

HOUSE BILL NO. 357
IN THE LEGISLATURE OF THE STATE OF ALASKA
EIGHTEENTH LEGISLATURE - SECOND SESSION

BY REPRESENTATIVE JAMES

Introduced: 1/10/94

Referred: Resources, Judiciary, Finance

A BILL

FOR AN ACT ENTITLED

1 "An Act confirming and ratifying the conversion of certain former mental health
2 to general grant land and disposals of that land, canceling the lis pendens notices
3 recorded in state public records against third-party holdings of former mental
4 health trust land, and urging the attorney general to seek the dissolution of a
5 related injunction; and providing for an effective date."

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

7 * Section 1. FINDINGS. The legislature finds that

8 (1) from the former mental health land obtained by the Territory of Alaska and
9 the state under the Alaska Mental Health Enabling Act of 1956, P.L. 84-830, 70 Stat. 709, and
10 subsequently redesignated by sec. 3(a), ch. 181, SLA 1978, as state general grant land, more
11 than 3,100 parcels, involving nearly 50,000 acres, have been conveyed to third parties;

12 (2) in State v. University of Alaska, 624 P.2d 807 (Alaska 1981), the Alaska
13 Supreme Court affirmed that the Alaska legislature has plenary authority over all state land

1 and may provide for removal or conveyance of land obtained by the state in trust so long as
2 the trust is compensated at fair market value for the land that is removed from trust status;
3 that compensation, the court said, may take the form of an exchange of land that is mutually
4 agreeable;

5 (3) in *Weiss v. State*, 706 P.2d 681 (Alaska 1985), the court determined that
6 the legislature did not provide compensation for its termination of the trust status of mental
7 health land, nor was compensation for the redesignation of that land to be inferred; concluding
8 that the legislation redesignating the mental health trust land as state general grant land
9 exceeded the authority granted to the Alaska legislature under the Alaska Mental Health
10 Enabling Act of 1956, the court invalidated the redesignation;

11 (4) on remand, the trial court in *Weiss v. State*, 4FA-82-2208 Civ., finding, in
12 its July 9, 1990, memorandum decision and order, that the plaintiffs in that proceeding "would
13 be within their rights to litigate the issue of third-party rights," permitted encumbrances to be
14 created on third-party holdings of former mental health trust land;

15 (5) the encumbrances placed on the former mental health parcels take the form
16 of notices of lis pendens affecting parcels held by third parties that were recorded in
17 September 1990 in various recording districts throughout the state and a preliminary injunction
18 entered against the state that prevents it from taking action to convey or transfer any interest
19 in former mental health land to third parties;

20 (6) in the period since issuance of the trial court's order, the Weiss plaintiffs
21 have not presented claims against the rights of third parties;

22 (7) the authority granted under sec. 202(e) of the Alaska Mental Health
23 Enabling Act of 1956 and under art. VIII of the state constitution as affirmed by the Alaska
24 Supreme Court in *State v. University of Alaska* permits the legislature of the State of Alaska
25 to act by law to eliminate these third-party encumbrances so long as the legislature
26 compensates or pledges to compensate the mental health trust at fair market value for the land
27 affected;

28 (8) ch. 66, SLA 1991, reconstitutes the trust first established by the Alaska
29 Mental Health Enabling Act of 1956; sec. 55, ch. 66, SLA 1991, directs the commissioner of
30 natural resources to compensate the reconstituted trust for former mental health trust land and
31 interests in it that cannot be returned to the corpus of the reconstituted trust by substituting

1 or exchanging other state land; the state land proposed to be substituted or exchanged must,
2 under subsection 55(d) of the Act, be of equal fair market value;

3 (9) in light of the state's commitment to compensate the mental health trust
4 for the removal of land from trust status by the substitution or exchange of state land of equal
5 fair market value, consistent with the obligation identified in State v. University of Alaska,
6 the legislature may act to eliminate the third-party encumbrances; and

7 (10) legislative action to eliminate the third-party encumbrances is in the best
8 interest of the trust and its prospective beneficiaries, the state, and third-party property owners
9 in that the elimination of the encumbrances would

10 (A) preclude protracted litigation about third-party rights in each of the
11 more than 3,100 parcels with its inherent risk that trust beneficiaries might not prevail;

12 (B) avoid further delay in the generation of proceeds or income from
13 the land for the benefit of a reconstituted Alaska Mental Health Trust, and put trust
14 assets into production at an earlier time;

15 (C) validate the third parties' title to or interests in land, thereby
16 eliminating a potential state obligation to the third party beneficiaries asserting a claim
17 of breach of contract in the state's management of its land; and

18 (D) reduce substantially the criticism of and hostility directed against
19 the Alaska Mental Health Trust and the trust's beneficiaries by third parties whose
20 property has been made subject to the lis pendens notices.

21 * **Sec. 2. APPLICABILITY OF ACT'S PROVISIONS.** This Act applies to the
22 encumbrances placed on land granted to the Territory of Alaska and the state under the Alaska
23 Mental Health Enabling Act of 1956, P.L. 84-830, 70 Stat. 709, and subsequently approved
24 for conveyance to third parties. The encumbrances are more specifically described in the
25 notices of lis pendens that were recorded in September 1990 at the following places:

26 (1) book 2074, pages 388 - 416, Anchorage Recording Office;

27 (2) book 62, pages 394 - 399, Cordova Recording Office;

28 (3) book 677, pages 62 - 100, Fairbanks Recording Office;

29 (4) book 19, pages 926 - 954, Haines Recording Office;

30 (5) book 201, pages 488 - 491, Homer Recording Office;

31 (6) book 335, pages 748 - 765, Juneau Recording Office;

- 1 (7) book 371, pages 117 - 158, Kenai Recording Office;
- 2 (8) book 181, pages 728 - 757, Ketchikan Recording Office;
- 3 (9) book 102, pages 869 - 872, Kodiak Recording Office;
- 4 (10) book 25, pages 195 - 198, McKinley Recording Office;
- 5 (11) book 46, pages 1 - 23, Nenana Recording Office;
- 6 (12) book 16, pages 393 - 397, Nulato Recording Office;
- 7 (13) book 629, pages 869 - 916, Palmer Recording Office;
- 8 (14) book 35, pages 518 - 534, Petersburg Recording Office;
- 9 (15) book 31, pages 621 - 626, Seldovia Recording Office;
- 10 (16) book 90, pages 524 - 538, Sitka Recording Office;
- 11 (17) book 6, pages 286 - 294, Skagway Recording Office;
- 12 (18) book 131, pages 585 - 590, Talkeetna Recording Office; and
- 13 (19) book 18, pages 643 - 650, Wrangell Recording Office.

14 * **Sec. 3. RATIFICATION OF CONVERSION OF AND DISPOSITION OF INTERESTS**
15 **IN FORMER MENTAL HEALTH LANDS.** The conversion to general grant land by sec.
16 3(a), ch. 181, SLA 1978, of former mental health trust land that was subsequently exchanged
17 or sold or for which other disposals of title or interest were subsequently given, and the
18 exchanges, sales, and other disposals of title and interest in that land are ratified and
19 confirmed, it being understood that the legislature intends to provide compensation for the
20 removal of this land from the trust under sec. 55, ch. 66, SLA 1991.

21 * **Sec. 4. NOTICES OF LIS PENDENS ON FORMER MENTAL HEALTH LAND HELD**
22 **BY THIRD PARTIES CANCELLED.** The notices of lis pendens identified in sec. 2 of this
23 Act are cancelled, and the encumbrances placed on third-party holdings of former mental
24 health trust land by these notices of lis pendens are removed.

25 * **Sec. 5. ATTORNEY GENERAL URGED TO SEEK DISSOLUTION OF RELATED**
26 **INJUNCTION.** The attorney general is urged and encouraged to take action necessary to
27 secure dissolution of the July 9, 1990, preliminary injunction entered in *Weiss v. State*, 4FA-
28 82-2208 Civ., that temporarily prevents the state from transferring titles to or interests in
29 former mental health trust land to third parties pending resolution of the claims in that
30 litigation.

31 * **Sec. 6.** This Act takes effect immediately under AS 01.10.070(c).