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COMMITTEE REPORT
SENATE

2/3/82

FURTHER: Resources and Finance

Date: 3/3/82

Mr. President:

The Committee on HEALTH, EDUCATION AND SOCIAL SERVICES has had SR 711

making a special appropriation to the Dept. of Revenue for deposit to the mental health fund

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
- and recommends _____ new title
- 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

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

B

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 assumed liability or otherwise.

STATE OF ALASKA

DEPARTMENT OF LAW

FEB - 8 1982

OFFICE OF THE ATTORNEY GENERAL

JAY S. HAMMOND, GOVERNOR

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

*/ 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; **/

*/ 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.

Hon. Hugh Malone
Alaska House of Representatives

February 8, 1982
Page #6

(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


Hon. Hugh Malone
Alaska House of Representatives

February 8, 1982
Page #7

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

ALASKA MENTAL HEALTH ENABLING ACT, PL. 84-830, § 202

70 STAT.]

PUBLIC LAW 830—JULY 26, 1956

711

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.

"(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."

Recovery of value of facility.

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. 292), 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.

(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.

Mineral deposits.

Lands: select

(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

(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

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

STATE OF ALASKA

DEPARTMENT OF REVENUE

OFFICE OF THE COMMISSIONER

JAY S. HAMMOND, GOVERNOR

POUCH 5
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

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 Date 2/16/82
 Committee

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)

	FY 82	FY 83	FY 84	FY 85	FY 86	FY 87
GENERAL FUND		73.6	77.0	84.8	93.2	102.4
FEDERAL FUNDS						
OTHER (Specify Source)						

POSITIONS

	FY 82	FY 83	FY 84	FY 85	FY 86	FY 87
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. Bushne
 AGENCY Revenue
 Original: Legislative Finance PHONE 465-2350
 cc: Budget and Management
 Prime Sponsor (First Legislator Named)
 33-001 (Rev. 12/81)

1	POSITION TITLE Accounting Technician II			RANGE/STEP 14A	CLASS. UNIT. G	LOCATION Juneau	FOY	APPROV	DISAPP
2	TYPE OF POSITION PFT	STAFF MONTHS 12	RP No. SB 710	PCN No.	PRIORITY	FORM 12 PAGE/LINE	FOY	APPROV	DISAPP
3	TYPE OF EXPENDITURE			AMOUNT					
	1	2	3						
4	PERSONAL SERVICES:								
	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					
JUSTIFICATION:									
To implement additions to Mental Health Fund per SB 710.									
To do accounting, recording and reporting work. Assure transactions 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.									
	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	CONTINUATION		FOR B&M USE ONLY						
22	ADDITION	XX							
4A - KEY NUMBER _____ (MM) (CC) _____									

AGENCY Department of Revenue PROGRAM Revenue Collection and Management

ORU Treasury Management

13 REQUEST FOR NEW POSITION.

COMPONENT _____

Page 1 of 1 REVISED DATE SB 710 2/16/82

FY 83

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.

IV. DATE 2/8/82 PREPARED BY Robert W. Elliott
 AGENCY Department of Revenue
 Original: Legislative Finance PHONE 465-2173
 cc: Budget and Management
 Prime Sponsor (First Legislator Named)
 33-001 (Rev. 12/81)

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 earnings 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 chronically 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. Marshall, M.D.
Director, Division of
Mental Health and Developmental Disabilities

Date: 16 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

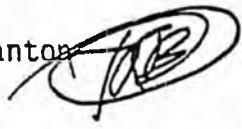
FULL TIME						
PART TIME						
TEMPORARY						

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, 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)

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 end I spoke to you about

Mike Colletta

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

B

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 proparation 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 assumed liability or otherwise.

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Dept. of Law Discussion Paper on Mental Health Trust
Fund

Legislative Counsel Discussion on SB 710 - 711

POSITION PAPER
SENATE BILL NO. 737

"An Act making a special appropriation to the Department of Health and Social Services to combat the causes and effects of birth defects."

This bill appropriates \$100,000 to this Department that may be utilized over the next 5 years, for which will continue to enhance a birth defects counseling service. In the past, this program was initiated and continued for several years by the National Foundation for Prevention of Birth Defects. It is anticipated that we will have to find another source to fund this service as that voluntary organization has indicated that other priorities have emerged for their support.

The Birth Defects program provides services ranging from diagnoses or confirmation of diagnoses, management and counseling. The categories covered include genetic disorders, chromosomal disorders (e.g. Down Syndrome), environmental (e.g. fetal alcohol syndrome) and those syndromes and malformations of unknown origin. They also receive many requests for information regarding amniocentesis, sickle-cell screening, drug exposure during pregnancy, etc.

The needs for services are rapidly increasing. The March of Dimes Birth Defects Foundation estimates that 1 out of 12 babies born has a significant birth defect. In Alaska during 1981, the Department of Vital Statistics recorded approximately 9550 live births, which statistically could represent almost 800 babies with significant birth defects. This is twice the number they can see in one year. A viable contracting mechanism has been established with the University of Washington using available Federal funds in addition to Foundation money. Federal funds are not available for FY 83 or beyond. This mechanism serves four cities in Alaska every two to four months. A continuation level would require close to \$50,000 per year. An expansion of the frequency and geographic availability of this service would require the expenditure of some additional funds.

POSITION

This service is considered by the Department to be a much needed preventive and cost effective program.

Recommended by: E.S. Rabeau
E.S. Rabeau, M.D., Director
Division of Public Health

Date: March 3, 1982

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

Date: 3-3-82

THE LEGISLATURE OF THE STATE OF ALASKA
TWELFTH LEGISLATURE

FISCAL NOTE

I. REQUEST

Bill/Resolution No. Senate Bill No. 737
Title "An Act making a special appropriation to the Department of Health and
Requested by Senate HESS Date 2/10/82

Social Services to combat the causes and effects of birth defects."

II. FISCAL DETAIL

Agency Affected Department of Health and Social Services
Program Category Affected Health/Public Health
BRU, Program, Or Subprogram(s) Affected Child & Family Health
(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	0	0	0	0	0	0
200 TRAVEL	0	0	0	0	0	0
300 CONTRACTUAL	0	0	0	0	0	0
400 COMMODITIES	0	0	0	0	0	0
500 EQUIPMENT	0	0	0	0	0	0
600 LAND & STRUCTURES	0	0	0	0	0	0
700 GRANTS, CLAIMS, ETC.	0	0	0	0	0	0
TOTAL	0	0	0	0	0	0

FUNDING (Thousands of Dollars)

GENERAL FUND	0	0	0	0	0	0
FEDERAL FUNDS	0	0	0	0	0	0
OTHER (Specify Source)	0	0	0	0	0	0

POSITIONS

FULL TIME	0	0	0	0	0	0
PART TIME	0	0	0	0	0	0
TEMPORARY	0	0	0	0	0	0

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

The \$100,000 appropriation in this bill may be expended over a 5 year period.

IV. DATE March 3, 1982 PREPARED BY E.S. Rabeau, M.D.
AGENCY Dept. of Health & Social Services
Original: Legislative Finance PHONE 465-3090
cc: Budget and Management
Prime Sponsor (First Legislator Named)
33-001 (Rev. 12/81)