

ALASKA LEGISLATURE SPECIAL COMMITTEE / SUBJECT FILES 86/2

245 SCOMM 9: HOUSE SPEC. COMM. ON PERMANENT FUND 1977-78

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

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

8 (b) Members of the investment committee shall disclose their
9 financial interest in an investment proposal and disqualify themselves
10 from voting on any investment proposal in which they have a financial
11 interest. The committee may not make an investment in any project or
12 enterprise in which officers of the bank have a financial interest.
13 Members of the policy board are prohibited from all attempts to influ-
14 ence the investment committee, its president or staff in the discharge
15 of their ordinary operating duties. All officers of the investment fund
16 in the discharge of their offices owe their duty entirely to the invest-
17 ment fund and no other authority.

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

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

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

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

7 Sec. 44.55.190. DEFINITIONS. In this chapter

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

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

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

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

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

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

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

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

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

26 (OO) Alaska Permanent Fund Board of Trustees.

27 * Sec. 6. This Act takes effect immediately in accordance with AS 01.10.-
28 070(c).

w.o. 4350
12/9/77

1 IN THE HOUSE

2 HOUSE BILL NO.

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 TENTH LEGISLATURE - SECOND SESSION

5 A BILL

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

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

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

10 ARTICLE IV. STATE INVESTMENT OVERSIGHT COMMITTEE.

11 Sec. 24.20.600. STATE INVESTMENT OVERSIGHT COMMITTEE ESTABLISHED.

12 The State Investment Oversight Committee is established as a permanent
13 interim committee of the legislature. The establishment of the com-
14 mittee recognizes the need of the legislature for technical review and
15 oversight of the performance of all agencies of the state which perform
16 lending, borrowing or investment functions.

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

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

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

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

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

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

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

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

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

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

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

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

10 (6) make recommendations concerning the structure and operat-
11 ing practices of all agencies of the state which perform lending,
12 borrowing or investment functions;

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

17 Sec. 24.20.660. STAFF. The legislative audit division shall
18 provide staff reasonably necessary for the conduct of the committee
19 duties. The committee may hire and determine the salary of the adminis-
20 trative support staff it considers necessary within the limit of the
21 budget approved by the legislature.

22 Sec. 24.20.670. DUTIES. The committee shall

23 (1) report to the legislature its recommendations relating to
24 the confirmation of suggested appointees to the Alaska Permanent Fund
25 Board of Trustees, the Board of Trustees of the Alaska Renewable Re-
26 sources Corporation, and the Alaska Enterprise Investment Fund Policy
27 Board;

28 (2) annually review the long-range operating plans of all
29 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

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

4 Sec. 37.13.020. FINDINGS. The people of the state, by constitu-
5 tional amendment, have required the placement of at least 25 per cent of
6 all mineral lease rentals, royalties, royalty sale proceeds, and federal
7 mineral revenue sharing payments and bonuses received by the state into
8 a permanent fund. The legislature finds that

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

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

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

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

21 Sec. 37.13.040. ALASKA PERMANENT FUND BOARD OF TRUSTEES. There is
22 established the Alaska Permanent Fund Board of Trustees. The permanent
23 fund board of trustees is a public corporation and government instru-
24 mentality in the Department of Revenue but has a legal existence inde-
25 pendent of and separate from the state. The purpose of the board is to
26 manage and invest the assets of the permanent fund in accordance with
27 the guidelines established in this chapter.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

18 Sec. 37.13.150. BOARD BUDGET. The board's operating budget is
19 from the general fund and is subject to the Executive Budget Act (AS
20 37.07).

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

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

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

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

14 CHAPTER 55. THE ALASKA ENTERPRISE INVESTMENT FUND.

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

22 (b) One-sixth of the receipts of all mineral lease rentals, roy-
23 alties, royalty sale proceeds, and federal mineral revenue sharing pay-
24 ments and bonuses allocated to the permanent fund shall be paid directly
25 into the investment fund until a total of \$100,000,000 has been paid in.

26 Sec. 44.55.020. ALASKA ENTERPRISE INVESTMENT FUND POLICY BOARD.

27 (a) There is established the Alaska Enterprise Fund Policy Board con-
28 sisting of a person employed in the executive branch of state government
29 appointed by the governor and six public members appointed by the

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

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

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

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

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

1 the member shall be reinstated to his position.

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

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

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

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

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

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

26 (4) review quarterly reports from the investment committee
27 concerning investment decisions and investment supervision, but the
28 board may not impose an investment decision upon, or override an invest-
29 ment 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

1 exercise of its powers and functions;

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

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

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

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

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

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

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

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

25 Sec. 44.55.120. INVESTMENTS. (a) In making investments, the
26 investment committee and staff shall exercise the judgment and care
27 under the circumstances then prevailing which a person of ordinary
28 prudence, discretion, and intelligence exercises in the management of
29 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~~ ^{equity 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 ~~\$5,000,000~~ ^{\$1,500,000}, whichever is less, in a single project unless the legislature has ~~\$2,500,000~~ 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

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

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

11 (j) The committee shall seek to maintain a reasonable diversifi-
12 cation in its investments.

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

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

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

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

1 report the results to the policy board.

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

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

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

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

16 (3) determine specific projects which are feasible for invest-
17 ment fund and private financing;

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

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

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

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

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

8 (b) Members of the investment committee shall disclose their
9 financial interest in an investment proposal and disqualify themselves
10 from voting on any investment proposal in which they have a financial
11 interest. The committee may not make an investment in any project or
12 enterprise in which officers of the bank have a financial interest.
13 Members of the policy board are prohibited from all attempts to influ-
14 ence the investment committee, its president or staff in the discharge
15 of their ordinary operating duties. All officers of the investment fund
16 in the discharge of their offices owe their duty entirely to the invest-
17 ment fund and no other authority.

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

23 Sec. 44.55.170. PUBLIC ACCESS TO INFORMATION. Information in the
24 possession of the investment fund is a public record, except that infor-
25 mation which discloses the particulars of the business or affairs of a
26 private enterprise or investor is confidential and is not a public
27 record. Confidential information may be disclosed only for the purposes
28 of an official law enforcement investigation or when its production is
29 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).

11/14/77

4350

#3

1 IN THE HOUSE

2 HOUSE BILL NO.

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 TENTH LEGISLATURE. - SECOND SESSION

5 A BILL

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

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

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

10 ARTICLE IV. STATE INVESTMENT OVERSIGHT COMMITTEE.

11 Sec. 24.20.600. STATE INVESTMENT OVERSIGHT COMMITTEE ESTABLISHED.

12 The State Investment Oversight Committee is established as a permanent
13 interim committee of the legislature. The establishment of the committee
14 recognizes the need of the legislature for technical review and oversight
15 of the performance of all agencies of the state which perform lending,
16 borrowing or investment functions.

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

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

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

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

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

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

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

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

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

1 (3) require all state officials and agencies of state govern
2 ment to give full cooperation to the committee or its staff in assembli
3 and furnishing requested information;

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

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

9 (6) make recommendations concerning the structure and operat
10 ing practices of all agencies of the state which perform lending, borro
11 ing or investment functions;

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

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

19 Sec. 24.20.670. DUTIES. The committee shall

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

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

27 (3) review quarterly reports from the permanent fund board of
28 trustees, renewable resources development fund commission, and develop-
29 ment 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 ^{Endowment Investment Fund} 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;

(3) the permanent fund should be used as a savings device *Spore of value* 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 guideline 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.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

23 (f) Subject to (a) of this section the board may invest its assets
24 in obligations of the United States or obligations for which the faith
25 and credit of the United States are pledged for payment of principal and
26 interest; loans secured by first liens on unencumbered realty or lease-
27 hold; and corporate stock and corporate obligations listed on a recog-
28 nized stock exchange. No investment may be made in a security which is
29 in default or in which default is imminent to principal or interest at

why only mining cos

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

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

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

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

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

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

4 CHAPTER 55. THE ALASKA ENTERPRISE INVESTMENT FUND.

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

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

16 Sec. 44.55.020. ALASKA ENTERPRISE INVESTMENT FUND POLICY BOARD.

17 (a) There is established the Alaska Enterprise Investment Fund Policy
18 Board, consisting of the commissioner of revenue, the commissioner of
19 commerce and economic development, the commissioner of community and
20 regional affairs, or their designees, and six members to be appointed by
21 the governor and confirmed by a majority of the members of the legisla-
22 ture in joint session. Two members shall have broad experience in investmen-
23 ture finance, one member shall represent organized labor, and three members
24 shall represent local communities.

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

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

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

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

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

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

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

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

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

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

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

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

20 (4) review quarterly reports from the investment committee
21 concerning investment decisions and investment supervision, but the
22 board may not impose an investment decision upon, or override an invest-
23 ment decision of, the investment committee;

24 (5) review, consider and approve policies;

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

29 Sec. 44.55.050. ALASKA ENTERPRISE INVESTMENT FUND INVESTMENT

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

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

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

17 Sec. 44.55.060. DUTIES OF THE INVESTMENT COMMITTEE. The invest-
18 ment committee has sole responsibility to approve all investment pro-
19 posals.

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

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

25 Sec. 44.55.090. FINDINGS.

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

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

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

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

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

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

- 12 (1) adopt, alter and use a corporate seal;
- 13 (2) prescribe, adopt, amend, and repeal bylaws;
- 14 (3) sue and be sued in the name of the investment fund;
- 15 (4) borrow funds, and in that connection furnish such collat-
16 eral or other security as it determines, except that investment fund
17 borrowing may not exceed one-half of its paid-in capital;
- 18 (5) guarantee obligations of another corporation or legal
19 entity in order to facilitate their sale;
- 20 (6) enter into agreements necessary or convenient in the
21 exercise of its powers and functions;
- 22 (7) acquire, hold, use, lease, sell or otherwise dispose of
23 property of any kind, real, personal or mixed, or any interest in it;
- 24 (8) contract with state, federal and other agencies to
25 develop needed information and analyses;
- 26 (9) do all acts and things necessary, convenient or desirable
27 to carry out the powers granted or implied in this chapter.

28 (b) In carrying out the corporate purposes of the investment fund,
29 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 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) 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 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

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

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

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

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

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

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

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

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

7 (j) The committee shall seek to maintain a reasonable diversifi-
8 cation in its investments.

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

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

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

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

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

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

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

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

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

12 (3) determine specific projects which are feasible for invest
13 ment fund and private financing;

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

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

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

1 it considers desirable to carry out its purpose.

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

4 (b) Members of the investment committee shall disclose their
5 financial interest in an investment proposal and disqualify themselves
6 from voting on any investment proposal in which they have a financial
7 interest. The committee may not make an investment in any project or
8 enterprise in which officers of the bank have a financial interest.
9 Members of the policy board are prohibited from all attempts to influ-
10 ence the investment committee, its president or staff in the discharge
11 of their ordinary operating duties. All officers of the investment fund
12 in the discharge of their offices owe their duty entirely to the invest-
13 ment fund and no other authority.

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

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

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

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

3 Sec. 44.55.190. DEFINITIONS. In this chapter

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

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

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

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

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

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

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

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

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

22 (OO) Alaska Permanent Fund Board of Trustees.

23 * Sec. 6. This Act takes effect immediately in accordance with AS 01.10.-
24 070(c).

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✓ or the appointment of his successor.

minority members?
? (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,

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

4 (3) require all state officials and agencies of state govern-
5 ment to give full cooperation to the committee or its staff in assembling
6 and furnishing requested information;

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

10 (5) prepare and distribute reports, memoranda, or other neces-
11 sary materials;

12 (6) make recommendations concerning the structure and operat-
13 ing practices of the permanent fund, renewable resources development
14 fund, and development bank;

15 (7) receive and review reports and post-audit analyses con-
16 ducted by the Legislative Budget and Audit Committee relating to the
17 permanent fund, renewable resources development fund, and development
18 bank.

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

22 Sec. 24.20.570. DUTIES. The committee shall

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

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

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

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

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

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

15 CHAPTER 13. ALASKA PERMANENT FUND.

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

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

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

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

1 members.

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

7 Sec. 37.13.050. REMOVAL AND VACANCIES. (a) The governor may
8 remove a trustee from office by and with the consent of a majority of
9 the members of the legislature in joint session. If the legislature is
10 not in session, the governor may suspend a member of the board for
11 cause. Upon suspension, a trustee may not participate in board business
12 and may not be counted for purposes of establishing a quorum. A sus-
13 pended member shall continue to receive his salary as a trustee until
14 the legislature in joint session consents to his removal. If the legis-
15 lature refuses to consent to his removal, the trustee shall be reinstated
16 to his position.

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

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

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

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

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

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

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

13 *none &* Sec. 37.13.080. COMPENSATION OF TRUSTEES. Trustees are in the
14 exempt service under AS 39.25 and receive an annual salary equal to that
15 of a superior court judge.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

total activity to date

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

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

9 CHAPTER 55. ALASKA DEVELOPMENT BANK.

10 Sec. 44.55.010. CREATION OF BANK; FUNDING. (a) For the purpose
11 of encouraging and promoting the investment of public and private capi-
12 tal for community development purposes, encouraging and assisting the
13 participation of private capital in private enterprises of benefit to
14 Alaskans, seeking to smooth the cyclical pattern of growth of the Alaska
15 economy, assisting the diversification of the economy of Alaska, and
16 supplementing private investment when sufficient private capital is not
17 available on reasonable terms and conditions, there is created the
18 Alaska Development Bank. The bank is a public corporation and govern-
19 ment instrument in the Department of Revenue but has legal existence
20 independent of and separate from the state. The exercise by the bank of
21 the powers conferred by this chapter is considered an essential govern-
22 mental function of the state.

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

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

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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

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

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

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

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

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

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

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

28 (4) review quarterly reports from the investment committee
29 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

1 development bank is exempt from the provisions of the Executive Budget
2 Act (AS 37.07).

3 Sec. 44.55.080. PERSONNEL OF BANK. The policy board and invest-
4 ment committee members and officers and staff of the development bank
5 are in the exempt service under AS 39.25.

6 Sec. 44.55.090. PURPOSE AND POWERS OF THE BANK. (a) The purpose
7 of the development bank is to assist in the development of renewable
8 resources industry in the state by assisting, after determining the
9 feasibility of specific projects, in the financing of projects in con-
10 junction with other sources.

11 (b) In carrying out the corporate purposes of the bank, the policy
12 board has power to

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

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

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

16 (4) borrow funds, and in that connection furnish such collat-
17 eral or other security as it determines, except that bank borrowing may
18 not exceed one-half of the amounts invested in investment-grade securi-
19 ties under sec. 100(b) of this chapter;

20 (5) guarantee securities in which the investment committee
21 has invested in order to facilitate their sale;

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

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

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

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

1 (c) In carrying out the corporate purposes of the bank, the in-
2 vestment committee has the power to

3 (1) invest, in such form as it considers appropriate, includ-
4 ing without limitation, by purchase of the capital stock of or the lend-
5 ing of money to, renewable resource projects, except that any investment
6 in the capital stock of or other ownership interest in such project may
7 not exceed 50 per cent of the capital stock of, or other ownership
8 interest in, the project, and no loan or other investment in the project
9 by the bank may exceed 90 per cent of the cost of the project unless, in
10 the judgment of the committee, additional amounts must be loaned to
11 protect the interests of the bank;

12 (2) deposit bank funds, or invest bank funds in such oblig-
13 ations as it may determine;

14 (3) buy and sell securities the bank has issued or guaranteed
15 or in which it has invested;

16 (4) purchase currently sound evidence of indebtedness from
17 the tourism fund, the agriculture revolving loan fund and the small
18 business development loan fund if the loan was made after the effective
19 date of this Act in support of renewable resource development and if the
20 loan meets the criteria of sec. 100 of this chapter;

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

23 Sec. 44.55.100. INVESTMENTS. (a) In making investments, the
24 investment committee and staff shall exercise the judgment and care
25 under the circumstances then prevailing which a person of ordinary
26 prudence, discretion, and intelligence exercises in the management of
27 his own affairs taking into consideration the probable income from the
28 investments as well as probable safety of principal.

29 (b) At least 40 per cent of the resources of the bank shall be

1 invested in investment-grade securities.

2 (c) The investment committee may invest not more than 30 per cent
3 of the resources of the bank to provide a reasonable proportion of
4 longer-term investment capital for financing the establishment, improve-
5 ment, and expansion of productive private enterprises which will benefit
6 Alaskans, and for which sufficient capital is not available from other
7 sources on reasonable terms. These investments may take the form of
8 equity, debt, or debt guarantees.

9 (d) The committee may invest no more than 30 per cent of the
10 resources of the bank in financing a reasonable proportion of the longer-
11 term investment capital needs for community development projects of
12 municipalities and public corporate entities and private dwellings in
13 Alaska for which sufficient financing is not available from other
14 sources on reasonable terms. These investments may take the form of
15 debt or debt guarantees.

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

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

23 (g) The committee shall only undertake its financing on terms and
24 conditions which it considers appropriate, taking into account the terms
25 and conditions normally obtained by private investors for similar fi-
26 nancing, the requirements of the enterprise or projects, the risks being
27 undertaken by the bank, and the participation of other investors.

28 (h) The committee may seek to revolve the bank's funds by selling
29 its investments to other investors whenever it can appropriately do so

*Set
scale of
policy*

1 on satisfactory terms.

2 (i) The committee shall seek to maintain a reasonable diversifi-
3 cation in its investments.

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

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

14 (l) The committee may guarantee qualifying loans made by financial
15 intermediaries in order to facilitate investment by the intermediaries
16 in specific enterprises or projects whose individual financing require-
17 ments are not, in the opinion of the committee, large enough to warrant
18 its direct supervision.

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

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

29 Sec. 44.55.110. INITIAL DETERMINATIONS. Before beginning its

1 financing operations, the policy board shall render a detailed report to
2 the legislature which shall

3 (1) define the renewable resource industry sectors which need
4 financing for expansion of existing projects or the development of new
5 projects;

6 (2) define the size and nature of projects which are feasible
7 for bank financing;

8 (3) determine specific projects which are feasible for bank
9 and private financing;

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

12 (5) forecast the capital requirements of the bank for the
13 first three years of its operations.

14 Sec. 44.55.120. REPORTS AND PUBLICATIONS. The policy board shall
15 publish an annual report to the governor, legislature and the public.
16 Each report shall include financial statements audited by independent
17 outside auditors, a statement of the amount of money received by the
18 bank from each source during the period covered, a statement of bank
19 investments, a description of bank investment activity during the
20 period covered by the report, an analysis of economic and other effects
21 of investment decisions including, but not limited to, the effects on
22 employment, income distribution, environment, health, social and other
23 factors, and any other information the policy board believes would be of
24 interest to the governor, the legislature and the public. The bank may
25 also publish such other reports as it considers desirable to carry out
26 its purpose.

27 Sec. 44.55.130. CONFLICT OF INTEREST. (a) Members of the policy
28 board and investment committee are subject to the provisions of AS 39.50.

29 (b) Members of the investment committee shall disclose their

1 financial interest in an investment proposal and disqualify themselves
2 from voting on any investment proposal in which they have a financial
3 interest. The committee may not make an investment in any project or
4 enterprise in which officers of the bank have a financial interest.
5 Members of the policy board are prohibited from all attempts to influ-
6 ence the investment committee, its president or staff in the discharge
7 of their ordinary operating duties. All officers of the bank in the
8 discharge of their offices owe their duty entirely to the bank and no
9 other authority.

10 Sec. 44.55.140. POLITICAL ACTIVITIES. The members of the policy
11 board, members of the investment committee, and officers and staff of
12 the bank may not engage in partisan political activities. The resources
13 of the bank may not be used to finance any partisan political activities.

14 Sec. 44.55.150. PUBLIC ACCESS TO INFORMATION. Information in the
15 possession of the bank is a public record, except that information which
16 discloses the particulars of the business or affairs of a private enter-
17 prise or investor is confidential and is not a public record. Con-
18 fidential information may be disclosed only for the purposes of an
19 official law enforcement investigation or when its production is re-
20 quired in a court proceeding. These restrictions do not prohibit the
21 publication of statistics presented in a manner that prevents the
22 identification of particular reports, items, persons, or enterprises.

23 Sec. 44.55.160. TAX EXEMPTION. The bank is exempt from all taxes
24 and assessments in the state. All security instruments issued by the
25 bank, their transfer and their income are exempt from all taxes and
26 assessments in the state.

27 Sec. 44.55.170. DEFINITIONS. In this chapter

28 (1) "bank" or "development bank" means the Alaska Development
29 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

power? (A) making, processing, preparing or producing in any manner goods or products of agriculture, fisheries, or forestry; or

(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 participation 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, royalty 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. ~~POWERS OF THE BOARD OF DIRECTORS~~ BOARD OF DIRECTORS. The board ~~may~~may

(1) finance all costs of a project which the directors deem recoverable and necessary to the carrying out of the bank's purpose, including, 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 ~~deemed~~ 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 ^{but not of} within the Department of Revenue the Alaska Permanent Fund ^{Board of Trustees} ~~Commission~~. 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.

trustee
Sec. 37.13.050. REMOVAL OF COMMISSIONERS. The governor may remove a *trustee* ~~commissioner~~ from office by and with the consent of a majority of the legislature *in joint session*.

trustee
Sec. 37.13.060. QUALIFICATIONS OF COMMISSIONERS. (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.

at least
(c) One member of the commission shall ~~have-a-recognized~~ *be knowledgeable and experienced in* be a graduate of an accredited university with a major or a degree in finance, ~~accounting,~~ *investments* 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. *) open*

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, ^{The commission may not} or guaranty loans made by any other program, ^{or association} ~~or association~~ ^{COMMISSION BUDGET}

Sec. 37.13.130. PERMANENT FUND INCOME; ^(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} ~~retained by the commission in amounts~~ needed 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 ^{Legislative Investment} ~~Permanent Fund~~ 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 prudence, 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 ^{Alaska}(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, 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 ~~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 reports presented to it by the commission, ^{and by} 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

See Appendix for Reporter's Notes, Court Citations, and Cross References

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

See Appendix for Reporter's Notes, Court Citations, and Cross References

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.

See Appendix for Reporter's Notes, Court Citations, and Cross References

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

See Appendix for Reporter's Notes, Court Citations, and Cross References

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*.

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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.

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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

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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

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§ 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.

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§ 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-