

SENATE BILL NO. 304

IN THE LEGISLATURE OF THE STATE OF ALASKA

SEVENTEENTH LEGISLATURE - FIRST SESSION

BY THE SENATE RULES COMMITTEE BY REQUEST OF THE LEGISLATIVE BUDGET AND AUDIT COMMITTEE

Introduced: 5/18/91
Referred: HES, Finance

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to expenditures from certain state endowment funds; and providing for
2 an effective date."

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

4 * Section 1. AS 14.40.170(a) is amended to read:

- 5 (a) The Board of Regents shall
 - 6 (1) appoint the president of the university by a majority vote of the whole board,
 - 7 and the president may attend meetings of the board;
 - 8 (2) fix the compensation of the president of the university, all heads of
 - 9 departments, professors, teachers, instructors, and other officers;
 - 10 (3) confer such appropriate degrees as it may determine and prescribe;
 - 11 (4) have the care, control, and management of
 - 12 (A) all the real and personal property of the university; and
 - 13 (B) land conveyed to the Board of Regents by the commissioner of natural
 - 14 resources in the settlement of the claim of the University of Alaska to land granted to the

1 state in accordance with the Act of March 4, 1915
2 (38 Stat. 1214), as amended, and in accordance with the Act of January 21, 1929 (45 Stat.
3 1091), as amended;

4 (5) keep a correct and easily understood record of the minutes of every meeting
5 and all acts done by it in pursuance of its duties;

6 (6) under procedures to be established by the commissioner of administration, and
7 in accordance with existing procedures for other state agencies, have the care, control, and
8 management of all money of the university and keep a complete record of all money received
9 and disbursed;

10 (7) adopt reasonable rules for the prudent trust management and the long-term
11 financial benefit to the university of the land of the university;

12 (8) provide public notice of sales, leases, exchanges, and transfers of the land of
13 the university or of interests in land of the university;

14 (9) report each year within the first 10 days of the convening of a regular session
15 of the legislature on the expenditures made during the preceding fiscal year from the funds of
16 the University of Alaska that are derived from sales, leases, exchanges, or transfers of the land
17 of the university or of interests in land of the university that were conveyed to the University of
18 Alaska in settlement of the claim of the University of Alaska to land granted to the state in
19 accordance with the Act of March 4, 1915 (38 Stat. 1214), as amended, and in accordance with
20 the Act of January 21, 1929 (45 Stat. 1091), as amended;

21 (10) establish the payout percentage for the endowment fund established
22 under AS 14.40.400;

23 (11) annually recommend to the legislature the amount to be appropriated
24 from the endowment fund established under AS 14.40.400; the amount recommended may
25 not be greater than the payout percentage multiplied by the average of the market values
26 of the fund on June 30 in each of the preceding five years.

27 * Sec. 2. AS 14.40.400(a) is amended to read:

28 (a) The Department of Revenue shall establish a separate endowment trust fund in which
29 all net income derived from the sale or lease of the land granted under the Act of Congress
30 approved January 21, 1929, and in which all monetary gifts, bequests, or endowments made to
31 the University of Alaska for the purpose of the fund and returns on the investment of the fund

1 [.] shall be held in trust.

2 * Sec. 3. AS 14.40.400(b) is amended to read:

3 (b) The commissioner of revenue is the fiduciary of the trust fund and shall account for
4 and invest the fund as set out in AS 37.14.160 [AS 37.14.110(c), 37.14.160,] and 37.14.170,
5 except that the commissioner shall report the condition and investment performance of the fund
6 to the Board of Regents.

7 * Sec. 4. AS 14.40.400(c) is amended to read:

8 (c) The assets of [NET INCOME FROM] the trust fund shall be used, subject to
9 appropriation, exclusively for the Agricultural College and School of Mines.

10 * Sec. 5. AS 14.40.400(e) is amended to read:

11 (e) The Department of Administration shall disburse the appropriated assets [NET
12 INCOME] from the trust fund upon vouchers approved by the president and treasurer of the
13 University of Alaska specifying the purpose for which the money is to be used and showing it
14 is to be used in conformity with this section.

15 * Sec. 6. AS 14.40.491 is amended to read:

16 Sec. 14.40.491. DEFINITIONS [DEFINITION OF UNIVERSITY RECEIPTS]. In
17 AS 14.40.120 - 14.40.491,

18 (1) "higher education inflation costs" means costs of inflation as measured
19 by the higher education price index published by the Research Associates of Washington;

20 (2) "payout percentage" means a percentage of the market value of the
21 endowment fund established under AS 14.40.400 that is not greater than the greater of

22 (A) five percent; or

23 (B) the average total return for the fund for the last 10 years net of
24 higher education inflation costs;

25 (3) "university receipts" includes

26 (A) [(1)] student fees, including tuition;

27 (B) [(2)] receipts from university auxiliary services;

28 (C) [(3)] recovery of indirect costs of university activities;

29 (D) [(4)] receipts from sales and rentals of university property;

30 (E) [(5)] federal receipts;

31 (F) [(6)] gifts, grants, and contracts; and

1 **(G) [(7)]** receipts from sales, rentals, and the provision of services of
2 educational activities.

3 * **Sec. 7. AS 37.10.071(d)** is amended to read:

4 (d) In exercising investment, custodial, or depository powers or duties under this section,
5 the commissioner or a designee of the commissioner is liable for a breach of a duty that is
6 assigned or delegated under this section [,] or under AS 14.25.180, AS 14.40.400(b),
7 AS 37.10.070, **AS 37.14.160** [AS 37.14.110(c), 37.14.160], 37.14.170, or AS 39.35.080.
8 However, the commissioner or the commissioner's designee is not liable for a breach of a duty
9 that has been delegated to another person if the delegation is prudent under the applicable
10 standard of prudence set out in statute or if the duty is assigned by law to another person, except
11 to the extent that the commissioner or designee

12 (1) knowingly **participates** [PARTICIPATE] in, or knowingly undertakes to
13 conceal, an act or omission of another person, knowing that the act or omission is a breach of
14 that person's duties under this chapter;

15 (2) by failure to comply with this section in the administration of specific
16 responsibilities, enables another person to commit a breach of duty; or

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

19 * **Sec. 8. AS 37.14.110(b)** is amended to read:

20 (b) The [PRINCIPAL OF THE] fund established in (a) of this section consists of

21 (1) the balance of the public school permanent fund on July 1, 1978; [AND]

22 (2) sums transferred under AS 37.14.150; **and**

23 (3) **returns on investments of the fund.**

24 * **Sec. 9. AS 37.14.130** is amended to read:

25 Sec. 37.14.130. **POWERS AND DUTIES OF BOARD.** The board created in
26 AS 37.14.120 has the following powers and duties:

27 (1) to hold regular meetings and special meetings considered necessary;

28 (2) to have prepared an annual accounting of the [PRINCIPAL AND INCOME
29 OF THE] fund established in AS 37.14.110; [AND]

30 (3) **to establish the payout percentage for the fund; and**

31 (4) **to annually recommend to the legislature the amount to be appropriated**

1 from the fund; the amount recommended may not be greater than the payout percentage
2 multiplied by the average of the market values of the fund on June 30 in each of the
3 preceding five years [REPEALED].

4 * Sec. 10. AS 37.14.140 is amended to read:

5 Sec. 37.14.140. FUND UTILIZATION [OF INCOME]. The assets [NET INCOME] of
6 the fund may not be appropriated for a purpose other than the support of the state public school
7 program. [THE COMMISSIONER OF REVENUE SHALL INVEST REALIZED NET INCOME
8 THAT HAS NOT BEEN APPROPRIATED OR THAT HAS BEEN APPROPRIATED BUT
9 NOT EXPENDED UNTIL THE INCOME IS APPROPRIATED AND EXPENDED.]

10 * Sec. 11. AS 37.14.160 is amended to read:

11 Sec. 37.14.160. DUTIES OF THE COMMISSIONER OF REVENUE. The commissioner
12 of revenue is the treasurer of the trust fund created in AS 37.14.110 and shall

13 (1) exercise the powers and duties established in AS 14.25.180(c); and

14 (2) [DEPOSIT THE PRINCIPAL AND INCOME FROM INVESTMENTS IN
15 SEPARATE PRINCIPAL AND INCOME ACCOUNTS FOR THE FUND;

16 (3) INVEST AND MAINTAIN ACCOUNTING RECORDS THAT
17 DISTINGUISH BETWEEN THE PRINCIPAL AND INCOME OF THE FUND;

18 (4)] provide reports to the board established under AS 37.14.120 on the condition
19 and investment performance of the fund.

20 * Sec. 12. AS 37.14.170 is amended to read:

21 Sec. 37.14.170. INVESTMENTS. The commissioner of revenue is the fiduciary of the
22 trust fund [AND SHALL INVEST THE FUND TO PROVIDE INCREASING NET INCOME
23 OVER LONG-TERM PERIODS TO THE FUND'S INCOME BENEFICIARIES. THE
24 COMMISSIONER MAY INVEST THE MONEY IN THE FUND ON THE BASIS OF
25 PROBABLE TOTAL RATE OF RETURN TO PROMOTE THE LONG-TERM GENERATION
26 OF INCOME]. In managing the trust fund, the commissioner shall

27 (1) consider the status of the fund's capital, total rate of return, and payout
28 percentage [THE INCOME GENERATED] on both a current and a probable future basis;

29 (2) determine the appropriate investment objectives;

30 (3) establish investment policies to achieve the objectives; and

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

1 * **Sec. 13.** AS 37.14 is amended by adding a new section to article 2 to read:

2 **Sec. 37.14.190. DEFINITIONS.** In AS 37.14.110 - 37.14.190,

3 (1) "fund" means the public school trust fund;

4 (2) "payout percentage" means a percentage of the market value of the endowment
5 fund established under AS 37.14.110 that is not greater than the greater of

6 (A) five percent; or

7 (B) the average total return for the fund for the last 10 years net of school
8 inflation costs;

9 (3) "school inflation costs" means costs of inflation as measured by the school
10 price index published by the Research Associates of Washington.

11 * **Sec. 14.** AS 37.14.200(b) is amended to read:

12 (b) The [PRINCIPAL OF THE] fund consists of

13 (1) legislative appropriations to the fund; [AND]

14 (2) gifts, bequests, and contributions of cash or other assets from a person; and

15 (3) returns on investments of the fund.

16 * **Sec. 15.** AS 37.14.210 is amended to read:

17 **Sec. 37.14.210. POWERS AND DUTIES OF THE COMMISSIONER OF REVENUE.**

18 The commissioner of revenue is the treasurer of the fund and shall [HAS THE POWER AND
19 DUTY TO:

20 (1) ACT AS OFFICIAL CUSTODIAN OF THE CASH AND INVESTMENTS
21 BELONGING TO THE FUND BY SECURING ADEQUATE AND SAFE CUSTODIAL
22 FACILITIES;

23 (2) RECEIVE ALL ITEMS OF CASH AND INVESTMENTS BELONGING TO
24 THE FUND;

25 (3) COLLECT THE PRINCIPAL AND INCOME FROM INVESTMENTS
26 OWNED OR ACQUIRED BY THE FUND AND DEPOSIT THE AMOUNTS IN SEPARATE
27 PRINCIPAL AND INCOME ACCOUNTS FOR THE FUND;

28 (4) INVEST AND REINVEST THE ASSETS OF THE FUND AS PROVIDED
29 IN THIS SECTION AND AS PROVIDED FOR THE INVESTMENT OF FUNDS UNDER AS
30 14.25.180(C) AND AS 37.14.170;

31 (5) EXERCISE THE POWERS OF AN OWNER WITH RESPECT TO THE

1 ASSETS OF THE FUND;

2 (6) MAINTAIN ACCOUNTING RECORDS OF THE FUND IN ACCORDANCE
3 WITH INVESTMENT ACCOUNTING PRINCIPLES AND WITH DISTINCTION BETWEEN
4 THE PRINCIPAL AND INCOME ACCOUNTS OF THE FUND;

5 (7) ENGAGE AN INDEPENDENT FIRM OF CERTIFIED PUBLIC
6 ACCOUNTANTS TO ANNUALLY AUDIT THE FINANCIAL CONDITION OF THE FUND'S
7 INVESTMENTS AND INVESTMENT TRANSACTIONS;

8 (8) ENTER INTO AND ENFORCE CONTRACTS OR AGREEMENTS
9 CONSIDERED NECESSARY FOR THE INVESTMENT PURPOSES OF THE FUND;

10 (9)] report to the commission the condition and investment performance of the
11 fund and exercise the powers and duties established under AS 14.25.180(c) [;

12 (10) DO ALL ACTS, WHETHER OR NOT EXPRESSLY AUTHORIZED, THAT
13 THE COMMISSIONER OF REVENUE CONSIDERS NECESSARY OR PROPER IN
14 ADMINISTERING THE ASSETS OF THE FUND].

15 * Sec. 16. AS 37.14 is amended by adding a new section to read:

16 Sec. 37.14.215. INVESTMENTS. The commissioner of revenue is the fiduciary of the
17 fund and shall

18 (1) manage the fund as a fiduciary;

19 (2) consider the status of the fund's capital, total rate of return, and payout
20 percentage on both a current and probable future basis;

21 (3) determine appropriate investment objectives for the fund;

22 (4) establish investment policies to achieve fund objectives; and

23 (5) act only in regard to the best financial interests of the fund's beneficiaries.

24 * Sec. 17. AS 37.14.230 is amended to read:

25 Sec. 37.14.230. POWERS AND DUTIES OF THE COMMISSION. When acting as
26 administrator of the fund, the commission shall

27 (1) hold special meetings it considers necessary; the commission may hold
28 meetings by teleconference;

29 (2) award grants from the [NET INCOME OF THE] fund to community-based
30 programs and projects that the commission finds will aid in the prevention of child abuse and
31 neglect;

1 (3) monitor approved programs and projects for compliance with AS 37.14.200 -
2 37.14.270;

3 (4) before providing assistance to a program or project, approve written findings
4 on the program or project that include a consideration of the means of measuring the
5 effectiveness of the program or project;

6 (5) apply for, and use [NET INCOME FROM] the fund to obtain, private and
7 federal grants for the prevention of child abuse and neglect;

8 (6) solicit contributions, gifts, and bequests to the fund;

9 (7) keep audio tape recordings of each meeting of the commission to be made
10 available on request; [AND]

11 (8) submit to the governor and the legislature by February 1 each year a report
12 describing

13 (A) the child abuse and neglect prevention services that were provided by
14 the programs and projects to which the commission awarded grants; and

15 (B) the annual level of contributions, income, and expenses of the fund;

16 (9) establish the payout percentage for the fund; and

17 (10) annually recommend to the legislature the amount to be appropriated
18 from the fund; the amount recommended may not be greater than the payout percentage
19 multiplied by the average of the market values of the fund on June 30 in each of the
20 preceding five years.

21 * Sec. 18. AS 37.14.240(b) is amended to read:

22 (b) The assets [NET INCOME] of the fund may be appropriated only for the following
23 purposes:

24 (1) the awarding of grants;

25 (2) obtaining private and federal grants for the fund;

26 (3) soliciting contributions, gifts, and bequests for the fund; and

27 (4) reimbursement to the Department of Revenue for the costs of managing

28 [ESTABLISHING] the fund.

29 * Sec. 19. AS 37.14.270 is amended to read:

30 Sec. 37.14.270. DEFINITIONS. In AS 37.14.200 - 37.14.270

31 (1) [REPEALED]

1 (2)] "child abuse and neglect" has the meaning given in AS 47.17.290;

2 (2) [(3)] "commission" means the Alaska Commission on Children and Youth
3 established under AS 44.19.521;

4 (3) [(4)] "fund" means the Alaska children's trust fund established under
5 AS 37.14.200;

6 (4) "inflation costs" means costs of inflation as measured by the Consumer
7 Price Index for all urban consumers, all items, for Anchorage, Alaska prepared by the
8 United States Bureau of Labor Statistics;

9 (5) "payout percentage" means a percentage of the market value of the
10 endowment fund established under AS 37.14.200 that is not greater than the greater of

11 (A) five percent; or

12 (B) the average total return for the fund for the last 10 years net of
13 inflation costs;

14 (6) [(5)] "prevention of child abuse and neglect" includes primary and secondary
15 prevention programs; in this paragraph

16 (A) "primary prevention program" means an educational or training
17 program intended to raise the awareness of and change attitudes concerning child abuse
18 and neglect and its prevention;

19 (B) "secondary prevention program" means a service intended to reach
20 high-risk groups and to prevent the occurrence or recurrence of child abuse and neglect.

21 * Sec. 20. AS 37.17.020 is amended to read:

22 Sec. 37.17.020. ESTABLISHMENT AND INVESTMENT OF ENDOWMENT. (a) In
23 order to support the foundation, the Alaska science and technology endowment is established,
24 consisting of money appropriated to the endowment for the benefit of the foundation and returns
25 on investment of the endowment.

26 (b) The endowment shall be held and invested by the Alaska Permanent Fund
27 Corporation subject to AS 37.13.120; however, assets [NET INCOME] from the endowment shall
28 be distributed under this chapter. Net income from the endowment may not be included in the
29 computation of net income available for distribution under AS 37.13.140.

30 * Sec. 21. AS 37.17.020 is amended by adding a new subsection to read:

31 (c) The Alaska Permanent Fund Corporation is the fiduciary of the fund and shall

- 1 (1) manage the fund as a fiduciary;
- 2 (2) consider the status of the endowment's capital, total rate of return, and payout
- 3 percentage on both a current and a probable future basis;
- 4 (3) determine appropriate investment objectives for the endowment;
- 5 (4) establish investment policies to achieve fund objectives; and
- 6 (5) act only in regard to the best financial interests of the endowment's
- 7 beneficiaries.

8 * Sec. 22. AS 37.17.030(a) is amended to read:

9 (a) The distribution of the assets [INCOME AND REALIZED CAPITAL GAINS] of the

10 endowment is subject to AS 37.07. [THE NET ANNUAL REALIZED CAPITAL GAINS OF

11 THE ENDOWMENT MAY BE EQUALLY DIVIDED BETWEEN THE INCOME AND THE

12 PRINCIPAL OF THE ENDOWMENT.] Upon application of the foundation's board of directors

13 or its authorized representative, after authorization under AS 37.07, the Alaska Permanent Fund

14 Corporation shall pay to the foundation the assets [INCOME] appropriated.

15 * Sec. 23. AS 37.17.030(b) is amended to read:

16 (b) In addition to endowment assets [INCOME], the foundation may receive gifts, grants,

17 and other aid. The foundation may accumulate assets [INCOME], gifts, grants, and other aid

18 from any one year and distribute them in a later year.

19 * Sec. 24. AS 37.17.030(c) is amended to read:

20 (c) The administrative expenses of the foundation are subject to AS 37.07 and shall be

21 paid from the assets [INCOME] of the endowment.

22 * Sec. 25. AS 37.17.030(d) is amended to read:

23 (d) The board of directors shall distribute the assets [INCOME] of the endowment

24 through competitive grants under this chapter. The board may disburse money that is received

25 by the foundation for special or general purposes.

26 * Sec. 26. AS 37.17.030 is amended by adding a new subsection to read:

27 (f) The board of directors shall

- 28 (1) establish the payout percentage for the fund; and
- 29 (2) annually recommend to the legislature the amount to be appropriated from the
- 30 fund; the amount recommended may not be greater than the payout percentage multiplied by the
- 31 average of the market values of the fund on June 30 in each of the preceding five years.

1 * Sec. 27. AS 37.17.090(d) is amended to read:

2 (d) Not less than 50 percent of the endowment assets [INCOME] that are [IS] distributed
3 as grants by the foundation in a fiscal year must be for grants of \$100,000 or less, exclusive of
4 other funding.

5 * Sec. 28. AS 37.17.090(g) is amended to read:

6 (g) As a condition of all grants awarded under this chapter, the board of directors shall
7 require that a fair and reasonable percentage of all income, if any, from royalties, licenses, and
8 patents produced as a result of the grant be paid into the [PRINCIPAL OF THE] endowment,
9 subject to AS 37.07.

10 * Sec. 29. AS 37.17 is amended by adding a new section to read:

11 Sec. 37.17.120. DEFINITIONS. In this chapter,

12 (1) "endowment" means the Alaska science and technology endowment created
13 under AS 37.17.020;

14 (2) "inflation costs" means costs of inflation as measured by the Consumer Price
15 Index for all urban consumers, all items, for Anchorage, Alaska, prepared by the United States
16 Bureau of Labor Statistics;

17 (3) "payout percentage" means a percentage of the market value of the endowment
18 fund established under AS 37.17.020 that is not greater than the greater of

19 (A) five percent; or

20 (B) the average total return for the fund for the last 10 years net of
21 inflation costs.

22 * Sec. 30. AS 37.14.110(c), 37.14.200(c), 37.14.240(a), 37.14.240(c), and AS 37.17.030(e) are
23 repealed.

24 * Sec. 31. This Act takes effect immediately under AS 01.10.070(c).