

SENATE BILL NO. 177

IN THE LEGISLATURE OF THE STATE OF ALASKA

THIRTIETH LEGISLATURE - SECOND SESSION

BY SENATOR MACKINNON

Introduced: 2/5/18

Referred: State Affairs, Finance

A BILL

FOR AN ACT ENTITLED

1 **"An Act relating to the mental health trust fund and the Alaska Mental Health Trust**
2 **Authority; relating to the Alaska Mental Health Trust Authority's authority to acquire,**
3 **invest in, make capital improvements to, or undertake other activities on real**
4 **properties; relating to management of mental health trust land; establishing the Alaska**
5 **Mental Health Trust Authority Development account; relating to public access to**
6 **information concerning the Alaska Mental Health Trust Authority or mental health**
7 **trust land; and providing for an effective date."**

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

9 * **Section 1.** The uncodified law of the State of Alaska is amended by adding a new section
10 to read:

11 PURPOSE. The purpose of this Act is to ratify the Alaska Mental Health Trust
12 Authority's acquisitions of, investments in, and development of real estate using amounts
13 attributable to principal derived from mental health trust land before the effective date of this

1 Act.

2 * **Sec. 2.** AS 37.14.009(a) is amended to read:

3 (a) The Alaska Mental Health Trust Authority

4 (1) has a fiduciary obligation to ensure that the assets of the trust are
5 managed consistent with the requirements of the Alaska Mental Health Enabling Act,
6 P.L. 84-830, 70 Stat. 709 (1956);

7 (2) shall contract with the Department of Natural Resources to manage
8 the land assets of the trust; the contract must provide for the recording of at least one
9 conveyance to the authority by quitclaim deed of mental health trust land in each
10 recording district in the state in which mental health trust land is located; a
11 conveyance to the authority is exempt from the platting and surveying requirements of
12 AS 38.04.045(b) and municipal ordinances adopted under AS 29.40; when the
13 Department of Natural Resources manages land assets of the trust under a contract
14 entered into under this paragraph, the department shall

15 (A) manage in conformity with AS 38.05.801;

16 (B) consult with the authority before adopting regulations
17 under AS 38.05.801(c);

18 (C) provide notice to, and consult with, the authority regarding
19 all proposed actions subject to public notice under AS 38.05.945 before giving
20 that public notice;

21 (D) annually provide the authority with a report including

22 (i) a description of all land management activities
23 undertaken under this section during the prior year;

24 (ii) an accounting of all income and proceeds generated
25 from mental health trust land;

26 (iii) an explanation of the manner in which the income
27 and proceeds were allocated between the mental health trust fund and
28 the mental health trust settlement income account; and

29 (E) obtain the approval of the authority before exchanging
30 mental health trust land under AS 38.05.801(b)(2); [AND]

31 (3) shall contract with Alaska Permanent Fund Corporation for

1 management of the mental health trust fund;

2 **(4) shall use any amount attributable to principal and not**
 3 **deposited in the mental health trust fund under AS 37.14.031(b) in accordance**
 4 **with AS 37.14.055; and**

5 **(5) shall manage the trust and make investments in accordance**
 6 **with AS 37.10.071.**

7 * Sec. 3. AS 37.14.031(b) is amended to read:

8 (b) The fund consists of the cash assets of the principal of the trust, and
 9 includes

10 (1) money appropriated to the fund;

11 (2) **to the extent directed by the authority to be deposited in the**
 12 **fund**, the proceeds of sale or other disposals of mental health trust land **attributable**
 13 **to principal**, and the fees, charges, income earned, royalty proceeds, and other money
 14 received from the management of mental health trust land attributable to principal;
 15 [AND]

16 (3) gifts, bequests, and contributions from other sources; **and**

17 **(4) net income of the fund directed by the authority to be deposited**
 18 **in the principal of the fund to offset the effect of inflation.**

19 * Sec. 4. AS 37.14.031(d) is amended to read:

20 (d) The authority shall adopt regulations providing for the determination of
 21 amounts attributable to principal **derived from mental health trust land, including**
 22 **amounts from revenue, distributions, and gains and losses realized on real estate**
 23 **acquired, invested in, improved, or developed under AS 37.14.055. Amounts**
 24 **derived from mental health trust land that are not attributable to the principal**
 25 **are income. The method and** [UNDER (b)(2) OF THIS SECTION. THE
 26 REGULATIONS MUST PROVIDE FOR THE ALLOCATION BETWEEN
 27 PRINCIPAL AND INCOME OF MONEY RECEIVED FROM THE
 28 MANAGEMENT OF MENTAL HEALTH TRUST LAND, AND THE] manner of
 29 **determining the amounts attributable to principal and income provided for in**
 30 **regulation** [ALLOCATION] must be in the long-term best interest of the trust and its
 31 beneficiaries.

1 * **Sec. 5.** AS 37.14.035(a) is amended to read:

2 (a) The cash principal of the mental health trust fund **under AS 37.14.031(b)**
 3 shall be retained perpetually in the fund for investment by the Alaska Permanent Fund
 4 Corporation, as specified in AS 37.13.300.

5 * **Sec. 6.** AS 37.14.035 is amended by adding a new subsection to read:

6 (d) The authority shall use any amount attributable to principal and not
 7 deposited in the fund under AS 37.14.031(b) in accordance with AS 37.14.055.

8 * **Sec. 7.** AS 37.14.041(a) is amended to read:

9 (a) Money in the mental health trust settlement income account may only be
 10 used for the following purposes:

11 (1) the awarding of grants and contracts in fulfillment of the authority's
 12 purpose to ensure an integrated comprehensive mental health program for the state;

13 (2) obtaining private and federal grants for a purpose described in (1)
 14 of this subsection;

15 (3) soliciting gifts, bequests, and contributions for a purpose described
 16 in (1) of this subsection;

17 (4) reimbursement to

18 (A) the Alaska Permanent Fund Corporation for the costs of
 19 managing [THE PRINCIPAL OF] the mental health trust fund; and

20 (B) the Department of Natural Resources for the cost of
 21 managing mental health trust land;

22 (5) offsetting the effect of inflation on the value of the principal of the
 23 mental health trust fund; and

24 (6) subject to AS 37.07 (Executive Budget Act), meeting the necessary
 25 administrative expenses of the authority that are required for it to properly discharge
 26 its responsibilities.

27 * **Sec. 8.** AS 37.14 is amended by adding new sections to read:

28 **Sec. 37.14.051. Alaska Mental Health Trust Authority development**
 29 **account established.** (a) The Alaska Mental Health Trust Authority development
 30 account is established as a separate account of the Alaska Mental Health Trust
 31 Authority. The Alaska Mental Health Trust Authority development account consists of

1 amounts attributable to principal under AS 37.14.031(d) that are not deposited in the
 2 mental health trust fund under AS 37.14.031(b), including principal derived from
 3 mental health trust land managed or invested in under AS 37.14.055.

4 (b) The authority may establish subaccounts within the Alaska Mental Health
 5 Trust Authority development account.

6 **Sec. 37.14.055. Use of principal derived from mental health trust land.** (a)
 7 The authority shall use the money in the Alaska Mental Health Trust Authority
 8 development account established under AS 37.14.051 for one or more of the following
 9 purposes:

10 (1) to acquire or invest in real property for the authority to use or for
 11 the unit of the Department of Natural Resources that manages mental health trust land
 12 to use;

13 (2) to acquire or invest in real property to use as a component of the
 14 state's mental health trust program;

15 (3) to acquire or invest in income producing real property;

16 (4) to acquire or invest in real property that has the potential to
 17 produce income;

18 (5) to make capital improvements to mental health trust land or the
 19 trust's real property investments or to undertake other activities that will enhance the
 20 value, marketability, or profitability of mental health trust land or the trust's real
 21 property investments.

22 (b) The authority may acquire, invest in, make capital improvements to, or
 23 undertake other activities on real property as provided under (a) of this section in its
 24 own name or through a corporation, limited liability company, or other entity wholly
 25 or partially owned by the authority. The authority may create subsidiary corporations
 26 for the purposes of this subsection.

27 (c) Any real property the authority acquires in its own name in this state under
 28 (a)(1), (2), (3), or (4) of this section shall be designated mental health trust land. Any
 29 capital improvements to or development of mental health trust land that the authority
 30 completes in its own name under (a)(5) of this section shall be considered part of the
 31 mental health trust land. The authority's interest in any corporation, limited liability

1 company, or other entity under (b) of this section shall be considered an investment of
2 the trust.

3 (d) The authority may acquire or invest in real property under (a)(1) or (2) of
4 this section if the board makes a finding by resolution that acquisition of or investment
5 in the real property is in the best interests of the trust and its beneficiaries and is in
6 furtherance of an integrated comprehensive mental health program for the state. Real
7 property acquired or invested in under (a)(1) or (2) of this section must be located in
8 the state.

9 (e) The authority may acquire or invest in real property under (a)(3) of this
10 section if the board makes a finding by resolution that the acquisition or investment is
11 in the best interests of the trust and its beneficiaries and is expected to yield, within the
12 time period estimated by the board in its finding, a return for the trust in excess of the
13 investment returns obtained from the trust fund. Real property acquired or invested in
14 under (a)(3) of this section must be located in the state or in another state of the United
15 States.

16 (f) The authority may acquire or invest in real property under (a)(4) of this
17 section if the board makes a finding by resolution that acquisition of or investment in
18 the real property is in the best interests of the trust and its beneficiaries and is expected
19 to yield, within the time period estimated by the board in its finding, a return for the
20 trust in excess of the investment returns obtained from the trust fund, after factoring in
21 the cost to make the real property produce income. Real property acquired or invested
22 in under (a)(4) of this section must be located in the state or in another state of the
23 United States.

24 (g) The authority may direct an expenditure to be made under (a)(5) of this
25 section if the board makes a finding by resolution that the expenditure is in the best
26 interests of the trust and its beneficiaries. If an expenditure under (a)(5) of this section
27 is for a capital improvement, the board shall include in its resolution a finding that the
28 expenditure is expected to yield, within the time period estimated by the board in its
29 finding, a return for the trust in excess of the investment returns obtained from the
30 trust fund.

31 (h) With respect to real property acquired, invested in, improved, or developed

1 under (a) of this section, the authority may, directly or through an entity in which the
2 investment is made, borrow money and grant a mortgage against the real property
3 being acquired or invested in if the borrowing and mortgage are nonrecourse to the
4 authority and the trust fund. In making the finding required under (d), (e), (f), or (g) of
5 this section, the board shall consider the debt service on the borrowing.

6 (i) If any cash principal derived from mental health trust land is held for one
7 of the purposes described in (a)(1) - (5) of this section and is not used for that purpose
8 for five years from the date of its most recent receipt as cash, the authority shall direct
9 the cash principal to be deposited in the trust fund under AS 37.14.031(b).

10 (j) The board shall annually, and with each acquisition of or investment in real
11 property made under (a) of this section, review the trust's holdings of and investments
12 in income producing real property to determine whether the holdings and investments
13 are consistent with the prudent investor rule and the fulfillment of the authority's
14 duties under AS 37.14.007(b). In making its determination, the board shall consider

15 (1) the need to preserve trust principal in perpetuity while generating
16 income to support an integrated comprehensive mental health program;

17 (2) the trust's overall mix of assets and investments by type and the
18 percentage of assets and investments devoted to income-producing real property,
19 including the real estate investments of the trust fund made by the Alaska Permanent
20 Fund Corporation;

21 (3) the diversification by geographic location and type of property of
22 the trust's income-producing real property, including the real estate investments of the
23 trust fund made by the Alaska Permanent Fund Corporation;

24 (4) the use of prudent measures to mitigate any risks;

25 (5) the transaction and ongoing costs the authority incurs with respect
26 to the holdings and investments;

27 (6) the use of real estate to further mental health programs in the state
28 that are supported by the authority; and

29 (7) any other investment policy considerations used by mission-driven
30 nonprofit trusts, foundations, or endowments managing substantial assets that the
31 board considers appropriate.

1 * **Sec. 9.** AS 37.14.099 is amended by adding new paragraphs to read:

2 (4) "mortgage" means a mortgage, deed of trust, conditional sales
3 contract, or other security agreement encumbering real property;

4 (5) "trust fund" means the mental health trust fund established under
5 AS 37.14.031(a).

6 * **Sec. 10.** AS 38.05.801(b) is amended to read:

7 (b) Subject to (a) of this section, the department

8 (1) shall manage mental health trust land under those provisions of law
9 applicable to other state land;

10 (2) may exchange other state land for mental health trust land under
11 the procedures set out in AS 38.50; [AND]

12 (3) may correct errors or omissions in the legal descriptions of mental
13 health trust land;

14 **(4) shall provide recommendations to and implement the directives**
15 **of the Alaska Mental Health Trust Authority regarding acquisitions of real**
16 **property and investments or other actions under AS 37.14.055; and**

17 **(5) shall maintain records of the department's activities on behalf**
18 **of the Alaska Mental Health Trust Authority or with respect to mental health**
19 **trust land. Records maintained under this paragraph must be available for**
20 **public inspection and copying under AS 40.25.110 - 40.25.220, unless the records**
21 **are confidential under AS 47.30.058.**

22 * **Sec. 11.** AS 47.30.011(c) is amended to read:

23 (c) The authority

24 (1) shall, as provided in AS 37.14.009, administer the trust established
25 under the Alaska Mental Health Enabling Act of 1956;

26 (2) may sue and be sued;

27 (3) may retain the services of independent counsel when, in the
28 judgment of the authority's board of trustees, independent counsel is needed;

29 (4) shall insure or indemnify and protect the board, a member of the
30 board, or an agent or employee of the authority against financial loss and expense,
31 including reasonable legal fees and costs, arising out of a claim, demand, suit, or

1 judgment by reason of alleged negligence, alleged violation of civil rights, or alleged
 2 wrongful act resulting in death or bodily injury to a person or accidental damage to or
 3 destruction of property if the board member, agent, or employee, at the time of the
 4 occurrence, was acting under the direction of the authority within the course or scope
 5 of the duties of the board member, agent, or employee;

6 (5) shall exercise the powers granted to it under AS 37.14.041, subject
 7 to the limitations imposed by AS 37.14.045; [AND]

8 (6) shall administer the office of the long term care ombudsman
 9 established in AS 47.62.010; **and**

10 **(7) shall use the money deposited in the Alaska Mental Health**
 11 **Trust Authority development account established under AS 37.14.051 in**
 12 **accordance with AS 37.14.055.**

13 * **Sec. 12.** AS 47.30 is amended by adding a new section to read:

14 **Sec. 47.30.058. Public access to information.** (a) Information in the
 15 possession of the authority or the Department of Natural Resources relating to mental
 16 health trust land is a public record, except the following information is confidential
 17 and not subject to public disclosure:

18 (1) private financial or proprietary business information made
 19 available to the authority by or on behalf of a party who requests that the information
 20 be kept confidential;

21 (2) information the disclosure of which would unfairly prejudice the
 22 ability of the authority or the Department of Natural Resources to invest or manage
 23 trust assets in the best interests of the trust and its beneficiaries;

24 (3) information that constitutes trade secrets or technical data
 25 reasonably held confidential in the finance or investment industry;

26 (4) information the immediate disclosure of which would clearly have
 27 an adverse effect on the finances of the authority or the trust, including information
 28 relating to negotiations, pending transactions, or investments under consideration; and

29 (5) information required to be kept confidential or exempt from public
 30 disclosure under federal or state law.

31 (b) The authority or the Department of Natural Resources may disclose

1 confidential information under this section only for the purpose of an official law
2 enforcement investigation or when its production is required in a court proceeding.
3 The restrictions in (a) of this section do not prohibit the publication of statistics
4 presented in a manner that prevents the identification of particular reports, items,
5 persons, or enterprises.

6 * **Sec. 13.** The uncodified law of the State of Alaska is amended by adding a new section to
7 read:

8 TRANSITION. Cash principal derived from mental health trust land that the Alaska
9 Mental Health Trust Authority is holding in the Alaska Mental Health Trust Authority
10 development account on the effective date of this Act shall be considered to have been
11 received by the Alaska Mental Health Trust Authority as of the effective date of this Act for
12 purposes of applying the period described under AS 37.14.055(i), added by sec. 8 of this Act.

13 * **Sec. 14.** This Act takes effect immediately under AS 01.10.070(c).