

HOUSE BILL NO. 309 am
IN THE LEGISLATURE OF THE STATE OF ALASKA
THIRTY-FIRST LEGISLATURE - SECOND SESSION
BY THE HOUSE RULES COMMITTEE
Amended: 3/24/20
Introduced: 3/20/20

A BILL
FOR AN ACT ENTITLED

1 **"An Act relating to the procedure for confirmation of the governor's appointments;**
2 **relating to the board of the Mental Health Trust Authority; and providing for an**
3 **effective date."**

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

5 *** Section 1.** The uncoded law of the State of Alaska is amended by adding a new section
6 to read:

7 **TIME FOR CONFIRMING GOVERNOR APPOINTMENTS.** (a) Notwithstanding
8 **AS 39.05.080,** for appointments presented by the governor during the Second Regular Session
9 of the Thirty-First Alaska State Legislature,

10 (1) the legislature shall, in joint session assembled, act on the appointments at
11 any time by confirming or declining to confirm the appointments by a majority vote of all of
12 the members on the appointments presented; and

13 (2) if the legislature does not act to confirm or decline to confirm an
14 appointment, the failure of the legislature to act to confirm or decline to confirm an

1 appointment presented is not tantamount to a declination of confirmation on the day the
2 Second Regular Session of the Thirty-First Alaska State Legislature adjourns.

3 (b) After the legislature meets in joint session assembled to act on the appointments
4 presented by the governor during, and after adjournment of, the Second Regular Session of
5 the Thirty-First Alaska State Legislature, the failure of the legislature to act to confirm or
6 decline to confirm an appointment presented will be tantamount to a declination of
7 confirmation on the day the joint session adjourns.

8 (c) Notwithstanding AS 47.30.021(a), a member of the board of the Alaska Mental
9 Health Trust Authority whose term expires March 1, 2020, may not continue to serve until a
10 successor is confirmed. A person appointed to the board of the Alaska Mental Health Trust
11 Authority and presented to the legislature by the governor during the Second Regular Session
12 of the Thirty-First Alaska State Legislature shall serve as successor to a member whose
13 appointment expired on March 1, 2020, and exercise the functions, have the powers, and be
14 charged with the duties prescribed by law for the appointment pending confirmation or
15 declination under (a) or (b) of this section.

16 * Sec. 2. This Act takes effect immediately under AS 01.10.070(c).



House Rules Committee
31st Alaska State Legislature
State Capitol, Juneau, AK

House Bill 309

Sponsor Statement

House Bill 309 temporarily extends the time for which the Legislature can meet in joint session to confirm the Governor's cabinet appointments and appointments to state boards and commissions.

Under current law, if confirmations are not taken up by the Legislature in a joint session before the regular session adjourns, the Governor's appointees are considered to be declined. Current health guidelines would disadvise sixty legislators and additional support staff from gathering in one room, as per joint session requirements. Additionally, COVID-19 and related emergencies could easily prevent the Legislature from being able to meet voting thresholds for confirmations or prevent the scheduling of a joint session before the session's end.

In the event of the need to adjourn early due to COVID-19 or if social distancing measures prevent the Legislature from meeting jointly, HB 309 would allow the Legislature the option of confirming governor appointees prior to the convening of the 32nd Alaska State Legislature.

House Bill 309 maintains as much of the regular confirmation process as possible while allowing the Legislature the flexibility to safely meet at a later date to give this important process its due.

Revisor's notes. — In 1992, under § 6, ch. 13, SLA 1992 and AS 01.05.031, "Governor's Council on Disabilities and Special Education" was substituted for "Governor's Council for the Handicapped and Gifted." In 1993, the reference in subparagraph (b)(2)(C) was changed from AS 44.29.110 to AS 44.29.100 to correct a manifest error.

In 1996, in paragraph (c)(2) of this section, "mental health trust settlement income account" was substituted for "mental health trust income account" pursuant to sec. 17, ch. 1, SSSLA 1994.

Cross references. — For qualifications of initial members of the Alaska Mental Health Trust Authority, see § 51, ch. 66, SLA 1991 in the Temporary and Special Acts.

Effect of amendments. — The first 2004 amendment, effective July 24, 2004, substituted "AS 47.45.200" for "AS 44.21.200" in paragraph (b)(2)(D).

The second 2004 amendment, effective June 26, 2004, substituted "AS 47.45.200" for "AS 44.21.200" in paragraph (b)(2)(D).

Sec. 47.30.020. [Repealed, § 7 ch 84 SLA 1981.]

Sec. 47.30.021. Term of office, vacancies, removal, and reappointment. (a) The members of the board serve staggered five-year terms. A member shall continue to serve until the member's successor is appointed and confirmed.

(b) A vacancy occurring in the membership of the board shall be filled within 60 days by appointment of the governor for the unexpired portion of the vacated term.

(c) The governor may remove a member of the board only for cause, including incompetence, neglect of duty, misconduct in office, poor attendance, or lack of contribution to the board's work. A member being removed for cause shall be given a copy of the charges and afforded an opportunity to publicly present a defense in person or by counsel upon not less than 10 days' written notice. If a member is removed for cause, the governor shall file with the lieutenant governor a complete statement of all charges made against the member and the governor's findings based on the charges, together with a complete record of the proceedings. The removal of a member for cause constitutes a final administrative order. A member seeking to appeal the governor's removal of a member for cause under this subsection shall file a notice of appeal with the superior court under AS 44.62.560.

(d) Except for a trustee who has served two consecutive five-year terms, a member of the board may be reappointed. A member of the board who has served two consecutive five-year terms is not eligible for reappointment to the board until one year has intervened. (§ 26 ch 66 SLA 1991)

Cross references. — For terms of initial members of the Alaska Mental Health Trust Authority, see § 51, ch. 66, SLA 1991 in the Temporary and Special Acts.

Sec. 47.30.026. Officers and staff. (a) The board shall annually elect a presiding officer and other officers it considers necessary from among its membership.

(b) The board shall employ a chief executive officer who shall be selected by the board. The chief executive officer shall be compensated at no less than range 26 of the pay plan for state employees under AS 39.27.011(a). The chief executive officer may

(1) hire additional employees;

(2) appoint hearing officers to perform the responsibilities set out in AS 47.30.031(b)(4); and

(3) contract for the services of consultants and others.

(c) The chief executive officer is directly responsible to the board.

(d) The chief executive officer and employees hired under this section are in the exempt service under AS 39.25.110. (§ 26 ch 66 SLA 1991; am § 2 ch 15 SLA 2001)

Revisor's notes. — In 2008, in (b)(2) of this section, "AS 47.30.031(b)(4)" was substituted for "AS 47.30.031(b)(5)" to reflect the 2008 renumbering of AS 47.30.031(b)(5).

Sec. 47.30.030. [Repealed, § 7 ch 84 SLA 1981.]

Sec. 47.30.031. Regulations. (a) The board shall adopt regulations under AS 44.62

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
FOURTH JUDICIAL DISTRICT AT FAIRBANKS

VERN T. WEISS, father and next
friend of CARL WEISS, a minor
child, and EARL HILLIKER, on
behalf of themselves and all
others similarly situated; the
ALASKA MENTAL HEALTH ASSOCIATION,
MARY C. NANUWAK and JOHN MARTIN,
on behalf of themselves and all
others similarly situated; and
ANITA BOSEL, FRANCES DOULIN,
SHARON GOODWIN, GABRIEL MAYOC,
H.L., M.K. and ALASKA ADDICTION
REHABILITATION SERVICES,

Plaintiffs,

vs.

STATE OF ALASKA,
Defendant.

FILED in the Trial Court
State of Alaska, Fourth District

JUN 10 1994

Clerk, Trial Court

No. 4FA-82-2208 Civil

SETTLEMENT AGREEMENT
AND
STIPULATION TO TERMS OF DISMISSAL

WHEREAS, the state and the plaintiffs and plaintiff-intervenors have engaged in litigation since 1982 over numerous disputes relating to the trust established by the Alaska Mental Health Enabling Act of 1956, including litigation over proposed settlement terms incorporated in Ch. 66 SLA 1991; and

WHEREAS, third-party intervenors Alaska Center for the Environment, et al., and Marathon and UNOCAL have intervened to challenge proposed settlement terms incorporated in Ch. 66 SLA 1991; and

LAW OFFICES OF
RICE, VOLLAND
AND GLEASON
A PROFESSIONAL CORPORATION
911 N STREET
ANCHORAGE, AK 99501
(907) 276-5231

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transition team of representatives from the beneficiary community to advise and deliberate with DNR and other affected state agencies.

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SETTLEMENT, DISMISSAL AND MODIFICATION

1. Seeking Approval of Settlement. The parties agree to expeditiously file any motions, memoranda, proposed orders or other papers and to participate in any hearings necessary or convenient to obtaining preliminary and final approval from the superior court of the settlement embodied in HB 201, HB 371 and this agreement.

2. Construction. All parties have participated in drafting this agreement and agree that any canon of construction construing ambiguities against the drafter does not apply.

3. Severability. If any provision of this agreement, or any settlement provision in HB 201 or HB 371, is declared invalid for any reason, such a finding does not affect the validity of other provisions herein.

4. Attorney Fees. Attorney fees and costs shall be awarded and paid as determined by the court. Paragraph 6(e) requires dismissal of appeals to the Supreme Court because they are moot. The parties request that attorney fees be awarded as if the orders had not been appealed.

5. Modification and Future Enforcement. By this agreement, the parties stipulate to a mutual dismissal of all claims and defenses, and acknowledge that the trust is reconstituted in accordance with State v. Weiss, 706 P.2d 681 (Alaska 1985). The

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provisions of Sections 2 through 9, 12 through 40(a) and(b), 41, 43, 46, 47, 49, 50 and 51 of HB 201 and Sections 1 and 2 of HB 371 constitute material terms upon which the plaintiffs have agreed to a dismissal and acknowledged that the trust is reconstituted. If the Legislature materially alters or repeals any of those provisions, the plaintiffs' sole remedy is a new action alleging that the mental health trust has not been adequately reconstituted and to seek such relief as may be appropriate in light of the plaintiffs' claims. In light of the dismissal of each parties' claims, no modification of this agreement may be made except in writing signed by all the parties. Nothing in this section shall limit any party's right to enforce this agreement or applicable state statutes.

6. Settlement and Dismissal. Upon final approval of the settlement embodied in HB 201, HB 371 and this agreement by the court pursuant to Alaska Civil Rule 23, within the time frame set forth in HB 201 and HB 371 for the settlement provisions to become effective, the parties stipulate and agree to the entry of an order or orders:

(a) Approving the terms of this agreement and the settlement provisions of HB 201 and HB 371;

(b) Dismissing Weiss et al. v. State, 4FA-82-2208 Civil;

(c) Dismissing with prejudice all class claims, including without limitation those of plaintiffs and plaintiff-intervenors, known or unknown, asserted or unasserted, that arise on or before the date of dismissal and arise from or relate to the

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Board Facts

Board: Alaska Mental Health Trust Authority Board of Trustees

Board identification number: 166

Department: REVENUE

Authority: AS 47.30.011 & 016

Status: Active

Sunset date:

Requirements: Legislative Confirmation and Financial Disclosure

Prohibitions: A member appointed by the Governor may not be an officer or employee of the state; or within the 2 years preceding or during the member's term of office have an interest in, served on the governing board of, or been employed by an organization that has received, during that same period, money from the mental health trust income account under a grant or contract for services. A trustee may be appointed for no more than 2 consecutive 5-year terms, and is eligible for reappointment only after 1 year has intervened.

Term: 5 years

Chair: Board elects.

Description: The board consists of 7 members appointed by the Governor, based on ability in financial management, investment, land management, or in services for trust beneficiaries. The Governor makes appointments after considering a list of qualified candidates prepared by 6-person panel which is outlined in AS 47.30.016 (2). Board elects a presiding officer and other officers from its membership. Board employs a chief executive officer, selected by the board who is directly responsible to the board.

Function: The board works to administer the trust established under the Alaska Mental Health Enabling Act of 1956. Preserve and protect the trust corpus under AS 37.14.009; coordinate with other state agencies involved with mental health service programs; submit an annual report to the Legislature, Governor, and the public. Submits a budget and proposed plan of implementation, no later than September 15 of each year, to the Governor and Legislative Budget and Audit Committee.

Special facts: Members of the board continue to serve until a successor is appointed and confirmed. A vacancy shall be filled within 60 days by appointment of the Governor for unexpired portion of term. The Governor may remove member only for cause, including incompetence, neglect of duty, misconduct in office, poor attendance, or lack of contribution to board's work. Four members is a quorum.

Compensation: Standard Travel and Per Diem Receive honorarium of \$200 per day.

Meetings: Meets quarterly.

Summary of HB 309: Confirmation of Appointments

House Bill 309 temporarily extends the time in which the Legislature can meet in joint session to confirm the governor's cabinet appointments and appointments to state boards and commissions.

Under current law (AS 39.05.080), failure to take up confirmations in joint session before the regular session adjourns is tantamount to declining the appointments. If that happens, the appointees would not be eligible for re-appointment.

A joint session of the Legislature would require 60 members, plus support staff, to congregate in close quarters in an enclosed space for potentially several hours. However, current health mandates related to COVID-19 discourage large groups, particularly in enclosed spaces.

House Bill 309 allows the Legislature to defer meeting in joint session to confirm appointees, ensuring the Alaskans who have volunteered to serve on these boards and commissions are not automatically disqualified if a joint session is not held by the time the 31st Legislature adjourns.

Sectional Analysis of HB 309 version M.A

Section 1: Adds a new section to uncodified law.

- For appointments presented during the Second Session of the 31st Legislature, the legislature shall meet in joint session at any time to confirm or deny the appointments.
- If the legislature does not meet in joint session by the day the Second Session adjourns, the appointees are not considered denied.
- After the legislature does meet to consider appointments, failure to act on an appointee will be tantamount to a denial on the day the joint session adjourns.
- (House floor amendment): Adds special treatment related to a Mental Health Trust Authority appointment. For a member whose term expires March 1, 2020, the member may not continue to serve until a new member is appointed. An appointee to fill that seat may serve as successor pending legislative confirmation.

Section 2: Sets an immediate effective date.

Article 01. MENTAL HEALTH TRUST AUTHORITY

Chapter 47.30 MENTAL HEALTH

Sec. 47.30.010. [Repealed, Sec. 7 ch 84 SLA 1981]. Repealed or Renumbered .

Sec. 47.30.011. Alaska Mental Health Trust Authority. (a) The Alaska Mental Health Trust Authority is established as a public corporation of the state within the Department of Revenue.

(b) The purpose of the authority is to ensure an integrated comprehensive mental health program and to administer the office of the long term care ombudsman established in AS 47.62.010.

(c) The authority

- (1) shall, as provided in AS 37.14.009, administer the trust established under the Alaska Mental Health Enabling Act of 1956;
- (2) may sue and be sued;
- (3) may retain the services of independent counsel when, in the judgment of the authority's board of trustees, independent counsel is needed;
- (4) shall insure or indemnify and protect the board, a member of the board, or an agent or employee of the authority against financial loss and expense, including reasonable legal fees and costs, arising out of a claim, demand, suit, or judgment by reason of alleged negligence, alleged violation of civil rights, or alleged wrongful act resulting in death or bodily injury to a person or accidental damage to or destruction of property if the board member, agent, or employee, at the time of the occurrence, was acting under the direction of the authority within the course or scope of the duties of the board member, agent, or employee;
- (5) shall exercise the powers granted to it under AS 37.14.041, subject to the limitations imposed by AS 37.14.045; and
- (6) shall administer the office of the long term care ombudsman established in AS 47.62.010.

(d) The provisions of AS 44.62.330 - 44.62.630 do not apply to the Alaska Mental Health Trust Authority.

Sec. 47.30.016. Board establishment, membership, quorum, fees, and expenses. (a) The authority shall be governed by its board of trustees.

(b) The board consists of seven members appointed by the governor and confirmed by the legislature. The members appointed under this subsection shall be appointed

- (1) based upon their ability in financial management and investment, in land management, or in services for the beneficiaries of the trust;

(2) after the governor has considered a list of persons prepared by a panel of six persons who are beneficiaries, or who are the guardians, family members, or representatives of beneficiaries; the panel shall consist of

(A) one person selected by the Alaska Mental Health Board established by AS 47.30.661;

(B) one person selected by the Governor's Council on Disabilities and Special Education;

(C) one person selected by the Advisory Board on Alcoholism and Drug Abuse established by AS 44.29.100;

(D) one person selected by the Alaska Commission on Aging established by AS 47.45.200;

(E) one person selected by the Alaska Native Health Board; and

(F) one person selected by the authority.

(c) A member of the board appointed by the governor under (b) of this section may not

(1) be an officer or employee of the state; or

(2) within the preceding two years or during the member's term of office have an interest in, served on the governing board of, or been employed by an organization that has received, during that same period, money from the mental health trust settlement income account under a grant or contract for services.

(d) A quorum of the board is four members.

(e) A member of the board is entitled to

(1) an honorarium of \$200 for each day or any part of a day spent at a meeting of the board, at a meeting of a subcommittee of the board, or as a representative of the board; and

(2) per diem and travel expenses authorized for boards and commissions under AS 39.20.180.