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W.O. 4255

BY THE RULES COMMITTEE BY REQUES
OF THE LEGISLATIVE COUNCIL
INTERIM COMMITTEE ON THE ALASKA
PERMANENT FUND

IN THE HOUSE

HOUSE BILL NO.

IN THE LEGISLATURE OF THE STATE OF ALASKA

TENTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act establishing the Alaska resident dividend program; amending rules of procedure; and providing for an effective date."

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

* Section 1. AS 37 is amended by adding a new chapter to read:

CHAPTER 18. ALASKA RESIDENT DIVIDEND PROGRAM.

Sec. 37.18.010. FINDINGS AND PURPOSE. (a) The legislature finds that there exists in Alaska a serious problem of population turnover. A substantial portion of the state's population is comprised of individual who reside in Alaska for only a relatively short period of time. This is especially true in the state's larger cities. This constant turnover in population leads to political, economic, and social instability and is harmful to the state. It is in the public interest for the state to promote a stable resident population.

(b) The legislature also finds that the demands on and costs of state government have increased over the past few years at an excessive rate and that this increase has been permitted to occur, at least in part, by a feeling on the part of much of the electorate that those demands and costs do not have a significant economic impact upon them personally. It is in the public interest for the state to promote the involvement of its citizens in the budget-making process by providing them with a more personal and direct stake in the outcome of budget decisions.

(c) The legislature finds that establishment of a mechanism for

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direct distribution to the people of resident dividends, and by which a individual's portion of that distribution will increase the longer he continues to be an Alaska resident, will promote the purposes of encouraging a stable resident population, and of providing the people wit a more personal and direct stake in the outcome of the state's budget decisions.

Sec. 37.18.020. ALASKA RESIDENT DIVIDEND PROGRAM. There is established in the Department of Revenue the Alaska resident dividend program. The program may be funded by the legislature by appropriations from the general fund.

Sec. 37.18.030. AMOUNT OF PAYMENTS. Each of the payments to be distributed under sec. 80 of this chapter shall be equal to the quotien of the amount appropriated under sec. 20 of this chapter divided by the total number of duly credited shares as of December 31 of the year last preceding the year in which the appropriation was made.

Sec. 37.18.040. ELIGIBILITY FOR SHARES. (a) As of December 31, 1979, each eligible resident of Alaska who makes timely application under sec. 70 of this chapter shall be credited by the commissioner with one share under this chapter for each five-year period since January 1, 1974, in which he has been an eligible resident, as defined in sec. 100 of this chapter, or would have been but for being too youn by five years or less to register to vote.

(b) Shares are not transferable in any way whatsoever, and no payments may be made, other than as expressly provided in sec. 80 of this chapter, to anyone other than the eligible resident. Shares do n survive the death of their holder, and any alienation is void as agair public policy. If a share should be declared or ordered by a court t be alienated in any way, it ceases to exist for purposes of this chapt until and unless it is restored to the person from whom it was alienat

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Sec. 37.18.050. ELIGIBILITY FOR PAYMENTS. Each eligible resident of Alaska, who has one or more shares under this chapter, and who makes timely application under sec. 70 of this chapter, shall receive one payment for each share to which he is entitled under sec. 40 of this chapter.

Sec. 37.18.060. DETERMINATION OF ELIGIBLITY. (a) Any person who applies for a share or for a payment or payments must make proof of eligibility satisfactory to the commissioner. The commissioner may not credit any person with a share or make a payment to any person until an unless proof of that person's eligibility sufficient to satisfy a reasonable person has been made to the commissioner.

(b) Proof of eligibility may be made by applicants from school attendance records, state and local tax and licensing records, voter registration records, birth and marriage certificates, selective servi records, sworn affidavits from others having knowledge of a person's residence, and other forms of documentary evidence which a reasonable person would rely on in the conduct of his own affairs. An affidavit from an applicant without supporting evidence of eligibility is not satisfactory proof of eligibility.

(c) A person may attempt to make proof by waiving his right to privacy and authorizing the commissioner to make a search of any and a local, state, and federal records and any private employment records which may tend to prove his eligibility. The commissioner's making an search of records is entirely discretionary, and he is under no duty t make the search or to exercise reasonable care in making the search, i he does so, the entire risk is upon the applicant.

(d) Upon his determination of a person's eligibility for a share or for a payment, the commissioner shall, by first class mail, notify the person of that determination. If the person is determined to be

ineligible, he shall be informed by certified mail, of the following:

(1) the reason for his ineligibility;

(2) that he may file additional proof or file a request for a hearing before the commissioner at which to present proof of his eligibility; and

(3) that his failure to do one or the other within 30 days makes the decision final and unappealable.

(e) If a person does not file additional proof or file a request for a hearing with the commissioner within 30 days after his receipt of the commissioner's notice of the determination, the commissioner's decision becomes final as to the period involved and there can be no further appeal. This time limit is jurisdictional.

(f) If a person files additional proof or files a request for a hearing with the commissioner within 30 days after he receives the commissioner's notice of the determination and, after the additional evidence has been considered or the hearing held, he is still determined to be ineligible, he may appeal to the superior court within 30 days after he receives notice of the final decision. This time limit i jurisdictional, and no suit may be brought after it has elapsed. In considering the appeal, the superior court is to review solely on the record which was before the commissioner and to use the reasonable-basi test on factual matters and its own judgment on the law. The same standard of review shall apply if a further appeal is taken to the supreme court. This requirement is substantive, not procedural.

(g) A person not eligible as of December 31 in any year may establish or reestablish eligibility as of December 31 in subsequent years.

Sec. 37.18.070. APPLICATION PERIOD. (a) In order to receive a payment or to be credited with a share, an eligible person must first

apply for one or both on the Alaska net income tax form or on another form provided by the commissioner.

(b) The application covers the last preceding period ending on December 31 in which the applicant was eligible for a payment or to be credited with a share or both.

(c) The application, together with the proof of eligibility required by sec. 60 of this chapter, for the year or five-year period claimed as of December 31 must be filed with the commissioner or, if mailed, postmarked no later than the following April 15. This filing date is mandatory. Any application not timely filed or postmarked will be returned, and the applicant is not eligible for the year for which the late application was made. This provision does not bar subsequent presentation of additional proof of eligibility so long as the application was timely filed. A year for which a person would have been eligible but for his failure to file a timely application may subsequently be counted toward a five-year period to be eligible for a share under this chapter.

Sec. 37.18.080. PAYMENTS. (a) Following the application, payments shall be made as soon as practical after January 1 of the year in which the legislature appropriates money to the program.

(b) If the payment is to a person presently incarcerated as punishment for committing a crime, it shall be made to the Department Health and Social Services to offset the expense to the state of the incarceration.

(c) At the request of the person to whom payments are to be distributed and to the extent allowed under federal law, distribution payments may be deferred or otherwise set aside so as to defer the payment of income taxes. Payments may also be made as tax credits or rebates at the request of the person to whom payments are to be

distributed.

Sec. 37.18.090. PENALTIES. (a) Any person who wilfully submits false or misleading information to the commissioner in making proof of his eligibility or of the eligibility of another is guilty of a misdemeanor.

(b) In addition to any criminal penalties imposed, any person convicted of violating (a) of this section whose conviction is not reversed is not, and can never become, an eligible resident under this chapter, forfeits any shares with which he may have been credited, and is not, and can never become, eligible to be credited with any shares o to receive any payments.

Sec. 37.18.100. DEFINITIONS. In this chapter, unless the context requires otherwise,

(1) "commissioner" means the commissioner of revenue or his designee;

(2) "department" means the Department of Revenue;

(3) "eligible resident" means any person who is registered to vote under the Election Code, is a resident of Alaska under AS 15.05.020, filed (or whose parent or parents filed) a resident Alaska income tax return for the year preceding his application, and was physically present in Alaska for more than one-half the period between January 1 and December 31 last preceding his application for one or mo payments or for a share, or both, or who, if not so physically present was temporarily absent for reasons of professional, vocational or othe special education for which a comparable program was not reasonably available in Alaska, post-secondary education, military service, medic treatment, or service in Co ngress;

(4) "five-year period" includes any cumulation of periods within a span of no more than 10 years which totals five full years;

(5) "share" means a right to receive payment from distribution made under this chapter and credited by the department to an eligible resident.

Sec. 37.18.110. NONSEVERABILITY. If the residency requirements of this chapter are invalid, the provision is nonseverable, and the entire chapter is invalid and of no force or effect.

* Sec. 2. In sec. 1 of this Act, the enactment of AS 37.18.060(e) and (f) has the effect of imposing a jurisdictional limitation on the operation of Appellate Rule 45, Alaska Rules of Court Procedure, in that an appeal under the rule (having to do with appeals from administrative decisions to the superior court) must be brought from the commissioner's decisions as to eligibility within 30 days or the courts will have no jurisdiction to hear it. This is an exercise of the legislature's authority over the jurisdiction of the courts, but because it also effects an implied, narrow amendment to Appellate Rule 45 by imposing this jurisdictional time limit instead of the procedural time limit of the same duration which will continue to apply to other appeals, this section has also been included.

* Sec. 3. This Act takes effect immediately in accordance with AS 01.-10.070(c).

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IN THE HOUSE

HOUSE BILL NO.

IN THE LEGISLATURE OF THE STATE OF ALASKA

TENTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act relating to nonrenewable resource revenues; and providing for an effective date."

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

* Section 1. AS 24.20 is amended by adding new sections to read:

ARTICLE IV. STATE INVESTMENT OVERSIGHT COMMITTEE.

Sec. 24.20.600. STATE INVESTMENT OVERSIGHT COMMITTEE ESTABLISHED. The State Investment Oversight Committee is established as a permanent interim committee of the legislature. The establishment of the committee recognizes the need of the legislature for technical review and oversight of the performance of all agencies of the state which perform lending, borrowing or investment functions.

Sec. 24.20.610. MEMBERSHIP. The committee is composed of eight members: the president of the senate, the speaker of the house, and three members appointed from each house by the respective presiding officer. The membership from each house shall include at least one member from each of the two major political parties. The committee shall select its own chairman.

Sec. 24.20.620. TERM OF MEMBERSHIP. (a) The committee shall be organized within 15 days after the organization of each legislature. Members serve for the duration of the legislature during which they are appointed. If a member is reelected or his term of office extends into the next succeeding legislature, he continues to serve until reappointed or the appointment of his successor.

(b) When a member of the committee files a declaration of candi-

dacy for an elective office other than that of member of either house of the legislature, and he has not resigned from membership on the committee, his committee membership terminates on the date of filing.

Sec. 24.20.630. VACANCIES. When a vacancy occurs in the statutory or appointive membership of the committee, the presiding officer of the house incurring the vacancy shall choose a successor. If the office of the president of the senate or speaker of the house of representatives becomes vacant and a vacancy from the affected house occurs among the membership of the committee, the remaining committee members from the house incurring the vacancy shall appoint a new member.

Sec. 24.20.640. MEETINGS. The committee may meet during sessions of the legislature and during the interim between sessions at such times and places in the state as the chairman may determine. Members may receive, for the minimum time required to get to and from meetings and for the period while attending meetings, the same travel and per diem allowances provided by law for members of the legislature when attending sessions, except that members of the committee receive no per diem during legislative sessions other than the per diem allowance paid to other members of the legislature.

Sec. 24.20.650. POWERS. The committee has the power to

(1) organize, adopt rules for the conduct of its business, and prescribe procedures for the comprehensive fiscal analysis, budget review and post-audit functions over those agencies of the state which perform lending, borrowing or investment functions;

(2) hold public hearings, administer oaths, issue subpoenas, compel the attendance of witnesses and production of papers, books, accounts, documents and testimony, and have the deposition of witnesses taken in a manner prescribed by court rule or law for taking depositions in civil actions;

(3) require all state officials and agencies of state government to give full cooperation to the committee or its staff in assembling and furnishing requested information;

(4) hold public hearings relating to the confirmation of members of the permanent fund board of trustees, renewable resources development fund commission, and the enterprise fund;

(5) prepare and distribute reports, memoranda, or other necessary materials;

(6) make recommendations concerning the structure and operating practices of all agencies of the state which perform lending, borrowing or investment functions;

(7) receive and review reports and post-audit analyses conducted by the Legislative Budget and Audit Committee relating to all agencies of the state which perform lending, borrowing or investment functions.

Sec. 24.20.660. STAFF. The legislative audit division shall provide staff reasonably necessary for the conduct of the committee duties. The committee may hire and determine the salary of the administrative support staff it deems necessary within the limit of the budget approved by the legislature.

Sec. 24.20.670. DUTIES. The committee shall

(1) report to the legislature its recommendations relating to the confirmation of suggested appointees to the permanent fund board of trustees, renewable resources development fund commission, and the development bank;

(2) annually review the long-range operating plans of all agencies of the state which perform lending, borrowing or investment functions;

(3) review quarterly reports from the permanent fund board of

trustees renewable resources development fund commission, and development bank policy board;

(4) present a complete report of investment programs, plans, performance, and policies of the permanent fund board of trustees, renewable resources development fund commission, and Alaska Enterprise Investment Fund Policy Board to the legislature within 30 days after the convening of each regular session.

Sec. 24.20.680. RECORDS. The committee shall keep a complete file of all reports presented to it and all reports presented by it to the legislature or any legislative committee.

* Sec. 2. AS 37 is amended by adding a new chapter to read:

CHAPTER 13. ALASKA PERMANENT FUND.

Sec. 37.13.010. ALASKA PERMANENT FUND. Under art IX, sec. 15 of the state constitution, there is established as a separate fund the Alaska Permanent Fund. The permanent fund consists of 100 per cent of mineral lease bonuses after deduction of any amounts allocated to the Alaska Native Fund under the Alaska Native Claims Settlement Act and implementing state legislation and any amounts allocated by law to the Alaska Renewable Resources Development Fund and 30 per cent of all mineral lease rentals, royalties, royalty sale proceeds and federal mineral revenue sharing payments received by the state and any other money allocated by law or appropriated to the principal of the fund. The permanent fund consists of (1) the fund established in this chapter to which five-sixths of the receipts from these sources is allocated and (2) the Alaska Enterprise Investment Fund established in AS 44.55 to which one-sixth of the receipts from these sources is allocated until the amount so allocated reaches the sum of $100,000,000. Thereafter the total receipts from these sources is allocated to the fund established in this chapter.

Sec. 37.13.020. FINDINGS. The people of the State of Alaska, by constitutional amendment, have required the placement of at least 25 per cent of all mineral lease rentals, royalties, royalty sale proceeds, federal mineral revenue sharing payments and bonuses received by the state into a permanent fund. The legislature finds that

(1) the permanent fund should provide a means of conserving a portion of the state's revenues from mineral resources to the ultimate benefit of future generations of Alaskans;

(2) the primary goal of the fund should be to maximize total return while maintaining safety of principal;

(3) the permanent fund should be used as a savings device until the future time when disposable income from the fund will be needed to replace depleting mineral resource revenues;

Sec. 37.13.030. PURPOSE. It is the purpose of this chapter to provide a mechanism for the management and investment of permanent fund assets in a manner consistent with the findings established in sec. 20 of this chapter.

Sec. 37.13.040. ALASKA PERMANENT FUND BOARD OF TRUSTEES. There is created the Alaska Permanent Fund Board of Trustees. The Permanent Fund Board of Trustees is a public corporation and government instrumentality in the Department of Revenue but has a legal existence independent of and separate from the state. The purpose of the board is to manage and invest the assets of the permanent fund in accordance with the guidelines established in this chapter.

Sec. 37.13.050. COMPOSITION OF BOARD OF TRUSTEES. (a) The board of trustees consists of three members appointed by the governor and confirmed by a majority of the members of the legislature in joint session.

(b) The board shall annually elect a chairman from among its

members.

Sec. 37.13.060. TERM OF OFFICE. The members of the board shall be appointed for terms of three years, and they may be reappointed. Terms shall be staggered. Initial terms shall be one member serving for one year, one member serving for two years, and one member serving for three years.

Sec. 37.13.070. REMOVAL AND VACANCIES. (a) The governor may remove a trustee from office by and with the consent of a majority of the members of the legislature in joint session. A removal by the governor shall be in writing and state the reason for removal. If the legislature is not in session, the governor may suspend a member of the board. Upon suspension, a trustee may not participate in board business and may not be counted for purposes of establishing a quorum. A suspended member shall continue to receive his salary as a trustee until the legislature in joint session consents to his removal. The joint session shall be held within 30 days from the date of removal if the removal occurs while the legislature is in session or within 30 days of convening of the legislature if the legislature is not in session. If the legislature refuses to consent to his removal, the trustee shall be reinstated to his position.

(b) A vacancy on the board shall be promptly filled by appointment by the governor and confirmation by a majority of the members of the legislature in joint session, and an appointee to fill a vacancy shall hold office for the balance of the term for which his predecessor on the board was appointed. If a vacancy arises on the board while the legislature is not in session, the governor may appoint an interim trustee who shall exercise all powers and receive the salary of a permanent trustee until such time as the legislature in joint session fails to confirm the interim trustee's appointment.

(c) A vacancy on the board does not impair the authority of a quorum of the board to exercise all the powers and perform all the duties of the board.

Sec. 37.13.080. QUALIFICATIONS OF TRUSTEES. (a) No trustee may be appointed to the board who has not been a resident of the state for at least three years.

(b) No member of the board may hold any other state or federal office, position or employment, either elective or appointive, except as a member of the armed forces of the United States or of this state.

(c) At least one member of the board shall be knowledgeable and experienced in finance, investments, or other business management-related field. No two members may be appointed to the board who share substantially similar professional or occupational backgrounds.

Sec. 37.13.090. QUORUM. Two members of the board constitute a quorum for the transaction of business and the exercise of the powers and duties of the board.

Sec. 37.13.100. COMPENSATION OF TRUSTEES. Trustees serve without compensation except that each member may be reimbursed by the fund for travel and per diem expenses at the rate set by law for members of boards and commissions.

Sec. 37.13.110. EMPLOYMENT OF PERSONNEL. The board may employ and determine the salary of an executive director. The executive director may, with the approval of the board, select and employ additional staff as necessary. The executive director may not be a trustee. The executive director and all employees of the board are in the exempt service under AS 39.25.

Sec. 37.13.120. CONFLICTS OF INTEREST. (a) Trustees are subject to the provisions of AS 39.50.

(b) No member or employee of the board shall acquire an interest,

direct or indirect, in a corporation, company, association, or project owned, controlled, or invested in by the permanent fund. If a member or employee owns or controls an interest, he shall immediately disclose the interest in writing to the board and refrain from participating in any manner in any board activity relating to that interest.

Sec. 37.13.130. POWERS AND DUTIES. (a) The prudent-person rule is applicable to the board in its management and investment of permanent fund assets. In making investments, the board shall exercise the judgment and care under the circumstances then prevailing which an institutional investor of ordinary prudence, discretion, and intelligence exercises in the management of large investments entrusted to it not in regard to speculation but in regard to the permanent disposition of funds, considering the probable income from them as well as probable safety of capital.

(b) The board shall seek to maintain a reasonable diversification of type and maturity of investments in its investments.

(c) The board shall submit long-range and quarterly investment reports to the State Investment Oversight Committee.

(d) The board may not borrow funds or guarantee loans made by any other program or association.

(e) The board may, except as provided by (f) of this section enter into and enforce all contracts necessary, convenient or desirable for purposes of the fund.

(f) The permanent fund shall be used only for income-producing investments. The board may contract only with private persons or organizations to recommend or select investments for the permanent fund. Investments shall be selected in accordance with (g) of this section.

(g) (To Come)

Sec. 37.13.140. GAINS AND LOSSES. At the end of each fiscal year, the total amount of losses on the sales of securities, not offset by gains on the sales of securities during that year, shall be computed, with a portion of these losses to be deducted each fiscal year from the interest and dividend income and the resulting amount of interest and dividend income added to the principal of the fund. Losses taken on the sales of bonds shall be accumulated over a period equal to the average remaining life of the bonds sold, and losses taken on the sales of stocks shall be accumulated within a period of five years, unless these losses are offset by gains on future sales of securities. In any fiscal year in which the gains on the sales of securities exceed the losses on the sales of securities, the excess shall be added to the principal of the fund.

Sec. 37.13.150. BOARD BUDGET. The board's operating budget is from the general fund and is subject to the Executive Budget Act (AS 37.07).

Sec. 37.13.160. AUDITS. The Legislative Budget and Audit Committee shall conduct annual operational and performance evaluations (post-audits) of the board's investments and investment programs and report the results to the State Investment Oversight Committee.

Sec. 37.13.170. REPORTS AND PUBLICATIONS. No later than the 20th day of the legislative session, the board shall publish a report to the governor, legislature, and the public in easily understandable language. Each report must include financial statements audited by the Legislative Budget and Audit Committee, a statement of the amount of money received by the permanent fund from each investment during the period covered, a statement of permanent fund investments, a description of permanent fund investment activity during the period covered by the report, a comparison of the fund performance with the intended goals contained in

sec. 020 of this chapter, an examination of the impact of the investment criteria of this chapter on the fund portfolio with recommendations of any needed changes and any other information the board believes would be of interest to the governor, the legislature, and the public. The annual income statement and balance sheet of the permanent fund shall be published in at least one newspaper in each judicial district. The board may also publish other reports it considers desirable to carry out its purpose.

* Sec. 3. AS 44 is amended by adding a new chapter to read:

CHAPTER 55. THE ALASKA ENTERPRISE INVESTMENT FUND.

Sec. 44.55.010. CREATION OF INVESTMENT FUND: FUNDING. (a) There is created the Alaska Enterprise Investment Fund. The investment fund is a public corporation and government instrumentality in the Department of Revenue but has legal existence independent of and separate from the state. The exercise by the investment fund of the powers conferred by this chapter is considered an essential governmental function of the state.

(b) One-sixth of the receipts of all mineral lease rentals, royalties, royalty sale proceeds, federal mineral revenue sharing payments and bonuses allocated to the permanent fund shall be paid directly into the investment fund until a total of $100,000,000 has been paid in.

Sec. 44.55.020. ALASKA ENTERPRISE INVESTMENT FUND POLICY BOARD. (a) There is established the Alaska Enterprise Fund Policy Board consisting of a person employed in the executive branch of state government appointed by the governor and six public members appointed by the governor with due regard for geographical representation and confirmed by a majority of the members of the legislature in joint session. At least two of the public members shall have broad experience in investment finance. The board shall elect one of the public members as

chairman and other officers they determine desirable.

(b) The six appointed members shall serve for four-year terms, and they may be reappointed. Terms shall be staggered. Initial terms shall be two members serving for two years, two members serving for three years, and two members serving for four years. Members continue to serve until their successors are appointed and confirmed.

(c) A majority of the policy board members constitutes a quorum for the transaction of business by the board. Decisions of the board shall be taken by a majority vote. The board shall hold at least one public meeting each year.

(d) Members of the policy board receive $_____ per meeting day if they attend the meeting and are entitled to per diem and travel allowances as are provided by law for members of state boards and commissions.

Sec. 44.55.030. REMOVAL AND VACANCIES ON BOARD. (a) The governor may remove a policy board member from office by and with the consent of a majority of the members of the legislature in joint session. The joint session shall be held within 10 days from the date of removal if the removal occurs while the legislature is in session or within 30 days of convening of the legislature if the member was suspended. If the legislature is not in session, the governor may suspend a member of the policy board for cause. Upon suspension, a board member may not participate in policy board business and may not be counted for purposes of establishing a quorum. A suspended member shall continue to receive his salary as a board member until the legislature in joint session consents to his removal. If the legislature refuses to consent to his removal, the member shall be reinstated to his position.

(b) A vacancy arising on the policy board shall be promptly filled by appointment by the governor and confirmation by a majority of the members of the legislature in joint session, and an appointee to fill a

vacancy shall hold office for the balance of the term for which his predecessor on the board was appointed. If a vacancy arises on the board while the legislature is not in session, the governor may appoint an interim board member who shall exercise all powers and receive the salary of a permanent board member until such time as the legislature in joint session fails to confirm the interim member's appointment.

(c) A vacancy on the policy board does not impair the authority of a quorum of the board to exercise all the powers and perform all the duties of the board.

Sec. 44.55.040. DUTIES OF THE POLICY BOARD. The policy board shall

(1) select and appoint the president and other members of the Alaska Development Bank Investment Committee established in sec. 50 of this chapter;

(2) annually review and approve long-range operating plans, the budget for the forthcoming year, and the financial plan for the following years;

(3) have responsibility on behalf of the bank for relations with the general public, legislature, executive branch, local communities, and interest groups concerning all things excepting only those matters that are the responsibility of the investment committee;

(4) review quarterly reports from the investment committee concerning investment decisions and investment supervision, but the board may not impose an investment decision upon, or override an investment decision of, the investment committee;

(5) review, consider and approve policies;

(6) establish an audit committee, consisting of the commissioner of revenue and other members of the policy board to be designated by the commissioner, which shall select independent outside auditors,

and receive all audit reports.

Sec. 44.55.050. ALASKA ENTERPRISE INVESTMENT FUND INVESTMENT COMMITTEE. (a) There is established the Alaska Enterprise Investment Fund Investment Committee, consisting of the president and four members appointed by the policy board. No member of the policy board may be a member of the investment committee. Members of the investment committee shall be persons of recognized competence and wide experience in investments, finance, and other business management-related fields. Members may be reappointed and continue to serve until their successors are appointed. The president and members shall serve for four year terms. Terms shall be staggered. Initial terms shall be one member serving for one year, one member serving for two years, one member serving for three years, and one member and the president serving for four years.

(b) Four members of the investment committee constitute a quorum. Decisions of the committee shall be taken by majority vote.

(c) Members of the investment committee are in the exempt service under AS 39.25 and receive an annual salary within Range 30 in the salary schedule for state employees established by AS 39.27.011.

Sec. 44.55.060. DUTIES OF THE INVESTMENT COMMITTEE. The investment committee has sole responsibility to approve all investment proposals.

Sec. 44.55.070. BUDGET. The investment fund operating budget is from the general fund and is subject to the provisions of the Executive Budget Act (AS 37.07).

Sec. 44.55.080. PERSONNEL OF INVESTMENT FUND. The policy board and investment committee members and officers and staff of the investment fund are in the exempt service under AS 39.25.

Sec. 44.55.090. FINDINGS.

(1) that investment in financially sound small and medium

scale productive private enterprises and community development projects in Alaska, particularly in rural areas of Alaska, is of benefit to the citizens of Alaska;

(2) there is a shortage of investment capital for financially sound small and medium scale productive private enterprises, and community development projects particularly in rural areas of Alaska;

(3) that the Alaska Enterprise Investment Fund working with private financial institutions to supplement but not supplant their services can help to alleviate this shortage.

Sec. 44.55.100. PURPOSE. The purpose of the Alaska Enterprise Investment Fund is to provide capital at market rates and terms for small and medium scale productive private enterprises, and community development projects particularly in rural areas of Alaska.

Sec. 44.55.110. POWERS OF THE INVESTMENT FUND. (a) In carrying out the corporate purposes of the investment fund, the policy board has power to

(1) adopt, alter and use a corporate seal;

(2) prescribe, adopt, amend, and repeal bylaws;

(3) sue and be sued in the name of the investment fund;

(4) borrow funds, and in that connection furnish such collateral or other security as it determines, except that investment fund borrowing may not exceed one-half of its paid-in capital;

(5) guarantee obligations of another corporation or legal entity in order to facilitate their sale;

(6) enter into agreements necessary or convenient in the exercise of its powers and functions;

(7) acquire, hold, use, lease, sell or otherwise dispose of property of any kind, real, personal or mixed, or any interest in it;

(8) contract with state, federal and other agencies to

develop needed information and analyses;

(9) do all acts and things necessary, convenient or desirable to carry out the powers granted or implied in this chapter.

(b) In carrying out the corporate purposes of the investment fund, the investment committee has the power to

(1) invest, in such form as it considers appropriate, including without limitation, by purchase of the capital stock of, or the lending of money to, projects, except that any investment in the capital stock of or other ownership interest in such project may not exceed 49 per cent of the capital stock of, or other ownership interest in, the project, and no loan or other investment in the project by the investment fund may exceed 90 per cent of the cost of the project unless, in the judgment of the committee, additional amounts must be loaned to protect the interests of the investment fund;

(2) deposit funds, or invest funds through the permanent fund in such obligations as it may determine;

(3) buy and sell securities the investment fund has issued or guaranteed or in which it has invested;

(4) do all acts and things necessary, convenient or desirable to carry out the powers granted or implied in this chapter.

Sec. 44.55.120. INVESTMENTS. (a) In making investments, the investment committee and staff shall exercise the judgment and care under the circumstances then prevailing which a person of ordinary prudence, discretion, and intelligence exercises in the management of his own affairs taking into consideration the probable income from the investments as well as probable safety of principal.

(b) An amount equal to at least 150 per cent of all guarantees by the investment fund shall be invested in investment-grade securities.

(c) The investment committee may invest not more than 50 per cent

of the resources of the investment fund to provide a reasonable proportion of longer-term investment capital for financing the establishment, improvement, and expansion of productive private enterprises which will benefit Alaskans, and for which sufficient capital is not available from other sources on reasonable terms. These investments may take the form of equity, debt, or debt guarantees.

(d) The committee may invest no more than 50 per cent of the resources of the investment fund in financing a reasonable proportion of the longer-term investment capital needs for community development projects of municipalities and public corporate entities and private dwellings in Alaska for which sufficient financing is not available from other sources on reasonable terms. These investments may take the form of debt or debt guarantees.

(e) The committee may not invest or guarantee obligations totaling more than five per cent of the resources of the bank or $1,500,000, whichever is less, in a single project unless the legislature has approved the investment by concurrent resolution.

(f) The committee may not undertake any financing for which, in its opinion, sufficient private capital could be obtained on reasonable terms.

(g) The committee may not assume responsibility for managing any enterprise or project in which it has invested and may not exercise voting rights for that purpose or for any other purpose which, in its opinion, properly is within the scope of managerial control.

(h) The committee shall only undertake its financing on terms and conditions which it considers appropriate, taking into account the terms and conditions normally obtained by private investors for similar financing, the requirements of the enterprise or projects, the risks being undertaken by the investment fund, and the participation of other

investors unless the legislature has appropriated funds for subsidizing investments which in the opinion of the investment fund are of such high priority that special terms and conditions are appropriate.

(i) The committee may seek to revolve the investment fund's money by selling its investments to other investors whenever it can appropriately do so on satisfactory terms.

(j) The committee shall seek to maintain a reasonable diversification in its investments.

(k) The committee shall only consider investment proposals after the applicant for an investment has submitted a detailed proposal to the committee's staff and the staff has prepared a written report recommending the investment after a study of its merits.

(l) The committee shall analyze the economic and other effects of an investment decision, including the effects on employment, income distribution, environment, health, social and other factors. The committee shall be sensitive to the views of affected local communities and shall include an analysis of those views in proposals for large investments.

(m) The committee may guarantee qualifying loans made by financial intermediaries in order to facilitate investment by the intermediaries in specific enterprises or projects whose individual financing requirements are not, in the opinion of the committee, large enough to warrant its direct supervision.

(n) The committee shall provide for operational and performance evaluations (post-audits) of its investments and investment programs and report the results to the policy board.

(o) Nothing in this section prevents the investment committee, in the event of actual or threatened default on any of its investments, actual or threatened insolvency of the enterprise in which the invest-

ment has been made, or other situations which, in the opinion of the investment committee, threaten to jeopardize the investment, from taking such action and exercising such rights as it may consider necessary for the protection of its interests.

Sec. 44.55.130. INITIAL DETERMINATIONS. Before beginning its financing operations, the policy board shall render a detailed report to the legislature which shall

(1) define the sectors which need financing for expansion of existing projects or the development of new projects;

(2) define the size and nature of projects which are feasible for investment fund financing;

(3) determine specific projects which are feasible for investment fund and private financing;

(4) determine the availability of private investment capital for the projects it determines are feasible;

(5) forecast the capital requirements of the investment fund for the first three years of its operations.

Sec. 44.55.140. REPORTS AND PUBLICATIONS. The policy board shall publish an annual report to the governor, legislature and the public. Each report shall include financial statements audited by independent outside auditors, a statement of the amount of money received by the investment fund from each source during the period covered, a statement of investment fund investments, a description of investment fund investment activity during the period covered by the report, an analysis of economic and other effects of investment decisions including, but not limited to, the effects on employment, income distribution, environment, health, social and other factors, and any other information the policy board believes would be of interest to the governor, the legislature and the public. The investment fund may also publish such other reports as

it considers desirable to carry out its purpose.

Sec. 44.55.150. CONFLICT OF INTEREST. (a) Members of the policy board and investment committee are subject to the provisions of AS 39.50.

(b) Members of the investment committee shall disclose their financial interest in an investment proposal and disqualify themselves from voting on any investment proposal in which they have a financial interest. The committee may not make an investment in any project or enterprise in which officers of the bank have a financial interest. Members of the policy board are prohibited from all attempts to influence the investment committee, its president or staff in the discharge of their ordinary operating duties. All officers of the investment fund in the discharge of their offices owe their duty entirely to the investment fund and no other authority.

Sec. 44.55.160. POLITICAL ACTIVITIES. The members of the policy board, members of the investment committee, and officers and staff of the investment fund may not engage in partisan political activities. The resources of the investment fund may not be used to finance any partisan political activities.

Sec. 44.55.170. PUBLIC ACCESS TO INFORMATION. Information in the possession of the investment fund is a public record, except that information which discloses the particulars of the business or affairs of a private enterprise or investor is confidential and is not a public record. Confidential information may be disclosed only for the purposes of an official law enforcement investigation or when its production is required in a court proceeding. These restrictions do not prohibit the publication of statistics presented in a manner that prevents the identification of particular reports, items, persons, or enterprises.

Sec. 44.55.180. TAX EXEMPTION. The investment fund is exempt from all taxes and assessments in the state. All security instruments issued

by the investment fund, their transfer and their income are exempt from all taxes and assessments in the state.

Sec. 44.55.190. DEFINITIONS. In this chapter

(1) "board" or "policy board" means the Alaska Enterprise Investment Policy Board created by sec. 20 of this chapter;

(2) "business enterprise" means a private corporation, firm, partnership or sole proprietorship;

(3) "committee" or "investment committee" means the Alaska Enterprise Investment Fund Investment Committee created by sec. 50 of this chapter;

(4) "fund" or "investment fund" means the Alaska Enterprise Investment Fund.

* Sec. 4. AS 39.25.110 is amended by adding new paragraphs to read:

(21) members of the policy board and investment committee, and the president, officers, and staff of the Alaska Enterprise Investment Fund;

(22) members of the board of trustees, the executive director, and staff of the Alaska Permanent Fund Board of Trustees.

* Sec. 5. AS 39.50.200(9) is amended by adding new subparagraphs to read:

(NN) Alaska Enterprise Investment Fund Policy Board and Alaska Enterprise Investment Fund Investment Committee;

(OO) Alaska Permanent Fund Board of Trustees.

* Sec. 6. This Act takes effect immediately in accordance with AS 01.10.-070(c).

w.o. 4434

IN THE HOUSE

HOUSE BILL NO.

IN THE LEGISLATURE OF THE STATE OF ALASKA

TENTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act relating to the Alaska Renewable Resources Corporation."

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

* Section 1. AS 37 is amended by adding a new chapter to read:

CHAPTER 12. ALASKA RENEWABLE RESOURCES CORPORATION.

Sec. 37.12.010. DECLARATION OF POLICY. It is the policy of the state to

(1) rehabilitate, enhance, and develop its renewable resources and, insofar as is consistent with sound resource management policies, develop its human resources by providing maximum opportunities for employment and a higher standard of living for its citizens; and

(2) utilize the funds ~~created~~ set aside by ch. 11 of this title to further the (A) development of renewable resources ~~industries~~ that will contribute to a stable self-sustaining state economy, employment opportunities, and lifestyle alternatives for its citizens, and (B) commercial, traditional, and common uses of the state's renewable resources

Sec. 37.12.020. FINDINGS. (a) The legislature finds that Alaska has ~~vast quantities of~~ renewable resources that are not being utilized to their full potential ~~and that great opportunities for increasing the wealth of the state lie in the expanded use of these resources~~. Many problems which confront the state, including ~~lack of full~~ high unemployment and ~~self-sustaining, renewable resource industries~~ unstable economy, could be mitigated by the expanded use and development of its renewable resources.

(b) It is further found that Alaska's economy has historically

depended upon sporadic and non-stable development ~~most often relating to nonrenewable resource exploitation.~~

(c) It is further found that several key factors have contributed to the slow development of renewable resource industries, including,

(1) reductions in research and development financing and venture capital financing;

(2) a lack of knowledge within the business and financial communities about conditions affecting renewable resource industrial development in the state; and

(3) a lack of appropriate technology etc ~~resource management uncertainties which have discouraged investment and technological development.~~

(d) It is further found that the state's policy of assisting the development of viable industries is best accomplished by providing ~~public~~ assistance to the private sector ~~in ways necessary and feasible to identify and promote new industries which will use the state's renewable resources to bring maximum benefits to the state and its citizens.~~ to identify and demonstrate new products, markets and technologies

(e) It is further found that some of the state's renewable resources will be most appropriately utilized by reserving their use to noncommercial activities for the purposes of sustaining traditional lifestyles, providing recreational opportunities, and protecting the natural environment, all of which are culturally and historically important to the citizens of the state.

Sec. 37.12.030. ALASKA RENEWABLE RESOURCES CORPORATION CREATED. There is created the Alaska Renewable Resources Corporation to carry out the purposes of this chapter. The corporation is a public corporation of the state and an instrumentality of the state within the Department of Revenue, but has a legal existence independent of and separate from the state ~~and has continuing succession until its existence is terminated by law~~. The exercise by the corporation of the powers conferred

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by this chapter is considered an essential function of the state.

Sec. 37.12.040. PURPOSES. The purposes of the corporation are to

(1) facilitate the rehabilitation, enhancement, and development of the state's renewable resources so as to foster a self-sustaining state economy;

(2) sponsor research and development ~~and demonstration~~ of technologies and innovations for the rehabilitation and enhancement of the state's renewable resources to achieve their most appropriate use;

(3) identify new products, markets, and technologies for renewable resource industries in the state; stimulate the research and development of these products, markets, and technologies; assist in the demonstration of their technical and economic feasibility; and assist in their introduction into commercial markets.

Sec. 37.12.050. ALLOCATION. There shall be allocated to the corporation from the receipts described in AS 37.11.020 at least five per cent of the receipts paid the state from mineral lease bonuses and rentals for state land and royalties derived from minerals produced on state land. sold in each month.

Sec. 37.12.060. BOARD OF TRUSTEES. A board of trustees of the corporation is established as its governing body.

Sec. 37.12.070. COMPOSITION OF THE BOARD OF TRUSTEES. The board of trustees consists of three members appointed by the governor and confirmed by a majority of the members of the legislature in joint session. The board shall annually elect a chairman from among its members. A chairman may not succeed himself.

Sec. 37.12.080. TERM OF OFFICE. The members of the board of trustees shall be appointed for terms of four years, and they may be reappointed. Terms shall be staggered. The initial terms shall be one member serving for two years, one member serving for three years,

and one member serving for four years.

Sec. 37.12.090. REMOVAL AND VACANCIES. (a) The governor may remove a board member from office by and with the consent of a majority of the members of the legislature in joint session. A removal by the governor shall be in writing and state the reason for removal. If the legislature is not in session, the governor may suspend a member of the board. Upon suspension, a board member may not participate in board business and may not be counted for the purpose of establishing a quorum. A suspended member shall continue to receive his salary as a board member until the legislature in joint session consents to his removal. The joint session shall be held within 30 days from the date of removal if the removal occurs while the legislature is in session or within 30 days of convening of the legislature if the legislature is not in session. If the legislature refuses to consent to his removal, the board member shall be reinstated to his position.

(b) A vacancy on the board shall be promptly filled by appointment by the governor and confirmation by a majority of members of the legislature in joint session. An appointee to fill a vacancy shall hold office for the balance of the term for which his predecessor on the board was appointed. If a vacancy arises on the board while the legislature is not in session, the governor may appoint an interim board member until such time as the legislature in joint session fails to confirm the interim member's appointment.

(c) A vacancy on the board does not impair the authority of a quorum of the board to exercise all the powers and perform all the duties of the board.

Sec. 37.12.100. QUALIFICATIONS OF BOARD MEMBERS. (a) No person may be appointed to the board who has not been a resident of the state for at least three years.

(b) No member of the board may hold any other state or federal office, position, or employment, whether elective or appointive, except as a member of the armed forces of the United States or the state.

Sec. 37.12.110. QUORUM. Two members of the board constitute a quorum for the transaction of business and the exercise of the powers and duties of the board.

Sec. 37.12.120. COMPENSATION OF BOARD MEMBERS. Board members are in the exempt service under AS 39.25 and receive an annual salary within Range 30 of the salary schedule for state employees established by AS 39.27.011.

Sec. 37.12.130. EMPLOYMENT OF PERSONNEL. The board may employ and determine the salary of an executive director. The executive director may, with the approval of the board, select and employ additional staff as necessary. The executive director and all employees of the board are in the exempt service under AS 39.25.

Sec. 37.12.140. CONFLICTS OF INTEREST. (a) Members of the board of trustees are subject to the provisions of AS 39.50.

(b) No member or employee of the board may acquire an interest, direct or indirect, in a corporation, company, association, or project owned, controlled, or invested in by the corporation. If a member or employee owns or controls such an interest, he shall immediately disclose the interest in writing to the board and refrain from participating in any manner in any board activity relating to that interest.

Sec. 37.12.150. POWERS. In carrying out the corporate powers of the corporation, the board may

(1) adopt, alter, and use a corporate seal;

(2) prescribe, adopt, amend, and repeal bylaws;

(3) sue and be sued in the name of the corporation;

(4) enter into any agreements necessary to the exercise of

its powers and functions;

(5) accept grants from and contract with the federal government and the state or its political subdivisions and to that end comply with the provisions of federal, state, or local programs where necessary, except that it may not enter into any agreements whereby any permanent state or local government position is funded or partially funded in connection with a project;

(6) accept grants and loans from other sources than those in (5) of this section to be held and used for the purposes of the corporation;

(7) appear in behalf of the corporation before boards, commissions, departments, or other agencies of municipal, state, or federal government;

(8) acquire, hold, use, lease, sell, or otherwise dispose of property of any kind, real, personal, or mixed, or any interest in it;

(9) hold patents, copyrights, trademarks, royalties, or any other evidences of protection or exclusivity as to any products or technology issued under the laws of the United States or any state or nation;

(10) prepare, publish, and distribute technical studies, reports, bulletins and other materials it considers appropriate;

(11) ~~contract or otherwise provide for technical assistance for applicants and recipients drawing on local resources whenever possible;~~

(12) make financial assistance available in the form of grants loans, loan guarantees, or other appropriate forms to public research and development groups in the state in order to facilitate investment by the board in specific projects which do not warrant direct supervision by the corporation;

(13) invest, in such form as it considers appropriate, in projects which have income-producing potential;

(14) provide grants only to projects or demonstration of projects which do not yet have income-producing potential but which are commercially promising or have potentially broad application to the public;

(15) adopt regulations to implement this chapter;

(16) do all acts and things necessary or desirable to carry out the purposes of the corporation.

Sec. 37.12.160. DUTIES. In carrying out the purposes of this chapter, the board shall

(1) seek to maintain the productivity of healthy renewable resources and expand the productivity of depleted or underutilized renewable resources;

(2) provide financial assistance for projects which the board finds will accomplish the purposes of the corporation as set out in sec. 40 of this chapter;

(3) promote the utilization of the state's renewable resources in the state and the development of import substitution and export markets;

(4) ~~seek to distribute the benefits of financial assistance~~ equitably among the areas of the state, different renewable resources, ~~and the citizens of the state;~~

(5) annually evalute and prioritize areas for potential financial assistance;

(6) monitor approved projects for compliance with this chapter and provide operational and performance evaluations (post-audits) of projects receiving financial assistance and an overall assessment, expressed in qualitative and quantitative terms, of the degree to which

the purposes of the corporation, as set out in sec. 40 of this chapter, have been achieved; and

(7) attempt to fund activities which will tend to maximize returns to the state and local governments and its citizens in such forms as tax revenues and resident employment and income.

Sec. 37.12.170. FINANCIAL ASSISTANCE. (a) In providing financial assistance, the board shall

(1) consider the proposals of qualified applicants only after the applicant has submitted a detailed proposal in the form prescribed by the board; no assistance may be approved by the board unless it finds in writing, that

(A) the proposed project, if successful, will further the purposes of the corporation as set out in sec. 40 of this chapter;

(B) the proposed project is likely to be technologically or economically feasible;

(C) private financing cannot reasonably be undertaken without aid or that financial participation is not otherwise available;

(D) the applicant has agreed that if new renewable resource industrial activity results from the proposed project, his best efforts will be employed to keep that activity in the state for a minimum period of time specified by the board;

(E) the applicant demonstrates sufficient technical and business expertise to accomplish the objectives of the proposed project ~~(i) where that expertise is found to be lacking, the board may provide technical or managerial assistance;~~

(F) the applicant has provided sufficient life cycle cost data;

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(G) potential resource use conflicts that may result from the proposed project are identified, and plans to mitigate or resolve those conflicts and to preserve for the future options for the use of the state's renewable resources are included in the application; if there are conflicts that cannot practically be resolved without substantially affecting the project, the board may approve the project notwithstanding the conflicts and shall make a finding to that effect which shall include an analysis of the conflicts, methods of mitigating or resolving them, and the resulting effect on the project;

(H) if the proposed project involves the use of a renewable resource, that use constitutes an appropriate use of that resource;

(2) use the financial mechanism most appropriate to the conditions of the applicant and the proposed project and which will most effectively utilize the funds available; grants may be utilized when other mechanisms are not feasible and when the benefits of the grant will accrue to the general public;

(3) consider regional preferences and priorities in evaluating projects.

(b) The board may not

(1) invest more than five per cent of the resources of the corporation or $1,500,000, whichever is less, in a single project or applicant unless the legislature has approved the investment by concurrent resolution;

(2) invest in more than ~~49~~ 25 per cent of the outstanding corporate stock or other corporate obligations issued by an applicant unless the legislature has approved the investment by concurrent

resolution;

(3) make a loan for a period in excess of 10 years unless the legislature has approved the loan by concurrent resolution; or

(4) assume the responsibility for management of any project in which it has invested and may not exercise voting rights for that purpose or for any other purpose which is within the scope of managerial control.

(c) Nothing in this section prevents the board from taking such action and exercising such rights as it considers necessary for the protection of its financial interests in the event of

(1) actual or threatened default on any of the board's investments;

(2) actual or threatened insolvency of a project in which the board has made an investment; or

(3) any other circumstance or event which jeopardizes an investment made by the board.

(d) Projects for which financial assistance is granted shall comply with all applicable provisions of law.

Sec. 37.12.180. ELIGIBILITY FOR FINANCIAL ASSISTANCE. The board may grant financial assistance if it finds that an applicant is qualified to receive assistance. An applicant is qualified if

(1) he has submitted a proposal to the board in accordance with sec. 170(a)(1) of this chapter;

(2) he is a resident of the state or, if the applicant is a partnership, corporation, or other association, it is owned by a majority who are residents of the state; and and registered in State ?

(3) his projects which have previously received financial assistance from the corporation, if any, have complied with all requirements of that assistance and have performed with sufficient success or

promise to warrant further aid.

Sec. 37.12.190. REPORTS AND PUBLICATIONS. (a) The board shall prepare and distribute in non-technical language materials describing the purposes and activities of the corporation.

(b) The board shall publish an annual report for the governor, the legislature, and the public at the time of submitting its annual budget request. Each annual report shall include financial statements and audit reports, a statement detailing the sources from which the corporation received money, a statement detailing the investments made by the corporation, a summary and evaluation of the data required by sec. 160(5) and (6) of this chapter, and any other information that the board of trustees believes would be of interest to the recipients of the report.

Sec. 37.12.200. BUDGET AND APPROPRIATIONS. The corporation shall submit its annual budget to the legislature through the governor as provided for state agencies by the Executive Budget Act (AS 37.07). The budget shall include all funds received by the corporation whether through allocations made by this chapter, appropriation, or otherwise. The corporation may expend money directly appropriated by the legislature only as authorized by the legislature. The total amount of the corporation's operating budget shall be specified as a separate item of its budget and be appropriated from the general fund.

Sec. 37.12.210. ANNUAL AUDIT. The corporation shall have its financial record audited annually by a certified public accountant. The legislative auditor may prescribe the form and content of the financial record of the corporation and shall have access to these records at any time.

Sec. 37.12.220. DEFINITIONS. In this chapter, unless the context otherwise requires,

(1) "applicant" means a person making application to the corporation for financial assistance;

(2) "appropriate use" means (definition to be supplied by other source);

(3) "board" means the Board of Trustees of the Alaska Renewable Resources Corporation;

(4) "corporation" means the Alaska Renewable Resources Corporation;

(5) "project" means products, markets, innovation, or technological developments for the rehabilitation, enhancement, or development of renewable resources and includes applied research for those products, markets, or technological developments;

(6) "rehabilitation, enhancement, and development" means any activity or program which improves the health and well-being of a renewable resource or renewable resource population leading to an increase in the quality or productivity of the resource and to an increase in the benefits derived from the resource to the citizens of the state;

(7) "renewable resource" means non-human living organisms; natural components of the environment, including the air, land, and water; and energy systems which are naturally recurring or replenished.

* Sec. 2. AS 44.66.010(a) is amended by adding a new paragraph to read:

(6) Alaska Renewable Resources Corporation (AS 37.12.030) -- June 30, 1982.

W.O. 4350
12/5/77

IN THE HOUSE

HOUSE BILL NO.

IN THE LEGISLATURE OF THE STATE OF ALASKA

TENTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act relating to nonrenewable resource revenues; and providing for an effective date."

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

* Section 1. AS 24.20 is amended by adding new sections to read:

ARTICLE IV. STATE INVESTMENT OVERSIGHT COMMITTEE.

Sec. 24.20.600. STATE INVESTMENT OVERSIGHT COMMITTEE ESTABLISHED. The State Investment Oversight Committee is established as a permanent interim committee of the legislature. The establishment of the committee recognizes the need of the legislature for technical review and oversight of the performance of all agencies of the state which perform lending, borrowing or investment functions.

Sec. 24.20.610. MEMBERSHIP. The committee is composed of eight members: the president of the senate, the speaker of the house, and three members appointed from each house by the respective presiding officer. The membership from each house shall include at least one member from each of the two major political parties. The committee shall select its own chairman.

Sec. 24.20.620. TERM OF MEMBERSHIP. (a) The committee shall be organized within 15 days after the organization of each legislature. Members serve for the duration of the legislature during which they are appointed. If a member is reelected or his term of office extends into the next succeeding legislature, he continues to serve until reappointed or the appointment of his successor.

(b) When a member of the committee files a declaration of candi-

dacy for an elective office other than that of member of either house of the legislature, and he has not resigned from membership on the committee, his committee membership terminates on the date of filing.

Sec. 24.20.630. VACANCIES. When a vacancy occurs in the statutory or appointive membership of the committee, the presiding officer of the house incurring the vacancy shall choose a successor. If the office of the president of the senate or speaker of the house of representatives becomes vacant and a vacancy from the affected house occurs among the membership of the committee, the remaining committee members from the house incurring the vacancy shall appoint a new member.

Sec. 24.20.640. MEETINGS. The committee may meet during sessions of the legislature and during the interim between sessions at such times and places in the state as the chairman may determine. Members may receive, for the minimum time required to get to and from meetings and for the period while attending meetings, the same travel and per diem allowances provided by law for members of the legislature when attending sessions, except that members of the committee receive no per diem during legislative sessions other than the per diem allowance paid to other members of the legislature.

Sec. 24.20.650. POWERS. The committee has the power to

(1) organize, adopt rules for the conduct of its business, and prescribe procedures for the comprehensive fiscal analysis, budget review and post-audit functions over those agencies of the state which perform lending, borrowing or investment functions;

(2) hold public hearings, administer oaths, issue subpoenas, compel the attendance of witnesses and production of papers, books, accounts, documents and testimony, and have the deposition of witnesses taken in a manner prescribed by court rule or law for taking depositions in civil actions;

(3) require all state officials and agencies of state government to give full cooperation to the committee or its staff in assembling and furnishing requested information;

(4) hold public hearings relating to the confirmation of members of the permanent fund board of trustees, renewable resources development fund commission, and the enterprise fund;

(5) prepare and distribute reports, memoranda, or other necessary materials;

(6) make recommendations concerning the structure and operating practices of all agencies of the state which perform lending, borrowing or investment functions;

(7) receive and review reports and post-audit analyses conducted by the Legislative Budget and Audit Committee relating to all agencies of the state which perform lending, borrowing or investment functions.

Sec. 24.20.660. STAFF. The legislative audit division shall provide staff reasonably necessary for the conduct of the committee duties. The committee may hire and determine the salary of the administrative support staff it deems necessary within the limit of the budget approved by the legislature.

Sec. 24.20.670. DUTIES. The committee shall

(1) report to the legislature its recommendations relating to the confirmation of suggested appointees to the permanent fund board of trustees, renewable resources development fund commission, and the development bank;

(2) annually review the long-range operating plans of all agencies of the state which perform lending, borrowing or investment functions;

(3) review quarterly reports from the permanent fund board of

trustees, renewable resources development fund commission, and development bank policy board;

(4) present a complete report of investment programs, plans, performance, and policies of the permanent fund board of trustees, renewable resources development fund commission, and Alaska Enterprise Investment Fund Policy Board to the legislature within 30 days after the convening of each regular session.

Sec. 24.20.680. RECORDS. The committee shall keep a complete file of all reports presented to it and all reports presented by it to the legislature or any legislative committee.

* Sec. 2. AS 37 is amended by adding a new chapter to read:

CHAPTER 13. ALASKA PERMANENT FUND.

Sec. 37.13.010. ALASKA PERMANENT FUND. Under art IX, sec. 15 of the state constitution, there is established as a separate fund the Alaska Permanent Fund. The permanent fund consists of 100 per cent of mineral lease bonuses after deduction of any amounts allocated to the Alaska Native Fund under the Alaska Native Claims Settlement Act and implementing state legislation and any amounts allocated by law to the Alaska Renewable Resources Development Fund and 30 per cent of all mineral lease rentals, royalties, royalty sale proceeds and federal mineral revenue sharing payments received by the state and any other money allocated by law or appropriated to the principal of the fund. The permanent fund consists of (1) the fund established in this chapter to which five-sixths of the receipts from these sources is allocated and (2) the Alaska Enterprise Investment Fund established in AS 44.55 to which one-sixth of the receipts from these sources is allocated until the amount so allocated reaches the sum of $100,000,000. Thereafter the total receipts from these sources is allocated to the fund established in this chapter.

Sec. 37.13.020. FINDINGS. The people of the State of Alaska, by constitutional amendment, have required the placement of at least 25 per cent of all mineral lease rentals, royalties, royalty sale proceeds, federal mineral revenue sharing payments and bonuses received by the state into a permanent fund. The legislature finds that

(1) the permanent fund should provide a means of conserving a portion of the state's revenues from mineral resources to the ultimate benefit of future generations of Alaskans;

(2) the primary goal of the fund should be to maximize total return while maintaining safety of principal;

(3) the permanent fund should be used as a savings device until the future time when disposable income from the fund will be needed to replace depleting mineral resource revenues;

Sec. 37.13.030. PURPOSE. It is the purpose of this chapter to provide a mechanism for the management and investment of permanent fund assets in a manner consistent with the findings established in sec. 20 of this chapter.

Sec. 37.13.040. ALASKA PERMANENT FUND BOARD OF TRUSTEES. There is created the Alaska Permanent Fund Board of Trustees. The Permanent Fund Board of Trustees is a public corporation and government instrumentality in the Department of Revenue but has a legal existence independent of and separate from the state. The purpose of the board is to manage and invest the assets of the permanent fund in accordance with the guidelines established in this chapter.

Sec. 37.13.050. COMPOSITION OF BOARD OF TRUSTEES. (a) The board of trustees consists of three members appointed by the governor and confirmed by a majority of the members of the legislature in joint session.

(b) The board shall annually elect a chairman from among its

members.

Sec. 37.13.060. TERM OF OFFICE. The members of the board shall be appointed for terms of three years, and they may be reappointed. Terms shall be staggered. Initial terms shall be one member serving for one year, one member serving for two years, and one member serving for three years.

Sec. 37.13.070. REMOVAL AND VACANCIES. (a) The governor may remove a trustee from office by and with the consent of a majority of the members of the legislature in joint session. A removal by the governor shall be in writing and state the reason for removal. If the legislature is not in session, the governor may suspend a member of the board. Upon suspension, a trustee may not participate in board business and may not be counted for purposes of establishing a quorum. A suspended member shall continue to receive his salary as a trustee until the legislature in joint session consents to his removal. The joint session shall be held within 30 days from the date of removal if the removal occurs while the legislature is in session or within 30 days of convening of the legislature if the legislature is not in session. If the legislature refuses to consent to his removal, the trustee shall be reinstated to his position.

(b) A vacancy on the board shall be promptly filled by appointment by the governor and confirmation by a majority of the members of the legislature in joint session, and an appointee to fill a vacancy shall hold office for the balance of the term for which his predecessor on the board was appointed. If a vacancy arises on the board while the legislature is not in session, the governor may appoint an interim trustee who shall exercise all powers and receive the salary of a permanent trustee until such time as the legislature in joint session fails to confirm the interim trustee's appointment.

(c) A vacancy on the board does not impair the authority of a quorum of the board to exercise all the powers and perform all the duties of the board.

Sec. 37.13.080. QUALIFICATIONS OF TRUSTEES. (a) No trustee may be appointed to the board who has not been a resident of the state for at least three years.

(b) No member of the board may hold any other state or federal office, position or employment, either elective or appointive, except as a member of the armed forces of the United States or of this state.

(c) At least one member of the board shall be knowledgeable and experienced in finance, investments, or other business management-related field. No two members may be appointed to the board who share substantially similar professional or occupational backgrounds.

Sec. 37.13.090. QUORUM. Two members of the board constitute a quorum for the transaction of business and the exercise of the powers and duties of the board.

Sec. 37.13.100. COMPENSATION OF TRUSTEES. Trustees serve without compensation except that each member may be reimbursed by the fund for travel and per diem expenses at the rate set by law for members of boards and commissions.

Sec. 37.13.110. EMPLOYMENT OF PERSONNEL. The board may employ and determine the salary of an executive director. The executive director may, with the approval of the board, select and employ additional staff as necessary. The executive director may not be a trustee. The executive director and all employees of the board are in the exempt service under AS 39.25.

Sec. 37.13.120. CONFLICTS OF INTEREST. (a) Trustees are subject to the provisions of AS 39.50.

(b) No member or employee of the board shall acquire an interest,

direct or indirect, in a corporation, company, association, or project owned, controlled, or invested in by the permanent fund. If a member or employee owns or controls an interest, he shall immediately disclose the interest in writing to the board and refrain from participating in any manner in any board activity relating to that interest.

Sec. 37.13.130. POWERS AND DUTIES. (a) The prudent-person rule is applicable to the board in its management and investment of permanent fund assets. In making investments, the board shall exercise the judgment and care under the circumstances then prevailing which an institutional investor of ordinary prudence, discretion, and intelligence exercises in the management of large investments entrusted to it not in regard to speculation but in regard to the permanent disposition of funds, considering the probable income from them as well as probable safety of capital.

(b) The board shall seek to maintain a reasonable diversification of type and maturity of investments in its investments.

(c) The board shall submit long-range and quarterly investment reports to the State Investment Oversight Committee.

(d) The board may not borrow funds or guarantee loans made by any other program or association.

(e) The board may, except as provided by (f) of this section enter into and enforce all contracts necessary, convenient or desirable for purposes of the fund.

(f) The permanent fund shall be used only for income-producing investments. The board may contract only with private persons or organizations to recommend or select investments for the permanent fund. Investments shall be selected in accordance with (g) of this section.

(g) Subject to (a) of this section the board may invest its assets in obligations of the United States or obligations for which the faith

and credit of the United States are pledged for payment of principal and interest; loans secured by first liens on unencumbered realty or leasehold; and corporate stock and corporate obligations which under the Securities Act of 1933 are freely tradeable.

(1) No portion of the assets of the fund may be used in the purchase of stocks of any company whose primary business is the exploration or development of oil or gas; nor in the purchase of stock of any corporation which is not paying dividends on that stock in cash at the time of purchase; nor in the purchase of bonds of any corporation, upon which any regular interest payment has been defaulted at any time within five years before purchase, except bonds never in default but which have been outstanding for less than five years.

(2) No portion of the assets of the fund may be used in the purchase of stocks of an issuer if immediately following the purchase:

(A) The proportionate market value of all stocks of the issuer held by the fund would exceed the greater of 2 per cent of the fund's equity assets or 125 per cent of the proportionate value which the securities of the issuer represent in the Standard & Poors 550 stock index; or

(B) The aggregate market value of all stock of the issuer held by the fund would exceed 3 per cent of the aggregate market value of the issuer's outstanding equity security; or

(C) The proportionate market value of all stocks then held by the fund in the issuer's industry would exceed the greater of 6 per cent of the fund's equity assets or 250 per cent of the proportionate value which the securities of that industry represent to the Standard & Poors 550 Stock Index.

(3) No portion of the assets of the fund may be used in the purchase of corporate obligations of an issuer if immediately following

the purchase the aggregate value of all obligations of that issuer would exceed the lesser of 2 per cent of the total corporate obligations held by the fund or 3 per cent of the aggregate market value of the issuer's outstanding obligations.

Sec. 37.13.140. GAINS AND LOSSES. At the end of each fiscal year, the total amount of losses on the sales of securities, not offset by gains on the sales of securities during that year, shall be computed, with a portion of these losses to be deducted each fiscal year from the interest and dividend income and the resulting amount of interest and dividend income added to the principal of the fund. Losses taken on the sales of bonds shall be accumulated over a period equal to the average remaining life of the bonds sold, and losses taken on the sales of stocks shall be accumulated within a period of five years, unless these losses are offset by gains on future sales of securities. In any fiscal year in which the gains on the sales of securities exceed the losses on the sales of securities, the excess shall be added to the principal of the fund.

Sec. 37.13.150. BOARD BUDGET. The board's operating budget is from the general fund and is subject to the Executive Budget Act (AS 37.07).

Sec. 37.13.160. AUDITS. The Legislative Budget and Audit Committee shall conduct annual operational and performance evaluations (post-audits) of the board's investments and investment programs and report the results to the State Investment Oversight Committee.

Sec. 37.13.170. REPORTS AND PUBLICATIONS. No later than the 20th day of the legislative session, the board shall publish a report to the governor, legislature, and the public in easily understandable language. Each report must include financial statements audited by the Legislative Budget and Audit Committee, a statement of the amount of money received

by the permanent fund from each investment during the period covered, a statement of permanent fund investments, a description of permanent fund investment activity during the period covered by the report, a comparison of the fund performance with the intended goals contained in sec. 020 of this chapter, an examination of the impact of the investment criteria of this chapter on the fund portfolio with recommendations of any needed changes and any other information the board believes would be of interest to the governor, the legislature, and the public. The annual income statement and balance sheet of the permanent fund shall be published in at least one newspaper in each judicial district. The board may also publish other reports it considers desirable to carry out its purpose.

* Sec. 3. AS 44 is amended by adding a new chapter to read:

CHAPTER 55. THE ALASKA ENTERPRISE INVESTMENT FUND.

Sec. 44.55.010. CREATION OF INVESTMENT FUND: FUNDING. (a) There is created the Alaska Enterprise Investment Fund. The investment fund is a public corporation and government instrumentality in the Department of Revenue but has legal existence independent of and separate from the state. The exercise by the investment fund of the powers conferred by this chapter is considered an essential governmental function of the state.

(b) One-sixth of the receipts of all mineral lease rentals, royalties, royalty sale proceeds, federal mineral revenue sharing payments and bonuses allocated to the permanent fund shall be paid directly into the investment fund until a total of $100,000,000 has been paid in.

Sec. 44.55.020. ALASKA ENTERPRISE INVESTMENT FUND POLICY BOARD. (a) There is established the Alaska Enterprise Fund Policy Board consisting of a person employed in the executive branch of state government appointed by the governor and six public members appointed by the

governor with due regard for geographical representation and confirmed by a majority of the members of the legislature in joint session. At least two of the public members shall have broad experience in investment finance. The board shall elect one of the public members as chairman and other officers they determine desirable.

(b) The six appointed members shall serve for four-year terms, and they may be reappointed. Terms shall be staggered. Initial terms shall be two members serving for two years, two members serving for three years, and two members serving for four years. Members continue to serve until their successors are appointed and confirmed.

(c) A majority of the policy board members constitutes a quorum for the transaction of business by the board. Decisions of the board shall be taken by a majority vote. The board shall hold at least one public meeting each year.

(d) Members of the policy board receive $_____ per meeting day if they attend the meeting and are entitled to per diem and travel allowances as are provided by law for members of state boards and commissions.

Sec. 44.55.030. REMOVAL AND VACANCIES ON BOARD. (a) The governor may remove a policy board member from office by and with the consent of a majority of the members of the legislature in joint session. The joint session shall be held within 10 days from the date of removal if the removal occurs while the legislature is in session or within 30 days of convening of the legislature if the member was suspended. If the legislature is not in session, the governor may suspend a member of the policy board for cause. Upon suspension, a board member may not participate in policy board business and may not be counted for purposes of establishing a quorum. A suspended member shall continue to receive his salary as a board member until the legislature in joint session consents to his removal. If the legislature refuses to consent to his removal,

the member shall be reinstated to his position.

(b) A vacancy arising on the policy board shall be promptly filled by appointment by the governor and confirmation by a majority of the members of the legislature in joint session, and an appointee to fill a vacancy shall hold office for the balance of the term for which his predecessor on the board was appointed. If a vacancy arises on the board while the legislature is not in session, the governor may appoint an interim board member who shall exercise all powers and receive the salary of a permanent board member until such time as the legislature in joint session fails to confirm the interim member's appointment.

(c) A vacancy on the policy board does not impair the authority of a quorum of the board to exercise all the powers and perform all the duties of the board.

Sec. 44.55.040. DUTIES OF THE POLICY BOARD. The policy board shall

(1) select and appoint the president and other members of the Alaska Development Bank Investment Committee established in sec. 50 of this chapter;

(2) annually review and approve long-range operating plans, the budget for the forthcoming year, and the financial plan for the following years;

(3) have responsibility on behalf of the bank for relations with the general public, legislature, executive branch, local communities, and interest groups concerning all things excepting only those matters that are the responsibility of the investment committee;

(4) review quarterly reports from the investment committee concerning investment decisions and investment supervision, but the board may not impose an investment decision upon, or override an investment decision of, the investment committee;

(5) review, consider and approve policies;

(6) establish an audit committee, consisting of the commissioner of revenue and other members of the policy board to be designated by the commissioner, which shall select independent outside auditors, and receive all audit reports.

Sec. 44.55.050. ALASKA ENTERPRISE INVESTMENT FUND INVESTMENT COMMITTEE. (a) There is established the Alaska Enterprise Investment Fund Investment Committee, consisting of the president and four members appointed by the policy board. No member of the policy board may be a member of the investment committee. Members of the investment committee shall be persons of recognized competence and wide experience in investments, finance, and other business management-related fields. Members may be reappointed and continue to serve until their successors are appointed. The president and members shall serve for four year terms. Terms shall be staggered. Initial terms shall be one member serving for one year, one member serving for two years, one member serving for three years, and one member and the president serving for four years.

(b) Four members of the investment committee constitute a quorum. Decisions of the committee shall be taken by majority vote.

(c) Members of the investment committee are in the exempt service under AS 39.25 and receive an annual salary within Range 30 in the salary schedule for state employees established by AS 39.27.011.

Sec. 44.55.060. DUTIES OF THE INVESTMENT COMMITTEE. The investment committee has sole responsibility to approve all investment proposals.

Sec. 44.55.070. BUDGET. The investment fund operating budget is from the general fund and is subject to the provisions of the Executive Budget Act (AS 37.07).

Sec. 44.55.080. PERSONNEL OF INVESTMENT FUND. The policy board

and investment committee members and officers and staff of the investment fund are in the exempt service under AS 39.25.

Sec. 44.55.090. FINDINGS.

(1) that investment in financially sound small and medium scale productive private enterprises and community development projects in Alaska, particularly in rural areas of Alaska, is of benefit to the citizens of Alaska;

(2) there is a shortage of investment capital for financially sound small and medium scale productive private enterprises, and community development projects particularly in rural areas of Alaska;

(3) that the Alaska Enterprise Investment Fund working with private financial institutions to supplement but not supplant their services can help to alleviate this shortage.

Sec. 44.55.100. PURPOSE. The purpose of the Alaska Enterprise Investment Fund is to provide capital at market rates and terms for small and medium scale productive private enterprises, and community development projects particularly in rural areas of Alaska.

Sec. 44.55.110. POWERS OF THE INVESTMENT FUND. (a) In carrying out the corporate purposes of the investment fund, the policy board has power to

(1) adopt, alter and use a corporate seal;

(2) prescribe, adopt, amend, and repeal bylaws;

(3) sue and be sued in the name of the investment fund;

(4) borrow funds, and in that connection furnish such collateral or other security as it determines, except that investment fund borrowing may not exceed one-half of its paid-in capital;

(5) guarantee obligations of another corporation or legal entity in order to facilitate their sale;

(6) enter into agreements necessary or convenient in the

exercise of its powers and functions;

(7) acquire, hold, use, lease, sell or otherwise dispose of property of any kind, real, personal or mixed, or any interest in it;

(8) contract with state, federal and other agencies to develop needed information and analyses;

(9) do all acts and things necessary, convenient or desirable to carry out the powers granted or implied in this chapter.

(b) In carrying out the corporate purposes of the investment fund, the investment committee has the power to

(1) invest, in such form as it considers appropriate, including without limitation, by purchase of the capital stock of, or the lending of money to, projects, except that any investment in the capital stock of or other ownership interest in such project may not exceed 49 per cent of the capital stock of, or other ownership interest in, the project, and no loan or other investment in the project by the investment fund may exceed 90 per cent of the cost of the project unless, in the judgment of the committee, additional amounts must be loaned to protect the interests of the investment fund;

(2) deposit funds, or invest funds through the permanent fund in such obligations as it may determine;

(3) buy and sell securities the investment fund has issued or guaranteed or in which it has invested;

(4) do all acts and things necessary, convenient or desirable to carry out the powers granted or implied in this chapter.

Sec. 44.55.120. INVESTMENTS. (a) In making investments, the investment committee and staff shall exercise the judgment and care under the circumstances then prevailing which a person of ordinary prudence, discretion, and intelligence exercises in the management of his own affairs taking into consideration the probable income from the

investments as well as probable safety of principal.

(b) An amount equal to at least 150 per cent of all guarantees by the investment fund shall be invested in investment-grade securities.

(c) The investment committee may invest not more than 50 per cent of the resources of the investment fund to provide a reasonable proportion of longer-term investment capital for financing the establishment, improvement, and expansion of productive private enterprises which will benefit Alaskans, and for which sufficient capital is not available from other sources on reasonable terms. These investments may take the form of equity, debt, or debt guarantees.

(d) The committee may invest no more than 50 per cent of the resources of the investment fund in financing a reasonable proportion of the longer-term investment capital needs for community development projects of municipalities and public corporate entities and private dwellings in Alaska for which sufficient financing is not available from other sources on reasonable terms. These investments may take the form of debt or debt guarantees.

(e) The committee may not invest or guarantee obligations totaling more than five per cent of the resources of the bank or $1,500,000, whichever is less, in a single project unless the legislature has approved the investment by concurrent resolution.

(f) The committee may not undertake any financing for which, in its opinion, sufficient private capital could be obtained on reasonable terms.

(g) The committee may not assume responsibility for managing any enterprise or project in which it has invested and may not exercise voting rights for that purpose or for any other purpose which, in its opinion, properly is within the scope of managerial control.

(h) The committee shall only undertake its financing on terms and

conditions which it considers appropriate, taking into account the terms and conditions normally obtained by private investors for similar financing, the requirements of the enterprise or projects, the risks being undertaken by the investment fund, and the participation of other investors unless the legislature has appropriated funds for subsidizing investments which in the opinion of the investment fund are of such high priority that special terms and conditions are appropriate.

(i) The committee may seek to revolve the investment fund's money by selling its investments to other investors whenever it can appropriately do so on satisfactory terms.

(j) The committee shall seek to maintain a reasonable diversification in its investments.

(k) The committee shall only consider investment proposals after the applicant for an investment has submitted a detailed proposal to the committee's staff and the staff has prepared a written report recommending the investment after a study of its merits.

(l) The committee shall analyze the economic and other effects of an investment decision, including the effects on employment, income distribution, environment, health, social and other factors. The committee shall be sensitive to the views of affected local communities and shall include an analysis of those views in proposals for large investments.

(m) The committee may guarantee qualifying loans made by financial intermediaries in order to facilitate investment by the intermediaries in specific enterprises or projects whose individual financing requirements are not, in the opinion of the committee, large enough to warrant its direct supervision.

(n) The committee shall provide for operational and performance evaluations (post-audits) of its investments and investment programs and

report the results to the policy board.

(o) Nothing in this section prevents the investment committee, in the event of actual or threatened default on any of its investments, actual or threatened insolvency of the enterprise in which the investment has been made, or other situations which, in the opinion of the investment committee, threaten to jeopardize the investment, from taking such action and exercising such rights as it may consider necessary for the protection of its interests.

Sec. 44.55.130. INITIAL DETERMINATIONS. Before beginning its financing operations, the policy board shall render a detailed report to the legislature which shall

(1) define the sectors which need financing for expansion of existing projects or the development of new projects;

(2) define the size and nature of projects which are feasible for investment fund financing;

(3) determine specific projects which are feasible for investment fund and private financing;

(4) determine the availability of private investment capital for the projects it determines are feasible;

(5) forecast the capital requirements of the investment fund for the first three years of its operations.

Sec. 44.55.140. REPORTS AND PUBLICATIONS. The policy board shall publish an annual report to the governor, legislature and the public. Each report shall include financial statements audited by independent outside auditors, a statement of the amount of money received by the investment fund from each source during the period covered, a statement of investment fund investments, a description of investment fund investment activity during the period covered by the report, an analysis of economic and other effects of investment decisions including, but not

limited to, the effects on employment, income distribution, environment, health, social and other factors, and any other information the policy board believes would be of interest to the governor, the legislature and the public. The investment fund may also publish such other reports as it considers desirable to carry out its purpose.

Sec. 44.55.150. CONFLICT OF INTEREST. (a) Members of the policy board and investment committee are subject to the provisions of AS 39.50.

(b) Members of the investment committee shall disclose their financial interest in an investment proposal and disqualify themselves from voting on any investment proposal in which they have a financial interest. The committee may not make an investment in any project or enterprise in which officers of the bank have a financial interest. Members of the policy board are prohibited from all attempts to influence the investment committee, its president or staff in the discharge of their ordinary operating duties. All officers of the investment fund in the discharge of their offices owe their duty entirely to the investment fund and no other authority.

Sec. 44.55.160. POLITICAL ACTIVITIES. The members of the policy board, members of the investment committee, and officers and staff of the investment fund may not engage in partisan political activities. The resources of the investment fund may not be used to finance any partisan political activities.

Sec. 44.55.170. PUBLIC ACCESS TO INFORMATION. Information in the possession of the investment fund is a public record, except that information which discloses the particulars of the business or affairs of a private enterprise or investor is confidential and is not a public record. Confidential information may be disclosed only for the purposes of an official law enforcement investigation or when its production is required in a court proceeding. These restrictions do not prohibit the

publication of statistics presented in a manner that prevents the identification of particular reports, items, persons, or enterprises.

Sec. 44.55.180. TAX EXEMPTION. The investment fund is exempt from all taxes and assessments in the state. All security instruments issued by the investment fund, their transfer and their income are exempt from all taxes and assessments in the state.

Sec. 44.55.190. DEFINITIONS. In this chapter

(1) "board" or "policy board" means the Alaska Enterprise Investment Policy Board created by sec. 20 of this chapter;

(2) "business enterprise" means a private corporation, firm, partnership or sole proprietorship;

(3) "committee" or "investment committee" means the Alaska Enterprise Investment Fund Investment Committee created by sec. 50 of this chapter;

(4) "fund" or "investment fund" means the Alaska Enterprise Investment Fund.

* Sec. 4. AS 39.25.110 is amended by adding new paragraphs to read:

(21) members of the policy board and investment committee, and the president, officers, and staff of the Alaska Enterprise Investment Fund;

(22) members of the board of trustees, the executive director, and staff of the Alaska Permanent Fund Board of Trustees.

* Sec. 5. AS 39.50.200(9) is amended by adding new subparagraphs to read:

(NN) Alaska Enterprise Investment Fund Policy Board and Alaska Enterprise Investment Fund Investment Committee;

(OO) Alaska Permanent Fund Board of Trustees.

* Sec. 6. This Act takes effect immediately in accordance with AS 01.10.-070(c).

w.o. 4350
12/9/77

IN THE HOUSE

HOUSE BILL NO.

IN THE LEGISLATURE OF THE STATE OF ALASKA

TENTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act relating to nonrenewable resource revenues; and providing for an effective date."

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

* Section 1. AS 24.20 is amended by adding new sections to read:

ARTICLE IV. STATE INVESTMENT OVERSIGHT COMMITTEE.

Sec. 24.20.600. STATE INVESTMENT OVERSIGHT COMMITTEE ESTABLISHED. The State Investment Oversight Committee is established as a permanent interim committee of the legislature. The establishment of the committee recognizes the need of the legislature for technical review and oversight of the performance of all agencies of the state which perform lending, borrowing or investment functions.

Sec. 24.20.610. MEMBERSHIP. The committee is composed of eight members: the president of the senate, the speaker of the house, and three members appointed from each house by the respective presiding officer. The membership from each house shall include at least one member from each of the two major political parties. The committee shall select its own chairman.

Sec. 24.20.620. TERM OF MEMBERSHIP. (a) The committee shall be organized within 15 days after the organization of each legislature. Members serve for the duration of the legislature during which they are appointed. If a member is reelected or his term of office extends into the next succeeding legislature, he continues to serve until reappointed or the appointment of his successor.

(b) When a member of the committee files a declaration of candi-

dacy for an elective office other than that of member of either house of the legislature, and he has not resigned from membership on the committee, his committee membership terminates on the date of filing.

Sec. 24.20.630. VACANCIES. When a vacancy occurs in the statutory or appointive membership of the committee, the presiding officer of the house incurring the vacancy shall choose a successor. If the office of the president of the senate or speaker of the house of representatives becomes vacant and a vacancy from the affected house occurs among the membership of the committee, the remaining committee members from the house incurring the vacancy shall appoint a new member.

Sec. 24.20.640. MEETINGS. The committee may meet during sessions of the legislature and during the interim between sessions at such times and places in the state as the chairman may determine. Members may receive, for the minimum time required to get to and from meetings and for the period while attending meetings, the same travel and per diem allowances provided by law for members of the legislature when attending sessions, except that members of the committee receive no per diem during legislative sessions other than the per diem allowance paid to other members of the legislature.

Sec. 24.20.650. POWERS. The committee has the power to

(1) organize, adopt rules for the conduct of its business, and prescribe procedures for the comprehensive fiscal analysis, budget review and post-audit functions over those agencies of the state which perform lending, borrowing or investment functions;

(2) hold public hearings, administer oaths, issue subpoenas, compel the attendance of witnesses and production of papers, books, accounts, documents and testimony, and have the deposition of witnesses taken in a manner prescribed by court rule or law for taking depositions in civil actions;

(3) require all state officials and agencies of state government to give full cooperation to the committee or its staff in assembling and furnishing requested information;

(4) hold public hearings relating to the confirmation of members of the Alaska Permanent Fund Board of Trustees, the Board of Trustees of the Alaska Renewable Resources Corporation, and the Alaska Enterprise Investment Fund Policy Board;

(5) prepare and distribute reports, memoranda, or other necessary materials;

(6) make recommendations concerning the structure and operating practices of all agencies of the state which perform lending, borrowing or investment functions;

(7) receive and review reports and post-audit analyses conducted by the Legislative Budget and Audit Committee relating to all agencies of the state which perform lending, borrowing or investment functions.

Sec. 24.20.660. STAFF. The legislative audit division shall provide staff reasonably necessary for the conduct of the committee duties. The committee may hire and determine the salary of the administrative support staff it considers necessary within the limit of the budget approved by the legislature.

Sec. 24.20.670. DUTIES. The committee shall

(1) report to the legislature its recommendations relating to the confirmation of suggested appointees to the Alaska Permanent Fund Board of Trustees, the Board of Trustees of the Alaska Renewable Resources Corporation, and the Alaska Enterprise Investment Fund Policy Board;

(2) annually review the long-range operating plans of all agencies of the state which perform lending, borrowing or investment

functions;

(3) review quarterly reports from the Alaska Permanent Fund Board of Trustees, the Board of Trustees of the Alaska Renewable Resources Corporation, and the Alaska Enterprise Investment Fund Policy Board;

(4) present a complete report of investment programs, plans, performance, and policies of the Alaska Permanent Fund Board of Trustees, the Board of Trustees of the Alaska Renewable Resources Corporation, and the Alaska Enterprise Investment Fund Policy Board to the legislature within 30 days after the convening of each regular session.

Sec. 24.20.680. RECORDS. The committee shall keep a complete file of all reports presented to it and all reports presented by it to the legislature or any legislative committee.

* Sec. 2. AS 37 is amended by adding a new chapter to read:

CHAPTER 13. ALASKA PERMANENT FUND.

Sec. 37.13.010. ALASKA PERMANENT FUND. Under art IX, sec. 15 of the state constitution, there is established as a separate fund the Alaska Permanent Fund. The permanent fund consists of 100 per cent of mineral lease bonuses after deduction of any amounts allocated to the Alaska Native Fund under the Alaska Native Claims Settlement Act and implementing state legislation and any amounts allocated by law to the Alaska Renewable Resources Development Fund and 30 per cent of all mineral lease rentals, royalties, royalty sale proceeds, and federal mineral revenue sharing payments received by the state and any other money allocated by law or appropriated to the principal of the fund. The permanent fund consists of (1) the fund established in this chapter to which five-sixths of the receipts from these sources is allocated and (2) the Alaska Enterprise Investment Fund established in AS 44.55 to which one-sixth of the receipts from these sources is allocated until

the amount so allocated reaches the sum of $100,000,000. Thereafter the total receipts from these sources is allocated to the fund established in this chapter.

Sec. 37.13.020. FINDINGS. The people of the state, by constitutional amendment, have required the placement of at least 25 per cent 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 that

(1) the permanent fund should provide a means of conserving a portion of the state's revenues from mineral resources to the ultimate benefit of future generations of Alaskans;

(2) the primary goal of the fund should be to maximize total return while maintaining safety of principal;

(3) the permanent fund should be used as a savings device until the future time when disposable income from the fund will be needed to replace depleting mineral resource revenues.

Sec. 37.13.030. PURPOSE. It is the purpose of this chapter to provide a mechanism for the management and investment of permanent fund assets in a manner consistent with the findings established in sec. 20 of this chapter.

Sec. 37.13.040. ALASKA PERMANENT FUND BOARD OF TRUSTEES. There is established the Alaska Permanent Fund Board of Trustees. The permanent fund board of trustees is a public corporation and government instrumentality in the Department of Revenue but has a legal existence independent of and separate from the state. The purpose of the board is to manage and invest the assets of the permanent fund in accordance with the guidelines established in this chapter.

Sec. 37.13.050. COMPOSITION OF BOARD OF TRUSTEES. (a) The board of trustees consists of three members appointed by the governor and con-

firmed by a majority of the members of the legislature in joint session.

(b) The board shall annually elect a chairman from among its member

Sec. 37.13.060. TERM OF OFFICE. The members of the board shall be appointed for terms of three years, and they may be reappointed. Terms shall be staggered. Initial terms shall be one member serving for one year, one member serving for two years, and one member serving for three years.

Sec. 37.13.070. REMOVAL AND VACANCIES. (a) The governor may remove a trustee from office by and with the consent of a majority of the members of the legislature in joint session. A removal by the governor shall be in writing and state the reason for removal. If the legislature is not in session, the governor may suspend a member of the board. Upon suspension, a trustee may not participate in board business and may not be counted for purposes of establishing a quorum. A suspended member shall continue to receive his salary as a trustee until the legislature in joint session consents to his removal. The joint session shall be held within 30 days from the date of removal if the removal occurs while the legislature is in session or within 30 days of convening of the legislature if the legislature is not in session. If the legislature refuses to consent to his removal, the trustee shall be reinstated to his position.

(b) A vacancy on the board shall be promptly filled by appointment by the governor and confirmation by a majority of the members of the legislature in joint session, and an appointee to fill a vacancy shall hold office for the balance of the term for which his predecessor on the board was appointed. If a vacancy arises on the board while the legislature is not in session, the governor may appoint an interim trustee who shall exercise all powers and receive the salary of a permanent trustee until such time as the legislature in joint session fails to confirm the interim trustee's appointment.

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(c) A vacancy on the board does not impair the authority of a quorum of the board to exercise all the powers and perform all the duties of the board.

Sec. 37.13.080. QUALIFICATIONS OF TRUSTEES. (a) No trustee may be appointed to the board who has not been a resident of the state for at least three years.

(b) No member of the board may hold any other state or federal office, position or employment, either elective or appointive, except as a member of the armed forces of the United States or of this state.

(c) At least one member of the board shall be knowledgeable and experienced in finance, investments, or other business management-related field. No two members may be appointed to the board who share substantially similar professional or occupational backgrounds.

Sec. 37.13.090. QUORUM. Two members of the board constitute a quorum for the transaction of business and the exercise of the powers and duties of the board.

Sec. 37.13.100. COMPENSATION OF TRUSTEES. Trustees serve without compensation except that each member may be reimbursed by the fund for travel and per diem expenses at the rate set by law for members of boards and commissions.

Sec. 37.13.110. EMPLOYMENT OF PERSONNEL. The board may employ and determine the salary of an executive director. The executive director may, with the approval of the board, select and employ additional staff as necessary. The executive director may not be a trustee. The executive director and all employees of the board are in the exempt service under AS 39.25.

Sec. 37.13.120. CONFLICTS OF INTEREST. (a) Trustees are subject to the provisions of AS 39.50.

(b) No member or employee of the board shall acquire an interest,

direct or indirect, in a corporation, company, association, or project owned, controlled, or invested in by the permanent fund. If a member or employee owns or controls an interest, he shall immediately disclose the interest in writing to the board and refrain from participating in any manner in any board activity relating to that interest.

Sec. 37.13.130. POWERS AND DUTIES. (a) The prudent-person rule is applicable to the board in its management and investment of permanent fund assets. In making investments, the board shall exercise the judgment and care under the circumstances then prevailing which an institutional investor of ordinary prudence, discretion, and intelligence exercises in the management of large investments entrusted to it not in regard to speculation but in regard to the permanent disposition of funds, considering the probable income from them as well as probable safety of capital.

(b) The board shall seek to maintain a reasonable diversification of type and maturity of investments in its investments.

(c) The board shall submit long-range and quarterly investment reports to the State Investment Oversight Committee.

(d) The board may not borrow funds or guarantee loans made by any other program or association.

(e) The board may, except as provided by (f) of this section enter into and enforce all contracts necessary, convenient or desirable for purposes of the fund.

(f) The permanent fund shall be used only for income-producing investments. The board may contract only with private persons or organizations to recommend or select investments for the permanent fund. Investments shall be selected in accordance with (g) of this section.

(g) Subject to (a) of this section the board may invest its assets in obligations of the United States or obligations for which the faith

and credit of the United States are pledged for payment of principal and interest; loans secured by first liens on unencumbered realty or leasehold; and corporate stock and corporate obligations which under the Securities Act of 1933 are freely tradeable.

(1) No portion of the assets of the fund may be used in the purchase of stocks of any company whose primary business is the exploration or development of oil or gas; nor in the purchase of stock of any corporation which is not paying dividends on that stock in cash at the time of purchase; nor in the purchase of bonds of any corporation, upon which any regular interest payment has been defaulted at any time within five years before purchase, except bonds never in default but which have been outstanding for less than five years.

(2) No portion of the assets of the fund may be used in the purchase of stocks of an issuer if immediately following the purchase

(A) the proportionate market value of all stocks of the issuer held by the fund would exceed the greater of 2 per cent of the fund's equity assets or 125 per cent of the proportionate value which the securities of the issuer represent in the Standard & Poors 550 stock index;

(B) the aggregate market value of all stock of the issuer held by the fund would exceed 3 per cent of the aggregate market value of the issuer's outstanding equity security; or

(C) the proportionate market value of all stocks then held by the fund in the issuer's industry would exceed the greater of 6 per cent of the fund's equity assets or 250 per cent of the proportionate value which the securities of that industry represent to the Standard & Poors 550 Stock Index.

(3) No portion of the assets of the fund may be used in the purchase of corporate obligations of an issuer if immediately following

the purchase the aggregate value of all obligations of that issuer would exceed the lesser of 2 per cent of the total corporate obligations held by the fund or 3 per cent of the aggregate market value of the issuer's outstanding obligations.

Sec. 37.13.140. GAINS AND LOSSES. At the end of each fiscal year, the total amount of losses on the sales of securities, not offset by gains on the sales of securities during that year, shall be computed, with a portion of these losses to be deducted each fiscal year from the interest and dividend income and the resulting amount of interest and dividend income added to the principal of the fund. Losses taken on the sales of bonds shall be accumulated over a period equal to the average remaining life of the bonds sold, and losses taken on the sales of stocks shall be accumulated within a period of five years, unless these losses are offset by gains on future sales of securities. In any fiscal year in which the gains on the sales of securities exceed the losses on the sales of securities, the excess shall be added to the principal of the fund.

Sec. 37.13.150. BOARD BUDGET. The board's operating budget is from the general fund and is subject to the Executive Budget Act (AS 37.07).

Sec. 37.13.160. AUDITS. The Legislative Budget and Audit Committee shall conduct annual operational and performance evaluations (post-audits) of the board's investments and investment programs and report the results to the State Investment Oversight Committee.

Sec. 37.13.170. REPORTS AND PUBLICATIONS. No later than the 20th day of the legislative session, the board shall publish a report to the governor, legislature, and the public in easily understandable language. Each report must include financial statements audited by the Legislative Budget and Audit Committee, a statement of the amount of money received

by the permanent fund from each investment during the period covered, a statement of permanent fund investments, a description of permanent fund investment activity during the period covered by the report, a comparison of the fund performance with the intended goals contained in sec. 20 of this chapter, an examination of the impact of the investment criteria of this chapter on the fund portfolio with recommendations of any needed changes and any other information the board believes would be of interest to the governor, the legislature, and the public. The annual income statement and balance sheet of the permanent fund shall be published in at least one newspaper in each judicial district. The board may also publish other reports it considers desirable to carry out its purpose.

* Sec. 3. AS 44 is amended by adding a new chapter to read:

CHAPTER 55. THE ALASKA ENTERPRISE INVESTMENT FUND.

Sec. 44.55.010. CREATION OF INVESTMENT FUND: FUNDING. (a) There is created the Alaska Enterprise Investment Fund. The investment fund is a public corporation and government instrumentality in the Department of Revenue but has legal existence independent of and separate from the state. The exercise by the investment fund of the powers conferred by this chapter is considered an essential governmental function of the state.

(b) One-sixth of the receipts of all mineral lease rentals, royalties, royalty sale proceeds, and federal mineral revenue sharing payments and bonuses allocated to the permanent fund shall be paid directly into the investment fund until a total of $100,000,000 has been paid in.

Sec. 44.55.020. ALASKA ENTERPRISE INVESTMENT FUND POLICY BOARD. (a) There is established the Alaska Enterprise Fund Policy Board consisting of a person employed in the executive branch of state government appointed by the governor and six public members appointed by the

governor with due regard for geographical representation and confirmed by a majority of the members of the legislature in joint session. At least two of the public members shall have broad experience in investment finance. The board shall elect one of the public members as chairman and other officers they determine desirable.

(b) The six appointed members shall serve for four-year terms, and they may be reappointed. Terms shall be staggered. Initial terms shall be two members serving for two years, two members serving for three years, and two members serving for four years. A member continues to serve until his successor is appointed and confirmed.

(c) A majority of the policy board members constitutes a quorum for the transaction of business by the board. Decisions of the board shall be taken by a majority vote. The board shall hold at least one public meeting each year.

(d) Members of the policy board receive $_____ per meeting day if they attend the meeting and are entitled to per diem and travel allowances as are provided by law for members of state boards and commissions.

Sec. 44.55.030. REMOVAL AND VACANCIES ON BOARD. (a) The governor may remove a policy board member from office by and with the consent of a majority of the members of the legislature in joint session. The joint session shall be held within 10 days from the date of removal if the removal occurs while the legislature is in session or within 30 days of convening of the legislature if the member was suspended. If the legislature is not in session, the governor may suspend a member of the policy board for cause. Upon suspension, a board member may not participate in policy board business and may not be counted for purposes of establishing a quorum. A suspended member shall continue to receive his salary as a board member until the legislature in joint session consents to his removal. If the legislature refuses to consent to his removal,

the member shall be reinstated to his position.

(b) A vacancy arising on the policy board shall be promptly filled by appointment by the governor and confirmation by a majority of the members of the legislature in joint session, and an appointee to fill a vacancy shall hold office for the balance of the term for which his predecessor on the board was appointed. If a vacancy arises on the board while the legislature is not in session, the governor may appoint an interim board member who shall exercise all powers and receive the salary of a permanent board member until such time as the legislature in joint session fails to confirm the interim member's appointment.

(c) A vacancy on the policy board does not impair the authority of a quorum of the board to exercise all the powers and perform all the duties of the board.

Sec. 44.55.040. DUTIES OF THE POLICY BOARD. The policy board shall

(1) select and appoint the president and other members of the Alaska Enterprise Investment Fund Investment Committee established in sec. 50 of this chapter;

(2) annually review and approve long-range operating plans, the budget for the forthcoming year, and the financial plan for the following years;

(3) have responsibility on behalf of the bank for relations with the general public, legislature, executive branch, local communities, and interest groups concerning all things excepting only those matters that are the responsibility of the investment committee;

(4) review quarterly reports from the investment committee concerning investment decisions and investment supervision, but the board may not impose an investment decision upon, or override an investment decision of, the investment committee;

(5) review, consider and approve policies;

(6) establish an audit committee, consisting of the commissioner of revenue and other members of the policy board to be designated by the commissioner, which shall select independent outside auditors, and receive all audit reports.

Sec. 44.55.050. ALASKA ENTERPRISE INVESTMENT FUND INVESTMENT COMMITTEE. (a) There is established the Alaska Enterprise Investment Fund Investment Committee, consisting of a president and four members appointed by the policy board. No member of the policy board may be a member of the investment committee. Members of the investment committee shall be persons of recognized competence and wide experience in investments, finance, and other business management-related fields. A member may be reappointed and continue to serve until his successor is appointed. The president and members shall serve for four-year terms. Terms shall be staggered. Initial terms shall be one member serving for one year, one member serving for two years, one member serving for three years, and one member and the president serving for four years.

(b) Four members of the investment committee constitute a quorum. Decisions of the committee shall be taken by majority vote.

(c) Members of the investment committee are in the exempt service under AS 39.25 and receive an annual salary within Range 30 in the salary schedule for state employees established by AS 39.27.011.

Sec. 44.55.060. DUTIES OF THE INVESTMENT COMMITTEE. The investment committee has sole responsibility to approve all investment proposals.

Sec. 44.55.070. BUDGET. The investment fund operating budget is from the general fund and is subject to the provisions of the Executive Budget Act (AS 37.07).

Sec. 44.55.080. PERSONNEL OF INVESTMENT FUND. Policy board

members, investment committee members, and officers and staff of the investment fund are in the exempt service under AS 39.25.

Sec. 44.55.090. FINDINGS. The legislature finds

(1) that investment in financially sound small and medium scale productive private enterprises and community development projects in the state, particularly in rural areas, is of benefit to the citizens of the state;

(2) there is a shortage of investment capital for financially sound small and medium scale productive private enterprises, and community development projects particularly in rural areas of the state;

(3) that the investment fund working with private financial institutions to supplement but not supplant their services can help to alleviate this shortage.

Sec. 44.55.100. PURPOSE. The purpose of the investment fund is to provide capital at market rates and terms for small and medium scale productive private enterprises, and community development projects particularly in rural areas of the state.

Sec. 44.55.110. POWERS OF THE INVESTMENT FUND. (a) In carrying out the corporate purposes of the investment fund, the policy board has power to

(1) adopt, alter and use a corporate seal;

(2) prescribe, adopt, amend, and repeal bylaws;

(3) sue and be sued in the name of the investment fund;

(4) borrow funds, and in that connection furnish such collateral or other security as it determines, except that investment fund borrowing may not exceed one-half of its paid-in capital;

(5) guarantee obligations of another corporation or legal entity in order to facilitate their sale;

(6) enter into agreements necessary or convenient in the

exercise of its powers and functions;

(7) acquire, hold, use, lease, sell or otherwise dispose of property of any kind, real, personal or mixed, or any interest in it;

(8) contract with state, federal and other agencies to develop needed information and analyses;

(9) do all acts and things necessary, convenient or desirable to carry out the powers granted or implied in this chapter.

(b) In carrying out the corporate purposes of the investment fund, the investment committee has the power to

(1) invest, in such form and such amounts as it considers appropriate, by purchasing the capital stock of, or lending money to, projects, except that any investment in the capital stock of or other ownership interest in a project may not exceed 49 per cent of the capital stock of, or other ownership interest in, the project, and no loan or other investment in the project by the investment fund may exceed 90 per cent of the cost of the project unless, in the judgment of the committee, additional amounts must be loaned to protect the interests of the investment fund;

(2) deposit funds, or invest funds through the permanent fund in such obligations as it may determine;

(3) buy and sell securities the investment fund has issued or guaranteed or in which it has invested;

(4) do all acts and things necessary, convenient or desirable to carry out the powers granted or implied in this chapter.

Sec. 44.55.120. INVESTMENTS. (a) In making investments, the investment committee and staff shall exercise the judgment and care under the circumstances then prevailing which a person of ordinary prudence, discretion, and intelligence exercises in the management of his own affairs taking into consideration the probable income from the

investments as well as probable safety of principal.

(b) An amount equal to at least 150 per cent of all guarantees by the investment fund shall be invested in investment-grade securities.

(c) The investment committee may invest not more than 50 per cent of the resources of the investment fund to provide a reasonable proportion of longer-term investment capital for financing the establishment, improvement, and expansion of productive private enterprises which will benefit Alaskans, and for which sufficient capital is not available from other sources on reasonable terms. These investments may take the form of equity, debt, or debt guarantees.

(d) The committee may invest no more than 50 per cent of the resources of the investment fund in financing a reasonable proportion of the longer-term investment capital needs for income producing community development projects of municipalities and public corporate entities and private dwellings in the state for which sufficient financing is not available from other sources on reasonable terms. These investments may take the form of ~~debt for~~ equity, debt, debt guarantees.

(e) The committee may not invest or guarantee obligations totaling more than five per cent of the resources of the bank or $1,500,000, #5,000,000 #2,500,000 whichever is less, in a single project unless the legislature has approved the investment by concurrent resolution.

(f) The committee may not undertake any financing for which, in its opinion, sufficient private capital could be obtained on reasonable terms.

(g) The committee may not assume responsibility for managing any enterprise or project in which it has invested and may not exercise voting rights for that purpose or for any other purpose which, in its opinion, properly is within the scope of managerial control.

(h) The committee shall only undertake its financing on terms and

conditions which it considers appropriate, taking into account the terms and conditions normally obtained by private investors for similar financing, the requirements of the enterprise or project, the risks being undertaken by the investment fund, and the participation of other investors unless the legislature has appropriated funds for subsidizing investments which in the opinion of the investment fund are of such high priority that special terms and conditions are appropriate.

(i) The committee may seek to revolve the investment fund's money by selling its investments to other investors whenever it can appropriately do so on satisfactory terms.

(j) The committee shall seek to maintain a reasonable diversification in its investments.

(k) The committee shall only consider investment proposals after the applicant for an investment has submitted a detailed proposal to the committee's staff and the staff has prepared a written report recommending the investment after a study of its merits.

(l) The committee shall analyze the economic and other effects of an investment decision, including the effects on employment, income distribution, environment, health, social and other factors. The committee shall be sensitive to the views of affected local communities, and shall include an analysis of those views in proposals for large investments.

(m) The committee may guarantee qualifying loans made by financial intermediaries in order to facilitate investment by the intermediaries in specific enterprises or projects whose individual financing requirements are not, in the opinion of the committee, large enough to warrant its direct supervision.

(n) The committee shall provide for operational and performance evaluations (post-audits) of its investments and investment programs and

report the results to the policy board.

(o) Nothing in this section prevents the investment committee, in the event of actual or threatened default on any of its investments, actual or threatened insolvency of the enterprise in which the investment has been made, or other situations which, in the opinion of the investment committee, threaten to jeopardize the investment, from taking such action and exercising such rights as it may consider necessary for the protection of its interests.

Sec. 44.55.130. INITIAL DETERMINATIONS. Before beginning its financing operations, the policy board shall render a detailed report to the legislature which shall

(1) define the sectors which need financing for expansion of existing projects or the development of new projects;

(2) define the size and nature of projects which are feasible for investment fund financing;

(3) determine specific projects which are feasible for investment fund and private financing;

(4) determine the availability of private investment capital for the projects it determines are feasible;

(5) forecast the capital requirements of the investment fund for the first three years of its operations.

Sec. 44.55.140. REPORTS AND PUBLICATIONS. The policy board shall publish an annual report to the governor, legislature and the public. Each report shall include financial statements audited by independent outside auditors, a statement of the amount of money received by the investment fund from each source during the period covered, a statement of investment fund investments, a description of investment fund investment activity during the period covered by the report, an analysis of economic and other effects of investment decisions including, but not

limited to, the effects on employment, income distribution, environment, health, social and other factors, and any other information the policy board believes would be of interest to the governor, the legislature and the public. The investment fund may also publish such other reports as it considers desirable to carry out its purpose.

Sec. 44.55.150. CONFLICT OF INTEREST. (a) Members of the policy board and investment committee are subject to the provisions of AS 39.50

(b) Members of the investment committee shall disclose their financial interest in an investment proposal and disqualify themselves from voting on any investment proposal in which they have a financial interest. The committee may not make an investment in any project or enterprise in which officers of the bank have a financial interest. Members of the policy board are prohibited from all attempts to influence the investment committee, its president or staff in the discharge of their ordinary operating duties. All officers of the investment fund in the discharge of their offices owe their duty entirely to the investment fund and no other authority.

Sec. 44.55.160. POLITICAL ACTIVITIES. The members of the policy board, members of the investment committee, and officers and staff of the investment fund may not engage in partisan political activities. The resources of the investment fund may not be used to finance any partisan political activities.

Sec. 44.55.170. PUBLIC ACCESS TO INFORMATION. Information in the possession of the investment fund is a public record, except that information which discloses the particulars of the business or affairs of a private enterprise or investor is confidential and is not a public record. Confidential information may be disclosed only for the purposes of an official law enforcement investigation or when its production is required in a court proceeding. These restrictions do not prohibit the

publication of statistics presented in a manner that prevents the identification of particular reports, items, persons, or enterprises.

Sec. 44.55.180. TAX EXEMPTION. The investment fund is exempt from all taxes and assessments in the state. All security instruments issued by the investment fund, their transfer, and their income are exempt from all taxes and assessments in the state.

Sec. 44.55.190. DEFINITIONS. In this chapter

(1) "board" or "policy board" means the Alaska Enterprise Investment Policy Board established by sec. 20 of this chapter;

(2) "business enterprise" means a private corporation, firm, partnership or sole proprietorship;

(3) "committee" or "investment committee" means the Alaska Enterprise Investment Fund Investment Committee established by sec. 50 of this chapter;

(4) "fund" or "investment fund" means the Alaska Enterprise Investment Fund.

* Sec. 4. AS 39.25.110 is amended by adding new paragraphs to read:

(21) members of the policy board and investment committee, and the president, officers, and staff of the Alaska Enterprise Investment Fund;

(22) members of the board of trustees, the executive director, and staff of the Alaska Permanent Fund Board of Trustees.

* Sec. 5. AS 39.50.200(9) is amended by adding new subparagraphs to read:

(NN) Alaska Enterprise Investment Fund Policy Board and Alaska Enterprise Investment Fund Investment Committee;

(OO) Alaska Permanent Fund Board of Trustees.

* Sec. 6. This Act takes effect immediately in accordance with AS 01.10.-070(c).

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IN THE HOUSE

HOUSE BILL NO.

IN THE LEGISLATURE OF THE STATE OF ALASKA

TENTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act relating to nonrenewable resource revenues; and providing for an effective date."

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

* Section 1. AS 24.20 is amended by adding new sections to read:

ARTICLE IV. STATE INVESTMENT OVERSIGHT COMMITTEE.

Sec. 24.20.600. STATE INVESTMENT OVERSIGHT COMMITTEE ESTABLISHED. The State Investment Oversight Committee is established as a permanent interim committee of the legislature. The establishment of the committee recognizes the need of the legislature for technical review and oversight of the performance of all agencies of the state which perform lending, borrowing or investment functions.

Sec. 24.20.610. MEMBERSHIP. The committee is composed of eight members: the president of the senate, the speaker of the house, the chairmen of the house and senate finance committees, the house and senate minority leaders, and one member appointed from each house by the respective presiding officer. The committee shall select its own chairman.

Sec. 24.20.620. TERM OF MEMBERSHIP. (a) The committee shall be organized within 15 days after the organization of each legislature. Members serve for the duration of the legislature during which they are appointed. If a member is reelected or his term of office extends into the next succeeding legislature, he continues to serve until reappointed or the appointment of his successor.

(b) When a member of the committee files a declaration of candi-

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dacy for an elective office other than that of member of either house of the legislature, and he has not resigned from membership on the committee, his committee membership terminates on the date of filing.

Sec. 24.20.630. VACANCIES. When a vacancy occurs in the statutory or appointive membership of the committee, the presiding officer of the house incurring the vacancy shall choose a successor. If the office of the president of the senate or speaker of the house of representatives becomes vacant and a vacancy from the affected house occurs among the membership of the committee, the remaining committee members from the house incurring the vacancy shall appoint a new member.

Sec. 24.20.640. MEETINGS. The committee may meet during sessions of the legislature and during the interim between sessions at such times and places in the state as the chairman may determine. Members may receive, for the minimum time required to get to and from meetings and for the period while attending meetings, the same travel and per diem allowances provided by law for members of the legislature when attending sessions, except that members of the committee receive no per diem during legislative sessions other than the per diem allowance paid to other members of the legislature.

Sec. 24.20.650. POWERS. The committee has the power to

(1) organize, adopt rules for the conduct of its business, and prescribe procedures for the comprehensive fiscal analysis, budget review and post-audit functions over those agencies of the state which perform lending, borrowing or investment functions;

(2) hold public hearings, administer oaths, issue subpoenas, compel the attendance of witnesses and production of papers, books, accounts, documents and testimony, and have the deposition of witnesses taken in a manner prescribed by court rule or law for taking deposition in civil actions;

(3) require all state officials and agencies of state government to give full cooperation to the committee or its staff in assembling and furnishing requested information;

(4) hold public hearings relating to the confirmation of members of the permanent fund board of trustees, renewable resources development fund commission, and the development bank;

(5) prepare and distribute reports, memoranda, or other necessary materials;

(6) make recommendations concerning the structure and operating practices of all agencies of the state which perform lending, borrowing or investment functions;

(7) receive and review reports and post-audit analyses conducted by the Legislative Budget and Audit Committee relating to all agencies of the state which perform lending, borrowing or investment functions.

Sec. 24.20.660. STAFF. The legislative audit division shall provide staff reasonably necessary for the conduct of the committee duties.

Sec. 24.20.670. DUTIES. The committee shall

(1) report to the legislature its recommendations relating to the confirmation of suggested appointees to the permanent fund board of trustees, renewable resources development fund commission, and the development bank;

(2) annually review the long-range operating plans of all agencies of the state which perform lending, borrowing or investment functions;

(3) review quarterly reports from the permanent fund board of trustees, renewable resources development fund commission, and development bank policy board;

(4) present a complete report of investment programs, plans, performance, and policies of the permanent fund board of trustees, renewable resources development fund commission, and development bank policy board to the legislature within 30 days after the convening of each regular session.

Sec. 24.20.680. RECORDS. The committee shall keep a complete file of all reports presented to it and all reports presented by it to the legislature or any legislative committee.

* Sec. 2. AS 37 is amended by adding a new chapter to read:

CHAPTER 13. ALASKA PERMANENT FUND.

Sec. 37.13.010. ALASKA PERMANENT FUND. Under art IX, sec. 15 of the state constitution, there is established as a separate fund in the Department of Revenue the Alaska Permanent Fund. The permanent fund consists of 100 per cent of mineral lease bonuses after deduction of any amounts allocated to the Alaska Native Fund under the Alaska Native Claims Settlement Act and implementing state legislation and any amounts allocated by law to the Alaska Renewable Resources Development Fund and 30 per cent of all mineral lease rentals, royalties, royalty sale proceeds and federal mineral revenue sharing payments received by the state and any other money allocated by law or appropriated to the principal of the fund. The permanent fund consists of (1) the fund established in this chapter to which five-sixths of the receipts from these sources is allocated and (2) the Alaska Development Bank established in AS 44.55 to which one-sixth of the receipts from these sources is allocated until the amount so allocated reaches the sum of $100,000,000. Thereafter the total receipts from these sources is allocated to the fund established in this chapter.

Sec. 37.13.020. FINDINGS. The people of the State of Alaska, by constitutional amendment, have required the placement of at least 25 per

cent of all mineral lease rentals, royalties, royalty sale proceeds, federal mineral revenue sharing payments and bonuses received by the state into a permanent fund. The legislature finds that

(1) the permanent fund should provide a means of conserving portion of the state's revenues from mineral resources to the ultimate benefit of future generations of Alaskans;

(2) the primary goal of the fund should be to maximize income while maintaining safety of principal; store of value

(3) the permanent fund should be used as a savings device until the future time when disposable income from the fund will be needed to replace depleting mineral resource revenues;

(4) the permanent fund should be managed to maintain the purchasing power of the fund to the extent compatible with preservation of principal.

Sec. 37.13.030. PURPOSE. It is the purpose of this chapter to provide a mechanism for the management and investment of permanent fund assets in a manner consistent with the findings established in sec. 20 of this chapter.

Sec. 37.13.040. ALASKA PERMANENT FUND BOARD OF TRUSTEES. There is created within but not of the Department of Revenue the Alaska Permanent Fund Board of Trustees. The purpose of the board is to manage and invest the assets of the permanent fund in accordance with the guidelines established in this chapter.

Sec. 37.13.050. COMPOSITION OF BOARD OF TRUSTEES. (a) The board of trustees consists of three members appointed by the governor and confirmed by a majority of the members of the legislature in joint session.

(b) The board shall annually elect a chairman from among its members.

Sec. 37.13.060. TERM OF OFFICE. The members of the board shall be appointed for terms of three years, and they may be reappointed. Terms shall be staggered. Initial terms shall be one member serving for one year, one member serving for two years, and one member serving for three years.

Sec. 37.13.070. REMOVAL AND VACANCIES. (a) The governor may remove a trustee from office by and with the consent of a majority of the members of the legislature in joint session. A removal by the governor shall be in writing and state the reason for removal. If the legislature is not in session, the governor may suspend a member of the board. Upon suspension, a trustee may not participate in board business and may not be counted for purposes of establishing a quorum. A suspended member shall continue to receive his salary as a trustee until the legislature in joint session consents to his removal. The joint session shall be held within 30 days from the date of removal if the removal occurs while the legislature is in session or within 30 days of convening of the legislature if the legislature is not in session. If the legislature refuses to consent to his removal, the trustee shall be reinstated to his position.

(b) A vacancy on the board shall be promptly filled by appointment by the governor and confirmation by a majority of the members of the legislature in joint session, and an appointee to fill a vacancy shall hold office for the balance of the term for which his predecessor on the board was appointed. If a vacancy arises on the board while the legislature is not in session, the governor may appoint an interim trustee who shall exercise all powers and receive the salary of a permanent trustee until such time as the legislature in joint session fails to confirm the interim trustee's appointment.

(c) A vacancy on the board does not impair the authority of a

quorum of the board to exercise all the powers and perform all the duties of the board.

Sec. 37.13.080. QUALIFICATIONS OF TRUSTEES. (a) No trustee may be appointed to the board who has not been a resident of the state for at least three years.

(b) No member of the board may hold any other state or federal office, position or employment, either elective or appointive, except as a member of the armed forces of the United States or of this state.

(c) At least one member of the board shall be knowledgeable and experienced in finance, investments, or other business management-related field. No two members may be appointed to the board who share substantially similar professional or occupational backgrounds.

Sec. 37.13.090. QUORUM. Two members of the board constitute a quorum for the transaction of business and the exercise of the powers and duties of the board.

Sec. 37.13.100. COMPENSATION OF TRUSTEES. Trustees serve without compensation except that each member may be reimbursed by the fund for travel and per diem expenses at the rate set by law for members of boards and commissions.

Sec. 37.13.110. EMPLOYMENT OF PERSONNEL. The board may employ and determine the salary of an executive director. The executive director may, with the approval of the board, select and employ additional staff as necessary. The executive director may not be a trustee. The executive director and all employees of the board are in the exempt service under AS 39.25.

Sec. 37.13.120. CONFLICTS OF INTEREST. (a) Trustees are subject to the provisions of AS 39.50.

(b) No member or employee of the board shall acquire an interest, direct or indirect, in a corporation, company, association, or project

owned, controlled, or invested in by the permanent fund. If a member or employee owns or controls an interest, he shall immediately disclose the interest in writing to the board and refrain from participating in any manner in any board activity relating to that interest.

Sec. 37.13.130. POWERS AND DUTIES. (a) The prudent-person rule is applicable to the board in its management and investment of permanent fund assets. In making investments, the board shall exercise the judgment and care under the circumstances then prevailing which a person of ordinary prudence, discretion, and intelligence exercises in the management of his own affairs not in regard to speculation but in regard to the permanent disposition of funds, considering the probable income from them as well as probable safety of capital.

(b) The board shall seek to maintain a reasonable diversification of type and maturity of investments in its investments.

(c) The board shall submit long-range and quarterly investment reports to the State Investment Oversight Committee.

(d) The board may not borrow funds or guarantee loans made by any other program or association.

(e) The permanent fund shall be used only for income-producing investments. The board may contract with the Department of Revenue or other persons to select investments for the permanent fund. Investments shall be selected in accordance with (f) of this section.

(f) Subject to (a) of this section the board may invest its assets in obligations of the United States or obligations for which the faith and credit of the United States are pledged for payment of principal and interest; loans secured by first liens on unencumbered realty or leasehold; and corporate stock and corporate obligations listed on a recognized stock exchange. No investment may be made in a security which is in default or in which default is imminent to principal or interest at

the time of investment. No portion of the assets of the fund may be used in the purchase of stocks of any mining company; nor in the purcha of stock of any private corporation which during the preceding five fiscal years has not paid dividends in cash of at least three and one-fourth per cent per year upon the par or stated value of the class of stock purchased or upon the par or stated value of a class of stock junior to the stock purchased; nor in the purchase of bonds of any private corporation, upon which any regular interest payment has been defaulted at any time within five years before purchase, except bonds never in default but which have been outstanding for less than five years. No more than 15 per cent of the assets of the fund may be invested in common stock.

Sec. 37.13.140. BOARD BUDGET. The board's budget is subject to the Executive Budget Act (AS 37.07).

Sec. 37.13.150. AUDITS. The Legislative Budget and Audit Committee shall conduct annual operational and performance evaluations (~~post-audits~~) of the board's investments and investment programs and report the results to the State Investment Oversight Committee.

Sec. 37.13.160. REPORTS AND PUBLICATIONS. No later than the 20th day of the legislative session, the board shall publish a report to the governor, legislature, and the public in easily understandable language. Each report must include financial statements audited by the Legislative Budget and Audit Committee, a statement of the amount of money received by the permanent fund from each investment during the period covered, a statement of permanent fund investments, a description of permanent fund investment activity during the period covered by the report, and any other information the board believes would be of interest to the governo the legislature, and the public. The annual income statement and balanc sheet of the permanent fund shall be published in at least one newspaper

in each judicial district. The board may also publish other reports it considers desirable to carry out its purpose.

* Sec. 3. AS 44 is amended by adding a new chapter to read:

CHAPTER 55. THE ALASKA ENTERPRISE INVESTMENT FUND.

Sec. 44.55.010. CREATION OF INVESTMENT FUND: FUNDING. (a) There is created the Alaska Enterprise Investment Fund. The investment fund a public corporation and government instrument in the Department of Revenue but has legal existence independent of and separate from the state. The exercise by the investment fund of the powers conferred by this chapter is considered an essential governmental function of the state.

(b) One-sixth of the receipts of all mineral lease rentals, royalties, royalty sale proceeds, federal mineral revenue sharing payments and bonuses allocated to the permanent fund shall be paid directly into the investment fund until a total of $100,000,000 has been paid in.

Sec. 44.55.020. ALASKA ENTERPRISE INVESTMENT FUND POLICY BOARD. (a) There is established the Alaska Enterprise Investment Fund Policy Board, consisting of the commissioner of revenue, the commissioner of commerce and economic development, the commissioner of community and regional affairs, or their designees, and six members to be appointed b the governor and confirmed by a majority of the members of the legislat in joint session. Two members shall have broad experience in investmen finance, one member shall represent organized labor, and three members shall represent local communities.

(b) The six appointed members shall serve for six-year terms, and they may be reappointed. Terms shall be staggered. Initial terms sha be two mem rs serving for two years, two members serving for four years, and two members serving for six years. Members continue to serv until their successors are appointed and confirmed.

(c) The chairman of the governing body of the renewable resources development fund serves as chairman of the policy board but is not a voting member.

(d) A majority of the policy board members constitutes a quorum for the transaction of business by the board. Decisions of the board shall be taken by a majority vote, including not less than a majority of the appointed members. The board shall hold at least one public meeting each year.

(e) Members of the policy board receive $100 per meeting day if they attend the meeting and are entitled to per diem and travel allowances as are provided by law for members of state boards and commissions.

Sec. 44.55.030. REMOVAL AND VACANCIES ON BOARD. (a) The governor may remove a policy board member from office by and with the consent of a majority of the members of the legislature in joint session. The joint session shall be held within 10 days from the date of removal if the removal occurs while the legislature is in session or within 30 days of convening of the legislature if the member was suspended. If the legislature is not in session, the governor may suspend a member of the policy board for cause. Upon suspension, a board member may not participate in policy board business and may not be counted for purposes of establishing a quorum. A suspended member shall continue to receive his salary as a board member until the legislature in joint session consents to his removal. If the legislature refuses to consent to his removal, the member shall be reinstated to his position.

(b) A vacancy arising on the policy board shall be promptly filled by appointment by the governor and confirmation by a majority of the members of the legislature in joint session, and an appointee to fill a vacancy shall hold office for the balance of the term for which his predecessor on the board was appointed. If a vacancy arises on the

board while the legislature is not in session, the governor may appoint an interim board member who shall exercise all powers and receive the salary of a permanent board member until such time as the legislature in joint session fails to confirm the interim member's appointment.

(c) A vacancy on the policy board does not impair the authority of a quorum of the board to exercise all the powers and perform all the duties of the board.

Sec. 44.55.040. DUTIES OF THE POLICY BOARD. The policy board shall

(1) select and appoint the president and other members of the Alaska Development Bank Investment Committee established in sec. 50 of this chapter;

(2) annually review and approve long-range operating plans, the budget for the forthcoming year, and the financial plan for the following years;

(3) have responsibility on behalf of the bank for relations with the general public, legislature, executive branch, local communities, and interest groups concerning all things excepting only those matters that are the responsibility of the investment committee;

(4) review quarterly reports from the investment committee concerning investment decisions and investment supervision, but the board may not impose an investment decision upon, or override an investment decision of, the investment committee;

(5) review, consider and approve policies;

(6) establish an audit committee, consisting of the commissioner of revenue and other members of the policy board to be designated by the commissioner, which shall select independent outside auditors, and receive all audit reports.

Sec. 44.55.050. ALASKA ENTERPRISE INVESTMENT FUND INVESTMENT

COMMITTEE. (a) There is established the Alaska Enterprise Investment Fund Investment Committee, consisting of the president and four members appointed by the policy board. No member of the policy board may be a member of the investment committee. Members of the investment committee shall be persons of recognized competence and wide experience in investments, finance, and other business management-related fields. Members may be reappointed and continue to serve until their successors are appointed. The president and members shall serve for four year terms. Terms shall be staggered. Initial terms shall be one member serving for one year, one member serving for two years, one member serving for three years, and one member and the president serving for four years.

(b) Four members of the investment committee constitute a quorum. Decisions of the committee shall be taken by majority vote.

(c) Members of the investment committee are in the exempt service under AS 39.25 and receive an annual salary within Range 30 in the salary schedule for state employees established by AS 39.27.011.

Sec. 44.55.060. DUTIES OF THE INVESTMENT COMMITTEE. The investment committee has sole responsibility to approve all investment proposals.

Sec. 44.55.070. BUDGET. The investment fund is subject to the provisions of the Executive Budget Act (AS 37.07).

Sec. 44.55.080. PERSONNEL OF INVESTMENT FUND. The policy board and investment committee members and officers and staff of the investmen fund are in the exempt service under AS 39.25.

Sec. 44.55.090. FINDINGS.

(1) that investment in financially sound small and medium scale enterprises in Alaska, particularly in rural areas of Alaska, is of benefit to the citizens of Alaska;

(2) there is a shortage of investment capital for financially

sound small and medium scale enterprises, particularly in rural areas of Alaska;

(3) that the Alaska Enterprise Investment Fund working with private financial institutions can help to alleviate this shortage.

Sec. 44.55.100. PURPOSE. The purpose of the Alaska Enterprise Investment Fund is to provide capital at market rates and terms for small and medium scale enterprises, particularly in rural areas of Alaska.

Sec. 44.55.110. POWERS OF THE INVESTMENT FUND. (a) In carrying out the corporate purposes of the investment fund, the policy board has power to

(1) adopt, alter and use a corporate seal;

(2) prescribe, adopt, amend, and repeal bylaws;

(3) sue and be sued in the name of the investment fund;

(4) borrow funds, and in that connection furnish such collateral or other security as it determines, except that investment fund borrowing may not exceed one-half of its paid-in capital;

(5) guarantee obligations of another corporation or legal entity in order to facilitate their sale;

(6) enter into agreements necessary or convenient in the exercise of its powers and functions;

(7) acquire, hold, use, lease, sell or otherwise dispose of property of any kind, real, personal or mixed, or any interest in it;

(8) contract with state, federal and other agencies to develop needed information and analyses;

(9) do all acts and things necessary, convenient or desirable to carry out the powers granted or implied in this chapter.

(b) In carrying out the corporate purposes of the investment fund, the investment committee has the power to

(1) invest, in such form as it considers appropriate, includ ing without limitation, by purchase of the capital stock of, or the lending of money to, projects, except that any investment in the capita stock of or other ownership interest in such project may not exceed 49 per cent of the capital stock of, or other ownership interest in, the project, and no loan or other investment in the project by the investme fund may exceed 90 per cent of the cost of the project unless, in the judgment of the committee, additional amounts must be loaned to protect the interests of the investment fund;

(2) deposit funds, or invest funds in such obligations as it may determine;

(3) buy and sell securities the investment fund has issued o guaranteed or in which it has invested;

(4) purchase currently sound evidence of indebtedness from the tourism fund, the agricultural revolving loan fund and the small business development loan fund if the loan was made after the effective date of this Act and if the loan meets the criteria of sec. 120 of this chapter;

(5) do all acts and things necessary, convenient or desirabl to carry out the powers granted or implied in this chapter.

Sec. 44.55.120. INVESTMENTS. (a) In making investments, the investment committee and staff shall exercise the judgment and care under the circumstances then prevailing which a person of ordinary prudence, discretion, and intelligence exercises in the management of his own affairs taking into consideration the probable income from the investments as well as probable safety of principal.

(b) An amount equal to at least 150 per cent of all guarantees by the investment fund shall be invested in investment-grade securities.

(c) The investment committee may invest not more than 50 per cent

of the resources of the investment fund to provide a reasonable proporti of longer-term investment capital for financing the establishment, improvement, and expansion of productive private enterprises which will benefit Alaskans, and for which sufficient capital is not available from other sources on reasonable terms. These investments may take the form of equity, debt, or debt guarantees.

(d) The committee may invest no more than 50 per cent of the resources of the investment fund in financing a reasonable proportion of the longer-term investment capital needs for community development projects of municipalities and public corporate entities and private dwellings in Alaska for which sufficient financing is not available from other sources on reasonable terms. These investments may take the form of debt or debt guarantees.

(e) The committee may not invest or guarantee obligations totaling more than five per cent of the resources of the bank or $1,500,000, whichever is less, in a single project unless the legislature has approv the investment by concurrent resolution.

(f) The committee may not undertake any financing for which, in its opinion, sufficient private capital could be obtained on reasonable terms.

(g) The committee may not assume responsibility for managing any enterprise or project in which it has invested and may not exercise voting rights for that purpose or for any other purpose which, in its opinion, properly is within the scope of managerial control.

(h) The committee shall only undertake its financing on terms and conditions which it considers appropriate, taking into account the terms and conditions normally obtained by private investors for similar financing, the requirements of the enterprise or projects, the risks being undertaken by the investment fund, and the participation of other

investors unless the legislature has appropriated funds for subsidizing investments which in the opinion of the investment fund are of such high priority that special terms and conditions are appropriate.

(i) The committee may seek to revolve the investment fund's money by selling its investments to other investors whenever it can appropriately do so on satisfactory terms.

(j) The committee shall seek to maintain a reasonable diversification in its investments.

(k) The committee shall only consider investment proposals after the applicant for an investment has submitted a detailed proposal to the committee's staff and the staff has prepared a written report recommending the investment after a study of its merits.

(l) The committee shall analyze the economic and other effects of an investment decision, including the effects on employment, income distribution, environment, health, social and other factors. The committee shall be sensitive to the views of affected local communities and shall include an analysis of those views in proposals for large investments.

(m) The committee may guarantee qualifying loans made by financial intermediaries in order to facilitate investment by the intermediaries in specific enterprises or projects whose individual financing requirements are not, in the opinion of the committee, large enough to warrant its direct supervision.

(n) The committee shall provide for operational and performance evaluations (post-audits) of its investments and investment programs and report the results to the policy board.

(o) Nothing in this section prevents the investment committee, in the event of actual or threatened default on any of its investments, actual or threatened insolvency of the enterprise in which the invest-

ment has been made, or other situations which, in the opinion of the investment committee, threaten to jeopardize the investment, from taking such action and exercising such rights as it may consider necessary for the protection of its interests.

Sec. 44.55.130. INITIAL DETERMINATIONS. Before beginning its financing operations, the policy board shall render a detailed report to the legislature which shall

(1) define the sectors which need financing for expansion of existing projects or the development of new projects;

(2) define the size and nature of projects which are feasible for investment fund financing;

(3) determine specific projects which are feasible for investment fund and private financing;

(4) determine the availability of private investment capital for the projects it determines are feasible;

(5) forecast the capital requirements of the investment fund for the first three years of its operations.

Sec. 44.55.140. REPORTS AND PUBLICATIONS. The policy board shall publish an annual report to the governor, legislature and the public. Each report shall include financial statements audited by independent outside auditors, a statement of the amount of money received by the investment fund from each source during the period covered, a statement of investment fund investments, a description of investment fund investment activity during the period covered by the report, an analysis of economic and other effects of investment decisions including, but not limited to, the effects on employment, income distribution, environment, health, social and other factors, and any other information the policy board believes would be of interest to the governor, the legislature and the public. The investment fund may also publish such other reports as

it considers desirable to carry out its purpose.

Sec. 44.55.150. CONFLICT OF INTEREST. (a) Members of the policy board and investment committee are subject to the provisions of AS 39.50

(b) Members of the investment committee shall disclose their financial interest in an investment proposal and disqualify themselves from voting on any investment proposal in which they have a financial interest. The committee may not make an investment in any project or enterprise in which officers of the bank have a financial interest. Members of the policy board are prohibited from all attempts to influence the investment committee, its president or staff in the discharge of their ordinary operating duties. All officers of the investment fund in the discharge of their offices owe their duty entirely to the investment fund and no other authority.

Sec. 44.55.160. POLITICAL ACTIVITIES. The members of the policy board, members of the investment committee, and officers and staff of the investment fund may not engage in partisan political activities. The resources of the investment fund may not be used to finance any partisan political activities.

Sec. 44.55.170. PUBLIC ACCESS TO INFORMATION. Information in the possession of the investment fund is a public record, except that information which discloses the particulars of the business or affairs of a private enterprise or investor is confidential and is not a public record. Confidential information may be disclosed only for the purposes of an official law enforcement investigation or when its production is required in a court proceeding. These restrictions do not prohibit the publication of statistics presented in a manner that prevents the identification of particular reports, items, persons, or enterprises.

Sec. 44.55.180. TAX EXEMPTION. The investment fund is exempt from all taxes and assessments in the state. All security instruments issued

by the investment fund, their transfer and their income are exempt from all taxes and assessments in the state.

Sec. 44.55.190. DEFINITIONS. In this chapter

(1) "board" or "policy board" means the Alaska Enterprise Investment Policy Board created by sec. 20 of this chapter;

(2) "business enterprise" means a private corporation, firm, partnership or sole proprietorship;

(3) "committee" or "investment committee" means the Alaska Enterprise Investment Fund Investment Committee created by sec. 50 of this chapter;

(4) "fund" or "investment fund" means the Alaska Enterprise Investment Fund.

* Sec. 4. AS 39.25.110 is amended by adding new paragraphs to read:

(21) members of the policy board and investment committee, and the president, officers, and staff of the Alaska Enterprise Investment Fund;

(22) members of the board of trustees, the executive director, and staff of the Alaska Permanent Fund Board of Trustees.

* Sec. 5. AS 39.50.200(9) is amended by adding new subparagraphs to read:

(NN) Alaska Enterprise Investment Fund Policy Board and Alaska Enterprise Investment Fund Investment Committee;

(OO) Alaska Permanent Fund Board of Trustees.

* Sec. 6. This Act takes effect immediately in accordance with AS 01.10.-070(c).

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IN THE HOUSE

HOUSE BILL NO.

IN THE LEGISLATURE OF THE STATE OF ALASKA

TENTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act relating to nonrenewable resource revenues; and providing for an effective date."

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

* Section 1. AS 24.20 is amended by adding new sections to read:

ARTICLE IV. STATE INVESTMENT OVERSIGHT COMMITTEE.

Sec. 24.20.500. STATE INVESTMENT OVERSIGHT COMMITTEE ESTABLISHED. The State Investment Oversight Committee is established as a permanent interim committee of the legislature. The establishment of the committee recognizes the need of the legislature for full-time, technical review and oversight of the performance of the Alaska Permanent Fund Board of Trustees (AS 37.13.020), the Alaska Renewable Resources Development Fund Commission (AS __.__.___), and the Alaska Development Bank (AS 44.-55.010). and others? commissioner investments, loan programs.

Sec. 24.20.510. MEMBERSHIP. The committee is composed of eight members: the president of the senate, the speaker of the house, the chairmen of the house and senate finance committees, the house and senate minority leaders, and one member appointed from each house by the respective presiding officer. The committee shall select its own chairman.

Sec. 24.20.520. TERM OF MEMBERSHIP. (a) The committee shall be organized within 15 days after the organization of each legislature. Members serve for the duration of the legislature during which they are appointed. If a member is reelected or his term of office extends into the next succeeding legislature, he continues to serve until reappointed

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unnecessary language?

minority members?

or the appointment of his successor.

(b) When a member of the committee files a declaration of candidacy for an elective office other than that of member of either house of the legislature, and he has not resigned from membership on the committee, his committee membership terminates on the date of filing.

minority members

Sec. 24.20.530. VACANCIES. When a vacancy occurs in the statutory or appointive membership of the committee, the presiding officer of the house incurring the vacancy shall choose a successor. If the office of the president of the senate or speaker of the house of representatives becomes vacant and a vacancy from the affected house occurs among the membership of the committee, the remaining committee members from the house incurring the vacancy shall appoint a new member.

Sec. 24.20.540. MEETINGS. The committee may meet during sessions of the legislature and during the interim between sessions at such times and places in the state as the chairman may determine. Members may receive, for the minimum time required to get to and from meetings and for the period while attending meetings, the same travel and per diem allowances provided by law for members of the legislature when attending sessions, except that members of the committee receive no per diem during legislative sessions other than the per diem allowance paid to other members of the legislature.

Sec. 24.20.550. POWERS. The committee has the power to

(1) organize, adopt rules for the conduct of its business, and prescribe procedures for the comprehensive fiscal analysis, budget review and post-audit functions over the permanent fund board of trustees, renewable resources development fund commission, and the development bank;

(2) hold public hearings, administer oaths, issue subpoenas, compel the attendance of witnesses and production of papers, books,

accounts, documents and testimony, and have the deposition of witnesses taken in a manner prescribed by court rule or law for taking depositions in civil actions;

(3) require all state officials and agencies of state government to give full cooperation to the committee or its staff in assembling and furnishing requested information;

(4) hold public hearings relating to the confirmation of members of the permanent fund board of trustees, renewable resources development fund commission, and the development bank;

(5) prepare and distribute reports, memoranda, or other necessary materials;

(6) make recommendations concerning the structure and operating practices of the permanent fund, renewable resources development fund, and development bank;

(7) receive and review reports and post-audit analyses conducted by the Legislative Budget and Audit Committee relating to the permanent fund, renewable resources development fund, and development bank.

Sec. 24.20.560. STAFF. The committee may hire and determine the salary of staff reasonably necessary for the conduct of the committee's duties.

Sec. 24.20.570. DUTIES. The committee shall

(1) report to the legislature its recommendations relating to the confirmation of suggested appointees to the permanent fund board of trustees, renewable resources development fund commission, and the development bank;

(2) annually review the long-range operating plans of the permanent fund board of trustees, renewable resources development fund commission, and development bank policy board;

(3) review quarterly reports from the permanent fund board of trustees, renewable resources development fund commission, and development bank policy board;

(4) present a complete report of investment programs, plans, performance, and policies of the permanent fund board of trustees, renewable resources development fund commission, and development bank policy board to the legislature within 30 days after the convening of each regular session.

Sec. 24.20.580. RECORDS. The committee shall keep a complete file of all reports presented to it by the permanent fund board of trustees, renewable resources development fund commission, development bank policy board, and budget and audit, and all reports presented by it to the legislature or any legislative committee.

* Sec. 2. AS 37 is amended by adding a new chapter to read:

CHAPTER 13. ALASKA PERMANENT FUND.

Sec. 37.13.010. ALASKA PERMANENT FUND. Under art. IX, sec. 15 of the state constitution, there is established as a separate fund in the Department of Revenue the Alaska Permanent Fund.

Sec. 37.13.020. ALASKA PERMANENT FUND BOARD OF TRUSTEES. There is created within but not of the Department of Revenue the Alaska Permanent Fund Board of Trustees. The purpose of the board is to manage and invest the assets of the permanent fund established in sec. 10 of this chapter in accordance with the guidelines established in secs. 10 - ___ of this chapter.

Sec. 37.13.030. COMPOSITION OF BOARD OF TRUSTEES. (a) The board of trustees consists of three members appointed by the governor and confirmed by a majority of the members of the legislature in joint session.

(b) The board shall annually elect a chairman from among its

members.

Sec. 37.13.040. TERM OF OFFICE. The members of the board shall be appointed for terms of three years, and they may be reappointed. Terms shall be staggered. Initial terms shall be one member serving for one year, one member serving for two years, and one member serving for three years.

Sec. 37.13.050. REMOVAL AND VACANCIES. (a) The governor may remove a trustee from office by and with the consent of a majority of the members of the legislature in joint session. If the legislature is not in session, the governor may suspend a member of the board for cause. Upon suspension, a trustee may not participate in board business and may not be counted for purposes of establishing a quorum. A suspended member shall continue to receive his salary as a trustee until the legislature in joint session consents to his removal. If the legislature refuses to consent to his removal, the trustee shall be reinstated to his position.

(b) A vacancy on the board shall be filled by appointment by the governor and confirmation by a majority of the members of the legislature in joint session, and an appointee to fill a vacancy shall hold office for the balance of the term for which his predecessor on the board was appointed. If a vacancy arises on the board while the legislature is not in session, the governor may appoint an interim trustee who shall exercise all powers and receive the salary of a permanent trustee until such time as the legislature in joint session fails to confirm the interim trustee's appointment.

(c) A vacancy on the board does not impair the authority of a quorum of the board to exercise all the powers and perform all the duties of the board.

Sec. 37.13.060. QUALIFICATIONS OF TRUSTEES. (a) No trustee may

be appointed to the board who has not been a resident of the state for at least three years.

(b) No member of the board may hold any other state or federal office, position or employment, either elective or appointive, except as a member of the armed forces of the United States or of this state.

(c) At least one member of the board shall be knowledgeable and experienced in finance, investments, or other business management-related field. No two members may be appointed to the board who share substantially similar professional or occupational backgrounds.

Sec. 37.13.070. QUORUM. Two members of the board constitute a quorum for the transaction of business and the exercise of the powers and duties of the board.

Sec. 37.13.080. COMPENSATION OF TRUSTEES. Trustees are in the exempt service under AS 39.25 and receive an annual salary equal to that of a superior court judge.

Sec. 37.13.090. EMPLOYMENT OF PERSONNEL. The board may employ and determine the salary of an executive director. The executive director may, with the approval of the board, select and employ additional staff as necessary. The executive director may not be a trustee. The executive director and all employees of the board are in the exempt service under AS 39.25.

Sec. 37.13.100. CONFLICTS OF INTEREST. (a) Trustees are subject to the provisions of AS 39.50.

(b) No member or employee of the board shall acquire an interest, direct or indirect, in a corporation, company, association, or project owned, controlled, or invested in by the permanent fund. If a member or employee owns or controls an interest, he shall immediately disclose the interest in writing to the board and refrain from participating in any manner in any board activity relating to that interest.

Sec. 37.13.110. POWERS AND DUTIES. (a) The prudent-person rule is applicable to the board in its management and investment of permanent fund assets. In making investments, the board shall exercise the judgment and care under the circumstances then prevailing which a person of ordinary prudence, discretion, and intelligence exercises in the management of his own affairs not in regard to speculation but in regard to the permanent disposition of funds, considering the probable income from them as well as probable safety of capital.

(b) The board shall seek to maintain a reasonable diversification in its investments.

(c) The board shall submit long-range and quarterly investment reports to the State Investment Oversight Committee.

(d) The board may not borrow funds or guarantee loans made by any other program or association.

(e) The permanent fund shall be used only for income-producing investments. The board shall select investments for the permanent fund. in accordance with (f) of this section, and may not delegate this duty to any other person or entity. However, the board may seek the advice of experts in relation to specific investments.

(f) Subject to (a) of this section, the board may invest permanent fund money in

(1) obligations of the United States and those for which the faith of the United States is pledged to provide for the payment of the interest and principal, obligations for which annual contributions to be paid under contract by the United States government or any of its instrumentalities, in accordance with an Act of Congress entitled the "Housing Act of 1949", are pledged as security for the payment of the interest and principal, and obligations of any agency of the United States;

(2) obligations of any state of the United States and those for which the faith of any state of the United States is pledged to provide for the payment of the interest and principal;

(3) obligations of a city, village, town, county, department, agency, district, authority, commission, or other public body of any state of the United States;

(4) any property improvement note issued under the provisions of Title 1 of the National Housing Act and any other real property improvement note of a face amount not in excess of $3,500;

(5) obligations of the Dominion of Canada or provinces of the Dominion of Canada payable in United States funds.

Sec. 37.13.120. PERMANENT FUND INCOME; BOARD BUDGET. (a) Income from investment of the permanent fund becomes a part of the permanent fund and shall be deposited in the permanent fund annually, except that income may be used to pay the operating and administrative expenses of the board and its staff.

(b) The board's budget shall be funded, to as great an extent as possible, from income from the permanent fund. The board's budget is subject to the Executive Budget Act (AS 37.07).

Sec. 37.13.130. AUDITS. The Legislative Budget and Audit Committee shall conduct annual operational and performance evaluations (post-audits) of the board's investments and investment programs and report the results to the State Investment Oversight Committee.

Sec. 37.13.140. REPORTS AND PUBLICATIONS. No later than the 20th day of the legislative session, the board shall publish a report to the governor, legislature, and the public in easily understandable language. Each report must include financial statements audited by the Legislative Budget and Audit Committee, a statement of the amount of money received by the permanent fund from each investment during the period covered,

total activity to date

a statement of permanent fund investments, a description of permanent fund investment activity during the period covered by the report, and any other information the board believes would be of interest to the governor, the legislature, and the public. The annual income statement and balance sheet of the permanent fund shall be published in at least one newspaper in each judicial district. The board may also publish other reports it considers desirable to carry out its purpose.

* Sec. 3. AS 44 is amended by adding a new chapter to read:

CHAPTER 55. ALASKA DEVELOPMENT BANK.

Sec. 44.55.010. CREATION OF BANK; FUNDING. (a) For the purpose of encouraging and promoting the investment of public and private capital for community development purposes, encouraging and assisting the participation of private capital in private enterprises of benefit to Alaskans, seeking to smooth the cyclical pattern of growth of the Alaska economy, assisting the diversification of the economy of Alaska, and supplementing private investment when sufficient private capital is not available on reasonable terms and conditions, there is created the Alaska Development Bank. The bank is a public corporation and government instrument in the Department of Revenue but has legal existence independent of and separate from the state. The exercise by the bank of the powers conferred by this chapter is considered an essential governmental function of the state.

(b) Not less than five per cent of the receipts paid the state from mineral lease bonuses and rentals for state land and royalties derived from minerals produced on state land shall be deposited in the bank until a total of $100,000,000 has been deposited.

Sec. 44.55.020. ALASKA DEVELOPMENT BANK POLICY BOARD. (a) There is established the Alaska Development Bank Policy Board, consisting of the commissioner of revenue, the commissioner of commerce and economic

development, the commissioner of community and regional affairs, or their designees, and six members to be appointed by the governor and confirmed by a majority of the members of the legislature in joint session. Two members shall have broad experience in investment finance, one member shall represent organized labor, and three members shall represent local communities.

(b) The six appointed members shall serve for six-year terms, and they may be reappointed. Terms shall be staggered. Initial terms shall be two members serving for two years, two members serving for four years, and two members serving for six years. Members continue to serve until their successors are appointed and confirmed.

(c) The chairman of the board of trustees or of the governing body of the renewable resources development fund serves as chairman of the policy board but is not a voting member.

(d) A majority of the policy board members constitutes a quorum for the transaction of business by the board. Decisions of the board shall be taken by a majority vote, including not less than a majority of the appointed members. The board shall hold at least one public meeting each year.

(e) Members of the policy board are in the exempt service under AS 39.25 and receive an annual salary equal to that of a commissioner of an executive department.

Sec. 44.55.030. REMOVAL AND VACANCIES ON BOARD. (a) The governor may remove a policy board member from office by and with the consent of a majority of the members of the legislature in joint session. If the legislature is not in session, the governor may suspend a member of the policy board for cause. Upon suspension, a board member may not participate in policy board business and may not be counted for purposes of establishing a quorum. A suspended member shall continue to receive

his salary as a board member until the legislature in joint session consents to his removal. If the legislature refuses to consent to his removal, the member shall be reinstated to his position.

(b) A vacancy arising on the policy board shall be filled by appointment by the governor and confirmation by a majority of the members of the legislature in joint session, and an appointee to fill a vacancy shall hold office for the balance of the term for which his predecessor on the board was appointed. If a vacancy arises on the board while the legislature is not in session, the governor may appoint an interim board member who shall exercise all powers and receive the salary of a permanent board member until such time as the legislature in joint session fails to confirm the interim member's appointment.

(c) A vacancy on the policy board does not impair the authority of a quorum of the board to exercise all the powers and perform all the duties of the board.

Sec. 44.55.040. DUTIES OF THE POLICY BOARD. The policy board shall

(1) select and appoint the president and other members of the Alaska Development Bank Investment Committee established in sec. 50 of this chapter;

(2) annually review and approve long-range operating plans, the budget for the forthcoming year, and the financial plan for the following years;

(3) have responsibility on behalf of the bank for relations with the general public, legislature, executive branch, local communities, and interest groups concerning all things excepting only those matters that are the responsibility of the investment committee;

(4) review quarterly reports from the investment committee concerning investment decisions and investment supervision, but the

board may not impose an investment decision upon, or override an investment decision of, the investment committee;

(5) review, consider and approve policies;

(6) establish an audit committee, consisting of the commissioner of revenue and other members of the policy board to be designated by the commissioner, which shall select independent outside auditors, and receive all audit reports.

Sec. 44.55.050. ALASKA DEVELOPMENT BANK INVESTMENT COMMITTEE. (a) There is established the Alaska Development Bank Investment Committee, consisting of the president and four members appointed by the policy board. No member of the policy board may be a member of the investment committee. Members of the investment committee shall be persons of recognized competence and wide experience in investments, finance, and other business management-related fields. Members may be reappointed and continue to serve until their successors are appointed. The president and members shall serve for four year terms. Terms shall be staggered. Initial terms shall be one member serving for one year, one member serving for two years, one member serving for three years, and one member and the president serving for four years.

(b) Four members of the investment committee constitute a quorum Decisions of the committee shall be taken by majority vote.

(c) Members of the investment committee receive $____ per meeting day if they attend the meeting and are entitled to per diem and travel allowances as are provided by law for members of state boards and commissions.

Sec. 44.55.060. DUTIES OF THE INVESTMENT COMMITTEE. The investment committee has sole responsibility to approve all investment proposals.

Sec. 44.55.070. EXEMPTION FROM EXECUTIVE BUDGET ACT. The

development bank is exempt from the provisions of the Executive Budget Act (AS 37.07).

Sec. 44.55.080. PERSONNEL OF BANK. The policy board and investment committee members and officers and staff of the development bank are in the exempt service under AS 39.25.

Sec. 44.55.090. PURPOSE AND POWERS OF THE BANK. (a) The purpose of the development bank is to assist in the development of renewable resources industry in the state by assisting, after determining the feasibility of specific projects, in the financing of projects in conjunction with other sources.

(b) In carrying out the corporate purposes of the bank, the policy board has power to

(1) adopt, alter and use a corporate seal;

(2) prescribe, adopt, amend, and repeal bylaws;

(3) sue and be sued in the name of the bank;

(4) borrow funds, and in that connection furnish such collateral or other security as it determines, except that bank borrowing may not exceed one-half of the amounts invested in investment-grade securities under sec. 100(b) of this chapter;

(5) guarantee securities in which the investment committee has invested in order to facilitate their sale;

(6) enter into agreements necessary or convenient in the exercise of its powers and functions;

(7) acquire, hold, use, lease, sell or otherwise dispose of property of any kind, real, personal or mixed, or any interest in it;

(8) contract with state, federal and other agencies to develop needed information and analyses;

(9) do all acts and things necessary, convenient or desirable to carry out the powers granted or implied in this chapter.

(c) In carrying out the corporate purposes of the bank, the investment committee has the power to

(1) invest, in such form as it considers appropriate, including without limitation, by purchase of the capital stock of or the lending of money to, renewable resource projects, except that any investment in the capital stock of or other ownership interest in such project may not exceed 50 per cent of the capital stock of, or other ownership interest in, the project, and no loan or other investment in the project by the bank may exceed 90 per cent of the cost of the project unless, in the judgment of the committee, additional amounts must be loaned to protect the interests of the bank;

(2) deposit bank funds, or invest bank funds in such obligations as it may determine;

(3) buy and sell securities the bank has issued or guaranteed or in which it has invested;

(4) purchase currently sound evidence of indebtedness from the tourism fund, the agriculture revolving loan fund and the small business development loan fund if the loan was made after the effective date of this Act in support of renewable resource development and if the loan meets the criteria of sec. 100 of this chapter;

(5) do all acts and things necessary, convenient or desirable to carry out the powers granted or implied in this chapter.

Sec. 44.55.100. INVESTMENTS. (a) In making investments, the investment committee and staff shall exercise the judgment and care under the circumstances then prevailing which a person of ordinary prudence, discretion, and intelligence exercises in the management of his own affairs taking into consideration the probable income from the investments as well as probable safety of principal.

(b) At least 40 per cent of the resources of the bank shall be

invested in investment-grade securities.

(c) The investment committee may invest not more than 30 per cent of the resources of the bank to provide a reasonable proportion of longer-term investment capital for financing the establishment, improvement, and expansion of productive private enterprises which will benefit Alaskans, and for which sufficient capital is not available from other sources on reasonable terms. These investments may take the form of equity, debt, or debt guarantees.

(d) The committee may invest no more than 30 per cent of the resources of the bank in financing a reasonable proportion of the longer-term investment capital needs for community development projects of municipalities and public corporate entities and private dwellings in Alaska for which sufficient financing is not available from other sources on reasonable terms. These investments may take the form of debt or debt guarantees.

(e) The committee may not undertake any financing for which, in its opinion, sufficient private capital could be obtained on reasonable terms.

(f) The committee may not assume responsibility for managing any enterprise or project in which it has invested and may not exercise voting rights for that purpose or for any other purpose which, in its opinion, properly is within the scope of managerial control.

(g) The committee shall only undertake its financing on terms and conditions which it considers appropriate, taking into account the terms and conditions normally obtained by private investors for similar financing, the requirements of the enterprise or projects, the risks being undertaken by the bank, and the participation of other investors.

(h) The committee may seek to revolve the bank's funds by selling its investments to other investors whenever it can appropriately do so

Set scale of policy

on satisfactory terms.

(i) The committee shall seek to maintain a reasonable diversification in its investments.

(j) The committee shall only consider investment proposals after the applicant for an investment has submitted a detailed proposal to the committee's staff and the staff has prepared a written report recommending the investment after a study of its merits.

(k) The committee shall analyze the economic and other effects of an investment decision, including the effects on employment, income distribution, environment, health, social and other factors. The committee shall be sensitive to the views of affected local communities and shall include an analysis of those views in proposals for large investments.

(l) The committee may guarantee qualifying loans made by financial intermediaries in order to facilitate investment by the intermediaries in specific enterprises or projects whose individual financing requirements are not, in the opinion of the committee, large enough to warrant its direct supervision.

(m) The committee shall provide for operational and performance evaluations (post-audits) of its investments and investment programs and report the results to the policy board.

(n) Nothing in this section prevents the investment committee, in the event of actual or threatened default on any of its investments, actual or threatened insolvency of the enterprise in which the investment has been made, or other situations which, in the opinion of the investment committee, threaten to jeopardize the investment, from taking such action and exercising such rights as it may consider necessary for the protection of its interests.

Sec. 44.55.110. INITIAL DETERMINATIONS. Before beginning its

financing operations, the policy board shall render a detailed report to the legislature which shall

(1) define the renewable resource industry sectors which need financing for expansion of existing projects or the development of new projects;

(2) define the size and nature of projects which are feasible for bank financing;

(3) determine specific projects which are feasible for bank and private financing;

(4) determine the availability of private investment capital for the projects it determines are feasible;

(5) forecast the capital requirements of the bank for the first three years of its operations.

Sec. 44.55.120. REPORTS AND PUBLICATIONS. The policy board shall publish an annual report to the governor, legislature and the public. Each report shall include financial statements audited by independent outside auditors, a statement of the amount of money received by the bank from each source during the period covered, a statement of bank investments, a description of bank investment activity during the period covered by the report, an analysis of economic and other effects of investment decisions including, but not limited to, the effects on employment, income distribution, environment, health, social and other factors, and any other information the policy board believes would be of interest to the governor, the legislature and the public. The bank may also publish such other reports as it considers desirable to carry out its purpose.

Sec. 44.55.130. CONFLICT OF INTEREST. (a) Members of the policy board and investment committee are subject to the provisions of AS 39.50.

(b) Members of the investment committee shall disclose their

financial interest in an investment proposal and disqualify themselves from voting on any investment proposal in which they have a financial interest. The committee may not make an investment in any project or enterprise in which officers of the bank have a financial interest. Members of the policy board are prohibited from all attempts to influence the investment committee, its president or staff in the discharge of their ordinary operating duties. All officers of the bank in the discharge of their offices owe their duty entirely to the bank and no other authority.

Sec. 44.55.140. POLITICAL ACTIVITIES. The members of the policy board, members of the investment committee, and officers and staff of the bank may not engage in partisan political activities. The resources of the bank may not be used to finance any partisan political activities.

Sec. 44.55.150. PUBLIC ACCESS TO INFORMATION. Information in the possession of the bank is a public record, except that information which discloses the particulars of the business or affairs of a private enterprise or investor is confidential and is not a public record. Confidential information may be disclosed only for the purposes of an official law enforcement investigation or when its production is required in a court proceeding. These restrictions do not prohibit the publication of statistics presented in a manner that prevents the identification of particular reports, items, persons, or enterprises.

Sec. 44.55.160. TAX EXEMPTION. The bank is exempt from all taxes and assessments in the state. All security instruments issued by the bank, their transfer and their income are exempt from all taxes and assessments in the state.

Sec. 44.55.170. DEFINITIONS. In this chapter

(1) "bank" or "development bank" means the Alaska Development Bank;

(2) "board" or "policy board" means the Alaska Development Bank Policy Board created by sec. 20 of this chapter;

(3) "business enterprise" means a private corporation, firm, partnership or sole proprietorship;

(4) "committee" or "investment committee" means the Alaska Development Bank Investment Committee created by sec. 50 of this chapter;

(5) "renewable resource project" or "project" means property of a business enterprise used in connection with

(A) making, processing, preparing or producing in any manner goods or products of agriculture, fisheries, or forestry; or

power?

(B) outdoor recreation.

* Sec. 4. AS 39.25.110 is amended by adding new paragraphs to read.

(21) members of the policy board and investment committee, and the president, officers, and staff of the Alaska Development Bank;

(22) members of the board of trustees, the executive director, and staff of the Alaska Permanent Fund Board of Trustees.

* Sec. 5. AS 39.50.200(9) is amended by adding new subparagraphs to read:

(NN) Alaska Development Bank Policy Board and Alaska Development Bank Investment Committee;

(OO) Alaska Permanent Fund Board of Trustees.

* Sec. 6. This Act takes effect immediately in accordance with AS 01.10.-070(c).

Section 3. AS __ is amended by adding a new chapter to read:

CHAPTER __. ALASKA DEVELOPMENT BANK.

Sec. one. ESTABLISHMENT OF BANK. There is created the Alaska Development Bank, a public corporation of the state. The corporation is an instrumentality of the state within the Department of Revenue but has a legal existence independent of and separate from the state and has continuing succession until its existence is terminated by law. The exercise by the bank of the powers conferred by this chapter is considered an essential governmental function of the state.

Sec. two. PURPOSE. The purpose of the bank is to help increase levels of employment, capital ownership, tax revenues and overall economic activity within the state; encourage and assist the participatio of private capital, from both within and outside Alaska, in private enterprises of benefit to Alaskans; promote the investment of public and private capital for community development purposes; supplement private investment when sufficient private capital is not available on reasonable terms and conditions; and seek to smooth the cyclical pattern of growth of the Alaska economy.

Sec. three. FUNDING. The legislature shall appropriate funds from the general fund for the purpose of initial funding of the bank's operations

(b) At least five percent of all mineral lease rentals, royalties, toyalty sale proceeds, federal mineral revenue sharing payments and bonuses received by the State shall be placed in the bank.

(c) The operating expenses of the bank shall be funded,to as great an extent as possible, from income from the bank's operations. Any excess income shall be placed in the general fund.

Sec. four. BOARD OF DIRECTORS. (a) ~~The bank~~ There is established the Alaska Development Bank Board of Directors. The board is composed of nine members, including the commissioner of revenue, the commissioner of commerce and economic development, the commissioner of community and regional affairs, and six members appointed by the governor. The six members appointed by the governor shall be confirmed by the majority of the members of the legislature in joint session

(b) The six members appointed by the governor shall be confirmed by the majority of the members of the legislature in joint session. Two members shall have broad experience in investment finance, one member shall represent organized labor, and three members shall represent local communities in the state.

Sec. five. TERMS OF OFFICE OF BOARD OF DIRECTORS. The six members appointed by the governor and confirmed by the legislature shall serve terms of six years, except that of the initial appointees, two shall serve for terms of two years, two for terms of four years, and two for terms of six years.

(b) USUAL BULLSHIT ABOUT VACANCIES, REPLACEMENTS, ETC.

Sec. six. PRESIDENT AND STAFF. The board shall hire and determine the salary of the president of the bank and all supporting staff reasonably necessary for it to efficiently conduct its business.

Sec. seven. QUORUM =2/3

Sec. eight. REMOVAL = for cause

Sec. nine. COMPENSATION = $

POWERS

SEc. ten. [illegible] OF [illegible] BOARD OF DIRECTORS. The board [illegible]may

(1) finance all costs of a project which the directors deem recoverable and necessary to the carrying out of the bank's purpose, inlcuding, but not limited to, financing market surveys, product planning, early staffing and working capital advancements, as well as more traditional finance secured by physical assets;

(2) provide directly or pay for technical advisory services to ventures in which the bank has invested;

(3) advance finance to ventures [illegible] in which the bank has invested or which is a prudent investment for the bank in the form of purchase of equity, convertible debt instruments, or straight loans;

(4) formulate and readjust the terms for loan repayment or payment of dividends to accommodate the venture's cash flow as it evolves;

(5) transfer real property where necessary to further the establishment or expansion of a bank-invested venture;

* Section 1. AS 37 is amended by adding a new chapter to read:

CHAPTER 13. ALASKA PERMANENT FUND.

Sec. 37.13.010. ALASKA PERMANENT FUND. Under Article IX, section 15, of the Alaska Constitution, there is established as a separate fund, in the Department of Revenue, the Alaska Permanent Fund.

Sec. 37.13.020. ALASKA PERMANENT FUND COMMISSION. There is created within the Department of Revenue the Alaska Permanent Fund ~~Commission~~ Board of trustees. The purpose of the commission is to manage and invest the assets of the Alaska Permanent Fund established in sec. 10 of this chapter in accordance with the guidelines established in secs. 10 through ___ of this chapter.

Sec. 37.13.030. COMPOSITION OF ALASKA PERMANENT FUND COMMISSION. (a) The Alaska Permanent Fund Commission consists of three members, appointed by the governor and confirmed by a majority of the members of the legislature in joint session.

(b) The members shall elect a chairman from among themselves.

Sec. 37.13.040. TERM OF OFFICE; VACANCY. (a) The members of the commission shall be appointed for terms of three years, except that of the members first appointed to the commission, one shall be appointed for a term of one year, one for a term of two years, and one for a term of three years. Commissioners may be appointed for successive terms. A commissioner, upon the expiration of his term, shall continue to hold office until his successor is appointed and qualified. members shall annually elect a chairman from amongst themselves

(b) A vacancy arising on the commission shall be filled by appointment by the governor and confirmation by a majority of the members of the legislature in joint session, and an appointee to fill a vacancy shall hold office for the balance of the term for which his predecessor on the commission was appointed.

(c) A vacancy on the commission does not impair the authority of a quorum of commissioners to exercise all the powers and perform all the duties of the commission.

Sec. 37.13.050. REMOVAL OF ~~COMMISSIONERS~~ trustees. The governor may remove a ~~commissioner~~ trustee from office by and with the consent of a majority of the legislature in joint session.

Sec. 37.13.060. QUALIFICATIONS OF ~~COMMISSIONERS~~ trustees. (a) No member may be appointed to the commission who has not been a resident of the state for at least three years.

(b) No member of the commission may hold any other state or federal office, position or employment, either elective or appointive, except as a member of the armed forces of the United States or of this state.

(c) At least one member of the commission shall ~~have a recognized~~ be knowledgable and experienced in investments be a graduate of an accredited university with a major or a degree in finance, ~~accounting,~~ or business management and shall have a broad range of professional experience in at least one of those fields. No two members may be appointed to the commission who share substantially similar professional or occupational backgrounds.

Sec. 37.13.070. QUORUM. Two members of the commission constitute a quorum for the transaction of business and the exercise of the powers and duties of the commission.

Sec. 37.13.080. COMPENSATION OF MEMBERS. Members of the commission are in the exempt service described in AS 39.25 and receive an annual salary equal to that of a commissioner of an executive department.

Sec. 37.13.090. EMPLOYMENT OF COMMISSION PERSONNEL. (a) The commission may employ an executive director. The executive director may not be one of the commissioners.

(b) The executive director, his deputy, and his secretary, are in the partially exempt service described in AS 39.25. All other employees of the commission, other than legal counsel, are in the ~~classified~~ partially service under AS 39.25.

Sec. 37.13.100. CONFLICTS OF INTEREST. No member or employee of the commission shall acquire an interest, direct or indirect, in a corporation, company, association or project owned, controlled, or invested in by the permanent fund. If a member or employee owns or controls an interest, he shall immediately disclose the interest in writing to the commission and refrain from participating in any manner in any commission activity relating to that interest.

Sec. 37.13.110. DUTIES AND POWERS OF THE COMMISSION. (TO BE DISCUSSED)

Sec. 37.13.120. RESTRICTIONS ON COMMISSION ACTIVITY. The commission may not borrow funds, ~~or~~ The commission may not guaranty loans made by any other program. or association

Sec. 37.13.130. PERMANENT FUND INCOME; COMMISSION BUDGET (a) Income from investment of the permanent fund becomes a part of the permanent fund and shall be deposited in the permanent fund annually, except that income may be ~~retained by the commission in amounts needed to~~ used to pay the operating and administrative expenses of the commission and its staff. (b) The commission's budget shall be funded, to as great an extent as possible, from income from the permanent fund. The commission's budget is subject to the Executive Budget Act (AS 37.07).

Sec. 37.13.140. AUDITS. Legislative Budget and Audit shall conduct annual operational and performance evaluations (post-audits) of the commission's investments and investment programs and report the results to the ~~Legislature~~ Permanent Fund Investment Oversight Committee established in _____.

Sec. 37.13.150. REPORTS AND PUBLICATIONS. The commission shall publish an annual report to the governor, legislature, and the public. Each report must include financial statements audited by Legislative Budget and Audit, a statement of the amount of money received by the permanent fund from each source during the period covered, a statement of permanent fund investments, a description of permanent fund investment activity during the period covered by the report, and any other information the commission believes would be of interest to the governor, the legislature, and the public. The annual income statement and balance sheet of the permanent fund shall be published in at least one newspaper in each judicial district. The corporation may also publish other reports it considers desirable to carry out its purpose.

RESPONSIBILITIES, ETC.

In making investments, the commission shall exercise the judgment and care under the circumstances then prevailing which a person of ordinary prudenc, discretion, and intelligence exercises in the management of his own affairs considering the probable income from them as well as the safety of capital.

The commission shall seek to maintain a reasonable diversification of its investments.

The permanent fund shall be used only for income-producing investments.

The commission shall select investments for the permanent fund and may not delegate this duty to any other person or entity. However, the commission may seek the advice of experts in relation to specific investments.

Submit to LOC long-range operating plans & quarterly investment reports

Section 2. AS 24.20 is amended by adding new sections to read:

ARTICLE IV. LEGISLATIVE OVERSIGHT COMMITTEE.

Sec. 24.20.500. LEGISLATIVE OVERSIGHT COMMITTEE ESTABLISHED. The Legislative Oversight Committee is established as a permanent interim committee of the legislature. The establishment of the committee recognizes the need of the legislature for full-time technical review and oversight of the permanent fund, the renewable resources funds, and the(renewable resources)development bank.

Sec. 24.20.510. MEMBERSHIP. The Legislative Oversight Committee is composed of eight members: the president of the senate, the speaker of the house the chairmen of the house and senate finance committees, the house and senate minority leaders, and one member appointed from each house by the respective presiding officer. The committee shall select its own chairman.

Sec. 24.20.520. TERM OF MEMBERSHIP. (a) The committee shall be organized within 15 days after the organization of each legislature. Members serve for the duration of the legislature during which they are appointed. If they are reelected or their term of office extends into the next succeeding legislature, they continue to serve until reappointed or the appointment of their successor.

(b) When a member of the committee files a declaration of candidacy for an elective office other than that of member of either house of the legislature, and he has not resigned from membership on the committee, his committee membership terminates on the date of filing.

Sec. 24.20.530. VACANCIES. When a vacancy occurs in the statutory or appointive membership of the committee, the presiding officer of the house incurring the vacancy shall choose a successor. If the office of the president of the senate or speaker of the house of representatives becomes vacant and a vacancy from the affected house occurs among the membership of the committee, the remaining committee members from the house incurring the vacancy shall appoint a new member.

Sec. 24.20.540. MEETINGS. The oversight committee may meet during sessions of

the legislature and during the interim between sessions at such times and places in the state as the chairman may determine. Members may receive, for the minimum time required to get to and from meetings and for the period while attending meetings the same travel and per diem allowances provided by law for members of the legislature when attending sessions, except that members of the committee receive no per diem during legislative sessions other than the per diem allowance paid to other members of the legislature.

Sec. 24.20.550. POWERS. The Legislative Oversight Committee has the power to:

(1) organize, adopt rules for the conduct of its business and prescribe procedures for the comprehensive fiscal analysis, budget review and post-audit functions over the permanent fund commission, renewable resources fund commission, and(renewable resources)development bank;

(2) hold public hearings, administer oaths, issue subpoenas, compel the attendance of witnesses and production of papers, books, accounts, doucments and testimony, and have the deposition of witnesses taken in a manner prescribed by court rule or law for taking depositions in civil actions;

(3) require all state officials and agencies of state government to give full cooperation to the committee or its staff in assembling and furnishing requested information;

(4) hold ~~hearing~~ public hearings relating to the confirmation of members of the permanent fund commission;

(5) prepare and distribute reports, memoranda or other necessary materials.

(6) make recommendations concerning the structure and operating practices of the permanent fund, renewable resources fund, and development bank;

(7) receive and review reports and post-audit analyses conducted by the Legislative Budget and Audit Committee relating to the permanent fund, renewable resources fund, and development bank.

Sec. 24.20.560. STAFF. The committee may hire and determine the salary of

Sec. 24.20.570. DUTIES. The committee shall

(1) report to the legislature its recommendations relating to the confirmation of suggested appointees to the permanent fund commission;

(2) annually review the long-range operating plans of the permanent fund commission;

(3) review quarterly reports from the permanent fund commission concerning investment decisions and investment supervision;

(4) present a complete report of investment programs, plans, performance, of the permanent fund commission
and policies to ~~the finance committees of~~ the legislature within 30 days after the beginning of each regular session.

Sec. 24.20.580. RECORDS. The committee shall keep a complete file of all
and by
reports presented to it by the commission, budget and audit, and all reports presented by it to the legislature or any legislative committee.

in so far as he is either under a duty to the beneficiary to exercise them or at least is under no duty to the beneficiary not to exercise them. It deals also with the liabilities of the trustee to suit by the beneficiary to vindicate his rights by enforcing the duties of the trustee or preventing or redressing violations thereof. It also deals specifically with duties and liabilities of the trustee with respect to investments and with respect to successive beneficiaries. It deals also with the trustee's compensation and indemnity and with other rights and powers conferred upon the trustee for his own protection.

The powers and duties of the trustee on the termination of the trust are dealt with in §§ 344 and 345.

The duties and liabilities of the trustee to third persons are considered in §§ 261–270 (Chapter 8). The power of the trustee to transfer the trust property to a third person in violation of his duty to the beneficiary is dealt with in §§ 283–320.

TOPIC 1. GENERAL PRINCIPLES

§ 164. Duties and Powers of the Trustee

The nature and extent of the duties and powers of the trustee are determined

(a) by the terms of the trust, except as stated in §§ 165–168; and

(b) in the absence of any provision in the terms of the trust, by the rules stated in §§ 169–196.

Comment on Clause (a):

a. "Terms of the trust." By the "terms of the trust" is meant the manifestation of intention of the settlor with respect to the trust expressed in a manner which admits of its proof in judicial proceedings. See § 4.

b. Intention at time of creation of trust. The intention of the settlor which determines the terms of the trust is his intention at the time of the creation of the trust and not his subsequent intention. The duties or powers of the trustee cannot be enlarged or diminished by a direction of the settlor given subsequent to the creation of the trust, except to the extent to which

service if, at the time of the undertaking or of performance, such service is illegal. See Restatement of Agency 2d, § 411. See also, Restatement of Agency 2d, §§ 86, 116, 412; Restatement of Contracts, §§ 498, 609.

§ 167. Change of Circumstances

(1) The court will direct or permit the trustee to deviate from a term of the trust if owing to circumstances not known to the settlor and not anticipated by him compliance would defeat or substantially impair the accomplishment of the purposes of the trust; and in such case, if necessary to carry out the purposes of the trust, the court may direct or permit the trustee to do acts which are not authorized or are forbidden by the terms of the trust.

(2) Under the circumstances stated in Subsection (1), the trustee can properly deviate from the terms of the trust without first obtaining the permission of the court if there is an emergency, or if the trustee reasonably believes that there is an emergency, and before deviating he has no opportunity to apply to the court for permission to deviate.

(3) Under the circumstances stated in Subsection (1), the trustee is subject to liability for failure to apply to the court for permission to deviate from the terms of the trust, if he knew or should have known of the existence of those circumstances.

See Reporter's Note.

Comment on Subsection (1):

a. Change of circumstances. If owing to circumstances not known to the settlor and not anticipated by him compliance with a specific direction by the settlor would defeat or substantially impair the accomplishment of the purposes of the trust, the court will permit or direct the trustee not to comply with the specific direction. This is true even though it is provided by statute that every conveyance by the trustee in contravention of the trust shall be absolutely void.

Compliance with a direction may be enough substantially to impair the purposes of the trust although it may not defeat the

Illustration:

6. A bequeaths $20,000 to B in trust to apply the income for the education and support of C and D during their minorities and to pay the principal to them in equal shares when the younger comes of age, but if either dies before coming of age to pay the principal to the other on coming of age. C and D are respectively fifteen and thirteen years of age. They have no other resources. Owing to an increase in the cost of living since the death of A, the income is insufficient for their education and support. The court may direct B to apply a part or if necessary the whole of the principal for the education and support of C and D.

f. In some States by statute the court can apply the principal for the support of a beneficiary although there is a contingent gift of the principal to another person who does not consent to the application.

TOPIC 2. DUTIES OF THE TRUSTEE

Introductory Note: In this Topic the duties of the trustee to the beneficiary in administering the trust are dealt with. As to the duties of the trustee on the termination of the trust, see §§ 344 and 345. The violation of a duty owed by the trustee to the beneficiary is a breach of trust. As to the liabilities of the trustee and the remedies of the beneficiary arising from a breach of trust, see Topic 4.

§ 169. Duty to Administer the Trust

Upon acceptance of the trust by the trustee, he is under a duty to the beneficiary to administer the trust.

Comment:

a. No duty without acceptance. Although a trust can be created without notice to or acceptance by the trustee (see § 35), the trustee is not under a duty to administer the trust unless he accepts. If he has not accepted, he can disclaim and is under no liability (see § 102); but once having accepted he is under a duty to administer the trust as long as he continues to be trustee. As to the resignation of the trustee, see § 106.

b. Duty though service gratuitous. Even though by the terms of the trust the trustee is to receive no compensation, he is under a duty if he has accepted the trust to administer it.

c. Duty not contractual. Although the trustee by accepting the office of trustee subjects himself to the duties of administration, his duties are not contractual in nature. See § 197, Comment *b*.

§ 170. Duty of Loyalty

(1) The trustee is under a duty to the beneficiary to administer the trust solely in the interest of the beneficiary.

(2) The trustee in dealing with the beneficiary on the trustee's own account is under a duty to the beneficiary to deal fairly with him and to communicate to him all material facts in connection with the transaction which the trustee knows or should know.

See Reporter's Note.

Comment on Subsection (1):

a. Fiduciary relation. A trustee is in a fiduciary relation to the beneficiary and as to matters within the scope of the relation he is under a duty not to profit at the expense of the beneficiary and not to enter into competition with him without his consent, unless authorized to do so by the terms of the trust or by a proper court. As to the nature of a fiduciary relation, see § 2, Comment *b*.

The principle stated in this Section is applicable not only to trustees but to other fiduciaries. See Restatement of Restitution, §§ 190–201.

b. Sale of trust property to the trustee individually. A trustee with power to sell trust property is under a duty not to sell to himself either by private sale or at auction, whether the property has a market price or not, and whether or not the trustee makes a profit thereby. It is immaterial that the trustee acts in good faith in purchasing trust property for himself, and that he pays a fair consideration.

The trustee cannot properly purchase trust property for himself even though he does not make the sale. Thus, he cannot

properly purchase trust property for himself on a foreclosure sale or tax sale or sale on execution of a judgment. To permit him to do so would create a situation where his personal interest would be in conflict with his duty as trustee. It is his duty as trustee to prevent the sale if possible or to see that the property is sold for as much as can be obtained. If he were permitted to bid in the property for himself at the sale, it would be for his personal advantage not to prevent the sale and to have as few bidders and as low bids as possible. The trustee who bids in the property for himself at such a sale is not permitted to keep the property, even though in the particular case he attempted to secure as many bidders and as high bids as he could and the amount which he bid was a fair consideration for the property.

Where there are several trustees, one of them cannot properly purchase trust property for himself, although his co-trustees are not personally interested in the purchase and consent to the sale.

As to the extent of the liability of the trustee where he sells trust property to himself individually, see § 206, Comment *b*.

c. Where trustee has a personal interest in the purchase. The trustee violates his duty to the beneficiary not only where he purchases trust property for himself individually, but also where he has a personal interest in the purchase of such a substantial nature that it might affect his judgment in making the sale. Thus, a trustee violates his duty if he sells trust property to a firm of which he is a member or to a corporation in which he has a controlling or substantial interest.

d. Sale of trust property by corporate trustee. A corporate trustee violates its duty to the beneficiary if it sells trust property to one of its departments. Thus, a trust company holding property as trustee in its trust department cannot properly sell such property to its securities or banking department. The various departments are not separate persons, and such a sale is a sale by the trustee to itself individually. A corporate trustee cannot properly sell trust property to an affiliated or subsidiary corporation in which it has the entire interest or a controlling interest or such a substantial interest that there would be a temptation to consider its own advantage in making the sale and not to consider solely the advantage to the beneficiaries of the trust. The rule is the same where the shares of the purchasing corporation are owned by the shareholders of the corporate trustee.

See Appendix for Reporter's Notes, Court Citations, and Cross References

of such advances to a designated trust is specifically authorized by the trust instrument covering the trust from which such advances are made."

Section 9 of Regulation F provides that funds awaiting investment or distribution shall not be used by the bank in the conduct of its business unless it first delivers to the trust department securities as collateral. Compare Comment *m*.

v. Cross reference. As to the extent of the trustee's liability for breach of his duty of loyalty, see § 206.

Comment on Subsection (2):

w. Dealings with beneficiary. Under the rule stated in Subsection (1), if the trustee attempts to acquire an interest in the trust property without the consent of the beneficiary, the beneficiary can avoid the transaction even though the transaction was fair. If the trustee acquires such an interest with the consent of the beneficiary, the transaction cannot be set aside by the beneficiary if the beneficiary was not under an incapacity, and had knowledge of his legal rights and of all material facts which the trustee knew or should have known unless the trustee reasonably believed that the beneficiary knew them, and was not induced by the trustee by undue influence or other improper means to enter into the transaction, and the transaction was fair and reasonable. If any of these factors is not present, however, the beneficiary can set aside the transaction. The relation between the trustee and the beneficiary being a fiduciary relation, the standard of conduct required of the trustee is higher than that required of persons who are not in a fiduciary relation. See § 2, Comment *b*.

As to the effect of the consent of the beneficiary to a breach of trust, see § 216.

§ 171. Duty Not to Delegate

The trustee is under a duty to the beneficiary not to delegate to others the doing of acts which the trustee can reasonably be required personally to perform.

Comment:

a. Fiduciary relation. A trustee, being in a fiduciary relation to the beneficiary, is under a duty personally to perform his duties as a fiduciary. As to the nature of a fiduciary relation, see § 2, Comment *b*.

reasonable for an individual owner to make such a deposit. See § 193, Comment *d*. So also, a trustee may in a proper case join in a representative suit affecting the trust property, although he thereby surrenders control over the suit.

j. Terms of the trust. By the terms of the trust a trustee may be permitted to delegate to agents or to co-trustees or to other persons the administration of the trust or the performance of acts which could not otherwise be properly delegated.

By the terms of the trust a trustee may be authorized to permit an agent or co-trustee or third person to manage the trust property or to do acts which the trustee could not otherwise properly delegate.

So also, by the terms of the trust it may be provided that powers which the trustee would otherwise have shall be exercised by some third person. See § 185. Thus, it may be provided that the trustee shall make such investments and only such investments as the settlor or beneficiaries or a third person may direct. In such a case the trustee has no power to select investments. As to the duty of the trustee in such a case, see § 185, Comment *f*.

k. Duty of supervision. In matters which a trustee has properly delegated to agents or co-trustees or other persons, he is under a duty to the beneficiary to exercise a general supervision over their conduct.

As to the liability of a trustee for the acts of a co-trustee, see § 224.

As to the liability of a trustee for the acts of agents employed by him and for the failure to exercise due care in the selection of such agents, see § 225.

§ 172. Duty to Keep and Render Accounts

The trustee is under a duty to the beneficiary to keep and render clear and accurate accounts with respect to the administration of the trust.

Comment:

a. Duty to keep accounts. The trustee is under a duty to keep accounts showing in detail the nature and amount of the trust property and the administration thereof.

of the account by that person shall discharge the trustee. Such a provision is effective, provided that the third person acts in good faith in giving his approval and provided that the trustee made a proper disclosure in his accounting of his conduct in the administration of the trust.

§ 173. Duty to Furnish Information

The trustee is under a duty to the beneficiary to give him upon his request at reasonable times complete and accurate information as to the nature and amount of the trust property, and to permit him or a person duly authorized by him to inspect the subject matter of the trust and the accounts and vouchers and other documents relating to the trust.

Comment:

a. Duty to permit examination by accountant. The trustee is under a duty to permit an accountant to examine the trust securities, accounts, vouchers and other documents if the beneficiary so requests.

b. What need not be communicated. The trustee is privileged to refrain from communicating to the beneficiary information acquired by the trustee at his own expense and for his own protection. Thus, he is privileged to refrain from communicating to the beneficiary opinions of counsel obtained by him at his own expense and for his own protection.

c. Terms of the trust. Although the terms of the trust may regulate the amount of information which the trustee must give and the frequency with which it must be given, the beneficiary is always entitled to such information as is reasonably necessary to enable him to enforce his rights under the trust or to prevent or redress a breach of trust.

d. Duty in the absence of a request by the beneficiary. Ordinarily the trustee is not under a duty to the beneficiary to furnish information to him in the absence of a request for such information. As to his duty to render accounts, see § 172. In dealing with the beneficiary on the trustee's own account, however, he is under a duty to communicate to the beneficiary all material facts in connection with the transaction which the trustee knows or should know. See § 170(2). Even if the trustee

is not dealing with the beneficiary on the trustee's own account, he is under a duty to communicate to the beneficiary material facts affecting the interest of the beneficiary which he knows the beneficiary does not know and which the beneficiary needs to know for his protection in dealing with a third person with respect to his interest. Thus, if the beneficiary is about to sell his interest under the trust to a third person and the trustee knows that the beneficiary is ignorant of facts known to the trustee which make the interest of the beneficiary much more valuable than the beneficiary believes it to be the trustee is under a duty to the beneficiary to inform him of such facts.

§ 174. Duty to Exercise Reasonable Care and Skill

The trustee is under a duty to the beneficiary in administering the trust to exercise such care and skill as a man of ordinary prudence would exercise in dealing with his own property; and if the trustee has or procures his appointment as trustee by representing that he has greater skill than that of a man of ordinary prudence, he is under a duty to exercise such skill.

Comment:

a. Standard of care and skill. The standard of care and skill required of a trustee is the external standard of a man of ordinary prudence in dealing with his own property. A trustee is liable for a loss resulting from his failure to use the care and skill of a man of ordinary prudence, although he may have exercised all the care and skill of which he was capable. On the other hand, if the trustee has a greater degree of skill than that of a man of ordinary prudence, he is liable for a loss resulting from the failure to use such skill as he has.

So also, if the trustee procured his appointment as trustee by representing that he has greater skill than that of a man of ordinary prudence, he is liable for a loss resulting from the failure to use such skill.

b. Test of prudence. Whether the trustee is prudent in the doing of an act depends upon the circumstances as they reasonably appear to him at the time when he does the act and not at some subsequent time when his conduct is called in question.

c. Ignorance of terms of the trust. The trustee's ignorance of the terms of the trust will not protect him from liability. He does not use proper care unless he acquaints himself with the terms of the trust and with the nature and circumstances of the trust property.

d. Standard fixed by terms of the trust. By the terms of the trust the requirement of care and skill may be relaxed or modified. A provision in the terms of the trust fixing a standard of care or skill lower than that which would otherwise be required of a trustee is strictly construed.

As to the effect of an exculpatory provision in the terms of the trust, see § 222.

e. Cross reference. As to the standard of care and skill required of a trustee in making investments, see § 227.

§ 175. Duty to Take and Keep Control

The trustee is under a duty to the beneficiary to take reasonable steps to take and keep control of the trust property.

Comment:

a. Duty as to possession of chattels. If tangible things are held in trust, the trustee is ordinarily under a duty to take and keep possession of them. The beneficiary is not entitled to possession or control of the subject matter of the trust except as provided by the terms of the trust. If by the terms of the trust the beneficiary or one of the beneficiaries is entitled to possession, the trustee is under a duty to give him possession. Thus, by the terms of the trust it may appear that land held in trust should be occupied by the life beneficiary. Similarly in the case of chattels it may be provided that a beneficiary shall be entitled to possession.

b. Duty as to possession of land. If land is held in trust it depends upon the terms of the trust whether the trustee is under a duty to retain possession of the land or to lease it to others. See § 189. If the land was leased at the time of the creation of the trust, the trustee should notify the lessee of the trust and require the lessee to pay the rent to him.

c. Duty as to possession of securities. Where securities are held in trust the trustee is under a duty to take and keep

possession of the securities, and to earmark them as trust property. See § 179, Comment *d*.

d. Duty as to choses in action. If the trust property includes a chose in action, the trustee should take necessary steps to secure payment of principal and income to himself; he should ordinarily notify the obligor of the trust and require the obligor to make payments to him. If the chose in action has matured, he should take reasonable steps to enforce it. See § 177.

e. Entrusting possession to an agent. To the extent to which it is reasonable for the trustee to entrust the possession of the subject matter of the trust to his attorney, broker, banker or other agent, the trustee can properly do so. See § 171.

f. Exclusive control. The duty of the trustee is not only to take and keep control, but to take and keep exclusive control. See § 180, Comment *e*.

g. Cross reference. As to the deposit of trust securities with a protective committee, see § 193, Comment *d*.

§ 176. Duty to Preserve the Trust Property

The trustee is under a duty to the beneficiary to use reasonable care and skill to preserve the trust property.

Comment:

a. Standard of care and skill. Except as otherwise provided by the terms of the trust, it is the duty of the trustee to exercise such care and skill to preserve the trust property as a man of ordinary prudence would exercise in dealing with his own property, and if he has greater skill than that of a man of ordinary prudence, he is under a duty to exercise such skill as he has. Compare § 174.

b. Protection from loss or damage. It is the duty of the trustee to use reasonable care to protect the trust property from loss or damage.

Illustrations:

1. A is trustee of certain securities. He carelessly keeps the securities in his desk instead of placing them in a safe deposit box. The securities are stolen. A is liable for the loss.

and is removed as trustee and B is appointed successor trustee. B demands the securities from A but A refuses to return them or to pay their value. B does not notify the beneficiaries of the situation or ask them to advance the money necessary to maintain a suit against A. A is solvent at the time but later dies insolvent. B is liable for the loss. He would not have been liable if he had notified the beneficiaries and they had refused to advance any money.

d. Terms of the trust. By the terms of the trust the duty of the trustee with respect to the preservation of the trust property may be modified. Thus, by the terms of the trust a trustee of land may be directed to allow a life beneficiary to occupy the land and the trustee may be relieved of the duty to keep it in repair.

§ 177. Duty to Enforce Claims

The trustee is under a duty to the beneficiary to take reasonable steps to realize on claims which he holds in trust.

Comment:

a. Scope of the duty. The trustee is under a duty to the beneficiary to take reasonable steps to enforce any claim which he holds as trustee against predecessor trustees (see § 223), or in the case of a testamentary trust against the executors of the estate, to compel them to transfer to him as trustee property which they are under a duty to transfer, or to redress any breach of duty committed by them.

If the settlor or a third person has covenanted to transfer property to the trust, it is the duty of the trustee to take reasonable steps to enforce such covenant.

If a third person commits a tort with respect to the trust property, it is the duty of the trustee to take reasonable steps to compel him to redress the tort. If the trustee holds in trust a contract claim against a third person, it is his duty to take reasonable steps to enforce such claim.

If it reasonably appears to the trustee that a claim cannot be collected in full, or where it appears doubtful whether the claim is enforceable, he can properly make an agreement of

§ 178. Duty to Defend Actions

The trustee is under a duty to the beneficiary to defend actions which may result in a loss to the trust estate, unless under all the circumstances it is reasonable not to make such defense.

Comment:

a. Duty to appeal. If an action is brought by a third person against the trustee and the trustee loses, he is under a duty to the beneficiary to appeal to a higher court, if under all the circumstances it is unreasonable not to appeal.

b. Compromise and arbitration. If it reasonably appears to be for the benefit of the beneficiary, the trustee can properly compromise or arbitrate such claims. See § 192.

c. Payment of unenforceable claim. The trustee can properly pay a claim, for example a tax, even though it appears to be a claim which is not enforceable, if the cost and risk incurred in defending the claim would be such that it is not unreasonable not to contest the claim.

§ 179. Duty to Keep Trust Property Separate

The trustee is under a duty to the beneficiary to keep the trust property separate from his individual property, and, so far as it is reasonable that he should do so, to keep it separate from other property not subject to the trust, and to see that the property is designated as property of the trust.

See Reporter's Note.

Comment:

a. Extent of duty. It is ordinarily the duty of the trustee (1) to keep the trust property separate from his own property; (2) to keep the trust property separate from property held upon other trusts; (3) to earmark the trust property as property of the trust.

b. Duty not to mingle trust funds with his own. It is the duty of the trustee not to mingle trust funds with his own funds. Thus, it is improper for the trustee to deposit trust money in his individual account in a bank. See § 180.

See Appendix for Reporter's Notes, Court Citations, and Cross References

§ 180. Duty with Respect to Bank Deposits

While a trustee can properly make general deposits of trust money in a bank, it is his duty to the beneficiary in making such a deposit to use reasonable care in selecting the bank, and properly to earmark the deposit as a deposit by him as trustee.

Comment:

a. Safekeeping and investment. A trustee may deposit trust funds in a bank for the purpose of making the funds available from time to time for the payment of expenses or pending investment or distribution. This is a reasonable method for safekeeping of the funds, more reasonable than keeping the funds in a safe deposit box. This was true even before bank deposits were partially insured by the Federal Deposit Insurance Corporation; although the deposit was an unsecured loan, it was proper as a method of safekeeping.

A deposit in a bank at interest, as, for example, a deposit in a savings account, may be proper as a method of investing trust funds. Such a deposit was generally held to be prudent as an investment, even before In most banks such deposits were at least partially insured by the Federal Deposit Insurance Corporation. In some states statutes have permitted such deposits to the extent to which they are insured. See § 227, Comment *i*.

b. Negligence of trustee. A trustee cannot properly deposit or leave on deposit trust money in a bank which he knows or should know to be insolvent or likely to become insolvent. This is an application of the rule stated in § 176 with respect to the duty of the trustee to use reasonable care and skill to preserve the trust property.

Illustrations:

1. A is trustee for B of $50,000. He deposits the money in the X Bank when it is generally believed that the bank is in an unsound condition. A has heard the reports, but believes that the bank will eventually improve its condition and will not fail. Shortly afterward the bank fails. A is liable to B for the loss.

2. A is trustee for B of $25,000. He deposits the money in the X Bank. At the time the bank is generally be-

See Appendix for Reporter's Notes, Court Citations, and Cross References

f. Cross reference. As to the liability of a corporate trustee for deposits of trust funds in its own banking department, see § 170, Comment *m*.

§ 181. Duty to Make the Trust Property Productive

The trustee is under a duty to the beneficiary to use reasonable care and skill to make the trust property productive.

Comment:

a. Land. A trustee of land is normally under a duty to lease it or to manage it so that it will produce income. By the terms of the trust, however, it may be his duty to give possession of the land to the beneficiary. It may be the duty of the trustee merely to hold the land without making it productive. This is the case where the trust is for a merely temporary purpose, as where the owner of land transfers it in trust to convey it to a third person immediately or as soon as the third person makes a certain payment. Similarly also the trustee is not under a duty to make the land productive if the land is unimproved land which cannot be leased and cannot otherwise be made productive without making improvements which the trustee is not empowered to make.

As to the duty of the trustee to sell unproductive land where the trust is for beneficiaries in succession, see § 240.

As to the power of a trustee to make leases, see § 189.

b. Chattels. In the case of chattels, unless it is the duty of the trustee to give possession of them to the beneficiary, it is ordinarily the duty of the trustee to sell or lease them.

c. Money. In the case of money, it is normally the duty of the trustee to invest it so that it will produce an income. The trustee is liable if he fails to invest trust funds which it is his duty to invest for a period which is under all the circumstances unreasonably long. If, however, the delay is not unreasonable, he is not liable.

If the trustee commits a breach of trust in neglecting within a reasonable time to invest the money, he is chargeable with the amount of income which normally would accrue from proper trust investments. See § 207.

Illustration:

1. A bequeaths $100,000 to B in trust to invest it and pay the income to C. B neglects to make any investment. The usual rate of income accruing from trust investments is 4 per cent. B is chargeable with interest at 4 per cent from the time when he should have invested the money.

d. Cross reference. As to what are proper trust investments, see § 227.

§ 182. Duty to Pay Income to Beneficiary

Where a trust is created to pay the income to a beneficiary for a designated period, the trustee is under a duty to the beneficiary to pay to him at reasonable intervals the net income of the trust property.

See Reporter's Note.

Comment:

a. As to what is included in net income, see § 233.

b. Power to withhold. The trustee can properly withhold a reasonable amount of the income to meet present or anticipated expenses which are properly chargeable to income. So also, the trustee can properly withhold income for his protection where there is reasonable doubt as to the amount of income payable to the beneficiary.

c. Terms of the trust. By the terms of the trust the trustee may be authorized or directed to accumulate the whole or a part of the income. If such a provision is not invalid, the trustee is not under a duty to pay to the beneficiary during the period in which he is authorized or directed to accumulate it such income as he is authorized to accumulate. As to the validity of provisions for accumulation, see § 62, Comment *t*.

To the extent to which the trustee by the terms of the trust has discretion to withhold the income from the beneficiary, he is not under a duty to pay it to the beneficiary. See § 128, Comment *d*; compare § 155.

If by the terms of the trust the trustee is authorized to apply the income for the support of the beneficiary, the trustee is not under a duty to the beneficiary to pay the income to him. See § 128, Comment *e*; compare § 154.

d. Where the beneficiary is under an incapacity. Where a beneficiary who is entitled to the benefit of the income is under an incapacity, as, for example, where he is an infant or where he has been judicially declared to be insane, the question arises as to what disposition should be made by the trustee of such income. If by the terms of the trust, the trustee is, expressly or otherwise, authorized to apply the income for the benefit of the beneficiary, he can properly do so, and it is unnecessary that a guardian of the beneficiary should be appointed or that, if one is appointed, the trustee should pay the income to him. Where the trustee is directed and not merely authorized so to apply the income, he cannot properly pay the income to the guardian, since this would be a delegation of his duty and would result in subjecting the estate unnecessarily to double commissions.

If by the terms of the trust the trustee is directed to pay the income to the beneficiary and is not authorized, expressly or otherwise, to apply the income for his benefit, it is the duty of the trustee to pay the income to the guardian instead of applying it for the beneficiary. If, however, the whole of the income is not needed for the proper support of the beneficiary, the trustee may be justified in accumulating the balance of the income for him, instead of paying it to the guardian. If the trustee applies the income in any reasonable manner for the support of the beneficiary, he is entitled to credit in his accounts, since otherwise the beneficiary would be unjustly enriched.

If the beneficiary is not under a legal disability, so that a guardian need not be appointed, as, for example, where the beneficiary is so ill that he cannot act rationally, and the trustee applies income for his benefit, the trustee is entitled to credit in his accounts for the amounts so applied, if under the circumstances it was reasonable that such application should be made.

Cross references. As to the duty of the trustee upon the termination of the trust to pay the principal to the beneficiary entitled thereto, see § 345.

As to the disposition of income on the death of the life beneficiary, see § 235 A.

§ 183. Duty to Deal Impartially with Beneficiaries

When there are two or more beneficiaries of a trust, the trustee is under a duty to deal impartially with them.

Comment:

a. The rule stated in this Section is applicable whether the beneficiaries are entitled to interests in the trust property simultaneously or successively.

By the terms of the trust the trustee may have discretion to favor one beneficiary over another. The court will not control the exercise of such discretion, except to prevent the trustee from abusing it. See § 187.

As to successive beneficiaries, see §§ 232–241.

§ 184. Duty with Respect to Co-trustees

If there are several trustees, each trustee is under a duty to the beneficiary to participate in the administration of the trust and to use reasonable care to prevent a co-trustee from committing a breach of trust or to compel a co-trustee to redress a breach of trust.

Comment:

a. Scope of the rule. It is ordinarily a breach of trust for a trustee to allow a co-trustee to have such control of the trust property as to enable him to misappropriate it. Thus, shares of stock held in trust by several trustees should be registered in the names of all the trustees. If a trustee has reason to suspect that a co-trustee is committing or attempting to commit a breach of trust, he must take reasonable steps to prevent him from so doing.

b. Terms of the trust. By the terms of the trust, where there are several trustees, it may be provided that one or more of the trustees may be permitted to have exclusive possession or control of the whole or a part of the trust property.

c. Where co-trustee refuses to concur. Where there are several trustees, action by all of them is necessary to the exercise of powers conferred upon them. See § 194. If the circumstances are such that it is the duty of the trustees to exercise a power conferred upon them, and one of them refuses to concur in the exercise of the power, the other trustees are not justified in merely acquiescing in the non-exercise of the power. See § 185. In such a case it is their duty to apply to the court for instructions.

d. Cross references. As to delegation by a trustee to a co-trustee, see § 171.

As to the power of a trustee to maintain a suit against his co-trustee, see § 200, Comment *e*.

As to the liability of a trustee for breach of trust committed by his co-trustee, see § 224.

§ 185. Duty with Respect to Person Holding Power of Control

If under the terms of the trust a person has power to control the action of the trustee in certain respects, the trustee is under a duty to act in accordance with the exercise of such power, unless the attempted exercise of the power violates the terms of the trust or is a violation of a fiduciary duty to which such person is subject in the exercise of the power.

See Reporter's Note.

Comment:

a. In general. The provisions of the trust instrument may give a person the power to control the action of the trustee in certain respects. This person may be a co-trustee, the settlor, a beneficiary, or a third person otherwise unconnected with the trust. The relationship of the holder of the power is unimportant, except in so far as it may be a factor in determining the nature or extent of the power. See Comment *c*.

b. Ordinary duty of trustee to comply. Where by the terms of the trust it is provided that in the administration of the trust the trustee shall do certain acts if he is directed by another person to do them, it is ordinarily his duty to comply with such directions and he is ordinarily liable if he fails to do so. So also, where by the terms of the trust it is provided that the trustee shall not do certain acts without the direction or consent of another, it is ordinarily his duty not to do such acts without such direction or consent. Thus, if it is provided by the terms of the trust that the trustee shall invest in such securities as the settlor or a third person shall direct, or shall sell such securities as he shall direct, or that the trustee shall not invest in any securities without his approval, or shall not sell securities without his con-

§ 187. Control of Discretionary Powers

Where discretion is conferred upon the trustee with respect to the exercise of a power, its exercise is not subject to control by the court, except to prevent an abuse by the trustee of his discretion.

See Reporter's Note.

Comment:

a. When powers are discretionary. The exercise of a power is discretionary except to the extent to which its exercise is required by the terms of the trust or by the principles of law applicable to the duties of trustees. As to the principles of law applicable to the duties of trustees, see §§ 169–185.

By the terms of the trust or by the principles of law applicable to the duties of trustees, it may be the duty of the trustee to exercise a power conferred upon him, or, on the other hand, he may have discretion whether to exercise the power or not. Even though it is the duty of the trustee to exercise a power, he may have discretion as to the time, manner and extent of its exercise.

b. Methods of control. When the court controls the exercise of a power by the trustee, it may do so by directing him to act or refrain from acting; by setting aside the transaction where he has already acted; or by holding him liable for the results of his action or non-action. The court will sometimes remove a trustee or deny or diminish his compensation where he has abused discretion conferred upon him.

c. Kinds of discretionary powers. The rule stated in this Section is applicable both to the powers of managing the trust estate conferred upon the trustee either in specific words or otherwise, and also to such powers as may be conferred upon him to determine the disposition of the beneficial interest. Thus, it is applicable not only to powers to lease, sell or mortgage the trust property or to invest trust funds, but also to powers to allocate the beneficial interest among various beneficiaries, to determine the amount necessary for a beneficiary's support, or to terminate the trust.

As to a discretionary power to apply principal for the benefit of the income beneficiary, see § 128, Comment *i*.

Introduced: 3/3/77
Referred: Special Committee on the Alaska Permanent Fund and Finance

IN THE HOUSE

BY THE RULES COMMITTEE BY REQUEST OF THE GOVERNOR

HOUSE BILL NO. 298

IN THE LEGISLATURE OF THE STATE OF ALASKA

TENTH LEGISLATURE - FIRST SESSION

A BILL

For an Act entitled: "An Act relating to management of the Alaska Permanent Fund; and providing for an effective date."

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

* Section 1. AS 37 is amended by adding a new chapter to read:

CHAPTER 13. ALASKA PERMANENT FUND.

Sec. 37.13.010. ALASKA PERMANENT FUND. (a) Under art. IX, sec. 15, of the Alaska Constitution, there is established as a separate fund, in the Department of Revenue, the Alaska Permanent Fund.

(b) There is created the Alaska Permanent Fund Corporation, a public corporation of the state. The corporation is an instrumentality of the state within the Department of Revenue but has a legal existence independent of and separate from the state and has continuing succession until its existence is terminated by law. The exercise by the corporation of the powers conferred by this chapter is considered an essential governmental function of the state. The corporation shall manage and invest the principal of the permanent fund and shall distribute the income earned from the permanent fund in accordance with the provisions of this chapter.

Enables corp. to issue other than G.O. bonds which are tax exempt

Sec. 37.13.020. PURPOSE OF THE PERMANENT FUND. (a) The purpose of the permanent fund is to provide a means of conserving a portion of the state's revenues from mineral resources to the ultimate benefit of present and future generations of Alaskans. The revenues so conserved shall be invested in income-producing investments which will provide further benefits to present and future generations of Alaskans.

(b) Further benefits may be derived through use of the permanent fund to:

(1) assist the diversification of the economy of Alaska by making sound investments in Alaska's renewable and non-renewable resources;

(2) seek to smooth the cyclical pattern of growth of the Alaska economy;

(3) encourage and assist the participation of private capital, from both within and outside Alaska, in private enterprises of benefit to Alaskans;

(4) promote the investment of public and private capital for community development purposes;

(5) supplement private investment when sufficient private capital is not available on reasonable terms and conditions;

(6) seek to preserve the permanent fund capital for future generations through sound investments in investment grade securities.

(c) The permanent fund shall be guided in all its decisions by the purpose set out in (a) of this section.

Sec. 37.13.030. COMPOSITION OF THE PERMANENT FUND. The permanent fund consists of 50 per cent of all mineral lease rentals, royalties, royalty sale proceeds, federal mineral revenue sharing payments and bonuses received by the state. The commissioner of revenue shall deposit in the permanent fund 50 per cent of the receipts from these sources at least once each month. Income from investment of the permanent fund does not become a part of the permanent fund and shall be deposited in the general fund annually, except that income in the following amounts may be retained in the permanent fund and used as indicated:

(1) the amount needed to pay the operating and administrative

expenses of the corporation;

(2) any amount allocated to a reserve account established under sec. 110 of this chapter.

Sec. 37.13.040. INVESTMENT OF THE PERMANENT FUND. (a) The permanent fund shall be used only for income-producing investments.

(b) At least 40 per cent of the resources of the permanent fund shall be invested in investment grade securities.

(c) The corporation may invest not more than 30 per cent of the resources of the permanent fund to provide a reasonable proportion of longer-term investment capital for financing the establishment, improvement, and expansion of productive private enterprises which will benefit Alaskans, and for which sufficient capital is not available from other sources on reasonable terms. These investments may take the form of equity, debt, or debt guarantees.

(d) The corporation may invest no more than 30 per cent of the resources of the permanent fund in financing a reasonable proportion of the longer-term investment capital needs for community development projects of municipalities and public corporate entities and private dwellings in Alaska for which sufficient financing is not available from other sources on reasonable terms. These investments may take the form of debt or debt guarantees.

Sec. 37.13.050. PERMANENT FUND POLICY BOARD. (a) There is established the Alaska Permanent Fund Policy Board, consisting of the commissioner of commerce and economic development, the commissioner of revenue, and seven members to be appointed by the governor. The seven appointed members must be Alaska residents and may not be employees of the state. Their term of office is four years, and they may be reappointed. Terms shall be staggered. Initial terms are one year for one member, two years for two members, three years for two members,

and four years for two members. Members may be removed for cause. Members may continue to serve until their successors are appointed.

(b) The president of the permanent fund, appointed under sec. 90 of this chapter, shall serve as the chairman of the policy board, but is not a voting member.

(c) A quorum for the transaction of policy board business consists of at least two-thirds of the members. Decisions of the board must be made by a majority vote, including not less than a majority of the appointed members. The board shall hold at least one public meeting each year.

(d) Appointed members of the policy board are not entitled to compensation as such but are entitled to per diem and travel allowances as provided by law for members of state boards and commissions.

Sec. 37.13.060. DUTIES OF THE POLICY BOARD. The policy board shall:

(1) select and appoint the president and other members of the investment committee;

(2) annually review and approve long-range operating plans, to include an investment program based on sectoral analysis of the Alaska economy, the budget for the forthcoming year, and the financial plan for the following years;

(3) have sole responsibility for relations with the general public, legislature, executive, local communities, and special interest groups concerning all matters other than specific investments of the permanent fund;

(4) review quarterly reports from the investment committee concerning investment decisions and investment supervision;

(5) review, consider and approve policies;

(6) review and publish an annual report including financial

statements audited by independent outside auditors;

(7) establish an audit committee, consisting of the commissioner of revenue and other members of the policy board to be designated by the board itself, which shall select the independent outside auditors, and receive all audit reports;

(8) decide appeals from interpretations of this chapter;

(9) determine the remuneration and terms of service of the president and other members of the investment committee;

(10) be prepared to present a complete report of investment programs, plans, performance, and policies to the finance committees of the Alaska Legislature within 30 days after the beginning of each regular session.

Sec. 37.13.070. PERMANENT FUND INVESTMENT COMMITTEE. (a) There is established the Alaska Permanent Fund Investment Committee, consisting of the president of the corporation, who shall serve as chairman, and four members appointed by the policy board. No member of the policy board may be a member of the investment committee. All members must be Alaska residents, may not be state employees, and must be persons of recognized competence and wide experience in investments, finance, and other business-management-related fields. Members may be reappointed or continue to serve until their successors are appointed.

(b) A quorum consists of four members of the investment committee. All decisions must be made by majority vote.

Sec. 37.13.080. DUTIES OF THE INVESTMENT COMMITTEE. The investment committee has sole responsibility to approve all investment proposals and review all investments in investment grade securities.

Sec. 37.13.090. PERMANENT FUND PRESIDENT. The president of the corporation shall be appointed by the policy board for a term of five years, may be reappointed, and shall serve at the pleasure of the policy

board. The president

(1) has sole responsibilty for presenting investment proposals to the investment committee;

(2) is responsible for the ordinary business of the corporation and the organization, appointment, dismissal, and remuneration of the officers and staff;

(3) is responsible for making investments in investment grade securities, subject to review by the investment committee;

(4) shall establish and maintain adequate and appropriate organizational, operating, and financial controls.

Sec. 37.13.100. STATUS AND POWERS OF PERMANENT FUND CORPORATION. The CORPORATION is exempt from the provisions of the Executive Budget Act (AS 37.07). The president, officers, and staff of the corporation are in the exempt service under AS 39.25.

(b) The corporation has all powers necessary to carry out the purposes of this chapter including but not limited to the following:

(1) sue and be sued;

(2) adopt a seal;

(3) have perpetual succession;

(4) adopt and amend policies and operational procedures when not inconsistent with this chapter;

(5) make and execute contracts and other instruments;

(6) in its own name, own, exchange, transfer, lease, rent, convey, acquire, or dispose of by other means real and personal property.

Sec. 37.13.110. RESERVES. The corporation may establish, from income derived from its permanent fund reserve accounts to preserve the principal of the permanent fund, consistent with sound financial practices.

Sec. 37.13.120. OPERATIONAL PRINCIPLES. The operations of the

corporation shall be conducted in accordance with the following principles:

(1) the prudent-person rule of investments is applicable; in making investments, the investment committee and staff shall exercise the judgment and care under the circumstances then prevailing which a person of ordinary prudence, discretion, and intelligence exercises in the management of his or her own affairs not in regard to speculation but in regard to the permanent disposition of funds, considering the probable income from them as well as probable safety of principal;

(2) the corporation may not undertake any financing for which, in its opinion, sufficient private capital could be obtained on reasonable terms;

(3) the corporation may not assume responsibility for managing any enterprise or project in which it has invested and may not exercise voting rights for that purpose or for any other purpose which, in its opinion, properly is within the scope of managerial control;

(4) the corporation shall only undertake its financing on terms and conditions which it considers appropriate, taking into account the requirements of the enterprise or project, the participation of other investors, the risks being undertaken by the corporation and the terms and conditions normally obtained by private investors from similar financing, unless the legislature has appropriated funds for subsidizing investments which, in the opinion of the corporation are of such high priority that special terms and conditions are appropriate;

(5) the corporation may seek to revolve its funds by selling its investments to other investors whenever it can appropriately do so on satisfactory terms;

(6) the corporation shall seek to maintain a reasonable

diversification in its investments;

(7) the corporation shall only consider investment proposals after the applicant for an investment has submitted a detailed proposal to the corporation staff, and the staff has prepared a written report recommending the investment after a study of its merits;

(8) the corporation shall make investment decisions with regard to economic and other considerations, including consideration of employment, income distribution, environment, health, social, and other factors; the corporation shall be sensitive to the views of affected local communities and shall include an analysis of those views in proposals for large investments;

(9) the corporation may make investments in financial intermediaries in order to facilitate investment by the intermediaries in specific enterprises or projects whose individual financing requirements are not, in the opinion of the corporation, large enough to warrant its direct supervision;

(10) the corporation shall provide for operational and performance evaluations (post-audits) of its investments and investment programs, and report the results to the policy board audit committee;

(11) nothing in this section prevents the corporation, in the event of actual or threatened default on any of the permanent fund investments, actual or threatened insolvency of the enterprise in which the investment has been made, or other situations which, in the opinion of the corporation, threaten to jeopardize the investment, from taking the action and exercising the rights it considers necessary for the protection of its interests.

Sec. 37.13.130. BORROWING POWERS. The corporation may borrow funds, and, in that connection, may furnish the collateral or other

security for them that it determines is necessary.

Sec. 37.13.140. REPORTS AND PUBLICATIONS. The policy board shall publish an annual report to the governor, legislature, and the public. Each report must include financial statements audited by independent outside auditors, a statement of the amount of money received by the permanent fund from each source during the period covered, a statement of permanent fund investments, a description of permanent fund investment activity during the period covered by the report, and any other information the policy board believes would be of interest to the governor, the legislature, and the public. The annual income statement and balance sheet of the corporation shall be published in at least one newspaper in each judicial district. The corporation may also publish other reports it considers desirable to carry out its purpose.

Sec. 37.13.150. TECHNICAL ASSISTANCE. (a) The corporation may provide financing for pre-investment activities including feasibility studies, when, in its opinion, the proposed investment is of high priority and the financing is not available from other sources on reasonable terms and conditions. Amounts so advanced may form a part of a later investment, if the enterprise or project is financed by the corporation.

(b) The corporation may provide for technical and management advice and assistance to proposed and actual investments as it considers necessary in the circumstances.

Sec. 37.13.160. CONFLICT-OF-INTERESTS POLICIES. Members of the investment committee shall disclose their financial interest in an investment proposal and disqualify themselves from voting on any investment proposal in which they have a financial interests. Members of the policy board shall refrain from all attempts to influence the investment committee, president, officers and staff in the discharge of their

ordinary operating duties. The president, officers, and staff of the corporation, in the discharge of their offices, owe their duty entirely to the corporation and no other authority.

Sec. 37.13.170. CONFIDENTIALITY OF INFORMATION. Information in the possession of the corporation which discloses the particulars of the business or affairs of a private enterprise or private investor is not a matter of public record, except for purposes of investigation and law enforcement. The information must be kept confidential except when its production is required in an official investigation or court proceeding. These restrictions do not prohibit the publication of statistics presented in a manner that prevents the identification of particular reports, items, persons, or enterprises.

Sec. 37.13.180. TAX EXEMPTION. The corporation is a public corporation and is exempt from all taxes and assessments in the state. All security instruments issued by the corporation, their transfer, and their income are exempt from all taxes and assessments in the state.

Sec. 37.13.900. DEFINITIONS. In this chapter, unless the context requires otherwise

(1) "corporation" means the Alaska Permanent Fund Corporation created by sec. 10(b) of this chapter;

(2) "investment committee" means the Alaska Permanent Fund Investment Committee created by sec. 70 of this chapter;

(3) "investments" includes equity, debt, and debt guarantees;

(4) "permanent fund" means the Alaska Permanent Fund created under authority of art. IX, sec. 15, of the Alaska Constitution;

(5) "policy board" means the Alaska Permanent Fund Policy Board created by sec. 50 of this chapter.

* Sec. 2. AS 39.25.110 is amended by adding a new paragraph to read:

(21) members of the policy board and investment committee, and the president, officers, and staff of the Alaska Permanent Fund Corporation.

* Sec. 3. AS 39.50.200(9) is amended by adding a new subparagraph to read:

(MM) Alaska Permanent Fund Policy Board and Alaska Permanent Fund Investment Committee.

* Sec. 4. Investments outstanding as of the effective date of this Act, made from money in the Alaska Permanent Fund, shall be transferred to the corporation established by AS 37.13.010(b), enacted in sec. 1 of this Act.

* Sec. 5. This Act takes effect immediately in accordance with AS 01.-10.070(c).

amounts are payable and shall not be accountable to anyone". One of the beneficiaries is living in poverty and the trustees give her $100 a month and accumulate income. When she asks for more income, the trustees cut her off completely. The beneficiary can sue and receive more income by court order. The clause purporting to relieve the trustees of the legal duty to account is void insofar as it attempts to deprive a court of jurisdiction, where a beneficiary can show that the trustees are not acting in good faith.

(2) A court will also intervene where a trustee has completely failed to exercise his judgment with regard to a discretionary power.

5. **Implied Powers**

a. **Power of sale:** Where the trust terms neither confer nor withhold the power to sell trust property, a power of sale is generally quite readily inferred by American courts. In deciding whether to infer a power of sale, courts consider the language of the instrument, the character of the property, the purposes of the trust, and whether there is any suggestion that particular property is to be held by the trustee and transferred to the remaindermen on termination of the trust. Power of sale may be more readily inferred in the case of personal property than in the case of real property.

(1) Note, however, that the settlor can direct the trustee not to sell certain property transferred into the trust. This directive is valid, and the trustee cannot sell the property without a court order permitting sale on the grounds that circumstances have changed so much that not selling would put the trust corpus in jeopardy.

b. **Expenses**

(1) It is generally implied that a trustee can incur expenses which are appropriate to carry out the trust purposes. He can incur such expenses as are necessary and ordinary in the management of the property and in keeping the property in repair, and he can employ agents and advisors where this is prudent, or where he cannot reasonably be expected to perform duties personally.

(2) Courts are less willing to imply the power to make improvements on trust property, but improvements can generally be made. Improvements involve some element of investment discretion and one might consider in relation to the propriety of improvement, whether it will have the result of concentrating investment in a particular party so as to be a violation of the trustee's duty to diversify investments.

c. **Power to lease:** Normally, it is implied that a trustee has power to lease trust property on such terms and for such periods as are reasonable under the circumstances.

d. **Power to borrow money:** Under ordinary circumstances, the trustee has no implied power to borrow money on the credit of the trust estate; nor has he power to mortgage or otherwise encumber the trust property. However, in the well drafted trust instrument the trustee is usually given the power to borrow and mortgage.

B. THE DUTIES OF THE TRUSTEE

1. **The Standard of Care Required of the Trustee:** In administering the trust, the trustee must exercise the degree of care, skill and prudence which would be exercised by a reasonably prudent person in managing his property.

a. **Skill** relates to the trustee's capabilities.

b. **Care** relates to his diligence and to the efforts he makes.

c. **Prudence** is the element of caution or conservatism in administering the trust.

2. **The Duty of Loyalty:** The trustee must be completely unselfish and undivided in his loyalty to the beneficiaries of the trust.

   a. **The trustee must take no personal advantage (other than the fees given him for serving as trustee) from his position:** He will be held accountable for any profit made by him through, or arising out of, the administration of the trust, even if the profit did not result from a breach of trust. The trustee must also avoid putting himself in any position where a conflict with the interest of the trust is even possible.

      (1) The trustee may not loan his personal funds to the trust and he may not borrow trust funds. This is self-dealing, which is absolutely prohibited.

      (2) He cannot sell his own property to the trust, and he cannot purchase trust property. Nor can his spouse buy the trust property or sell property to the trust. This too is self-dealing.

         (a) **Example:** X, trustee, purchases from the trust 100 shares of Blue Company stock at $50 a share, which is market value. The stock subsequently increases to $75 a share, at which time X sells the stock. X is liable to the trust beneficiaries for the $2500 capital gain. Suppose the stock declined in value to $30 a share after X purchased it from the trust. X then sells it. The beneficiaries are entitled to affirm the sale to X for $50 a share. Thus X must personally suffer the capital loss.

      (3) A prohibited transaction is not made permissible because it takes place at a public or judicial sale. E.g., at a foreclosure sale by a mortgagee, the trustee may not buy for himself.

      (4) The duty to keep and render accounts, and to furnish information to the beneficiary or his agent at the beneficiary's request, is one way of insuring that the trustee is meeting his obligation of loyalty.

      (5) **Note:** Bad faith on the trustee's part or damage to the trust are irrelevant. (For example, a trustee acting in complete good faith and to help the trust, loans money to the trust and takes a second mortgage on trust property. When the first mortgage is foreclosed it turns out that the trustee has made a profit. That profit must be turned over to the trust.) The policy reason for this harsh rule is that personal interest on the part of the trustee opens the door to biased judgments and thus to decisions which may not be in the beneficiary's best interests.

   b. **If a prohibited transaction takes place, the beneficiary may**

      (1) Set aside the transaction;

      (2) Recover the profit made by the trustee, reduced by losses arising out of the same transaction (see infra, p. 35); or

      (3) Affirm the transaction (which would occur when the transaction has turned out to be advantageous to the trust). Thus the trustee bears the risk of subsequent loss, and also is required to turn over any profit if the dealings with the trust were advantageous to him.

c. **Self employment can constitute a form of prohibited dealing:** However, extraordinary services to the trust on the part of the trustee may entitle the trustee to additional compensation. This problem may arise if the trustee renders legal services to the trust which are outside the normal scope of his duties, and for which additional compensation is fair and appropriate.

d. **The duty of loyalty extends to all beneficiaries equally, unless the trust instrument specifies otherwise:** Dealing impartially with the beneficiaries is more difficult when beneficiaries are entitled to successive benefits; e.g., A receives income for life, B receives the trust corpus at A's death. The trustee has a duty to A to see that trust property produces income. He violates his duty to A if the property is not income-producing. On the other hand, to carry out his duty to B the trustee must insure that trust property will not depreciate in value.

3. **The Duty to Separate and Earmark Trust Property (Prohibition Against Commingling Trust Funds)**

a. **The duty to separate:** Trust assets must be kept physically separate from the trustee's personal assets and from assets from other trusts. (Statutory exceptions in most states permit a corporate fiduciary to hold property of trusts of which it is a trustee in a common trust fund.)

(1) Liability is imposed on the trustee who breaches the duty to keep funds separate even where the breach has not contributed in any way to the actual loss of trust property.

(2) If there is difficulty in tracing the commingled trust property, the court is likely to place the burden of separating the property on the trustee. If the property cannot be separated the court may treat all of the property as trust assets, or it may make the trustee liable for any loss or shrinkage in trust assets even if the mingling of funds did not cause the loss.

(3) The measure of damages will be the actual loss to the trust.

b. **The duty to earmark trust property:** Trust property must be titled in the trustee, as trustee for a specific trust. For example, money deposited in a bank account must be deposited in the name of "X as trustee", and not in the name of X personally.

(1) The older view held the trustee strictly liable for a failure to earmark, regardless of whether that failure caused the loss to the trust. The measure of damages was the actual loss sustained by the trust. Reason: This prevents the trustee from lying about what property is trust property and what is his own.

(a) Example: Trustee of $5,000, deposits $5,000 in Bank X and $5,000 in Bank Y. $5,000 is his own money and $5,000 comes from the trust. Bank X folds. Trustee is liable for $5,000 regardless of whether the $5,000 in Bank X came from him personally or from the trust.

(2) The Restatement Second of Trusts view would hold the trustee liable for a failure to earmark only to the extent that damages were caused by the failure to earmark.

(3) **Example:** During a business recession, trust property depreciates in value. Trustee has not earmarked the property and the beneficiary sues. Although the bad business climate caused the decline in value of trust assets, not the

failure to earmark, the older view would hold the trustee liable for the whole loss; the Restatement view would not hold the trustee liable.

4. **The Duty to Perform Personally (Prohibition on Delegation of Trust Duties)**

   a. A trustee cannot delegate the entire administration of a trust.

   b. On the other hand, he may delegate acts which it would be unreasonable to require him to perform personally (e.g., mailing letters). There is no clear-cut standard for judging when delegation is proper. Should you have a question which raises an issue of improper delegation, discuss the facts in light of what a reasonably prudent person would do, the type of discretion delegated and whether someone with greater skill or some special skill is needed to do the act.

   c. The power to select investments for the trust cannot be delegated.

   d. The trustee must personally exercise reasonable care in the selection, retention and supervision of agents and employees.

   e. The trustee can seek the advice of attorneys and others on matters which he may not delegate. However, the trustee must make the decisions. If he appears to take advice without exercising his independent judgment, he may be held liable on the theory that he improperly delegated his duties.

   f. **Remedy:** If a trustee improperly limits or surrenders his control over trust property, he becomes a guarantor of the fund. The trustee's motives or the fact that the loss was not directly caused by the abdication of control will not be considered by the court. The trustee is held for the amount of the actual loss to the trust.

5. **The Duty to Preserve Trust Property and to Make It Productive**

   a. **Duty implied even where not expressed:** There is a basic duty to preserve and protect the trust corpus. From this basic duty, there normally will be implied the duty to make the trust property productive, which includes the duty to invest (below).

   b. **Scope of duty:** The duty to protect and preserve the corpus requires the trustee to exercise reasonable care to do the following (and if he has held himself out as having special skills or has been selected on account of such special skills, he will be held to exercise such skills):

      (1) To invest trust funds within a reasonable period of time following receipt thereof (and constantly to review such investments and sell and reinvest when required)

         (a) If the trustee fails to invest trust monies, he is chargeable with the amount of income which would normally accrue from "proper" investments.

         (b) As to what constitutes "proper investments", see below.

      (2) To collect all claims due the trust.

      (3) To lease land or manage it so that it is productive; or sell it if it is not productive (but this doesn't apply if the trust instrument requires the trustee to convey that land to a beneficiary).

      (4) To record recordable documents to protect title; to keep securities and funds in safe places; to pay taxes on trust assets to prevent liens thereon; and to secure insurance on trust properties.

(a) It is proper for the trustee to obtain insurance on trust property—including liability insurance—even though such insurance protects him individually as well as the trust estate.

c. **Standards of trust investment**

(1) **Statutory investment lists:** Some states continue to follow a statutory "legal list" of approved investments. Such statutes set forth a list of described investments for trustees. They usually include government bonds, conservative first mortgages on land, and other conservative investments.

(a) If the list is deemed to be "permissive" the trustee can invest in securities outside the list but incurs a heavier burden of proving the propriety of each investment when he does so. Where the list is "mandatory" the trustee probably commits a breach of trust any time he invests in properties outside the list, although the cases are not altogether consistent in this regard.

(b) Under either type of statutory list, the trustee cannot follow the list blindly. A particular investment of an approved type may yet be an unreasonable one, and the trustee remains liable if he fails to exercise care, skill and prudence.

(2) **The prudent investor rule:** The trend of modern authority is the so-called "prudent investor rule". In essence, the trustee is required to adhere to a standard of good faith, reasonable prudence, sound discretion and care in making trust investments. He must invest as a prudent businessman would do in making a permanent disposition of his own funds, considering both the probable income and probable safety of capital. (This rule is codified in some states; e.g., Calif.)

(a) A basic principle of prudent investment is reasonable diversification. Even though a particular investment is a proper one, it becomes improper if too great a portion of the trust estate is invested in it. Appropriate diversification must take into account the importance of spreading investment not only among different entities but even among different industries; the portion which may be concentrated in a particular investment or type of investment depends upon the stability and other characteristics of the investment and also upon the size of the trust estate, for it is not possible to diversify a small estate in the same manner that a large one could be diversified. (Note: The Bar Exam has often posed questions where the trustee did not diversify.)

(b) The trustee must also consider the marketability of his investment, the adequacy of the security, and probably even tax factors.

1) **Assets received on creation of trust:** Suppose the trustee receives upon creation of the trust 5000 shares of Red Corporation as the corpus. Must he sell some of the Red Corp. stock and diversify? (a) The trustee does not have to diversify if he is directed not to sell the Red Corp. stock; or (b) it can be inferred that the settlor would have so intended. (E.g., if Red Corp. is closely held, and the 5000 shares give the trustee a controlling interest, a court is likely to imply an authorization to retain the shares.

(c) The prudent investor rule requires the trustee constantly to review the trust investments and sell within a reasonable time whatever investments have become imprudent.

(d) In determining whether a particular investment is a "prudent" one, the court looks to the circumstances as they existed at the time the investment was made, or at the time of a particular decision to retain the investment. Thus, a trustee is not a guarantor against loss, if the investment appeared prudent when made.

(e) The trustee must not only use the caution of a prudent person, but also reasonable care to obtain yield from the investment. Therefore, it is not necessarily "prudent" to invest only in the very safest and most conservative securities.

(3) **Particular investments:** The fact that a type of investment is permissible does not necessarily mean that the investment is proper, for in selecting from among the permissible investments, the trustee must exercise reasonable care, skill and prudence. All circumstances must be taken into account, including such things as preserving purchasing power in the face of possible inflation, minimizing risks to capital and the need to obtain a fair return on the investment.

(a) **Proper investments:** Normally a trustee can invest in government securities, in high grade corporate bonds and in first mortgages on real estate provided the margin of security is adequate.

(b) **Improper investments:** Except for bank deposits bearing interest, an unsecured loan of trust funds is normally an improper investment. Most states regard an investment in a second mortgage as a breach of trust in the absence of extreme or compelling circumstances.

(c) **Corporate stocks:** Most statutory lists exclude common and preferred stocks. Under the prudent person rule, a trustee can invest in preferred or common shares of companies which have been paying dividends regularly and can be expected to continue to do so.

(d) **Land:** The courts are divided on whether investment in land is permissible. Acquisition of land or other property for the purpose of resale at a profit is speculation and therefore a breach of trust.

1) **Example:** Trustee buys 1000 acres of unimproved desert land. This is an improper investment. Not only is it speculative, but it produces no income and the trustee has the duty of making the trust property productive. Otherwise the life tenant would lose his income by investments in non-productive property.

(e) **Common investment arrangements**

1) Mortgage participations, under which large sums are advanced as loans to property owners in exchange for mortgages, are increasingly upheld as proper investments mainly because they permit a greater diversification than would be possible if a single trust fund had to make the loan by itself.

2) Investments in common trust funds and mutual funds are increasingly permitted by statute. However, except for a small trust needing diversified investments, investment in a mutual fund may

be an imprudent choice because of the added administrative cost of the mutual fund. And, investment in mutual funds may also constitute a breach of trust because the trustee parts with the management duties which are incident to his office.

(f) **Testator's business:** Where a testator is engaged in business at the time of his death, and leaves all his property to his executor in trust, the executor cannot properly continue the business, unless authorized by the testator to do so. He must dispose of the business and invest in proper trust investments, and if he fails to do so within a reasonable time he is liable for any losses which result.

(4) **Trust terms may limit or enlarge trustee's investment powers:** Where the trust instrument provides for investments to be made in the discretion of the trustee, it is a question of interpretation whether the trustee's power of investment is enlarged.

(a) In a prudent person jurisdiction the trustee's authority to make investments in his discretion usually does not permit investments other than those which satisfy the prudent person standard.

(b) In a legal list jurisdiction, such language is likely to free the trustee from the list and probably permits investment in a manner similar to that under the prudent person rule.

(c) There is a tendency to strictly construe language of this type, but investment power can be broadened by it.

6. **The Duty to Defend the Trust From Attack**

a. Except when the trustee's examination reveals that an attack against the trust is well founded, he has a duty to defend the trust.

7. **Summary—The Fiduciary Obligation:** The standards imposed on the trustee are harsh. The policy behind such stringent standards and remedies for their violation is deterrence of wrongful conduct, and to ease the burden of proving a breach of the duty should that become necessary. Do not overlook mentioning policy reasons in your answer. Watch for a Bar Exam question regarding self-dealing, diversification, investment in non-productive property, and set off of gain from one breach against loss from another (see below).

Also ask: Was the act one which the trustee was authorized to perform at all under the terms of the trust and applicable law. If not, there is a breach of trust regardless of the good faith, skill and diligence with which the trustee performed the act.

Then ask: If the act was proper for the trustee to perform, did the trustee perform in a manner which satisfies the standard of conduct required of him? Did he act prudently, in good faith, exercising the appropriate amount of skill and with the diligence and care of a reasonably prudent person under the circumstances?

C. LIABILITIES OF THE TRUSTEE

1. **Enforcement by the Beneficiaries:** The beneficiaries may seek to have the trustee surcharged (pay damages suffered by the trust) or even removed from office if the trustee breaches his duties. Outsiders may not seek to enforce the trust. The settlor may sue if he is also a beneficiary.

a. **Prior to the breach:** A court of equity will compel the trustee to perform his duties or will enjoin the trustee from committing the breach.