APPENDIX AC

Statutes Governing Investment of the Alaska Children's Trust

Endowment trust fund.

Accounting system required to distinguish between principal and income.

Section 37.14.200. Alaska children's trust established. (a) The Alaska children's trust is established as a separate endowment trust of the state.

(b) The principal of the trust consists of

(1) legislative appropriations to the trust; and

(2) gifts, bequests, and contributions of cash or other assets from a person.

(c) The net income of the trust shall be determined by the commissioner of revenue in accordance with investment accounting principles and in a manner that preserves the distinction between principal and income.

Section 37.14.210. Powers and duties of the commissioner of revenue. The commissioner of revenue is the treasurer of the trust and has the power and duty to:

(1) act as official custodian of the cash and investments belonging to the trust by securing adequate and safe custodial facilities;

(2) receive all items of cash and investments belonging to the trust;

Separate principal and income accounts required.

(3) collect the principal and income from investments owned or acquired by the trust and deposit the amounts in separate principal and income accounts for the trust;

AS 14.25.180(c) *and* AS 37.14.170 *also govern investment of Fund.*

(4) invest and reinvest the assets of the trust as provided in this section and as provided for the investment of funds under AS 14.25.180(c) and AS 37.14.170;

(5) exercise the powers of an owner with respect to the assets of the trust;

(6) maintain accounting records of the trust in accordance with investment accounting principles and with distinction between the principal and income accounts of the trust;

Independent firm of CPA's must annually audit the Fund's investments and investment transactions.

(7) engage an independent firm of certified public accountants to annually audit the financial condition of the trust's investments and investment transactions;

(8) enter into and enforce contracts or agreements considered necessary for the investment purposes of the trust;

(9) report to the board the condition and investment performance of the trust;

(10) do all acts, whether or not expressly authorized, that the commissioner of revenue considers necessary or proper in administering the assets of the trust.

This section incorporated by AS 37.14.210(4) *and it in turn incorporates* AS 37.10.071. AS 14.25.180(c) *modifies the standard of prudence imposed by* AS 37.10.071(c) *with respect to this Fund.*

Section 14.25.180. Management and investment of fund.

(c) In carrying out investment duties under this chapter, the Alaska State Pension Investment Board has the same powers and duties in regard to the teacher's retirement trust fund as are provided in AS 37.10.071, except that the standard of prudence that the board must obey under AS 37.10.071(c) shall be in regard to the management of large trust investments rather than large investments.

This section incorporated by AS 37.14.210(4). *It is a provision from the statutes applicable to the Public School Trust. Commissioner is fiduciary of the trust fund. As a consequence* of AS 37.14.240(a*) [see page U-6], capital gains and losses remain with the principal. This has the same effect as* AS 37.14.110(c) *has on both the Public School Trust Fund and the University of Alaska Trust on the required asset allocation for the Funds.*

Section 37.14.170. Investments. The commissioner of revenue is the fiduciary of the trust fund and shall invest the fund to provide increasing net income over long-term periods to the fund's income beneficiaries. The commissioner may invest the money in the fund on the basis of probable total rate of return to promote the long-term generation of income. In managing the trust fund, the commissioner shall:

(1) consider the status of the fund's capital and the income generated on both a current and a probable future basis;

(2) determine the appropriate investment objectives;

(3) establish investment policies to achieve the objectives; and

(4) act only in regard to the financial interests of the fund's beneficiaries.

This section incorporated and made applicable by AS 14.25.180(c).

Section 37.10.071. Investment powers and duties. (a) In making investments under this section, the fiduciary of a state fund shall:

(1) act as official custodian of cash and investments by securing adequate and safe custodial facilities for them;

(2) receive all items of cash and investments;

(3) collect and deposit the principal of and income from owned or acquired investments;

(4) invest and reinvest the assets in accordance with this section;

(5) receive and spend appropriations to cover the cost of the exercise of duties under this section;

(6) exercise the powers of an owner with respect to the assets;

(7) perform all acts, not prohibited by this section, whether or not expressly authorized, that the fiduciary considers necessary or proper in administering the assets;

(8) maintain accounting records in accordance with generally accepted accounting principles;

Annual independent audit required.

(9) engage an independent certified public accountant to conduct an annual audit of the financial condition and investment transactions;

(10) enter into and enforce contracts or agreements considered necessary, convenient, or desirable for the investment purposes of this section; and

(11) when choosing to acquire or dispose of investments, secure competitive national or international market rates or prices, or the equivalence of those rates or prices in the judgment of the fiduciary.

(b) Under this section, the fiduciary of a state fund or the fiduciary's designee may

(1) delegate investment, custodial, or depository authority on a discretionary or nondiscretionary basis to officers or employees of the state or to independent firms, banks, financial institutions, or trust companies by designation through appointments, contracts, or letters of authority;

(2) acquire or dispose of investments either directly, indirectly, or through investment pools or trusts, by competitive or negotiated agreements, contracts, or auctions, in public or private markets;

(3) concentrate or diversify investments as the fiduciary considers appropriate to increase the probable total rate of return or to decrease the overall exposure to potentially adverse market value risks;

(4) protect the market value or the rate of return of the investments by entering into forward agreements to buy or sell assets at a future date as a hedge against existing held assets or as a precommitment of future cash flows;

(5) lend assets, under an agreement and for a fee, against deposited collateral of equivalent market value;

(6) borrow assets on a short-term basis, under an agreement and for a fee, against the deposit of collateral consisting of other assets in order to accommodate temporary cash or investment needs;

(7) hold investments in bearer or registered form in the name of the state, a fund, or nominees authorized by the fiduciary;

(8) utilize consultants, advisors, custodians, investment services, and legal counsel for assistance in investment matters on either a continuing or a limited-term basis and with or without compensation;

(9) declare records to be confidential and exempt from AS 09.25.110 and 09.25.120 if the records contain information that discloses the particulars of the business or the affairs of a private enterprise, investor, borrower, advisor, consultant, counsel, or manager.

(c) In exercising investment, custodial, or depository powers or duties under this section, the fiduciary of a state fund shall apply the prudent investor rule and exercise the fiduciary duty in the sole financial best interest of the fund entrusted to the fiduciary. Among beneficiaries of a fund, the fiduciaries shall treat beneficiaries with impartiality.

AS 14.25.180 *and* AS 37.14.170 *apply here.*

Commissioner relieved of fiduciary responsibility for investment, custodial or depository responsibilities under limited circumstances where duty is properly delegated.

(d) In exercising investment, custodial, or depository powers or duties under this section, the fiduciary or the fiduciary's designee is liable for a breach of a duty that is assigned or delegated under this section, or under AS 14.25.180, AS 14.40.400(b), AS 37.10.070, AS 37.14.110(c), 37.14.160, 37.14.170, or AS 39.35.080. However, the fiduciary or the designee is not liable for a breach of a duty that has been delegated to another person if the delegation is prudent under the applicable standard of prudence set out in statute or if the duty is assigned by law to another person, except to the extent that the fiduciary or designee;

(1) knowingly participates in, or knowingly undertakes to conceal, an act or omission of another person knowing that the act or omission is a breach of that person's duties under this chapter;

(2) by failure to comply with this section in the administration of specific responsibilities, enables another person to commit a breach of duty; or

(3) has knowledge of a breach of duty by another person, unless the fiduciary or designee makes reasonable efforts under the circumstances to remedy the breach.

(e) The state shall defend and indemnify the fiduciary or an officer or employee of the state against liability under (d) of this section to the extent that the alleged act or omission was performed in good faith and was prudent under the applicable standard of prudence.

(f) In this section, "fiduciary of a state fund" or "fiduciary" means

(1) the commissioner of revenue for investments under AS 37.10.070;

(2) with respect to the Alaska State Pension Investment Board, for investments under AS 14.25.180,

(A) each trustee who serves on the board of trustees; and

(B) any other person who exercises control or authority with respect to management or disposition of assets for which the board is responsible or who gives investment advice to the board; or

(3) the person or body provided by law to manage the investments for investments not subject to AS 14.25.180 or AS 37.10.070.

Section 37.14.220. Administration of the trust. The trust shall be administered by the Alaska Children's Trust Board.

Since the new board created by the 1996 Executive Order includes "experts" in private sector finance, is the board expected to play a role in the investment of the fund?

Section 37.14.225. Trust board established. The Alaska Children's Trust Board is established in the Office of the Governor. The board is composed of:

(1) the governor or a designee of the governor;

(2) the commissioner of health and social services or the commissioner's designee;

(3) the commissioner of education or the commissioner's designee;

(4) four public members appointed by the governor; in appointing the public members, the governor shall give a preference to persons who have experience and expertise in:

(A) children's or prevention programs; or

(B) private sector finance.

The board's duties.

Section 37.14.230. Powers and duties of the board. When acting as administrator of the trust, the board shall:

(1) hold regular and special meetings it considers necessary; the board may hold meetings by teleconference;

(2) award grants from the net income of the trust to community- based programs and projects that the board finds will aid in the prevention of child abuse and neglect;

(3) monitor approved programs and projects for compliance with AS 37.14.200 - 37.14.270;

(4) before providing assistance to a program or project, approve written findings on the program or project that include a consideration of the means of measuring the effectiveness of the program or project;

(5) apply for, and use net income from the trust to obtain, private and federal grants for the prevention of child abuse and neglect;

(6) solicit contributions, gifts, and bequests to the trust;

(7) keep audio tape recordings of each meeting of the board to be made available on request; and

(8) submit to the governor and make available to the legislature by February 1 each year a report describing

(A) the child abuse and neglect prevention services that were provided by the programs and projects to which the board awarded grants; and

(B) the annual level of contributions, income, and expenses of the trust.

Capital gains remain part of principal.

Section 37.14.240. Fund utilization. (a) Except as provided in (d) of this section, the principal of the trust and any capital gains or losses realized on the principal shall be retained perpetually in the trust for investment as specified in AS 37.14.210, and may not be used for the awarding of grants.

(b) The net income of the trust may be appropriated only for the following purposes:

(1) the awarding of grants;

(2) obtaining private and federal grants for the trust;

(3) soliciting contributions, gifts, and bequests for the trust; and

(4) reimbursement to the Department of Revenue for the costs of establishing the trust.

(c) Realized net income that has not been appropriated, or that has been appropriated but not expended, shall be invested until appropriated and expended.

AS 37.14.240(d) *authorizes Board to use up to $150,000 of principal per year to cover its expenses.*

(d) Up to $150,000 per year may be appropriated from the principal of the trust for the administrative expenses of the board relating to AS 37.14.200 - 37.14.270.

Section 37.14.250. Grants. (a) In awarding grants from the net income of the trust, the board shall consider the proposals of a qualified applicant only after the applicant has submitted a detailed proposal in the form prescribed by the board. The board may not award a grant unless the board makes written findings that

(1) the proposed project, if successful, will help prevent child abuse or neglect;

(2) the application for financial assistance contains an adequate plan for project implementation, including both financial feasibility and project effectiveness;

(3) the applicant demonstrates that sufficient technical expertise is available to accomplish the objectives of the proposed program or project; and

(4) the applicant has identified costs associated with and ancillary to the project, additional governmental costs, future obligations generated by the program or project, and necessary operating, maintenance, or other support costs for the life of the program or project.

(b) The board may establish other requirements for the award of grants under this section if necessary to carry out the purpose of the trust.

(c) The board shall award grants in amounts that

(1) are appropriate to the conditions of the applicant and the proposed program or project; and

(2) will make the most effective use of the money available.

(d) The amount of all grants awarded by the board during a 12-month period to a single project or program may not exceed $50,000. The board may not finance more than 75 percent of the cost of a program or project during each of the first two years for which the program or project receives a grant, 50 percent

during each of the third and fourth years, and 25 percent during each year thereafter.

(e) A recipient of a grant may not use more than 10 percent of the grant for administration of the program or project.

(f) To the extent consistent with the terms or conditions of the grant, a private or federal grant awarded to the board shall be distributed in the same manner as provided for grants under this section and AS 37.14.260.

Section 37.14.260. Eligibility for grants. The board may award a grant to an applicant if

(1) the applicant has submitted a proposal that is acceptable to the board; and

(2) programs and projects, if any, of the applicant that have previously received a grant from the board have complied with all requirements of that assistance and have performed with sufficient success or promise to warrant further financial assistance.

Section 37.14.270. Definitions. In AS 37.14.200 - 37.14.270:

(1) “board” means the Alaska Children’s Trust Board;

(2) "child abuse and neglect" has the meaning given in AS 47.17.290;

(3) "prevention of child abuse and neglect" includes primary and secondary prevention programs; in this paragraph

(A) "primary prevention program" means an educational or training program intended to raise the awareness of and change attitudes concerning child abuse and neglect and its prevention;

(B) "secondary prevention program" means a service intended to reach high-risk groups and to prevent the occurrence or recurrence of child abuse and neglect;

(4) “trust” means the Alaska children’s trust established in AS 37.14.200.