SB

710

COMMITTEE REPORT

SENATE

3/3/82

FURTHER: Resources and Finance

Date: 3/3/82

Mr. President:

The Committee on HEALTH, EDUCATION AND SOCIAL SERVICES has had SF 710

create trust funds and their administration

under consideration and (a majority of the committee) (the committee) reports it back with the following recommendations:

[ ] do pass [ ] do not pass

[ ] do pass with attached amendments(s)

[ ] replace with CS for _____ [ ] same title [ ] new title

and recommends _____

[ ] AND attaches a "Letter of Intent" [ ] New Fiscal Note

[ ] reports it back without recommendation

[ ] referred to the _____ Committee

MEMBERS SIGNING
DO PASS

MEMBERS HAVING
OTHER RECOMMENDATIONS:

_____ CHAIRMAN

S 60 (Rev. 12/78)

SB 710 FILE

STATE OF ALASKA
THE LEGISLATURE

POUCH Y · STATE CAPITOL
JUNEAU, ALASKA 99811
907-465-3800

LEGISLATIVE AFFAIRS AGENCY

M E M O R A N D U M

April 12, 1982

SUBJECT: Mental health trust as "money trust" (SB 710)

TO: Senator Charles H. Parr

FROM: Richard A. Bradley
Legislative Counsel

Nancy Dietrick has asked that I prepare an analysis of the legislative history of the mental health trust laws, particularly with reference to the transition from a "land trust" to a "money trust" in 1978.

The quick answer to your question is that the "redesignation" provisions of Chapters 181 and 182, SLA 1978 constitute the sections that make the transition from the land trust to the money trust. See Sec. 3 of Chapter 181 and Sec. 1 of Chapter 182. To put these provisions in some context, it is useful to review the two bills and their contents.

The provisions of AS 37.14 are derived from these two bills. See Sec. 4 of Chapter 181, SLA 1978 and Sec. 4 of Chapter 182, SLA 1978. The Revisor's Note following the chapter 37.14 heading (page 47 of the AS 37 pamphlet) notes that the two chapters both contained provisions adopting AS 37.14. Because, the revisor says, the provisions in Chapter 182 are subsequent in time and contains a "more comprehensive treatment of trust funds," (though see the discussion below) the provisions of the latter formulation of AS 37.14 were treated as superseding those contained in Chapter 181.

The provisions of Chapter 182 were adopted as SB 159 [FCCS CSSB 159]. This bill started out having nothing to do particularly with the various trust funds' management that eventually appeared in it; it was rather a legislative solution to the rather heated problems that arose in the

early years of the Hammond administration from that administration's review of the policies of the division of lands. It involved reappraisal of the Teamster's Mall lease in Anchorage and a number of other leases that the administration believed were not properly delivering to the state a proper return. Reappraisals raised land valuations and rentals in some cases 1,000 percent in recent years.

I have reviewed the work order request file on FCCS CSSB 159 and there is no indication of the source of the trust fund management sections. In fact, the provisions of HB 720 (FCCS SCS CSHB 720) which became Chapter 181 show a more complex evolution of these provisions.

The closest thing that appears in the SB 159 file is a copy of a letter signed by Ted Smith as co-chairman of the "Ad Hoc Committee" on land policies and procedures, dated February 22, 1977. It is addressed to Governor Hammond as a report on administration of the state's "land patrimony".

Recommendation No. 11 notes that:

> The committee believes that state trust lands (school, mental health, and university) are now and have been managed at a low intensity. These lands may be returning only a fraction of their potential value that could be realized by a small full time management staff. The Division manages these lands at no change to the various trust funds and receives no reimbursement for its services. Therefore it has traditionally placed low priority on the management of these lands. This committee recommends that the State Legislature authorize each trust board the authority to freely contract with any agency or private firm for the management of its lands for revenue production in accordance with the state's land act.

At the time of this report [before the adoption of Chapters 181 and 182, SLA 1978], the lands held in trust were managed under general laws for the management of public lands but under competitive bidding procedures. Under FCCS CSSB 159, mental health lands (as well as the other trust lands) may be leased either by competitive bidding or by noncompetitive disposal methods (direct negotiation, lottery, etc.) if the commissioner determines that the method selected is in the best interests of the state.

This result occurs because the provisions of both Chapters 181 and 182 provide for the "redesignation" of the mental health lands as general grant lands. See Sec. 3 of Chapter 181:

> * Sec. 3. REDESIGNATION AND DISPOSAL OF MENTAL HEALTH LAND. (a) Land granted to the state under the Mental Health Enabling Act of 1956, 70 Stat. 709, and patented to or approved for patent to the state on July 1, 1978 and land designated as mental health land which was received by the state in exchange for land granted under the federal land grant is redesignated as general grant land and shall be managed and disposed of by the Department of Natural Resources under applicable provisions of law.
>
> (The provisions of (b) do not concern us.)

Sec. 1 of Chapter 182 is essentially identical.

The intent of these two sections states the core of your concern; those sections changed the character of mental health land into general grant land; they sought simultaneously to establish a fund to replace the segregated lands granted for the trust purposes.

It seems that the goal was reasonable.

Congress permitted the lands granted for mental health purposes to be sold or held and managed. It seems therefore that there was no need to maintain the lands in a segregated trust status. The concept of one and one-half percent dedication is also reasonable; 2,000,000 acres of the 104 million acres granted to the state from the various sources are mental health trust lands; one and one-half percent of the lands is a fair if not precise allocation which should do justice to the purposes of the trust established by Congress.

There is [at least] one difference of substance between the two formulations of the mental health funds established in each bill. While I do not disagree with the determination made by the revisors to use the provisions of the later adopted bill in determining which chapter 37.14 became effective, I note that the provisions of AS 37.14 in Chapter 181 required the commissioner to make the contributions to the fund without the qualification found in

Chapter 182: "subject to legislative appropriation". See in this context Sec. 37.14.070 in Chapter 181 and Sec. 37.-14.050 in Chapter 182.

Therefore, if the provisions of Chapter 181 had been utilized, at least a large part of the present problem addressed in SB 710 would not have occurred.

If I may assist further, please advise.

RAB:ljb

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710, 711

SB

TO: Senator Mike Colletta

FROM: Thomas R. Branton

Proposed amendment to AS 37.14.050:

Shall be amended by the deletion from the first sentence of the words [subject to legislative appropriation of sufficient funds]

Purpose of proposed amendment:

This change will remove the legislative determination language from the existing law. No funds have been appropriated to this trust and, consequently, there has been no restitution to the State mental health program for the transfer of State mental health lands per chapter 181 and 182 of the Session Laws of Alaska, 1978.

This proposed amendment will also make AS 37.14.050 consistent with AS 37.14.100 which is a response to the loss of university land per chapter 181 and 182 of the Session Laws of Alaska, 1978.

Charlie —

this is the and I spoke to you about

Mike Colletta

INDEX

710, 711

DMH & DD

Schedule of Expenditures

FY 1977 - FY 1981

	1977	1978	1979	1980	1981
Mental Health:					
API	6,439,428	6,721,268	7,494,515	8,060,922	9,559,297
Antecedents	190,812	186,935	220,608	194,977	267,200
Regional Community MH Svcs.	1,795,600	2,370,216	2,841,446	3,226,945	4,295,849
	8,309,802	9,479,019	10,555,969	11,482,344	14,122,346
Developmental Disabilities:					
HDC	4,410,789	4,888,480	5,324,210	5,296,904	6,211,056
Council on Handicapped / Gifted	194,704	223,865	150,522	286,477	320,296
Regional Community DD Svcs.	1,677,744	2,597,924	2,752,375	3,066,892	3,730,111
	6,283,237	7,710,269	8,227,137	8,650,273	10,261,463
Administration					
Central Office	542,426	749,778	515,735	606,791	617,008
Others	78,415	--	193,809	112,011	305,626
	620,841	749,778	709,544	718,802	782,634
TOTAL	15,329,918	17,939,062	19,492,650	20,851,919	25,366,443
Mental Health & Admin	9,046,681	10,228,797	11,265,513	12,201,646	15,104,980
Developmental Disabilities	6,283,237	7,710,269	8,227,137	8,650,273	10,261,463

2 Positions '83 — automated MH information SB 100 — Transferred from Central Office

3-16-82

Nancy in SB 817?

Jan'n Sackett
Chairman Senate Finance Subcommitte
on H&SS
State Legislature
Pouch V
Juneau Ak. 99811

Dear Senator Sackett

It has come to my attention that a budget reduction in H&SS could be proposed which would result in a closure of 7 rural community Mental Health Centers. I am quite knowledgeable of rural Alaskan mental Health Center clientele, through my previous casework experience with vocational Rehabilitation, assisting disabled individuals in obtaining employment. I am most familiar with the interior Regions & Kenai Peninsula.

With the chronic emotional Health issues in our state, notwithstanding family & children related problems caused by Alcoholism, I cannot fathom the reasoning behind eliminating local mental Health assistance.

It takes years to gain rapport in rural settings; to think an itinerant psychologist or clinician could help as well as a local resident is ridiculous. Please do not allow these well functioning clinics to be cut.

Sincerely

David Quisenberry
POB 81842
Fairbanks AK 99708

cc Jabbar Kerkvliet
Helen Beirne
Don Bennett
Bettye Farrenkamp
Charles Parr

STATE OF ALASKA
THE LEGISLATURE

POUCH Y - STATE CAPITOL
JUNEAU, ALASKA 99811
907-465-3700

LEGISLATIVE AFFAIRS AGENCY

M E M O R A N D U M March 2, 1982

SUBJECT: State Trust Funds
(CSSB 710 (HESS))

TO: Senator Charles H. Parr
Chairman, Senate HESS Committee

FROM: Richard A. Bradley
Legislative Counsel

The bill is prepared as you requested with one exception.

The bill as prepared for you originally had a defect which has only now been noticed. The provisions of AS 37.14.060 - 37.14.100 never took effect and are not now law; therefore, they may not be amended.

Sec. 4, Chapter 182, SLA 1978 added Article 2 to AS 37.14 concerning the "University Fund." The legislature made its effective date the date that "the Board of Regents voted to approve the matters under consideration in Sec. 24 of the Act." The Board of Regents disapproved all matters on August 17, 1978. See the Supplement to AS 37.14 at page 309.

This being the case, I have deleted the reference to the one section amended within this article: AS 37.14.100.

If I may assist on this matter, please advise.

RAB:jdn

Enclosure

Bradley

Original sponsor: Health, Education and Social Services Committee

IN THE SENATE

BY THE HEALTH, EDUCATION AND SOCIAL SERVICES COMMITTEE

CS FOR SENATE BILL NO. 710 (HESS)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWELFTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act relating to state trust funds and their administration; and providing for an effective date."

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

* Section 1. AS 37.14.040 is amended to read:

Sec. 37.14.040. FUND UTILIZATION. The principal of the fund established in AS 37.14.010 shall be retained in that fund for investment as specified in AS 37.14.170. The income of the fund shall [MAY NOT] be appropriated first for [A PURPOSE OTHER THAN] the support of the state mental health program and the balance of the income of the fund which is not required for support of the state mental health program may be appropriated for any other public purpose.

* Sec. 2. AS 37.14.050 is amended to read:

Sec. 37.14.050. CONTRIBUTIONS. During each fiscal year [, SUBJECT TO LEGISLATIVE APPROPRIATION OF SUFFICIENT FUNDS,] the commissioner of revenue [THE DEPARTMENT OF REVENUE] shall transfer to the fund established in AS 37.14.010 a sum equal to one and one-half percent of the total receipts [REVENUE] derived from [THE MANAGEMENT OF STATE LAND, INCLUDING AMOUNTS PAID TO THE STATE AS PROCEEDS OF SALE OR ANNUAL RENT OF SURFACE RIGHTS,] mineral lease rentals, royalties, royalty sale proceeds, and federal mineral revenue-sharing payments or bonuses.

* Sec. 3. AS 37.14.150 is amended to read:

Sec. 37.14.150. CONTRIBUTIONS. During each fiscal year the commissioner of revenue [THE DEPARTMENT OF REVENUE] shall transfer to the fund established [CREATED] in AS 37.14.110 a sum equal to one-half of

one percent of the total receipts derived from [THE MANAGEMENT OF STATE LAND, INCLUDING AMOUNTS PAID TO THE STATE AS PROCEEDS OF SALE OR ANNUAL RENT OF SURFACE RIGHTS,] mineral lease rentals, royalties, royalty sale proceeds, and federal mineral revenue-sharing payments or bonuses.

* Sec. 4. AS 37.14 is amended by adding a new section to read:

Sec. 37.14.180. REVIEW BY BUDGET AND AUDIT COMMITTEE. The Legislative Budget and Audit Committee shall annually review the performance of the commissioner of revenue regarding the custody, management, and investment of the funds established by AS 37.14.010, 37.14.060, and 37.14.110 and report its findings to the legislature and the governor.

* Sec. 5. AS 37.14.020, 37.14.030, 37.14.120, and 37.14.130 are repealed.

* Sec. 6. This Act takes effect July 1, 1982.

FISCAL NOTE (VERSION #2) Draft SSB 710 (Resolution)

I. REQUEST

Bill/Resolution Number: CSSB 710 (HESS) (3/5/82) (Res)

Title: Relating to state trust funds and their administration

Requested by: Senate Resources Committee Date: 4/12/82

II. FISCAL DETAIL

Agency Affected: Department of Revenue

Program Category Affected: Revenue Collection and Management

BRU, Program, or Subprogram(s) Affected: Treasury Management

(Note: If more than one budget component is affected, separate line-item amounts and funding for each component in the analysis section.)

EXPENDITURES (Thousands of Dollars)

	FY 82	FY 83	FY 84	FY 85	FY 86	FY 87
100 PERSONAL SERVICES	-	15.7	17.3	19.0	41.7	45.8
200 TRAVEL	-	2.0	2.2	2.4	2.7	2.9
300 CONTRACTUAL	-	21.0	24.2	27.9	32.1	37.0
400 COMMODITIES	-	.5	.6	.7	.8	.8
500 EQUIPMENT	-	1.5	-	-	-	-
600 LAND & STRUCTURES	-	-	-	-	-	-
700 GRANTS,CLAIMS,ETC	-	-	-	-	-	-
800 MISCELLANEOUS	-	-	-	-	-	-
TOTAL	-	40.7	44.3	50.0	77.3	86.5

FUNDING (Thousands of Dollars)

GENERAL FUND	-	40.7	44.3	50.0	77.3	86.5
FEDERAL FUNDS	-	-	-	-	-	-
OTHER (Specify Source)	-	-	-	-	-	-

POSITIONS

FULL TIME	-	-	-	-	1/12MM	1/12MM
PART TIME	-	1/6MM	1/6MM	1/6MM	-	-
TEMPORARY	-	-	-	-	-	-

III. ANALYSIS (See Fiscal Note Preparation Instruction, Section III)

Allows the Commissioner of Revenue to invest the Mental Health Fund

THIS ANALYSIS IS BASED ON ASSUMPTION COMPANION BILL SB 711, APPROPRIATION TO MENTAL HEALTH FUND, DOES NOT PASS.

Personal Services is one-half time Accounting Tech. II (R14,G) for associated trust accounting, proper allocation, monthly/quarter/annual reporting. Contractual Services: Comm. $3.0; Print & Adv. $3.0; Safekeeping and relating reporting/accounting $10.0; Audit $5.0. Equipment for new position.

Trust funds should pay for related expenses out of income for true rate of return and proper cost allocation.

A. Staack

IV. DATE: April 12, 1982 PREPARED BY: Anselm C. Staack, Treasury Comptroller

AGENCY: Dept. of Revenue, Treasury Division

PHONE: 465-2350

Original: Legislative Finance

cc: Budget and Management

Prime Sponsor (First Legislator Named)

TWELFTH LEGISLATURE (Revenue Reduction To General Fund)

FISCAL NOTE

I. REQUEST

Bill/Resolution Number: CSSB 710 (Doa.)

Title: Relating to state trust funds and their administration

Requested by: _____ Date: 4/12/82

II. FISCAL DETAIL

Agency Affected: General Fund Unrestricted Revenue

Program Category Affected: _____

BRU, Program, or Subprogram(s) Affected: _____

(Note: If more than one budget component is affected, separate line-item amounts and funding for each component in the analysis section.)

EXPENDITURES (Thousands of Dollars)

	FY 82	FY 83	FY 84	FY 85	FY 86	FY 87
100 PERSONAL SERVICES	-	-	-	-	-	-
200 TRAVEL	-	-	-	-	-	-
300 CONTRACTUAL	-	-	-	-	-	-
400 COMMODITIES	-	-	-	-	-	-
500 EQUIPMENT	-	-	-	-	-	-
600 LAND & STRUCTURES	-	-	-	-	-	-
700 GRANTS,CLAIMS,ETC	-	-	-	-	-	-
800 MISCELLANEOUS	-	-	-	-	-	-
TOTAL	-	-	-	-	-	-

FUNDING			IN MILLIONS OF DOLLARS			
GENERAL FUND	-	(16.2)	(17.7)	(21.1)	(24.6)	(28.8)
FEDERAL FUNDS	-	-	-	-	-	-
OTHER (Specify Source)	-	-	-	-	-	-

POSITIONS						
FULL TIME	-	-	-	-	-	-
PART TIME	-	-	-	-	-	-
TEMPORARY	-	-	-	-	-	-

III. ANALYSIS (See Fiscal Note Preparation Instruction, Section III)

Above is in terms of reduction of General Fund unrestricted revenue now to be contributed to Mental Health Fund at one and one-half percent contribution rate of mineral lease rentals, royalties, royalty sale proceeds. Based on latest revenue estimates as of date of preparation of fiscal note.

A. Staack

IV. DATE: April 12, 1982 PREPARED BY: Anselm C. Staack, Treasury Comptroller

AGENCY: Dept. of Revenue, Treasury Division

PHONE: 465-2350

Original: Legislative Finance

cc: Budget and Management

Prime Sponsor (First Legislator Named)

38-001 (Rev. 12/81)

TWELFTH LEGISLATURE

FISCAL NOTE

I. REQUEST
Bill/Resolution No. CS SB 710 (Resources)
Title Relating to the mental health trust fund
Requested by Senate Resources Committee Date 4/12/82

II. FISCAL DETAIL
Agency Affected Menatl Health Fund Advisory Board - Dept. of Revenue
Program Category Affected Revenue Collection and Management
BRU, Program, Or Subprogram(s) Affected Treasury Division
(Note: If more than one budget component is affected, separate line-item amounts and funding for each component in the analysis section.)

EXPENDITURES (Thousands of Dollars)

	FY 82	FY 83	FY 84	FY 85	FY 86	FY 87
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL		50,000	-0-	50,000	-0-	50,000
400 COMMODITIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS,CLAIMS,ETC.						
TOTAL		50,000	-0-	50,000	-0-	50,000

FUNDING (Thousands of Dollars)

GENERAL FUND		50,000	-0-	50,000	-0-	50,000
FEDERAL FUNDS						
OTHER (Specify Source)						

POSITIONS

FULL TIME						
PART TIME						
TEMPORARY						

III. ANALYSIS (See Fiscal Note Preparation Instruction, Section III

This analysis assumes that each needs assessment will be prepared on contract and that each will cost no more than $50,000.

IV. DATE 4/12/82 PREPARED BY Senator Fahrenkamp, Chairman
AGENCY Senate Resources Committee
PHONE 465-3762

Original: Legislative Finance
cc: Budget and Management
Prime Sponsor (First Legislator Named)
33-001 (Rev. 12/81)

Division Name Division of Mental Health & Developmental Disabilities

Component Name Community Mental Health Grants

FY 82 Budget	Governor's FY 83 Budget	Proposed Reduction
4181.7 GF 0 PFT	4558.4 GF 0 PFT	827.5 GF 0 PFT

GF = General Funds PFT = Permanent Full-time Position

	Reduction	Total After Reduction
100 Pers. Serv.		-
200 Travel		-
300 Contractual	100.0	3.6
400 Commodities		-
500 Equipment		-
600 Land/Bldg.		3992.8
700 Grants, Clms	727.5	3996.4
800 Misc.		-
Total Expend		3996.4
Fed. Receipt		265.5
G.F. Match		-
General Fund		3730.9
Pgm. Receipts		-
Other Funds		-
Full Time		0
Part Time		0
Temporary		0
Staff-months		0

What are the ramifications of the reduction - which services will be deleted, which will be reduced, what will be the impact on Alaskans, etc.?

1) Mental health centers serving 7 communities and their surrounding districts will be discontinued. This will include centers in the following districts. The number of cases formally served and hours of informal counseling, community education, and prevention are listed for FY 81.

Funding Cut	Center	Clients	Hours of Informal Counseling & Prevention	
111.9	Seward	150	1712	
122.6	Homer	148	393	
80.3	Copper Center	11	1175	
117.2	Tanana	80	1500	
127.9	Galena	24	1387	part year programs in FY 81
50.0	Craig	?	?	
50.0	Wrangell	50	?	

2) Clinicians and services will be cut in the following communities:

40.0 Kodiak - 1 psychologist eliminated

10.0 McGrath - village outreach worker eliminated

17.6 Fairbanks - psychiatric coverage reduced

72.5

3) A proposed program for evaluation and observation of criminal offenders will be eliminated in Fairbanks. This will result in increased demand on API for this service.

4) The net effect of these cuts will be elimination of services to an area of 25,000 population and reduction of service in additional areas. It is expected that this will increase the case load at API. Final determination of where cuts will be made is dependent on contract negotiation and advisory board review.

Rationale for Reduction:

1) The centers selected to be discontinued were selected on a basis of;

a. effective programs which are connected via roadways to other functional programs whereby the served population could commute to the alternate provider clinics, as example, Seward and Homer can be served by the addition of staff to the Kenai Center;

b. less effective programs with a record staff recruitment and other problems which total to a service delivery inefficiency; and

c. programs which serve a lessor number of clients annually than the "more popular" clinics.

2) Staff is cut at the larger programs where a cutback will decrease service capability but result in reduction rather than closure as would be the case for the one or two person clinics.

3) This is a proposed new start program which is cut because it presents no cutback but restricts growth in program.

4) No comment required.

Nancy

CITY of WRANGELL, ALASKA

INCORPORATED JUNE 15, 1903

BOX 531, 99929 (907) 874-2381

ADOPTED AUGUST 1972

March 26, 1982

Helen D. Beirne, Commissioner
Department of Health & Social Services
Pouch H-01
Juneau, Alaska 99811

Dear Ms. Beirne:

It has come to the City of Wrangell's attention that an evaluation of proposed reductions of community mental health grants has been prepared. It is our understanding that Wrangell satellite office is proposed to be closed as part of the reduction.

The Wrangell City Council has gone on record strongly protesting closure of the Wrangell office. Full time clinical services in Wrangell have increased client fees revenue substantially. It has been the City's intent to increase contribution from the City and School District to this service in the fiscal year ending June 30, 1983. In the event the satellite office is closed, it is apparent the client fees and contributions will decrease. The revenues generated by the satellite office should be considered when proposals are made to discontinue the service.

Very truly yours,

Joyce Rasler
City Manager

JR:jb

cc: Representative Adams, Chairman, House Finance Committee
Senator Bennett, Co-chairman, Senate Finance Committee
Senator Dankworth, Co-chairman, Senate Finance Committee
Representative Beirne, Chairman, House HESS Committee
Senator Parr, Chairman, Senate HESS Committee ✓
Representative E. J. Haugen
Seantor Richard Elaison
Representative Oral Freeman
Representative Terry Gardiner
Senator Robert Zeigler
Representative Thelma Buckholdt

POSITION PAPER/Department of Health & Social Services

POSITION PAPER

SENATE BILL NO. 710

"An Act relating to state trust funds and their administration; and providing for an effective date."

The effect of this act insofar as mental health programs is concerned is that it will (Sec. 1, 47.14.040) make the mental health fund income mandated for use first for mental health programs with any balance available for general public use.

Section 2, 37.14.050 removes the current permissive wording and requires that the one and one-half percent total receipts from "land use" be transferred each year.

Section 5, 37.14.170(a) removes the advisory board from direct involvement in the investment of the fund.

Section 7, 18.07.011 charges the Statewide Health Coordinating Council with review and reporting to the legislature of the fund's activity.

Section 8, 47.30.350(a) charges the Commissioner of Health and Social Services with review and reporting to the legislature of the fund's activity.

Section 9, 47.30.605(b) charges the Governor's Mental Health Advisory Council with review and reporting to the legislature of the fund's activity.

Section 10, 47.80.090 charges the Governor's Council for the Handicapped and Gifted with the review and reporting to the legislature of the fund's activity.

Section 11, 37.14.020 repeals the mental health land fund use advisory board. 37.14.030 repeals the powers granted to the mental health land fund use advisory board.

Analysis: This legislation will have the effect of establishment of a permanent fund which was implied when State mental health lands were placed in public ownership by 1978 legislation. This fund is to replace the earlier established mental health lands trust; the lands with a dollar value. First call on the revenue from this trust goes to fund mental health programs. The review of activity and fund use from the trust is made by a multiplicity of boards and councils. No direct authority over the fund is given to any persons other than the legislature and the Commissioner of Revenue. All other reviews are advisory in capacity.

The existence of this funding source for mental health programs should have no direct impact on the State mental health system because the revenue from the fund will require a legislative appropriation which is the procedure that currently exists. The major difference will be a change in the funding source for the appropriation.

POSITION PAPER/Department of Health & Social Services

Position Paper
Senate Bill No. 710

Recommendation: The Division of Mental Health and Developmental Disabilities supports Senate Bill No. 710; however, we suggest that the multiplicity of council and board reviews be evaluated as a possible duplication, as each of these groups currently does review that part of the mental health budget which is pertinent to their area of responsibility. Senate Bill No. 710 will require that the role of each council be increased beyond their area of interest, i.e., the Governor's Council for the Handicapped and Gifted may not wish to consider the funds allocated to operate the Alaska Psychiatric Institute. The Department of Revenue will furnish monthly reports on the fund's income which can be given needed distribution.

Recommended by: Robert W. Marshall

Robert W. Marshall, M.D.
Director, Division of
Mental Health and Developmental Disabilities

Date: 17 Feb 82

Approved by: Helen D. Beirne

Helen D. Beirne
Commissioner
Department of Health and
Social Services

Date: 2-17-82

THE LEGISLATURE OF THE STATE OF ALASKA
TWELFTH LEGISLATURE

FISCAL NOTE

I. REQUEST
Bill/Resolution No. Senate Bill No. 710
Title Relating to state trust funds and their administration.
Requested by Commissioner's Office Date 2/17/82

II. FISCAL DETAIL
Agency Affected Department of Health & Social Services
Program Category Affected Mental Health & Developmental Disabilities
BRU, Program, Or Subprogram(s) Affected
(Note: If more than one budget component is affected, separate line-item amounts and funding for each component in the analysis section.)

EXPENDITURES (Thousands of Dollars)

	FY 82	FY 83	FY 84	FY 85	FY 86	FY 87
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 COMMODITIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS,CLAIMS,ETC.						
TOTAL	-0-	-0-	-0-	-0-	-0-	-0-

FUNDING (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER (Specify Source)						

POSITIONS

FULL TIME						
PART TIME						
TEMPORARY						

III. ANALYSIS (See Fiscal Note Preparation Instruction, Section III)

No cost impact is foreseen to the Department of Health and Social Services as a result of this legislation.

IV. DATE
PREPARED BY Robert W. Marshall, M.D., Director
AGENCY Health & Social Services, Mental Health & DD
PHONE 465-3370

Brubt. Marshall 1cc

Original: Legislative Finance
cc: Budget and Management
Prime Sponsor (First Legislator Named)
33-001 (Rev. 12/81)

POSITION PAPER/Department of Health & Social Services

POSITION PAPER

SENATE BILL NO. 711

"An Act making a special appropriation to the Department of Revenue for deposit to the mental health fund; and providing for an effective date."

This act will appropriate $84,295,000. to the mental health fund. This is provided for in Alaska Statute 37.14.050.

Mental health trust lands were abolished by chapter 181 of the 1978 legislature. This chapter created in the place of the trust lands a new mental health fund which, subject to an appropriation by the legislature, was to receive 1.5 percent of the revenues paid to the State each year as proceeds from the management of State lands. This would include proceeds from surface rights, mineral leases, rental royalties, royalty sales, mineral revenues, etc. The principal of the mental health fund is to be retained in the fund for investment. The income of the fund is to be appropriated for the State mental health program.

The utilization of the annual mental health fund earning could be used to offset current general fund support for mental health programs in whole or part. Potentially in the future, revenues could expand to address needs of long range benefit to Alaskans such as applied behavioral science research, biomedical research, and transitional facilities supporting the chronic mentally ill.

The Department of Health and Social Services acknowledges that this mental health trust fund is the statutory mandated replacement for the mental health land.

Recommended by: Robert W. Marshall

Robert W. Marsh II, M.D.
Director, Division of
Mental Health and Developmental Disabilities

Date: 18 Feb 82

Approved by: Helen D. Beirne

Helen D. Beirne
Commissioner, Department
of Health and Social
Services

Date: 2-17-82

THE LEGISLATURE OF THE STATE OF ALASKA
TWELFTH LEGISLATURE

FISCAL NOTE

I. REQUEST
Bill/Resolution No. Senate Bill No. 711
Title Special appropriation to Dept. of Revenue for mental health fund.
Requested by Commissioner's Office Date 2/11/82

II. FISCAL DETAIL
Agency Affected Department of Health & Social Services
Program Category Affected Mental Health & Developmental Disabilities
BRU, Program, Or Subprogram(s) Affected
(Note: If more than one budget component is affected, separate line-item amounts and funding for each component in the analysis section.)

EXPENDITURES (Thousands of Dollars)

	FY 82	FY 83	FY 84	FY 85	FY 86	FY 87
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 COMMODITIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS,CLAIMS,ETC.						
TOTAL	-0-	-0-	-0-	-0-	-0-	-0-

FUNDING (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER (Specify Source)						

POSITIONS

FULL TIME						
PART TIME						
TEMPORARY						

III. ANALYSIS (See Fiscal Note Preparation Instruction, Section III)

No cost impact is foreseen to the Department of Health and Social Services as a result of this legislation.

IV. DATE
PREPARED By Robert W. Marshall, M.D., Director
AGENCY Health & Social Services, Mental Health & DD
PHONE 465-3370

Original: Legislative Finance
cc: Budget and Management
Prime Sponsor (First Legislator Named)
33-001 (Rev. 12/81)

HOUSE RESEARCH

STATE LAND REPORT

29:

733 W. FOURTH AVE.
ANCHORAGE, ALASKA

FEDERAL-STATE LAND USE PLANNING COMMISSION FOR ALASKA

STATE LAND POLICY RECOMMENDATIONS

AND

BACKGROUND PAPERS

DECEMBER, 1977

STATE TRUST LANDS

Findings and Recommendations of the
Joint Federal-State Land Use Planning Commission
December, 1977

Findings:

1. Before Statehood, the Federal government granted certain lands to the Territory of Alaska for the benefit of the University of Alaska (100,000 acres), the public school system (109,000 acres), and the mental health program (1,000,000 acres). Original Federal legislation making these reservations included precise terms governing the management of land and the revenues received therefrom.

2. The Statehood Act conveyed these preestablished trust responsibilites to the State of Alaska. Because of repealer clauses in the sections of the Statehood Act pertaining to University and school lands, the State is not bound by the precise terms of previous Federal legislation relating to these lands, however, a trust responsibility remains.

3. The statutes require separate funds for revenues gained from school and University lands, but there is no special fund for the mental health program. Instead, these revenues have been placed in the general fund.

4. By statute, the director must manage mental health lands for the support of the mental health program. Revenues derived from management of these lands must be used first for support of this program, and any excess deposited in the general fund.

5. Since the school, University, and mental health lands are held in trust for the financial support of these programs, it is normally incumbent upon the State to handle transactions of trust lands on the basis of fair market value. Revenues derived from school and University lands must be invested and the interest allocated to the support of the respective programs.

6. School lands were granted under the historic "in-place" system of conveying sections 16 and 36 in each township. The State only received those school lands which had been surveyed as of the date of statehood. However, since surveying was concentrated near communities, several of the State's school land sections are stategically located in urban growth areas.

7. Most of the university lands and all of the mental health lands have been selected "at large" from vacant, unreserved

public lands. University lands could only be selected from non-mineral, surveyed lands, requirements which placed them directly in the already settled areas. Since selections were for the purpose of maximizing real estate value, and were accomplished prior to the State's general grant selections, lands in the University and mental health trusts comprise prime real estate around communities and in valuable waterfront locations.

8. Because of the strategic location of trust lands in relation to community development and settlement, management decisions affecting trust lands have had, and will have, a major impact on community growth patterns.

9. The effect of vacant trust lands on community growth patterns has been random and varied. Some communities have grown around trust lands, leaving trust lands as windows of open space in heavily settled areas. In Anchorage, State trust lands are zoned "Public Lands and Institutions", a designation which prohibits private development. In Southeastern communities, where trust lands are numerous, the effect has been to either compress and consolidate community growth or to force a "leapfrog" pattern that is costly in terms of public utilities and services.

10. There are probable conflicts between the State's general welfare objective of achieving a desirable land use pattern and the State's obligation to the trust to obtain fair market value from trust lands. In some cases, the trust lands are well suited as parks, but this use may conflict with the State's long-term responsibility as trustee to manage the lands for revenue.

11. In acting as the land management agent for all three trusts, the Division of Lands may have a built-in conflict of interest where it manages lands for more than one trust in the same location.

12. The trust boards have never developed land management guidelines, and, in turn, the State has failed to actively manage trust lands to obtain market value for the trusts. The State has not charged the trust boards for management services, but few services have been rendered.

13. Alaska municipalities would like to select trust lands because of their desireable location and value for community development or public use purposes.

14. Under current State statutes, trust lands are subject to legislation granting preference rights to certain groups that make them available for less than market value.

15. Under current State statutes some trust lands are available for mineral staking and, therefore, for acquisition of private property rights at less than market value.

16. Under the new lease law, passed in 1977, the State undermined the administration's ability to manage leaseholds on trust lands at market value.

17. The permanent fund requirements, which make no distinction between mineral revenues from trust lands and general grant lands, are inconsistent with the State's trust responsibilities.

Recommendations:

1. The trust boards should clearly define their objectives regarding the lands which the State holds in trust for the public schools, the University, and the mental health program. In the absence of a specific statute defining trust responsiblities in Alaska, these objectives must conform to general trust standards. The Division of Lands shall manage trust lands as the agent of the trusts, in accordance with these objectives.

2. If the primary objective of the trust boards is to use lands for revenue, then this objective may conflict with the State and municipal objective of achieving a sound land use pattern. This conflict could be resolved, without compromise by either party, through an exchange of existing trust lands for an equally valuable interest in State surface or subsurface elsewhere. Such exchanges must comply with the "prudent person" standard of trust investment.

3. The definition of State land, as used in statutes pertaining to the permanent fund, preference rights, lease holders rights, and other topics, should distinguish between State general grant lands and trust lands. State statutes which abridge the trust responsibilities should be amended.

4. A separate statutory fund should be created for the proceeds from the mental health lands.

BUDGETING FOR STATE LAND MANAGEMENT

Findings and Recommendations of the
Joint Federal-State Land Use Planning Commission
December, 1977

Findings:

1. Achieving effective, responsive administration of programs conveying State land rights to private parties will require that the administrative capacity of the Division of Lands be expanded. Additional professional expertise in leasing, appraisal, permitting, easements, sales, and other aspects of land management must be acquired.

2. Topographic mapping, site planning, land survey, and access development are essential elements of any land disposal program. To convey State land rights to private owners in a manner which accommodates the variety of their different needs and makes good use of available land, the Division of Lands must have the staff and budget to satisfy these requirements.

3. Resource inventory, land use planning, consultation with local people, and classification of State lands must proceed apace with any disposal of State land rights to private parties. Current funding for these efforts is inadequate in relation to the amount and complexity of State land ownership.

Recommendation:

That the Legislature work closely with the Department of Natural Resources to develop and fund a budget that is sufficient to support the State's responsibilities for planning and managing State lands for both retention and disposal purposes.

SB 710 HIC

STATE OF ALASKA
THE LEGISLATURE

POUCH Y - STATE CAPITOL
JUNEAU, ALASKA 99811
907-465-3800

LEGISLATIVE AFFAIRS AGENCY

M E M O R A N D U M

April 12, 1982

SUBJECT: Mental health trust as "money trust" (SB 710)

TO: Senator Charles H. Parr

FROM: Richard A. Bradley RB
Legislative Counsel

Nancy Dietrick has asked that I prepare an analysis of the legislative history of the mental health trust laws, particularly with reference to the transition from a "land trust" to a "money trust" in 1978.

The quick answer to your question is that the "redesignation" provisions of Chapters 181 and 182, SLA 1978 constitute the sections that make the transition from the land trust to the money trust. See Sec. 3 of Chapter 181 and Sec. 1 of Chapter 182. To put these provisions in some context, it is useful to review the two bills and their contents.

The provisions of AS 37.14 are derived from these two bills. See Sec. 4 of Chapter 181, SLA 1978 and Sec. 4 of Chapter 182, SLA 1978. The Revisor's Note following the chapter 37.14 heading (page 47 of the AS 37 pamphlet) notes that the two chapters both contained provisions adopting AS 37.14. Because, the revisor says, the provisions in Chapter 182 are subsequent in time and contains a "more comprehensive treatment of trust funds," (though see the discussion below) the provisions of the latter formulation of AS 37.14 were treated as superseding those contained in Chapter 181.

The provisions of Chapter 182 were adopted as SB 159 [FCCS CSSB 159]. This bill started out having nothing to do particularly with the various trust funds' management that eventually appeared in it; it was rather a legislative solution to the rather heated problems that arose in the

early years of the Hammond administration from that administration's review of the policies of the division of lands. It involved reappraisal of the Teamster's Mall lease in Anchorage and a number of other leases that the administration believed were not properly delivering to the state a proper return. Reappraisals raised land valuations and rentals in some cases 1,000 percent in recent years.

I have reviewed the work order request file on FCCS CSSB 159 and there is no indication of the source of the trust fund management sections. In fact, the provisions of HB 720 (FCCS SCS CSHB 720) which became Chapter 181 show a more complex evolution of these provisions.

The closest thing that appears in the SB 159 file is a copy of a letter signed by Ted Smith as co-chairman of the "Ad Hoc Committee" on land policies and procedures, dated February 22, 1977. It is addressed to Governor Hammond as a report on administration of the state's "land patrimony".

Recommendation No. 11 notes that:

> The committee believes that state trust lands (school, mental health, and university) are now and have been managed at a low intensity. These lands may be returning only a fraction of their potential value that could be realized by a small full time management staff. The Division manages these lands at no change to the various trust funds and receives no reimbursement for its services. Therefore it has traditionally placed low priority on the management of these lands. This committee recommends that the State Legislature authorize each trust board the authority to freely contract with any agency or private firm for the management of its lands for revenue production in accordance with the state's land act.

At the time of this report [before the adoption of Chapters 181 and 182, SLA 1978], the lands held in trust were managed under general laws for the management of public lands but under competitive bidding procedures. Under FCCS CSSB 159, mental health lands (as well as the other trust lands) may be leased either by competitive bidding or by noncompetitive disposal methods (direct negotiation, lottery, etc.) if the commissioner determines that the method selected is in the best interests of the state.

This result occurs because the provisions of both Chapters 181 and 182 provide for the "redesignation" of the mental health lands as general grant lands. See Sec. 3 of Chapter 181:

> * Sec. 3. REDESIGNATION AND DISPOSAL OF MENTAL HEALTH LAND. (a) Land granted to the state under the Mental Health Enabling Act of 1956, 70 Stat. 709, and patented to or approved for patent to the state on July 1, 1978 and land designated as mental health land which was received by the state in exchange for land granted under the federal land grant is redesignated as general grant land and shall be managed and disposed of by the Department of Natural Resources under applicable provisions of law.
>
> (The provisions of (b) do not concern us.)

Sec. 1 of Chapter 182 is essentially identical.

The intent of these two sections states the core of your concern; those sections changed the character of mental health land into general grant land; they sought simultaneously to establish a fund to replace the segregated lands granted for the trust purposes.

It seems that the goal was reasonable.

Congress permitted the lands granted for mental health purposes to be sold or held and managed. It seems therefore that there was no need to maintain the lands in a segregated trust status. The concept of one and one-half percent dedication is also reasonable; 2,000,000 acres of the 104 million acres granted to the state from the various sources are mental health trust lands; one and one-half percent of the lands is a fair if not precise allocation which should do justice to the purposes of the trust established by Congress.

There is [at least] one difference of substance between the two formulations of the mental health funds established in each bill. While I do not disagree with the determination made by the revisors to use the provisions of the later adopted bill in determining which chapter 37.14 became effective, I note that the provisions of AS 37.14 in Chapter 181 required the commissioner to make the contributions to the fund without the qualification found in

Chapter 182: "subject to legislative appropriation". See in this context Sec. 37.14.070 in Chapter 181 and Sec. 37.-14.050 in Chapter 182.

Therefore, if the provisions of Chapter 181 had been utilized, at least a large part of the present problem addressed in SB 710 would not have occurred.

If I may assist further, please advise.

RAJ:ljb

STATE OF ALASKA

JAY S. HAMMOND, GOVERNOR

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

POUCH K – STATE CAPITOL
JUNEAU, ALASKA 99811
PHONE: (907) 465-3600

February 8, 1982

Hon. Hugh Malone
Alaska State Legislature
Pouch V
Juneau, AK 99811

Re: Mental health trust fund
Our file: J66-534-81A

Dear Representative Malone:

You have asked us to review HB 151 and HB 152 to determine whether they, if enacted, would satisfy the state's obligation to the mental health trust fund. In our opinion, the bills as drafted would not entirely satisfy the state's obligation to the mental health trust fund. In addition, the existing legislation which HB 151 would amend presents a problem under our constitutional prohibition against dedicated funds. We have also reviewed SB 710 and SB 711 which affect the mental health trust fund. We will discuss the development of the mental health trust fund, and make specific suggestions for legislative action.

The Alaska Mental Health Enabling Act, P.L. 84-830, § 202, 70 Stat. 709 (July 28, 1956)(copy attached), authorized the Territory of Alaska to select one million acres from the public lands of the United States in Alaska which were vacant, unappropriated, unreserved at that time. The statute required that these lands be administered by the Territory "as a public trust" and that proceeds and income of these lands "first be applied to meet the necessary expenses of the mental health program of Alaska." The statute authorized the territory to sell, lease, mortgage, exchange or otherwise dispose of the land in order to obtain funds or other property to be invested, expended, or used by the territory. The committee report which accompanied that legislation stated that "amounts not needed for the mental health program can be used for other public purposes as the legislature may determine." Senate Report No. 2053, 84th Cong., 2nd Sess., reprinted in (1956) U.S. Code Congressional and Administrative News at 3639.

In 1958, Congress passed the Alaska Statehood Act, P.L. 85-508, 72 Stat. 339 (July 7, 1958). Section 6k of the

Statehood Act provided that "grants previously made to the Territory of Alaska are hereby confirmed and transferred to the State of Alaska upon its admission." That section also specifically repealed two earlier federal acts under which land had been reserved, and granted the reserved lands to the state "for the purposes for which they were reserved." This proviso applied to lands reserved for the benefit of the public schools and university under the Act of March 4, 1915, P.L. 63-330, 38 Stat. 1214; it also applied to lands within the naval petroleum reserves under the Act of February 15, 1920, P.L. 66-146, 41 Stat. 450. However, this provision did not apply to the lands reserved under the Mental Health Enabling Act.

A section of the Mental Health Enabling Act which authorized federal grants for mental health treatment in Alaska was repealed in 1959 by the Alaska Omnibus Act, P.L. 86-70, 73 Stat. 148 (June 25, 1959), § 31(b)(1). That Act did not effect the land grant or trust provisions of the Mental Health Enabling Act. The attorney general opined in 1964 that lands received pursuant to the Alaska Mental Health Enabling Act were reserved and thus could not be selected by municipalities under state land disposal laws. 1964 Opin. Alaska Atty. Gen. #7. Subsequently, the attorney general advised that mental health lands could be exchanged for land of equivalent fair market value. Inf. Opin. Alaska Atty. Gen., Feb. 10, 1967.

In 1978, the Alaska Legislature redesignated mental health lands as general grant lands and established a mental health trust fund which was to receive one and one-half percent of the total receipts derived from the management of state land. 1978 Alaska Sess. L., ch. 181, §§ 3 and 4; AS 37.14.070. We understand that this percentage of state revenues was intended to approximate the value of the trust lands. However, since no appraisal was made of the fair market value of these lands, it is impossible to determine whether the substituted revenue source meets or exceeds the fair market value of the trust lands. Since the dedication of a percentage of state revenues has no termination date, it will presumably exceed the value of the trust lands at some time.

In addition, the 1978 legislation conditioned the placement of this percentage of state revenues in the mental health trust fund upon appropriation by the legislature. We understand that to date no appropriation has been made to the mental health trust fund. We also understand that the legislature has made regular appropriations for the purpose of mental health treatment in Alaska and that the Department of Health and Social Services contains a division which is responsible

for mental health treatment in the state.

Our review of the statutes and relevant cases leads us to conclude that the Alaska Mental Health Enabling Act did impose affirmative responsibilities on the Territory of Alaska to review the needs for mental health treatment in the territory and to meet those needs with revenues from the mental health trust lands before using any proceeds from those lands for other purposes. The Alaska Supreme Court has ruled that the public trust established by the federal government for the benefit of the university in territorial days still requires that the state compensate the university for the fair market value of any land reserved for the university under that trust. State v. University of Alaska, 624 P.2d 807 (Alaska 1981). The mental health trust differs greatly from the federal trusts for the public schools and university in that the use of the latter was restricted absolutely for the benefit of the public schools and university respectively. Income and proceeds of the mental health trust lands could be spent for purposes other than mental health at the discretion of the legislature, if the mental health needs in the state had been met. Nevertheless, we think it unlikely that a court would find that the Alaska Mental Health Enabling Act did not impose some affirmative trust obligation on the territory.

We also think it unlikely that a court would find that the mental health trust obligation was terminated by the Statehood Act. Section 6k of that act specifically repealed certain portions of the public school and university trust legislation and transferred to the state lands reserved under those acts "for purposes for which they were reserved." Since the Alaska Mental Health Enabling Act was not repealed, we presume that it remains effective.

The general language in section 6k of the Statehood Act confirming previous grants made to the territory could be construed to impliedly repeal any restrictions on those grants, such as were contained in the Alaska Mental Health Enabling Act. However, the act could as easily be read to reaffirm and transfer the existing trust obligations to the new state. Since the latter view reconciles the Acts, it would probably be preferred by the courts. Sands, SUTHERLAND STATUTORY CONSTRUCTION (1973) §§ 51.01, 51.02.

If the Statehood Act did not terminate the mental health trust, then the trust obligation as to those lands selected under the Alaska Mental Health Enabling Act remains in effect. If the substitution of revenue for the trust imposed

by the 1978 state legislation was not equal to the fair market value of the trust lands, then the trust has been breached. Lassen v. Arizona, 385 U.S. 458 (1967). Even if the substituted revenue source were equal to the fair market value of the trust lands, the state's failure to appropriate that money to the trust may be a breach of the trust.

In addition, the dedication of one and one-half percent of total receipts from state lands will probably at some time exceed the fair market value of the trust lands. To that extent, the dedication is prohibited by article IX, § 7, of the Alaska Constitution. */ The dedication of revenues to the mental health trust fund is permitted under the Alaska Constitution only to the extent that it is required by federal law.

Thus, our review of the history of the mental health trust fund indicates that (1) a trust obligation probably exists under federal law, and (2) the state has probably breached that trust obligation by redesignating the mental health trust lands as general grant lands, and failing to compensate the trust for the fair market value of those lands. We have identified three alternative courses of legislative action and will discuss them briefly.

First, the legislature may follow its past course and do nothing to fund the mental health trust fund. There is a risk of litigation over the state's obligations in a suit brought by either the federal government or some beneficiary of mental health programs in the state. We note that the Alaska Mental Health Enabling Act does not provide any mechanism for enforcement of the trust. Therefore, the state may be immune from any action to enforce the terms of the trust under the

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*/ Alaska Constitution, article IX, section 7 provides:

> DEDICATED FUNDS. The proceeds of any state tax or license shall not be dedicated to any special purpose, except as provided in section 15 of this article or when required by the federal government for state participation in federal programs. This provision shall not prohibit the continuance of any dedication for special purposes existing upon the date of ratification of this section by the people of Alaska.

Eleventh Amendment of the United States Constitution. Scott, Law of Trusts § 95 (1967). */ This is an issue which should be explored more thoroughly if litigation appears likely. In addition, there is the possibility that the legislative appropriations for mental health programs over the years have been adequate to meet the need for mental health treatment in the state. If past appropriations have been rationally based on reasonable assessments of mental health needs in Alaska, then the state may have fulfilled its basic trust responsibilities despite the failure to establish a separate fund with the trust lands. In that case, there may be no effective remedy for any possible breach of trust.

Second, the state may attempt to comply with the terms of the Alaska Mental Health Enabling Act. We believe that this would require:

(1) an assessment of the fair market value of the lands which were selected by the state under the Alaska Mental Health Enabling Act, as of the date of their redesignation by statute as general grant lands;

(2) some regular review (perhaps by the senate and house HESS committees) of the need for mental health treatment in the state; a report to the legislature with recommendations for appropriations for mental health treatment and facilities in the state; a legislative finding that these needs are met before money in the mental health trust fund is appropriated for any other purpose; **/

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*/ The state has partially waived its immunity from suit in state courts for contract, quasi-contract and certain tort claims. AS 09.50.250. It is doubtful that a suit to enforce a federal trust obligation could be brought under this statute.

**/ The attorney general opined in 1961 that money received from the mental health trust lands in excess of the needs of the mental health program could be transferred to the general fund without specific legislative authorization. 1961 Opin. Alaska Atty. Gen. No. 11. We agree that the transfer of money into the general fund does not require an appropriation. However, we believe that the mental health trust obligation requires a rationally based legislative determination that the current needs of the state mental health program are met before trust money is expended for another purpose. We do not know whether past appropriations for the mental health program would be found to have satisfied this requirement.

(3) transfer of money to the mental health trust fund until the fund has received money equaling the fair market value of the trust lands.

We believe that these measures would satisfy the state's obligation under the Alaska Mental Health Enabling Act, while retaining flexibility as to the use of money in the mental health trust fund. At present, AS 37.14.040 provides that the principal of the fund shall be reinvested, and the income of the fund may be appropriated only for the support of a state mental health program. This section is much more restrictive than the federal trust obligation would require. Any restriction on the use of money beyond that required by federal law may violate the Alaska constitutional prohibition on dedicated funds.

We also note that the current statute requires that money be appropriated into the mental health trust fund. AS 37.14.050. Once in the fund, it must again be appropriated before it can be spent. The dual appropriation requirement is unnecessary to satisfy the federal trust obligation. In fact, it makes compliance with the federal trust obligation more difficult, by interposing the appropriation requirement before money can be placed in the fund. Money may be placed in the fund without an appropriation to the extent required by federal law, without violating our dedicated fund provision. We recommend direct transfer of money to the mental health trust fund until the fund reaches an amount indicated by an appraisal of the mental health trust lands. Under the terms of the federal law, the legislature may use money in the fund for any public purpose, once it has determined that the needs of the mental health program in the state have been met. This determination must be made by the legislature and must have a rational basis.

HB 151 and SB 710 each contain provisions consistent with some of our recommendations. HB 152 and SB 711 each contain appropriations to the mental health fund. We hope that our comments are helpful in the legislative consideration of these bills. Please let us know if we may be of further assistance in this matter.

The third alternative which may be pursued along with either one of the first two is to seek repeal of the Alaska Mental Health Enabling Act by Congress. If the restrictions of the trust unreasonably interfere with the prudent management of state resources and are unnecessary to ensure adequate funding of mental health treatment programs in the state, then Congressional repeal of the Alaska Mental Health Enabling Act may be

appropriate. We cannot advise you on the likelihood of obtaining such a repeal. However, we expect that Congress would be more favorably disposed toward the state if our actions demonstrated a commitment to carrying out our obligations under the Alaska Mental Health Enabling Act.

Very truly yours,

WILSON L. CONDON
ATTORNEY GENERAL

By: Laura L. Davis
Laura L. Davis
Assistant Attorney General

LLD/pjg

cc: Hon. Charles Parr
Alaska State Senate

Carole Burger
Office of the Governor

SB 710 file

STATE OF ALASKA

JAY S. HAMMOND, GOVERNOR

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

POUCH K – STATE CAPITOL
JUNEAU, ALASKA 99811
PHONE: (907) 465-3600

May 19, 1982

Senator Don Bennett, Co-Chairman
Senator M.E. Dankworth, Co-Chairman
Senate Finance Committee
Alaska State Legislature
Pouch V
Juneau, AK 99811

Re: CSSB 710 (Res)
Mental health trust lands
Our file: 366-674-82

Dear Senators Bennett and Dankworth:

This will summarize my oral testimony yesterday on CSSB 710 (Res). The mental health trust fund as established under AS 37.14.010, and as amended by this bill, differs from the trust established by the federal Mental Health Enabling Act (P.L. 84-830, § 202, 70 Stat. 709, July 28, 1956) in at least two ways.

First, the present state law provides for a continuing deposit of a fixed percentage of certain revenues from state lands, without reference to a maximum amount. This deposit is contingent on annual appropriations which have never been made. CSSB 710 (Res) would amend AS 37.14 to provide for a dedication to be effective without annual appropriations. Since there is no basis for determining when the money dedicated will equal the fair market value of the lands which were granted to the state for this trust, and there are no provisions for terminating the dedication, the fund will at some point exceed the value of the federally-created trust.

Second, under present state law, the principal of the trust is to be reinvested and the income may be spent only for mental health needs. CSSB 710 (Res) would amend AS 37.14 to permit the income to be spent for other public purposes after mental health needs are met. The federal law permitted the territory to use or dispose of any property in the trust and to use the proceeds first for mental health, and then for other public purposes. Both of these differences raise questions under our constitution.

Our constitution prohibits the dedication of any state "tax or license" except for those dedications existing at

ratification of the constitution or required by federal law. Alaska Const., art. IX, § 7. This prohibition has been construed by the recent Alaska Supreme Court decision in State v. Alex, ___ P.2d ___ (Alaska No. 2488, April 23, 1982). The court held that the dedication of salmon assessments to the regional aquaculture associations was prohibited since the court interpreted "tax or license" to mean "any source of revenue." State v. Alex at 20. We conclude that the constitutional prohibition probably applies to the dedication of revenues from state lands.

Presently, there is no dedicated fund for mental health, since money must be appropriated into the fund. CSSB 710 (Res) would amend AS 37.14 to provide for a dedication of certain state revenues. This dedication is intended to supplant the federally-created land trust. It is not entirely clear whether this is a valid dedication required by federal law. To the extent that the dedication of revenue exceeds the value of lands granted under federal law, we believe it would be unconstitutional. This problem may be avoided by providing for an appraisal of the fair market value of the lands selected by the state under the federal Mental Health Enabling Act, and terminating the dedication when that amount has been deposited.

In addition, the restriction of use of the principal of the fund to reinvestment is added by state law. Under the federal statute, the territorial legislature was to use any proceeds of the trust first for mental health and then for other public purposes. (Sen. Rep. No. 2053, 84th Cong., 2d Sess., 1956 U.S. Code Cong. Admin. News at 3639.) The trust lands could be leased or sold to produce revenue. It may be argued that this additional restriction does not violate the dedicated fund prohibition because it does not restrict the revenue available for appropriation by future legislatures. It merely restricts the use of money which has already been dedicated under authority of a federal statute.

However, it could also be argued that this additional restriction of the use of principal does violate our dedicated fund prohibition because it goes beyond the dedication required by federal law. The supreme court has not given any guidance on this issue and we cannot advise with certainty on how it would be resolved. The problem may be avoided by permitting the principal as well as income of the mental health trust fund to be appropriated first for mental health needs and then for other public purposes.

The present law, adopted in 1978, avoids these questions by requiring that money be appropriated into the fund.

However, the failure of the legislature to make appropriations to the fund has raised questions as to the state's obligations under the federal Mental Health Enabling Act. These questions are discussed more fully in our memorandum of February 8, 1982 to Representative Hugh Malone, a copy of which is attached. CSSB 710 (Res) woud change the state law to parallel the federal Mental Health Enabling Act more closely. If amended as suggested above, it would also avoid questions under our constitutional dedicated fund prohibition.

We hope that this answers your questions.

Sincerely yours,

WILSON L. CONDON
ATTORNEY GENERAL

By: Laura L. Davis
Assistant Attorney General

LLD/pjg

cc: All members of the Senate
Finance Committee

Hon. Charles Parr

Nancy - shallus:

ALASKA MENTAL HEALTH ASSOCIATION

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Telephone 276-1705
A Division of the National Mental Health Association

January 5, 1982

Senator Charles Parr
Alaska State Legislature
Pouch V (MS 3100)
Juneau, Alaska 99811

Dear Senator Parr:

As a Legislator long recognized as an advocate for mental health services in Alaska, we call upon you with the hope that you will take an active role in the Senate this session to press for passage of HBs 151 and 152, which finally will rectify a longstanding noncompliance of a trust given the State and not honored up to this time.

For your information and convenience, we have prepared a short resumé of the history of this public trust mandated by the United States Congress and virtually ignored for twenty-five years.

Your active participation in resolving the Mental Health Lands Trust issue this session will negate the necessity of our proceeding with a suit in the Federal Court and will make possible the provision of the necessary mental health programs as intended in the Congressional Act.

Thank you for your consideration in this vital matter.

Sincerely yours,

Natalie

Natalie Gottstein
Executive Director

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A PUBLIC TRUST

During the 1950's, when Alaska was in the process of becoming a state, the United States Congress granted the Territory 1,000,000 acres of land to be managed as a public trust to provide funds for Alaska's mental health program. This grant represents a unique approach to the funding of mental health services in the United States, but the benefits of this legacy have never been realized by the mentally ill of Alaska.

The legislative language, when reviewed, seems to be fairly straightforward. The facts are as follows:

1956 · Public Law 880, Title II, Sec. 202:

(a) "The Territory of Alaska is hereby granted and shall be entitled to select.....not to exceed one million acres.....

(b) ".....The authority to make selections shall never be alienated or bargained away, in whole or in part.....

(c) "All grants made or confirmed under this section shall include mineral rights.....

(d) .....

(e) "All lands granted to the Territory of Alaska under this section, together with the income therefrom and the proceeds from dispositions thereof, shall be administered by the Territory of Alaska as a public trust and such proceeds and income shall first be applied to meet the necessary expenses of the mental health program of Alaska....."

In 1958, the Alaska Statehood Act was passed and confirmed the legality of this grant of land:

1958 Public Law 85-508, Alaska Statehood Act, Sec. 6:

(k) "Grants previously made to the Territory of Alaska are hereby confirmed and transferred to the State of Alaska upon its admission..... for the purposes for which they were reserved;"

The lands were promptly selected and patented, but a trust fund was not established. The lands were sold, traded, leased; and the proceeds were placed in the General Fund. The lands were managed by the Division of Lands for the general public good, without specific reference to supporting the mental health program. As a consequence, Mental Health Land was placed in State Parks, the Auke Bay Community College, the Eagle River Correctional Center, fish hatcheries, church camps, etc., were built on Mental Health Land. Portions of this land were traded to municipalities and individuals.

These lands were of enormous value. They included miles of beach property in Southeast Alaska, thousands of acres of prime forest land, portions of Iron Mountain near Haines, six sections of the Beluga Coal Fields, and commercially valuable property surrounding Sitka, Juneau, Ketchikan, and other communities of Southeast Alaska. In fact, the value of these lands was so great, everyone wanted them for their owm purposes.

A Mental Health Land Board was created in 1976. The Land Board's experience with the Division of Lands, the agency directly involved in managing the lands, was disappointing. The revenue from the lands amounted to about three dollars per acre because of the management philosophy. The Division of Lands could not provide the Board with adequate accounting of the lands. It was discovered that lands had been traded for other undesignated properties -- which meant that the State "owed" some acreage to the Mental Helath Lands. The Division had created a device called the "Interagency Land Management Agreement". We have learned that the University of Alaska was "managing" the Auke Bay property by building its facility on Mental Health Land -- rent free. It was a classic case of the "fox guarding the hen house". It became apparent in 1978, when the Native claims were being finalized and municipalities were selecting properties, that a decision had to be made.

The Mental Health Land Board advocated the creation of a strong trust, with an administrative board with sufficient staff to be directly responsible for the management of the lands. The Board met with the leaders in the Legislature, the Governor and his Commissioners, and other interested parties.

The solution the Legislature agreed upon was to "redesignate and dispose" of all Mental Health Lands and to create a mental health trust fund, which would receive a percentage of the State's revenues.

1978 A NEW LAW WAS PASSED -- Chapter 181:

Section 1. Redesignation and Disposal of Mental Health Land.....

Sec. 37.14.010 "Mental Health Fund Established."

Sec. 37.14.020 "Mental Health Advisory Board Created."

Sec. 37.14.050 "Contribution: -- The Commissioner of the Department of Revenue shall transfer to the fund, subject to legislative appropriation...a sum equal to one and one-half percent of the total revenue derived from the management of State land....."

The result of the new law is as follows:

1979 -- No money -- No Board meeting

1980 -- No money -- No Board meeting

1981 -- No money -- No Board meeting

The University of Alaska, which also received a land grant in 1956

(150,000 acres), did not accept this new law and filed a limited lawsuit in 1978, which they won in 1980.

The University sued over the inclusion of some of their land in the Chugach State Park. (Mental Health Land was also included in this State Park.) The University was never compensated for this land and was prohibited from using it for University purposes. The fact of the case was never disputed. In the process, the State's basic position on all trust lands was revealed through this lawsuit. It argued that such lands can be used for other public purposes without paying compensation. The judge disagreed. As a consequence of this victory, the University is now in the process of a much larger suit to force the State to recognize the trust obligation it has ignored for the last twenty-five years.

In 1981, the Attorney General, Wilson L. Condon, stated in a formal opinion, "It can also be argued, perhaps even successfully, that Congress created a trust when it passed the Mental Health Lands Act .....But the Legislature's appropriating the proper amount of money to a trust fund would cure any problem....." At the same time, HBs 151 and 152 were introduced in an effort to finally begin to honor the State's obligation to the mentally ill. HB 152 appropriates something over $84,000,000.00 to the Mental Health Trust Fund, the sum deemed owed since the fund was created in 1978. The other bill, HB 151, provides for the oversight of this fund and its income. These bills are still in the Legislature and if they are not passed in the current session, will die in committee.

When this subject was reviewed by the administrative staff of the Anchorage Community Mental Health Center, they commented, "It is obvious that public officials who have been charged with responsibility for the Mental Health Trust Fund, in effect, have disinherited those who should now, and in the future, benefit from the trust." "This issue is more than an economic or political issue, it is a serious moral issue, which should be the concern of every thoughtful citizen of this state and of this nation."

The Alaska Mental Health Association has been actively working towards a solution of this problem since 1973. We don't believe it is possible for the mentally ill to receive a grant of such enormous value in 1956 and have nothing to show for it in 1981. The situation has become critical. Every year that passes results in more lost revenue and moves us closer to the point where Alaska might find it extremely painful to meet its obligation.

We feel we must have some progress towards a solution of this problem during this legislative session. At the very least, the one and one-half percent of State revenues owed since 1978 should be appropriated to bring the fund up to date. In addition, Chapter 181, Sec. 37.14.050 should be ammended to provide for the automatic transfer of the revenues into the fund on a monthly basis.

Our experience of the last twenty-five years has taught a lesson which we believe everyone should recognize. The original intent of the Mental Health Land Grant will never be realized if the oversight of this trust fund is left to the bureaucrats. We strongly believe that the governance of this fund and of the mental health program requires the

involvement of a trust Board with sufficient citizen involvement to assure integrity and objectivity in their management. We believe this type of oversight to be acceptable and appropriate and would like to call your attention to the fact tha. the State of Texas has a similar Board included in the administration of its mental health program.

We earnestly request your assistance in the resolution of this long-standing injustice during the current legislative session.

Sincerely yours,

The Alaska Mental Health Association by

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Natalie Gottstein
Executive Director

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* Sec. 4. AS 38.05.290 is amended by adding a new subsection to read:

(b) Consistent with the best interests of the state in the selection of general grant land it is the policy of the state to make available the maximum land area from which municipalities may fulfill land entitlements under AS 29.18.201 - 29.18.213.

* Sec. 5. AS 29.18.190, 29.18.200, and 29.18.420 are repealed.

* Sec. 6. REPORT. Within 30 days after the convening of each regular session of the Eleventh and Twelfth Legislatures and the first regular session of the Thirteenth Legislature, the director of the division of lands shall report to the legislature on the implementation of AS 29.18.201 - 29.18.213 in sec. of this Act.

* Sec. 7. This Act takes effect July 1, 1978, except that AS 29.18.208, enacted by sec. 2 of this Act, takes effect July 1, 1980.

Approved by the Governor: July 18, 1978
Actual Effective Date: July 1, 1978 (except AS 29.18.208 (sec. 2) effective July 1, 1980)

LAWS OF ALASKA

1978

Source: FCCS SCS CSHB 720

Chapter No. 181

AN ACT

Relating to the disposal of state land; and providing for an effective date.

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

* Section 1. DESIGNATION OF LAND FOR DISPOSAL. (a) The director of the division of lands in the Department of Natural Resources shall, no later than November 1, 1978, designate 30,000 acres of state land for disposal under the homesite entry program established in AS 38.08 and the open-to-entry program established in AS 38.05.077.

(b) Not less than 25 per cent of the former mental health land described in sec. 3(a) of this Act which is located within a municipality entitled to select land under AS 29.18 shall be designated for disposal in fiscal year 1979 under AS 38.04.020 enacted in sec. 5 of this Act. A municipality may select that former mental health land to satisfy its entitlement under AS 29.18 but title to the land may not be transferred to the municipality by the director until the governing body of the municipality certifies that disposal programs will be undertaken by the municipality which will meet the needs of persons residing in the municipality.

* Sec. 2. ASSESSMENT OF SUPPLY AND DEMAND OF LAND. (a) The director of the division of lands in the Department of Natural Resources shall assess the supply and demand for land under the homesite entry program established in AS 38.08 and the open-to-entry program established in AS 38.05.077. The assessment shall be based on applications submitted by persons in the state who are eligible to participate in those disposal programs. The applications shall be made on forms supplied by the division of lands which shall be available to the public at each district office of the division of lands in the state. The applications shall contain provisions so that each person may indicate a preference for the type of disposal program that best suits his

needs. To the extent possible, the director of the division of lands shall determine by region of the state which disposal program or combination of programs specified in this subsection is suited to the differing needs of eligible persons residing in that region.

(b) The closing date for the initial determinations of eligibility is October 1, 1978. The director of the division of lands in the Department of Natural Resources shall determine the eligibility of persons submitting applications and before November 1, 1978, advise them whether they are eligible to participate in disposals under AS 38.08 or AS 38.05.077. Persons determined to be ineligible shall be advised of the reason for their disqualification and the actions they may take to establish eligibility. The director shall compile a master list of all persons found to be eligible to participate in the disposals specified in (a) of this section. The master list shall be revised at regular intervals after the initial determination period so that it accurately reflects the eligibility of applicants.

(c) The director of the division of lands shall present to the legislature the plan for the disposal of land under the programs specified in (a) of this section. The plan shall be submitted not later than the 15th day of the First Session of the Eleventh Legislature. The plan shall set out the location of the land for disposal and the amount of acreage to be included in each program.

* Sec. 3. REDESIGNATION AND DISPOSAL OF MENTAL HEALTH LAND: (a) Land granted to the state under the Mental Health Enabling Act of 1956, 70 Stat. 709, and patented to or approved for patent to the state on July 1, 1978 and land designated as mental health land which was received by the state in exchange for land granted under that federal land grant is redesignated as general grant land and shall be managed and disposed of by the Department of Natural Resources under applicable provisions of law.

(b) The redesignation of mental health land in (a) of this section does not affect the validity of a deed, contract for sale, lease, easement, right-of-way, permit, mineral lease disposal, or a reservation for public use of that land by statute, in effect before July 1, 1978 or land management actions including use classifications under AS 38.05.300, and interagency land management assignments of that land made by the Department of Natural Resources before July 1, 1978.

* Sec. 4. AS 37 is amended by adding a new chapter to read:

CHAPTER 14. MENTAL HEALTH FUND.

Sec. 37.14.010. MENTAL HEALTH FUND ADVISORY BOARD CREATED. (a) There is created in the Department of Revenue the Mental Health Fund Advisory Board composed of the director of the division of mental health, the chairman of the Mental Health Advisory Council, and the commissioner of the Department of Revenue.

(b) The board shall elect a chairman from the membership of the board. Members serve without compensation but are entitled to per diem and travel expenses authorized by law for other boards.

Sec. 37.14.020. POWERS AND DUTIES OF BOARD. The board has the following powers and duties:

(1) to hold regular meetings and special meetings considered necessary;

(2) to have prepared an annual accounting of the total principal and income of the mental health fund established in sec. 30 of this chapter;

(3) to prepare long-range investment plans for the fund established in sec. 30 of this chapter.

Sec. 37.14.030. MENTAL HEALTH FUND ESTABLISHED. (a) There is established as a separate fund the mental health fund.

(b) The principal of the fund consists of sums transferred under sec. 70 of this chapter.

(c) The income of the fund consists of the interest and dividends earned from investments of the fund under sec. 60 of this chapter.

Sec. 37.14.040. DUTIES OF COMMISSIONER OF REVENUE. The commissioner of revenue is the treasurer of the fund and shall

(1) act as official custodian of the cash and securities belonging to the fund and provide adequate safe deposit facilities for them;

(2) receive cash belonging to the fund;

(3) collect the principal on securities acquired for the fund and deposit it in the fund;

(4) collect interest and dividends earned on investments of the fund and credit the income account of the fund;

(5) invest and reinvest the principal of the fund in accordance with sec. 60 of this chapter.

Sec. 37.14.050. FUND UTILIZATION. The principal of the fund shall be retained in the fund for investment as specified in sec. 60 of this chapter. The income of the fund may not be appropriated for a purpose other than the support of the state mental health program.

Sec. 37.14.060. INVESTMENTS. (a) The commissioner of revenue, with the approval of the board, may invest the principal of the fund in the same manner specified in AS 39.35.110 for the investment of surplus pension funds.

(b) The commissioner of revenue may

(1) invest and reinvest the principal of the fund;

(2) sell, exchange, convey, transfer, or otherwise dispose of an investment of the fund by private

contract or at public auction;

(3) vote upon a stock, bond, or other security; give a general or special proxy or power of attorney with or without power of substitution; exercise a conversion privilege, subscription right, or other option and make payments incidental to it; consent to or participate in a corporate reorganization or other change affecting corporate securities, delegate discretionary power, pay an assessment or charge in connection with the delegation; and generally exercise any of the powers of an owner with respect to stocks, bonds, securities, or other investments held in the fund;

(4) make, execute, acknowledge, and deliver documents of transfer and conveyance and instruments necessary or appropriate to carry out the powers granted;

(5) register investments held in the fund in the name of the board;

(6) do all acts whether or not expressly authorized which are considered proper for the protection of the investments held in the fund.

Sec. 37.14.070. CONTRIBUTIONS. During each fiscal year the commissioner of the Department of Revenue shall transfer to the fund a sum equal to one and one-half per cent of the total receipts derived from the management of state land, including amounts paid to the state as proceeds of sale or annual rent of surface rights, mineral lease rentals, royalties, royalty sale proceeds, and federal mineral revenue sharing payments or bonuses.

Sec. 37.14.080. DEFINITIONS. In this chapter,

(1) "board" means the Mental Health Fund Advisory Board;

(2) "fund" means the mental health fund established in sec. 30 of this chapter.

* Sec. 5. AS 38 is amended by adding a new chapter to read:

CHAPTER 4. POLICY FOR USE AND CLASSIFICATION OF STATE LAND SURFACE.

ARTICLE 1. PUBLIC AND PRIVATE LAND USE.

Sec. 38.04.005. POLICY. (a) In order to provide for maximum use of state land consistent with the public interest, it is the policy of the State of Alaska to plan and manage state-owned land to establish a balanced combination of land available for both public and private purposes. The choice of land best suited for public and private use shall be determined through the inventory, planning, and classification processes set out in secs. 60 - 70 of this chapter.

(b) In classifying state land for private use and settlement purposes, the director shall make adequate provision for public open space which is accessible to communities so that natural areas are easily reached from all communities and settled areas. The amount of that land

shall be sufficient to meet existing and projected needs for accessible public recreation land. Special care shall be taken to preserve public access to public water and to retain state ownership of sufficient land which combine high value for recreation and other public purposes with accessibility to settled areas. This classification for public purposes does not constitute dedication to open space, but the division's management of land so classified shall be in a manner to preserve the identified values.

(c) In allocating land for private use and public retention, the requirements of future generations shall be considered. To this end, a supply of state land of a variety of types and locations shall be reserved to provide an opportunity for future decisions.

(d) Private land use rights are integral to the material well-being of the people of Alaska and our society.

(e) Involvement of municipalities and local residents is essential in the decision-making process which leads to making state land available for private use.

Sec. 38.04.010. PUBLIC INTEREST IN MAKING LAND AVAILABLE FOR PRIVATE USE. (a) The primary public interest in conveying rights to state land surface to private parties is to make them available to individuals and other persons for direct use in areas classified as suitable for these purposes. In making state land available for private use, the director shall seek to guide year-round settlement to areas where public services already exist, or can be extended with reasonable economy, or where development of a viable economic base is probable.

(b) State land which is located beyond the range of existing schools and other necessary public services, or which is located where development of sources of employment is improbable, may be made available for seasonal recreational purposes or for low density settlement, with sufficient separation between residences so that public services will not be necessary or expected.

Sec. 38.04.015. PUBLIC INTEREST IN RETAINING STATE LAND IN PUBLIC OWNERSHIP. The primary public interests in retaining areas of state land surface in public ownership are

(1) to make them available on a sustained-yield basis for a variety of beneficial uses including subsistence, energy development, aquaculture, forestry, grazing, sport hunting and fishing, hiking, snowmobiling, skiing, and other activities of a type which can generally be made available to more people and conducted more successfully if the land is in public rather than private ownership;

(2) to facilitate mining and mineral leasing by managing appropriate public land for surface uses which are compatible with subsurface uses;

(3) to protect critical wildlife habitat and areas of special scenic, recreational, scientific, or other environmental concern;

(4) to restrict development in hazardous locations such as floodplains and avalanche zones; and

(5) to guide the location of settlement and development to minimize public costs and maximize social and economic benefits.

ARTICLE 2. LAND AVAILABILITY FOR PRIVATE USE.

Sec. 38.04.020. TIMING AND AMOUNT. On a continuing annual basis, the director shall make available for private use an array of state land suitable for a variety of uses. During fiscal year 1979, the director shall make available a minimum of 50,000 acres, not more than 10 per cent of which may be made available for leasing and 30,000 acres of which shall be for disposal under the homesite entry program established under AS 38.08 and the open-to-entry program established under AS 38.05.077 based upon a statewide assessment of supply and demand for land conducted under sec. 2 of this Act. Annually thereafter, the following three options for the state land availability program shall be submitted to the legislature along with the administration's budget: an increased-level program, a current-level program, and a reduced-level program. At least one option shall include at least 50,000 acres.

Sec. 38.04.025. VARIETY OF USES. In making state land available for private use, the director shall endeavor to accommodate persons with a current need and anticipated use for the land. To this end, the director shall assess the nature of the supply and demand for state land in different regions and locations of the state, taking into account the supply of available land under other ownership, and shall make land available in locations and under programs suited to the differing needs of prospective users throughout the state.

Sec. 38.04.030. LAND AVAILABILITY PROGRAMS. Programs which may be used by the director to make the state's land surface available for private use under this section include sale of whole or partial rights to the fee simple estate, including conveyance of agricultural use rights; leasing; open-to-entry; homesiting; homesteading; permitting for construction and occupation of cabins in isolated locations on land retained in state ownership; and other methods as provided by law.

Sec. 38.04.035. CRITERIA FOR PROGRAM SELECTION. In determining which land availability program is appropriate for state lands in different locations, the director shall be guided by the following criteria:

(1) To cover public costs associated with private land use and to provide the public with a fair return for publicly owned property, conveyance of state land to private parties should be at fair market value except where otherwise authorized by statute, or by an administrative regulation the adoption of which is specifically permitted by statute.

(2) Sale or lease programs should be used where land is readily accessible to a major community center or

where, because of a prime location on waterfront or a transportation route or some other location characteristic, land has relatively high real estate value.

(3) Sale programs are preferred but lease programs should be used

(A) where special land use controls are required and there is a high public interest in having certain types of land used for particular purposes;

(B) when the intended use is a temporary one;

(C) in commercial or industrial situations when a leasehold can provide cash flow advantages to the lessee;

(D) when a unique location with special public values is involved, as in a deep water port, hydroelectric site, or aquaculture facility;

(E) where current demand for private use is high, but projections suggest that, in the future, the land may be more valuable for public use, as in accessible waterfront recreation areas.

(4) For enabling isolated cabin development in remote locations where survey and conveyance is impractical, a system for cabin permits on public land may be used.

(5) Limited or conditional title may be granted when the state's best interest so dictates. Among other things, title limitations may include grants of agricultural interest only, retention of development rights, and retention of scenic or other easements. A conditional title may be tied to a development schedule or other standards of performance.

Sec. 38.04.040. AVAILABILITY OF SCHOOL LAND AND UNIVERSITY LAND. School land and university land may be made available at fair market value for private use under the purposes of this chapter; however, any action to do so shall be in accordance with statutes pertaining to these lands and the authority of the Board of Education and the Board of Regents of the University of Alaska.

Sec. 38.04.045. SURVEY AND SUBDIVISION. (a) State land to be conveyed in fee simple or less than fee simple estate shall be subdivided so that lots and tracts are of a size which fits the requirements of individual users and reflects the physical characteristics of the land, except that in locations where there is an inadequate margin between the demand for and the supply of vacant land, the state may make land available for private acquisition in parcels that are larger than required for individual use.

(b) Before the conveyance of surface rights to state land, an official cadastral survey shall be accomplished, unless a comparable, acceptable survey exists that has been conducted by the federal Bureau of Land Management. The rectangular survey section corner positions shall be

monumented and shown on a cadastral survey plat approved by the state. However, for those areas where the state may wish to convey surface estate outside of an official cadastral survey grid, the director may waive monumentation of all individual section corner positions and substitute an official control survey with control points being monumented at approximately two-mile intervals and shown on control survey plats approved by the state. No portion of land to be conveyed may be located more than two miles from such a survey control monument. The lots and tracts in state subdivisions shall be monumented and the cadastral survey and plats for the subdivision shall be approved by the state. Where land is located within a municipality with planning, platting, and zoning powers, plats for state subdivisions shall comply with local ordinances and regulations in the same manner and to the same extent as plats for subdivisions by other landowners. State subdivisions shall be filed in the district recorder's office. The requirements of this section do not apply to land made available through a cabin permit system, material sales, or short-term leases; however, for short-term leases the lessee must comply with local subdivision ordinances unless waived by the municipality under procedures specified by ordinance.

Sec. 38.04.050. ACCESS TO PRIVATE USE AREAS. Wherever state land is surveyed for purposes of private use, adequate rights-of-way and easements shall be reserved as necessary for access and, where appropriate, for power and telephone service to each parcel of land. Where necessary and appropriate for the use intended, the director shall arrange for the development of surface access as part of the land availability program. The direct cost of local access development shall be borne by the recipient of the land unless otherwise provided by state statutes or regulations.

Sec. 38.04.055. ACCESS THROUGH PRIVATE USE AREAS. The director shall reserve easements and rights-of-way on and across land which is made available for private use as necessary to reach or use public water and public and private land.

ARTICLE 3. INVENTORY, PLANNING, AND CLASSIFICATION.

Sec. 38.04.060. INVENTORY. (a) The commissioner shall prepare and maintain on a continuing basis an inventory of all state land and water and their resource and other values, giving priority to areas of potential settlement, economic development, and critical environmental concern. This inventory shall be kept current so as to reflect changes in conditions and to identify new and emerging resource and other values.

(b) The commissioner's inventory shall include land and water under interagency assignment of land management authority and land and water proposed for such an assignment. That land and water must be reviewed at regular intervals to analyze current and proposed uses as these uses relate to alternative uses for all or part of the land and to determine the uses which best provide for the public interest.

(c) As funds and manpower are made available, the

commissioner shall provide local and federal governments and major private landowners with data from the inventory for the purpose of planning and managing the uses of land in proximity to state land.

Sec. 38.04.065. LAND USE PLANNING AND CLASSIFICATION. (a) The commissioner shall, with local governmental and public involvement in accordance with AS 38.05.305, develop, maintain and, when appropriate, revise land use plans which provide, by regions or areas, for the use of the state-owned land.

(b) In the development and revision of land use plans, the commissioner shall

(1) use and observe the principles of multiple use and sustained yield;

(2) consider physical, economic, and social factors affecting the region or area and involve other agencies and the public in achieving a systematic interdisciplinary approach;

(3) give priority to planning and classification in areas of potential settlement and critical environmental concern;

(4) rely, to the extent that it is available, on the inventory of the state land, its resources, and other values;

(5) consider present and potential uses of state land;

(6) consider the supply, resources, and present and potential use of land under other ownership within the area or region of concern;

(7) plan for compatible surface and mineral land use classifications; and

(8) provide for meaningful participation in the planning process by affected local governments, state and federal agencies, adjacent landowners, and the general public.

(c) As a basis for more detailed land use planning and classification, the commissioner shall develop regional land use plans for the use of all state land. These regional plans shall identify and delineate

(1) areas of settlement and settlement impact, where land must be classified for various private uses and for public recreation, open space, and other public uses desirable in and around settlement; and

(2) areas which must be retained in state ownership and planned and classified for various uses and purposes in accordance with sec. 15 of this chapter.

(d) Official regional or area plans and subsequent amendments adopted by the commissioner after public and

local governmental participation shall be signed and dated by the commissioner. Land classifications shall be made in accordance with these official plans.

(e) Land shall be classified as provided in AS 38.05.-300.

(f) Decisions about the location of easements and rights-of-way, other than for minor access, shall be integrated with land use planning and classification for the appropriate area or region.

(g) Land use plans adopted by the commissioner under this section shall be consistent with local governmental land use plans to the maximum extent he determines to be consistent with the state interests and the purposes of this chapter.

Sec. 38.04.070. MANAGEMENT CATEGORIES. State land classified for uses and purposes involving retention in public ownership may be included in the following management categories:

(1) state public reserve lands: areas of public land to be maneged for a wide variety of compatible uses and purposes in accordance with the principles of multiple use and sustained yield; land designated to this category may include, but need not be limited to, state forest reserves and state wildlife reserves as well as land classified for public purposes within settlement impact areas;

(2) state parks: areas with special recreational, scenic, cultural, historical, wilderness, or similar values, to be managed primarily for the public use and enjoyment of these values;

(3) state trails: a system of public historic or recreational trails;

(4) wild and scenic rivers: a system of rivers and adjacent state land with special natural, scenic, and recreational values located within or adjacent to a wild and scenic river area managed as part of the national system of wild and scenic rivers in accordance with the federal Wild and Scenic Rivers Act (82 Stat. 906; 16 U.S.C. 1271 et seq.);

(5) state public domain: land within areas designated on regional plans as settlement and settlement impact which are not part of the management categories listed in (1) - (4) of this section; through classification, this land may be made available for private use, settlement, and development as well as for public uses associated with settlement and development.

ARTICLE 4. GENERAL PROVISIONS.

Sec. 38.04.900. REGULATIONS. (a) The commissioner shall adopt under the Administrative Procedure Act (AS 44.62) regulations he believes are necessary to carry out the purposes of this chapter. Within 120 days after the effective date of this Act, the director shall submit to the

commissioner draft regulations implementing this chapter and revising regulations in effect on the effective date of this Act pertaining to planning, classification, management, and disposal of the state's surface estate in land. New and revised regulations shall be integrated in a single comprehensive draft compatible with the structure of the Alaska Administrative Code. In preparing this draft, the director shall seek to simplify and clarify regulations governing land planning, classification, management, and disposal.

(b) A municipality has standing to petition the commissioner for the adoption of a regulation, or for the amendment or repeal of an existing regulation, or to appeal a decision of the commissioner with respect to classification, management, or disposal of land made under authority of a regulation adopted under (a) of this section with respect to state land outside the corporate boundaries of the municipality to protect any interest which the municipality is authorized to regulate outside its boundaries under AS 29.48.037.

(c) If the regulations adopted by the commissioner under (a) of this section fail to provide for a process by which decisions of the commissioner may be appealed, an interested person may petition for reconsideration of a decision. The petition shall contain the information required to be submitted by AS 44.62.220 and shall be acted upon by the commissioner in the manner provided in AS 44.-62.230. For purposes of this section, a municipality is an interested person with respect to its interests in land defined in (b) of this section.

Sec. 38.04.910. DEFINITIONS. In this chapter, unless the context otherwise requires,

(1) "commissioner" means the commissioner of the Department of Natural Resources;

(2) "director" means the director of the division of lands of the Department of Natural Resources;

(3) "fair market value" means the price at which a willing seller and a willing buyer will trade;

(4) "multiple use" means the management of state land and its various resource values so that it is used in the combination that will best meet the present and future needs of the people of Alaska, making the most judicious use of the land for some or all of these resources or related services over areas large enough to provide sufficient latitude for periodic adjustments in use to conform to changing needs and conditions; it includes

(A) the use of some land for less than all of the resources, and

(B) a combination of balanced and diverse resource uses that takes into account the short-term and long-term needs of present and future generations for renewable and nonrenewable resources, including, but not limited to, recreation, range, timber, minerals, watershed, wildlife and fish, and natural scenic, scientific, and historic values;

(5) "official cadastral survey" means a United States public land survey or a survey executed under survey instructions issued by the division for the purpose of preparing a cadastral survey plat, and approved and accepted by the division for the state's official records;

(6) "official control survey" means a position marked on the ground by triangulation or traverse stations established in conformity with standards adopted by United States Coastal and Geodetic Survey for first, second and third order work, whose geodetic positions have been rigidly adjusted on the North American datum of 1927 and approved by the division;

(7) "short-term lease" means a lease for a term of five years or less;

(8) "state park" means an area of state land designated by law to be managed for public use and enjoyment of recreational, scenic, cultural, historical, wilderness, and similar values, including but not limited to areas designated under

(A) AS 41.20.050 - 41.20.060, roadside rests and recreational beaches;

(B) AS 41.20.130 - 41.20.160, 41.20.330 - 41.20.345, ch. 61 SLA 1966, and ch. 26 SLA 1967, state recreation areas;

(C) AS 41.20.170 - 41.20.320, state parks; and

(D) AS 41.35.030, state monuments and historic sites;

(9) "state trail" means an area designated by law to be managed as a public historic or recreational trail, including but not limited to

(A) trails designated under AS 41.20.070 - 41.20.120, wilderness trails and campsites; and

(B) trails and footpaths designated under AS 41.20.355 - 41.20.375;

(10) "sustained yield" means the achievement and maintenance in perpetuity of a high level annual or regular periodic output of the various renewable resources of the state lands consistent with multiple use;

(11) "wild and scenic river" means a free-flowing river or stream designated as provided in the federal Wild and Scenic Rivers Act (82 Stat. 906; 16 U.S.C. 1271-1287).

* Sec. 6. AS 38.05 is amended by adding a new section to read:

Sec. 38.05.057. LAND DISCOUNT PROGRAM. (a) The director shall grant to eligible persons a discount on the purchase price of land sold for residential use under this chapter at the rate of five per cent of the purchase price of the land purchased for each full year that the purchaser

is a resident of the state. A discount granted under this section may not exceed 50 per cent of the total purchase price of the land or a value of $25,000, whichever amount is less. A discount may be used by an eligible veteran to purchase land offered at a restricted sale under sec. 67 of this chapter.

(b) To be eligible for a discounted purchase price under (a) of this section, a person shall

(1) have been physically present in the state for the 12-month period before the sale, except for brief intervals, military service, attendance at an educational or training institution or for absence for good cause;

(2) maintain a place of residence in the state;

(3) be registered to vote in the state;

(4) not have claimed residence in any other state for any purpose during the 12-month period immediately before the sale;

(5) show by all attending circumstance that his intent is to make Alaska his continuous residence; and

(6) have attained the age of 18 at the date of sale.

(c) A person seeking to establish eligibility for a discount under this section shall present proof meeting the criteria set out in (b) of this section to the director. A person who submits information to the director under this section knowing it to be false is guilty of a felony and, upon conviction, is punishable by imprisonment for not more than five years, or by a fine of not more than $50,000, or by both.

(d) A person is entitled to not more than one discount on the purchase price of land under this section in his lifetime. A discount granted under this section may be applied only to the acquisition of surface rights to state land. A discount may not be applied to costs such as survey costs, road development costs, utility assessments, or other costs as determined by the director which are reimbursable to the state. In all cases, a cash down payment of at least five per cent of the price of the land shall be made at the time of acquisition.

(e) The commissioner may adopt regulations to implement the provisions of this section.

* Sec. 7. AS 38.08.010(a) is repealed and re-enacted to read:

(a) The director shall designate, classify and make available for homesite entry state land in amounts and at times as required in AS 38.04.020 or as may otherwise be required by law.

* Sec. 8. AS 38.08.010 is amended by adding a new subsection to read:

(d) The director shall, to as great an extent as possible, classify land for homesite entry based upon the distribution of population in the state.

* Sec. 9. AS 38.08.020 is amended to read:

Sec. 38.08.020. OFFERING OF LAND FOR HOMESITE ENTRY. The director shall publish notice of the availability of the land for at least three consecutive weeks through the electronic media and in at least three newspapers of general circulation in the state, at least one of which, if possible, shall be a newspaper of general circulation in the vicinity of the available land.

* Sec. 10. AS 38.08.030(a)(2) is amended to read:

(2) submit proof acceptable to the commissioner that he is a resident of the state at the time of application, and that he has been a resident of the state for not less than three years immediately preceding the date his application was submitted, or that he has been a resident for 20 years cumulatively;

* Sec. 11. AS 38.08.060(a)(2) is amended to read:

(2) erects a habitable, permanent, single-family dwelling on the homesite, which meets all applicable state and local regulations, within five years of the date of issuance of the homesite entry permit; for the purposes of this paragraph, mobile homes are not considered to be permanent dwellings unless they are placed on a permanent foundation;

* Sec. 12. AS 38.08.110 is amended to read:

Sec. 38.08.110. REGULATIONS. The commissioner shall adopt regulations in accordance with AS 44.62.180 - 44.62.290 to carry out the purposes of this chapter, including, but not limited to, regulations relating to easements and access routes.

* Sec. 13. AS 38.50.040 is amended to read:

Sec. 38.50.040. LAND SUBJECT TO EXCHANGE. Except as otherwise provided in this chapter, the director is authorized to convey for purposes of exchange any state land or interest in land regardless of the authority under which the land or interest was obtained by the state. The conveyance of university land and school land shall be approved in the manner prescribed in AS 38.05.030.

* Sec. 14. AS 38.50.110(a)(6) is amended to read:

(6) mail the notice to the appropriate board or other entity or person with approval authority as indicated in sec. 40 of this chapter and AS 38.05.030, when university land or school land is involved in the proposed exchange;

* Sec. 15. AS 38.05.035(a)(13), 38.05.365(8), and AS 38.08.-110(b)(1), (2), (3) and (5) are repealed.

* Sec. 16. Sections 3, 4, 13 and 14 of this Act and the

repeal of AS 38.05.035(a)(13) and 38.05.365(8) contained in sec. 15 of this Act take effect July 1, 1978.

* Sec. 17. Sections 1, 2, 5, and 6 - 12 of this Act and the repeal of AS 38.08.010(b)(1) - (3) and (5) contained in sec. 15 of this Act take effect immediately in accordance with AS 01.10.-070(c).

Approved by the Governor: July 18, 1978
Actual Effective Date: Secs. 3, 4, 13 and 14, July 1, 1978;
Secs. 1, 2, 5 - 12, and 15, July 19, 1978

LAWS OF ALASKA

1978

Source

FCCS CSSB 159

Chapter No.

182

AN ACT

Relating to state land; and providing for an effective date.

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

* Section 1. REDESIGNATION AND DISPOSAL OF MENTAL HEALTH LAND. (a) Land granted to the state under the Mental Health Enabling Act of 1956, 70 Stat. 709, and patented to or approved for patent to the state on July 1, 1978 and land designated as mental health land which was received in exchange for land granted under that federal land grant is redesignated as general grant land and shall be managed consistent with applicable provisions of law.

(b) Redesignation of mental health land in (a) of this section does not affect the validity of a deed, contract for sale, lease, easement, right-of-way, permit, mineral lease disposal, or a reservation for public use of that land by statute, in effect before July 1, 1978 or land management actions including use classifications under AS 38.05.300, and interagency land management assignments of that land made by the Department of Natural Resources before July 1, 1978.

* Sec. 2. REDESIGNATION AND DISPOSAL OF SCHOOL LAND. (a) Land granted to the state in sections 16 and 36 in each township surveyed before January 3, 1959 under the Act of March 4, 1915, 48 U.S.C. 353, and patented to or approved for patent to the state on July 1, 1978 and land designated as school land which was received in exchange for land granted under that federal land grant and land granted to the state as lieu or indemnity land is redesignated as general grant land and shall be managed consistent with applicable provisions of law.

(b) The redesignation of school land in (a) of this section does not affect the validity of a deed, contract for sale, lease, easement, right-of-way, permit, mineral lease disposal, or a

reservation for public use of that land by statute, in effect before July 1, 1978 or land management actions including use classifications under AS 38.05.300, and interagency land management assignments of that land made by the Department of Natural Resources before July 1, 1978.

* Sec. 3. REDESIGNATION AND DISPOSAL OF UNIVERSITY LAND. (a) Land granted to the state under 38 Stat. 1214, as amended, 48 U.S.C. 353, and the Act of January 21, 1929, 48 U.S.C. 354(a) which is held in the name of the University of Alaska on July 1, 1978 and land designated as university land which was received in exchange for land granted under those federal land grants is redesignated as general grant land and shall be managed consistent with applicable provisions of law.

(b) The redesignation of university land in (a) of this section does not affect the validity of a deed, contract for sale, lease, easement, right-of-way, permit, mineral lease disposal, or a reservation for public use of that land by statute, in effect before July 1, 1978 or land management actions including use classifications under AS 38.05.300, and interagency land management assignments of that land made by the Department of Natural Resources before July 1, 1978.

(c) Land in Section 6, Township 1 South, Range 1 West, Section 31, Township 1 North, Range 1 West, Section 1, Township 1 South, Range 2 West, and Section 36, Township 1 North, Range 2 West, Fairbanks Meridian granted under the Act of March 4, 1915, 48 U.S.C. 353, and all land used or occupied by the university and its associated facilities, community colleges, or subordinate campuses on or before July 1, 1978 shall be held in the name of the University of Alaska and shall be reserved and dedicated to use for the University of Alaska and title to that land shall be held by the university.

* Sec. 4. AS 37 is amended by adding a new chapter to read:

CHAPTER 14. TRUST FUNDS.

ARTICLE 1. MENTAL HEALTH FUND.

Sec. 37.14.010. MENTAL HEALTH FUND ESTABLISHED. (a) There is established as a separate fund the mental health fund.

(b) The principal of the fund established in (a) of this section consists of sums transferred under sec. 50 of this chapter.

(c) The income of the fund established in (a) of this section consists of the interest and dividends earned from investments of the principal of that fund under sec. 170 of this chapter.

Sec. 37.14.020. MENTAL HEALTH FUND ADVISORY BOARD CREATED. (a) There is created in the Department of Revenue the Mental Health Fund Advisory Board composed of the director of the division of mental health, the chairman of the Mental Health Advisory Council, and the commissioner of the Department of Revenue.

(b) The board created in (a) of this section shall elect a chairman from the membership of that board. Members

serve without compensation but are entitled to per diem and travel expenses authorized by law for other boards.

Sec. 37.14.030. POWERS AND DUTIES OF BOARD. The board created in sec. 20 of this chapter has the following powers and duties:

(1) to hold regular meetings and special meetings considered necessary;

(2) to have prepared an annual accounting of the total principal and income of the fund established in sec. 10 of this chapter; and

(3) to prepare long-range investment plans for the fund established in sec. 10 of this chapter.

Sec. 37.14.040. FUND UTILIZATION. The principal of the fund established in sec. 10 of this chapter shall be retained in that fund for investment as specified in sec. 170 of this chapter. The income of the fund may not be appropriated for a purpose other than the support of the state mental health program.

Sec. 37.14.050. CONTRIBUTIONS. During each fiscal year, subject to legislative appropriation of sufficient funds, the commissioner of the Department of Revenue shall transfer to the fund established in sec. 10 of this chapter a sum equal to one and one-half per cent of the total revenue derived from the management of state land, including amounts paid to the state as proceeds of sale or annual rent of surface rights, mineral lease rentals, royalties, royalty sale proceeds, and federal mineral revenue-sharing payments or bonuses.

ARTICLE 2. UNIVERSITY FUND.

Sec. 37.14.060. UNIVERSITY FUND ESTABLISHED. (a) There is established as a separate fund the university fund.

(b) The principal of the fund established in (a) of this section consists of

(1) the balance of the trust fund established in AS 14.40.400 on July 1, 1978; and

(2) sums transferred under sec. 100 of this chapter.

(c) The income of the fund established in (a) of this section consists of the interest and dividends earned from investments of the principal of that fund under sec. 170 of this chapter.

Sec. 37.14.070. UNIVERSITY FUND ADVISORY BOARD CREATED. (a) There is created in the Department of Revenue the University Fund Advisory Board composed of two members appointed by the Board of Regents of the University of Alaska from the membership of the Board of Regents, and the commissioner of the Department of Revenue.

(b) The board created in (a) of this section shall elect a chairman from the membership of that board.

Members serve without compensation but are entitled to per diem and travel expenses authorized by law for other boards.

Sec. 37.14.080. POWERS AND DUTIES OF BOARD. The board created in sec. 70 of this chapter has the following powers and duties:

(1) to hold regular meetings and special meetings considered necessary;

(2) to have prepared an annual accounting of the total principal and income of the fund established in sec. 60 of this chapter; and

(3) to prepare long-range investment plans for the fund established in sec. 60 of this chapter.

Sec. 37.14.090. FUND UTILIZATION. (a) The principal of the fund established in sec. 60 of this chapter shall be retained in the fund for investment as specified in sec. 170 of this chapter.

(b) The income from the fund established in sec. 60 of this chapter may not be appropriated for a purpose other than the support of programs of the University of Alaska.

(c) No part of the principal and income of the fund established in sec. 60 of this chapter may be used for the support of a sectarian or denominational college or school.

Sec. 37.14.100. CONTRIBUTIONS. During each fiscal year the commissioner of the Department of Revenue shall transfer to the fund created in sec. 60 of this chapter a sum equal to one-half of one per cent of the total receipts derived from the management of state land, including amounts paid to the state as proceeds of sale or annual rent of surface rights, mineral lease rentals, royalties, royalty sale proceeds, and federal mineral revenue-sharing payments or bonuses.

ARTICLE 3. PUBLIC SCHOOL FUND.

Sec. 37.14.110. PUBLIC SCHOOL FUND ESTABLISHED. (a) There is established as a separate fund the public school fund.

(b) The principal of the fund established in (a) of this section consists of

(1) the balance of the public school permanent fund on July 1, 1978; and

(2) sums transferred under sec. 150 of this chapter.

(c) The income of the fund created in (a) of this section consists of the interest and dividends earned from investments of the principal of that fund under sec. 170 of this chapter.

Sec. 37.14.120. PUBLIC SCHOOL FUND ADVISORY BOARD CREATED. (a) There is created in the Department of Revenue the Public School Fund Advisory Board composed of

the commissioner of the Department of Education, three members elected by the Board of Education from among its membership, and the commissioner of the Department of Revenue.

(b) The board created in (a) of this section shall elect a chairman from the membership of the board. Members serve without compensation but are entitled to per diem and travel expenses authorized by law for other boards.

Sec. 37.14.130. POWERS AND DUTIES OF BOARD. The board created in sec. 120 of this chapter has the following powers and duties:

(1) to hold regular meetings and special meetings considered necessary;

(2) to have prepared an annual accounting of the principal and income of the fund established in sec. 110 of this chapter; and

(3) to prepare long-range investment plans for the fund established in sec. 110 of this chapter.

Sec. 37.14.140. FUND UTILIZATION. The principal of the fund established in sec. 110 of this chapter shall be retained in the fund for investment as specified in sec. 170 of this chapter. The income of the fund may not be appropriated for a purpose other than for the support of public education programs.

Sec. 37.14.150. CONTRIBUTIONS. During each fiscal year the commissioner of the Department of Revenue shall transfer to the fund created in sec. 110 of this chapter a sum equal to one-half of one per cent of the total receipts derived from the management of state land, including amounts paid to the state as proceeds of sale or annual rent of surface rights, mineral lease rentals, royalties, royalty sale proceeds, and federal mineral revenue-sharing payments or bonuses.

ARTICLE 4. CUSTODY AND INVESTMENT OF TRUST FUNDS.

Sec. 37.14.160. DUTIES OF COMMISSIONER OF REVENUE. The commissioner of revenue is the treasurer of the funds created in secs. 10, 60, and 110 of this chapter and shall

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

(2) receive cash belonging to those funds;

(3) collect the principal on securities acquired for each fund established under secs. 10, 60, and 110 of this chapter and credit each fund accordingly;

(4) collect interest and dividends earned on investments of the funds established under secs. 10, 60, and 110 of this chapter and credit the income reserve account of each fund accordingly;

(5) invest and reinvest the principal of each

fund in accordance with sec. 170 of this chapter.

Sec. 37.14.170. INVESTMENTS. (a) The commissioner of revenue, with the approval of each advisory board created in secs. 20, 70, and 120 of this chapter, may invest the principal of the funds created in secs. 10, 60, and 110 of this chapter in the same manner as specified for the investment of surplus pension funds under AS 39.35.110.

(b) The commissioner of revenue may

(1) invest and reinvest the principal of the funds;

(2) sell, exchange, convey, transfer, or otherwise dispose of investments of the funds by private contract or at public auction;

(3) vote upon a stock, bond, or other security; give a general or special proxy or power of attorney with or without power of substitution; exercise a conversion privilege, subscription right, or other option and make payments incidental to it; consent to or participate in a corporate reorganization or other change affecting corporate securities, delegate discretionary power, pay an assessment or charge in connection with the delegation; and generally exercise any of the powers of an owner with respect to stocks, bonds, securities, or other investments held in the funds;

(4) make, execute, acknowledge, and deliver documents of transfer and conveyance and instruments necessary or appropriate to carry out the powers granted;

(5) register investments held in a fund in the name of the board having the power to approve investments for a fund;

(6) do all acts whether or not expressly authorized which are considered proper for the protection of the investments held in the funds.

* Sec. 5. AS 38.05.030(c) is amended to read:

(c) In addition to the requirements specified in AS 38.50.090, the agencies referred to in (b) of this section and other state agencies with authority to acquire or dispose of land shall give written notification of the fact of acquisition, lease or exchange to the division of lands within three months after the date that they make the acquisition, lease or exchange.

* Sec. 6. AS 38.05.030(d) is amended to read:

(d) Real property acquired by, and under the management of, the agencies referred to in (b) of this section, which is no longer needed for its intended use, shall be returned to the jurisdiction of the division of lands, except that the Department of Transportation and Public Facilities may dispose of real property acquired by it under AS 19.05.040(2) and AS 19.05.080 - 19.05.120.

* Sec. 7. AS 38.05.035(b) is amended by adding a new

paragraph to read:

(6) dispose of land which is held in the name of the University of Alaska except land granted under the Act of March 4, 1915, 48 U.S.C. 353 which is reserved as the site of the University of Alaska and all land used or occupied by the university and its associated facilities, community colleges, or subordinate campuses.

* Sec. 8. AS 38.05.085(b) is repealed and re-enacted to read:

(b) When it becomes necessary to determine the fair market value of property as required by (a) of this section, the director shall have the property appraised by a qualified appraiser. If the lessee disagrees with the appraisal obtained by the director, he may appoint a qualified appraiser to make an appraisal of the property in question. If the two appraisers agree upon the fair market value, the determination is binding on the parties. In the event the two appraisers are unable to agree, they shall appoint a third qualified appraiser who shall then make his appraisal of the property in question. When the third appraisal is completed, the two of the three appraisals which are nearest each other in their determination of the fair market value shall be averaged and the resultant sum shall be the fair market value of the property in question and absolutely binding on the parties. All costs incurred in making the appraisals provided for in this subsection shall be borne by the state and the lessee equally.

* Sec. 9. AS 38.05.085(g) is amended by adding a new paragraph to read:

(3) "qualified appraiser" means a senior member of the American Institute of Real Estate Appraisers, the Society of Real Estate Appraisers, a person meeting the requirements for certification as an appraiser II by the division of personnel, Department of Administration, or a person qualified according to regulations adopted by the commissioner under the Administrative Procedure Act (AS 44.62).

* Sec. 10. AS 38.05.095 is amended to read:

Sec. 38.05.095. SUBLEASES. (a) Except as provided in (b) of this section, a lessee may sublease or assign the land or portion of it upon which he has a lease if, after application to the director, the director issues a permit. The director may issue a permit if he finds that it is in the best interests of the state to do so.

(b) A nonprofit organization that is exempted from paying rent on state land under sec. 97 of this chapter may not sublease or assign the land or a portion of it on which it has a lease.

* Sec. 11. AS 38.05 is amended by adding a new section to read:

Sec. 38.05.097. EXEMPTION FROM RENTAL PAYMENTS ON LAND LEASED BY NONPROFIT ORGANIZATIONS. (a) A nonprofit organization using state land leased by it under secs. 70 - 105 of this chapter for a youth encampment or similar

recreational purpose is exempt from lease rental payments on that land. The nonprofit organization shall meet all other terms and conditions of the lease specified under secs. 70 - 105 of this chapter.

(b) In this section, "nonprofit organization" means nonprofit corporations, associations, clubs, or societies organized and operated exclusively for charitable, religious, scientific, or educational purposes or for the promotion of social welfare and which has received an exemption from the payment of federal income tax.

(c) A nonprofit organization which satisfies the requirements of this section that is using land under a lease in effect before July 1, 1978 may convert its lease to a new lease with terms exempting it from the payment of rent by submitting a written request to the director.

* Sec. 12. AS 38.05.105(b)(1) is amended to read:

(1) subject to the provisions of (c) of this section, changes in property value due to governmental actions, including zoning reclassifications, shall be included; and

* Sec. 13. AS 38.05.105 is amended by adding a new subsection to read:

(c) Changes or adjustments of annual rent on land under lease and used for single-family residential purposes in an area zoned for commercial or other nonresidential uses shall be based on an adjusted fair market value determined by reference to the actual use of the property and not by reference to the other uses permissible under the zoning ordinance.

* Sec. 14. AS 38.05.310 is amended to read:

Sec. 38.05.310. APPRAISAL. No land may be sold or leased, or a renewal lease issued, except in the case of an oil or gas or mineral lease, unless it has been appraised within 120 days before the date fixed for the sale or lease. When land is offered at public sale but is not sold and is available at private sale, no reappraisal is required unless the director considers that a change in value of the lands may have occurred. A grazing lease may be granted to a lessee of federal grazing lands without prior appraisal, if his federal lease was cancelled to allow the state to select the lands under lease. No land may be sold or leased for less than the approved, appraised market value, except as provided in secs. 3[illegible] and 320 of this chapter, secs. 75 - 85 and sec. 97 of this chapter.

* Sec. 15. AS 38.05.340 is amended to read:

Sec. 38.05.340. ASSIGNMENT. (a) Except as provided in (b) of this section, all contracts of purchase or lease of lands or interest in lands may be, on the affirmative approval of the director, assigned or subleased in whole or in part in writing by the contract holder or lessee, and the assignee or sublessee is subject to the provisions of laws and regulations applicable to the contract or lease.

(b) A nonprofit organization that is exempted from paying rent on state land under sec. 97 of this chapter may not assign or sublease the land or a portion of it on which it has a lease.

* Sec. 16. AS 38.35.140(a) is amended to read:

(a) The lease price for a right-of-way lease shall be the annual fair market rental of the state lands included in the right-of-way based on the appraised fair market value of the land. The lease price is payable annually in advance on or before the anniversary of the lease. The appraised fair market rental value shall be adjusted at five-year intervals and charges or adjustments shall be based on a reappraised annual rental value. Rental may not be charged for any land acquired by the lessee under sec. 130(b) of this chapter and conveyed without cost to the state.

* Sec. 17. AS 38.50.040 is amended to read:

Sec. 38.50.040. LAND SUBJECT TO EXCHANGE. Except as otherwise provided in this chapter, the director is authorized to convey for purposes of exchange any state land or interest in land regardless of the authority under which the land or interest was obtained by the state. The conveyance of university land shall be approved in the manner prescribed in AS 38.05.030.

* Sec. 18. AS 38.50.040 is amended to read:

Sec. 38.50.040. LAND SUBJECT TO EXCHANGE. Except as otherwise provided in this chapter, the director is authorized to convey for purposes of exchange any state land or interest in land regardless of the authority under which the land or interest was obtained by the state.

* Sec. 19. AS 14.40.280 is amended to read:

Sec. 14.40.280. ENDOWMENTS AND DONATIONS. All monetary gifts, bequests or endowments which are made to the university for the purpose of the separate fund created under AS 37.14.110 shall be transferred to the Department of Revenue. The Department of Revenue shall manage that money in accordance with AS 37.14.060 - 37.14.100. Title to and control or possession of land, personal property, and all money other than that transferred to the Department of Revenue, which is devised, bequeathed or given to the university shall be taken by the university in its corporate capacity acting by and through the regents or an authorized agent, and shall be entered in the perpetual inventory of the university.

* Sec. 20. The following laws are repealed: AS 14.40.350, 14.40.360, 14.40.400; AS 34.10.010 - 34.10.160, 34.10.180 - 34.10.240; AS 38.05.030(a) and (e), 38.05.032, 38.05.035(a)(8) and (13), 38.05.365(8), (14) and (20); and AS 38.50.110(a)(6).

* Sec. 21. Sec. 12, ch. 138, SLA 1977 is amended to read:

Sec. 12. CONVERSION OF LEASES. The provisions of secs. 9 - 11 of this Act are applicable to state leases which are in existence on or before the effective date of this Act if a lessee under a lease elects, in writing, to

STATE OF ALASKA

JAY S. HAMMOND, GOVERNOR

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

POUCH K – STATE CAPITOL
JUNEAU, ALASKA 99811
PHONE: (907) 465-3600

February 8, 1982

Hon. Hugh Malone
Alaska State Legislature
Pouch V
Juneau, AK 99811

Re: Mental health trust fund
Our file: J66-534-81A

Dear Representative Malone:

You have asked us to review HB 151 and HB 152 to determine whether they, if enacted, would satisfy the state's obligation to the mental health trust fund. In our opinion, the bills as drafted would not entirely satisfy the state's obligation to the mental health trust fund. In addition, the existing legislation which HB 151 would amend presents a problem under our constitutional prohibition against dedicated funds. We have also reviewed SB 710 and SB 711 which affect the mental health trust fund. We will discuss the development of the mental health trust fund, and make specific suggestions for legislative action.

The Alaska Mental Health Enabling Act, P.L. 84-830, § 202, 70 Stat. 709 (July 28, 1956)(copy attached), authorized the Territory of Alaska to select one million acres from the public lands of the United States in Alaska which were vacant, unappropriated, unreserved at that time. The statute required that these lands be administered by the Territory "as a public trust" and that proceeds and income of these lands "first be applied to meet the necessary expenses of the mental health program of Alaska." The statute authorized the territory to sell, lease mortgage, exchange or otherwise dispose of the land in order to obtain funds or other property to be invested, expended, or used by the territory. The committee report which accompanied that legislation stated that "amounts not needed for the mental health program can be used for other public purposes as the legislature may determine." Senate Report No. 2053, 84th Cong., 2nd Sess., reprinted in (1956) U.S. Code Congressional and Administrative News at 3639.

In 1958, Congress passed the Alaska Statehood Act, P.L. 85-508, 72 Stat. 339 (July 7, 1958). Section 6k of the

Statehood Act provided that "grants previously made to the Territory of Alaska are hereby confirmed and transferred to the State of Alaska upon its admission." That section also specifically repealed two earlier federal acts under which land had been reserved, and granted the reserved lands to the state "for the purposes for which they were reserved." This proviso applied to lands reserved for the benefit of the public schools and university under the Act of March 4, 1915, P.L. 63-330, 38 Stat. 1214; it also applied to lands within the naval petroleum reserves under the Act of February 15, 1920, P.L. 66-146, 41 Stat. 450. However, this provision did not apply to the lands reserved under the Mental Health Enabling Act.

A section of the Mental Health Enabling Act which authorized federal grants for mental health treatment in Alaska was repealed in 1959 by the Alaska Omnibus Act, P.L. 86-70, 73 Stat. 148 (June 25, 1959), § 31(b)(1). That Act did not effect the land grant or trust provisions of the Mental Health Enabling Act. The attorney general opined in 1964 that lands received pursuant to the Alaska Mental Health Enabling Act were reserved and thus could not be selected by municipalities under state land disposal laws. 1964 Opin. Alaska Atty. Gen. #7. Subsequently, the attorney general advised that mental health lands could be exchanged for land of equivalent fair market value. Inf. Opin. Alaska Atty. Gen., Feb. 10, 1967.

In 1978, the Alaska Legislature redesignated mental health lands as general grant lands and established a mental health trust fund which was to receive one and one-half percent of the total receipts derived from the management of state land. 1978 Alaska Sess. L., ch. 181, §§ 3 and 4; AS 37.14.070. We understand that this percentage of state revenues was intended to approximate the value of the trust lands. However, since no appraisal was made of the fair market value of these lands, it is impossible to determine whether the substituted revenue source meets or exceeds the fair market value of the trust lands. Since the dedication of a percentage of state revenues has no termination date, it will presumably exceed the value of the trust lands at some time.

In addition, the 1978 legislation conditioned the placement of this percentage of state revenues in the mental health trust fund upon appropriation by the legislature. We understand that to date no appropriation has been made to the mental health trust fund. We also understand that the legislature has made regular appropriations for the purpose of mental health treatment in Alaska and that the Department of Health and Social Services contains a division which is responsible

for mental health treatment in the state.

Our review of the statutes and relevant cases leads us to conclude that the Alaska Mental Health Enabling Act did impose affirmative responsibilities on the Territory of Alaska to review the needs for mental health treatment in the territory and to meet those needs with revenues from the mental health trust lands before using any proceeds from those lands for other purposes. The Alaska Supreme Court has ruled that the public trust established by the federal government for the benefit of the university in territorial days still requires that the state compensate the university for the fair market value of any land reserved for the university under that trust. State v. University of Alaska, 624 P.2d 807 (Alaska 1981). The mental health trust differs greatly from the federal trusts for the public schools and university in that the use of the latter was restricted absolutely for the benefit of the public schools and university respectively. Income and proceeds of the mental health trust lands could be spent for purposes other than mental health at the discretion of the legislatures, if the mental health needs in the state had been met. Nevertheless, we think it unlikely that a court would find that the Alaska Mental Health Enabling Act did not impose some affirmative trust obligation on the territory.

We also think it unlikely that a court would find that the mental health trust obligation was terminated by the Statehood Act. Section 6k of that act specifically repealed certain portions of the public school and university trust legislation and transferred to the state lands reserved under those acts "for purposes for which they were reserved." Since the Alaska Mental Health Enabling Act was not repealed, we presume that it remains effective.

The general language in section 6k of the Statehood Act confirming previous grants made to the territory could be construed to impliedly repeal any restrictions on those grants, such as were contained in the Alaska Mental Health Enabling Act. However, the act could as easily be read to reaffirm and transfer the existing trust obligations to the new state. Since the latter view reconciles the Acts, it would probably be preferred by the courts. Sands, SUTHERLAND STATUTORY CONSTRUCTION (1973) §§ 51.01, 51.02.

If the Statehood Act did not terminate the mental health trust, then the trust obligation as to those lands selected under the Alaska Mental Health Enabling Act remains in effect. If the substitution of revenue for the trust imposed

by the 1978 state legislation was not equal to the fair market value of the trust lands, then the trust has been breached. Lassen v. Arizona, 385 U.S. 458 (1967). Even if the substituted revenue source were equal to the fair market value of the trust lands, the state's failure to appropriate that money to the trust may be a breach of the trust.

In addition, the dedication of one and one-half percent of total receipts from state lands will probably at some time exceed the fair market value of the trust lands. To that extent, the dedication is prohibited by article IX, § 7, of the Alaska Constitution. */ The dedication of revenue to the mental health trust fund is permitted under the Alaska Constitution only to the extent that it is required by federal law.

Thus, our review of the history of the mental health trust fund indicates that (1) a trust obligation probably exists under federal law, and (2) the state has probably breached that trust obligation by redesignating the mental health trust lands as general grant lands, and failing to compensate the trust for the fair market value of those lands. We have identified three alternative courses of legislative action and will discuss them briefly.

First, the legislature may follow its past course and do nothing to fund the mental health trust fund. There is a risk of litigation over the state's obligations in a suit brought by either the federal government or some beneficiary of mental health programs in the state. We note that the Alaska Mental Health Enabling Act does not provide any mechanism for enforcement of the trust. Therefore, the state may be immune from any action to enforce the terms of the trust under the

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*/ Alaska Constitution, article IX, section 7 provides:

> DEDICATED FUNDS. The proceeds of any state tax or license shall not be dedicated to any special purpose, except as provided in section 15 of this article or when required by the federal government for state participation in federal programs. This provision shall not prohibit the continuance of any dedication for special purposes existing upon the date of ratification of this section by the people of Alaska.

Eleventh Amendment of the United States Constitution. Scott, Law of Trusts § 95 (1967). */ This is an issue which should be explored more thoroughly if litigation appears likely. In addition, there is the possibility that the legislative appropriations for mental health programs over the years have been adequate to meet the need for mental health treatment in the state. If past appropriations have been rationally based on reasonable assessments of mental health needs in Alaska, then the state may have fulfilled its basic trust responsibilities despite the failure to establish a separate fund with the trust lands. In that case, there may be no effective remedy for any possible breach of trust.

Second, the state may attempt to comply with the requirements of the Alaska Mental Health Enabling Act. We believe that this would require:

(1) an assessment of the fair market value of the lands which were selected by the state under the Alaska Mental Health Enabling Act, as of the date of their redesignation by statute as general grant lands;

(2) some regular review (perhaps by the senate and house HESS committees) of the need for mental health treatment in the state; a report to the legislature with recommendations for appropriations for mental health treatment and facilities in the state; a legislative finding that these needs are met before money in the mental health trust fund is appropriated for any other purpose; **/

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**/ The attorney general opined in 1961 that money received from the mental health trust lands in excess of the needs of the mental health program could be transferred to the general fund without specific legislative authorization. 1961 Opin. Alaska Atty. Gen. No. 11. We agree that the transfer of money into the general fund does not require an appropriation. However, we believe that the mental health trust obligation requires a rationally based legislative determination that the current needs of the state mental health program are met before trust money is expended for another purpose. We do not know whether past appropriations for the mental health program would be found to have satisfied this requirement.

(3) transfer of money to the mental health trust fund until the fund has received money equaling the fair market value of the trust lands.

We believe that these measures would satisfy the state's obligation under the Alaska Mental Health Enabling Act, while retaining flexibility as to the use of money in the mental health trust fund. At present, AS 37.14.040 provides that the principal of the fund shall be reinvested, and the income of the fund may be appropriated only for the support of a state mental health program. This section is much more restrictive than the federal trust obligation would require. Any restriction on the use of money beyond that required by federal law may violate the Alaska constitutional prohibition on dedicated funds.

We also note that the current statute requires that money be appropriated into the mental health trust fund. AS 37.14.050. Once in the fund, it must again be appropriated before it can be spent. The dual appropriation requirement is unnecessary to satisfy the federal trust obligation. In fact, it makes compliance with the federal trust obligation more difficult, by interposing the appropriation requirement before money can be placed in the fund. Money may be placed in the fund without an appropriation to the extent required by federal law, without violating our dedicated fund provision. We recommend direct transfer of money to the mental health trust fund until the fund reaches an amount indicated by an appraisal of the mental health trust lands. Under the terms of the federal law, the legislature may use money in the fund for any public purpose, once it has determined that the needs of the mental health program in the state have been met. This determination must be made by the legislature and must have a rational basis.

HB 151 and SB 710 each contain provisions consistent with some of our recommendations. HB 152 and SB 711 each contain appropriations to the mental health fund. We hope that our comments are helpful in the legislative consideration of these bills. Please let us know if we may be of further assistance in this matter.

The third alternative which may be pursued along with either one of the first two is to seek repeal of the Alaska Mental Health Enabling Act by Congress. If the restrictions of the trust unreasonably interfere with the prudent management of state resources and are unnecessary to ensure adequate funding of mental health treatment programs in the state, then Congressional repeal of the Alaska Mental Health Enabling Act may be

appropriate. We cannot advise you on the likelihood of obtaining such a repeal. However, we expect that Congress would be more favorably disposed toward the state if our actions demonstrated a commitment to carrying out our obligations under the Alaska Mental Health Enabling Act.

Very truly yours,

WILSON L. CONDON
ATTORNEY GENERAL

By: Laura L. Davis
Laura L. Davis
Assistant Attorney General

LLD/pjg

cc: Hon. Charles Parr
Alaska State Senate

Carole Burger
Office of the Governor

That the Surgeon General may cause the project to be inspected at any time, and if such inspection indicates that the project is not being constructed in accordance with approved plans and specifications, he may, after notice and affording opportunity for hearing, withhold further payment until he finds that adequate corrective measures have been taken.

"(d) The term 'cost of construction' means the amount found necessary by the Surgeon General for the construction of a project and includes the construction and initial equipment of buildings (including medical transportation facilities), architects' and engineering fees, the cost of land acquired specifically for the purpose of the project, and on-site improvements.

Recovery of value of facility.

"(e) If, within twenty years from the date of completion of construction, any hospital or other medical facility constructed with the aid of grants under this section shall cease to be a publicly owned facility operated for the care or treatment of patients under the Territory's mental health program, the United States shall be entitled to recover from the Territory the then value of the hospital or other medical facility, reduced, however, proportionately to the extent to which the Territory may have contributed to the cost of construction thereof."

LAND GRANT

SEC. 202. (a) The Territory of Alaska is hereby granted and shall be entitled to select, within ten years from the effective date of this Act, not to exceed one million acres from the public lands of the United States in Alaska which are vacant, unappropriated, and unreserved at the time of their selection: *Provided*, That nothing herein contained shall affect any valid existing rights. All lands duly selected by the Territory of Alaska pursuant to this section shall be patented to the Territory by the Secretary of the Interior.

(b) The lands authorized to be selected by the Territory of Alaska by subsection (a) of this section shall be selected in such manner as the laws of the Territory may provide, and in conformity with such regulations as the Secretary of the Interior may prescribe. The authority to make selections shall never be alienated or bargained away, in whole or in part, by the Territory. All selections shall be made in reasonably compact tracts, taking into account the situation and potential uses of the lands involved. Upon the revocation of any order of withdrawal in Alaska, the order of revocation shall provide for a period of not less than ninety days before the date on which it otherwise becomes effective during which period the Territory of Alaska shall have a preferred right of selection, subject to the requirements of this Act, except as against prior existing valid rights or as against equitable claims subject to allowance and confirmation. Such preferred right of selection shall have precedence over the preferred right of application created by section 4 of the Act of September 27, 1944 (58 Stat. 748; 43 U. S. C., sec. 282), as now or hereafter amended, but not over other preference rights now conferred by law. As used in this subsection, the words "equitable claims subject to allowance and confirmation" include, without limitation, claims of holders of permits issued by the Department of Agriculture on lands eliminated from national forests, whose permits have been terminated only because of such elimination and who own valuable improvements on such lands.

Mineral deposits.

(c) All grants made or confirmed under this section shall include mineral deposits: *Provided, however*, That mineral deposits in lands which on January 1, 1956, were subject to public land order numbered 82 of January 22, 1943, shall not be included in said grants, but shall continue to be reserved to the United States.

Leases; sales.

(d) Following the selection of lands by the Territory pursuant to subsection (b), but prior to the issuance of final patent, the Territory shall be authorized to lease and to make conditional sales of such selected lands.

(e) All lands granted to the Territory of Alaska under this section, together with the income therefrom and the proceeds from any dispositions thereof, shall be administered by the Territory of Alaska as a public trust and such proceeds and income shall first be applied to meet the necessary expenses of the mental health program of Alaska. Such lands, income, and proceeds shall be managed and utilized in such manner as the Legislature of Alaska may provide. Such lands, together with any property acquired in exchange therefor or acquired out of the income or proceeds therefrom, may be sold, leased, mortgaged, exchanged, or otherwise disposed of in such manner as the Legislature of Alaska may provide, in order to obtain funds or other property to be invested, expended, or used by the Territory of Alaska. The authority of the Legislature of Alaska under this subsection shall be exercised in a manner compatible with the conditions and requirements imposed by other provisions of this Act.

EFFECTIVE DATE

SEC. 203. This title shall become effective on the date of enactment of this Act.

TITLE III—TRANSITIONAL AND GENERAL PROVISIONS

AMENDMENTS AND REPEALS

SEC. 301. (a) Such of the following Acts or parts thereof as the Governor by proclamation shall declare to be superseded by a law or laws hereafter enacted by the Territorial legislature are repealed as of the effective date (specified in such proclamation) of such superseding law or laws, or as of the two hundred and tenth day after the date of enactment of this Act, whichever is later:

(1) Section 8 of the Act of January 27, 1905 (33 Stat. 616, 619; 48 U. S. C. 47);

(2) The first sentence of section 7 of the Act of February 6, 1909 (35 Stat. 600, 601), as amended by section 2 of the Act of October 14, 1942 (56 Stat. 782; 48 U. S. C. 46);

(3) The Act of June 25, 1910 (36 Stat 852; see 48 U. S. C. 46b);

(4) The Act of April 24, 1926 (44 Stat. 322), as amended by sections 4 and 5 of the Act of October 14, 1942 (56 Stat. 782, 783; 48 U. S. C. 50, 50a); and

48 USC 46c, 47a, 47b, 47c, 48, 48a.

(5) Sections 1, 3, 6, 7, 8, and 9 of the Act of October 14, 1942 (56 Stat. 782, 783–785; 48 U. S. C. 46c, 47a, 47b, 47c, 48, 48a).

(b) (1) The Acts and parts of Acts listed in subsection (a), except the Act of June 25, 1910, are, pending their repeal as provided in subsection (a), amended (A) by striking out the words "Secretary", "United States", "Congress", and "Department of the Interior" wherever these words appear, and inserting in lieu thereof the words "Governor of Alaska or his designee", "Territory of Alaska", "the Legislature of Alaska", and "Territory of Alaska", respectively; (B) by inserting immediately before the word "Treasury", wherever it appears, the word "Territorial"; (C) by striking out the word "Federal"; and (D) by amending section 1 (a) of the Act of October 14, 1942, to read as follows: "'Governor' means the Governor of Alaska or his designee:": *Provided*, That the words "United States" where

D R A F T M E M O R A N D U M 02/17/82

SUBJECT: Mental health trust land liabilities
(Work Order Request #12 - 2465)

TO: Sen. Charles H. Parr

FROM: Richard A. Bradley
Legislative Counsel

You have asked that I comment on the general question of the Mental Health Trust Lands granted to the Territory and the State of Alaska as well as the bill presently pending before the legislature relating to the trust lands, SB 710.

In preparing these comments, I have reviewed the memorandum of February 8, 1982 to Representative Malone from the Department of Law which I believe that you also received a copy of. While I did not draft SB 710, I have been advised that SB 710 is the same as HB 151, the bill reviewed in the Department of Law memorandum. Accordingly, it seems that the comments in that memorandum are usefully generally also to your question.

Because of the brief time allowed for the proeparation of this memorandum, it was necessary to cast my views in general conclusory statements:

(1) I agree that it is unlikely that a court would conclude that the mental health trust responsibility imposed on the state to use the lands received for mental

health purposes was terminated at statehood by the Statehood Act or by the Omnibus Act.

(2) I agree that it is likely that a court would conclude that the Alaska Mental Health Enabling Act imposed an affirmative trust on the State.

(3) It may be that the prohibition against the dedication of funds under the Alaska Constitution will, at some time in the future, have practical implications for the provisions of AS 37.14. I do not believe that it does at this point.

Several aspects of this problem may be noted. This office disagrees with the Department of Law views on the nature of the constitutional requirement; in our view, the income from the disposal of lands does not constitute the income from a "tax or license." We believe those words have meaning, whether or not our constitutional fathers correctly anticipated the actual sources of state income in the 1980's.

Until litigation resolves the question, it will be open to the legislature to interpret the constitution and dedicate the income from the disposal of lands if it wishes.

But I suspect that we also disagree with the suggestion that if the legislature dedicates the proceeds of a tax

or license but the funds remain subject to legislative appropriation, that an unconstitutional dedication occurred.

Put in other words, if the dedication of the proceeds of a tax or license are subject to affirmative legislative appropriation, there also no violation of the constitution occurs; in effect, the dedication constitutes nothing more than an allocation to an account within the treasury for accounting purposes.

I think it is premature, therefore, to pay too much attention to those concerns, particularly as long as there remains an obligation on the legislature to appropriate all the funds granted under the one and one-half percent formula. A dedication that remains subject to the discretion of the legislature to appropriate is not in fact a dedicated fund.

(4) I agree that so long as AS 37.14 remains the method by which the legislature seeks to execute its trust land responsibilities, the legislature should honor its own commitment to fund AS 37.14. I suggest that a legislative determination that the state is meeting or has met its mental health responsibilities, if based on reasonably well founded facts, will go some distance towards blunting the possibility of litigation on a theory that the state has failed in that liability. Whether that

conclusion can be justified (and be well founded), is a more difficult question on which I have no answers.

(5) If the legislature remains with a reasonable commitment to AS 37.14 and supports funding under that concept, the needs for an appraisal of the mental health lands may be avoided.

(6) I agree that the allocation of money to the mental health funds may be achieved without appropriation and that it is reasonable to do so.

As suggested, the money should be used for mental health purposes but if the legislature makes an implicit determination that mental health needs are adequately funded, the mental health funds may be appropriated by the legislature to a different purpose.

The provisions of SB 710 seem consistent with these conclusions and I offer no proposals for amendments to deal with the asssumed liability or otherwise.

February 8, 1982

Hon. Hugh Malone
Alaska State Legislature
Pouch V
Juneau, AK 99811

Re: Mental health trust fund
Our file: J66-534-81A

Dear Representative Malone:

You have asked us to review HB 151 and HB 152 to determine whether they, if enacted, would satisfy the state's obligation to the mental health trust fund. In our opinion, the bills as drafted would not entirely satisfy the state's obligation to the mental health trust fund. In addition, the existing legislation which HB 151 would amend presents a problem under our constitutional prohibition against dedicated funds. We have also reviewed SB 710 and SB 711 which affect the mental health trust fund. We will discuss the development of the mental health trust fund, and make specific suggestions for legislative action.

The Alaska Mental Health Enabling Act, P.L. 84-830, § 202, 70 Stat. 709 (July 28, 1956)(copy attached), authorized the Territory of Alaska to select one million acres from the public lands of the United States in Alaska which were vacant, unappropriated, unreserved at that time. The statute required that these lands be administered by the Territory "as a public trust" and that proceeds and income of these lands "first be applied to meet the necessary expenses of the mental health program of Alaska." The statute authorized the territory to sell, lease, mortgage, exchange or otherwise dispose of the land in order to obtain funds or other property to be invested, expended, or used by the territory. The committee report which accompanied that legislation stated that "amounts not needed for the mental health program can be used for other public purposes as the legislature may determine." Senate Report No. 2053, 84th Cong., 2nd Sess., reprinted in (1956) U.S. Code Congressional and Administrative News at 3639.

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Statehood Act provided that "grants previously made to the Territory of Alaska are hereby confirmed and transferred to the State of Alaska upon its admission." That section also specifically repealed two earlier federal acts under which land had been reserved, and granted the reserved lands to the state "for the purposes for which they were reserved." This proviso applied to lands reserved for the benefit of the public schools and university under the Act of March 4, 1915, P.L. 63-330, 38 Stat. 1214; it also applied to lands within the naval petroleum reserves under the Act of February 15, 1920, P.L. 66-146, 41 Stat. 450. However, this provision did not apply to the lands reserved under the Mental Health Enabling Act.

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for mental health treatment in the state.

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HB 151 and SB 710 each contain provisions consistent with some of our recommendations. HB 152 and SB 711 each contain appropriations to the mental health fund. We hope that our comments are helpful in the legislative consideration of these bills. Please let us know if we may be of further assistance in this matter.

The third alternative which may be pursued along with either one of the first two is to seek repeal of the Alaska Mental Health Enabling Act by Congress. If the restrictions of the trust unreasonably interfere with the prudent management of state resources and are unnecessary to ensure adequate funding of mental health treatment programs in the state, then Congressional repeal of the Alaska Mental Health Enabling Act may be

appropriate. We cannot advise you on the likelihood of obtaining such a repeal. However, we expect that Congress would be more favorably disposed toward the state if our actions demonstrated a commitment to carrying out our obligations under the Alaska Mental Health Enabling Act.

Very truly yours,

WILSON L. CONDON
ATTORNEY GENERAL

By:
Laura L. Davis
Assistant Attorney General

LLD/pjg

cc: Hon. Charles Parr
Alaska State Senate

Carole Burger
Office of the Governor

bcc: Bruce Botelho, Juneau AGO
Margo Waring, Legis. B&A Comm.
David Dye, Office of the Lt. Gov.
Tom Meacham, Anchorage AGO

70 STAT. 711-712

That the Surgeon General may cause the project to be inspected at any time, and if such inspection indicates that the project is not being constructed in accordance with approved plans and specifications, he may, after notice and affording opportunity for hearing, withhold further payment until he finds that adequate corrective measures have been taken.

"(d) The term 'cost of construction' means the amount found necessary by the Surgeon General for the construction of a project and includes the construction and initial equipment of buildings (including medical transportation facilities), architects' and engineering fees, the cost of land acquired specifically for the purpose of the project, and on-site improvements.

Recovery of value of facility.

"(e) If, within twenty years from the date of completion of construction, any hospital or other medical facility constructed with the aid of grants under this section shall cease to be a publicly owned facility operated for the care or treatment of patients under the Territory's mental health program, the United States shall be entitled to recover from the Territory the then value of the hospital or other medical facility, reduced, however, proportionately to the extent to which the Territory may have contributed to the cost of construction thereof."

LAND GRANT

SEC. 202. (a) The Territory of Alaska is hereby granted and shall be entitled to select, within ten years from the effective date of this Act, not to exceed one million acres from the public lands of the United States in Alaska which are vacant, unappropriated, and unreserved at the time of their selection: *Provided*, That nothing herein contained shall affect any valid existing rights. All lands duly selected by the Territory of Alaska pursuant to this section shall be patented to the Territory by the Secretary of the Interior.

(b) The lands authorized to be selected by the Territory of Alaska by subsection (a) of this section shall be selected in such manner as the laws of the Territory may provide, and in conformity with such regulations as the Secretary of the Interior may prescribe. The authority to make selections shall never be alienated or bargained away, in whole or in part, by the Territory. All selections shall be made in reasonably compact tracts, taking into account the situation and potential uses of the lands involved. Upon the revocation of any order of withdrawal in Alaska, the order of revocation shall provide for a period of not less than ninety days before the date on which it otherwise becomes effective during which period the Territory of Alaska shall have a preferred right of selection, subject to the requirements of this Act, except as against prior existing valid rights or as against equitable claims subject to allowance and confirmation. Such preferred right of selection shall have precedence over the preferred right of application created by section 4 of the Act of September 27, 1944 (58 Stat. 748; 43 U. S. C., sec. 282), as now or hereafter amended, but not over other preference rights now conferred by law. As used in this subsection, the words "equitable claims subject to allowance and confirmation" include, without limitation, claims of holders of permits issued by the Department of Agriculture on lands eliminated from national forests, whose permits have been terminated only because of such elimination and who own valuable improvements on such lands.

Mineral deposits.

(c) All grants made or confirmed under this section shall include mineral deposits: *Provided, however*, That mineral deposits in lands which on January 1, 1956, were subject to public land order numbered 82 of January 22, 1943, shall not be included in said grants, but shall continue to be reserved to the United States.

Leases; sales

(d) Following the selection of lands by the Territory pursuant to subsection (b), but prior to the issuance of final patent, the Territory shall be authorized to lease and to make conditional sales of such selected lands.

(e) All lands granted to the Territory of Alaska under this section, together with the income therefrom and the proceeds from any dispositions thereof, shall be administered by the Territory of Alaska as a public trust and such proceeds and income shall first be applied to meet the necessary expenses of the mental health program of Alaska. Such lands, income, and proceeds shall be managed and utilized in such manner as the Legislature of Alaska may provide. Such lands, together with any property acquired in exchange therefor or acquired out of the income or proceeds therefrom, may be sold, leased, mortgaged, exchanged, or otherwise disposed of in such manner as the Legislature of Alaska may provide, in order to obtain funds or other property to be invested, expended, or used by the Territory of Alaska. The authority of the Legislature of Alaska under this subsection shall be exercised in a manner compatible with the conditions and requirements imposed by other provisions of this Act.

EFFECTIVE DATE

SEC. 203. This title shall become effective on the date of enactment of this Act.

TITLE III—TRANSITIONAL AND GENERAL PROVISIONS

AMENDMENTS AND REPEALS

SEC. 301. (a) Such of the following Acts or parts thereof as the Governor by proclamation shall declare to be superseded by a law or laws hereafter enacted by the Territorial legislature are repealed as of the effective date (specified in such proclamation) of such superseding law or laws, or as of the two hundred and tenth day after the date of enactment of this Act, whichever is later:

(1) Section 8 of the Act of January 27, 1905 (33 Stat. 616, 619; 48 U. S. C. 47);

(2) The first sentence of section 7 of the Act of February 6, 1909 (35 Stat. 600, 601), as amended by section 2 of the Act of October 14, 1942 (56 Stat. 782; 48 U. S. C. 46);

(3) The Act of June 25, 1910 (36 Stat 852; see 48 U. S. C. 46b);

(4) The Act of April 24, 1926 (44 Stat. 322), as amended by sections 4 and 5 of the Act of October 14, 1942 (56 Stat. 782, 783; 48 U. S. C. 50, 50a); and

48 USC 46c, 47a, 47b, 47c, 48, 48a.

(5) Sections 1, 3, 6, 7, 8, and 9 of the Act of October 14, 1942 (56 Stat. 782, 783–785; 46 U. S. C. 46c, 47a, 47b, 47c, 48, 48a).

(b) (1) The Acts and parts of Acts listed in subsection (a), except the Act of June 25, 1910, are, pending their repeal as provided in subsection (a), amended (A) by striking out the words "Secretary", "United States", "Congress", and "Department of the Interior" wherever these words appear, and inserting in lieu thereof the words "Governor of Alaska or his designee", "Territory of Alaska", "the Legislature of Alaska", and "Territory of Alaska", respectively: (B) by inserting immediately before the word "Treasury", wherever it appears, the word "Territorial"; (C) by striking out the word "Federal"; and (D) by amending section 1 (a) of the Act of October 14, 1942, to read as follows: "'Governor' means the Governor of Alaska or his designee;": *Provided*, That the words "United States" where

STATE OF ALASKA

DEPARTMENT OF REVENUE

OFFICE OF THE COMMISSIONER

JAY S. HAMMOND, GOVERNOR

POUCH S
JUNEAU, ALASKA 99811
PHONE: (907) 465-2300

February 17, 1982

The Honorable Charles H. Parr
Chairman
Senate Health, Education and
Social Services Committee
Room 209 - Behrends Building
Juneau, Alaska

Dear Senator Parr:

Re: Senate Bill No. 710
Senate Bill No. 711

Senate Bill No. 710, an Act relating to state trust funds and their administration, was introduced in the Senate on February 3, 1982 and was referred to the Senate Health, Education & Social Services; Resources and Finance Committees.

Senate Bill No. 711, an Act making a special appropriation to the Department of Revenue for deposit to the mental health fund, was introduced in the Senate on February 3, 1982 and was referred to the Senate Health, Education & Social Services; Resources and Finance Committees.

For the consideration of the Senate Health, Education & Social Services Committee, I am enclosing copies of Fiscal Notes prepared by Mr. Peter A. Bushre, Deputy Commissioner, Treasury and Mr. Vincent Wright, Chief, Research Section concerning the two Senate Bills.

Sincerely,

R. D. Stevenson
Special Assistant

Enclosure

cc: The Honorable Bettye Fahrenkamp
Chairwoman
Senate Resources Committee

The Honorable Don Bennett
The Honorable M. E. Dankworth
Co-Chairmen
Senate Finance Committee

The Honorable Michael F. Beirne
Chairman
House Health, Education &
Social Services Committee

Joseph K. Donohue
Deputy Commissioner, Taxation
Department of Revenue

Peter A. Bushre
Deputy Commissioner, Treasury
Department of Revenue

Vincent Wright, Chief
Research Section
Department of Revenue

	POSITION TITLE			RANGE/STEP	BARG. UNIT.	LOCATION	GOV.	APPROV.	DISAPP.
1	Accounting Technician II			14A	G	Juneau			
	TYPE OF POSITION	STAFF MONTHS	RP No. / PCN No.	PRIORITY		FORM 12 PAGE/LINE	LEG.		
2	PFT	12	SE 710						

	TYPE OF EXPENDITURE		AMOUNT
	1	2	3
3	PERSONAL SERVICES:		
4	SALARY 2,145 X 12	25,740	
5	BENEFITS 25.740 X .1550	3,989	
6	SBS X .0613	1,577	
7	FIXED BENEFITS	1,836	
8	TOTAL PERSONAL SERVICES 01		33,142
9	TRAVEL 02		
10	CONTRACTUAL 03		
11	COMMODITIES 04		
12	EQUIPMENT 05		3,500
13	OTHER		
14	TOTAL COST		36,642

	RECEIPT CODE	FUNDING SOURCE	
15		FED RCPTS. 1002	
16		GF MATCH. 1003	
17		GEN. FUND 1004	36,642
18		I-A RCPTS. 1005	
19		PGM RCPTS 1028	
20		OTHER	
21	CONT. JATION		
22	ADDITION	XX	

FOR R&M USE ONLY

4A KEY NUMBER ..... COLUMN NO. .....

JUSTIFICATION:

To implement additions to Mental Health Fund per SB 710.

To do accounting, recording and reporting work. Assure t ansactions are posted to the proper account, track income receipts, review and proof safekeeping reports and asset listings, aid in general ledger posting and preparation of monthly, quarterly and annual reports.

AGENCY Department of Revenue

PROGRAM Revenue Collection and Management

BRU Treasury Management

COMPONENT

13 REQUEST FOR NEW POSITION

Page 1 of 1

REVISED DATE SB 710 2/16/82

FY 83

01-1130 (7/81)

THE LEGISLATURE OF THE STATE OF ALASKA
TWELFTH LEGISLATURE

FISCAL NOTE

I. REQUEST
Bill/Resolution No. SB 710/711
Title Act relating to State Trust Funds
Requested by Senate Health, Education & Social Services Committee Date 2/8/82

II. FISCAL DETAIL
Agency Affected
Program Category Affected
BRU, Program, Or Subprogram(s) Affected
(Note: If more than one budget component is affected, separate line-item amounts and funding for each component in the analysis section.)

EXPENDITURES (Thousands of Dollars)

	FY 82	FY 83	FY 84	FY 85	FY 86	FY 87
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 COMMODITIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS,CLAIMS,ETC.						
TOTAL						

FUNDING (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER (Specify Source)						
Mental Health Fund		26,736	32,408			
University Fund		8,912	10,803			
Public School Fund		8,912	10,803			
POSITIONS						
FULL TIME						
PART TIME						
TEMPORARY						

III. ANALYSIS (See Fiscal Note Preparation Instruction, Section III)

The figures reflect the projected revenues (based on the Department of Revenue's January 1982 estimates) transferred from the General Fund to the Mental Health Fund (AS 37.14.010), the University Fund (AS 37.14.060), and the Public School Fund (AS 37.14.110). Royalty sale proceeds are not included in the projections since bids are impossible to anticipate prior to sales.

Robert W. Elliott

IV. DATE 2/8/82 PREPARED BY Robert W. Elliott
AGENCY Department of Revenue
PHONE 465-2173

Original: Legislative Finance
cc: Budget and Management
Prime Sponsor (First Legislator Named)

33-001 (Rev. 12/81)

THE LEGISLATURE OF THE STATE OF ALASKA
TWELFTH LEGISLATURE

FISCAL NOTE

I. REQUEST
Bill/Resolution No. Senate Bill Number 710 and 711
Title An Act Relating to State trust funds and their administration
Requested by Health, Education and Social Services Committee Date 2/16/82

II. FISCAL DETAIL
Agency Affected Department of Revenue
Program Category Affected Revenue Collection and Management
BRU, Program, Or Subprogram(s) Affected Treasury Management
(Note: If more than one budget component is affected, separate line-item amounts and funding for each component in the analysis section.)

EXPENDITURES (Thousands of Dollars)

	FY 82	FY 83	FY 84	FY 85	FY 86	FY 87
100 PERSONAL SERVICES		33.1	36.4	40.0	44.0	48.4
200 TRAVEL						
300 CONTRACTUAL		37.0	40.6	44.8	49.2	54.0
400 COMMODITIES						
500 EQUIPMENT		3.5				
600 LAND & STRUCTURES						
700 GRANTS,CLAIMS,ETC.						
TOTAL		73.6	77.0	84.8	93.2	102.4

FUNDING (Thousands of Dollars)

GENERAL FUND		73.6	77.0	84.8	93.2	102.4
FEDERAL FUNDS						
OTHER (Specify Source)						

POSITIONS

FULL TIME						
PART TIME						
TEMPORARY						

III. ANALYSIS (See Fiscal Note Preparation Instruction, Section III)

SB 710 would allow the Commissioner of Revenue to invest the Mental Health Fund, University Fund and Public School Fund in the same manner as specified for the surplus pension funds.

The costs herein represent personal services of an Accounting Technician II for accounting recording, review and reporting. Contractual services are for additional related safekeeping fees, computer accounting costs, etc. Equipment is for new position including working file storage.

IV. DATE February 17, 1982 PREPARED BY Peter A. Bentz
AGENCY Revenue
PHONE 465-2350

Original: Legislative Finance
cc: Budget and Management
Prime Sponsor (First Legislator Named)

33-001 (Rev. 12/81)

NOTE REGARDING THE FOLLOWING FRAME ON MICROFILM:

COMPLETE DOCUMENT IS AVAILABLE IN ORIGINAL FILES IN ALASKA STATE ARCHIVES. TITLE PAGE ONLY HAS BEEN FILMED.

Alaska Mental Health Association
808-E Street
Anchorage, Alaska 99501
(907) 276-1705

COPING

WINTER 1982

Reach (Betty Halsey Pres)
808-E Street
Anchorage, Alaska 99501
(907) 276-1705

Natalie Gottstein .....Editor

Magazine Advisory Committee
Jim Parsons
Fred Selkregg

Cover Photo
"Mendenhall Glacier" near Juneau
by Frank Butte

Published quarterly for members and friends by the Alaska Mental Health Association, a non-profit corporation, to improve attitudes toward mental illness and the mentally ill — to improve services for the mentally ill — for prevention of mental illness and the promotion of mental health.

Publication Coordinated by
Larry Anderson
Pat Anderson

Any business or individuals wanting to put a supportive ad in the Coping Magazine, please call Pat Anderson 243-7179.

Advertising Representative
Pat Anderson

CONTENTS

Periodic needs assessment.

ISSUES: DEDICATED FUND. - indefinite duration - needs value ~~of~~ of fund, can approp. to MH be considered

VALUE of TRUST LANDS - no attempt ever made to evaluate. 400-500,000 to eval. land through DNR

MH Lacks

~~Adv~~ including children w/ adults.
transitional facilities
Chronic facilities
Sheltered workshops.

SB, 710 - AG opinion:

Sec. 1 more consistent w/ Fed. Law-

Sec. 2 does away with double approp.

MH ASSOC. WANTS FROM STATE
TRUST OBLIGATION EXISTS (ACKNOWLEDGEMENT)
MONEY BE APPOP. TO FUND

will compromise on not going back to 1978 for appropriations.

~~$~~ 26.7 million FY 83
~~$~~ 32.4 " FY 84

DMH & DD

Schedule of Expenditures

FY 1977 - FY 1981

	1977	1978	1979	1980	1981
Mental Health:					
API	6,439,428	6,921,868	7,494,515	8,060,922	9,559,297
Atascadero	190,812	186,935	220,008	194,977	267,200
Regional Community MH Svcs.	1,775,600	2,370,216	2,841,446	3,226,945	4,295,849
	8,405,840	9,479,019	10,555,969	11,482,844	14,122,346
Developmental Disabilities:					
HDC	4,410,789	4,888,480	5,324,240	5,296,904	6,211,056
Council on Handicapped / Gifted	194,704	223,865	150,522	286,477	320,296
Regional Community DD Svcs.	1,677,744	2,597,924	2,752,375	3,066,892	3,730,111
	6,283,237	7,710,269	8,227,137	8,650,273	10,261,463
Administration					
Central Office	542,426	749,778	515,735	606,791	617,008
Others	78,415	--	193,869	112,011	365,626
	620,841	749,778	709,544	718,802	982,634
TOTAL	15,329,918	17,939,060	17,492,650	20,851,919	25,366,443
Mental Health & Admin	9,046,681	10,228,797	11,265,513	12,201,646	15,104,980
Developmental Disabilities	6,283,237	7,710,269	8,227,137	8,650,273	10,261,463

2 Positions '83 — automated MH information SB 100 — Transferred from Central Of

or [illegible] expression, it is inappropriate to address the excessiveness issue at this point. We do not think that further briefing on the excessiveness issue would be of any significant value, although the parties may choose to address the issue further.

As to appellant Smith, the judgment of the superior court is Affirmed. As to appellant Mossberg, the judgment of conviction is Affirmed. Decision of the sentence appeal is postponed pending further briefing and oral argument before this court.

BURKE and BOOCHEVER, JJ., not participating.

STATE of Alaska, Appellant,

v.

UNIVERSITY OF ALASKA, Appellee.

No. 4579.

Supreme Court of Alaska.

Feb. 27, 1981.

State brought action for injunctive relief, damages and declaratory judgment that developers were trespassing on land which was within state park and which had been granted to State by federal government for support of University of Alaska. University intervened and sought declaratory judgment whether such land could be used for purposes other than support of University. The Superior Court, Third Judicial District, Anchorage, James K. Singleton, Jr., determined that inclusion of university lands in state park constituted a breach of federal trust, invalidated portion of statute including such land within park, and awarded attorney fees to University, and State appealed. The Supreme Court, Connor, J., held that: (1) land, which had been granted for support of University, could not be used for other public purposes; (2) inclusion of the land within state park violated provision of federal grant under which land was to be held in trust for University; (3) state constitutional provision did not preclude legislature from disposing of university land without obtaining University's approval; (4) proper remedy would not be invalidation of statute, but, rather, the remedy of inverse condemnation and either awarding monetary damages or exchanging lands having an equal fair market value; (5) attorney fees were not covered by rule providing that failure of party to serve cost bill and notice as required by such rule would be construed as a waiver of his right to recover costs; (6) permitting University to file request for attorney fees 13 days after judgment was not abuse of discretion; (7) award of $15,000 in attorney fees was excessive; and (8) trial court was not precluded from awarding attorney fees, though both parties were state entities.

Affirmed in part, reversed in part, and remanded.

1. Public Lands ⇐51

Lands, which federal government granted to territory of Alaska for support of University of Alaska, could not be used for other public purposes, though Congress repealed statutory provision to effect that lands granted to the territory were to be held by the territory in trust. AS 14.40.390, 14.40.500, 38.05.005, 38.05.065, 38.05.066, 41.-20.210; 48 U.S.C. (1964 Ed.) § 354a(a, b-f); Const. Art. 12, § 13.

2. Public Lands ⇐51

Inclusion of land within state park, without compensation to University of Alaska, violated provision of federal grant under which land was to be held in trust for University. AS 41.20.210; 48 U.S.C. (1964 Ed.) § 354a(b-f).

3. Public Lands ⇐51

Principle that trustee has a duty to administer private trust solely in interest of beneficiaries is applicable to federal land grants [illegible] purposes.

4. Colleges and Universities ⇐6(5)

Statute, which provided that no disposal of university lands could be made without approval of Board of Regents of University of Alaska, would be applicable only to disposals of land by Commissioner of Natural Resources, and did not apply to disposal of university lands by the legislature. AS 38.05.030(a).

5. Colleges and Universities ⇐6(5)

State constitutional provision, which stated that University of Alaska had title to all real and personal property set aside for or conveyed to it and that its property was to be administered and disposed of according to law, did not preclude legislature from disposing of university land without obtaining University's approval. Const. Art. 7, § 2; Art. 8, §§ 2, 7; Art. 12, § 11; Laws 1978, c. 182, § 3(c); AS 14.40.170(4), 38.05.030(a), 41.20.210.

6. Colleges and Universities ⇐2

Statute creating state park, in which University of Alaska's land was included, did not impliedly repeal statute providing that no disposal of university lands could be made without approval of University's Board of Regents. AS 14.40.170(4), 38.05.030(a), 41.20.210.

7. Declaratory Judgment ⇐204

Issue whether, if board of regents wishes to dispose of university land granted to state under certain act, the Commissioner of Natural Resources had to carry out the disposal was not ripe for review where the requested disposal was not made by Department of Natural Resources because the land had been included in state park and there was no reason to assume that there was a general problem or that there was a likelihood of a recurring controversy concerning such issue if the University of Alaska was not compensated. 48 U.S.C. (1964 Ed.) § 354a.

8. Eminent Domain ⇐266

Proper remedy, in regard to breach of trust arising when statute creating state park included University of Alaska's land within the park without compensation, would not be the invalidation of the statute, but, rather, the remedy of inverse condemnation and either awarding monetary damages or exchanging lands having an equal fair market value. 48 U.S.C. (1964 Ed.) § 354a; AS 41.20.210, 41.20.210(11).

9. Costs ⇐203

Though attorney fees were costs, such fees were not covered by rule providing that party entitled to costs was to serve on each of the other parties to the action or proceeding a cost bill, together with notice when application was to be made to the clerk to tax costs, that cost bill was to distinctly set forth each item claimed and that failure of a party to serve a cost bill on notice as required by the rule was to be construed as a waiver of his right to recover costs. Rules of Civil Procedure, Rule 79(a).

10. Costs ⇐199

It is within discretion of trial court to impose a time limit for filing for attorney fees.

11. Costs ⇐199

In action involving issue whether lands granted by federal government for support of University of Alaska could by used for other public purposes, permitting University to file its request for attorney fees 13 days after the judgment was not abuse of discretion. Rules of Civil Procedure, Rule 82.

12. Costs ⇐172

In action which related to issue whether lands originally granted to state by federal government for support of University of Alaska could be used for other public purposes and in which University requested an award of attorney fees in the amount of $16,196, award of $15,000 in attorney fees to University was excessive, in light of fact that there was no evidence that State's claim was frivolous, vexatious or devoid of good faith. Rules of Civil Procedure, Rule 82.

13. Colleges and Universities ⇐1

University of Alaska enjoys, in some limited respects, a status which is equal rather than subordinate to that of the over-

utive or legislative arms of government. AS 14.40.040; Const. Art. 7, §§ 2, 3.

14. States ⇐215

In action involving issue whether lands originally granted to State by federal government for support of University of Alaska could be used for other public purposes, trial court was not precluded from awarding University attorney fees against State, though both parties were state entities and it was asserted that the fees would ultimately come from the same fund. AS 14.40.040; Const. Art. 7, §§ 2, 3.

Barbara J. Miracle and Thomas E. Meacham, Asst. Attys. Gen., and Avrum M. Gross, Atty. Gen., Juneau, for appellant.

Brian J. Farney and Mary Louise Molenda, Abbott, Lynch & Farney, Anchorage, for appellee.

OPINION

Before RABINOWITZ, C. J., CONNOR, BURKE and MATTHEWS, JJ., and DIMOND, Senior Justice.

CONNOR, Justice.

The principal issue in this case is whether lands that were originally granted to the state by the federal government for the support of the University of Alaska may now be used for other public purposes. The state contends that university lands can be included in Chugach State Park without paying compensation. The superior court held that the inclusion of the university lands in the state park constituted a breach of trust and invalidated the portion of AS 41.20.210 which included the university land in the park. It awarded substantially full attorney's fees to the university.

We conclude that the trial court was correct in holding that it was a breach of a federal trust to include university land in the park without compensation, but we conclude that invalidating the statute was error. The proper remedy in this case is to award compensation to the university. We also hold that it was improper to award substantially full attorney's fees to the university.

I. Facts

The facts in this case are not in dispute. A group of real estate developers (Village Developers, *et al.*) wished to build a housing development known as Innsbruck Village. All the proposed land for the development, consisting of about 710 acres, is a privately owned inholding within the boundaries of Chugach State Park. Between this enclave of private land and the park boundary are two sections of land designated as Sections 11 and 14 of Township 15 North Range 1 West, Seward Meridian. In 1961, the state received the patent to the bulk of the land in these two sections[1] from the United States under the authority of the Act of January 21, 1929, ch. 92, 45 Stat. 1091 (1929), which allows the state to select 100,000 acres of vacant unreserved land from the federal domain for the "use and benefit" of what is now the University of Alaska. This is not land to be used as the site of a university campus; rather, it is an asset of the university to be used for its support through its retention and use or its eventual sale.

The real estate developers wished to widen and reroute a portion of a then existing road that provided the only access into the private land. This road cuts across the two sections of university land. In July, 1977, the developers applied to both the university and the state Department of Natural Resources for permission to do the road work. The university granted its permission in December, but on April 5, 1978, the Department of Natural Resources denied its permission.

At the time the state denied its permission, a survey crew employed by the developers had already been on the road for several days and had cut some trees and brush. On April 12, the state filed a com-

1. The remaining land in the sections is private and acquired under homestead entry prior to the state patent.

plaint seeking an injunction halting any further work, a declaratory judgment that the developers were trespassing, and damages.

The developers, in their answer and a motion for partial summary judgment, stated among other defenses and counterclaims that the court should not permit the state to treat the university land as park land. The state, in opposing this contention, maintained that the land belonged to the state, the legislature had included the land in Chugach State Park, and therefore it had to be managed in a manner compatible with park land. The state further took the position that the Board of Regents of the university had no power to force the state to grant a right of way over this land and that the university's permission to the developers had no effect.

At a hearing on the summary judgment motion, the court decided to permit the University of Alaska to intervene as a party. The court was concerned that any decision regarding the relatively minor dispute between the developers and the state over a piece of road construction could have a far-reaching effect on the future management of university lands. When the university intervened as a defendant, it sought a declaratory judgment not only as to the land specifically involved in the road dispute, but also as to the total 5,040 acres of university land included in Chugach State Park.[2]

In a memorandum decision, the trial court concluded, first, that the land granted to the university continued to be retained in trust for the university under the federal grant; second, that by placing the university land in Chugach State Park the state violated the purpose of the trust; third, that under Alaska law, the Board of Regents must be consulted whenever there is a disposition of land, and there was no approval by the Board to place this land in a state park; and forth, that when the Board of Regents seeks a disposal of its land, as was done in this case by approval of the road building plan, the state Department of Natural Resources must acquiesce, and carry out the disposal as a ministerial duty. The trial court's ultimate conclusion was that the university lands were not part of the Chugach State Park because the legislature's enactment including the lands in the park was invalid. A final order to this effect was entered.

The state has appealed from the court's judgment. After the court entered its final order, the state and the developers settled. The only remaining dispute is between the university and the state.

II. Violation of Federal Trust

[1] The state's principal argument in this appeal is that the grant of 100,000 acres of federal land for the support of higher education in the Territory of Alaska under the 1929 Act is no longer restricted to the narrow purpose envisioned by that Act. While the state recognizes that the 1929 Act originally required university lands to be managed solely for the benefit of the university, the state apparently now believes that these lands may be managed with multiple objectives in mind, some of which may be compatible with the support of the university and some which may not be compatible. It does not believe that the university must be compensated for placing the land in the state park. The state's reasoning is based on the action of Congress, which has repealed certain sections of the original 1929 land grant.

A review of the subsequent history of the 1929 land grant shows that the state's argument is without support. We agree with the trial court that putting university lands into a state park without compensation to the university was a breach of the trust.

A. The 1929 Act.

The 1929 Act originally consisted of seven sections. The first, which is still in effect, is a habendum clause describing the size of the grant and its purpose. In particular, it

2. The university apparently did not sue when Chugach State Park was first created because of uncertainty as to whether university lands [illegible] the state park by statutes were to be treated as private inholdings or managed like other park lands.

states that the land is granted "for the *exclusive* use and benefit of the Agricultural College and School of Mines" (now the University of Alaska) (emphasis added). Section 2 of the Act, which is also in effect, states that the land grant cannot be used for the support of any religious institution. The remaining five sections, which are now repealed, contained detailed provisions relating to the sale or disposal of land. For example, they required that land be sold to the highest bidder at a public auction, that timber and other products from the land be sold at their appraised value, and that funds derived from the sale of lands be held in trust. Transactions in violation of the Act were "null and void," and the Attorney General of the United States was empowered to enforce the Act.

Language which is nearly identical to that contained in sections 3 through 7 of the 1929 Act appears in sections 10 and 28 of the New Mexico-Arizona Enabling Act, ch. 310, 36 Stat. 557 (1910), which makes grants of extensive amounts of federal land for school purposes to those states. The reason for these provisions in the New Mexico-Arizona Enabling Act was explained by the United States Supreme Court in *Lassen v. Arizona*, 385 U.S. 458, 463-64, 87 S.Ct. 584, 587, 17 L.Ed.2d 515, 520 (1967):

> "All the restrictions on the use and disposition of the trust lands, including those on the powers of sale and lease, were first inserted by the Senate Committee on the Territories. Senator Beveridge, the committee's chairman, made clear on the floor of the Senate that the committee's determination to require the restrictions sprang from its fear that the trust would be exploited for private advantage. He emphasized that the committee was influenced chiefly by the repeated violations of a similar grant made to New Mexico in 1898. The violations had there allegedly consisted of private sales at unreasonably low prices, and the committee evidently hoped to prevent such depredations here by requiring public notice and sale. The restrictions were thus intended to guarantee, by preventing particular abuses through the prohibition of specific practices, that the trust received appropriate compensation for trust lands." (footnotes omitted).

The nearly identical language used in the grant of land to the Territory of Alaska was undoubtedly placed in the Act to prevent the same kind of abuses by the territorial government.

The State of Alaska acquired the rights to the land granted by the 1929 Act by section 6(k) of the Alaska Statehood Act, Pub.L.No.85-508, 72 Stat. 339 (1958), which provides in relevant part:

> "Grants previously made to the Territory of Alaska are hereby confirmed and transferred to the State of Alaska upon its admission."

Article XII, section 13, of the state constitution provides that any land taken by the state under a federal grant will be accepted under the "terms or conditions of the grants."[3] In *Wessells v. State Department of Highways*, 562 P.2d 1042, 1051 n.34 (Alaska 1977), we recognized that acceptance of grants of school lands under this section created a trust with the state acting as trustee.

B. The 1966 repeal.

In 1966, the United States Congress repealed sections 3 through 7 of the 1929 Act. Pub.L.No.89-588, 80 Stat. 811 (1966). The state asserts that this repeal means that there are no longer any federal restrictions on the use of the land granted under the 1929 Act. Its principal contention is that the repealing of section 3 of the Act removed any federal trust obligations. Section 3 had provided, in part:

3. The full text of Article XII, section 13, provides:

> "*Consent to Act of Admission.* All provisions of the act admitting Alaska into the Union which require rights or powers to the United States, or which in those provisions

> the terms or conditions of the grants of lands or other property, are consented to fully by the State and it is granted."

AS 38.40.330 implements the above section, and AS 37.14.400 establishes a trust fund for proceeds derived from university lands.

> "[I]t is hereby declared that all lands granted to said Territory are hereby expressly transferred and confirmed to the said Territory and shall be by the said Territory held in trust . . . ."

The state concludes that, once this language was repealed, the state could establish its own guidelines for how the land should be used.

The legislative history of the repeal, the history of the school land grants in general and the plain wording of the habendum clause of section 1 make this theory of the state unsupportable.

First, it is abundantly clear from the legislative history that Congress was willing to repeal sections 3 through 7 of the 1929 Act because it was satisfied that Alaska had adequate procedures in its own statutory law to prevent the type of abuses that the repealed sections were designed to prevent. In particular, it should be noted that in its first session in 1959, Alaska's new state legislature enacted a bill that provided for the disposal of public lands and resources along principles nearly identical to those contained in sections 3 through 7 of the 1929 Act. Like the 1929 Act, the state law required that lands and resources be sold to the highest bidder. *See* Ch. 169, art. IV, § 2, and art. VI, § 3, SLA 1959. In floor debates on the bill, Representative Rivers from Alaska was asked by one of his colleagues to clarify that Alaska had adequate procedural safeguards to manage university lands. Because of Alaska statutory law, Representative Rivers could assure him that such protections existed. It hardly seems possible that Representative Rivers intended to convey the message the state now asserts, that in fact the state would be free to use university lands for any purpose which it saw fit under some broad concept of the "public interest."[4]

Second, the state's argument fails to appreciate that, if Congress had intended to allow land to be used for other than university purposes, this would have signaled a major shift in federal land policy. The statehood enabling acts of at least nine other western states contain allocations of acreage for school trust lands totaling approximately 40 million acres. *See* Note, *Compensation for Highway Easements Over School Trust Lands*, 42 Wash.L.Rev. 912, 912 n.5 (1967). In 1962, Arizona's legislature petitioned Congress to modify is enabling act so that municipalities could use school trust lands for parks, schools and other public purposes and compensate the trust at less than fair market value. Bills introduced by the Arizona congressional delegation failed to pass both houses. *See* Udall, *Arizona's Public Lands—Mixed Blessing, Mixed Burden*, 8 Ariz.L.Rev. 11, 13 (1966). It does not seem reasonable to conclude that Alaska, alone among western states, was to be treated so differently.

Finally, it is clear that the language of the 1929 Act that was not affected by the 1966 repeal continues to impose a trust obligation upon the state. As noted above, the habendum clause, which remains in effect, continues to require that the land be used

4. The following conversation took place:
"Mr. HALL. I see no objection to the land of a land-grant college or university, or otherwise, being sold to the highest bidder. Does the gentleman mean to inform me directly that the laws of the State of Alaska now care for this, in lieu of the Federal restrictions?
Mr. RIVERS of Alaska. Yes, and it is so stated in the report, which says that the change by the Congress would not be immediately effective because conforming legislation is still in effect or being considered by the State.
Mr. HALL. Mr. Speaker, I believe the gentleman knows I am a "States' righter" in most areas, and I believe in the 10th amendment to our Constitution. It bears repeating to me that the State of Alaska now has inherent in its own code and laws the fact that it will make sales at public auction, and that they will maintain necessary restrictions for the protection of the State university and the State of Alaska—that is all I need.
Mr. RIVERS of Alaska. Mr. Speaker, I will say that the State will impose its own, private restrictions. But I must also say that the present law allows the sale of university lands by sealed bids as well as by public auction. With that one modification I warrant all that the gentleman requires.
Mr. HALL. Mr. Speaker, I withdraw my reservation."
112 Cong.Rec. H 21,739 (1966).

for the "exclusive use and benefit" of the university.

C. The trust violation.

[2] Because the land was to be held in trust for the university, we must determine whether inclusion of the land in Chugach State park caused a breach of the trust. The trial court concluded that the inclusion of university land in the park violated the trust provision of the federal grant. We agree. The use that can be made of park lands as compared to state lands in general is severely restricted. Trees may not be cut, minerals may not be removed, nor can the land be used for raising farm animals. The general principle is that park lands are to be managed in a way that will increase "the value of a recreational experience." [5] It is apparent that this objective is incompatible with the objective of using university land for the "exclusive use and benefit" of the university. The implied intent of the grant was to maximize the economic return from the land for the benefit of the university. This intent cannot be accomplished if the use of the land is restricted to any significant degree.

[3] It is well established in private trusts that "[i]t is the duty of a trustee to administer the trust solely in the interest of the beneficiaries." II A. Scott, The Law of Trusts § 170, at 1298 (3d ed. 1967). *See* G. Bogert, The Law of Trusts and Trustees § 541, at 157 (rev. 2d. ed. 1978). *Lassen v. Arizona*, 385 U.S. 458, 87 S.Ct. 587, 17 L.Ed.2d 515 (1967), makes clear that the same private trust law principles are to apply to federal land granted to the states for school purposes.[6] *Lassen* involved the question of whether and how much compensation must be paid by a state when it uses school lands for a highway right of way.

The Court noted that the enabling act granting the school land "unequivocally demands ... that the trust receive the full value of any lands transferred from it. ..." 385 U.S. at 466, 87 S.Ct. at 588, 17 L.Ed.2d at 521. Further, the intent of Congress was that "the grants provide the most substantial support possible to the beneficiaries and that *only* those beneficiaries profit from the trust." 385 U.S. at 467, 87 S.Ct. at 589, 17 L.Ed.2d at 522 (emphasis added).[7] As noted in a more recent Supreme Court case, *Alamo Land & Cattle Co. v. Arizona*, 424 U.S. 295, 302, 96 S.Ct. 910, 915, 47 L.Ed.2d 1, 8

5. 11 AAC 18.010 provides:

"On public lands located within the boundaries of a state park, surface or subsurface mineral (including gravel and rock) exploration or extraction, removal or cutting of timber or other plant growth, grazing or pasturing of domestic animals, or other activities which do not increase park values or which do not add to the value of a recreational experience are incompatible uses and are prohibited without a permit from the director. The director shall issue a permit if he determines that the

(1) ecology of state park lands will not be irreparably damaged or imperiled;

(2) state park lands are protected from pollution;

(3) public use values of the state park are maintained and protected; and

(4) public safety, health and welfare will not be damaged or imperiled."

6. At least two courts have specifically concluded that the law of private trusts is applicable to and held by the state in trust for schools. *See* [illegible] *Rosenberger*, 87 Nev. 26, 123 [illegible] 1972). As discussed in the [illegible] lands created a trust. *Wesselis v. State Dept. of Highways*, 562 P.2d 1042, 1051 n.34 (Alaska 1977). The state has apparently recognized that at least as to funds derived from university lands, private trust law applies. *See* 1963 Op. Att'y Gen. No. 13 (Alaska May 31, 1963), which liberally cites private trust law authorities in determining the proper management of the fund created by AS 14.40.400. The state offers no explanation why the lands granted to the university should be treated differently from funds derived from them, and we cannot find any logical reason why they should be.

7. It is clear in both these quoted passages that the Court reached this conclusion by examining those provisions of the New Mexico-Arizona Enabling Act which, like former sections 3 through 7 of the 1929 Act, provided for detailed procedures for maximizing the profit from the disposal of land. However, as discussed in detail above, repeal of these sections in the Alaska Act was not meant to change this policy. It was only meant to allow the state to use its own similar procedures. Therefore, the language in *Lassen* is equally applicable to this case.

(1976), the ultimate conclusion of *Lassen* is that "even where the State itself is the acquisitor, the Act's designated beneficiaries were to derive the full benefit of the grant."[8]

The state conjectures that there may still be an economic return from these lands because at some point in the future the Department of Natural Resources may allow ski tows or concession stands to be placed on them. The Supreme Court in *Lassen* rejected this type of speculation about the possible future value of land. The Arizona Supreme Court had concluded that it was safe to presume that a highway always increases the value of adjacent lands in an amount equal to the value of the right of way that has been taken. The United States, as amicus curiae, had suggested that, instead of using a presumption, any compensation paid into a trust be reduced by any proved enhancement. The Supreme Court rejected both arguments and concluded that the school trust had to be compensated for the actual appraised value of the land taken.

From the foregoing discussion, we conclude that the state has breached the trust by not compensating it for the value of the university land included in the park. The appropriate remedy is discussed in detail below.

III. Legislature's Power to Dispose of University Lands

[4] As discussed above, the trial court concluded that the disposal of university land without compensation violated a trust created by the 1929 Act. The court further concluded, however, that the state legislature had no power to dispose of university land without the express permission of the Board of Regents. The court reasoned that AS 38.05.030(a) prevents any disposal of university lands by the Commissioner of Natural Resources without the approval of the Board of Regents, and, because this was a disposal of land without the Board's approval, it was invalid.

While we agree with the trial judge's conclusion that this was a "disposal" of land, we conclude that AS 38.05.030(a) only covers disposals of land by the Commissioner of Natural Resources.[9] The creation of Chugach State Park was a disposal by the legislature, not by administrative action, and therefore AS 38.05.030(a) is inapplicable.

[5] The university argues, on the basis of article VII, section 2, of the Alaska Constitution, that the legislature cannot control university land. That section provides:

> "The University of Alaska is hereby established as the state university and constitutes a body corporate. It shall have title to all real and personal property now or hereafter set aside for or conveyed to it. Its property shall be administered and disposed of according to law."

The trial court concluded:

> "The apparent intention of the framers of the Constitution was to insure that the University had legal title to all land and property actually utilized by it in its educational capacity."

This is a reasonable interpretation of the section, and in fact the legislature has given

8. Of all the states that received federal land grants for schools in their enabling acts prior to *Lassen* only Arizona, *Arizona Highway Dept. v. Lassen*, 99 Ariz. 161, 407 P.2d 747 (1965), and to a limited extent Wyoming, *Ross v. Trustees of Univ. of Wyo.*, 222 P. 3 (Wyo.1924), *aff'd on rehearing*, 31 Wyo. 464, 228 P. 652 (1924), had concluded that a public purpose use of school lands did not require compensation to a school trust fund. *See State ex rel. Galen v. Dist. Court*, 42 Mont. 105, 112 P. 706 (1910), *State ex rel. Johnson v. Central Neb. Pub. Power & Irrigation Dist.*, 143 Neb. 152, 8 N.W.2d 841 (1943); *State Highway Comm'n v. Walker*, 61 N.M. 374, 301 P.2d 317 (1956), *State Highway Comm'n v. State*, 70 N.D. 673, 297 N.W. 194 (1941); Note, *Compensation for Highway Easements over School Trust Lands*, 42 Wash.L.Rev. 912, 913 n.6 (1967).

9. AS 38.05.005-.040 governs the administration of public lands by the Commissioner of Natural Resources. AS 38.05.030(a) provides in part:

> "The sale, lease or other disposal of university lands shall be made by the commissioner. . . . No sale, lease, exchange or other disposal of university lands may be made without the approval of the Board of Regents of the University of Alaska."

title to lands in the area of the Fairbanks campus to the university. Ch. 182, § 3(c), SLA 1978. Moreover, the university takes any land it may have title to "according to law." As the state points out, only the legislature can make laws effecting the disposal of land, not the Board of Regents,[10] so even if the university did have title to the land, the legislature would still be empowered to dispose of it.[11] The only veto power the Board of Regents has over disposals of land is defined by statute. Consequently, we believe that the legislature was free to dispose of this land without obtaining the approval of the university. In any event, as the federal patent makes clear, the state, not the university, was the grantee.

The natural resources article of the Alaska Constitution grants extensive powers to the legislature to control state lands. Article VIII, section 2, provides that

> "The legislature shall provide for the utilization, development, and conservation of all natural resources belonging to the State, including land and waters, for the maximum benefit of its people."

It is clear that these lands "belong" to the state. Additionally, article VIII, section 7, provides for reserving from the public lands areas which have recreational value.

[6, 7] The university objects to this interpretation of the natural resources article which allows the legislature wide latitude of control over its lands. It contends that it allows politics to intrude into the management of university affairs. However, if the trust fund for university lands is fully compensated at the appraised value of the property, as *Lassen* requires, it is difficult to imagine how the legislature can have any impact on university policy or academic freedom.[12]

Thus we hold that the legislature had the power to dispose of the land in question.

IV. Remedy

[8] The trial court held that the portions of AS 41.20.210(11) which included university land in the park were invalid, and rejected the remedy of inverse condemnation and either monetary damages for the taking of the university land or an exchange of lands having an equal fair market value. In the trial court's view, the remedy of inverse condemnation would result in the judiciary "injecting itself unnecessarily into the political sphere" and could force an unanticipated allocation of resources by the state.[13]

10. *See* Alaska Const., art. XII, § 11. Terms such as "according to law" refer to the legislature's power to make laws.

11. Nebraska has apparently concluded that its legislature does not have the power to make direct disposals of land. *See State ex rel. Johnson v. Central Neb. Pub. Power & Irrigation Dist.*, 143 Neb. 153, 8 N.W.2d 841, 848 (1942). However, the Nebraska Constitution specifically provides for a method of management and disposal of school lands. The Alaska constitution has left these determinations to the legislature.

12. The university suggests that, by enacting AS 41.20.210, creating Chugach State Park, there was an implied repeal of AS 38.05.030(a). This is not a logical or necessary construction. AS 41.20.210 withdrew the particular university land involved from the operation of the management mechanism created by AS 38.05.030(a) and AS 14.40.170(4), which grants certain management powers to the Board of Regents. The university also has sought a declaration that when the Board of Regents wishes to dispose of university land granted to the state under the 1929 Act the Commissioner of Natural Resources must carry out the disposal. In this case, it is clear that the requested disposal was not made by the Department of Natural Resources because the land had been included in the state park. There is no reason to assume that this is a general problem or that there is a likelihood of a recurring controversy concerning the issue if the university is compensated. Therefore, we do not believe the issue is ripe for review. *See Jefferson v. Asplund*, 458 P.2d 995, 999 (Alaska 1969) (regarding declaratory judgments).

13. One commentary argues that inverse condemnation should not be an available remedy when the state's taking is a purely nonphysical, regulatory one. The only remedy that should be available, according to this view, is declaratory or injunctive relief invalidating the statute; otherwise, legislatures would become reluctant to try new approaches to land use problems because the state or municipality might suddenly find itself liable for numerous damage claims. This would not occur if the law were merely declared invalid. Furthermore, invalidating the law leaves it to the legislature to determine whether it wishes to reenact a similar law with the certain knowledge that it will now have to pay something for it. Permitting

While there is some merit to the argument in the context of a private damage action, we believe that it is inapplicable in this case. If damages are awarded here, it will, at the most, involve a transfer of either lands or funds from one governmental entity to another. Moreover, the legislature has nearly total control over appropriations to the university. Thus, there is no issue of the allocation of resources between the private and public sectors.

It is also logical to assume that the legislature intended to compensate the university for the loss of its land. This view gives the statute creating Chugach State Park a reading that is in accord with the well recognized canon of statutory construction that, when possible, legislation should be construed in a way that upholds its validity. *See* 1 C. Sands, Sutherland Statutory Construction § 2.01 (4th ed. 1972).

The New Jersey Supreme Court based a decision on this rationale in *Lomarch Corp. v. Mayor of Englewood*, 51 N.J. 108, 237 A.2d 881 (1968). Rather than declare a statute that provided for reserving private land for parks invalid, the court concluded that the statute should be construed in such a way that it required compensation, even though the statute and a municipal ordinance enacted under it did not mention the subject. *Cf. Maryland-National Capital Park & Planning Commission v. Chadwick*, 286 Md. 1, 405 A.2d 241, 250 (1979) (striking down a plan similar to New Jersey's on the ground that the regulation constituted a taking and was therefore unconstitutional in that it failed to award any compensation). We do not decide whether we will follow *Lomarch* in an action by a private property owner[14] but we do find its reasoning appropriate in this case where no private damage actions are involved.

Thus, it is necessary to remand this case to determine the value of the lands taken. We conclude that the university should receive the full appraised value of the land that was placed in the park. The applicable date on which the fair market value of the land should be determined is the date the Chugach State Park act was enacted. This is in accordance with our holding that the statute which created Chugach State Park required compensation, and with our decision in *City of Anchorage v. Nesbett*, 530 P.2d 1324, 1334-36 (Alaska 1975). Finally, we believe the parties should be given an election to pay monetary damages or arrange a mutually agreeable land exchange.

V. Attorney's Fees

Following judgment, the university moved in the superior court for an award of $16,196.00 in attorney's fees incurred in defending the underlying action. The court granted a partial award of $15,000.00. The state raises numerous objections to the court's award of attorney's fees: that the university waived its right to recover attorney's fees by failing to comply with the requirements of Civil Rule 79(a) that a cost bill be filed within ten days of judgment, and by failing to set forth the charges incurred with sufficient particularity; that the court's award of substantially full attorney's fees was unreasonable and an abuse of discretion; and that one state agency should not be ordered to pay attorney's fees to another state agency.

[9] Initially, the state argues that the trial court erred in refusing to apply the requirements of Civil Rule 79(a) to the university's request for attorney's fees. Civil Rule 79(a) provides in part:

> "Within 10 days after the entry of judgment, a party entitled to costs shall serve on each of the other parties to the action or proceeding a cost bill, together with a notice when application will be made to the clerk to tax costs. The cost bill shall distinctly set forth each item claimed in order that the nature of the

an inverse condemnation action places the allocation of public resources into the hands of the private litigants. Note, *Inverse Condemnation: Its Availability to Challenge the Validity of a Zoning Ordinance*, 26 Stan.L.Rev. 1429 (1974).

14. As noted, *Lomarch* involved compensation to private property owners.

charge can be readily understood. . . . Failure of a party to serve a cost bill and notice as required by this subdivision shall be construed as a waiver of his right to recover costs."

The state contends that the university waived its right to recover attorney's fees by its failure to comply with the requirement that a cost bill be served within ten days of judgment. The university filed its request for attorney's fees in the superior court thirteen days after judgment. The trial court ruled that it would be unfair to treat any delay in filing the motion for attorney's fees as a waiver (citing Civil Rule 94), given the established position of the superior court in the Third Judicial District that the procedures in Rule 79 do not govern Rule 82 motions for attorney's fees.

We have never directly addressed the question of whether a request for attorney's fees is governed by the procedural requirements of Rule 79. However, on two occasions we have intimated that Rule 79 does not govern attorney's fees, by considering the issue of attorney's fees after holding that the right to recover costs was waived for failure to establish compliance with Rule 79(a). *See Curran v. Hastreiter*, 579 P.2d 524 (Alaska 1978);[15] *M-B Contracting Co. v. Davis*, 399 P.2d 433 (Alaska 1965).

We conclude that, while attorney's fees are costs,[16] they are not covered by the literal requirements of Civil Rule 79(b).[17]

[10, 11] It is within the discretion of the trial court to impose a time limit for the filing for attorney's fees. The trial court did not abuse its discretion in this case by permitting the request thirteen days after the judgment.

[12] When granting attorney's fees, the trial court indicated that the amount requested by the university, $16,196.00, was reasonable due to the high quality and extensive nature of the work required, but it felt constrained by this court's decisions to grant only a partial award. The state contends that the amount awarded, $15,000.00, provides "substantially full attorneys fees" and is per se unreasonable. In *Moses v. McGarvey*, 614 P.2d 1363, 1370 (Alaska 1980), we stated that "complexity may be considered in determining the amount to be awarded, but that factor alone does not justify the award of full fees."

We have consistently held that an award of full attorney's fees is "manifestly unreasonable" in the absence of a bad faith defense or vexatious conduct by the losing party. *E. g., Davis v. Hallett*, 587 P.2d

15. *Curran* states:

"Although appellees specify as error the superior court's failure to award both costs and attorney's fees, they request that the case be remanded only for a determination of attorney's fees. There is no indication in the record that appellees complied with Civil Rule 79(a) which requires a party seeking costs to serve on each of the other parties within 10 days after entry of judgment 'a cost bill, together with a notice when application will be made to the clerk to tax costs.' The rule also provides that '[f]ailure of a party to serve a cost bill and notice as required by this subdivision shall be construed as a waiver of his right to recover costs.' Thus, appellees have apparently waived their right to costs. *See M-B Contracting Co., Inc. v. Davis*, 399 P.2d 432, 436-37 (Alaska 1965). In *M-B Contracting*, after invoking Rule 79(a) to bar consideration of an appeal as to costs, this court considered the separate issue of attorney's fees."

579 P.2d at 526 n.2.

16. AS 09.60.010 provides:

"Except as otherwise provided by statute, the supreme court shall determine by rule or order what *costs, if any, including attorney fees*, shall be allowed the prevailing party in any case." (emphasis added).

17. Alaska R.Civ.P. 79(b) reads:

"*Items Allowed as Costs.* A party entitled to costs may be allowed premiums paid on and expenses of posting, undertakings, bonds or security stipulations, where the same have been furnished by reason of express requirement of law or on order of the court; the necessary expense of taking deposition for use at trial and producing exhibits; the expense of service and publication of summons or notices, and postage when the same are served by mail; filing fees and other charges made by the clerk of the court and fees for transcripts required in the trial of a case in the superior court. In addition to the items allowed as costs by law and in these rules, a party shall be allowed any other expenses necessarily incurred in order to enable a party to secure some right accorded him in the action or proceeding."

1170, 1171-72 (Alaska 1978); *Maivo v. J. C. Penney Co.*, 512 P.2d 575, 587 (Alaska 1973). In *Stepanov v. Gavrilovich*, 594 P.2d 30, 37 (Alaska 1979), an award of substantially full attorney's fees was held to be "contrary to the philosophy expressed in *Maivo*. . . ."

The attorney's fees awarded the university are over ninety per cent of what it requested, and there is no evidence that the state's claim was frivolous, vexatious or devoid of good faith. The award is excessive and must be reduced on remand.[18]

[13, 14] Finally, the state suggests that the court is precluded from awarding attorney's fees when both parties are state entities, claiming that the fees will ultimately come from the same fund. This argument was not presented to the superior court, and therefore it need not be considered. In any event, the argument is without merit. The university is a corporation of independent authority established by the Alaska Constitution, article VII, sections 2 and 3. It has the statutory power to "sue and be sued" in its own name, AS 14.40.040; and it is "an instrumentality of the sovereign which enjoys in some limited respects a status which is co-equal rather than subordinate to that of the executive or the legislative arms of government." *University of Alaska v. National Aircraft Leasing, Ltd.*, 536 P.2d 121, 128 (Alaska 1975) (footnote omitted). Attorney's fees would be paid out of segregated appropriations given to each entity. Each entity has an interest in preserving its own funds, and the university, as the prevailing party, is entitled to an award of fees.

In conclusion, we affirm the trial court's decision that the inclusion of university lands in Chugach State Park by statute, without compensation to the university, was a breach of the federal trust. We hold, however, that the court erred in invalidating the statute. The proper remedy is to permit an award in inverse condemnation. We also hold that the court erred in awarding substantially full attorney's fees against the state.

AFFIRMED in part, REVERSED in part, and REMANDED.

BOOCHEVER, J., not participating.

Andrew KAGAK, Appellant,

v.

STATE of Alaska, Appellee.

No. 5228.

Supreme Court of Alaska.

March 13, 1981.

Defendant was convicted in Superior Court, State of Alaska, Fourth Judicial District, Barrow, Jay Hodges, J., of assault with a dangerous weapon and of shooting with intent to wound. Defendant appealed from sentence of 15-year term of imprisonment on the shooting with intent to wound count. The Supreme Court held that in view of fact that defendant during latter stages of commission of a previous armed robbery offense had aimed loaded pistol at police officer and pulled trigger, the pistol misfiring, and in view of fact that defendant had been out of jail only five months when he brandished loaded 12-gauge shotgun at young girl, threatened to kill her, and then shot another person in shoulder at point blank range, 15-year sentence was not inappropriate on his conviction for shooting with intent to wound.

Affirmed.

18. The state also argues that the university failed to comply with the requirements of Rule 79(a) that a cost bill "distinctly set forth each item claimed in order that the nature of the charge can be readily understood." On remand, the university should provide the state and the court with more complete records, including brief descriptions of the services charged.

Mental health group threatens lawsuit

Anch Times 5/8/82

by Carol Murkowski
Times Writer

The Alaska Mental Health Association said Friday it will sue the state for possession of one million acres of formerly classified mental health trust land and income from the land unless the state Legislature moves to accommodate Alaska's mental health needs.

The announcement of the possible suit — which could amount to $1 billion — came just hours after the arrest of an Alaska Psychiatric Institute patient for the murder of four teen-agers at Russian Jack Springs Park.

"The facts of this morning's headlines point up the problems we're facing," said Dr. Jim Parsons, a psychologist and former president of the Mental Health Association. He and other association members stopped short of saying the deaths could have been prevented by more adequate facilities.

However, association director Natalie Gottstein said Anchorage's mental health facilities are filled to capacity.

"The fact there aren't more terrible things happening in this community is almost a miracle," she said.

Association attorney Jim Gottstein said he hopes the threat of a suit will force the Legislature to allocate funds to a now-empty mental health trust.

The association bases its case on a recently completed survey of mental health needs in Alaska, and the alleged failure of the state to comply with a 1956 grant from the federal government.

In 1956, the territory of Alaska was given one million acres of land, with the specification that its income be used to fund mental health programs. However, for the next 22 years, mental health programs were funded separately, while income from mental health lands were mixed with other state lands.

In 1978 the Legislature made a swap, removing the mental health designation from the land and establishing a mental health trust fund in its place. The fund was to be fed with 1.5 percent of state revenues.

But the money never came through. Now, Jim Gottstein says, the Mental Health Association will sue unless the Legislature agrees to appropriate the missing 1.5 percent in revenues.

House bills 151 and 152 and Senate bills 710 and 711 were introduced last year, and would bank $84 million in the mental health trust fund. That would cover the amount that should have flowed into the endowment fund since it began.

The Alaska Mental Health Association will sue for "recreation of the trust and administration of the proceeds in accordance with the Mental Health Lands Enabling Act," said Jim Gottstein, a member of the association's board.

"If it came to suit, we would say the state violated the trust," he said. "The state admits that they're currently violating federal law, and we'd sue for compliance."

The group will be armed with several attorney generals' opinions in support of an established mental health trust fund, and a recent court settlement concerning University of Alaska trust lands. If some compliance is not made, assistant attorney general Rod Pegues warned legislators last year, the federal government might legally be able to reclaim the land, now the site of parks, church camps, a fish hatchery, the Eagle River Correctional Center and other facilities.

The association also is armed with a mental health needs assessment survey it completed this month.

The report said all public and private psychiatric inpatient beds are being used, and that "a significant proportion of admissions for inpatient care result from the inadequacy of aftercare services and the almost total lack of programs which provide alternatives to hospital care."

The study recommended strengthening Alaska Psychiatric Institute programs, establishing an annual assessment of mental health programs, studying problems of the Alaska native and Bush communities and developing a community-based system of alternatives to institutional care, including half-way houses, sheltered workshops, social activity centers and intermediate care for chronic mental patients.

Anchorage History

From the notebook of Evangeline Atwood

May 8

1954
The "Flying Carpet" delegation takes off for Washington, D.C., to lobby for statehood.

1970
Anchorage attorney George Boney is named Chief Justice of the state Supreme Court by Gov. Keith Miller.

SB 710 - 71? - Testimony

Jim Godstein - Ak Mental Health Assn
Anselm Staoul - Dept of Revenue -
(If Needed)
Dr Marshall - Division Mental Health
(If Needed)