

Introduced: 1/30/87
 Referred: Health, Education &
 Social Services and Finance

BY POURCHOT BY REQUEST OF
 THE JOINT SPECIAL COMMITTEE
 ON MENTAL HEALTH TRUST LAND

1 IN THE HOUSE

2 HOUSE BILL NO. 92

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FIFTEENTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act implementing a settlement relating to the
 7 federally created mental health trust; and providing
 8 for an effective date."

9 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

10 * Section 1. FINDINGS AND PURPOSE. (a) The legislature finds that:

11 (1) the United States Congress passed the Alaska Mental Health
 12 Enabling Act of 1956, P.L. 84-830, 70 Stat. 709, to "confer upon Alaska
 13 autonomy in the field of mental health, transfer from the Federal Govern-
 14 ment to the Territory the fiscal and functional responsibility for the
 15 hospitalization of committed mental patients, and for other purposes";

16 (2) in sec. 202 of the Alaska Mental Health Enabling Act, Con-
 17 gress granted the territory the right to select up to 1,000,000 acres of
 18 federal land to serve as a source of funds to support the territory's
 19 mental health program;

20 (3) in subsection 202(e), Congress specifically provided that
 21 the land granted and the proceeds and income from dispositions of the land
 22 were to be administered as "a public trust and such proceeds and income
 23 shall first be applied to meet the necessary expenses of the mental health
 24 program of Alaska";

25 (4) the Tenth Alaska State Legislature, in enacting ch. 181 and
 26 182, SLA 1978, redesignated all mental health land as general grant land
 27 and compensated the mental health trust for the value of the land by creat-
 28 ing the mental health fund into which a sum equal to one and one-half
 29 percent of all revenue received from the management of state land was to be

1 deposited and from which the income was to be appropriated for mental
2 health programs;

3 (5) no funds were ever deposited in this account;

4 (6) a lawsuit, Weiss v. State, 4FA-82-2208, filed on Novem-
5 ber 26, 1982, sought a judicial determination that the 1,000,000 acres
6 received by the state under the Alaska Mental Health Enabling Act were
7 received as a public trust and that the 1978 legislation redesignating the
8 mental health trust land as general grant land breached the trust;

9 (7) the Alaska Supreme Court held in State v. Weiss, 706 P.2d
10 681 (1985) that the Alaska Mental Health Enabling Act established a public
11 trust, that the 1978 legislation redesignating mental health land as
12 general grant land was a breach of that trust, and that the appropriate
13 remedy was to return mental health land still in state ownership to trust
14 status and to compensate the trust for the fair market value of mental
15 health land disposed of between 1978 and the date of the court's decision
16 subject to a set-off for state mental health expenditures during the same
17 period;

18 (8) while the Alaska Supreme Court returned mental health land
19 to trust status, the decision of the Supreme Court left unanswered signifi-
20 cant questions that may require additional costly and time-consuming liti-
21 gation;

22 (9) further litigation over mental health land management is not
23 in the public interest because it diverts attention from the funding of the
24 mental health program, which was the goal of the Congress in the enactment
25 of the Enabling Act, because it has the potential to be extremely divisive
26 because of incompatibilities between current land use and general trust
27 management principles, and because of transfers of mental health land to
28 third parties;

29 (10) the goal of the Congress in funding a mental health program

1 and the public interest in addressing mental health problems in the state
2 will be better achieved by establishing a reasonable mechanism for funding
3 mental health programs independent of the management of mental health land;

4 (11) subsection 202(e) of the Enabling Act specifically provides
5 that land granted under the Act "may be sold, leased, mortgaged, exchanged,
6 or otherwise disposed of in such manner as the Legislature of Alaska may
7 provide, in order to obtain funds or other property to be invested, ex-
8 pended, or used" as provided in the Act; and

9 (12) the legislature will best serve the public interest by
10 exercising its authority under subsection 202(e) of the Enabling Act to
11 dispose of mental health land by removing it from trust status and by
12 simultaneously redesignating it as general grant land in order to obtain
13 funds to be expended as provided in the Enabling Act, and to compensate the
14 mental health trust for the value of the land removed from the trust
15 through the establishment of a special account in the general fund of the
16 state composed of five percent of all revenue received by the state general
17 fund during each fiscal year.

18 (b) The purposes of this Act are to

19 (1) establish a funding source for the mental health trust to
20 take the place of the land trust established in the Alaska Mental Health
21 Enabling Act as authorized in subsection 202(e) of the Enabling Act and in
22 the exercise of the power of the legislature under art. VIII, sec. 2, of
23 the Alaska Constitution;

24 (2) eliminate, to the extent practicable, the need for costly,
25 time-consuming, and divisive litigation over the management of the mental
26 health land;

27 (3) ensure that the attention of the public and the government
28 is focused on mental health programs as contemplated by Congress and not on
29 issues related to the management of the mental health land;

1 (4) satisfy the public interest in removing state-owned mental
2 health land from its trust status so that the land may be managed for its
3 highest and best use without regard to the maximum generation of income to
4 the trust; and

5 (5) replace the original mental health corpus with a permanent
6 direct funding source while, at the same time, pledging state assets for
7 use in reconstituting the trust corpus if the state should fail to estab-
8 lish the funding source.

9 * Sec. 2. AS 37.14 is amended by adding new sections to read:

10 ARTICLE 1. SPECIAL MENTAL HEALTH ACCOUNT.

11 Sec. 37.14.011. SPECIAL MENTAL HEALTH ACCOUNT ESTABLISHED. (a)
12 The special mental health account is established in the general fund
13 of the state.

14 (b) During each fiscal year, the commissioner of revenue shall
15 make deposits into the special mental health account so that the total
16 of deposits during the year equals five percent of all revenue re-
17 ceived by the state general fund during that fiscal year.

18 Sec. 37.14.021. UTILIZATION OF THE SPECIAL MENTAL HEALTH AC-
19 COUNT. Money in the special mental health account established in
20 AS 37.14.011(a) shall first be appropriated by the legislature to meet
21 the necessary expenses of the mental health program in the state. In
22 making annual appropriations from the special mental health account,
23 the legislature shall consider the recommendations of the Mental
24 Health Board established under AS 37.14.041. After mental health
25 programs have been funded, the legislature may appropriate for other
26 purposes as determined by the legislature.

27 Sec. 37.14.031. PLEDGE OF STATE ASSETS. (a) Notwithstanding
28 AS 09.50.270, the general assets of the state may be executed upon to
29 the extent necessary to reconstitute the mental health trust

1 recognized by the Alaska Supreme Court in State v. Weiss, 706 P.2d 681
2 (Alaska 1985) if the commissioner of revenue fails to make the de-
3 posits required by AS 37.14.011 or if the legislature fails to make
4 the appropriations required by AS 37.14.021.

5 (b) If an execution occurs under (a) of this section, state
6 assets shall be executed upon in a prioritized order as provided by
7 law.

8 Sec. 37.14.041. MENTAL HEALTH BOARD ESTABLISHED. (a) The
9 Mental Health Board is established in the Department of Health and
10 Social Services. The board is composed of the commissioner of health
11 and social services, or a designee of the commissioner, and four
12 public members appointed by the governor. The appointments shall be
13 made from a list of nominees prepared by statewide or regional groups
14 interested in mental health, including groups representing both pro-
15 fessional providers and clients.

16 (b) The members of the Mental Health Board shall elect from its
17 membership a presiding officer. Members of the board serve without
18 compensation but are entitled to travel expenses and per diem au-
19 thorized for members of boards under AS 39.20.180.

20 (c) The Mental Health Board may meet frequently. The board may
21 use the teleconference facilities of the state for its meetings.

22 Sec. 37.14.051. POWERS AND DUTIES OF THE MENTAL HEALTH BOARD.
23 The Mental Health Board shall

24 (1) recommend legislation and funding levels necessary to
25 meet the needs of the mental health program of the state;

26 (2) submit a report to the legislature by the 10th day of
27 each regular session on the use and expenditure of funds in the spe-
28 cial mental health account established under AS 37.14.011.

29 * Sec. 3. AS 37.14.160 is amended to read:

1 **Sec. 37.14.160. DUTIES OF COMMISSIONER OF REVENUE.** The commis-
2 sioner of revenue is the treasurer of the funds created in AS 37.14.-
3 011 [AS 37.14.010] and 37.14.110 and shall

4 (1) act as official custodian of the cash and securities
5 belonging to those funds and provide adequate safe deposit facilities
6 for each of them;

7 (2) receive cash belonging to those funds;

8 (3) collect the principal on securities acquired for each
9 fund established under AS 37.14.011 [AS 37.14.010] and 37.14.110 and
10 credit each fund accordingly;

11 (4) collect interest and dividends earned on investments of
12 the funds established under AS 37.14.011 [AS 37.14.010] and 37.14.110
13 and credit the income reserve account of each fund accordingly;

14 (5) invest and reinvest the principal of each fund in
15 accordance with AS 37.14.170.

16 * Sec. 4. AS 37.14.170(a) is amended to read:

17 (a) The commissioner of revenue, with the approval of each
18 advisory board created in AS 37.14.041 [AS 37.14.020] and 37.14.120,
19 may invest the principal of the funds created in AS 37.14.011 [AS 37.-
20 14.010] and 37.14.110 in the same manner as specified for the invest-
21 ment of surplus pension funds under AS 39.35.110.

22 * Sec. 5. AS 38.05 is amended by adding a new section to read:

23 **Sec. 38.05.815. REMOVAL FROM TRUST STATUS AND REDESIGNATION OF**
24 **MENTAL HEALTH LAND.** Land granted to the state under the Mental Health
25 Enabling Act of 1956, 70 Stat. 709, and patented to or approved for
26 patent to the state, and land designated as mental health land that
27 was received by the state in exchange for land granted under that
28 federal Act, is redesignated as general grant land and shall be
29 managed and disposed of by the Department of Natural Resources under

1 applicable provisions of law.

2 * Sec. 6. LEGISLATIVE INTENT. The redesignation of mental health land
3 in AS 38.05.815, as enacted by sec. 5 of this Act, is intended to validate
4 each deed, contract for sale, lease, easement, right-of-way, permit,
5 mineral lease disposal, reservation of land for public use by statute, or
6 land management actions, including use classifications under AS 38.05.300
7 and interagency land management assignments by the Department of Natural
8 Resources that may have been called into question by the Supreme Court's
9 decision in State v. Weiss, 706 P.2d 681 (Alaska 1985) returning mental
10 health land to trust status.

11 * Sec. 7. AS 37.14.010, 37.14.020, 37.14.030, 37.14.040, and 37.14.050
12 are repealed.

13 * Sec. 8. This Act takes effect immediately under AS 01.10.070(c).