

**HOUSE CS FOR CS FOR SENATE BILL NO. 39 (FINANCE)**

IN THE LEGISLATURE OF THE STATE OF ALASKA

SEVENTEENTH LEGISLATURE - SECOND SESSION

BY THE HOUSE FINANCE COMMITTEE

Offered: 5/10/92

Referred: Rules

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(b) is amended to read:

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

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

13 Sec. 37.13.020. FINDINGS. The people of the state, by constitutional amendment, have  
14 required the placement of at least 25 percent of all mineral lease rentals, royalties, royalty sale

1 proceeds, and federal mineral revenue sharing payments and bonuses received by the state into  
2 a permanent fund. The legislature finds with respect to the fund [ALASKA PERMANENT  
3 FUND CORPORATION] that

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

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

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

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

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

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

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

22 \* Sec. 6. AS 37.13.080 is amended to read:

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

27 \* Sec. 7. AS 37.13.110 is amended to read:

28 Sec. 37.13.110. CONFLICTS OF INTEREST. (a) Members of the board, [AND] the  
29 executive director, and investment officers of the corporation are subject to the provisions of  
30 AS 39.50.

31 (b) If a member of the board or an employee of the corporation acquires, owns, or

1 controls an interest, direct or indirect, in an entity or project in which fund [CORPORATION]  
2 assets are invested, the member shall immediately disclose the interest to the board. The  
3 disclosure is a matter of public record and shall be included in the minutes of the board meeting  
4 next following the disclosure.

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

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

14 \* Sec. 9. AS 37.13.120(b) is amended to read:

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

17 \* Sec. 10. AS 37.13.120(e) is amended to read:

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

20 \* Sec. 11. AS 37.13.120(g) is amended to read:

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

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

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

29 (3) certificates of deposit and term deposits of United States domestic banks that  
30 are members of the Federal Deposit Insurance Corporation and that may be readily sold in a  
31 secondary market at prices reflecting fair value or that are fully secured at all times as to

1 payment of principal and interest as described in (m) of this section;

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

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

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

15 (6) [(7)] fixed-term certificates of indebtedness of federally insured credit unions  
16 in Alaska [THAT MAY BE READILY SOLD IN A SECONDARY MARKET AT PRICES  
17 REFLECTING FAIR VALUE OR] that are fully secured at all times as to payments of principal  
18 and interest as described in (m) of this section;

19 (7) [(8)] domestic corporate debt securities that are rated A [AA] or better by a  
20 nationally recognized rating service, or nondomestic corporate debt securities of comparable  
21 quality;

22 (8) [(9)] short-term

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

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

28 (9) [(10)] bankers' acceptances drawn on and accepted by United States banks  
29 each of which has a combined capital and surplus aggregating at least \$200,000,000;

30 (10) [(11)] repurchase agreements, the securities underlying the agreements being  
31 any of the items in (1) - (6) [(1) - (3) AND (8) - (10)] of this subsection;

1                   (11) [(12) THE GUARANTEED PORTION OF FEDERAL SMALL BUSINESS  
2 ADMINISTRATION LOANS;

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

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

7                   (12) [(15)] the guaranteed portion of Farmers Home Administration loans;

8                   (13) [(16)] notes secured by mortgages granting a first lien on [COMMERCIAL  
9 OR] residential real estate improved by completed buildings if the mortgages are insured by a  
10 private mortgage insurance corporation that is authorized to do business in this state [ALASKA]  
11 and has combined capital and surplus aggregating at least \$20,000,000, and if loan-to-value ratios  
12 do not exceed [75 PERCENT FOR COMMERCIAL MORTGAGES AND] 90 percent [FOR  
13 RESIDENTIAL MORTGAGES]; however,

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

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

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

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

31                   (15) [(19)] certificates of deposit, term deposits, or bankers' acceptances, that are

1 issued by a United States or nondomestic bank or trust company located outside of the United  
2 States and are denominated in United States or nondomestic currency, if either (A) they may be  
3 readily sold in a secondary market at prices reflecting fair value, or (B) the issuing bank or trust  
4 company has capital, surplus, and retained earnings at the date of issue equaling at least  
5 \$500,000,000; investments made under this paragraph are not subject to the collateral  
6 requirements for domestic certificates under (m) of this section;

7 (16) [(20)] equity interests in, and debt obligations secured by mortgages granting  
8 a first lien on, real estate improved by completed and substantially rented buildings and located  
9 in the United States, if these investments are made

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

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

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

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

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

31 (17) [(21)] securities of nondomestic governments and nondomestic government

1 agencies, the principal of, or interest on, which is payable in either United States dollars or  
2 nondomestic currencies;

3 (18) [(22)] securities of nondomestic corporations, including common and  
4 preferred stock, whose dividends, if any, may be payable in either United States dollars or  
5 nondomestic currencies;

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

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

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

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

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

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

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

23 (4) securities of nondomestic governments, nondomestic government agencies, and  
24 nondomestic corporations under (g)(7), (17), and (18) [(g)(8), (21), AND (22)] of this section,  
25 domestic corporate stocks [AND DEBT SECURITIES] under (g)(14) [(G)(8) AND (18)] of this  
26 section, and short-term nondomestic corporate promissory notes under (g)(8)(B) [(g)(9)(B)] of  
27 this section - 50 percent;

28 (5) domestic corporate debt securities that are rated A and nondomestic  
29 corporate debt securities of comparable quality under (g)(7) of this section, and taxable  
30 municipal or state debt securities that are rated A under (g)(19) of this section - five  
31 percent.

1 \* Sec. 13. 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. 14. 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. 15. 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. 16. 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;

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

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

29 (5) notes secured by mortgages granting a first lien on commercial or  
30 residential real estate improved by completed buildings if the originating financial  
31 institution retains at least 25 percent of the mortgage until maturity [, WHICH

1 INVESTMENTS OR OBLIGATIONS HAVE VALUE AT LEAST EQUAL TO THE FACE  
2 VALUE OF THE CERTIFICATE OF DEPOSIT. THE BOARD MAY REQUIRE  
3 SUBSTITUTION OF COLLATERAL IN ORDER TO ENSURE CONTINUED SATISFACTION  
4 OF THE REQUIREMENTS SET OUT IN THIS SUBSECTION].

5 \* Sec. 17. AS 37.13.120 is amended by adding a new subsection to read:

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

10 \* Sec. 18. AS 37.13.140 is amended to read:

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

19 \* Sec. 19. AS 37.13.145 is repealed and reenacted to read:

20 Sec. 37.13.145. DISPOSITION OF INCOME. (a) The earnings reserve account is  
21 established as a separate account in the fund. Income from the fund shall be deposited by the  
22 corporation into the account as soon as it is received. Money in the account shall be invested  
23 in investments authorized under AS 37.13.120.

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

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

13 \* Sec. 20. AS 37.13.150 is amended to read:

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

19 \* Sec. 21. AS 37.13.160 is amended to read:

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

23 \* Sec. 22. AS 37.13.170 is amended to read:

24 Sec. 37.13.170. REPORTS AND PUBLICATIONS. By September 30 of each year, the  
25 board shall publish a report of the fund [CORPORATION] for distribution to the governor,  
26 legislature, and the public. The report shall be written in easily understandable language. The  
27 report must include financial statements audited by independent outside auditors, a statement of  
28 the amount of money received by the [ALASKA PERMANENT] fund from each investment  
29 during the period covered, a statement of investments of the fund [CORPORATION] including  
30 an appraisal at market value, a description of fund [CORPORATION] investment activity during  
31 the period covered by the report, a comparison of the fund [CORPORATION] performance with

1 the intended goals contained in AS 37.13.020, an examination of the impact of the investment  
2 criteria of this chapter on the fund [CORPORATION] portfolio with recommendations of any  
3 needed changes, and any other information the board believes would be of interest to the  
4 governor, the legislature, and the public. The annual income statement and balance sheet of the  
5 fund [CORPORATION] shall be published in at least one newspaper in each judicial district. The  
6 income statement and balance sheet for the two fiscal years preceding the publication of the  
7 election pamphlet under AS 15.58 shall be included in that pamphlet.

8 \* Sec. 23. AS 37.13.180 is amended to read:

9 Sec. 37.13.180. TAX EXEMPTION. The corporation and the fund are [IS] exempt  
10 from all taxes and assessments in the state. All security instruments issued by the corporation  
11 or the fund, their transfer, and their income are exempt from all taxes and assessments in the  
12 state.

13 \* Sec. 24. AS 37.13.190 is amended to read:

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

16 \* Sec. 25. AS 37.13.210 is amended by adding a new paragraph to read:

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

19 \* Sec. 26. AS 39.50.200(b)(42) is amended to read:

20 (42) Board of Trustees, [AND] executive director, and investment officers of the  
21 Alaska Permanent Fund Corporation (AS 37.13.040);

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

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

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

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

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

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

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

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

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

10 (3) dividing the amount determined under (1) of this section by the amount  
11 determined under (2) of this section.

12 \* Sec. 28. AS 37.13.145(d), added by sec. 19 of this Act, is repealed on the day that the revisor of  
13 statutes certifies to the legislature that the Alaska Supreme Court has made a final determination that,  
14 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. 19  
15 of this Act, no judge or juror is disqualified from serving as judge or juror solely because the judge or  
16 juror may qualify to receive a permanent fund dividend.

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

18 \* Sec. 30. TRANSITION. Notwithstanding the filing deadline set by AS 39.50.020(a), a person  
19 employed by the Alaska Permanent Fund Corporation as an investment officer on the effective date of  
20 this Act shall file the statement required by AS 39.50.020(a) within 30 days after the effective date of  
21 this Act.

22 \* Sec. 31. This Act takes effect July 1, 1992.