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**WRITTEN TESTIMONY**

NAME: Allen McCarty  
REPRESENTING: Citizens Alliance Protecting School Lands (CAPSL) a 501(c)3 non-profit advocacy group working to restore the Alaska Public School Lands Trust established in the historic 1915 Congressional Act (attached) reserving federal Sections 16 and 36 in every township in Alaska for the financial support of Alaska public schools. This Act was repealed yet confirmed in Section 6(k) of the Alaska Statehood Act (attached). The Alaska Statehood Act required all public school trust lands, reserved as of the date of the Act (July 7, 1958) be granted for the purposes for which they were reserved upon admission of the State into the Union.

BILL#/ SUBJECT: COMMITTEE SUBSTITUTE SB 96 VERSION T  
EDUCATION:SCHOOLS/TEACHERS/FUNDING

COMMITTEE & HEARING DATE: Senate Education 3/28/17

Thank you for allowing the opportunity to testify on this proposed legislation.

CAPSL believes only an Act of Congress can modify the requirements of the 1915 Act establishing the Alaska Public School Lands Trust or the Alaska Statehood Act. SB 96 materially changes essential provisions of the 1915 Act confirmed in Section 6(k) of the Alaska Statehood Act.

Please accept this testimony relevant to specific sections of the *Committee Substitute SB 96 Version T* considering the Senate Education Committee *Sectional Analysis* filed with the bill and *Explanation of Changes – Version R to T*:

- *Section 19: Deletes language in AS 37.14.130 that requires the Public School Fund Advisory Board prepare accounting specifically for the principal and income of the Public School Trust Fund. This accounting is required by the 1915 Act confirmed at Statehood which mandates the entire proceeds or income derived from the Public School Trust lands be deposited in "separate and permanent funds...to be invested and the income from which shall be expended only for the exclusive use and benefit of the public schools of Alaska."*

- ***Section 21: Creates a new section to allow the Legislature to appropriate not more than 4.75% of the market value established with the changes made in Section 22 of the Committee Substitute Version T. Although the statute as currently proposed would continue to identify the funds available for use to benefit Alaska public school students as income (interest), the proposed new subsection AS 37.14.160(b) clearly contradicts by identifying these funds as a monthly average over three years of market value. This action is contrary to the 1915 Act confirmed at Statehood allowing only income (interest) earned by the separate and permanent school fund established in 1915 may be spent to benefit Alaska public school students. Income, once earned and received, is easily quantifiable while market value almost constantly fluctuates and thus the requirement of averaging over time. Income and market value are not directly related. Market value is more directly related to invested principal. Use of the principal endangers the longevity of the fund, fails trustee duties to protect the interests of current and future beneficiaries and is not allowed by the 1915 Act.***
- ***Section 22: Deletes language in AS 37.14.160 relating to separate accounts and records for the principal and income of the Public School Trust Fund. This section also includes the new subsection that requires the Department of Revenue (DOR) to determine annually the monthly average market value of the fund for the last three fiscal years. It cannot be overstated that this action is contrary to the 1915 Act confirmed at Statehood that established and defined the Alaska Public School Land Trust and Permanent Fund. Providing separate accounting of principal and income (interest) and the ability to spend the income (interest) while making the principal permanent was agreed upon by Congress and the State as a prudent method to benefit Alaska public school students into perpetuity. These restrictions were accepted by the Territory of Alaska and the State of Alaska and remain unchanged except by Acts of Congress.***
- ***Section 23: Amends AS 37.14.170 to allow the commissioner of DOR to invest the Public School Trust Fund in order to provide increasing returns from capital appreciation."*** Requiring a specific investment strategy based on capital appreciation (market value) increases risk to the long-term viability of the trust and is contrary to long-standing trust law. Additionally injecting "current" beneficiaries into the statute is contradictory to AS 37.14.170(4) requiring the commissioner act only in regard to the financial interest of the fund's beneficiaries who include both "current" and future Alaska public school

students. The commissioner as trustee and fiduciary of the trust must act for the beneficiaries not the state. It is not the commissioner's role to provide a larger income stream if it benefits "current" beneficiaries to the detriment of those next year, five years from now or sometime in the future.

- *Section 24: Repeals AS 37.14.110(c) which sets how the Commissioner of DOR will calculate the net income of the Public School Trust Fund and AS 37.14.140 which requires that net income from the fund only go towards funding public education."* The statute proposed for repeal is essential to fulfill the obligation of the State of Alaska to current and future beneficiaries as required by the 1915 Act confirmed at Statehood and must be retained.

The Alaska Public School Land Trust Fund predates Statehood by 44 years. It is a dedicated funding source that was created specifically to benefit Alaska public school students into perpetuity. The State of Alaska holds restricted title to the Alaska Public School Trust lands as they are reserved and held in trust for Alaska public school students. The State of Alaska, like the Territory of Alaska before Statehood, is the trustee and is required by long-standing trust law to:

- follow the instructions in the trust documents (the 1915 Act, the Alaska Statehood Act & any additional Congressional Acts impacting the trust);
  - maintain all trust assets separately;
  - use trust assets for the benefit of the current and future beneficiaries (Alaska public school children)
  - treat all trust beneficiaries the same (current and future Alaska public school children); one cannot be favored over another;
  - invest assets in a prudent (conservative) manner, in a way that will result in reasonable growth with minimum risk
  - keep accurate records and report to the beneficiaries (Alaska public school students).
- *Section 26: Creates an effective date for the bill of June 30, 2017. In the original SB 96 prior to Committee Substitutes, the date was conditional on a final judgement being made regarding combining the income and principal of the Public School Trust Fund and that such action did not violate trust law. While this condition has been removed by the*

committee substitute because there are no pending lawsuits, it should be remembered that the judge in *Kasayulie v State of Alaska* found the State did indeed breach the trust. The parties agreed to leave the resolution of the Public School Land Trust breach unresolved in the settlement. However, the *Kasayulie* settlement may currently no longer be valid since the state may have failed to fulfill settlement obligations in a timely manner. Therefore *Kasayulie* plaintiffs could potentially reopen the case at any time adding the new trust breach created by SB 96 if passed.

Instead of potentially bleeding the trust dry to maximize income during this period of statewide fiscal difficulties, it is more important than ever to work with CAPSL and other stakeholders to rebuild the Alaska Public School Land Trust over time and as finances allow so that all Alaska public school children benefit into perpetuity from their lands held in state trust. Perhaps more importantly, Sections 16 and 36 and in lieu of lands remaining under federal control which should have been reserved and transferred to the trust after passage of the Statehood Act (July 7, 1958) could be recovered and put to work benefitting Alaska public school students.

Although only Congress can modify federal law including trust laws, the Legislature does have the ability to potentially create one of the largest public school land trusts in the country and truly impact Alaska education now and forever.

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**Attachments:**

- *1915 Act to reserve lands to the Territory of Alaska for educational uses, and other purposes*
- *Alaska Statehood Act Section 6(k)*
- *Why SB 146 (and HB 261) are bad for Alaska's School Children.* (This document was provided to members of the 29<sup>th</sup> Legislature during the 2016 session in response to bills introduced by the Governor which appear to have been incorporated into SB96.)