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

1 IN THE HOUSE

2 HOUSE BILL NO.

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 TENTH LEGISLATURE. - SECOND SESSION

5 A BILL

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

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

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

11 CHAPTER 18. ALASKA RESIDENT DIVIDEND PROGRAM.

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

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

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

1 direct distribution to the people of resident dividends, and by which a
2 individual's portion of that distribution will increase the longer he
3 continues to be an Alaska resident, will promote the purposes of en-
4 couraging a stable resident population, and of providing the people with
5 a more personal and direct stake in the outcome of the state's budget
6 decisions.

7 Sec. 37.18.020. ALASKA RESIDENT DIVIDEND PROGRAM. There is estab-
8 lished in the Department of Revenue the Alaska resident dividend pro-
9 gram. The program may be funded by the legislature by appropriations
10 from the general fund.

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

16 Sec. 37.18.040. ELIGIBILITY FOR SHARES. (a) As of December 31,
17 1979, each eligible resident of Alaska who makes timely application
18 under sec. 70 of this chapter shall be credited by the commissioner
19 with one share under this chapter for each five-year period since
20 January 1, 1974, in which he has been an eligible resident, as defined
21 in sec. 100 of this chapter, or would have been but for being too young
22 by five years or less to register to vote.

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

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

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

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

20 (c) A person may attempt to make proof by waiving his right to
21 privacy and authorizing the commissioner to make a search of any and all
22 local, state, and federal records and any private employment records
23 which may tend to prove his eligibility. The commissioner's making an
24 search of records is entirely discretionary, and he is under no duty to
25 make the search or to exercise reasonable care in making the search, if
26 he does so, the entire risk is upon the applicant.

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

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

(1) the reason for his ineligibility;

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

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

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

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

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

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

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

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

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

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

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

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

1 distributed.

2 Sec. 37.18.090. PENALTIES. (a) Any person who wilfully submits
3 false or misleading information to the commissioner in making proof of
4 his eligibility or of the eligibility of another is guilty of a mis-
5 demeanor.

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

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

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

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

17 (3) "eligible resident" means any person who is registered
18 to vote under the Election Code, is a resident of Alaska under AS
19 15.05.020, filed (or whose parent or parents filed) a resident Alaska
20 income tax return for the year preceding his application, and was
21 physically present in Alaska for more than one-half the period between
22 January 1 and December 31 last preceding his application for one or more
23 payments or for a share, or both, or who, if not so physically present
24 was temporarily absent for reasons of professional, vocational or other
25 special education for which a comparable program was not reasonably
26 available in Alaska, post-secondary education, military service, medical
27 treatment, or service in Congress;

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

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

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

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

18 * Sec. 3. This Act takes effect immediately, in accordance with AS 01.-
19 10.070(c).

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1 IN THE HOUSE

2 HOUSE BILL NO.

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 TENTH LEGISLATURE - SECOND SESSION

5 A BILL

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

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

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

10 ARTICLE IV. STATE INVESTMENT OVERSIGHT COMMITTEE.

11 Sec. 24.20.600. STATE INVESTMENT OVERSIGHT COMMITTEE ESTABLISHED.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

21 Sec. 24.20.670. DUTIES. The committee shall

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

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

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

1 trustees, renewable resources development fund commission, and develop-
2 ment bank policy board;

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

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

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

12 CHAPTER 13. ALASKA PERMANENT FUND.

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

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

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

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

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

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

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

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

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

1 members.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

28 (g) (To Come)
29

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

14 Sec. 37.13.150. BOARD BUDGET. The board's operating budget is
15 from the general fund and is subject to the Executive Budget Act (AS
16 37.07).

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

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

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

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

10 CHAPTER 55. THE ALASKA ENTERPRISE INVESTMENT FUND.

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

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

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

23 (a) There is established the Alaska Enterprise Fund Policy Board con-
24 sisting of a person employed in the executive branch of state government
25 appointed by the governor and six public members appointed by the
26 governor with due regard for geographical representation and confirmed
27 by a majority of the members of the legislature in joint session. At
28 least two of the public members shall have broad experience in invest-
29 ment finance. The board shall elect one of the public members as

1 chairman and other officers they determine desirable.

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

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

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

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

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

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

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

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

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

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

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

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

26 (5) review, consider and approve policies;

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

1 and receive all audit reports.

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

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

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

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

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

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

28 Sec. 44.55.090. FINDINGS.

29 (1) that investment in financially sound small and medium

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

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

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

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

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

17 (1) adopt, alter and use a corporate seal;
18 (2) prescribe, adopt, amend, and repeal bylaws;
19 (3) sue and be sued in the name of the investment fund;
20 (4) borrow funds, and in that connection furnish such collat-
21 eral or other security as it determines, except that investment fund
22 borrowing may not exceed one-half of its paid-in capital;

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

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

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

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

1 develop needed information and analyses;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 it considers desirable to carry out its purpose.

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

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

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

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

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

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

3 Sec. 44.55.190. DEFINITIONS. In this chapter

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

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

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

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

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

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

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

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

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

22 (OO) Alaska Permanent Fund Board of Trustees.

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

w.o. 4434

1 IN THE HOUSE

2 HOUSE BILL NO.

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 TENTH LEGISLATURE - SECOND SESSION

5 A BILL

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

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 12. ALASKA RENEWABLE RESOURCES CORPORATION.

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

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

17 (2) utilize the funds ^{set aside} ~~created~~ by ch. 11 of this title to
18 further the (A) development of renewable resources ~~industries~~ that will
19 contribute to a stable self-sustaining state economy, employment oppor-
20 tunities, and lifestyle alternatives for its citizens, and (B) com-
21 mercial, traditional, and common uses of the state's renewable resources

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

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

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

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

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

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

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

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

17 (e) It is further found that some of the state's renewable re-
18 sources will be most appropriately utilized by reserving their use to
19 noncommercial activities for the purposes of sustaining traditional
20 lifestyles, providing recreational opportunities, and protecting the
21 natural environment, all of which are culturally and historically impor-
22 tant to the citizens of the state.

23 Sec. 37.12.030. ALASKA RENEWABLE RESOURCES CORPORATION CREATED.

24 There is created the Alaska Renewable Resources Corporation to carry out
25 the purposes of this chapter. The corporation is a public corporation
26 of the state and an instrumentality of the state within the Department
27 of Revenue, but has a legal existence independent of and separate from
28 the state ~~and has continuing succession until its existence is termi-~~
29 ~~nated by law.~~ ^A The exercise by the corporation of the powers conferred

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

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

3 (1) facilitate the rehabilitation, enhancement, and develop-
4 ment of the state's renewable resources so as to foster a self-sus-
5 taining state economy;

6 (2) sponsor research, ^{and} development ~~and demonstration~~ of tech-
7 nologies and innovations for the rehabilitation and enhancement of the
8 state's renewable resources to achieve their most appropriate use;

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

14 Sec. 37.12.050. ALLOCATION. There shall be allocated to the cor-
15 poration from the receipts described in AS 37.11.020 at least five per
16 cent of the receipts paid the state from mineral lease bonuses and
17 rentals for state land and royalties derived from minerals produced on
18 state land. *collected in each month.*

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

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

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

1 and one member serving for four years.

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

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

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

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

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

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

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

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

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

18 (b) No member or employee of the board may acquire an interest,
19 direct or indirect, in a corporation, company, association, or project
20 owned, controlled, or invested in by the corporation. If a member or
21 employee owns or controls such an interest, he shall immediately dis-
22 close the interest in writing to the board and refrain from participat-
23 ing in any manner in any board activity relating to that interest.

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

- 26 (1) adopt, alter, and use a corporate seal;
27 (2) prescribe, adopt, amend, and repeal bylaws;
28 (3) sue and be sued in the name of the corporation;
29 (4) enter into any agreements necessary to the exercise of

1 its powers and functions;

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

8 (6) accept grants and loans from other sources than those in
9 (5) of this section to be held and used for the purposes of the corpora-
10 tion;

11 (7) appear in behalf of the corporation before boards, com-
12 missions, departments, or other agencies of municipal, state, or federal
13 government;

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

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

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

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

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

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

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

7 (15) adopt regulations to implement this chapter;

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

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

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

15 (2) provide financial assistance for projects which the board
16 finds will accomplish the purposes of the corporation as set out in sec.
17 40 of this chapter;

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

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

24 (5) annually evaluate and prioritize areas for potential
25 financial assistance;

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

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

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

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

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

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

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

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

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

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

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

write & shorten

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

12 (H) if the proposed project involves the use of a renew-
13 able resource, that use constitutes an appropriate use of that
14 resource;

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

20 (3) consider regional preferences and priorities in evaluat-
21 ing projects.

22 (b) The board may not

23 (1) invest more than five per cent of the resources of the
24 corporation or \$1,500,000, whichever is less, in a single project or
25 applicant unless the legislature has approved the investment by con-
26 current resolution;

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

1 resolution;

2 (3) make a loan for a period in excess of ¹⁰20 years unless the
3 legislature has approved the loan by concurrent resolution; or

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

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

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

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

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

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

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

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

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

27 (3) his projects which have previously received financial
28 assistance from the corporation, if any, have complied with all require-
29 ments of that assistance and have performed with sufficient success or

1 promise to warrant further aid.

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

5 (b) The board shall publish an annual report for the governor, the
6 legislature, and the public at the time of submitting its annual budget
7 request. Each annual report shall include financial statements and
8 audit reports, a statement detailing the sources from which the corpora-
9 tion received money, a statement detailing the investments made by the
10 corporation, a summary and evaluation of the data required by sec.
11 160(5) and (6) of this chapter, and any other information that the board
12 of trustees believes would be of interest to the recipients of the
13 report.

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

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

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

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

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

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

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

9 (5) "project" means products, markets, innovation, or tech-
10 nological developments for the rehabilitation, enhancement, or
11 development of renewable resources and includes applied research for
12 those products, markets, or technological developments;

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

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

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

22 (6) Alaska Renewable Resources Corporation (AS 37.12.030) --
23 June 30, 1982.
24
25
26
27
28
29

W.O. 4350

12/5/77

1 IN THE HOUSE

2 HOUSE BILL NO.

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 TENTH LEGISLATURE - SECOND SESSION

5 A BILL

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

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

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

10 ARTICLE IV. STATE INVESTMENT OVERSIGHT COMMITTEE.

11 Sec. 24.20.600. STATE INVESTMENT OVERSIGHT COMMITTEE ESTABLISHED.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

21 Sec. 24.20.670. DUTIES. The committee shall

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

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

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

1 trustees, renewable resources development fund commission, and develop-
2 ment bank policy board;

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

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

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

12 CHAPTER 13. ALASKA PERMANENT FUND.

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

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

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

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

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

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

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

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

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

1 members.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

14 CHAPTER 55. THE ALASKA ENTERPRISE INVESTMENT FUND.

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

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

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

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

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

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

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

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

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

1 the member shall be reinstated to his position.

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

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

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

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

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

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

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

1 (5) review, consider and approve policies;

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

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

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

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

23 Sec. 44.55.060. DUTIES OF THE INVESTMENT COMMITTEE. The invest-
24 ment committee has sole responsibility to approve all investment pro-
25 posals.

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

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

1 and investment committee members and officers and staff of the invest-
2 ment fund are in the exempt service under AS 39.25.

3 Sec. 44.55.090. FINDINGS.

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

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

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

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

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

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

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

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

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

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

29 (6) enter into agreements necessary or convenient in the

1 exercise of its powers and functions;

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

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

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

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

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

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

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

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

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

1 investments as well as probable safety of principal.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 report the results to the policy board.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

7 Sec. 44.55.190. DEFINITIONS. In this chapter

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

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

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

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

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

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

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

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

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

26 (OO) Alaska Permanent Fund Board of Trustees.

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

w.o. 4350
12/9/77

1 IN THE HOUSE

2 HOUSE BILL NO.

3 IN THE LEGISLATURE OF THE STATE OF ALASKA
4 TENTH LEGISLATURE - SECOND SESSION

5 A BILL

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

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

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

10 ARTICLE IV. STATE INVESTMENT OVERSIGHT COMMITTEE.

11 Sec. 24.20.600. STATE INVESTMENT OVERSIGHT COMMITTEE ESTABLISHED.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

22 Sec. 24.20.670. DUTIES. The committee shall

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

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

1 functions;

2 (3) review quarterly reports from the Alaska Permanent Fund
3 Board of Trustees, the Board of Trustees of the Alaska Renewable Re-
4 sources Corporation, and the Alaska Enterprise Investment Fund Policy
5 Board;

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

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

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

15 CHAPTER 13. ALASKA PERMANENT FUND.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

14 CHAPTER 55. THE ALASKA ENTERPRISE INVESTMENT FUND.

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

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

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

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

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

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

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

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

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

1 the member shall be reinstated to his position.

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

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

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

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

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

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

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

1 (5) review, consider and approve policies;

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

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

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

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

23 Sec. 44.55.060. DUTIES OF THE INVESTMENT COMMITTEE. The invest-
24 ment committee has sole responsibility to approve all investment pro-
25 posals.

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

29 Sec. 44.55.080. PERSONNEL OF INVESTMENT FUND. Policy board

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

Sec. 44.55.090. FINDINGS. The legislature finds

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

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

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

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

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

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

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

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

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

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

(6) enter into agreements necessary or convenient in the

1 exercise of its powers and functions;

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

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

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

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

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

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

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

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

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

1 investments as well as probable safety of principal.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 report the results to the policy board.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

7 Sec. 44.55.190. DEFINITIONS. In this chapter

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

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

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

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

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

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

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

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

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

26 (OO) Alaska Permanent Fund Board of Trustees.

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

11/14/77

4350

#3

1 IN THE HOUSE

2 HOUSE BILL NO.

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 TENTH LEGISLATURE. - SECOND SESSION

5 A BILL

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

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

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

10 ARTICLE IV. STATE INVESTMENT OVERSIGHT COMMITTEE.

11 Sec. 24.20.600. STATE INVESTMENT OVERSIGHT COMMITTEE ESTABLISHED.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

19 Sec. 24.20.670. DUTIES. The committee shall

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

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

27 (3) review quarterly reports from the permanent fund board o
28 trustees, renewable resources development fund commission, and develop-
29 ment bank policy board;

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

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

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

CHAPTER 13. ALASKA PERMANENT FUND.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

only mining cos

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

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

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

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

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

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

4 CHAPTER 55. THE ALASKA ENTERPRISE INVESTMENT FUND.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

24 (5) review, consider and approve policies;

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

29 Sec. 44.55.050. ALASKA ENTERPRISE INVESTMENT FUND INVESTMENT

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

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

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

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

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

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

25 Sec. 44.55.090. FINDINGS.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 it considers desirable to carry out its purpose.

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

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

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

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

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

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

3 Sec. 44.55.190. DEFINITIONS. In this chapter

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

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

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

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

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

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

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

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

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

22 (OO) Alaska Permanent Fund Board of Trustees.

23 * Sec. 6. This Act takes effect immediately in accordance with AS 01.10.-

24 070(c).

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1 IN THE HOUSE

2 HOUSE BILL NO.

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 TENTH LEGISLATURE - SECOND SESSION

5 A BILL

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

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

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

10 ARTICLE IV. STATE INVESTMENT OVERSIGHT COMMITTEE.

11 Sec. 24.20.500. STATE INVESTMENT OVERSIGHT COMMITTEE ESTABLISHED.

12 The State Investment Oversight Committee is established as a permanent
13 interim committee of the legislature. The establishment of the committee
14 recognizes the need of the legislature for full-time, technical review
15 and oversight of the performance of the Alaska Permanent Fund Board of
16 Trustees (AS 37.13.020), the Alaska Renewable Resources Development Fund
17 Commission (AS), and the Alaska Development Bank (AS 44.-
18 55.010). *and others? commissioner investments, loan programs.*

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

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

unusual language?

minority members?

1 or the appointment of his successor.

2 (b) When a member of the committee files a declaration of candi-
3 dacy for an elective office other than that of member of either house of
4 the legislature, and he has not resigned from membership on the commit-
5 tee, his committee membership terminates on the date of filing.

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

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

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

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

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

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

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

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

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

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

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

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

22 Sec. 24.20.570. DUTIES. The committee shall

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

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

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

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

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

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

15 CHAPTER 13. ALASKA PERMANENT FUND.

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

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

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

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

1 members.

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

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

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

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

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

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

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

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

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

none &

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

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

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

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

[Handwritten initials]

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

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

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

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

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

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

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

too restrictive?

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

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

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

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

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

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

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

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

total activity to date

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

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

9 CHAPTER 55. ALASKA DEVELOPMENT BANK.

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

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

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

*That many
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1 development, the commissioner of community and regional affairs, or
2 their designees, and six members to be appointed by the governor and
3 confirmed by a majority of the members of the legislature in joint ses-
4 sion. Two members shall have broad experience in investment finance,
5 one member shall represent organized labor, and three members shall
6 represent local communities.

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

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

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

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

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

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

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

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

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

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

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

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

28 (4) review quarterly reports from the investment committee
29 concerning investment decisions and investment supervision, but the

board may not impose an investment decision upon, or override an investment decision of, the investment committee;

(5) review, consider and approve policies;

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

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

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

(c) Members of the investment committee receive \$___ per meeting day if they attend the meeting and are entitled to per diem and travel allowances as are provided by law for members of state boards and commissions.

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

Sec. 44.55.070. EXEMPTION FROM EXECUTIVE BUDGET ACT. The

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

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

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

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

- 13 (1) adopt, alter and use a corporate seal;
- 14 (2) prescribe, adopt, amend, and repeal bylaws;
- 15 (3) sue and be sued in the name of the bank;
- 16 (4) borrow funds, and in that connection furnish such collat-
17 eral or other security as it determines, except that bank borrowing may
18 not exceed one-half of the amounts invested in investment-grade securi-
19 ties under sec. 100(b) of this chapter;
- 20 (5) guarantee securities in which the investment committee
21 has invested in order to facilitate their sale;
- 22 (6) enter into agreements necessary or convenient in the
23 exercise of its powers and functions;
- 24 (7) acquire, hold, use, lease, sell or otherwise dispose of
25 property of any kind, real, personal or mixed, or any interest in it;
- 26 (8) contract with state, federal and other agencies to
27 develop needed information and analyses;
- 28 (9) do all acts and things necessary, convenient or desirable
29 to carry out the powers granted or implied in this chapter.

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

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

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

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

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

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

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

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

1 invested in investment-grade securities.

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

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

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

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

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

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

*Set
scale of
policy*

1 on satisfactory terms.

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

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

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

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

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

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

29 Sec. 44.55.110. INITIAL DETERMINATIONS. Before beginning its

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

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

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

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

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

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

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

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

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

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

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

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

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

27 Sec. 44.55.170. DEFINITIONS. In this chapter

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

(2) "board" or "policy board" means the Alaska Development Bank Policy Board created by sec. 20 of this chapter;

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

(4) "committee" or "investment committee" means the Alaska Development Bank Investment Committee created by sec. 50 of this chapter;

(5) "renewable resource project" or "project" means property of a business enterprise used in connection with

- (A) making, processing, preparing or producing in any manner goods or products of agriculture, fisheries, or forestry; or
- (B) outdoor recreation.

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

(21) members of the policy board and investment committee, and the president, officers, and staff of the Alaska Development Bank;

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

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

(NN) Alaska Development Bank Policy Board and Alaska Development Bank Investment Committee;

(OO) Alaska Permanent Fund Board of Trustees.

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

Section 3. AS ___ is amended by adding a new chapter to read:

CHAPTER __. ALASKA DEVELOPMENT BANK.

Sec. one. ESTABLISHMENT OF BANK. There is created the Alaska Development Bank, a public corporation of the state. The corporation is an instrumentality of the state within the Department of Revenue but has a legal existence independent of and separate from the state and has continuing succession until its existence is terminated by law. The exercise by the bank of the powers conferred by this chapter is considered an essential governmental function of the state.

Sec. two. PURPOSE. The purpose of the bank is to help increase levels of employment, capital ownership, tax revenues and overall economic activity within the state; encourage and assist the participation of private capital, from both within and outside Alaska, in private enterprises of benefit to Alaskans; promote the investment of public and private capital for community development purposes; supplement private investment when sufficient private capital is not available on reasonable terms and conditions; and seek to smooth the cyclical pattern of growth of the Alaska economy.

Sec. three. FUNDING. The legislature shall appropriate funds from the general fund for the purpose of initial funding of the bank's operations

(b) At least five percent of all mineral lease rentals, royalties, royalty sale proceeds, federal mineral revenue sharing payments and bonuses received by the State shall be placed in the bank.

(c) The operating expenses of the bank shall be funded, to as great an extent as possible, from income from the bank's operations. Any excess income shall be placed in the general fund.

Sec. four. BOARD OF DIRECTORS. (a) ~~There~~ There is established the Alaska Development Bank Board of Directors. The board is composed of nine members, including the commissioner of revenue, the commissioner of commerce and economic development, the commissioner of community and regional affairs, and six members appointed by the governor. The six members appointed by the governor shall be confirmed by the majority of the members of the legislature in joint session.

(b) The six members appointed by the governor shall be confirmed by the majority of the members of the legislature in joint session. Two members shall have broad experience in investment finance, one member shall represent organized labor, and three members shall represent local communities in the state.

Sec. five. TERMS OF OFFICE OF BOARD OF DIRECTORS. The six members appointed by the governor and confirmed by the legislature shall serve terms of six years, except that of the initial appointees, two shall serve for terms of two years, two for terms of four years, and two for terms of six years.

(b) USUAL BULLSHIT ABOUT VACANCIES, REPLACEMENTS, ETC.

Sec. six. PRESIDENT AND STAFF. The board shall hire and determine the salary of the president of the bank and all supporting staff reasonably necessary for it to efficiently conduct its business.

Sec. seven. QUORUM = 2/3

Sec. eight. REMOVAL = for cause

Sec. nine. COMPENSATION = \$

Sec. ten. ~~POWERS OF BOARD OF DIRECTORS~~ POWERS BOARD OF DIRECTORS. The board ~~may~~may

(1) finance all costs of a project which the directors deem recoverable and necessary to the carrying out of the bank's purpose, including, but not limited to, financing market surveys, product planning, early staffing and working capital advancements, as well as more traditional finance secured by physical assets;

(2) provide directly or pay for technical advisory services to ventures in which the bank has invested;

(3) advance finance to ventures ~~deemed~~ in which the bank has invested or which is a prudent investment for the bank in the form of purchase of equity, convertible debt instruments, or straight loans;

(4) formulate and readjust the terms for loan repayment or payment of dividends to accommodate the venture's cash flow as it evolves;

(5) transfer real property where necessary to further the establishment or expansion of a bank-invested venture;

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

CHAPTER 13. ALASKA PERMANENT FUND.

Sec. 37.13.010. ALASKA PERMANENT FUND. Under Article IX, section 15, of the Alaska Constitution, there is established as a separate fund, in the Department of Revenue, the Alaska Permanent Fund.

Sec. 37.13.020. ALASKA PERMANENT FUND COMMISSION. There is created within ^{but not of} the Department of Revenue the Alaska Permanent Fund ^{Board of trustees} ~~Commission~~. The purpose of the commission is to manage and invest the assets of the Alaska Permanent Fund established in sec. 10 of this chapter in accordance with the guidelines established in secs. 10 through ___ of this chapter.

Sec. 37.13.030. COMPOSITION OF ALASKA PERMANENT FUND COMMISSION. (a) The Alaska Permanent Fund Commission consists of three members, appointed by the governor and confirmed by a majority of the members of the legislature in joint session.

(b) The members shall elect a chairman from among themselves.

Sec. 37.13.040. TERM OF OFFICE; VACANCY. (a) The members of the commission shall be appointed for terms of three years, except that of the members first appointed to the commission, one shall be appointed for a term of one year, one for a term of two years, and one for a term of three years. Commissioners may be appointed for successive terms. A commissioner, upon the expiration of his term, shall continue to hold office until his successor is appointed and qualified. *members shall annually elect a chairman from amongst themselves*

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

(c) A vacancy on the commission does not impair the authority of a quorum of commissioners to exercise all the powers and perform all the duties of the commission.

trustee
Sec. 37.13.050. REMOVAL OF COMMISSIONERS. The governor may remove a *trustee* commissioner from office by and with the consent of a majority of the legislature *in joint session*.

trustee
Sec. 37.13.060. QUALIFICATIONS OF COMMISSIONERS. (a) No member may be appointed to the commission who has not been a resident of the state for at least three years.

(b) No member of the commission may hold any other state or federal office, position or employment, either elective or appointive, except as a member of the armed forces of the United States or of this state.

at least
(c) One member of the commission shall *be knowledgeable and experienced in* have-a-recognized be a graduate of an accredited university with a major or a degree in finance, *investments* ~~accounting~~, or business management and shall have a broad range of professional experience in at least one of those fields. No two members may be appointed to the commission who share substantially similar professional *or occupational* backgrounds.

Sec. 37.13.070. QUORUM. Two members of the commission constitute a quorum for the transaction of business and the exercise of the powers and duties of the commission.

Sec. 37.13.080. COMPENSATION OF MEMBERS. Members of the commission are in the exempt service described in AS 39.25 and receive an (annual salary equal to that of a commissioner of an executive department.) *open*

Sec. 37.13.090. EMPLOYMENT OF COMMISSION PERSONNEL. (a) The commission may employ an executive director. The executive director may not be one of the commissioners.

(b) The executive director, his deputy, and his secretary, are in the ~~partially~~ exempt service described in AS 39.25. All other employees of the commission, other than legal counsel, are in the *virtually* classified service under AS 39.25.

Sec. 37.13.100. CONFLICTS OF INTEREST. No member or employee of the commission shall acquire an interest, direct or indirect, in a corporation, company, association or project owned, controlled, or invested in by the permanent fund. If a member or employee owns or controls an interest, he shall immediately disclose the interest in writing to the commission and refrain from participating in any manner in any commission activity relating to that interest.

Sec. 37.13.110. DUTIES AND POWERS OF THE COMMISSION. (TO BE DISCUSSED)

Sec. 37.13.120. RESTRICTIONS ON COMMISSION ACTIVITY. The commission may not borrow funds, ^{The commission may not} or guaranty loans made by any other program, ^{or association} ~~or association~~ ^{COMMISSION BUDGET}

Sec. 37.13.130. PERMANENT FUND INCOME; ^(a) Income from investment of the permanent fund becomes a part of the permanent fund and shall be deposited in the permanent fund annually, except that income may be ^{used to} ~~retained by the commission in amounts~~ ~~needed to~~ pay the operating and administrative expenses of the commission and its staff. ^{(b) The commission's budget shall be funded, to as great an extent as possible, from income from the permanent fund. The commission's budget is subject to the Executive Budget Act (AS 37.07).}

Sec. 37.13.140. AUDITS. Legislative Budget and Audit shall conduct annual operational and performance evaluations (post-audits) of the commission's investments and investment programs and report the results to the ^{Legislative} ~~Permanent~~ Investment Fund Oversight Committee established in _____.

Sec. 37.13.150. REPORTS AND PUBLICATIONS. The commission shall publish an annual report to the governor, legislature, and the public. Each report must include financial statements audited by Legislative Budget and Audit, a statement of the amount of money received by the permanent fund from each source during the period covered, a statement of permanent fund investments, a description of permanent fund investment activity during the period covered by the report, and any other information the commission believes would be of interest to the governor, the legislature, and the public. The annual income statement and balance sheet of the permanent fund shall be published in at least one newspaper in each judicial district. The corporation may also publish other reports it considers desirable to carry out its purpose.

RESPONSIBILITIES, ETC.

In making investments, the commission shall exercise the judgment and care under the circumstances then prevailing which a person of ordinary prudence, discretion, and intelligence exercises in the management of his own affairs considering the probable income from them as well as the safety of capital.

The commission shall seek to maintain a reasonable diversification of its investments.

The permanent fund shall be used only for income-producing investments.

The commission shall select investments for the permanent fund and may not delegate this duty to any other person or entity. However, the commission may seek the advice of experts in relation to specific investments.

Submit to LOC long-range operating plans & quarterly investment reports

Section 2. AS 24.20 is amended by adding new sections to read:

ARTICLE IV. LEGISLATIVE OVERSIGHT COMMITTEE.

Sec. 24.20.500. LEGISLATIVE OVERSIGHT COMMITTEE ESTABLISHED. The Legislative Oversight Committee is established as a permanent interim committee of the legislature. The establishment of the committee recognizes the need of the legislature for full-time technical review and oversight of the permanent fund, the renewable resources funds, and the ^{Alaska}(renewable resources)development bank.

Sec. 24.20.510. MEMBERSHIP. The Legislative Oversight Committee is composed of eight members: the president of the senate, the speaker of the house, the chairmen of the house and senate finance committees, the house and senate minority leaders, and one member appointed from each house by the respective presiding officer. The committee shall select its own chairman.

Sec. 24.20.520. TERM OF MEMBERSHIP. (a) The committee shall be organized within 15 days after the organization of each legislature. Members serve for the duration of the legislature during which they are appointed. If they are reelected or their term of office extends into the next succeeding legislature, they continue to serve until reappointed or the appointment of their successor.

(b) When a member of the committee files a declaration of candidacy for an elective office other than that of member of either house of the legislature, and he has not resigned from membership on the committee, his committee membership terminates on the date of filing.

Sec. 24.20.530. VACANCIES. When a vacancy occurs in the statutory or appointive membership of the committee, the presiding officer of the house incurring the vacancy shall choose a successor. If the office of the president of the senate or speaker of the house of representatives becomes vacant and a vacancy from the affected house occurs among the membership of the committee, the remaining committee members from the house incurring the vacancy shall appoint a new member.

Sec. 24.20.540. MEETINGS. The oversight committee may meet during sessions of

the legislature and during the interim between sessions at such times and places in the state as the chairman may determine. Members may receive, for the minimum time required to get to and from meetings and for the period while attending meetings the same travel and per diem allowances provided by law for members of the legislature when attending sessions, except that members of the committee receive no per diem during legislative sessions other than the per diem allowance paid to other members of the legislature.

Sec. 24.20.550. POWERS. The Legislative Oversight Committee has the power to:

(1) organize, adopt rules for the conduct of its business and prescribe procedures for the comprehensive fiscal analysis, budget review and post-audit functions over the permanent fund commission, renewable resources fund commission, and (renewable resources) development bank;

(2) hold public hearings, administer oaths, issue subpoenas, compel the attendance of witnesses and production of papers, books, accounts, documents and testimony, and have the deposition of witnesses taken in a manner prescribed by court rule or law for taking depositions in civil actions;

(3) require all state officials and agencies of state government to give full cooperation to the committee or its staff in assembling and furnishing requested information;

(4) hold ~~hearing~~ public hearings relating to the confirmation of members of the permanent fund commission;

(5) prepare and distribute reports, memoranda or other necessary materials.

(6) make recommendations concerning the structure and operating practices of the permanent fund, renewable resources fund, and development bank;

(7) receive and review reports and post-audit analyses conducted by the Legislative Budget and Audit Committee relating to the permanent fund, renewable resources fund, and development bank.

Sec. 24.20.560. STAFF. The committee may hire and determine the salary of

Sec. 24.20.570. DUTIES. The committee shall

(1) report to the legislature its recommendations relating to the confirmation of suggested appointees to the permanent fund commission;

(2) annually review the long-range operating plans of the permanent fund commission;

(3) review quarterly reports from the permanent fund commission concerning investment decisions and investment supervision;

(4) present a complete report of investment programs, plans, performance, of the permanent fund commission and policies to the ~~finance committees~~ of the legislature within 30 days after the beginning of each regular session.

Sec. 24.20.580. RECORDS. The committee shall keep a complete file of all reports presented to it by the commission, ^{and by} budget and audit, and all reports presented by it to the legislature or any legislative committee.

in so far as he is either under a duty to the beneficiary to exercise them or at least is under no duty to the beneficiary not to exercise them. It deals also with the liabilities of the trustee to suit by the beneficiary to vindicate his rights by enforcing the duties of the trustee or preventing or redressing violations thereof. It also deals specifically with duties and liabilities of the trustee with respect to investments and with respect to successive beneficiaries. It deals also with the trustee's compensation and indemnity and with other rights and powers conferred upon the trustee for his own protection.

The powers and duties of the trustee on the termination of the trust are dealt with in §§ 344 and 345.

The duties and liabilities of the trustee to third persons are considered in §§ 261-270 (Chapter 8). The power of the trustee to transfer the trust property to a third person in violation of his duty to the beneficiary is dealt with in §§ 283-320.

TOPIC 1. GENERAL PRINCIPLES

§ 164. Duties and Powers of the Trustee

The nature and extent of the duties and powers of the trustee are determined

(a) by the terms of the trust, except as stated in §§ 165-168; and

(b) in the absence of any provision in the terms of the trust, by the rules stated in §§ 169-196.

Comment on Clause (a):

a. *"Terms of the trust."* By the "terms of the trust" is meant the manifestation of intention of the settlor with respect to the trust expressed in a manner which admits of its proof in judicial proceedings. See § 4.

b. *Intention at time of creation of trust.* The intention of the settlor which determines the terms of the trust is his intention at the time of the creation of the trust and not his subsequent intention. The duties or powers of the trustee cannot be enlarged or diminished by a direction of the settlor given subsequent to the creation of the trust, except to the extent to which

See Appendix for Reporter's Notes, Court Citations, and Cross References

service if, at the time of the undertaking or of performance, such service is illegal. See Restatement of Agency 2d, § 411. See also, Restatement of Agency 2d, §§ 86, 116, 412; Restatement of Contracts, §§ 498, 609.

§ 167. Change of Circumstances

(1) The court will direct or permit the trustee to deviate from a term of the trust if owing to circumstances not known to the settlor and not anticipated by him compliance would defeat or substantially impair the accomplishment of the purposes of the trust; and in such case, if necessary to carry out the purposes of the trust, the court may direct or permit the trustee to do acts which are not authorized or are forbidden by the terms of the trust.

(2) Under the circumstances stated in Subsection (1), the trustee can properly deviate from the terms of the trust without first obtaining the permission of the court if there is an emergency, or if the trustee reasonably believes that there is an emergency, and before deviating he has no opportunity to apply to the court for permission to deviate.

(3) Under the circumstances stated in Subsection (1), the trustee is subject to liability for failure to apply to the court for permission to deviate from the terms of the trust, if he knew or should have known of the existence of those circumstances.

See Reporter's Note.

Comment on Subsection (1):

a. Change of circumstances. If owing to circumstances not known to the settlor and not anticipated by him compliance with a specific direction by the settlor would defeat or substantially impair the accomplishment of the purposes of the trust, the court will permit or direct the trustee not to comply with the specific direction. This is true even though it is provided by statute that every conveyance by the trustee in contravention of the trust shall be absolutely void.

Compliance with a direction may be enough substantially to impair the purposes of the trust although it may not defeat the

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Illustration:

6. A bequeaths \$20,000 to B in trust to apply the income for the education and support of C and D during their minorities and to pay the principal to them in equal shares when the younger comes of age, but if either dies before coming of age to pay the principal to the other on coming of age. C and D are respectively fifteen and thirteen years of age. They have no other resources. Owing to an increase in the cost of living since the death of A, the income is insufficient for their education and support. The court may direct B to apply a part or if necessary the whole of the principal for the education and support of C and D.

f. In some States by statute the court can apply the principal for the support of a beneficiary although there is a contingent gift of the principal to another person who does not consent to the application.

TOPIC 2. DUTIES OF THE TRUSTEE

Introductory Note: In this Topic the duties of the trustee to the beneficiary in administering the trust are dealt with. As to the duties of the trustee on the termination of the trust, see §§ 344 and 345. The violation of a duty owed by the trustee to the beneficiary is a breach of trust. As to the liabilities of the trustee and the remedies of the beneficiary arising from a breach of trust, see Topic 4.

§ 169. Duty to Administer the Trust

Upon acceptance of the trust by the trustee, he is under a duty to the beneficiary to administer the trust.

Comment:

a. *No duty without acceptance.* Although a trust can be created without notice to or acceptance by the trustee (see § 35), the trustee is not under a duty to administer the trust unless he accepts. If he has not accepted, he can disclaim and is under no liability (see § 102); but once having accepted he is under a duty to administer the trust as long as he continues to be trustee. As to the resignation of the trustee, see § 106.

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b. Duty though service gratuitous. Even though by the terms of the trust the trustee is to receive no compensation, he is under a duty if he has accepted the trust to administer it.

c. Duty not contractual. Although the trustee by accepting the office of trustee subjects himself to the duties of administration, his duties are not contractual in nature. See § 197, Comment *b*.

§ 170. Duty of Loyalty

(1) The trustee is under a duty to the beneficiary to administer the trust solely in the interest of the beneficiary.

(2) The trustee in dealing with the beneficiary on the trustee's own account is under a duty to the beneficiary to deal fairly with him and to communicate to him all material facts in connection with the transaction which the trustee knows or should know.

See Reporter's Note.

Comment on Subsection (1):

a. Fiduciary relation. A trustee is in a fiduciary relation to the beneficiary and as to matters within the scope of the relation he is under a duty not to profit at the expense of the beneficiary and not to enter into competition with him without his consent, unless authorized to do so by the terms of the trust or by a proper court. As to the nature of a fiduciary relation, see § 2, Comment *b*.

The principle stated in this Section is applicable not only to trustees but to other fiduciaries. See Restatement of Restitution, §§ 190-201.

b. Sale of trust property to the trustee individually. A trustee with power to sell trust property is under a duty not to sell to himself either by private sale or at auction, whether the property has a market price or not, and whether or not the trustee makes a profit thereby. It is immaterial that the trustee acts in good faith in purchasing trust property for himself, and that he pays a fair consideration.

The trustee cannot properly purchase trust property for himself even though he does not make the sale. Thus, he cannot

See Appendix for Reporter's Notes, Court Citations, and Cross References

properly purchase trust property for himself on a foreclosure sale or tax sale or sale on execution of a judgment. To permit him to do so would create a situation where his personal interest would be in conflict with his duty as trustee. It is his duty as trustee to prevent the sale if possible or to see that the property is sold for as much as can be obtained. If he were permitted to bid in the property for himself at the sale, it would be for his personal advantage not to prevent the sale and to have as few bidders and as low bids as possible. The trustee who bids in the property for himself at such a sale is not permitted to keep the property, even though in the particular case he attempted to secure as many bidders and as high bids as he could and the amount which he bid was a fair consideration for the property.

Where there are several trustees, one of them cannot properly purchase trust property for himself, although his co-trustees are not personally interested in the purchase and consent to the sale.

As to the extent of the liability of the trustee where he sells trust property to himself individually, see § 206, Comment *b*.

c. Where trustee has a personal interest in the purchase. The trustee violates his duty to the beneficiary not only where he purchases trust property for himself individually, but also where he has a personal interest in the purchase of such a substantial nature that it might affect his judgment in making the sale. Thus, a trustee violates his duty if he sells trust property to a firm of which he is a member or to a corporation in which he has a controlling or substantial interest.

d. Sale of trust property by corporate trustee. A corporate trustee violates its duty to the beneficiary if it sells trust property to one of its departments. Thus, a trust company holding property as trustee in its trust department cannot properly sell such property to its securities or banking department. The various departments are not separate persons, and such a sale is a sale by the trustee to itself individually. A corporate trustee cannot properly sell trust property to an affiliated or subsidiary corporation in which it has the entire interest or a controlling interest or such a substantial interest that there would be a temptation to consider its own advantage in making the sale and not to consider solely the advantage to the beneficiaries of the trust. The rule is the same where the shares of the purchasing corporation are owned by the shareholders of the corporate trustee.

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of such advances to a designated trust is specifically authorized by the trust instrument covering the trust from which such advances are made."

Section 9 of Regulation F provides that funds awaiting investment or distribution shall not be used by the bank in the conduct of its business unless it first delivers to the trust department securities as collateral. Compare Comment *m*.

v. Cross reference. As to the extent of the trustee's liability for breach of his duty of loyalty, see § 206.

Comment on Subsection (2):

w. Dealings with beneficiary. Under the rule stated in Subsection (1), if the trustee attempts to acquire an interest in the trust property without the consent of the beneficiary, the beneficiary can avoid the transaction even though the transaction was fair. If the trustee acquires such an interest with the consent of the beneficiary, the transaction cannot be set aside by the beneficiary if the beneficiary was not under an incapacity, and had knowledge of his legal rights and of all material facts which the trustee knew or should have known unless the trustee reasonably believed that the beneficiary knew them, and was not induced by the trustee by undue influence or other improper means to enter into the transaction, and the transaction was fair and reasonable. If any of these factors is not present, however, the beneficiary can set aside the transaction. The relation between the trustee and the beneficiary being a fiduciary relation, the standard of conduct required of the trustee is higher than that required of persons who are not in a fiduciary relation. See § 2, Comment *b*.

As to the effect of the consent of the beneficiary to a breach of trust, see § 216.

§ 171. Duty Not to Delegate

The trustee is under a duty to the beneficiary not to delegate to others the doing of acts which the trustee can reasonably be required personally to perform.

Comment:

a. Fiduciary relation. A trustee, being in a fiduciary relation to the beneficiary, is under a duty personally to perform his duties as a fiduciary. As to the nature of a fiduciary relation, see § 2, Comment *b*.

reasonable for an individual owner to make such a deposit. See § 193, Comment *d*. So also, a trustee may in a proper case join in a representative suit affecting the trust property, although he thereby surrenders control over the suit.

j. Terms of the trust. By the terms of the trust a trustee may be permitted to delegate to agents or to co-trustees or to other persons the administration of the trust or the performance of acts which could not otherwise be properly delegated.

By the terms of the trust a trustee may be authorized to permit an agent or co-trustee or third person to manage the trust property or to do acts which the trustee could not otherwise properly delegate.

So also, by the terms of the trust it may be provided that powers which the trustee would otherwise have shall be exercised by some third person. See § 185. Thus, it may be provided that the trustee shall make such investments and only such investments as the settlor or beneficiaries or a third person may direct. In such a case the trustee has no power to select investments. As to the duty of the trustee in such a case, see § 185, Comment *f*.

k. Duty of supervision. In matters which a trustee has properly delegated to agents or co-trustees or other persons, he is under a duty to the beneficiary to exercise a general supervision over their conduct.

As to the liability of a trustee for the acts of a co-trustee, see § 224.

As to the liability of a trustee for the acts of agents employed by him and for the failure to exercise due care in the selection of such agents, see § 225.

§ 172. Duty to Keep and Render Accounts

The trustee is under a duty to the beneficiary to keep and render clear and accurate accounts with respect to the administration of the trust.

Comment:

a. Duty to keep accounts. The trustee is under a duty to keep accounts showing in detail the nature and amount of the trust property and the administration thereof.

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of the account by that person shall discharge the trustee. Such a provision is effective, provided that the third person acts in good faith in giving his approval and provided that the trustee made a proper disclosure in his accounting of his conduct in the administration of the trust.

§ 173. Duty to Furnish Information

The trustee is under a duty to the beneficiary to give him upon his request at reasonable times complete and accurate information as to the nature and amount of the trust property, and to permit him or a person duly authorized by him to inspect the subject matter of the trust and the accounts and vouchers and other documents relating to the trust.

Comment:

a. Duty to permit examination by accountant. The trustee is under a duty to permit an accountant to examine the trust securities, accounts, vouchers and other documents if the beneficiary so requests.

b. What need not be communicated. The trustee is privileged to refrain from communicating to the beneficiary information acquired by the trustee at his own expense and for his own protection. Thus, he is privileged to refrain from communicating to the beneficiary opinions of counsel obtained by him at his own expense and for his own protection.

c. Terms of the trust. Although the terms of the trust may regulate the amount of information which the trustee must give and the frequency with which it must be given, the beneficiary is always entitled to such information as is reasonably necessary to enable him to enforce his rights under the trust or to prevent or redress a breach of trust.

d. Duty in the absence of a request by the beneficiary. Ordinarily the trustee is not under a duty to the beneficiary to furnish information to him in the absence of a request for such information. As to his duty to render accounts, see § 172. In dealing with the beneficiary on the trustee's own account, however, he is under a duty to communicate to the beneficiary all material facts in connection with the transaction which the trustee knows or should know. See § 170(2). Even if the trustee

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is not dealing with the beneficiary on the trustee's own account, he is under a duty to communicate to the beneficiary material facts affecting the interest of the beneficiary which he knows the beneficiary does not know and which the beneficiary needs to know for his protection in dealing with a third person with respect to his interest. Thus, if the beneficiary is about to sell his interest under the trust to a third person and the trustee knows that the beneficiary is ignorant of facts known to the trustee which make the interest of the beneficiary much more valuable than the beneficiary believes it to be the trustee is under a duty to the beneficiary to inform him of such facts.

§ 174. Duty to Exercise Reasonable Care and Skill

The trustee is under a duty to the beneficiary in administering the trust to exercise such care and skill as a man of ordinary prudence would exercise in dealing with his own property; and if the trustee has or procures his appointment as trustee by representing that he has greater skill than that of a man of ordinary prudence, he is under a duty to exercise such skill.

Comment:

a. Standard of care and skill. The standard of care and skill required of a trustee is the external standard of a man of ordinary prudence in dealing with his own property. A trustee is liable for a loss resulting from his failure to use the care and skill of a man of ordinary prudence, although he may have exercised all the care and skill of which he was capable. On the other hand, if the trustee has a greater degree of skill than that of a man of ordinary prudence, he is liable for a loss resulting from the failure to use such skill as he has.

So also, if the trustee procured his appointment as trustee by representing that he has greater skill than that of a man of ordinary prudence, he is liable for a loss resulting from the failure to use such skill.

b. Test of prudence. Whether the trustee is prudent in the doing of an act depends upon the circumstances as they reasonably appear to him at the time when he does the act and not at some subsequent time when his conduct is called in question.

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c. Ignorance of terms of the trust. The trustee's ignorance of the terms of the trust will not protect him from liability. He does not use proper care unless he acquaints himself with the terms of the trust and with the nature and circumstances of the trust property.

d. Standard fixed by terms of the trust. By the terms of the trust the requirement of care and skill may be relaxed or modified. A provision in the terms of the trust fixing a standard of care or skill lower than that which would otherwise be required of a trustee is strictly construed.

As to the effect of an exculpatory provision in the terms of the trust, see § 222.

e. Cross reference. As to the standard of care and skill required of a trustee in making investments, see § 227.

§ 175. Duty to Take and Keep Control

The trustee is under a duty to the beneficiary to take reasonable steps to take and keep control of the trust property.

Comment:

a. Duty as to possession of chattels. If tangible things are held in trust, the trustee is ordinarily under a duty to take and keep possession of them. The beneficiary is not entitled to possession or control of the subject matter of the trust except as provided by the terms of the trust. If by the terms of the trust the beneficiary or one of the beneficiaries is entitled to possession, the trustee is under a duty to give him possession. Thus, by the terms of the trust it may appear that land held in trust should be occupied by the life beneficiary. Similarly in the case of chattels it may be provided that a beneficiary shall be entitled to possession.

b. Duty as to possession of land. If land is held in trust it depends upon the terms of the trust whether the trustee is under a duty to retain possession of the land or to lease it to others. See § 189. If the land was leased at the time of the creation of the trust, the trustee should notify the lessee of the trust and require the lessee to pay the rent to him.

c. Duty as to possession of securities. Where securities are held in trust the trustee is under a duty to take and keep

possession of the securities, and to earmark them as trust property. See § 179, Comment *d*.

d. Duty as to choses in action. If the trust property includes a chose in action, the trustee should take necessary steps to secure payment of principal and income to himself; he should ordinarily notify the obligor of the trust and require the obligor to make payments to him. If the chose in action has matured, he should take reasonable steps to enforce it. See § 177.

e. Entrusting possession to an agent. To the extent to which it is reasonable for the trustee to entrust the possession of the subject matter of the trust to his attorney, broker, banker or other agent, the trustee can properly do so. See § 171.

f. Exclusive control. The duty of the trustee is not only to take and keep control, but to take and keep exclusive control. See § 180, Comment *e*.

g. Cross reference. As to the deposit of trust securities with a protective committee, see § 193, Comment *d*.

§ 176. Duty to Preserve the Trust Property

The trustee is under a duty to the beneficiary to use reasonable care and skill to preserve the trust property.

Comment:

a. Standard of care and skill. Except as otherwise provided by the terms of the trust, it is the duty of the trustee to exercise such care and skill to preserve the trust property as a man of ordinary prudence would exercise in dealing with his own property, and if he has greater skill than that of a man of ordinary prudence, he is under a duty to exercise such skill as he has. Compare § 174.

b. Protection from loss or damage. It is the duty of the trustee to use reasonable care to protect the trust property from loss or damage.

Illustrations:

1. A is trustee of certain securities. He carelessly keeps the securities in his desk instead of placing them in a safe deposit box. The securities are stolen. A is liable for the loss.

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and is removed as trustee and B is appointed successor trustee. B demands the securities from A but A refuses to return them or to pay their value. B does not notify the beneficiaries of the situation or ask them to advance the money necessary to maintain a suit against A. A is solvent at the time but later dies insolvent. B is liable for the loss. He would not have been liable if he had notified the beneficiaries and they had refused to advance any money.

d. Terms of the trust. By the terms of the trust the duty of the trustee with respect to the preservation of the trust property may be modified. Thus, by the terms of the trust a trustee of land may be directed to allow a life beneficiary to occupy the land and the trustee may be relieved of the duty to keep it in repair.

§ 177. Duty to Enforce Claims

The trustee is under a duty to the beneficiary to take reasonable steps to realize on claims which he holds in trust.

Comment:

a. Scope of the duty. The trustee is under a duty to the beneficiary to take reasonable steps to enforce any claim which he holds as trustee against predecessor trustees (see § 223), or in the case of a testamentary trust against the executors of the estate, to compel them to transfer to him as trustee property which they are under a duty to transfer, or to redress any breach of duty committed by them.

If the settlor or a third person has covenanted to transfer property to the trust, it is the duty of the trustee to take reasonable steps to enforce such covenant.

If a third person commits a tort with respect to the trust property, it is the duty of the trustee to take reasonable steps to compel him to redress the tort. If the trustee holds in trust a contract claim against a third person, it is his duty to take reasonable steps to enforce such claim.

If it reasonably appears to the trustee that a claim cannot be collected in full, or where it appears doubtful whether the claim is enforceable, he can properly make an agreement of

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§ 178. Duty to Defend Actions

The trustee is under a duty to the beneficiary to defend actions which may result in a loss to the trust estate, unless under all the circumstances it is reasonable not to make such defense.

Comment:

a. Duty to appeal. If an action is brought by a third person against the trustee and the trustee loses, he is under a duty to the beneficiary to appeal to a higher court, if under all the circumstances it is unreasonable not to appeal.

b. Compromise and arbitration. If it reasonably appears to be for the benefit of the beneficiary, the trustee can properly compromise or arbitrate such claims. See § 192.

c. Payment of unenforceable claim. The trustee can properly pay a claim, for example a tax, even though it appears to be a claim which is not enforceable, if the cost and risk incurred in defending the claim would be such that it is not unreasonable not to contest the claim.

§ 179. Duty to Keep Trust Property Separate

The trustee is under a duty to the beneficiary to keep the trust property separate from his individual property, and, so far as it is reasonable that he should do so, to keep it separate from other property not subject to the trust, and to see that the property is designated as property of the trust.

See Reporter's Note.

Comment:

a. Extent of duty. It is ordinarily the duty of the trustee (1) to keep the trust property separate from his own property; (2) to keep the trust property separate from property held upon other trusts; (3) to earmark the trust property as property of the trust.

b. Duty not to mingle trust funds with his own. It is the duty of the trustee not to mingle trust funds with his own funds. Thus, it is improper for the trustee to deposit trust money in his individual account in a bank. See § 180.

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§ 180. Duty with Respect to Bank Deposits

While a trustee can properly make general deposits of trust money in a bank, it is his duty to the beneficiary in making such a deposit to use reasonable care in selecting the bank, and properly to earmark the deposit as a deposit by him as trustee.

Comment:

a. Safekeeping and investment. A trustee may deposit trust funds in a bank for the purpose of making the funds available from time to time for the payment of expenses or pending investment or distribution. This is a reasonable method for safekeeping of the funds, more reasonable than keeping the funds in a safe deposit box. This was true even before bank deposits were partially insured by the Federal Deposit Insurance Corporation; although the deposit was an unsecured loan, it was proper as a method of safekeeping.

A deposit in a bank at interest, as, for example, a deposit in a savings account, may be proper as a method of investing trust funds. Such a deposit was generally held to be prudent as an investment, even before in most banks such deposits were at least partially insured by the Federal Deposit Insurance Corporation. In some states statutes have permitted such deposits to the extent to which they are insured. See § 227, Comment *i*.

b. Negligence of trustee. A trustee cannot properly deposit or leave on deposit trust money in a bank which he knows or should know to be insolvent or likely to become insolvent. This is an application of the rule stated in § 176 with respect to the duty of the trustee to use reasonable care and skill to preserve the trust property.

Illustrations:

1. A is trustee for B of \$50,000. He deposits the money in the X Bank when it is generally believed that the bank is in an unsound condition. A has heard the reports, but believes that the bank will eventually improve its condition and will not fail. Shortly afterward the bank fails. A is liable to B for the loss.

2. A is trustee for B of \$25,000. He deposits the money in the X Bank. At the time the bank is generally be-

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j. 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.

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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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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.

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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 *e*.

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-

See Appendix for Reporter's Notes, Court Citations, and Cross References

§ 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*.

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 sidered 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.

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* Sec. 2. AS 39.25.110 is amended by adding a new paragraph to read:

(21) members of the policy board and investment committee,
and the president, officers, and staff of the Alaska Permanent Fund
Corporation.

* Sec. 3. AS 39.50.200(9) is amended by adding a new subparagraph to
read:

(MM) Alaska Permanent Fund Policy Board and Alaska
Permanent Fund Investment Committee.

* Sec. 4. Investments outstanding as of the effective date of this Act,
made from money in the Alaska Permanent Fund, shall be transferred to the
corporation established by AS 37.13.010(b), enacted in sec. 1 of this Act.

* Sec. 5. This Act takes effect immediately in accordance with AS 01.-
10.070(c).

amounts are payable and shall not be accountable to anyone". One of the beneficiaries is living in poverty and the trustees give her \$100 a month and accumulate income. When she asks for more income, the trustees cut her off completely. The beneficiary can sue and receive more income by court order. The clause purporting to relieve the trustees of the legal duty to account is void insofar as it attempts to deprive a court of jurisdiction, where a beneficiary can show that the trustees are not acting in good faith.

- (2) A court will also intervene where a trustee has completely failed to exercise his judgment with regard to a discretionary power.

5. Implied Powers

- a. **Power of sale:** Where the trust terms neither confer nor withhold the power to sell trust property, a power of sale is generally quite readily inferred by American courts. In deciding whether to infer a power of sale, courts consider the language of the instrument, the character of the property, the purposes of the trust, and whether there is any suggestion that particular property is to be held by the trustee and transferred to the remaindermen on termination of the trust. Power of sale may be more readily inferred in the case of personal property than in the case of real property.

- (1) Note, however, that the settlor can direct the trustee not to sell certain property transferred into the trust. This directive is valid, and the trustee cannot sell the property without a court order permitting sale on the grounds that circumstances have changed so much that not selling would put the trust corpus in jeopardy.

b. Expenses

- (1) It is generally implied that a trustee can incur expenses which are appropriate to carry out the trust purposes. He can incur such expenses as are necessary and ordinary in the management of the property and in keeping the property in repair, and he can employ agents and advisors where this is prudent, or where he cannot reasonably be expected to perform duties personally.

- (2) Courts are less willing to imply the power to make improvements on trust property, but improvements can generally be made. Improvements involve some element of investment discretion and one might consider in relation to the propriety of improvement, whether it will have the result of concentrating investment in a particular party so as to be a violation of the trustee's duty to diversify investments.

- c. **Power to lease:** Normally, it is implied that a trustee has power to lease trust property on such terms and for such periods as are reasonable under the circumstances.

- d. **Power to borrow money:** Under ordinary circumstances, the trustee has no implied power to borrow money on the credit of the trust estate; nor has he power to mortgage or otherwise encumber the trust property. However, in the well drafted trust instrument the trustee is usually given the power to borrow and mortgage.

B. THE DUTIES OF THE TRUSTEE

1. **The Standard of Care Required of the Trustee:** In administering the trust, the trustee must exercise the degree of care, skill and prudence which would be exercised by a reasonably prudent person in managing his property.

- a. **Skill** relates to the trustee's capabilities.
 - b. **Care** relates to his diligence and to the efforts he makes.
 - c. **Prudence** is the element of caution or conservatism in administering the trust.
2. **The Duty of Loyalty:** The trustee must be completely unselfish and undivided in his loyalty to the beneficiaries of the trust.
- a. **The trustee must take no personal advantage (other than the fees given him for serving as trustee) from his position:** He will be held accountable for any profit made by him through, or arising out of, the administration of the trust, even if the profit did not result from a breach of trust. The trustee must also avoid putting himself in any position where a conflict with the interest of the trust is even possible.
 - (1) The trustee may not loan his personal funds to the trust and he may not borrow trust funds. This is self-dealing, which is absolutely prohibited.
 - (2) He cannot sell his own property to the trust, and he cannot purchase trust property. Nor can his spouse buy the trust property or sell property to the trust. This too is self-dealing.
 - (a) **Example:** X, trustee, purchases from the trust 100 shares of Blue Company stock at \$50 a share, which is market value. The stock subsequently increases to \$75 a share, at which time X sells the stock. X is liable to the trust beneficiaries for the \$2500 capital gain. Suppose the stock declined in value to \$30 a share after X purchased it from the trust. X then sells it. The beneficiaries are entitled to affirm the sale to X for \$50 a share. Thus X must personally suffer the capital loss.
 - (3) A prohibited transaction is not made permissible because it takes place at a public or judicial sale. E.g., at a foreclosure sale by a mortgagee, the trustee may not buy for himself.
 - (4) The duty to keep and render accounts, and to furnish information to the beneficiary or his agent at the beneficiary's request, is one way of insuring that the trustee is meeting his obligation of loyalty.
 - (5) **Note:** Bad faith on the trustee's part or damage to the trust are irrelevant. (For example, a trustee acting in complete good faith and to help the trust, loans money to the trust and takes a second mortgage on trust property. When the first mortgage is foreclosed it turns out that the trustee has made a profit. That profit must be turned over to the trust.) The policy reason for this harsh rule is that personal interest on the part of the trustee opens the door to biased judgments and thus to decisions which may not be in the beneficiary's best interests.
 - b. **If a prohibited transaction takes place, the beneficiary may**
 - (1) Set aside the transaction;
 - (2) Recover the profit made by the trustee, reduced by losses arising out of the same transaction (see *infra*, p. 35); or
 - (3) Affirm the transaction (which would occur when the transaction has turned out to be advantageous to the trust). Thus the trustee bears the risk of subsequent loss, and also is required to turn over any profit if the dealings with the trust were advantageous to him.

- c. **Self employment can constitute a form of prohibited dealing:** However, extraordinary services to the trust on the part of the trustee may entitle the trustee to additional compensation. This problem may arise if the trustee renders legal services to the trust which are outside the normal scope of his duties, and for which additional compensation is fair and appropriate.
- d. **The duty of loyalty extends to all beneficiaries equally, unless the trust instrument specifies otherwise:** Dealing impartially with the beneficiaries is more difficult when beneficiaries are entitled to successive benefits; e.g., A receives income for life, B receives the trust corpus at A's death. The trustee has a duty to A to see that trust property produces income. He violates his duty to A if the property is not income-producing. On the other hand, to carry out his duty to B the trustee must insure that trust property will not depreciate in value.

3. **The Duty to Separate and Earmark Trust Property (Prohibition Against Commingling Trust Funds)**

- a. **The duty to separate:** Trust assets must be kept physically separate from the trustee's personal assets and from assets from other trusts. (Statutory exceptions in most states permit a corporate fiduciary to hold property of trusts of which it is a trustee in a common trust fund.)
 - (1) Liability is imposed on the trustee who breaches the duty to keep funds separate even where the breach has not contributed in any way to the actual loss of trust property.
 - (2) If there is difficulty in tracing the commingled trust property, the court is likely to place the burden of separating the property on the trustee. If the property cannot be separated the court may treat all of the property as trust assets, or it may make the trustee liable for any loss or shrinkage in trust assets even if the mingling of funds did not cause the loss.
 - (3) The measure of damages will be the actual loss to the trust.
- b. **The duty to earmark trust property:** Trust property must be titled in the trustee, as trustee for a specific trust. For example, money deposited in a bank account must be deposited in the name of "X as trustee", and not in the name of X personally.
 - (1) The older view held the trustee strictly liable for a failure to earmark, regardless of whether that failure caused the loss to the trust. The measure of damages was the actual loss sustained by the trust. Reason: This prevents the trustee from lying about what property is trust property and what is his own.
 - (a) Example: Trustee of \$5,000, deposits \$5,000 in Bank X and \$5,000 in Bank Y. \$5,000 is his own money and \$5,000 comes from the trust. Bank X folds. Trustee is liable for \$5,000 regardless of whether the \$5,000 in Bank X came from him personally or from the trust.
 - (2) The Restatement Second of Trusts view would hold the trustee liable for a failure to earmark only to the extent that damages were caused by the failure to earmark.
 - (3) **Example:** During a business recession, trust property depreciates in value. Trustee has not earmarked the property and the beneficiary sues. Although the bad business climate caused the decline in value of trust assets, not the

failure to earmark, the older view would hold the trustee liable for the whole loss; the Restatement view would not hold the trustee liable.

4. The Duty to Perform Personally (Prohibition on Delegation of Trust Duties)

- a. A trustee cannot delegate the entire administration of a trust.
- b. On the other hand, he may delegate acts which it would be unreasonable to require him to perform personally (e.g., mailing letters). There is no clear-cut standard for judging when delegation is proper. Should you have a question which raises an issue of improper delegation, discuss the facts in light of what a reasonably prudent person would do, the type of discretion delegated and whether someone with greater skill or some special skill is needed to do the act.
- c. The power to select investments for the trust cannot be delegated.
- d. The trustee must personally exercise reasonable care in the selection, retention and supervision of agents and employees.
- e. The trustee can seek the advice of attorneys and others on matters which he may not delegate. However, the trustee must make the decisions. If he appears to take advice without exercising his independent judgment, he may be held liable on the theory that he improperly delegated his duties.
- f. **Remedy:** If a trustee improperly limits or surrenders his control over trust property, he becomes a guarantor of the fund. The trustee's motives or the fact that the loss was not directly caused by the abdication of control will not be considered by the court. The trustee is held for the amount of the actual loss to the trust.

5. The Duty to Preserve Trust Property and to Make It Productive

- a. **Duty implied even where not expressed:** There is a basic duty to preserve and protect the trust corpus. From this basic duty, there normally will be implied the duty to make the trust property productive, which includes the duty to invest (below).
- b. **Scope of duty:** The duty to protect and preserve the corpus requires the trustee to exercise reasonable care to do the following (and if he has held himself out as having special skills or has been selected on account of such special skills, he will be held to exercise such skills):
 - (1) To invest trust funds within a reasonable period of time following receipt thereof (and constantly to review such investments and sell and reinvest when required)
 - (a) If the trustee fails to invest trust monies, he is chargeable with the amount of income which would normally accrue from "proper" investments.
 - (b) As to what constitutes "proper investments", see below.
 - (2) To collect all claims due the trust.
 - (3) To lease land or manage it so that it is productive; or sell it if it is not productive (but this doesn't apply if the trust instrument requires the trustee to convey that land to a beneficiary).
 - (4) To record recordable documents to protect title; to keep securities and funds in safe places; to pay taxes on trust assets to prevent liens thereon; and to secure insurance on trust properties.

- (a) It is proper for the trustee to obtain insurance on trust property—including liability insurance—even though such insurance protects him individually as well as the trust estate.

c. **Standards of trust investment**

- (1) **Statutory investment lists:** Some states continue to follow a statutory "legal list" of approved investments. Such statutes set forth a list of described investments for trustees. They usually include government bonds, conservative first mortgages on land, and other conservative investments.

- (a) If the list is deemed to be "permissive" the trustee can invest in securities outside the list but incurs a heavier burden of proving the propriety of each investment when he does so. Where the list is "mandatory" the trustee probably commits a breach of trust any time he invests in properties outside the list, although the cases are not altogether consistent in this regard.

- (b) Under either type of statutory list, the trustee cannot follow the list blindly. A particular investment of an approved type may yet be an unreasonable one, and the trustee remains liable if he fails to exercise care, skill and prudence.

- (2) **The prudent investor rule:** The trend of modern authority is the so-called "prudent investor rule". In essence, the trustee is required to adhere to a standard of good faith, reasonable prudence, sound discretion and care in making trust investments. He must invest as a prudent businessman would do in making a permanent disposition of his own funds, considering both the probable income and probable safety of capital. (This rule is codified in some states; e.g., Calif.)

- (a) A basic principle of prudent investment is reasonable diversification. Even though a particular investment is a proper one, it becomes improper if too great a portion of the trust estate is invested in it. Appropriate diversification must take into account the importance of spreading investment not only among different entities but even among different industries; the portion which may be concentrated in a particular investment or type of investment depends upon the stability and other characteristics of the investment and also upon the size of the trust estate, for it is not possible to diversify a small estate in the same manner that a large one could be diversified. (Note: The Bar Exam has often posed questions where the trustee did not diversify.)

- (b) The trustee must also consider the marketability of his investment, the adequacy of the security, and probably even tax factors.

- 1) **Assets received on creation of trust:** Suppose the trustee receives upon creation of the trust 5000 shares of Red Corporation as the corpus. Must he sell some of the Red Corp. stock and diversify? (a) The trustee does not have to diversify if he is directed not to sell the Red Corp. stock; or (b) it can be inferred that the settlor would have so intended. (E.g., if Red Corp. is closely held, and the 5000 shares give the trustee a controlling interest, a court is likely to imply an authorization to retain the shares.)

- (c) The prudent investor rule requires the trustee constantly to review the trust investments and sell within a reasonable time whatever investments have become imprudent.
 - (d) In determining whether a particular investment is a "prudent" one, the court looks to the circumstances as they existed at the time the investment was made, or at the time of a particular decision to retain the investment. Thus, a trustee is not a guarantor against loss, if the investment appeared prudent when made.
 - (e) The trustee must not only use the caution of a prudent person, but also reasonable care to obtain yield from the investment. Therefore, it is not necessarily "prudent" to invest only in the very safest and most conservative securities.
- (3) **Particular investments:** The fact that a type of investment is permissible does not necessarily mean that the investment is proper, for in selecting from among the permissible investments, the trustee must exercise reasonable care, skill and prudence. All circumstances must be taken into account, including such things as preserving purchasing power in the face of possible inflation, minimizing risks to capital and the need to obtain a fair return on the investment.
- (a) **Proper investments:** Normally a trustee can invest in government securities, in high grade corporate bonds and in first mortgages on real estate provided the margin of security is adequate.
 - (b) **Improper investments:** Except for bank deposits bearing interest, an unsecured loan of trust funds is normally an improper investment. Most states regard an investment in a second mortgage as a breach of trust in the absence of extreme or compelling circumstances.
 - (c) **Corporate stocks:** Most statutory lists 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.