

ALASKA LEGAL SERVICES PROJECT / 86/2

246 COMM 9: HOUSE SPEC. COMM. PERMANENT FUND 1977-78

*f. Cross reference.* As to the liability of a corporate trustee for deposits of trust funds in its own banking department, see § 170, Comment *m*.

### § 181. Duty to Make the Trust Property Productive

The trustee is under a duty to the beneficiary to use reasonable care and skill to make the trust property productive.

#### Comment:

*a. Land.* A trustee of land is normally under a duty to lease it or to manage it so that it will produce income. By the terms of the trust, however, it may be his duty to give possession of the land to the beneficiary. It may be the duty of the trustee merely to hold the land without making it productive. This is the case where the trust is for a merely temporary purpose, as where the owner of land transfers it in trust to convey it to a third person immediately or as soon as the third person makes a certain payment. Similarly also the trustee is not under a duty to make the land productive if the land is unimproved land which cannot be leased and cannot otherwise be made productive without making improvements which the trustee is not empowered to make.

As to the duty of the trustee to sell unproductive land where the trust is for beneficiaries in succession, see § 240.

As to the power of a trustee to make leases, see § 189.

*b. Chattels.* In the case of chattels, unless it is the duty of the trustee to give possession of them to the beneficiary, it is ordinarily the duty of the trustee to sell or lease them.

*c. Money.* In the case of money, it is normally the duty of the trustee to invest it so that it will produce an income. The trustee is liable if he fails to invest trust funds which it is his duty to invest for a period which is under all the circumstances unreasonably long. If, however, the delay is not unreasonable, he is not liable.

If the trustee commits a breach of trust in neglecting within a reasonable time to invest the money, he is chargeable with the amount of income which normally would accrue from proper trust investments. See § 207.

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

## Illustration:

1. A bequeaths \$100,000 to B in trust to invest it and pay the income to C. B neglects to make any investment. The usual rate of income accruing from trust investments is 4 per cent. B is chargeable with interest at 4 per cent from the time when he should have invested the money.

*d. Cross reference.* As to what are proper trust investments, see § 227.

## § 182. Duty to Pay Income to Beneficiary

Where a trust is created to pay the income to a beneficiary for a designated period, the trustee is under a duty to the beneficiary to pay to him at reasonable intervals the net income of the trust property.

See Reporter's Note.

## Comment:

*a.* As to what is included in net income, see § 233.

*b. Power to withhold.* The trustee can properly withhold a reasonable amount of the income to meet present or anticipated expenses which are properly chargeable to income. So also, the trustee can properly withhold income for his protection where there is reasonable doubt as to the amount of income payable to the beneficiary.

*c. Terms of the trust.* By the terms of the trust the trustee may be authorized or directed to accumulate the whole or a part of the income. If such a provision is not invalid, the trustee is not under a duty to pay to the beneficiary during the period in which he is authorized or directed to accumulate it such income as he is authorized to accumulate. As to the validity of provisions for accumulation, see § 62, Comment *t*.

To the extent to which the trustee by the terms of the trust has discretion to withhold the income from the beneficiary, he is not under a duty to pay it to the beneficiary. See § 128, Comment *d*; compare § 155.

If by the terms of the trust the trustee is authorized to apply the income for the support of the beneficiary, the trustee is not under a duty to the beneficiary to pay the income to him. See § 128, Comment *e*; compare § 154.

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

*d. Where the beneficiary is under an incapacity.* Where a beneficiary who is entitled to the benefit of the income is under an incapacity, as, for example, where he is an infant or where he has been judicially declared to be insane, the question arises as to what disposition should be made by the trustee of such income. If by the terms of the trust, the trustee is, expressly or otherwise, authorized to apply the income for the benefit of the beneficiary, he can properly do so, and it is unnecessary that a guardian of the beneficiary should be appointed or that, if one is appointed, the trustee should pay the income to him. Where the trustee is directed and not merely authorized so to apply the income, he cannot properly pay the income to the guardian, since this would be a delegation of his duty and would result in subjecting the estate unnecessarily to double commissions.

If by the terms of the trust the trustee is directed to pay the income to the beneficiary and is not authorized, expressly or otherwise, to apply the income for his benefit, it is the duty of the trustee to pay the income to the guardian instead of applying it for the beneficiary. If, however, the whole of the income is not needed for the proper support of the beneficiary, the trustee may be justified in accumulating the balance of the income for him, instead of paying it to the guardian. If the trustee applies the income in any reasonable manner for the support of the beneficiary, he is entitled to credit in his accounts, since otherwise the beneficiary would be unjustly enriched.

If the beneficiary is not under a legal disability, so that a guardian need not be appointed, as, for example, where the beneficiary is so ill that he cannot act rationally, and the trustee applies income for his benefit, the trustee is entitled to credit in his accounts for the amounts so applied, if under the circumstances it was reasonable that such application should be made.

*Cross references.* As to the duty of the trustee upon the termination of the trust to pay the principal to the beneficiary entitled thereto, see § 345.

As to the disposition of income on the death of the life beneficiary, see § 235 A.

### § 183. Duty to Deal Impartially with Beneficiaries

When there are two or more beneficiaries of a trust, the trustee is under a duty to deal impartially with them.

**Comment:**

*a.* The rule stated in this Section is applicable whether the beneficiaries are entitled to interests in the trust property simultaneously or successively.

By the terms of the trust the trustee may have discretion to favor one beneficiary over another. The court will not control the exercise of such discretion, except to prevent the trustee from abusing it. See § 187.

As to successive beneficiaries, see §§ 232-241.

**§ 184. Duty with Respect to Co-trustees**

If there are several trustees, each trustee is under a duty to the beneficiary to participate in the administration of the trust and to use reasonable care to prevent a co-trustee from committing a breach of trust or to compel a co-trustee to redress a breach of trust.

**Comment:**

*a. Scope of the rule.* It is ordinarily a breach of trust for a trustee to allow a co-trustee to have such control of the trust property as to enable him to misappropriate it. Thus, shares of stock held in trust by several trustees should be registered in the names of all the trustees. If a trustee has reason to suspect that a co-trustee is committing or attempting to commit a breach of trust, he must take reasonable steps to prevent him from so doing.

*b. Terms of the trust.* By the terms of the trust, where there are several trustees, it may be provided that one or more of the trustees may be permitted to have exclusive possession or control of the whole or a part of the trust property.

*c. Where co-trustee refuses to concur.* Where there are several trustees, action by all of them is necessary to the exercise of powers conferred upon them. See § 194. If the circumstances are such that it is the duty of the trustees to exercise a power conferred upon them, and one of them refuses to concur in the exercise of the power, the other trustees are not justified in merely acquiescing in the non-exercise of the power. See § 185. In such a case it is their duty to apply to the court for instructions.

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

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*d. Cross references.* As to delegation by a trustee to a co-trustee, see § 171.

As to the power of a trustee to maintain a suit against his co-trustee, see § 200, Comment *e*.

As to the liability of a trustee for breach of trust committed by his co-trustee, see § 221.

### § 185. Duty with Respect to Person Holding Power of Control

If under the terms of the trust a person has power to control the action of the trustee in certain respects, the trustee is under a duty to act in accordance with the exercise of such power, unless the attempted exercise of the power violates the terms of the trust or is a violation of a fiduciary duty to which such person is subject in the exercise of the power.

See Reporter's Note.

#### Comment:

*a. In general.* The provisions of the trust instrument may give a person the power to control the action of the trustee in certain respects. This person may be a co-trustee, the settlor, a beneficiary, or a third person otherwise unconnected with the trust. The relationship of the holder of the power is unimportant, except in so far as it may be a factor in determining the nature or extent of the power. See Comment *a*.

*b. Ordinary duty of trustee to comply.* Where by the terms of the trust it is provided that in the administration of the trust the trustee shall do certain acts if he is directed by another person to do them, it is ordinarily his duty to comply with such directions and he is ordinarily liable if he fails to do so. So also, where by the terms of the trust it is provided that the trustee shall not do certain acts without the direction or consent of another, it is ordinarily his duty not to do such acts without such direction or consent. Thus, if it is provided by the terms of the trust that the trustee shall invest in such securities as the settlor or a third person shall direct, or shall sell such securities as he shall direct, or that the trustee shall not invest in any securities without his approval, or shall not sell securities without his con-

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## § 187. Control of Discretionary Powers

Where discretion is conferred upon the trustee with respect to the exercise of a power, its exercise is not subject to control by the court, except to prevent an abuse by the trustee of his discretion.

See Reporter's Note.

**Comment:**

*a. When powers are discretionary.* The exercise of a power is discretionary except to the extent to which its exercise is required by the terms of the trust or by the principles of law applicable to the duties of trustees. As to the principles of law applicable to the duties of trustees, see §§ 169-185.

By the terms of the trust or by the principles of law applicable to the duties of trustees, it may be the duty of the trustee to exercise a power conferred upon him, or, on the other hand, he may have discretion whether to exercise the power or not. Even though it is the duty of the trustee to exercise a power, he may have discretion as to the time, manner and extent of its exercise.

*b. Methods of control.* When the court controls the exercise of a power by the trustee, it may do so by directing him to act or refrain from acting; by setting aside the transaction where he has already acted; or by holding him liable for the results of his action or non-action. The court will sometimes remove a trustee or deny or diminish his compensation where he has abused discretion conferred upon him.

*c. Kinds of discretionary powers.* The rule stated in this Section is applicable both to the powers of managing the trust estate conferred upon the trustee either in specific words or otherwise, and also to such powers as may be conferred upon him to determine the disposition of the beneficial interest. Thus, it is applicable not only to powers to lease, sell or mortgage the trust property or to invest trust funds, but also to powers to allocate the beneficial interest among various beneficiaries, to determine the amount necessary for a beneficiary's support, or to terminate the trust.

As to a discretionary power to apply principal for the benefit of the income beneficiary, see § 128, Comment *i*.

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

Introduced: 3/3/77  
Referred: Special Committee  
on the Alaska Permanent Fund  
and Finance

1 IN THE HOUSE

BY THE RULES COMMITTEE BY  
REQUEST OF THE GOVERNOR

2 HOUSE BILL NO. 298

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 TENTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act relating to management of the Alaska Permanent  
7 Fund; and providing for an effective date."

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

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

10 CHAPTER 13. ALASKA PERMANENT FUND.

11 Sec. 37.13.010. ALASKA PERMANENT FUND. (a) Under art. IX, sec.  
12 15, of the Alaska Constitution, there is established as a separate  
13 fund, in the Department of Revenue, the Alaska Permanent Fund.

14 (b) There is created the Alaska Permanent Fund Corporation, a  
15 public corporation of the state. The corporation is an instrumentality  
16 of the state within the Department of Revenue but has a legal existence  
17 independent of and separate from the state and has continuing succession  
18 until its existence is terminated by law. The exercise by the corpora-  
19 tion of the powers conferred by this chapter is considered an essential  
20 governmental function of the state. The corporation shall manage and  
21 invest the principal of the permanent fund and shall distribute the  
22 income earned from the permanent fund in accordance with the provisions  
23 of this chapter.

24 Sec. 37.13.020. PURPOSE OF THE PERMANENT FUND. (a) The purpose  
25 of the permanent fund is to provide a means of conserving a portion of  
26 the state's revenues from mineral resources to the ultimate benefit of  
27 present and future generations of Alaskans. The revenues so conserved  
28 shall be invested in income-producing investments which will provide  
29 further benefits to present and future generations of Alaskans.

*Enables corp. to  
issue other than  
G.O. bonds which  
are tax exempt*

1 (b) Further benefits may be derived through use of the permanent  
2 fund to:

3 (1) assist the diversification of the economy of Alaska by  
4 making sound investments in Alaska's renewable and non-renewable  
5 resources;

6 (2) seek to smooth the cyclical pattern of growth of the  
7 Alaska economy;

8 (3) encourage and assist the participation of private  
9 capital, from both within and outside Alaska, in private enterprises  
10 of benefit to Alaskans;

11 (4) promote the investment of public and private capital  
12 for community development purposes;

13 (5) supplement private investment when sufficient private  
14 capital is not available on reasonable terms and conditions;

15 (6) seek to preserve the permanent fund capital for future  
16 generations through sound investments in investment grade securities.

17 (c) The permanent fund shall be guided in all its decisions by  
18 the purpose set out in (a) of this section.

19 Sec. 37.13.030. COMPOSITION OF THE PERMANENT FUND. The permanent  
20 fund consists of 50 per cent of all mineral lease rentals, royalties,  
21 royalty sale proceeds, federal mineral revenue sharing payments and  
22 bonuses received by the state. The commissioner of revenue shall  
23 deposit in the permanent fund 50 per cent of the receipts from these  
24 sources at least once each month. Income from investment of the perma-  
25 nent fund does not become a part of the permanent fund and shall be  
26 deposited in the general fund annually, except that income in the  
27 following amounts may be retained in the permanent fund and used as  
28 indicated:

29 (1) the amount needed to pay the operating and administrative

1 expenses of the corporation;

2 (2) any amount allocated to a reserve account established  
3 under sec. 110 of this chapter.

4 Sec. 37.13.040. INVESTMENT OF THE PERMANENT FUND. (a) The per-  
5 manent fund shall be used only for income-producing investments.

6 (b) At least 40 per cent of the resources of the permanent fund  
7 shall be invested in investment grade securities.

8 (c) The corporation may invest not more than 30 per cent of the  
9 resources of the permanent fund to provide a reasonable proportion of  
10 longer-term investment capital for financing the establishment, improve-  
11 ment, and expansion of productive private enterprises which will  
12 benefit Alaskans, and for which sufficient capital is not available  
13 from other sources on reasonable terms. These investments may take  
14 the form of equity, debt, or debt guarantees.

15 (d) The corporation may invest no more than 30 per cent of the  
16 resources of the permanent fund in financing a reasonable proportion  
17 of the longer-term investment capital needs for community development  
18 projects of municipalities and public corporate entities and private  
19 dwellings in Alaska for which sufficient financing is not available  
20 from other sources on reasonable terms. These investments may take  
21 the form of debt or debt guarantees.

22 Sec. 37.13.050. PERMANENT FUND POLICY BOARD. (a) There is  
23 established the Alaska Permanent Fund Policy Board, consisting of the  
24 commissioner of commerce and economic development, the commissioner of  
25 revenue, and seven members to be appointed by the governor. The seven  
26 appointed members must be Alaska residents and may not be employees of  
27 the state. Their term of office is four years, and they may be  
28 reappointed. Terms shall be staggered. Initial terms are one year  
29 for one member, two years for two members, three years for two members,

1 and four years for two members. Members may be removed for cause.  
2 Members may continue to serve until their successors are appointed.

3 (b) The president of the permanent fund, appointed under sec. 90  
4 of this chapter, shall serve as the chairman of the policy board, but  
5 is not a voting member.

6 (c) A quorum for the transaction of policy board business consists  
7 of at least two-thirds of the members. Decisions of the board must be  
8 made by a majority vote, including not less than a majority of the  
9 appointed members. The board shall hold at least one public meeting  
10 each year.

11 (d) Appointed members of the policy board are not entitled to  
12 compensation as such but are entitled to per diem and travel allowances  
13 as provided by law for members of state boards and commissions.

14 Sec. 37.13.060. DUTIES OF THE POLICY BOARD. The policy board  
15 shall:

16 (1) select and appoint the president and other members of  
17 the investment committee;

18 (2) annually review and approve long-range operating plans,  
19 to include an investment program based on sectoral analysis of the  
20 Alaska economy, the budget for the forthcoming year, and the financial  
21 plan for the following years;

22 (3) have sole responsibility for relations with the general  
23 public, legislature, executive, local communities, and special interest  
24 groups concerning all matters other than specific investments of the  
25 permanent fund;

26 (4) review quarterly reports from the investment committee  
27 concerning investment decisions and investment supervision;

28 (5) review, consider and approve policies;

29 (6) review and publish an annual report including financial

1 statements audited by independent outside auditors;

2 (7) establish an audit committee, consisting of the commis-  
3 sioner of revenue and other members of the policy board to be desig-  
4 nated by the board itself, which shall select the independent outside  
5 auditors, and receive all audit reports;

6 (8) decide appeals from interpretations of this chapter;

7 (9) determine the remuneration and terms of service of the  
8 president and other members of the investment committee;

9 (10) be prepared to present a complete report of investment  
10 programs, plans, performance, and policies to the finance committees  
11 of the Alaska Legislature within 30 days after the beginning of each  
12 regular session.

13 Sec. 37.13.070. PERMANENT FUND INVESTMENT COMMITTEE. (a) There  
14 is established the Alaska Permanent Fund Investment Committee, consist-  
15 ing of the president of the corporation, who shall serve as chairman,  
16 and four members appointed by the policy board. No member of the  
17 policy board may be a member of the investment committee. All members  
18 must be Alaska residents, may not be state employees, and must be  
19 persons of recognized competence and wide experience in investments,  
20 finance, and other business-management-related fields. Members may be  
21 reappointed or continue to serve until their successors are appointed.

22 (b) A quorum consists of four members of the investment committee.  
23 All decisions must be made by majority vote.

24 Sec. 37.13.080. DUTIES OF THE INVESTMENT COMMITTEE. The invest-  
25 ment committee has sole responsibility to approve all investment  
26 proposals and review all investments in investment grade securities.

27 Sec. 37.13.090. PERMANENT FUND PRESIDENT. The president of the  
28 corporation shall be appointed by the policy board for a term of five  
29 years, may be reappointed, and shall serve at the pleasure of the policy

1 board. The president

2 (1) has sole responsibility for presenting investment pro-  
3 posals to the investment committee;

4 (2) is responsible for the ordinary business of the corpora-  
5 tion and the organization, appointment, dismissal, and remuneration of  
6 the officers and staff;

7 (3) is responsible for making investments in investment  
8 grade securities, subject to review by the investment committee;

9 (4) shall establish and maintain adequate and appropriate  
10 organizational, operating, and financial controls.

11 Sec. 37.13.100. STATUS AND POWERS OF PERMANENT FUND CORPORATION.  
12 The CORPORATION is exempt from the provisions of the Executive Budget  
13 Act (AS 37.07). The president, officers, and staff of the corporation  
14 are in the exempt service under AS 39.25.

15 (b) The corporation has all powers necessary to carry out the  
16 purposes of this chapter including but not limited to the following:

17 (1) sue and be sued;

18 (2) adopt a seal;

19 (3) have perpetual succession;

20 (4) adopt and amend policies and operational procedures  
21 when not inconsistent with this chapter;

22 (5) make and execute contracts and other instruments;

23 (6) in its own name, own, exchange, transfer, lease, rent,  
24 convey, acquire, or dispose of by other means real and personal property.

25 Sec. 37.13.110. RESERVES. The corporation may establish, from  
26 income derived from its permanent fund reserve accounts to preserve  
27 the principal of the permanent fund, consistent with sound financial  
28 practices.

29 Sec. 37.13.120. OPERATIONAL PRINCIPLES. The operations of the

1 corporation shall be conducted in accordance with the following  
2 principles:

3 (1) the prudent-person rule of investments is applicable;  
4 in making investments, the investment committee and staff shall exercise  
5 the judgment and care under the circumstances then prevailing which a  
6 person of ordinary prudence, discretion, and intelligence exercises in  
7 the management of his or her own affairs not in regard to speculation  
8 but in regard to the permanent disposition of funds, considering the  
9 probable income from them as well as probable safety of principal;

10 (2) the corporation may not undertake any financing for  
11 which, in its opinion, sufficient private capital could be obtained on  
12 reasonable terms;

13 (3) the corporation may not assume responsibility for  
14 managing any enterprise or project in which it has invested and may  
15 not exercise voting rights for that purpose or for any other purpose  
16 which, in its opinion, properly is within the scope of managerial  
17 control;

18 (4) the corporation shall only undertake its financing on  
19 terms and conditions which it considers appropriate, taking into  
20 account the requirements of the enterprise or project, the participation  
21 of other investors, the risks being undertaken by the corporation and  
22 the terms and conditions normally obtained by private investors from  
23 similar financing, unless the legislature has appropriated funds for  
24 subsidizing investments which, in the opinion of the corporation are  
25 of such high priority that special terms and conditions are appropriate;

26 (5) the corporation may seek to revolve its funds by selling  
27 its investments to other investors whenever it can appropriately do so  
28 on satisfactory terms;

29 (6) the corporation shall seek to maintain a reasonable

1 diversification in its investments;

2 (7) the corporation shall only consider investment pro-  
3 posals after the applicant for an investment has submitted a detailed  
4 proposal to the corporation staff, and the staff has prepared a written  
5 report recommending the investment after a study of its merits;

6 (8) the corporation shall make investment decisions with  
7 regard to economic and other considerations, including consideration  
8 of employment, income distribution, environment, health, social, and  
9 other factors; the corporation shall be sensitive to the views of  
10 affected local communities and shall include an analysis of those  
11 views in proposals for large investments;

12 (9) the corporation may make investments in financial  
13 intermediaries in order to facilitate investment by the intermediaries  
14 in specific enterprises or projects whose individual financing require-  
15 ments are not, in the opinion of the corporation, large enough to  
16 warrant its direct supervision;

17 (10) the corporation shall provide for operational and  
18 performance evaluations (post-audits) of its investments and invest-  
19 ment programs, and report the results to the policy board audit  
20 committee;

21 (11) nothing in this section prevents the corporation, in  
22 the event of actual or threatened default on any of the permanent fund  
23 investments, actual or threatened insolvency of the enterprise in  
24 which the investment has been made, or other situations which, in the  
25 opinion of the corporation, threaten to jeopardize the investment,  
26 from taking the action and exercising the rights it considers necessary  
27 for the protection of its interests.

28 Sec. 37.13.130. BORROWING POWERS. The corporation may borrow  
29 funds, and, in that connection, may furnish the collateral or other

1 security for them that it determines is necessary.

2 Sec. 37.13.140. REPORTS AND PUBLICATIONS. The policy board shall  
3 publish an annual report to the governor, legislature, and the public.  
4 Each report must include financial statements audited by independent  
5 outside auditors, a statement of the amount of money received by the  
6 permanent fund from each source during the period covered, a statement  
7 of permanent fund investments, a description of permanent fund invest-  
8 ment activity during the period covered by the report, and any other  
9 information the policy board believes would be of interest to the  
10 governor, the legislature, and the public. The annual income statement  
11 and balance sheet of the corporation shall be published in at least  
12 one newspaper in each judicial district. The corporation may also  
13 publish other reports it considers desirable to carry out its purpose.

14 Sec. 37.13.150. TECHNICAL ASSISTANCE. (a) The corporation may  
15 provide financing for pre-investment activities including feasibility  
16 studies, when, in its opinion, the proposed investment is of high  
17 priority and the financing is not available from other sources on  
18 reasonable terms and conditions. Amounts so advanced may form a part  
19 of a later investment, if the enterprise or project is financed by the  
20 corporation.

21 (b) The corporation may provide for technical and management  
22 advice and assistance to proposed and actual investments as it con-  
23 siderers necessary in the circumstances.

24 Sec. 37.13.160. CONFLICT-OF-INTERESTS POLICIES. Members of the  
25 investment committee shall disclose their financial interest in an  
26 investment proposal and disqualify themselves from voting on any invest-  
27 ment proposal in which they have a financial interests. Members of the  
28 policy board shall refrain from all attempts to influence the investment  
29 committee, president, officers and staff in the discharge of their

1 ordinary operating duties. The president, officers, and staff of the  
2 corporation, in the discharge of their offices, owe their duty en-  
3 tirely to the corporation and no other authority.

4 Sec. 37.13.170. CONFIDENTIALITY OF INFORMATION. Information in  
5 the possession of the corporation which discloses the particulars of  
6 the business or affairs of a private enterprise or private investor is  
7 not a matter of public record, except for purposes of investigation  
8 and law enforcement. The information must be kept confidential except  
9 when its production is required in an official investigation or court  
10 proceeding. These restrictions do not prohibit the publication of  
11 statistics presented in a manner that prevents the identification of  
12 particular reports, items, persons, or enterprises.

13 Sec. 37.13.180. TAX EXEMPTION. The corporation is a public  
14 corporation and is exempt from all taxes and assessments in the  
15 state. All security instruments issued by the corporation, their  
16 transfer, and their income are exempt from all taxes and assessments  
17 in the state.

18 Sec. 37.13.900. DEFINITIONS. In this chapter, unless the context  
19 requires otherwise

20 (1) "corporation" means the Alaska Permanent Fund Corpora-  
21 tion created by sec. 10(b) of this chapter;

22 (2) "investment committee" means the Alaska Permanent Fund  
23 Investment Committee created by sec. 70 of this chapter;

24 (3) "investments" includes equity, debt, and debt guarantees;

25 (4) "permanent fund" means the Alaska Permanent Fund  
26 created under authority of art. IX, sec. 15, of the Alaska Constitu-  
27 tion;

28 (5) "policy board" means the Alaska Permanent Fund Policy  
29 Board created by sec. 50 of this chapter.

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

2               (21) members of the policy board and investment committee,  
3       and the president, officers, and staff of the Alaska Permanent Fund  
4       Corporation.

5       \* Sec. 3. AS 39.50.200(9) is amended by adding a new subparagraph to  
6       read:

7                       (MM) Alaska Permanent Fund Policy Board and Alaska  
8       Permanent Fund Investment Committee.

9       \* Sec. 4. Investments outstanding as of the effective date of this Act,  
10       made from money in the Alaska Permanent Fund, shall be transferred to the  
11       corporation established by AS 37.13.010(b), enacted in sec. 1 of this Act.

12       \* Sec. 5. This Act takes effect immediately in accordance with AS 01.-  
13       10.070(c).

amounts are payable and shall not be accountable to anyone". One of the beneficiaries is living in poverty and the trustees give her \$100 a month and accumulate income. When she asks for more income, the trustees cut her off completely. The beneficiary can sue and receive more income by court order. The clause purporting to relieve the trustees of the legal duty to account is void insofar as it attempts to deprive a court of jurisdiction, where a beneficiary can show that the trustees are not acting in good faith.

- (2) A court will also intervene where a trustee has completely failed to exercise his judgment with regard to a discretionary power.

## 5. Implied Powers

- a. **Power of sale:** Where the trust terms neither confer nor withhold the power to sell trust property, a power of sale is generally quite readily inferred by American courts. In deciding whether to infer a power of sale, courts consider the language of the instrument, the character of the property, the purposes of the trust, and whether there is any suggestion that particular property is to be held by the trustee and transferred to the remaindermen on termination of the trust. Power of sale may be more readily inferred in the case of personal property than in the case of real property.

- (1) Note, however, that the settlor can direct the trustee not to sell certain property transferred into the trust. This directive is valid, and the trustee cannot sell the property without a court order permitting sale on the grounds that circumstances have changed so much that not selling would put the trust corpus in jeopardy.

- b. **Expenses**

- (1) It is generally implied that a trustee can incur expenses which are appropriate to carry out the trust purposes. He can incur such expenses as are necessary and ordinary in the management of the property and in keeping the property in repair, and he can employ agents and advisors where this is prudent, or where he cannot reasonably be expected to perform duties personally.

- (2) Courts are less willing to imply the power to make improvements on trust property, but improvements can generally be made. Improvements involve some element of investment discretion and one might consider in relation to the propriety of improvement, whether it will have the result of concentrating investment in a particular party so as to be a violation of the trustee's duty to diversify investments.

- c. **Power to lease:** Normally, it is implied that a trustee has power to lease trust property on such terms and for such periods as are reasonable under the circumstances.

- d. **Power to borrow money:** Under ordinary circumstances, the trustee has no implied power to borrow money on the credit of the trust estate; nor has he power to mortgage or otherwise encumber the trust property. However, in the well drafted trust instrument the trustee is usually given the power to borrow and mortgage.

## B. THE DUTIES OF THE TRUSTEE

1. **The Standard of Care Required of the Trustee:** In administering the trust, the trustee must exercise the degree of care, skill and prudence which would be exercised by a reasonably prudent person in managing his property.

- a. **Skill** relates to the trustee's capabilities.
  - b. **Care** relates to his diligence and to the efforts he makes.
  - c. **Prudence** is the element of caution or conservatism in administering the trust.
2. **The Duty of Loyalty:** The trustee must be completely unselfish and undivided in his loyalty to the beneficiaries of the trust.
- a. **The trustee must take no personal advantage (other than the fees given him for serving as trustee) from his position:** He will be held accountable for any profit made by him through, or arising out of, the administration of the trust, even if the profit did not result from a breach of trust. The trustee must also avoid putting himself in any position where a conflict with the interest of the trust is even possible.
    - (1) The trustee may not loan his personal funds to the trust and he may not borrow trust funds. This is self-dealing, which is absolutely prohibited.
    - (2) He cannot sell his own property to the trust, and he cannot purchase trust property. Nor can his spouse buy the trust property or sell property to the trust. This too is self-dealing.
      - (a) **Example:** X, trustee, purchases from the trust 100 shares of Blue Company stock at \$50 a share, which is market value. The stock subsequently increases to \$75 a share, at which time X sells the stock. X is liable to the trust beneficiaries for the \$2500 capital gain. Suppose the stock declined in value to \$30 a share after X purchased it from the trust. X then sells it. The beneficiaries are entitled to affirm the sale to X for \$50 a share. Thus X must personally suffer the capital loss.
    - (3) A prohibited transaction is not made permissible because it takes place at a public or judicial sale. E.g., at a foreclosure sale by a mortgagee, the trustee may not buy for himself.
    - (4) The duty to keep and render accounts, and to furnish information to the beneficiary or his agent at the beneficiary's request, is one way of insuring that the trustee is meeting his obligation of loyalty.
    - (5) **Note:** Bad faith on the trustee's part or damage to the trust are irrelevant. (For example, a trustee acting in complete good faith and to help the trust, loans money to the trust and takes a second mortgage on trust property. When the first mortgage is foreclosed it turns out that the trustee has made a profit. That profit must be turned over to the trust.) The policy reason for this harsh rule is that personal interest on the part of the trustee opens the door to biased judgments and thus to decisions which may not be in the beneficiary's best interests.
  - b. **If a prohibited transaction takes place, the beneficiary may**
    - (1) Set aside the transaction;
    - (2) Recover the profit made by the trustee, reduced by losses arising out of the same transaction (see *infra*, p. 35); or
    - (3) Affirm the transaction (which would occur when the transaction has turned out to be advantageous to the trust). Thus the trustee bears the risk of subsequent loss, and also is required to turn over any profit if the dealings with the trust were advantageous to him.

- c. **Self employment can constitute a form of prohibited dealing:** However, extraordinary services to the trust on the part of the trustee may entitle the trustee to additional compensation. This problem may arise if the trustee renders legal services to the trust which are outside the normal scope of his duties, and for which additional compensation is fair and appropriate.
- d. **The duty of loyalty extends to all beneficiaries equally, unless the trust instrument specifies otherwise:** Dealing impartially with the beneficiaries is more difficult when beneficiaries are entitled to successive benefits; e.g., A receives income for life, B receives the trust corpus at A's death. The trustee has a duty to A to see that trust property produces income. He violates his duty to A if the property is not income-producing. On the other hand, to carry out his duty to B the trustee must insure that trust property will not depreciate in value.

### 3. **The Duty to Separate and Earmark Trust Property (Prohibition Against Commingling Trust Funds)**

- a. **The duty to separate:** Trust assets must be kept physically separate from the trustee's personal assets and from assets from other trusts. (Statutory exceptions in most states permit a corporate fiduciary to hold property of trusts of which it is a trustee in a common trust fund.)
  - (1) Liability is imposed on the trustee who breaches the duty to keep funds separate even where the breach has not contributed in any way to the actual loss of trust property.
  - (2) If there is difficulty in tracing the commingled trust property, the court is likely to place the burden of separating the property on the trustee. If the property cannot be separated the court may treat all of the property as trust assets, or it may make the trustee liable for any loss or shrinkage in trust assets even if the mingling of funds did not cause the loss.
  - (3) The measure of damages will be the actual loss to the trust.
- b. **The duty to earmark trust property:** Trust property must be titled in the trustee, as trustee for a specific trust. For example, money deposited in a bank account must be deposited in the name of "X as trustee", and not in the name of X personally.
  - (1) The older view held the trustee strictly liable for a failure to earmark, regardless of whether that failure caused the loss to the trust. The measure of damages was the actual loss sustained by the trust. Reason: This prevents the trustee from lying about what property is trust property and what is his own.
    - (a) Example: Trustee of \$5,000, deposits \$5,000 in Bank X and \$5,000 in Bank Y. \$5,000 is his own money and \$5,000 comes from the trust. Bank X folds. Trustee is liable for \$5,000 regardless of whether the \$5,000 in Bank X came from him personally or from the trust.
  - (2) The Restatement Second of Trusts view would hold the trustee liable for a failure to earmark only to the extent that damages were caused by the failure to earmark.
  - (3) **Example:** During a business recession, trust property depreciates in value. Trustee has not earmarked the property and the beneficiary sues. Although the bad business climate caused the decline in value of trust assets, not the

failure to earmark, the older view would hold the trustee liable for the whole loss; the Restatement view would not hold the trustee liable.

#### 4. The Duty to Perform Personally (Prohibition on Delegation of Trust Duties)

- a. A trustee cannot delegate the entire administration of a trust.
- b. On the other hand, he may delegate acts which it would be unreasonable to require him to perform personally (e.g., mailing letters). There is no clear-cut standard for judging when delegation is proper. Should you have a question which raises an issue of improper delegation, discuss the facts in light of what a reasonably prudent person would do, the type of discretion delegated and whether someone with greater skill or some special skill is needed to do the act.
- c. The power to select investments for the trust cannot be delegated.
- d. The trustee must personally exercise reasonable care in the selection, retention and supervision of agents and employees.
- e. The trustee can seek the advice of attorneys and others on matters which he may not delegate. However, the trustee must make the decisions. If he appears to take advice without exercising his independent judgment, he may be held liable on the theory that he improperly delegated his duties.
- f. **Remedy:** If a trustee improperly limits or surrenders his control over trust property, he becomes a guarantor of the fund. The trustee's motives or the fact that the loss was not directly caused by the abdication of control will not be considered by the court. The trustee is held for the amount of the actual loss to the trust.

#### 5. The Duty to Preserve Trust Property and to Make It Productive

- a. **Duty implied even where not expressed:** There is a basic duty to preserve and protect the trust corpus. From this basic duty, there normally will be implied the duty to make the trust property productive, which includes the duty to invest (below).
- b. **Scope of duty:** The duty to protect and preserve the corpus requires the trustee to exercise reasonable care to do the following (and if he has held himself out as having special skills or has been selected on account of such special skills, he will be held to exercise such skills):
  - (1) To invest trust funds within a reasonable period of time following receipt thereof (and constantly to review such investments and sell and reinvest when required)
    - (a) If the trustee fails to invest trust monies, he is chargeable with the amount of income which would normally accrue from "proper" investments.
    - (b) As to what constitutes "proper investments", see below.
  - (2) To collect all claims due the trust.
  - (3) To lease land or manage it so that it is productive; or sell it if it is not productive (but this doesn't apply if the trust instrument requires the trustee to convey that land to a beneficiary).
  - (4) To record recordable documents to protect title; to keep securities and funds in safe places; to pay taxes on trust assets to prevent liens thereon; and to secure insurance on trust properties.

- (a) It is proper for the trustee to obtain insurance on trust property—including liability insurance—even though such insurance protects him individually as well as the trust estate.

c. **Standards of trust investment**

- (1) **Statutory investment lists:** Some states continue to follow a statutory "legal list" of approved investments. Such statutes set forth a list of described investments for trustees. They usually include government bonds, conservative first mortgages on land, and other conservative investments.

- (a) If the list is deemed to be "permissive" the trustee can invest in securities outside the list but incurs a heavier burden of proving the propriety of each investment when he does so. Where the list is "mandatory" the trustee probably commits a breach of trust any time he invests in properties outside the list, although the cases are not altogether consistent in this regard.

- (b) Under either type of statutory list, the trustee cannot follow the list blindly. A particular investment of an approved type may yet be an unreasonable one, and the trustee remains liable if he fails to exercise care, skill and prudence.

- (2) **The prudent investor rule:** The trend of modern authority is the so-called "prudent investor rule". In essence, the trustee is required to adhere to a standard of good faith, reasonable prudence, sound discretion and care in making trust investments. He must invest as a prudent businessman would do in making a permanent disposition of his own funds, considering both the probable income and probable safety of capital. (This rule is codified in some states; e.g., Calif.)

- (a) A basic principle of prudent investment is reasonable diversification. Even though a particular investment is a proper one, it becomes improper if too great a portion of the trust estate is invested in it. Appropriate diversification must take into account the importance of spreading investment not only among different entities but even among different industries; the portion which may be concentrated in a particular investment or type of investment depends upon the stability and other characteristics of the investment and also upon the size of the trust estate, for it is not possible to diversify a small estate in the same manner that a large one could be diversified. (Note: The Bar Exam has often posed questions where the trustee did not diversify.)

- (b) The trustee must also consider the marketability of his investment, the adequacy of the security, and probably even tax factors.

- 1) **Assets received on creation of trust:** Suppose the trustee receives upon creation of the trust 5000 shares of Red Corporation as the corpus. Must he sell some of the Red Corp. stock and diversify? (a) The trustee does not have to diversify if he is directed not to sell the Red Corp. stock; or (b) it can be inferred that the settlor would have so intended. (E.g., if Red Corp. is closely held, and the 5000 shares give the trustee a controlling interest, a court is likely to imply an authorization to retain the shares.)

- (c) The prudent investor rule requires the trustee constantly to review the trust investments and sell within a reasonable time whatever investments have become imprudent.
  - (d) In determining whether a particular investment is a "prudent" one, the court looks to the circumstances as they existed at the time the investment was made, or at the time of a particular decision to retain the investment. Thus, a trustee is not a guarantor against loss, if the investment appeared prudent when made.
  - (e) The trustee must not only use the caution of a prudent person, but also reasonable care to obtain yield from the investment. Therefore, it is not necessarily "prudent" to invest only in the very safest and most conservative securities.
- (3) **Particular investments:** The fact that a type of investment is permissible does not necessarily mean that the investment is proper, for in selecting from among the permissible investments, the trustee must exercise reasonable care, skill and prudence. All circumstances must be taken into account, including such things as preserving purchasing power in the face of possible inflation, minimizing risks to capital and the need to obtain a fair return on the investment.
- (a) **Proper investments:** Normally a trustee can invest in government securities, in high grade corporate bonds and in first mortgages on real estate provided the margin of security is adequate.
  - (b) **Improper investments:** Except for bank deposits bearing interest, an unsecured loan of trust funds is normally an improper investment. Most states regard an investment in a second mortgage as a breach of trust in the absence of extreme or compelling circumstances.
  - (c) **Corporate stocks:** Most statutory lists include common and preferred stocks. Under the prudent person rule, a trustee can invest in preferred or common shares of companies which have been paying dividends regularly and can be expected to continue to do so.
  - (d) **Land:** The courts are divided on whether investment in land is permissible. Acquisition of land or other property for the purpose of resale at a profit is speculation and therefore a breach of trust.
    - 1) **Example:** Trustee buys 1000 acres of unimproved desert land. This is an improper investment. Not only is it speculative, but it produces no income and the trustee has the duty of making the trust property productive. Otherwise the life tenant would lose his income by investments in non-productive property.
  - (e) **Common investment arrangements**
    - 1) Mortgage participations, under which large sums are advanced as loans to property owners in exchange for mortgages, are increasingly upheld as proper investments mainly because they permit a greater diversification than would be possible if a single trust fund had to make the loan by itself.
    - 2) Investments in common trust funds and mutual funds are increasingly permitted by statute. However, except for a small trust needing diversified investments, investment in a mutual fund may

be an imprudent choice because of the added administrative cost of the mutual fund. And, investment in mutual funds may also constitute a breach of trust because the trustee parts with the management duties which are incident to his office.

(f) **Testator's business:** Where a testator is engaged in business at the time of his death, and leaves all his property to his executor in trust, the executor cannot properly continue the business, unless authorized by the testator to do so. He must dispose of the business and invest in proper trust investments, and if he fails to do so within a reasonable time he is liable for any losses which result.

(4) **Trust terms may limit or enlarge trustee's investment powers:** Where the trust instrument provides for investments to be made in the discretion of the trustee, it is a question of interpretation whether the trustee's power of investment is enlarged.

(a) In a prudent person jurisdiction the trustee's authority to make investments in his discretion usually does not permit investments other than those which satisfy the prudent person standard.

(b) In a legal list jurisdiction, such language is likely to free the trustee from the list and probably permits investment in a manner similar to that under the prudent person rule.

(c) There is a tendency to strictly construe language of this type, but investment power can be broadened by it.

#### 6. The Duty to Defend the Trust From Attack

a. Except when the trustee's examination reveals that an attack against the trust is well founded, he has a duty to defend the trust.

7. **Summary—The Fiduciary Obligation:** The standards imposed on the trustee are harsh. The policy behind such stringent standards and remedies for their violation is deterrence of wrongful conduct, and to ease the burden of proving a breach of the duty should that become necessary. Do not overlook mentioning policy reasons in your answer. Watch for a Bar Exam question regarding self-dealing, diversification, investment in non-productive property, and set off of gain from one breach against loss from another (see below).

**Also ask:** Was the act one which the trustee was authorized to perform at all under the terms of the trust and applicable law. If not, there is a breach of trust regardless of the good faith, skill and diligence with which the trustee performed the act.

**Then ask:** If the act was proper for the trustee to perform, did the trustee perform in a manner which satisfies the standard of conduct required of him? Did he act prudently, in good faith, exercising the appropriate amount of skill and with the diligence and care of a reasonably prudent person under the circumstances?

### C. LIABILITIES OF THE TRUSTEE

1. **Enforcement by the Beneficiaries:** The beneficiaries may seek to have the trustee surcharged (pay damages suffered by the trust) or even removed from office if the trustee breaches his duties. Outsiders may not seek to enforce the trust. The settlor may sue if he is also a beneficiary.

a. **Prior to the breach:** A court of equity will compel the trustee to perform his duties or will enjoin the trustee from committing the breach.

SCOMM

# 9:146

## ANALYSIS OF THREE PROPOSED PERMANENT FUND IMPLEMENTATION BILLS

House Bill 4 by Swanson

House Bill 298 by Rules by Request of Governor

House Bill 300 by Special Committee on the Alaska Permanent Fund

### 1. Per cent of revenue contributed:

- HB 4 - At least 25 % of bonuses, mineral lease rentals, royalties and federal mineral revenue sharing
- HB 298 - 50 % of bonuses, mineral lease rentals, royalties and federal mineral revenue sharing
- HB 300 - 100 % of bonuses, 50 % of mineral lease rentals, royalties and federal mineral revenue sharing

### 2. Management structure:

- HB 4 - Fund is established in Dept. of Revenue, governed by a board of Trustees (5 members) appointed by the Governor and confirmed by the Legislature. Trustees must come from each of 5 fields: agriculture, fisheries, forest resources, finance and tourism. 3-year terms.
- HB 298 - A.P.F established as a public corporation, instrumentality within the Department of Revenue. Two board structures: P.F. Policy Board (9 members) consisting of Commissioners of Commerce and Revenue, 7 members appointed by the Governor. The Policy Board appoints 4 members of the A.P.F. Investment Committee, president of Policy Board serves as 5th member of Investment Committee. The Investment Committee has sole responsibility to approve investment proposals and to review all investments. The Policy Board approves long-range operating plans, deals with the public & government, audits Investments, and issues regular reports and statements.
- HB 300 - Similar to 298, except that Policy Board members are confirmed by the Legislature.

### 3. Investment limitations:

- HB 4 - Fairly restrictive. Investment is limited to government obligations, bank CD's and prime quality corporate obligations (similar to type of investments provided for in HB 210, the P.F. interim management bill).
- HB 298 } P.F. used only for income-producing investments. 40 %  
HB 300 } invested in investment-grade securities; 30 % venture capital (equity, debt or debt guarantees); 30 % community development and housing (debt or debt guarantees)

### 4. Use of income:

- HB 4 - Income shall be used for renewable resource development, enhancement and rehabilitation. P.F. Trustees plan expenditures, which governor submits to Legislature. Unused balance at end of FY becomes part of fund principal. (Note similarity to AS 37.11, Renewable Resource Funds).
- HB 298 } Income deposited in general fund, with the exception  
HB 300 } of operating expenses and reserves.

5. Fiscal Note:

|       |       |                                    |
|-------|-------|------------------------------------|
|       | HB 4  | HB 298,300                         |
| FY 77 | 177.4 |                                    |
| FY 78 | 512.5 | 798.1                              |
| FY 79 | 587.5 | (Fiscal note for one year only,    |
| FY 80 | 566.6 | as A.P.F. will prepare its own     |
| FY 81 | 572.1 | budget effective FY 79. Opera-     |
| FY 82 | 627.6 | ting expenses come from PF income. |

6. Other:

HB 4 Trustees salary \$37,500 per year. Trustees prohibited from voting when there is a conflict of interest. Trustees powers are not as broad as in HB 298 & 300.

HB 298 Purpose is more clearly spelled out than in HB 4. Policy Board duties are completely listed. The Permanent Fund corporation is exempt from the Executive Budget Act. Corporation has borrowing powers. Investment Committee members prohibited from voting when there is a conflict of interest. Corporation is tax exempt.

HB 300 Purpose same as 298. Policy Board is confirmed by the Legislature, as in HB 4. Policy Board presents complete report to joint meeting of senate and house finance each session. Operational principals worded slightly differently. The Permanent Fund is exempt from the Executive Budget Act. Permanent Fund has borrowing powers. Policy Board is prohibited from campaign or general advertising expenditures to promote or defend policies and operations. Members of policy board & investment committee, officers & staff prohibited from partisan political activities which involve the permanent fund. The resources of the permanent fund may not be used to finance any partisan political activities.

Note: "Alaska, Inc." to provide cash dividend payments to resident Alaskans will be submitted at a later date.(HB 298)

In both HB 298 and 300, the Policy Board has sole responsibility for the external relations of the Fund. The Policy Board may not influence the investment committee (which is under conflict of interest controls).

SCOMM

#9:147

Original sponsors: Freeman, Haugen,  
Gardiner, et al

Offered: 5/25/77  
Referred: Finance

1 IN THE HOUSE

BY THE RESOURCES COMMITTEE

2 SENATE CS FOR CS FOR HOUSE BILL NO. 2 (Resources) am S

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 TENTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act authorizing state land to be made available as  
7 homesites."

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

9 \* Section 1. PURPOSE OF ACT. The longstanding policy of the state, de-  
10 clared in the Constitution of the State of Alaska (art. VIII, sec. 1) and the  
11 Alaska Land Act (AS 38.05.350), has been to encourage the settlement of the  
12 state's land and the development of its resources by making them available  
13 for maximum use consistent with the public interest. In authorizing the  
14 classification of land for settlement as homesites, this Act is intended to  
15 further that policy explicitly, by recognizing that the immediate production  
16 of revenues to the state through the auction of land to the highest bidder,  
17 virtually the only method by which state land has been made available to the  
18 public for residential use, is secondary in importance to the primary, and  
19 ultimately more beneficial and productive, goal of providing land for Alaskans  
20 to settle at a cost reasonably within their means, and that the highest and  
21 best use of some land may clearly be for habitation.

22 \* Sec. 2. AS 38 is amended by adding a new chapter to read:

23 CHAPTER 8. HOMESITES.

24 Sec. 38.08.010. CLASSIFICATION OF LAND FOR HOMESITE ENTRY. (a)

25 The director shall classify, survey, and plat for homesite entry 25,000  
26 acres of state land which is otherwise vacant, unappropriated and unre-  
27 served and is suitable for erection of residential dwellings to use as a  
28 permanent abode.

29 (b) Land classified as homesite entry land shall be divided into

1 parcels not exceeding five acres in reasonably compact form, with  
2 boundaries conforming as nearly as practicable to natural geologic  
3 and topographic features.

4 (c) No land may be classified for homesite entry which

5 (1) lacks drainage sufficient for construction of residential  
6 dwellings;

7 (2) has soil which has been classified and interpreted as  
8 appropriate for agriculture in soil surveys conducted by the Soil Con-  
9 servation Service of the United States Department of Agriculture;

10 (3) is known to be mineralized with commercially valuable  
11 minerals;

12 (4) is located where homesites would threaten fish regenera-  
13 tion;

14 (5) is located where existing services provided by the state  
15 and political subdivisions of the state would be inaccessible;

16 (6) lacks sufficient water for a residential dwelling used as  
17 a permanent abode; or

18 (7) is unsuitable for on-site sewage disposal, if other  
19 methods of sewage disposal are not feasible.

20 Sec. 38.08.020. OFFERING OF LAND FOR HOMESITE ENTRY. Following  
21 classification of land for homesite entry, offerings of homesite entry  
22 land shall be made on a rotating basis from among the four judicial  
23 districts of the state. The director shall publish notice of the  
24 availability of the land for at least three consecutive weeks through  
25 the electronic media and in at least three newspapers of general circu-  
26 lation in the state, at least one of which, if possible, shall be a  
27 newspaper of general circulation in the vicinity of the available land.

28 Sec. 38.08.030. APPLICATIONS FOR HOMESITE ENTRY; FEES. (a) To  
29 qualify for a homesite entry permit, an applicant shall

1 (1) at the time of application have attained the age of 18;

2 (2) submit proof acceptable to the commissioner that he is a  
3 resident of the state at the time of application, and that he has been a  
4 resident of the state for not less than six years immediately pre-  
5 ceding the date his application was submitted, or that he has been a  
6 resident for 20 years cumulatively;

7 (3) agree to comply with the requirements for obtaining a  
8 patent to land set out under sec. 60 of this chapter.

9 (b) Fees for filing an application may not exceed \$10.

10 Sec. 38.08.040. ISSUANCE OF ENTRY PERMIT. (a) An applicant  
11 meeting the qualifications for homesite entry under sec. 30 of this  
12 chapter shall be issued a revocable permit to occupy and improve the  
13 homesite in order to qualify for issuance of patent as provided in this  
14 chapter. The application fee is the sole rent chargeable on the permit  
15 for its duration.

16 (b) If the number of applicants qualified for homesite entry  
17 exceeds the number of available homesites offered, or if several appli-  
18 cants apply and qualify for the same homesite, priority in award of an  
19 entry permit shall be accorded to that applicant showing proof of the  
20 longest residency in the state.

21 (c) The permit may not be assigned, conveyed or otherwise trans-  
22 ferred, but rights under the permit may devolve by testate or intestate  
23 succession. An attempt to assign, convey, or to otherwise transfer the  
24 permit, is void and constitutes a substantial breach.

25 (d) An applicant may apply for more than one available homesite.  
26 No person holding a homesite patent may apply for a homesite entry  
27 permit, no person may simultaneously hold more than one homesite entry  
28 permit, and no person who is a member of the homesite entry permit  
29 holder's household may be issued a homesite entry permit while a member

1 of the homesite entry permit holder's household.

2 Sec. 38.08.050. REVOCATION OF ENTRY PERMIT. (a) The entry permit  
3 may only be revoked for failure to erect a dwelling as required under  
4 sec. 60 of this chapter, or for other substantial breach of the terms  
5 and conditions of the homesite entry permit.

6 (b) Upon revocation and termination of a permit, improvements or  
7 chattels upon the homesite shall be managed, and subsequent issuance of  
8 a permit for entry on the homesite shall be conditioned, in the same  
9 manner as provided in AS 38.05.090 for removal or reversion of improve-  
10 ments upon termination of leases of state land.

11 Sec. 38.08.060. ISSUANCE OF PATENT. (a) A person who enters upon  
12 homesite entry land under a permit issued by the director shall be  
13 issued a patent to the land conveying an unencumbered title if that  
14 person

15 (1) occupies the land for a cumulative total of 21 months  
16 within the three-year period following issuance of the homesite entry  
17 permit or five months, with 20 years Alaskan cumulative residence.

18 (2) erects a habitable, permanent, single-family dwelling on  
19 the homesite, which meets all applicable state and local regulations,  
20 within three years of the date of issuance of the homesite entry permit;  
21 for the purposes of this paragraph, mobile homes are not considered to  
22 be permanent dwellings unless they are placed on a permanent foundation;

23 (3) reimburses the state for the survey and platting under-  
24 taken in accordance with this chapter. The director shall provide by  
25 regulation for installment payments of this reimbursement.

26 (b) Nothing in this chapter shall be construed to prohibit a  
27 person issued a homesite entry permit from residing in a temporary  
28 habitable dwelling on the homesite until revocation of the homesite  
29 entry permit.

1 (c) No person may be issued more than one patent during his life-  
2 time, nor may any person who is a member of a patent holder's household  
3 be issued a patent while a member of the patent holder's household.

4 (d) If a dwelling is found to have been substantially completed  
5 under sec. 100 of this chapter, patent shall be issued upon completion  
6 of the dwelling, notwithstanding (a)(2) of this section.

7 Sec. 38.08.070. LAND LOCATED WITHIN MUNICIPALITIES. No state land  
8 which is located within the boundaries of an organized borough or city  
9 may be classified for homesite entry under this chapter until the pro-  
10 posed use of the land has been studied and approved jointly by the  
11 director and the local planning authority. Nothing in this section or  
12 AS 29.18.190 prevents the director from selecting and classifying for  
13 homesite entry land which would otherwise be available for borough or  
14 city selection under AS 29.18.190. If classified for homesite entry,  
15 the land shall not be available for city or borough selection.

16 Sec. 38.08.080. REQUIRED ZONING. No state land which is located  
17 within the boundaries of a municipality which exercises planning and  
18 zoning authority under AS 29 may be offered by the director for homesite  
19 entry under this chapter until the land has been zoned by the governing  
20 body of the municipality for residential use only. No state land which  
21 is located within a municipality which does not exercise planning and  
22 zoning authority, or which is located in the unorganized borough, may be  
23 offered by the director for homesite entry under this chapter unless the  
24 division of lands has adopted zoning regulations to restrict the  
25 use of the land to residential purposes.

26 Sec. 38.08.090. DISCLAIMER OF INTENT TO PROVIDE SERVICES.  
27 Nothing in this chapter obligates the state to provide services to  
28 lands which are the subject of homesite entry and patent.

29 Sec. 38.08.100. SUBSTANTIAL COMPLETION OF DWELLING. An

1 entry permit may not be revoked for failure to erect a dwelling in  
2 the time required under sec. 60(a)(2) of this chapter if the director  
3 finds that erection of the dwelling has been substantially completed  
4 and progress toward completion is being made at the expiration of the  
5 time required.

6 Sec. 38.08.110. REGULATIONS. The commissioner shall adopt  
7 regulations in accordance with AS 44.62.180 - 44.62.290 to carry out the  
8 purposes of this chapter.

9 Sec. 38.08.120. DEFINITIONS. In this chapter

10 (1) "commissioner" means the commissioner of natural re-  
11 sources;

12 (2) "habitable dwelling" means a dwelling of a permanent  
13 nature, together with fixtures and facilities, including sanitary  
14 facilities, required or customary in the vicinity of the land made  
15 available for homesite entry.

16 (3) "resident" means a person who is not claiming residence  
17 in another state and shows by all attending circumstances that his  
18 intent is to make this state his permanent residence.

19 \* Sec. 3. AS 29.33.090 is amended by adding a new subsection to read:

20 (c) The assembly shall regulate and restrict the use of state land  
21 within the borough which is vacant, unappropriated and unreserved and  
22 which is found suitable for classification and disposal for homesite  
23 entry under AS 38.08.010. Compliance with the provisions of this sub-  
24 section is a prerequisite to issuance of homesite entry permits for land  
25 within the borough.

26 \* Sec. 4. AS 29.13.100 is amended by adding a new paragraph to read:

27 (37) AS 29.33.090(c) (zoning of state land for homesite  
28 entry)

29 \* Sec. 5. No land may be classified and made available for homesite

1 entry under AS 38.08.010-38.08.120 within any portion of the new  
2 capital site established under AS 44.06 before July 1, 1982.  
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SCOMM

#9:148

# COMMITTEE REPORT

3/9/77

HOUSE

FINANCE

w/fiscal note and memo  
from Judiciary attached

\_\_\_\_\_ Date

Mr. Speaker:

The Committee on SPECIAL COMMITTEE ON THE  
ALASKA PERMANENT FUND has had HB 4  
under consideration. A majority of the members of the Committee

- ☐ recommends it do pass
- ☐ recommends it do not pass
- ☐ recommends it do pass with attached amendment(s)
- ☐ recommends it be replaced with CS for \_\_\_\_\_ and that  
CS for \_\_\_\_\_ do pass
- ☐ (and) recommends it be referred to the \_\_\_\_\_  
committee
- ☐ reports it back without recommendation
- ☐ AND attaches a report of its intent
- ☐ (other) \_\_\_\_\_

MEMBERS SIGNING THE MAJORITY REPORT:

|       |       |       |
|-------|-------|-------|
| _____ | _____ | _____ |
| _____ | _____ | _____ |
| _____ | _____ | _____ |
| _____ | _____ | _____ |

MEMBERS NOT CONCURRING IN THE MAJORITY REPORT:

|       |                   |
|-------|-------------------|
| _____ | recommends: _____ |
| _____ | recommends: _____ |
| _____ | recommends: _____ |

\_\_\_\_\_  
Chairman

# STATE OF ALASKA

## DEPARTMENT OF REVENUE

STATE OFFICE BUILDING

POUCH SA - JUNEAU 99811

February 17, 1977

*Keep with #134*  
JAY S. HAMMOND, GOVERNOR

The Honorable Terry Gardiner  
Chairman  
House Judiciary Committee  
Alaska State Legislature  
Room 122 - State Capitol Building  
Juneau, Alaska

Re: House Bill No. 4

Dear Mr. Gardiner:

House Bill No. 4, an Act relating to the Alaska permanent fund, was introduced in the House on January 12, 1977 and was referred to the House Judiciary and Finance Committees.

For the consideration of the House Judiciary Committee, I am enclosing a Fiscal Note prepared by Mr. Jim Edenso, Deputy Commissioner, Department of Revenue concerning the proposed legislation.

Very truly yours,



R. D. Stevenson  
Special Assistant

Enclosure

cc: The Honorable Steve Cowper  
Chairman  
House Finance Committee  
Alaska State Legislature  
State Capitol Building  
Juneau, Alaska

Jim Edenso, Deputy Commissioner  
Department of Revenue

THE LEGISLATURE OF THE STATE OF ALASKA  
TENTH LEGISLATURE

FISCAL NOTE

I. REQUEST

Bill/Resolution No. HB 4

Title An Act relating to the Alaska Permanent Fund

Requested by Swanson

Date \_\_\_\_\_

II. FISCAL DETAIL

Agency Affected Department of Revenue

Program Category Affected General Government

Budget Request Unit(s) Affected Treasury Management

EXPENDITURES (Thousands of Dollars)

|                          | FY 77 | FY 78 | FY 79 | FY 80 | FY 81 | FY 82 |
|--------------------------|-------|-------|-------|-------|-------|-------|
| 100 PERSONAL SERVICES    | 83.5  | 294.7 | 357.2 | 357.2 | 357.2 | 357.2 |
| 200 TRAVEL               | 5.8   | 25.1  | 31.2  | 31.2  | 31.2  | 31.2  |
| 300 CONTRACTUAL          | 73.2  | 162.7 | 168.2 | 148.2 | 153.2 | 208.2 |
| 400 COMMODITIES          | 1.2   | 4.0   | 4.5   | 5.0   | 5.5   | 6.0   |
| 500 EQUIPMENT            | 5.7   | 1.0   | 1.5   |       |       |       |
| 600 LAND & STRUCTURES    | 8.0   | 25.0  | 25.0  | 25.0  | 25.0  | 25.0  |
| 700 GRANTS, CLAIMS, ETC. |       |       |       |       |       |       |
| TOTAL                    | 177.4 | 512.5 | 587.6 | 566.6 | 572.1 | 627.6 |

FUNDING (Thousands of Dollars)

|                 |       |       |       |       |       |       |
|-----------------|-------|-------|-------|-------|-------|-------|
| GENERAL FUND    | 177.4 | 512.5 | 587.6 | 566.6 | 572.1 | 627.6 |
| FEDERAL FUNDS   |       |       |       |       |       |       |
| OTHER (Specify) |       |       |       |       |       |       |
|                 |       |       |       |       |       |       |
|                 |       |       |       |       |       |       |

POSITIONS

|           |   |   |   |   |   |   |
|-----------|---|---|---|---|---|---|
| FULL TIME | 6 | 7 | 9 | 9 | 9 | 9 |
| PART TIME |   |   |   |   |   |   |
| TEMPORARY |   |   |   |   |   |   |

III. ANALYSIS (See Fiscal Note Preparation Instructions, Section III)

This fiscal note enumerates expenses for management of the Alaska Permanent Fund. Personal services cover salary and benefits for 5 trustees, one secretary, a State Investment Officer III (FY 78), an Investment Accountant (FY 80), and a State Investment Officer II (FY 81). Contractual services include charges for safekeeping agency assuming cost inflation of 10% per year, and consultive services.

IV. DATE February 16, 1977

PREPARED BY *John Edens*

AGENCY Department of Revenue

PHONE 465-2350

Original: Legislative Finance

cc: Budget and Management

Prime Sponsor (First Legislator Named)

1 IN THE HOUSE

BY SWANSON

2 HOUSE BILL NO. 4

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 TENTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act relating to the Alaska permanent fund."

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

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

9 CHAPTER 12. ALASKA PERMANENT FUND.

10 Sec. 37.12.010. FUND ESTABLISHED. There is established as a  
11 separate account the Alaska permanent fund. At least 25 per cent of all  
12 mineral lease rentals, royalties, royalty sale proceeds, federal mineral  
13 revenue-sharing payments and bonuses received by the state shall be  
14 placed in the fund. These funds and any other funds appropriated for  
15 deposit in the permanent fund shall be held perpetually in trust for the  
16 benefit of the present and future generations of Alaskans. The fund  
17 shall be administered in accordance with the provisions of this chapter.

18 Sec. 37.12.020. FUND PRINCIPAL. Funds placed or deposited in the  
19 permanent fund are fund principal which shall be invested in perpetuity  
20 only in the income-producing investments specifically designated in this  
21 chapter regardless of other provisions of law dealing with permissible  
22 investments of state funds.

23 Sec. 37.12.030. INVESTMENTS ALLOWED. (a) The principal of the  
24 fund may be invested only in

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

27 (2) obligations of the State of Alaska or municipalities of  
28 the State of Alaska;

29 (3) obligations secured by reserves paid in by the United

1 States or agencies or instrumentalities of the United States or corpor-  
2 ations in which the United States is a shareholder or member;

3 (4) bank certificates of deposit which are secured as to the  
4 payment of principal and interest in accordance with Alaska law;

5 (5) corporate obligations of prime or equivalent quality as  
6 recognized by a nationally recognized rating organization.

(b) Investment policy shall be formulated by the board of trustees  
8 with the assistance of the commissioners of revenue and commerce and  
9 economic development. In formulating investment policy the board shall  
10 consider maximum income consistent with safety governed by the prudent-  
11 man rule.

12 Sec. 37.12.040. FUND INCOME. Income derived from investment of  
13 permanent fund principal shall be used to provide funding for capital  
14 and operating appropriations for the rehabilitation, enhancement and  
15 development of renewable resource programs. Plans for expenditure from  
16 fund income shall be prepared in detail by the board, with the cooper-  
17 ation of appropriate state departments and agencies. The plans shall  
18 be submitted to the governor who shall submit the requested appropria-  
19 tions, as prepared by the board, in accordance with the Executive  
20 Budget Act (AS 37.07) as part of his annual budget presentation to the  
21 legislature. Unappropriated or unencumbered balances of income remain-  
22 ing at the close of each fiscal year are transferred to fund principal.

23 Sec. 37.12.050. PROTECTION OF PRINCIPAL. If a transaction in-  
24 volving permanent fund principal results in an actual dollar loss of  
25 principal, the loss shall be reimbursed in full from fund income before  
26 any additional income may be expended.

27 Sec. 37.12.060. TRUSTEES. (a) There is established in the  
28 Department of Revenue, division of treasury, the Board of Trustees of  
29 the Permanent Fund. The board is the governing body of the fund.

1 (b) The board consists of five trustees appointed by the governor  
2 and confirmed by the legislature in joint session. Each trustee shall  
3 have been at the time of his appointment a resident of the state for at  
4 least 10 years and shall have adequate knowledge of and experience in  
5 investments. The trustees shall be appointed from persons experienced  
6 in each of the following fields: agriculture, fisheries, forest re-  
7 sources, finance and tourism.

8 (c) The term of the trustees is three years except that of the  
9 trustees first taking office one shall serve for a term of one year,  
10 two shall serve for a term of two years, and two shall serve for a term  
11 of three years. The governor shall designate the terms in his original  
12 appointments. A vacancy on the board shall be filled in the same  
13 manner as an original appointment. An appointee to fill a vacancy  
14 holds office for the remainder of the term for which his predecessor  
15 was appointed. A trustee may be removed by the governor for ineffi-  
16 ciency, neglect of duty or malfeasance in office.

17 (d) The trustees shall elect one of their number as chairman.  
18 The person elected serves as chairman for a term of one year but may be  
19 reelected for successive terms. The board may have other officers as  
20 it determines.

21 Sec. 37.12.070. COMPENSATION, PER DIEM AND TRAVEL. Trustees  
22 receive an annual salary of \$37,500 and are in the exempt service under  
23 AS 39.25.110. They receive per diem and travel allowances as provided  
24 by law for other boards and commissions.

25 Sec. 37.12.080. MEETINGS, RULES, QUORUM, VOTES REQUIRED; CONFLICT  
26 OF INTEREST. (a) The board shall prescribe its own rules of procedure.  
27 It shall meet at a time and place determined by the chairman, and at  
28 other times and places as the chairman, or a majority of the trustees  
29 considers necessary. A quorum is a majority of the trustees. The

1 votes of the trustees shall be recorded. Effective action to carry out  
2 the powers granted under this chapter requires the affirmative vote of  
3 a majority of the trustees. No trustee may, with respect to a matter  
4 before the board, vote for or on behalf of another trustee.

5 (b) No trustee may act upon a matter in which his relationship  
6 with any person creates a conflict of interest. No trustee may have an  
7 official connection with or hold stock or securities in, or have a  
8 pecuniary interest in, a corporation, company or association in whose  
9 securities any funds under this chapter are invested or is the recipient  
10 of or has applied for any loan or grant under this chapter.

11 Sec. 37.12.090. POWERS. The board has the power to

12 (1) direct the investment of the principal of the fund and  
13 require reports relating to the investment as it prescribes;

14 (2) prepare and submit to the governor plans for expenditures  
15 of fund income;

16 (3) hire and determine the compensation of an executive  
17 director, consultants expert in investments, finance, economics, re-  
18 newable resources and other relevant technical professions, and other  
19 persons as necessary to assist the board in the exercise of its powers;

20 (4) take whatever other actions are reasonably necessary in  
21 furtherance of the purposes of this chapter.

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

23 (21) members of the Board of Trustees of the Alaska Permanent  
24 Fund.

2956  
Bevier

Introduced: 1/12/77  
Referred: (Judiciary) and  
Finance (waived 3/9)  
3/9 Spec Common Alaska  
Permanent Fund

IN THE HOUSE

BY SWANSON

HOUSE BILL NO. 4

IN THE LEGISLATURE OF THE STATE OF ALASKA

TENTH LEGISLATURE - FIRST SESSION

A BILL

For an Act entitled: "An Act relating to the Alaska permanent fund."

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

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

CHAPTER 12. ALASKA PERMANENT FUND.

Sec. 37.12.010. FUND ESTABLISHED. There is established as a separate account the Alaska permanent fund. 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 shall be placed in the fund. These funds and any other funds appropriated for deposit in the permanent fund shall be held perpetually in trust for the benefit of the present and future generations of Alaskans. The fund shall be administered in accordance with the provisions of this chapter.

Sec. 37.12.020. FUND PRINCIPAL. Funds placed or deposited in the permanent fund are fund principal which shall be invested in perpetuity only in the income-producing investments specifically designated in this chapter regardless of other provisions of law dealing with permissible investments of state funds.

Sec. 37.12.030. INVESTMENTS ALLOWED. (a) The principal of the fund may be invested only in

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

(2) obligations of the State of Alaska or municipalities of the State of Alaska;

(3) obligations secured by reserves paid in by the United

1 States or agencies or instrumentalities of the United States or corpor-  
2 ations in which the United States is a shareholder or member;

3 (4) bank certificates of deposit which are secured as to the  
4 payment of principal and interest in accordance with Alaska law;

5 (5) corporate obligations of prime or equivalent quality as  
6 recognized by a nationally recognized rating organization.

7 (b) Investment policy shall be formulated by the board of trustees  
8 with the assistance of the commissioners of revenue and commerce and  
9 economic development. In formulating investment policy the board shall  
10 consider maximum income consistent with safety governed by the prudent-  
11 man rule.

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13 permanent fund principal shall be used to provide funding for capital  
14 and operating appropriations for the rehabilitation, enhancement and  
15 development of renewable resource programs. Plans for expenditure from  
16 fund income shall be prepared in detail by the board, with the cooper-  
17 ation of appropriate state departments and agencies. The plans shall  
18 be submitted to the governor who shall submit the requested appropria-  
19 tions, as prepared by the board, in accordance with the Executive  
20 Budget Act (AS 37.07) as part of his annual budget presentation to the  
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22 ing at the close of each fiscal year are transferred to fund principal.

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24 volving permanent fund principal results in an actual dollar loss of  
25 principal, the loss shall be reimbursed in full from fund income before  
26 any additional income may be expended.

27 Sec. 37.12.060. TRUSTEES. (a) There is established in the  
28 Department of Revenue, division of treasury, the Board of Trustees of  
29 the Permanent Fund. The board is the governing body of the fund.

1 (b) The board consists of five trustees appointed by the governor  
2 and confirmed by the legislature in joint session. Each trustee shall  
3 have been at the time of his appointment a resident of the state for at  
4 least 10 years and shall have adequate knowledge of and experience in  
5 investments. The trustees shall be appointed from persons experienced  
6 in each of the following fields: agriculture, fisheries, forest re-  
7 sources, finance and tourism.

8 (c) The term of the trustees is three years except that of the  
9 trustees first taking office one shall serve for a term of one year,  
10 two shall serve for a term of two years, and two shall serve for a term  
11 of three years. The governor shall designate the terms in his original  
12 appointments. A vacancy on the board shall be filled in the same  
13 manner as an original appointment. An appointee to fill a vacancy  
14 holds office for the remainder of the term for which his predecessor  
15 was appointed. A trustee may be removed by the governor for ineffi-  
16 ciency, neglect of duty or malfeasance in office.

17 (d) The trustees shall elect one of their number as chairman.  
18 The person elected serves as chairman for a term of one year but may be  
19 reelected for successive terms. The board may have other officers as  
20 it determines.

21 Sec. 37.12.070. COMPENSATION, PER DIEM AND TRAVEL. Trustees  
22 receive an annual salary of \$37,500 and are in the exempt service under  
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24 by law for other boards and commissions.

25 Sec. 37.12.080. MEETINGS, RULES, QUORUM, VOTES REQUIRED; CONFLICT  
26 OF INTEREST. (a) The board shall prescribe its own rules of procedure.  
27 It shall meet at a time and place determined by the chairman, and at  
28 other times and places as the chairman, or a majority of the trustees  
29 considers necessary. A quorum is a majority of the trustees. The

1 votes of the trustees shall be recorded. Effective action to carry out  
2 the powers granted under this chapter requires the affirmative vote of  
3 a majority of the trustees. No trustee may, with respect to a matter  
4 before the board, vote for or on behalf of another trustee.

5 (b) No trustee may act upon a matter in which his relationship  
6 with any person creates a conflict of interest. No trustee may have an  
7 official connection with or hold stock or securities in, or have a  
8 pecuniary interest in, a corporation, company or association in whose  
9 securities any funds under this chapter are invested or is the recipient  
10 of or has applied for any loan or grant under this chapter.

11 Sec. 37.12.090. POWERS. The board has the power to

12 (1) direct the investment of the principal of the fund and  
13 require reports relating to the investment as it prescribes;

14 (2) prepare and submit to the governor plans for expenditures  
15 of fund income;

16 (3) hire and determine the compensation of an executive  
17 director, consultants expert in investments, finance, economics, re-  
18 newable resources and other relevant technical professions, and other  
19 persons as necessary to assist the board in the exercise of its powers;

20 (4) take whatever other actions are reasonably necessary in  
21 furtherance of the purposes of this chapter.

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

23 (21) members of the Board of Trustees of the Alaska Permanent  
24 Fund.

6956  
6956

|                                                 |                 |
|-------------------------------------------------|-----------------|
| ALASKA STATE LEGISLATURE                        |                 |
| TENTH... Legislature                            | FIRST.. Session |
| HOUSE .....BILL..... NO. ...4.....              |                 |
| By SWANSON .....                                |                 |
| "An Act relating to the Alaska permanent fund." |                 |
| Permanent Fund                                  |                 |
| Introduced in the House 1-12 77                 |                 |
| ....., 19....                                   |                 |

|                          |                                              |
|--------------------------|----------------------------------------------|
| HISTORY IN THE HOUSE     |                                              |
| 19 77                    | Read first time and referred to Committee on |
| Jan. 12                  | Judiciary and Finance                        |
| Mar 9                    | Reported back with recommendation that       |
|                          | Read second time and                         |
|                          | Read third time and                          |
|                          | PASS Effective Date                          |
|                          | Yeas Yeas                                    |
|                          | Nays Nays                                    |
|                          | Absent Absent                                |
|                          | Excused Excused                              |
|                          | Reconsideration                              |
|                          | PASS Effective Date                          |
|                          | Yeas Yeas                                    |
|                          | Nays Nays                                    |
|                          | Absent Absent                                |
|                          | Excused Excused                              |
|                          | Reported correctly engrossed                 |
|                          | Signed by Speaker                            |
|                          | Sent to Senate                               |
| CHIEF CLERK OF THE HOUSE |                                              |

|                         |                                              |
|-------------------------|----------------------------------------------|
| HISTORY IN THE SENATE   |                                              |
| 19                      | Read first time and referred to Committee on |
|                         | Reported back with recommendation that       |
|                         | Read second time and                         |
|                         | Read third time and                          |
|                         | PASS Effective Date                          |
|                         | Yeas Yeas                                    |
|                         | Nays Nays                                    |
|                         | Absent Absent                                |
|                         | Excused Excused                              |
|                         | Reconsideration                              |
|                         | PASS Effective Date                          |
|                         | Yeas Yeas                                    |
|                         | Nays Nays                                    |
|                         | Absent Absent                                |
|                         | Excused Excused                              |
|                         | Reported correctly engrossed                 |
|                         | Signed by President                          |
|                         | Returned to House                            |
| SECRETARY OF THE SENATE |                                              |

|                      |                                                            |
|----------------------|------------------------------------------------------------|
| HISTORY IN THE HOUSE |                                                            |
| 19                   | Received from Senate                                       |
|                      | Concurred in Senate amendment thus adopting:               |
|                      | Failed to concur in Senate amendment; asked Sen. to recede |
|                      | Senate receded from amendment                              |
|                      | Senate failed to recede from amendment                     |
|                      | FCC appointed by House                                     |
|                      | FCC appointed by Senate                                    |
|                      | FCC adopted                                                |
|                      | To enrolling                                               |
|                      | Reported correctly enrolled                                |
|                      | Sent to Governor                                           |
|                      | ..... Governor                                             |
|                      | Filed with Lt. Governor                                    |
|                      | Chapter No. ....                                           |

SCOMM

#9:149

Original sponsors: McKinnon and  
Gardiner

Offered: 5/24/77  
Referred: Rules

1 IN THE HOUSE

BY THE COMMERCE COMMITTEE

2 2d CS FOR HOUSE BILL NO. 29

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 TENTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act providing for state chartered credit unions."

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

8 \* Section 1. AS 06 is amended by adding a new chapter to read:

9 CHAPTER 40. ALASKA CREDIT UNION ACT.

10 ARTICLE 1. FORMATION AND MANAGEMENT OF CREDIT UNIONS.

11 Sec. 06.40.010. FORMATION OF CREDIT UNION. (a) A credit union  
12 may be formed by seven or more residents of this state who meet the  
13 requirement of common bond contained in sec. 60 of this chapter and the  
14 requirements in this section by subscribing for shares of the credit  
15 union in the aggregate amount of \$1,000 and executing two copies of  
16 articles of incorporation and bylaws of the credit union consistent with  
17 the provisions of this chapter and regulations of the commissioner.

18 (b) The incorporators shall submit to the commissioner an appli-  
19 cation to establish a credit union, including the proposed articles of  
20 incorporation, bylaws, and required fees. The commissioner shall approve  
21 the application by the incorporators if he determines that

22 (1) the articles of incorporation and bylaws conform to the  
23 provisions of this chapter;

24 (2) the incorporators are fit and of good general character;

25 (3) the proposed credit union is economically feasible;

26 (4) the name of the proposed credit union is not deceptively  
27 similar to another credit union doing business in the state; and

28 (5) any conditions imposed by the department in granting the  
29 certificate of approval have been fulfilled.

1 (c) The commissioner shall, within 60 days of receipt from the  
2 incorporators of all information requested by the commissioner under (b)  
3 of this section, either approve or disapprove the application. If the  
4 commissioner approves the application, he will within the 60-day period  
5 prescribed in this subsection issue a certificate of approval and return  
6 a copy of the articles of incorporation, the certificate of approval,  
7 and bylaws to the organizers to be preserved in the permanent files of  
8 the credit union.

9 (d) No credit union may transact business until formal approval  
10 of the charter has been received.

11 Sec. 06.40.020. ARTICLES OF INCORPORATION. (a) The articles of  
12 incorporation shall state the name of the credit union; the term of  
13 existence; the par value of its shares, which shall be in \$5 multiples,  
14 not less than \$5 nor more than \$25; the names and addresses of the in-  
15 corporators and the number of shares held by each; the territory in  
16 which the proposed credit union will operate; the proposed field of  
17 membership, specified in detail; and the number of directors which shall  
18 be an odd number not less than 5 and not more than 25.

19 (b) Amendments to the articles of incorporation shall be submitted  
20 to the commissioner and shall be effective upon written approval of the  
21 commissioner. A fee may be charged for the approval of amendments.

22 Sec. 06.40.030. BYLAWS. The incorporators shall adopt the initial  
23 bylaws of the credit union. The members of the credit union may alter,  
24 amend or repeal the bylaws or adopt new bylaws. The bylaws shall pre-  
25 scribe the following:

26 (1) the conditions of residence or occupation which qualify  
27 persons for membership; however,

28 (A) credit unions shall be open to groups having common  
29 bonds of occupation or association, or to residents within a well-

1 defined neighborhood, community, or rural district, or to employees  
2 of related or vicinal industries, or to members of bona fide frater-  
3 nal, religious, cooperative, labor, rural, educational, or similar  
4 organization and employees of the credit union; members of the  
5 immediate family of all qualified persons are eligible for member-  
6 ship; in this section "members of the immediate family" include the  
7 wife, husband, parents, and children of a member whether living  
8 together in the same household or not and any other relative of the  
9 member or spouse of a member living together in the same household  
10 as the member;

11 (B) organizations and associations composed of indivi-  
12 duals, the majority of whom are eligible for membership, may be  
13 admitted to membership in the same manner and under the same  
14 conditions as individuals;

15 (C) an individual who ceases to qualify under this  
16 section may retain his full membership in the credit union at the  
17 discretion of the board of directors;

18 (2) the method of receipting for money paid on accounts;

19 (3) the number of directors and the length of their terms, a  
20 credit committee or loan officer;

21 (4) the duties of the several officers;

22 (5) the time of the annual meeting of members, which shall be  
23 held within 90 days after the end of the calendar year;

24 (6) the manner in which members and directors shall be noti-  
25 fied of meetings;

26 (7) other provisions for the management of the affairs of the  
27 credit union not inconsistent with law or the articles of incorporation.

28 Sec. 06.40.040. NAME. The name of a credit union chartered under  
29 this chapter shall include the words "credit union". A credit union may

1 not adopt the same name as that of any other existing credit union.

2 Sec. 06.40.050. INITIAL DIRECTORS AND COMMITTEES. The incorpora-  
3 tors shall select at least five persons to serve on the board of direc-  
4 tors, three persons to serve on the supervisory committee, and persons  
5 to serve on other committees required by the articles or bylaws. The  
6 selected persons will serve in these capacities until the first annual  
7 meeting of the members and the election of their successors.

8 Sec. 06.40.060. MEMBERSHIP. (a) Except as provided in this sec-  
9 tion, the membership of a credit union shall be limited to persons who  
10 have common bonds who have met the requirements stated in the articles  
11 of incorporation and the bylaws.

12 (b) Societies and co-partnerships composed primarily of indivi-  
13 duals who are eligible to membership and corporations whose stockholders  
14 are composed primarily of these individuals may be admitted to member-  
15 ship in the same manner and under the same conditions as individuals.

16 (c) A credit union organized under this chapter may permit mem-  
17 bership of a central credit union organized under this chapter.

18 Sec. 06.40.070. POWERS. A credit union may

19 (1) have perpetual succession by its corporate name unless  
20 its duration is limited by its articles of incorporation;

21 (2) adopt and use a seal, which may be altered at pleasure;

22 (3) sue and be sued, complain and defend, in its corporate  
23 name;

24 (4) make contracts, purchase, hold, lease and dispose of  
25 property, either in whole or in part, necessary to its operations;

26 (5) require the payment of an entrance fee or annual member-  
27 ship fee;

28 (6) receive savings from its members in the form of shares,  
29 deposits, time certificates or special purpose thrift accounts;

1           (7) lend its funds to its members and invest surplus funds as  
2 provided in this chapter;

3           (8) borrow from any source in an aggregate amount not to  
4 exceed 50 per cent of paid-in and unimpaired capital and surplus to meet  
5 share withdrawals or for purposes of financing investments in real estate  
6 and credit union premises under sec. 276 of this chapter but may not  
7 borrow for any other investments, and discount or sell eligible obliga-  
8 tions, subject to regulations prescribed by the commissioner; however,  
9 the proposed borrowing must be in accordance with policy established by  
10 the board of directors, and the credit union must notify the commissioner  
11 when the amount borrowed by the credit union exceeds 35 per cent of its  
12 paid-in and unimpaired capital and surplus;

13           (9) make deposits in banks chartered by this state or the  
14 federal government, in trust companies, in savings and loan associations,  
15 and in central credit unions;

16           (10) hold membership in a central credit union organized under  
17 this chapter and in organizations composed of credit unions;

18           (11) declare dividends, pay interest on deposits and pay  
19 interest refunds to borrowers as provided in this chapter;

20           (12) assess charges to members in accordance with the bylaws  
21 for failure to meet their obligations to the credit union;

22           (13) sell travelers checks, money orders and other money-type  
23 instruments to its members;

24           (14) act as fiscal agents for and to receive deposits from  
25 this state, the federal government or political subdivisions of either;

26           (15) perform trust services for its members subject to the  
27 provisions of ch. 25 of this title upon approval by the commissioner,  
28 including the trust estates of deceased members, and to act as a custo-  
29 dian of qualified pension funds of self-employed individuals under the

1 provisions of P.L. 89-809;

2 (16) sell all or a part of its assets or purchase all or a  
3 part of the assets of another credit union, subject to the approval of  
4 the commissioner;

5 (17) receive from its members or from another credit union  
6 deposits in accounts of a type approved by the administrator of the  
7 National Credit Union Administration for federally chartered credit  
8 unions, and honor requests for withdrawals of these deposits in any form  
9 which is similarly approved, if the credit union has total shares and  
10 deposits of at least \$1,000,000 and maintains the reserves and bonds  
11 required by the commissioner;

12 (18) contribute to public service or eleemosynary institutions  
13 and contribute to, support or participate in a nonprofit service facility  
14 whose services will benefit the credit union, subject to regulations  
15 prescribed by the commissioner;

16 (19) facilitate its members' purchase of goods and services in  
17 a manner which promotes the purposes of the credit union;

18 (20) exercise the incidental powers necessary to enable it to  
19 carry out effectively the business and purposes for which it is incor-  
20 porated, including the inherent powers generally implied for general  
21 corporations organized under the laws of this state.

22 Sec. 06.40.080. MEMBERS' MEETINGS. The annual meeting and special  
23 meetings of the members of the credit union shall be held at the time,  
24 place and in the manner prescribed in the bylaws. At least a simple  
25 majority of the members must be present or represented by proxies to  
26 conduct the annual meeting; however, proxies shall be equally divided  
27 among those members attending the annual meeting. Each member shall have  
28 one vote at the annual meeting, irrespective of his shareholdings. A  
29 society, association, partnership or corporation, having membership in

1 the credit union, may be represented and vote by one of its members or  
2 shareholders who has been legally authorized by its governing body.

3 Sec. 06.40.090. BOARD OF DIRECTORS. (a) The business affairs,  
4 funds and records of the credit union shall be directed by a board of  
5 directors to be elected at the annual members' meeting by and from the  
6 members. All members of the board shall hold office for the term pro-  
7 vided in the bylaws. The board of directors shall fill vacancies  
8 occurring in the board at the next regular directors' meeting after the  
9 vacancy occurs, until successors elected at the next annual members'  
10 meeting have been qualified, except that vacancies created by an expan-  
11 sion of the board shall be filled only by election at the next members'  
12 meeting. The board shall appoint the members of the supervisory com-  
13 mittee and other committees required by the bylaws and shall fill  
14 vacancies occurring in these committees.

15 (b) The board of directors shall meet as often as necessary, but  
16 not less than once each month. The board may appoint from the membership  
17 of the board an executive committee of not less than three directors who  
18 may be authorized to act for the board in all respects, subject to  
19 conditions and limitations prescribed by the board.

20 (c) No member of the board or committee of the board may be com-  
21 pensated for his service. A member, while on official business of the  
22 credit union authorized by the board of directors, may be reimbursed for  
23 necessary expenses incidental to the performance of the business.

24 (d) It is the duty of the directors to

25 (1) act upon applications for membership or to appoint one or  
26 more membership officers other than the treasurer, assistant treasurer,  
27 or loan officer, to act on membership applications under procedures  
28 established in the bylaws;

29 (2) purchase a blanket fidelity bond, in accordance with the

1 regulations of the commissioner, covering the officers, employees,  
2 members of official committees, and agents of the credit union;

3 (3) determine the interest rate to be charged on loans and to  
4 be paid on deposits, to authorize an interest refund to members from  
5 income earned and received in proportion to the interest paid by them,  
6 and to declare dividends on shares as provided in the bylaws;

7 (4) determine the number of shares and share certificates  
8 and the classes of shares and share certificates that may be held by a  
9 member, and determine the security and the maximum amount which may be  
10 loaned or provided in lines of credit;

11 (5) direct the investment of surplus funds, except that the  
12 board may designate a committee of its number or a qualified individual  
13 to have charge of making investments in accordance with sec. 290 of this  
14 chapter;

15 (6) authorize the employment of persons necessary to carry on  
16 the business of the credit union and to establish the compensation of  
17 employees, the treasurer and loan officers;

18 (7) designate a depository or depositories for the funds of  
19 the credit union, authorize the conveyance of property, and borrow or  
20 lend money to carry on the functions of the credit union;

21 (8) perform or authorize any action consistent with this  
22 chapter not specifically reserved by the bylaws for the members.

23 Sec. 06.40.100. EXECUTIVE OFFICERS. (a) At the organization  
24 meeting and within 30 days following each annual meeting of the members,  
25 the directors shall elect from their own number an executive officer,  
26 who may be designated as chairman of the board or president; a vice-  
27 chairman of the board or one or more vice-presidents, a treasurer, and  
28 a secretary, of whom the last two may be the same individual. The  
29 persons elected shall be the executive officers of the corporation. No

1 executive officer, except the treasurer, may be compensated for his  
2 service. The terms of officers shall be one year or until their suc-  
3 cessors have been chosen and qualified.

4 (b) The board of directors may employ an officer in charge of  
5 operations whose title shall be general manager or may designate the  
6 treasurer to act as general manager and be in active charge of the  
7 affairs of the credit union. The duties of the officers shall be as  
8 determined by the bylaws.

9 (c) Before the officer in charge of operations may enter upon his  
10 duties he shall give bond with good and sufficient surety, in an amount  
11 and character to be determined by the board in compliance with regula-  
12 tions prescribed by the commissioner.

13 Sec. 06.40.110. CREDIT COMMITTEE. (a) The board of directors  
14 shall appoint a credit committee consisting of an odd number of members  
15 of the credit union, no less than three, or, if provided in the bylaws,  
16 appoint one or more loan officers empowered to approve loans under the  
17 conditions prescribed by the board. No loan may be made unless approved  
18 by the loan officer or credit committee.

19 (b) A credit committee shall hold meetings as often as the busi-  
20 ness of the credit union may require, but not less frequently than once  
21 a month. Loans must be approved by a majority of the committee who are  
22 present at the meeting at which the application is considered. The  
23 credit committee may appoint one or more loan officers, and delegate to  
24 him or them the power to approve loans. Not more than one member of the  
25 credit committee may be appointed as loan officer or assistant loan  
26 officer.

27 Sec. 06.40.120. SUPERVISORY COMMITTEE. (a) The supervisory  
28 committee shall make a semiannual audit of the credit union and shall  
29 submit a report of the audit to the board of directors and a summary of

1 that report to the members. A copy of the report shall also be submitted  
2 to the department within 60 days of its completion. The committee shall  
3 provide for supplementary audits which it considers necessary or which  
4 may be required by the commissioner, and submit reports of these supple-  
5 mentary audits to the board of directors. The supervisory committee  
6 shall also provide for verification of the passbooks and accounts of the  
7 members with the records of the treasurer at least once every two years  
8 and at least half of the passbooks and accounts shall be verified each  
9 year.

10 (b) The supervisory committee may by a unanimous vote suspend an  
11 officer of the credit union or a member of the credit committee or of  
12 the board of directors, until the next meeting, which shall be held not  
13 less than 7 nor more than 14 days after the suspension, at which meeting  
14 the suspension shall be acted on by the members of the credit union.

15 (c) The supervisory committee may by a majority vote call a spe-  
16 cial meeting of the members to consider an alleged violation of this  
17 chapter, the charter or the bylaws, or a practice of the credit union  
18 considered by the supervisory committee to be unsafe or unauthorized; if  
19 a meeting is called, the commissioner shall be notified immediately and  
20 informed of the time and place of the meeting and the nature of the  
21 alleged violation to be considered.

22 (d) A member of the supervisory committee may be suspended by a  
23 majority vote of the board of directors. The members of the credit  
24 union shall decide, at a meeting held not less than 7 nor more than 14  
25 days after the suspension, whether the suspended committee member shall  
26 be removed from or restored to the supervisory committee.

27 Sec. 06.40.125. CONFLICTS OF INTEREST. (a) No director, committee  
28 member, officer, agent or employee of the credit union may in any  
29 manner, directly or indirectly, participate in the deliberation upon or

1 the determination of any question affecting his pecuniary interest or  
2 the pecuniary interest of any corporation, partnership or association,  
3 other than the credit union, in which he is directly or indirectly  
4 interested.

5 (b) In addition to other penalties, a person who violates this  
6 section may not serve as an officer, agent or employee of a credit  
7 union.

8 ARTICLE 2. SUPERVISION AND REGULATION OF CREDIT UNIONS.

9 Sec. 06.40.130. SUPERVISION AND FEES. (a) The commissioner has  
10 general supervision of credit unions, subject to the provisions of this  
11 chapter.

12 (b) The commissioner shall promulgate regulations for the admin-  
13 istration of this chapter which prescribe the minimum amount of surety  
14 bond coverage required of credit unions in relation to their assets and  
15 establish application and examination fees.

16 (c) The commissioner may authorize a credit union chartered under  
17 this chapter to engage in any activity in which a federally chartered  
18 credit union may engage.

19 (d) For the purpose of paying the costs incident to the ascertain-  
20 ment of whether a certificate of approval should be issued, the incor-  
21 porators shall pay, at the time of filing their articles of incorporation  
22 and bylaws, the amount prescribed by the commissioner, which shall not  
23 exceed \$100 in any case. Not later than January 31 of each calendar  
24 year, each credit union shall pay to the department for the preceding  
25 calendar year, a supervision fee in accordance with a graduated scale  
26 prescribed by this section on the basis of assets as of December 31 of  
27 the preceding year, but the fee shall in no event be less than \$100, as  
28 follows:

29 Total Assets

Maximum Fee

1 \$500,000 or less.....30 cents per \$1,000  
 2 Over \$500,000 and not over \$1,000,000....\$150 plus 25 cents per \$1,000  
 3 in excess of \$500,000  
 4 Over \$1,000,000 and not over \$2,000,000..\$275 plus 20 cents per \$1,000  
 5 in excess of \$1,000,000  
 6 Over \$2,000,000 and not over \$5,000,000..\$475 plus 15 cents per \$1,000  
 7 in excess of \$2,000,000  
 8 Over \$5,000,000.....\$925 plus 10 cents per \$1,000  
 9 in excess of \$5,000,000

10 (e) No annual supervision fee is payable by the credit union for  
 11 the year in which its charter is issued if the charter is issued after  
 12 June 30 except in cases of conversion from a credit union chartered  
 13 under the provisions of the Federal Credit Union Act to a credit union  
 14 chartered under this chapter, or in which final distribution is made in  
 15 its liquidation or the charter is otherwise canceled.

16 (f) Failure of any credit union to pay any amount provided in this  
 17 section is grounds for the revocation of the charter of the credit union  
 18 failing to make the payment.

19 (g) Fees collected under this section shall be deposited in the  
 20 general fund.

21 Sec. 06.40.140. EXAMINATIONS. (a) The commissioner or his  
 22 representatives shall conduct an annual examination and any additional  
 23 examinations he considers necessary of each credit union established  
 24 under this chapter. A report of the examination will be forwarded to  
 25 the board of directors of the credit union within 60 days after comple-  
 26 tion of the examination. The report shall contain comments on the  
 27 general condition of the assets and the management of the credit union.  
 28 A general meeting of the board of directors and committeemen shall be  
 29 called within 30 days after receipt to consider the report, and copies

1 of the report shall be made available by the board of directors to all  
2 members of the credit union. Within 60 days of receipt of the report,  
3 the board of directors shall furnish the department with a signed state-  
4 ment acknowledging the receipt of the report and attesting to their  
5 review of and familiarity with its contents.

6 (b) A credit union, its officers and agents are required to give  
7 the commissioner full access to all books, papers, securities, records  
8 and other sources of information under their control. For purposes of  
9 examination, the commissioner shall have the power to subpoena wit-  
10 nesses, administer oaths, compel the giving of testimony and require the  
11 submission of documents.

12 (c) The commissioner may contract for examinations of credit  
13 unions if the scope of the examination is equivalent to the examination  
14 made by the commissioner. The cost of contract examinations shall be  
15 borne by the credit union.

16 (d) The examiner shall take and subscribe an oath that he will  
17 honestly and impartially examine into and report the condition of state  
18 credit unions as to assets and liabilities and other information as may  
19 be required by the department, that he will not disclose the information  
20 he obtains through the examination to any person other than the depart-  
21 ment, that at the time of his employment he is not obligated to or a  
22 member of the credit union and that he is not an officer or employee of  
23 any credit union conducting business in this state.

24 (e) All records of the department relating to this chapter are  
25 public records, including those related to methods and procedures used  
26 in examinations, except that all papers, documents, reports, reports of  
27 examination, and other writings relating specifically to the supervision  
28 and regulation of any state credit union by the department under this  
29 chapter are not public records and are not open for examination or

1 copying by the public except under a court subpoena. Reports of examina-  
2 tions made by the department shall be retained for five years.

3 Sec. 06.40.150. REQUIRED DIRECTORS' MEETINGS AND STATEMENTS TO THE  
4 DEPARTMENT. When the department considers it necessary it may require a  
5 meeting of the board of directors of a credit union to be held in the  
6 manner and at the time and place it directs. Any report of an examina-  
7 tion required or allowed by this chapter, any conclusions drawn from  
8 such an examination by the department, any recommendations made by the  
9 department relative to it, and any other matters concerning the opera-  
10 tion and condition of the credit union may be presented to the board of  
11 directors by the department. Each member of the board of directors  
12 shall furnish to the department a statement on forms to be supplied by  
13 the department that he has read and is familiar with the recommendations  
14 of the department.

15 Sec. 06.40.160. ANNUAL REPORTS. A credit union organized under  
16 this chapter shall submit annual reports to the commissioner on forms  
17 supplied by him for that purpose, which reports shall be due on or be-  
18 fore February 1. A credit union failing to file by February 15 shall be  
19 levied a fine of \$10 per day until the report is filed.

20 Sec. 06.40.170. CENTRAL CREDIT UNION. (a) A central credit union  
21 may be organized and operated under the provisions of this chapter and  
22 is subject to all provisions not inconsistent with this section. This  
23 credit union shall be known as the Alaska Central Credit Union. Member-  
24 ship in the central credit union shall be limited to

25 (1) credit unions organized and operating under the pro-  
26 visions of this chapter or operating in this state under the provisions  
27 of the Federal Credit Union Act;

28 (2) officers, directors and committee members and employees  
29 of credit unions, employees of the central credit union, employees of an

1 association of Alaska credit unions, and resident employees of federal  
2 or state government agencies responsible for the supervision of credit  
3 unions in this state;

4 (3) organizations or associations of these persons;

5 (4) employees of a common employer with insufficient numbers  
6 to form or conduct the affairs of a separate credit union, upon approval  
7 of the commissioner; and

8 (5) persons who are members of credit unions in this state  
9 which have entered into or are about to enter into voluntary or involun-  
10 tary dissolution proceedings under the provisions of sec. 330 of this  
11 chapter or credit unions in this state which have entered into or are  
12 about to enter into voluntary or involuntary dissolution proceedings  
13 under the provisions of Chapter 14 of Title XII of the U.S. Code.

14 (b) The board of directors of a credit union becoming a member of  
15 the central credit union shall designate one person to be its voting  
16 representative. The voting representative shall be eligible to hold  
17 office in the central credit union as if that person were himself a  
18 member of the central credit union.

19 (c) The central credit union shall have all the rights and powers  
20 of any other credit union organized under this chapter and shall in  
21 addition have the power to obtain or acquire the assets and liabilities  
22 of a credit union operating in this state which enters into liquidation.

23 (d) The central credit union shall have the authority to make  
24 loans to other credit unions and to purchase shares of and make deposits  
25 in other credit unions. It shall have the power to invest in and grant  
26 loans to associations of credit unions, central funds of credit unions  
27 or organizations chartered to provide exclusive service to credit  
28 unions; to borrow money from any source, not to exceed the amount of its  
29 unimpaired capital and surplus; and to issue notes or debentures.

1 ARTICLE 3. FINANCIAL PRACTICES.

2 Sec. 06.40.180. SHARES. (a) Shares may be subscribed to, paid  
3 for and transferred in the manner prescribed in the bylaws. No certi-  
4 ficate may be issued to denote ownership of a share in a credit union.

5 (b) The credit union shall have and may impress a lien on the  
6 shares, deposits and accumulated dividends or interest of a member in  
7 his individual, joint or trust account for any sum due the credit union  
8 from the member or for any loan endorsed by him.

9 (c) When the losses of a credit union, resulting from a depreci-  
10 ation in value of its loans or investments or otherwise, exceed its  
11 undivided earnings and reserve fund so that the estimated value of its  
12 assets is less than the total amount due the shareholders, the directors  
13 shall immediately advise the department and the credit union may by a  
14 majority vote of the entire membership order a reduction in the shares  
15 of each of its shareholders to divide the loss proportionately among its  
16 members. If the credit union realizes from the assets a greater amount  
17 than was fixed by the order of reduction, the excess shall be divided  
18 among the shareholders whose assets were reduced, but only to the extent  
19 of the reduction.

20 Sec. 06.40.190. DEPOSITS. A credit union may issue time certifi-  
21 cates to its members, subject to the conditions and the returns estab-  
22 lished by the board of directors. Time certificates, differ from shares  
23 in that a predeclared rate of return may be established on them and they  
24 have a prior claim on the assets of the credit union. Christmas clubs,  
25 vacation clubs, and other thrift accounts may be operated in accordance  
26 with the provisions of the bylaws.

27 Sec. 06.40.200. MULTIPLE PARTY ACCOUNTS. (a) A credit union may  
28 enter into multiple party accounts to the same extent that it may enter  
29 into single party accounts. A multiple party account is an account in

1 the name of two or more persons, one or more of whom may make with-  
2 drawals. At least one party to a multiple party account must be a  
3 member of the credit union in which the account is established. The  
4 account may be created with any person designated by the credit union  
5 member, but a nonmember shall not be permitted to vote, obtain loans, or  
6 hold office.

7 (b) Accounts established for deposit of funds of a partnership,  
8 joint venture or other association or accounts controlled by two or more  
9 persons as the legally authorized agents or trustees for a corporation,  
10 unincorporated association, charitable or civic organization or any  
11 trust, except trusts of deposits evidenced only by the form of the  
12 deposit, are excluded from the meaning of the term and from the pro-  
13 visions of this chapter relating to multiple party accounts.

14 (c) Unless the terms of the account expressly stipulate that joint  
15 signatures are required, a multiple party account may be paid on demand  
16 to any one or more of the parties to the account, without regard to  
17 whether any other party is incompetent or deceased at the time the  
18 payment is demanded. If the account is one presumed to be a survivor-  
19 ship account, payment may not be made to the personal representative or  
20 heirs of a deceased party unless proofs of death are presented to the  
21 credit union showing that the decedent was the last surviving party. A  
22 credit union is not required to inquire as to the source of funds re-  
23 ceived for deposit or the proposed application of any sum withdrawn from  
24 the account.

25 (d) During the lifetime of all parties, a multiple party account  
26 which provides that the sums on deposit or in shares may be paid on  
27 demand of either of two or more parties is presumed to belong to the  
28 parties in proportion to the net contributions by each party to the sums  
29 on deposit. In the absence of satisfactory proof of net contributions,

1 the parties shall be presumed to own a multiple party account in equal  
2 undivided interests.

3 (e) The death of a party to a multiple party account shall have no  
4 effect on the beneficial ownership of the account, other than to trans-  
5 fer the decedent's right to his estate, unless the account is a survi-  
6 vorship account or trust account.

7 (f) Without qualifying any other statutory right to set-off or  
8 lien and subject to any contractual provision, when a party to a mul-  
9 tiple party account is indebted to a credit union, the credit union has  
10 a right to set-off against the entire amount of the account.

11 Sec. 06.40.210. SURVIVORSHIP ACCOUNTS. A multiple party account  
12 payable to two or more persons, jointly or severally, which does not  
13 expressly provide that there is no right of survivorship, is presumed to  
14 be a survivorship account. At the death of a party, sums on deposit in  
15 a survivorship account belong to the surviving party or parties as  
16 against the estate of the decedent. Where there are two or more sur-  
17 vivors, their respective ownership shall be in proportion to their  
18 previous net contributions augmented by an equal share for each survivor  
19 of any interest the decedent may have owned in the account immediately  
20 before his death, plus the proceeds of insurance on decedent's life paid  
21 to the account. The right of survivorship continues between survivors.

22 Sec. 06.40.220. PRESUMPTIONS REBUTTABLE. The presumptions created  
23 by secs. 190 - 210 of this chapter concerning beneficial ownership as  
24 between parties, or as between parties and beneficiaries, of multiple  
25 party accounts are relevant only to controversies between these persons  
26 or their creditors or other successors, and shall have no bearing on the  
27 rights of withdrawal of these persons as determined by the terms of the  
28 account contracts. These presumptions are based upon inferences of the  
29 intention of parties to multiple party accounts and the usual

1 expectations of persons using these accounts and are rebuttable by clear  
2 and convincing evidence of a different intention. The presumptions of  
3 survivorship are not subject to change by will, but may be rebutted by  
4 a written order received by the credit union to change the form of the  
5 account or directing that payment not be made in accordance with the  
6 account which is signed by a party and is received by the credit union  
7 during the party's lifetime. If not rebutted by contrary evidence, the  
8 presumptions provided in this chapter are effective to establish bene-  
9 ficial ownership. Transfers resulting from the application of these  
10 presumptions are effective by reason of the account contracts and are  
11 not to be considered as testamentary.

12 Sec. 06.40.230. PAYMENTS BY CREDIT UNION. Payment made in accord-  
13 ance with secs. 190 - 210 of this chapter discharges the credit union  
14 from all claims for amounts so paid whether or not the payment is  
15 consistent with the beneficial ownership of the account as between  
16 parties, or beneficiaries or their successors. The protection given  
17 does not extend to payments made after a credit union has received  
18 written notice from a party who has a present right of withdrawal that  
19 withdrawals in accordance with the terms of the account should not be  
20 permitted. Unless the notice is withdrawn by the person giving it, the  
21 death of any party after notice has no effect on withdrawal rights, and  
22 the personal representative or heirs of the decedent must concur in any  
23 demand for withdrawal if the credit union is to be protected under this  
24 section. No other notice or information shown to have been available to  
25 a credit union shall affect its right to the protection provided here.  
26 This protection shall have no bearing on the rights of parties in  
27 disputes between themselves or their successors concerning the bene-  
28 ficial ownership of funds in, or withdrawn from, multiple party accounts.

1 received from a minor who may withdraw the shares and deposits, includ-  
2 ing dividends and interest. Deposits and share investments made by a  
3 minor and withdrawals of them by the minor shall be valid in all re-  
4 spects. For these purposes a minor is considered of full age.

5 Sec. 06.40.250. INACTIVE ACCOUNTS. If a credit union is unable to  
6 contact a member, beneficiary or other person by first class mail at the  
7 last address shown on the records of the credit union, and if this  
8 inability continues for a period of more than seven years, all shares,  
9 deposits, accounts, dividends, interest and other sums due to or stand-  
10 ing in the name of that person escheat to and become the property of the  
11 state. This provision shall not apply to sums due to or standing in the  
12 name of two or more persons unless the credit union is unable to contact  
13 any of these persons in the manner and during the period specified in  
14 this section.

15 Sec. 06.40.260. DIVIDENDS. After provision for operating ex-  
16 penses, interest, accrued taxes and the required reserves, the board of  
17 directors may, at intervals determined by them in accordance with regula-  
18 tions which may be promulgated by the commissioner, declare a dividend  
19 to be paid on the classes of shares determined by them from the remain-  
20 ing net earning at a rate not to exceed the rate established by the  
21 National Credit Union Administrator. Dividends may be paid at different  
22 rates on different types of shares and at different rates and maturity  
23 dates in the case of share certificates. Dividend credit may be accrued  
24 on various types of shares and share certificates as authorized by the  
25 board of directors. No dividend shall be declared if, after payment of  
26 the dividend, known losses would exceed the combined balances of the  
27 reserve fund and undivided earnings.

28 Sec. 06.40.270. LOANS. (a) A credit union may make loans to its  
29 members upon the terms and conditions provided in the bylaws and

1 approved by the credit committee or loan officer. The rate of interest  
2 may not exceed one per cent per month on the unpaid balance, and the  
3 maximum rate of interest prescribed by this section is inclusive of all  
4 charges incident to making the loan. When applicable for real estate  
5 loans, the interest rates prescribed in AS 45.45.010(b) shall prevail.  
6 Every application for a loan shall be made in writing upon a form  
7 approved by the board of directors, and shall state the purpose for  
8 which the loan is desired, and the security, if any, offered. Every  
9 loan shall be evidenced by a written statement. An unsecured loan shall  
10 bear a maturity of no longer than five years and shall be supported by a  
11 financial statement of the loan applicant. All secured loans except  
12 those secured by improved real estate shall mature within 10 years. In  
13 addition to generally accepted types of security, the endorsement of a  
14 note by a guarantor or assignment of shares, in a manner consistent with  
15 the laws of this state, shall be considered security within the meaning  
16 of this chapter; however, when an endorsement of a note by a guarantor  
17 is used as security on a loan for more than \$2,000, the loan shall also  
18 be supported by a financial statement. The adequacy of all securities  
19 shall be within the determination of the credit committee or loan  
20 officer, subject to the provisions of this chapter and the bylaws. A  
21 borrower may repay his loan before maturity in whole or in part on any  
22 business day without penalty.

23 (b) The credit committee or loan officer may approve in advance  
24 upon its own motion or upon application by a member, an extension of  
25 credit, and loans may be granted to the member within the limit of the  
26 extension of credit. When an extension of credit has been approved,  
27 applications for loans need no further consideration as long as the  
28 aggregate obligation does not exceed the limit of the extension of  
29 credit. The credit committee or loan officer shall, at least once a