

DRAFT MENTAL HEALTH TRUST BILL

Proposed Changes	Why	To Achieve What
Amend AS 37.14.031(b) to more clearly give AMHTA the option to direct principal obtained from land dispositions to Permanent Fund Corporation or to real estate investments made by AMHTA	Current statute provides for deposit of principal with Permanent Fund Corporation, does not explicitly provide for possibility of direct re-investment of principal by AMHTA in other real estate	Explicitly give AMHTA the flexibility to use principal to perform stewardship functions on Trust land and to pursue real estate investments separate from Permanent Fund Corporation
Amend AS 37.14.031(b) to provide that income AMHTA leaves with the Permanent Fund Corporation for inflation proofing is part of the mental health trust fund	Current statute does not explicitly provide for inflation proofing to be part of the mental health trust fund	Have the statutes reflect what is actually occurring with inflation proofing the mental health trust fund
Delete reference in AS 37.14.041(a) to “the principal of” the mental health trust fund	Permanent Fund Corporation actually manages some income of the fund, not just principal	Have the statutes reflect what is actually occurring with the Permanent Fund Corporation’s management of the mental health trust fund
Add new statute (AS 37.14.047(a)) to clearly and explicitly authorize AMHTA to acquire and invest in real estate with principal obtained from land dispositions	AMHTA authority to use principal to acquire or invest in real estate is not clearly and explicitly set out in existing statutes	Give AMHTA the clear and explicit power to use real estate as a means of furthering program purposes and generating income and principal growth for the trust
Add provision (AS 37.14.047(b)) that AMHTA may use entities such as LLCs to acquire and invest in real estate	Use of entities to protect other assets of investor against liabilities arising from a particular investment is standard practice for prudent real estate investing	Protect AMHTA from potential liabilities of real estate ownership and investing

Proposed Changes	Why	To Achieve What
Add provision (AS 37.14.047(c)) that specifies when real estate acquired becomes mental health trust land and when it is only an investment	Clarity needed on when rules for managing state lands apply and when they do not	Apply regular state lands rules when AMHTA directly acquires real estate in its own name, but not apply those rules to investments made through other entities
Add provisions (AS 37.14.047 (d), (e), (f) & (g)) on findings the AMHTA Board must make to use principal to acquire or invest in real estate	Ensure the AMHTA Board considers and validates reasons for acquiring or investing in real estate	Give AMHTA Board some structure for considering acquisitions of or investments in real estate
Add provision (AS 37.14.047(h)) to authorize borrowing money and granting nonrecourse mortgages for real estate acquisitions and investments	Existing state statutes do not explicitly give AMHTA the authority to borrow or mortgage property, although the Alaska Mental Health Enabling Act contemplates both	Allow AMHTA to leverage real estate investments with borrowed money like other institutional investors, while protecting assets of mental health trust by requiring that borrowing be done on nonrecourse basis
Add provision (AS 37.14.047(i)) to limit how long AMHTA may hold principal obtained from land dispositions before using it or turning it over to the Permanent Fund Corporation	To prevent AMHTA from holding principal without investing it for an excessive period of time	Provide a five-year time limit after which unused principal must be deposited with the Permanent Fund Corporation
Add provision (AS 37.14.047(j)) that requires AMHTA Board to follow prudent investor rule and consider enumerated factors when acquiring or investing in real estate	To provide AMHTA general statutory guideposts on how it, as trustee, should consider real estate acquisitions and investments	Require that the AMHTA Board develop a process that uses a defined structure for considering acquisitions of or investments in real estate
Replace existing statute with new one (AS 37.14.049) on AMHTA adopting regulations to allocate trust principal and income	Expand authority for AMHTA to adopt regulations on allocating principal and income	Allow AMHTA to expand its existing regulations to also allocate principal and income for returns from real estate investments

Proposed Changes	Why	To Achieve What
Add new definitions to AS 37.14.099 that are pertinent to new statutes on AMHTA acquiring or investing in real estate	Definitions add clarity to what the statutes mean	Add clarity to new statutory provisions
Amend the TLO statute (AS 38.05.801) to authorize it to advise AMHTA and implement its decisions on real estate acquisition and investments	Give TLO explicit statutory authority to serve AMHTA regarding real estate acquisitions and investments	Have the statutes reflect what is actually occurring with the TLO and the AMHTA's real estate program
Amend the TLO statute (AS 38.05.801) to make new statute on public access to AMHTA's records applicable to TLO	Outside of limited exemptions of Public Records Act, existing statutes have no provision for TLO to protect confidential information in situations where institutional investors would normally be expected to protect confidentiality	Facilitate protecting confidential information the disclosure of which would harm AMHTA or private parties dealing with AMHTA
Add a new statute (AS 47.30.058) on public access to AMHTA's records	Outside of limited exemptions of Public Records Act, existing statutes have no provision for AMHTA to protect confidential information in situations where institutional investors would normally be expected to protect confidentiality	Facilitate protecting confidential information the disclosure of which would harm AMHTA or private parties dealing with AMHTA
Add provision to uncodified law to deal with existing funds in the TADA	Provide a method of transitioning existing TADA funds to the provisions of the new statutes.	Give AMHTA five years from enactment to use existing TADA funds for real estate acquisition or investment

Proposed Changes	Why	To Achieve What
Add transition provision to uncodified law to deal with prior AMHTA real estate acquisitions and investments	Recognize prior real estate acquisitions and investments as appropriate under the new statutes.	Have an explicit legislative ratification of AMHTA's prior real estate acquisitions and investments