025(a) is amended to read:

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

- 1 (1) determining the total amount available for dividend payments, which equals
2 (A) the amount of income of the Alaska permanent fund transferred to the
3 dividend fund under AS 37.13.145(b) [AS 43.23.045(b)] during the current year;
4 (B) plus the unexpended and unobligated balances of prior fiscal year
5 appropriations that lapse into the dividend fund under AS 43.23.045(d);
6 (C) less the amount necessary to pay dividends from the dividend fund in
7 the current year under AS 43.23.055(3) and (7);
8 (D) less the amount necessary to pay dividends from the dividend fund
9 due to eligible applicants who, as determined by the department, filed for a previous
10 year's dividend by the filing deadline but who were not included in a previous year's
11 dividend computation;
12 (E) less appropriations from the dividend fund during the current year,
13 including amounts to pay costs of administering the dividend program and the hold
14 harmless provisions of AS 43.23.075;
- 15 (2) determining the number of individuals eligible to receive a dividend payment
16 for the current year; and
- 17 (3) dividing the amount determined under (1) of this section by the amount
18 determined under (2) of this section.

19 * **Sec. 28.** AS 37.13.145(d), added by sec. 20 of this Act, is repealed on the day that the revisor of
20 statutes certifies to the legislature that the Alaska Supreme Court has made a final determination that,
21 in the absence of AS 43.23.045(e), repealed by sec. 29 of this Act, or AS 37.13.145(d), added by sec. 20
22 of this Act, no judge or juror is disqualified from serving as judge or juror solely because the judge or
23 juror may qualify to receive a permanent fund dividend.

24 * **Sec. 29.** AS 43.23.045(b) and 43.23.045(e), and sec. 4, ch. 18, SLA 1991, are repealed.

25 * **Sec. 30.** This Act takes effect July 1, 1992.