

SCOMM

#18:15

Introduced: 2/22/79
Referred: Special Permanent Fund
Committee and Finance

1 IN THE HOUSE

BY THE SPECIAL
PERMANENT FUND COMMITTEE

2 HOUSE BILL NO. 282

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 ELEVENTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act relating to the Alaska Enterprise Investment
7 Corporation; and providing for an effective date."

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

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

10 CHAPTER 09. THE ALASKA ENTERPRISE INVESTMENT CORPORATION.

11 Sec. 37.09.010. CREATION OF CORPORATION; FUNDING. (a) There is
12 created the Alaska Enterprise Investment Corporation. The corporation
13 is a public corporation and government instrumentality in the Department
14 of Revenue but has legal existence independent of and separate from the
15 state. The exercise by the corporation of the powers conferred by this
16 chapter is considered an essential governmental function of the state.

17 (b) One-sixth of the receipts of all mineral lease rentals, roy-
18 alties, royalty sale proceeds, and federal mineral revenue sharing pay-
19 ments and bonuses allocated to the Alaska permanent fund shall be paid
20 directly into the Alaska Enterprise Investment Corporation until a total
21 of \$100,000,000 has been paid in. The amount paid into the Alaska
22 Enterprise Investment Corporation under this subsection is the paid-in
23 capital of the corporation.

24 Sec. 37.09.020. FINDINGS. The legislature finds

25 (1) that investment in financially sound small and medium
26 scale (A) productive private enterprises and (B) community development
27 projects in the state, for which sufficient capital is not available
28 from other sources on reasonable terms, is of benefit to the citizens of
29 the state;

1 (2) there is a shortage of investment capital available from
2 other sources on reasonable terms for financially sound small and medium
3 scale productive private enterprise and community development projects;

4 (3) that the corporation working with private financial
5 institutions to supplement but not supplant their services can help to
6 alleviate this shortage.

7 Sec. 37.09.030. PURPOSE. The purpose of the corporation is to
8 provide capital at market rates and terms which are not available from
9 other sources on reasonable terms for small and medium scale productive
10 private enterprises and community development projects.

11 Sec. 37.09.040. ALASKA ENTERPRISE INVESTMENT CORPORATION POLICY
12 BOARD. (a) There is established the Alaska Enterprise Investment
13 Corporation Policy Board consisting of a person employed in the execu-
14 tive branch of state government appointed by the governor and six public
15 members appointed by the governor with due regard for geographical
16 representation and confirmed by a majority of the members of the legis-
17 lature in joint session. At least two of the public members shall have
18 recognized competency and wide experience in investment and finance. No
19 public member may be appointed to the board who has not been a resident
20 of the state for at least three years. The board shall elect one of the
21 public members as chairman and other officers they determine desirable.

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

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

1 public meeting each year.

2 (d) Public members of the policy board receive an honorarium of
3 \$250 for each meeting day if they attend the meeting and are entitled to
4 per diem and travel allowances as provided by law for members of state
5 boards and commissions.

6 Sec. 37.09.050. REMOVAL AND VACANCIES ON BOARD. (a) The governor
7 may remove a policy board member from office by and with the consent of
8 a majority of the members of the legislature in joint session. The
9 joint session shall be held within 10 days from the date of removal if
10 the removal occurs while the legislature is in session or within 30 days
11 of convening of the legislature if the member was suspended. If the
12 legislature is not in session, the governor may suspend a member of the
13 policy board for cause. Upon suspension, a vacancy is not created but
14 a board member may not participate in policy board business and may not
15 be counted for purposes of establishing a quorum. If the legislature
16 refuses to consent to his removal, the member shall be reinstated to his
17 position.

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

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

1 Sec. 37.09.060. DUTIES OF THE POLICY BOARD. The policy board shall

2 (1) select and appoint the president and other members
3 of the Investment Committee established in AS 37.09.080;

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

7 (3) have responsibility on behalf of the corporation for
8 relations with the general public, legislature, executive branch, local
9 communities, and interest groups concerning all things excepting only
10 those matters that are the responsibility of the Investment Committee;

11 (4) review quarterly reports from the Investment Committee
12 concerning investment decisions and investment supervision, but the
13 board may not impose an investment decision upon, or override an invest-
14 ment decision of, the Investment Committee;

15 (5) review, consider and approve policies;

16 (6) establish an audit committee which shall select inde-
17 pendent outside auditors, and receive all audit reports.

18 Sec. 37.09.070. PRESIDENT. The president of the corporation is
19 appointed by the policy board for a term of four years, may be reap-
20 pointed, and serves at the pleasure of the policy board. The salary of
21 the president is set at the discretion of the policy board, but may not
22 be set below that of the highest paid member of the Investment Commit-
23 tee. The president shall

24 (1) have sole responsibility for presenting investment pro-
25 posals to the Investment Committee;

26 (2) be responsible for the ordinary business of the corpo-
27 ration and the organization, appointment, dismissal, and remuneration of
28 the officers and staff;

29 (3) be responsible for making investments in investment grade

1 securities, subject to review by the Investment Committee;

2 (4) establish and maintain adequate and appropriate organi-
3 zational, operating and financial controls.

4 Sec. 37.09.080. INVESTMENT COMMITTEE. (a) There is established
5 the Investment Committee, consisting of the president and four members
6 appointed by the policy board. No member of the policy board may be a
7 member of the committee. Members of the committee shall be persons of
8 recognized competence and wide experience in investments, finance, and
9 other business management-related fields. No member may be appointed to
10 the committee who has not been a resident of the state for at least
11 three years. A member may be reappointed and continue to serve until
12 his successor is appointed. The president and members shall serve for
13 four-year terms. Terms shall be staggered. Initial terms shall be one
14 member serving for one year, one member serving for two years, one
15 member serving for three years, and one member and the president serving
16 for four years.

17 (b) Three members of the committee constitute a quorum. Decisions
18 of the committee shall be taken by majority vote.

19 (c) Members of the committee other than the president receive an
20 annual salary in the amount set by the policy board.

21 Sec. 37.09.090. DUTIES OF THE COMMITTEE. The committee has sole
22 responsibility to approve all investment proposals regarding productive
23 private enterprises and community development projects in the state, and
24 review all investments in investment grade securities.

25 Sec. 37.09.100. BUDGET. The corporation operating budget is from
26 the general fund and is subject to the provisions of the Executive
27 Budget Act (AS 37.07).

28 Sec. 37.09.110. PERSONNEL OF CORPORATION. Policy board members,
29 committee members, and officers and staff of the corporation are in the

1 exempt service under AS 39.25.

2 Sec. 37.09.120. POWERS OF THE CORPORATION. (a) In carrying out
3 the corporate purposes of the corporation, the policy board has power to

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

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

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

7 (4) borrow funds, and in that connection furnish such collat-
8 eral or other security as it determines, except that corporation borrow-
9 ing may not exceed its paid-in capital;

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

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

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

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

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

20 (b) In carrying out the corporate purposes of the corporation, the
21 committee has the power to

22 (1) invest, as it considers appropriate, by purchasing the
23 capital stock of, or lending money to, projects, except that any invest-
24 ment in the capital stock of or other ownership interest in a project
25 may not exceed 25 per cent of the capital stock of, or other ownership
26 interest in, the project, and no loan or other investment in the project
27 by the corporation may exceed 90 per cent of the cost of the project
28 unless, in the judgment of the committee, additional amounts must be
29 loaned to protect the interests of the investment fund;

1 (2) deposit or invest surplus funds in such obligations as
2 the committee may determine;

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

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

7 Sec. 37.09.125. INVESTMENTS. (a) In making investments, the
8 committee and staff shall exercise the judgment and care under the
9 circumstances then prevailing which a person of ordinary prudence,
10 discretion, and intelligence exercises in the management of his own
11 affairs taking into consideration the probable income from the invest-
12 ments as well as probable safety of principal.

13 (b) The committee may invest not more than 50 per cent of the
14 resources of the corporation to provide a reasonable proportion of
15 longer-term investment capital for financing the establishment, improve-
16 ment, and expansion of financially sound small and medium scale produc-
17 tive private enterprises which will benefit Alaskans, and for which
18 sufficient capital is not available from other sources on reasonable
19 terms. These investments may take the form of equity, debt, or debt
20 guarantees.

21 (c) The committee may invest not more than 50 per cent of the
22 resources of the corporation in financing a reasonable proportion of the
23 longer-term investment capital needs for financially sound small and
24 medium scale community development projects of municipalities and public
25 corporate entities and private dwellings in the state for which suf-
26 ficient financing is not available from other sources on reasonable
27 terms. These investments may take the form of equity, debt, or debt
28 guarantees.

29 (d) The committee may not invest or guarantee obligations totaling

1 more than five per cent of the assets of the corporation or \$5,000,000,
2 whichever is less, in a single project unless the legislature has ap-
3 proved the investment by concurrent resolution.

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

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

11 (g) The committee shall only undertake its financing on terms and
12 conditions which it considers appropriate, taking into account the terms
13 and conditions normally obtained by private investors for similar fi-
14 nancing, the requirements of the enterprise or project, the risks being
15 undertaken by the corporation, and the participation of other investors
16 unless the legislature has appropriated funds for subsidizing invest-
17 ments which in the opinion of the corporation are of such high priority
18 that special terms and conditions are appropriate.

19 (h) The committee may seek to revolve the corporation's money by
20 selling its investments to other investors whenever it can appropriately
21 do so on satisfactory terms.

22 (i) The committee shall seek to maintain a reasonable diversi-
23 fication in its investments.

24 (j) The committee shall only consider investment proposals after
25 the applicant for an investment has submitted a detailed proposal to the
26 committee's staff and the staff has prepared a written report recommend-
27 ing the investment after a study of its merits.

28 (k) The committee shall analyze the economic and other effects of
29 an investment decision, including the effects on employment, income

1 distribution, environment, health, social and other factors. The com-
2 mittee shall be sensitive to the views of affected local communities.

3 (l) The committee may guarantee qualifying loans made by financial
4 intermediaries in order to facilitate investment by the intermediaries
5 in specific enterprises or projects.

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

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

16 Sec. 37.09.140. INITIAL DETERMINATIONS. Before beginning its
17 financing operations, the policy board shall render a detailed report to
18 the legislature which shall

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

21 (2) define the size and nature of projects which are feasible
22 for corporation financing;

23 (3) determine specific projects which are feasible for corpo-
24 ration and private financing;

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

27 (5) forecast the capital requirements of the corporation for
28 the first three years of its operations.

29 Sec. 37.09.150. REPORTS AND PUBLICATIONS. The policy board shall

1 publish an annual report in easily understandable language to the gover-
2 nor, legislature and the public. Each report shall include financial
3 statements audited by independent outside auditors, a statement of the
4 amount of money received by the corporation from each source during the
5 period covered, a statement of corporation investments, a description of
6 corporation investment activity during the period covered by the report,
7 an analysis of economic and other effects of investment decisions in-
8 cluding, but not limited to, the effects on employment, income distri-
9 bution, environment, health, social and other factors, and any other
10 information the policy board believes would be of interest to the gover-
11 nor, the legislature and the public. The corporation may also publish
12 such other reports as it considers desirable to carry out its purpose.

13 Sec. 37.09.160. CONFLICT OF INTEREST. (a) Members of the policy
14 board and the committee are subject to the provisions of AS 39.50.

15 (b) Members of the policy board and the committee shall disclose
16 their financial interest in an investment proposal and disqualify them-
17 selves from voting on any investment proposal in which they have a
18 financial interest.

19 Sec. 37.09.170. POLITICAL ACTIVITIES. The members of the policy
20 board and the committee and officers and staff of the corporation may
21 not engage in partisan political activities. The resources of the
22 corporation may not be used to finance any partisan political activi-
23 ties.

24 Sec. 37.09.180. PUBLIC ACCESS TO INFORMATION. Information in the
25 possession of the corporation is a public record, except that infor-
26 mation which discloses the particulars of the business or affairs of a
27 private enterprise or investor is confidential and is not a public
28 record. Confidential information may be disclosed only for the purposes
29 of an official law enforcement investigation or when its production is

1 required in a court proceeding. These restrictions do not prohibit the
2 publication of statistics presented in a manner that prevents the iden-
3 tification of particular reports, items, persons, or enterprises.

4 Sec. 37.09.190. TAX EXEMPTION. The corporation is exempt from all
5 taxes and assessments in the state. All security instruments issued by
6 the corporation, their transfer, and their income are exempt from all
7 taxes and assessments in the state.

8 Sec. 37.09.200. DEFINITIONS. In this chapter

9 (1) "board" or "policy board" means the Alaska Enterprise In-
10 vestment Corporation Policy Board established by AS 37.09.020;

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

13 (3) "committee" means the Investment Committee established by
14 AS 37.09.060;

15 (4) "corporation" means the Alaska Enterprise Investment
16 Corporation.

17 * Sec. 2. AS 39.25.110 is amended by adding a new paragraph to read:

18 (22) members of the policy board and Investment Committee, and
19 the president, officers, and staff of the Alaska Enterprise Investment
20 Corporation.

21 * Sec. 3. AS 39.50.200(9) is amended by adding a new subparagraph to
22 read:

23 (QQ) Alaska Enterprise Investment Corporation Policy
24 Board and Investment Committee.

25 * Sec. 4. TRANSITION. (a) The commissioner of revenue shall transfer
26 one-sixth of the funds of the Alaska permanent fund to the Alaska Enterprise
27 Investment Corporation established by this Act after request for transfer is
28 made by the policy board of the corporation.

29 (b) The Alaska Enterprise Investment Corporation may not expend funds

1 for any purpose other than normal operating expenses of the corporation until
2 the paid-in capital of the corporation reaches \$50,000,000. Other funds of
3 the corporation including the funds received under AS 37.09.010 in sec. 1 of
4 this Act shall be invested as surplus funds under AS 37.09.120(b)(2) in sec.
5 1 of this Act until the paid-in capital reaches \$50,000,000.

6 * Sec. 5. Section 4 of this Act takes effect upon transfer of one-sixth
7 of the funds of the Alaska permanent fund to the Alaska Enterprise Investment
8 Corporation as provided in sec. 4(a) of this Act. The remainder of this Act
9 takes effect immediately in accordance with AS 01.10.070(c).