

CS FOR SENATE BILL NO. 67(JUD)

IN THE LEGISLATURE OF THE STATE OF ALASKA

EIGHTEENTH LEGISLATURE - FIRST SESSION

BY THE SENATE JUDICIARY COMMITTEE

Offered: 4/2/93
Referred: FINANCE

Sponsor(s): SENATE RESOURCES COMMITTEE

A BILL

FOR AN ACT ENTITLED

1 "An Act amending provisions of ch. 66, SLA 1991, that relate to reconstitution
 2 of the corpus of the mental health trust, the management of trust assets, and
 3 to the manner of enforcement of the obligation to compensate the trust; relating
 4 to survey requirements applicable to the land to be conveyed by the state to the
 5 Alaska Mental Health Trust Authority; relating to the jurisdiction of courts in
 6 the resolution of disputes arising under the reconstitution of the corpus of the
 7 mental health trust; and providing for an effective date."

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

9 * Section 1. AS 22.10.020 is amended by adding a new subsection to read:
 10 (j) The superior court is the court of original jurisdiction to hear and determine
 11 any dispute arising under AS 37.14.036(c) - (e).

12 * Sec. 2. AS 37.14.009(a), added by sec. 10, ch. 66, SLA 1991, is amended to read:

13 (a) Except for land and minerals managed under AS 38.05.002 - 38.05.009,

1 ~~the~~ [THE] Alaska Mental Health Trust Authority

2 (1) shall

3 (A) manage the assets of the trust in a fiduciary manner to
4 fulfill the purposes of the trust; ~~or~~

5 (B) contract for management of the assets of the trust under
6 (4) or (5) of this subsection;

7 (2) may, consistent with (1) of this subsection and AS 47.30.036(1),
8 sell, lease, exchange, or otherwise dispose of the land or minerals in the trust;

9 (3) may, consistent with (1) of this subsection, use land that is an asset
10 of the trust directly for the integrated comprehensive mental health program;

11 (4) shall

12 (A) under AS 47.30.031, adopt regulations relating to
13 management and disposal of the land and minerals of the trust; and

14 (B) [MAY] contract with the Department of Natural Resources
15 to manage and dispose of the land and minerals [ASSETS] of the trust,
16 unless the authority determines that the best interests of trust beneficiaries
17 would be served by other arrangements; if, under this subparagraph, the
18 Department of Natural Resources manages and disposes of the land and
19 minerals of the trust, it shall do so

20 (i) in accordance with the regulations adopted by the
21 Alaska Mental Health Trust Authority under (A) of this paragraph;

22 (ii) in a fiduciary manner to fulfill the purposes of the
23 trust; and

24 (5) shall contract with the Alaska Permanent Fund Corporation for
25 management of the trust's cash assets, unless the authority finds that the best interests
26 of trust beneficiaries would be served by contracting with another entity.

27 * Sec. 3. AS 37.14.009(b), added by sec. 10, ch. 66, SLA 1991, is amended to read:

28 (b) In exercising its power under (a)(1) - (3) [(a)(2) OR (3)] of this section,
29 the authority, or the Department of Natural Resources to the extent it is managing
30 or disposing of the land or minerals of the trust under (a)(4) of this section, is not
31 required to comply with AS 38.04 or AS 38.05, except that the authority and the

1 department shall

2 (1) comply with AS 38.05.285; however, the authority and the
3 department are excused from complying with the requirements of AS 38.05.285
4 if disposal or use of trust land or minerals in conformity with that section would
5 conflict with a power, duty, or responsibility of the trustee set out in AS 37.14.007
6 or 37.14.009;

7 (2) give public notice in the manner provided under AS 38.05.945(b)
8 and (c)

9 (A) of a preliminary decision to dispose of trust land or
10 minerals and consider any written comments submitted within 30 days of
11 the giving of the public notice before making a final decision; and

12 (B) of a final decision to dispose of trust land or minerals
13 [, BUT IS NOT OTHERWISE BOUND BY THE PROVISIONS OF AS 38.04
14 OR AS 38.05].

15 * Sec. 4. AS 37.14.009, added by sec. 10, ch. 66, SLA 1991, is amended by adding a new
16 subsection to read:

17 (c) In exercising its power under (a)(1) - (4) and (b) of this section with
18 respect to land or minerals where there is a protected interest under AS 38.05.802, the
19 authority or, to the extent that it is managing or disposing of the land or minerals of
20 the trust under (a)(4) of this section, the Department of Natural Resources, shall
21 comply with all statutes, regulations, and the common law applicable to conflicts
22 between different owners of the land and mineral interests in the same land.

23 * Sec. 5. AS 37.14.036(c), added by sec. 11, ch. 66, SLA 1991, is repealed and reenacted
24 to read:

25 (c) As compensation (1) for the land and minerals, or interests in them, that
26 constituted the trust established by the enabling Act and that are not reconstituted as
27 part of the mental health trust corpus established under AS 38.05.800, and (2) for any
28 reduction in value to the trust resulting from the management or disposal of land or
29 minerals under AS 38.05.802, the state shall make an annual payment of six percent
30 of the unrestricted general fund revenue of the state during each fiscal year. The
31 commissioner of revenue shall annually allocate that amount from the general fund to

1 the mental health trust income account established in (a) of this section. In this
2 subsection, "unrestricted general fund revenue of the state" means all the categories of
3 accounting for money accruing to the state general fund that, under the statewide
4 accounting system as established on the effective date of ch. 66, SLA 1991, were
5 identified as revenue that was not restricted by law to a specific use.

6 * Sec. 6. AS 37.14.036, added by sec. 11, ch. 66, SLA 1991, is amended by adding new
7 subsections to read:

8 (d) To secure the allocation of amounts required under (c) of this section,
9 except for land and minerals identified in AS 38.05.800(a)(1), land and minerals
10 granted to the state under the enabling Act, and that are, on the effective date of ch.
11 66, SLA 1991, designated by law as a state park, state forest, state game refuge, state
12 wildlife refuge, state game sanctuary, state recreational area, state recreational river,
13 state wilderness park, state marine park, state special management area, state public
14 use area, critical habitat area, bald eagle preserve, bison range, or moose range, are
15 pledged as security to the mental health trust. Title to this land and minerals remains
16 in the state and

17 (1) notwithstanding the grant of the land and minerals to the state under
18 the enabling Act or the pledge of the land and minerals as security, the state may
19 continue to conduct all activities on the land and minerals that are authorized by law;
20 and

21 (2) so long as a default does not exist under (c) of this section, income
22 from that land and minerals shall be deposited in the general fund and considered
23 unrestricted general funds of the state.

24 (e) Upon default, the foreclosure of the land and minerals pledged as security
25 under (d) of this section, including the parcels to be foreclosed and the manner of
26 foreclosure, shall be determined by the superior court.

27 * Sec. 7. AS 38.04.045(b) is amended to read:

28 (b) Before the issuance of a long-term lease under AS 38.05.070 or of a patent
29 for state land, an official cadastral survey shall be accomplished, unless a comparable,
30 approved survey exists that has been conducted by the federal Bureau of Land
31 Management. Before land may be offered under AS 38.05.055, 38.05.057, AS 38.08,

1 or AS 38.09, an official rectangular survey grid shall be established. The rectangular
2 survey section corner positions shall be monumented and shown on a cadastral survey
3 plat approved by the state. For those areas where the state may wish to convey
4 surface estate outside of an official rectangular survey grid, the commissioner may
5 waive monumentation of individual section corner positions and substitute an official
6 control survey with control points being monumented and shown on control survey
7 plats approved by the state. The commissioner may not issue more than one
8 conveyance for each section within a township outside of an official rectangular survey
9 grid. No portion of land to be conveyed may be located more than two miles from an
10 official survey control monument except that the commissioner may waive this
11 requirement on a determination that a single purpose use does not justify the
12 requirement if the existing status of the land is known with reasonable certainty. The
13 lots and tracts in state subdivisions shall be monumented and the cadastral survey and
14 plats for the subdivision shall be approved by the state. Where land is located within
15 a municipality with planning, platting, and zoning powers, plats for state subdivisions
16 shall comply with local ordinances and regulations in the same manner and to the same
17 extent as plats for subdivisions by other landowners. State subdivisions shall be filed
18 and recorded in the district recorder's office. The requirements of this section do not
19 apply to the conveyance of land to the Alaska Mental Health Trust Authority
20 established by AS 47.30.011 or to land made available through a cabin permit system,
21 for material sales, for short-term leases, for parcels adjoining a surveyed right-of-way,
22 or for land that has been open to random staking under the remote parcel program or
23 homestead program in the past; however, for short-term leases, the lessee must comply
24 with local subdivision ordinances unless waived by the municipality under procedures
25 specified by ordinance. In this subsection, "a single purpose use" includes a
26 communication site, an aid to navigation, and a park site.

27 * Sec. 8. AS 38.05.800 is repealed and reenacted to read:

28 Sec. 38.05.800. RECONSTITUTION OF MENTAL HEALTH TRUST
29 CORPUS. (a) The corpus of the mental health trust includes land and minerals
30 granted to the state under the Alaska Mental Health Enabling Act of 1956, P.L. 84-
31 830, 70 Stat. 709, that, on the effective date of ch. 66, SLA 1991, have not been

1 conveyed by the state or reserved by law from the public domain. In this subsection,

2 (1) "conveyed" means that the land or minerals

3 (A) are subject to a contract for the sale of the land entered into
4 by the state or a municipality of the state;

5 (B) are subject to a patent or deed executed in favor of a
6 person, a municipality, or the University of Alaska;

7 (C) are subject to a selection by a municipality under AS 29.65
8 or under former AS 29.18.190 - 29.18.200 that has been approved or
9 disapproved by the director before the effective date of ch. 66, SLA 1991;

10 (D) were purchased by the state with federal, state, or joint
11 federal and state funds in which the related program imposes restrictions on the
12 management or use of the land or minerals purchased;

13 (E) have been selected by a Native corporation under 43 U.S.C.
14 1611;

15 (F) are subject to a claim of allotment under 43 U.S.C. 1634 or
16 is land or minerals for which a certificate of allotment has been issued to a
17 Native under applicable federal law;

18 (G) have been identified for conveyance as part of an exchange
19 agreement between the state and a Native corporation or between the state and
20 the University of Alaska, but the land or minerals were not, on the effective
21 date of ch. 66, SLA 1991, subject to a patent or deed;

22 (H) are subject to an interagency land management agreement,
23 interagency land management transfer, management agreement, or management
24 right and the land or minerals are necessary to carry out the purpose of the
25 interagency land management agreement, interagency land management
26 transfer, management agreement, or management right;

27 (2) "reserved by law from the public domain" means that the land or
28 minerals were, on the effective date of ch. 66, SLA 1991, designated by law as a state
29 park, state forest, state game refuge, state wildlife refuge, state game sanctuary, state
30 recreational area, state recreational river, state wilderness park, state marine park, state
31 special management area, state public use area, critical habitat area, bald eagle

1 preserve, bison range, or moose range.

2 (b) For purposes of reconstituting the corpus of the mental health trust, the
3 land and minerals described in (a) of this section are includable in the trust corpus only
4 if both the land and the minerals meet the requirements of (a) of this section.

5 * Sec. 9. AS 38.05 is amended by adding new sections to read:

6 Sec. 38.05.802. MANAGEMENT OF EXISTING LAND AND MINERAL
7 INTERESTS IN RECONSTITUTED MENTAL HEALTH TRUST CORPUS. (a)
8 Land and minerals included in the corpus of the mental health trust under
9 AS 38.05.800 are subject to the terms, conditions, and provisions, and all rights related
10 thereto, of a lease, land right convertible to title, timber contract, material sale contract,
11 land use permit, right-of-way, prospecting permit, exploration permit, water right, or
12 other land or mineral interest issued by or acquired from the United States or the state
13 before the effective date of ch. 66, SLA 1991.

14 (b) Land and minerals included in the corpus of the mental health trust under
15 AS 38.05.800 are subject to a mining claim or mining leasehold location if the claim
16 or location

17 (1) was acquired on or before the effective date of ch. 66, SLA 1991;

18 (2) was in compliance with applicable laws and regulations that were
19 in effect on the effective date of ch. 66, SLA 1991; and

20 (3) continues in compliance with applicable laws and regulations at all
21 times after the effective date of ch. 66, SLA 1991.

22 (c) The department shall manage an interest in land or minerals that is
23 identified in (a) or (b) of this section as general grant land, subject only to the laws,
24 including regulations and standards, applicable to general grant land of the state and
25 without regard to any law that may be applicable to management of other land or
26 minerals of the trust. However, the proceeds of the management of the land or
27 minerals managed under this section shall be deposited into the mental health trust
28 income account under AS 37.14.036(a)(1).

29 (d) The department shall manage an interest in land or minerals that is
30 identified in (a) or (b) of this section for only as long as the lease, land right
31 convertible to title, timber contract, material sale contract, land use permit, right-of-

1 way, prospecting permit, exploration permit, water right, mining claim, mining
2 leasehold, or other land or mineral interest that qualifies the land or minerals for
3 management under this section continues in effect. When a lease, land right
4 convertible to title, timber contract, material sale contract, land use permit, right-of-
5 way, prospecting permit, exploration permit, water right, mining claim, mining
6 leasehold, or other land or mineral interest identified in (a) or (b) of this section
7 expires, the land or minerals of the trust that were subject to that interest shall be
8 managed under AS 37.14.009.

9 (c) In the case of land subject to a land right convertible to title issued or
10 obtained before the effective date of ch. 66, SLA 1991, the authority shall join in
11 executing the patent or deed that is issued to consummate the issuance of title upon
12 the conversion of the right. When a patent or deed issues under this paragraph,

13 (1) the land covered by the patent or deed and the minerals are no
14 longer part of the corpus of the mental health trust; and

15 (2) the land and minerals are released from the mental health trust
16 established by the enabling Act and from any claim of the authority or of the
17 beneficiaries of the trust.

18 (f) For purposes of (b) of this section, unless closed by court order or by an
19 order of the department, land and minerals obtained by the state under the enabling
20 Act are considered to have been open to mineral entry.

21 **Sec. 38.05.804. RIGHT OF INTEREST HOLDER TO WAIVE PROVISIONS.**

22 A person who holds an interest described in AS 38.05.802(a) or (b) may enter into an
23 agreement with the authority and with the department to waive the provisions of
24 AS 38.05.802(c) and have the interest managed as provided by AS 37.14.009.

25 **Sec. 38.05.809. DEFINITIONS APPLICABLE TO MENTAL HEALTH**
26 **TRUST LAND.** In AS 38.05.800 - 38.05.809,

27 (1) "authority" means the Alaska Mental Health Trust Authority;

28 (2) "enabling Act" means the Alaska Mental Health Enabling Act of
29 1956, P.L. 84-830, 70 Stat. 709;

30 (3) "land right convertible to title" means a lease, entry program right,
31 or homestead right that includes a right to obtain a patent or deed;

1 (4) "land use permit" means a permit issued by the state authorizing the
2 use of land;

3 (5) "lease" means an oil and gas lease, coal lease, mining lease, land
4 lease, and any other surface or mineral lease;

5 (6) "right-of-way" means

6 (A) a right-of-way permit or easement; or

7 (B) a road, utility, or other improvement constructed under an
8 approved land use application, permit, or letter of entry issued by the
9 department and for which a right-of-way permit or easement has not, on the
10 effective date of ch. 66, SLA 1991, been issued;

11 (7) "trust" has the meaning given in AS 47.30.061.

12 * Sec. 10. AS 47.30.046(a), added by sec. 26, ch. 66, SLA 1991, is amended to read:

13 (a) The board shall annually, not later than September 15, submit to the
14 governor and the Legislative Budget and Audit Committee a budget for the next fiscal
15 year and a proposed plan of implementation based on the integrated comprehensive
16 mental health program plan prepared under AS 47.30.660(a)(1). The budget must
17 include the authority's determination of the amount

18 (1) recommended for expenditure from the mental health trust income
19 account during the next fiscal year to

20 (A) meet the administrative expenses of the authority, including
21 the funding for the Department of Natural Resources to manage and
22 dispose of trust land and minerals under AS 37.14.009 and AS 38.05.802 -
23 38.05.809;

24 (B) offset the effect of inflation on the value of the trust corpus;
25 and

26 (C) meet the necessary operating and capital expenses of the
27 integrated comprehensive mental health program;

28 (2) recommended for expenditure from the general fund, if any, during
29 the next fiscal year to meet the necessary operating and capital expenses of the
30 integrated comprehensive mental health program; and

31 (3) in the mental health trust income account, if any, that is not

1 reasonably necessary to meet the projected operating and capital expenses of the
2 integrated comprehensive mental health program that may be transferred into the
3 general fund.

4 * Sec. 11. AS 47.30.056(a), added by sec. 26, ch. 66, SLA 1991, is amended to read:

5 (a) If appropriated by law, the money in the mental health trust income
6 account established in AS 37.14.036 shall be used to

7 (1) provide an integrated comprehensive mental health program as
8 required by this section;

9 (2) meet the authority's annual administrative expenses, including the
10 costs incurred by the Department of Natural Resources in managing and
11 disposing of trust land and minerals under AS 37.14.009 and AS 38.05.802 -
12 38.05.809; and

13 (3) offset the effect of inflation on the corpus of the trust.

14 * Sec. 12. Section 49, ch. 66, SLA 1991, is amended to read:

15 Sec. 49. AS 37.14.011, 37.14.021, [AS 38.05.800,] AS 47.30.546, secs. 1, 2,
16 4, and 5, ch. 132, SLA 1986; and secs. 7 - 10, ch. 48, SLA 1987 are repealed.

17 * Sec. 13. Sections 54, 55, 56, and 57, ch. 66, SLA 1991, are repealed.

18 * Sec. 14. SPECIAL MASTER. The superior court may refer the proceedings under
19 AS 22.10.020(j), added by sec. 1 of this Act, to a special master.

20 * Sec. 15. STATUS OF LAND GRANTED TO THE STATE UNDER THE ALASKA
21 MENTAL HEALTH ENABLING ACT OF 1956 AND NOT INCLUDED WITHIN THE
22 CORPUS OF THE RECONSTITUTED MENTAL HEALTH TRUST. On the effective date
23 of ch. 66, SLA 1991, the land and minerals granted to the state under the Alaska Mental
24 Health Enabling Act of 1956, P.L. 84-830, 70 Stat. 709, that are not includable within the
25 corpus of the reconstituted mental health trust under AS 38.05.800(a), repealed and reenacted
26 by sec. 8 of this Act, are released from the mental health trust established by that Act and
27 from any claim of the Alaska Mental Health Trust Authority established by sec. 26, ch. 66,
28 SLA 1991, or the beneficiaries of the trust established by the Alaska Mental Health Enabling
29 Act of 1956.

30 * Sec. 16. CONVEYANCE OF LAND TO TRUST. On and after the effective date of ch.
31 66, SLA 1991, after giving public notice in the manner provided under AS 38.05.945(b) and

1 (c), the commissioner of natural resources shall convey by patent without survey to the Alaska
2 Mental Health Trust Authority established by sec. 26, ch. 66, SLA 1991, title to the land and
3 minerals that are includable within the corpus of the reconstituted mental health trust under
4 AS 38.05.800(a), repealed and reenacted by sec. 8 of this Act.

5 * Sec. 17. **CONDITIONAL RETROACTIVE APPLICATION.** If ch. 66, SLA 1991, takes
6 effect before this Act takes effect, this Act is retroactive to the actual effective date of ch. 66,
7 SLA 1991.

8 * Sec. 18. This Act does not take effect unless ch. 66, SLA 1991, takes effect.

9 * Sec. 19. If this Act takes effect, it takes effect on the effective date of ch. 66, SLA 1991.