

HOUSE

COMMITTEE REPORT

(11)

Date referred: 4/25/86

FURTHER REFERRALS:

DATE: 5-10-86

The FINANCE Committee has considered CSSB 472 (Res)

"An Act relating to the interim management of the mental health trust; and providing for an effective date."

and recommends:

- do pass
- do not pass
- do pass with attached amendment(s)
- no recommendation
- replace with HCS CSSB 472 (FIN) same title
- new title

and recommends do pass

further referral to the _____ Committee

- and attaches:
- letter of intent
 - first fiscal note
 - new fiscal note 5/7/86 300.0
 - zero fiscal note

SIGNING DO PASS:

SIGNING OTHER RECOMMENDATIONS:

[Handwritten signatures]

[Handwritten signature: Rich Healy (NO RES)]

[Handwritten signature: Albert W. Adams]

Chairman

STATE OF ALASKA 1986 LEGISLATIVE SESSION FISCAL NOTE

Revision Date : 5/7/86

REQUEST

Bill/Resolution No. SB 472 (FIN)
 Title : Management of Mental Health Trust

Sponsor : Senate HESS
 Requestor : House Finance
 Date of Request : 5/7/86

FISCAL DETAIL

Agency Affected : Natural Resources
 BRU : Land and Water Management

Components : _____

EXPENDITURES/REVENUES : (Thousands of Dollars)

OPERATING	FY 86	FY 87	FY 88	FY 89	FY 90	FY 91
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS		300.0				
TOTAL OPERATING		300.0				

CAPITAL						
---------	--	--	--	--	--	--

REVENUE						
---------	--	--	--	--	--	--

FUNDING : (Thousands of Dollars)

GENERAL FUND		300.0				
FEDERAL FUNDS						
OTHER						
TOTAL		300.0				

POSITIONS :

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS : Attach a separate page if necessary

see attached

Prepared by : Mike Vediner Phone : 465-2400
 Division : Commissioner's Office Date : 5/7/86

Approved by Commissioner : Wm S D Arnold, Deputy Date : 5/7/86
 Agency : Department of Natural Resources

Distribution (by Agency preparing fiscal note) :

- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)

Department of Natural Resources
5-7-86
Senate Bill 472
House Finance - Fiscal Note Addendum

Analysis

Several detailed reports, audits, and appraisals would be required under this bill, and indeed are required under the Supreme Court decision in Weiss v. Alaska, as interpreted by the Attorney General's Office.

Task 4 specifies that \$72,000 will be made available to the commission which will prepare a budget for necessary expenditure of those funds. Tasks 1, 2, and 3 will be completed by the department with the remaining \$228,000. Rather than allocate the funds to each component it is preferred that the department have the flexibility to utilize the funds as determined necessary by the commissioner.

1. Account for all funds or land received from conveyances and exchanges made between July 19, 1978 and October 4, 1985.

We estimate that 4,650 cases (2,370 land conveyances, 1,370 mining claims, 390 rights-of-way, 275 land leases, 25 timber or material sales, 110 oil and gas or coal leases, and 110 miscellaneous cases) will have to be audited to determine the amount received and/or appraised. Land discounts will have to be accounted for during this process. This process will take a Natural Resource Officer I approximately one year.

2. Identify and appraise all less than fair market value conveyances and encumbrances.

These appraisals will be performed contractually. However, the department must prepare reports and maps containing information about each parcel before the contract can be let. We also note that these appraisals cover only those mental health parcels that are no longer in trust status. The approximately 700,000 acres in trust status are not to be appraised.

The reports and maps must take approximately 1,100 parcels into consideration. This project will be completed by the Natural Resource Officer I in item #1 above.

We project that approximately 820 parcels totalling 268,000 acres will need appraisals. These appraisals may be determined by an Opinion of Value panel method. This method employs three senior designated appraisers, each

representing one geographic region (northern, southcentral, and southeastern). The panel of appraisers prepares value statements for each parcel of mental health land based on their regional expertise. The Opinion of Value method has been criticized by the plaintiffs and intervenors.

In addition, approximately 276 leases must be reappraised at five-year intervals. Currently these leases may not be reappraised for twenty-five years which will create a discrepancy with fair market value rental.

3. Provide management oversight of all transactions and account for funds received from mental health lands.

The Supreme Court decision in Weiss v. Alaska requires the department to manage mental health land as a trust consistent with the Alaska Mental Health Enabling Act. In order to comply in a defensible and consistent manner the department will employ a Natural Resource Manager and Accounting Technician.

The new Natural Resource Manager (NRM) position will oversee all actions taken by the department on mental health land. Over the last eight years we have averaged approximately 60 cases per month where some (former) mental health land was involved. These include mining locations, park permits, oil and gas lease sales, rights-of-way, ILMAs, municipal selections, leases, land sales, and nearly anything else in which the department is involved.

One of the major duties of the NRM will be review of these cases to ensure compliance with the court decision and prepare briefing packets for review by the commission. In addition the NRM will: prepare mental health land management notices to the department; prepare audit reports; oversee implementation of Department Order 121 relating to interim mental health land management; research trust land management problems; coordinate review and responses by various agencies; continue to update audit reports; implement procedure to recognize various trust lands on the LAS computer system; establish, maintain, and continue to improve departmental mental health land records system; prepare fact sheets and informational notices regarding mental health lands; and, oversee and assist in the activities of the NRO (item 1 above) and coordinate with the accountant position to ensure an accurate and expeditious procedure for distribution of monies.

It is expected that the manager will also provide the necessary coordination between the department and the plaintiffs, and will be required to travel.

The accounting position is required to distribute the appropriate percentage of income to the proper accounts for each post-October 4, 1985 transaction involving mental health land. In addition to percentage distributions among land types this position must also identify the percentage distribution between interest, principle, and penalty payments for entry into AKSAS. Many of these transactions are manually posted. A large portion of the work this position must accomplish will be the large number of monthly transactions from pre-1978 and continuing leases which must be corrected to reflect the proper distribution of income monies between the general and trust accounts. This is a continuing prospective function for each of the several thousand transactions which include mental health land.

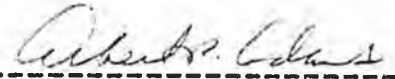
4. Commission funding for the performance of its duties.
Total allocation: \$72,000.

The commissioner shall allocate \$72,000 to the commission for the performance of its duties which may include, but are not limited to, hiring an executive director and staff, contracting with parties or individuals for the performance of functions it considers necessary, and travel expenses incurred in convening the commission or by the executive director. A budget for these funds will be prepared by the commission as provided in section 1 of the bill.

Office space and equipment will be provided by the department.

HOUSE FINANCE COMMITTEE
LETTER OF INTENT
FOR
H CS CSSB 472 (FINANCE)

It is the intent of the House Finance Committee that the "procedures and guidelines for the audit of the state mental health program," to be developed under section 3 (a) (1) of HCS CSSB 472 (Finance), are to specify the method by which the audit is to be conducted and are not to limit the scope of the audit by defining items constituting the state's mental health program. Rather, it is the intent of the House Finance Committee that the required audit of state mental health expenditures be as broad in scope as possible. At the same time, the House Finance Committee intends that the commission make recommendations as to which of the audited items are appropriately considered part of the state's mental health program in the report submitted to the legislature under section 4.



Al Adams, Chair
House Finance Committee

Original sponsor: Health, Education and
Social Services Committee

1 IN THE SENATE

BY THE FINANCE COMMITTEE

2 HOUSE CS FOR CS FOR SENATE BILL NO. 472 (Finance)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FOURTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to the interim management of the
7 mental health trust; and providing for an effective
8 date."

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

10 * Section 1. INTERIM MENTAL HEALTH TRUST COMMISSION ESTABLISHED. (a)

11 The interim mental health trust commission is established in the Department
12 of Natural Resources.

13 (b) The commission established under (a) of this section consists of
14 five members, including the commissioner of natural resources and the
15 commissioner of health and social services, or their designees, and three
16 members and three alternates appointed by the governor as follows:

17 (1) a member and an alternate representing the plaintiffs,
18 appointed by the governor from a list of three names submitted to the
19 governor by the plaintiffs in Weiss v. State, 4 FA 82-2208 Civil;

20 (2) a member and an alternate representing the intervenors,
21 appointed by the governor from a list of three names submitted to the
22 governor by the intervenors in Weiss v. State, 4 FA 82-2208 Civil; and

23 (3) a member and an alternate representing the Governor's Mental
24 Health Advisory Council, appointed by the governor from a list of three
25 names submitted to the governor by the Governor's Mental Health Advisory
26 Council.

27 (c) The members of the commission shall elect a presiding officer. A
28 majority of the commission constitutes a quorum. The affirmative vote of
29 three members is required to take official action. A vacancy does not

1 impair the power of the remaining members to exercise the powers of the
2 commission.

3 (d) In the absence of the member, an alternate appointed under (b) of
4 this section may vote and has all the powers of a member.

5 (e) Members of the commission serve without compensation but are
6 entitled to per diem and travel expenses authorized by law for other boards
7 under AS 39.20.180.

8 (f) The commission shall meet at least quarterly and may meet more
9 frequently, either in person or by teleconference.

10 (g) The commission shall prepare a budget allocating the funds appro-
11 priated to it for the performance of its responsibilities and may contract
12 with parties or individuals for the performance of functions it considers
13 necessary, including the services of an executive director and staff.

14 * Sec. 2. RESPONSIBILITIES OF THE COMMISSIONER OF NATURAL RESOURCES AND
15 THE COMMISSION. (a) The commissioner of natural resources shall inventory
16 and catalog the mental health trust land of the state, shall audit and
17 appraise each transaction involving land that has been part of the mental
18 health trust land of the state, and determine the status of mental health
19 trust land on October 4, 1985, under procedures and guidelines established
20 by the commissioner of natural resources with the approval of the commis-
21 sion. In the exercise of the commission's responsibilities under this
22 section, the commission and its staff may review the records of the Depart-
23 ment of Natural Resources that are made confidential by law or regulation.

24 (b) An individual who acquires information made confidential by law
25 or regulation in the performance of functions authorized by this Act and
26 discloses it without proper authority violates AS 11.56.860.

27 (c) The commissioner of natural resources shall, with the approval of
28 the commission, retain an appraiser or appraisers to appraise all or a
29 portion of land that, at any time, was part of the mental health trust land

1 of the state. The commissioner shall provide an appraiser conducting an
2 appraisal with written procedures and instructions that have been approved
3 by the commission.

4 (d) The commissioner of natural resources is responsible for the
5 management of the mental health land of the state as a public trust under
6 P.L. 84-830, 70 Stat. 709. Except as provided in (e) of this section, the
7 commissioner of natural resources may not sell, lease, or exchange mental
8 health trust land of the state or an interest in the mental health trust
9 land of the state without the prior approval of the commission. In review-
10 ing a proposal for the sale, lease, or exchange of mental health trust land
11 from the commissioner of natural resources, the commission may approve the
12 proposal of the commissioner on its determination that the proposal is
13 consistent with the terms of the trust established by the Alaska Mental
14 Health Enabling Act.

15 (e) The commissioner of natural resources may transfer trust land to
16 the federal government under AS 38.05.035(b)(9) without approval of the
17 commission. The commissioner of natural resources shall advise the commis-
18 sion of an intention to transfer trust land to the federal government and,
19 after the transfer, shall make every effort to acquire replacement land to
20 fulfill the state's remaining entitlement based on a prioritization, ap-
21 proved by the commission, of existing valid mental health selection.

22 (f) The proceeds from the management of the mental health trust land
23 of the state shall be deposited in a special trust account in the general
24 fund of the state and shall first be applied to meet the necessary expenses
25 of the mental health program of the state.

26 * Sec. 3. RESPONSIBILITIES OF THE COMMISSIONER OF HEALTH AND SOCIAL
27 SERVICES AND THE COMMISSION. (a) The commissioner of health and social
28 services, with the approval of the commission, shall

29 (1) establish the procedures and guidelines for the audit of the

1 state's mental health program; and

2 (2) propose the guidelines and procedures to be used in de-
3 termining a range of expenditures for mental health programs necessary to
4 comply with the state's comprehensive mental health plan.

5 (b) The legislative auditor shall audit the state's mental health
6 program under the procedures and guidelines established in (a) of this
7 section.

8 * Sec. 4. ADDITIONAL RESPONSIBILITIES OF THE COMMISSION. The commis-
9 sion shall submit a report to the legislature by the 10th day of the First
10 Session of the Fifteenth State Legislature on matters of concern to the
11 commission. The report shall include its recommendations for amendment of
12 the laws relating to the management of the mental health trust account, the
13 mental health trust land, and the mental health program of the state.

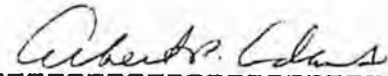
14 * Sec. 5. DEFINITION. In this Act "commission" means the interim
15 mental health trust commission established in sec. 1 of this Act.

16 * Sec. 6. This Act is repealed July 1, 1987.

17 * Sec. 7. This Act takes effect immediately in accordance with AS 01.-
18 10.070(c).

HOUSE FINANCE COMMITTEE
LETTER OF INTENT
FOR
H CS CSSB 472 (FINANCE)

It is the intent of the House Finance Committee that the "procedures and guidelines for the audit of the state mental health program," to be developed under section 3 (a) (1) of HCS CSSB 472 (Finance), are to specify the method by which the audit is to be conducted and are not to limit the scope of the audit by defining items constituting the state's mental health program. Rather, it is the intent of the House Finance Committee that the required audit of state mental health expenditures be as broad in scope as possible. At the same time, the House Finance Committee intends that the commission make recommendations as to which of the audited items are appropriately considered part of the state's mental health program in the report submitted to the legislature under section 4.



Al Adams, Chair
House Finance Committee

PROPOSED FINANCE COMMITTEE LETTER OF INTENT

It is the intent of the House Finance Committee that the "procedures and guidelines for the audit of the state mental health program," to be developed under section 3(a)(1) of HCS CSSB 472 (Fin), are to specify the method by which the audit is to be conducted and are not to limit the scope of the audit by defining items constituting the state's mental health program. Rather, it is the intent of the House Finance Committee that the required audit of state mental health expenditures be as broad in scope as possible. At the same time, the House Finance Committee intends that the commission make recommendations as to which of the audited items are appropriately considered part of the state's mental health program in the report submitted to the legislature under section 4.

PROPOSED MENTAL HEALTH TRUST LAND APPROPRIATIONS

DNR	Account for all funds or land received from conveyances and exchanges July 19, 1978 through October 4, 1985.	\$ 40.8
DNR	Identify and appraise all less than fair market value conveyances and encumbrances using the opinion of value method.	\$ 28.0
DNR	Reappraise approximately 276 leases to determine current market value.	\$ 71.2
DNR	Departmental management oversight of all transactions, and account funds received from mental health lands.	\$ 88.0
IMHTC	Staffing, travel, and contractual for Interim Mental Health Trust Commission.	\$ 72.0
	Total in fiscal note =	\$300.0
<hr/>		
LAW (HB 500)	100.0 for payment of plaintiff legal fees. These fees should only be paid by court order.	\$100.0
	Proposed: 70.0 for legal fees 30.0 as RSA to Commission for consensus building by groups.	
DNR (HB 574)	Proposed extension of lapse date on \$250,000 appropriation for land records research, appraisal, and title search costs associated with Alaska mental health land to June 30, 1987.	\$ 25.0
LEGISLATURE (SCR 36)	Joint legislative committee on mental health trust land.	\$ 30.6

HIGHLIGHTS OF PROPOSED FINANCE COMMITTEE CHANGES TO
CSSB 472 (RESOURCES)

1. Delete findings section.
2. Page 1, line 16: after "members" add and three alternates.

Rationale: This provides for alternates to be appointed for the public members serving on the commission. Because the public members are not compensated, there may be times when a member may not be able to attend a commission meeting. Rather than just providing for designees to attend, an extension of the formal appointment of members and alternates was chosen.

3. Page 1, lines 17, 20, and 23: in each respective line after "member" add and an alternate.

Rationale: Provides for the actual selection of members and alternates to be appointed by the Governor from names submitted by the respective groups. Conforming change.

4. Page 2, lines 3 and 4: revises Senate language to provide that in the absence of a member, an alternate enjoys and exercises all powers and prerogatives of a member. Conforming changes.
5. Page 2, lines 10 - 13: rewrites Senate language regarding the hiring of staff and the ability of the commission to contract.

Add new subsection (g) which allows for the contracting of professional staff and other functions the commission considers necessary.

Rationale: The Senate bill provided for the Department of Natural Resources to hire an executive director and staff and authorized these staff under the exempt services. At the time that that language was adopted, the fiscal note exceeded \$600,000 and provided for an executive director at a range 26A. As passed by the Senate and as proposed by the House Finance Committee, the fiscal note now totals \$300,000. To provide the greatest flexibility to the commission in hiring staff as it considers appropriate, contracting for these services has been provided. Additionally, at a time when many necessary state programs are taking reductions in permanent staff, it does not seem appropriate to add additional full-time staff.

6. Page 2, line 19: after "on" delete [the effective date of this Act] and insert October 4, 1985.

Rationale: Under the responsibility of the Commissioner of Natural Resources section, the commissioner must inventory and catalog mental health lands, audit and appraise each transaction involving such lands, and determine the status of these lands.

Such a status determination must occur on a date certain. To maintain the status quo between parties, the date of the State Supreme Court decision was decided upon for the date of determining their status.

7. Page 2, lines 22, 23 and lines 24 - 26: all pertain to the access the commission may have to the confidential records of the Department of Natural Resources. The effect of the House Finance Committee change is to provide for commission and staff access to those records of the Department which are confidential only by law or regulation. Recognizing that such access carries responsibility, it also provides for criminal penalties for unauthorized disclosure by staff or members. These penalties are the same as those currently in statute for similar unauthorized disclosures.
8. Page 3, lines 15 - 21: adds a new subsection (e) which allows the Commissioner of Natural Resources to reconvey lands to the federal government which were wrongfully conveyed to the state.

Rationale: This section was added by the House Judiciary Committee to HB 128 (the House companion bill) and also adopted by the Senate Resources Committee. The Finance Committee substitute blends the differing language in each version to mitigate the concerns of the Departments of Law, Health and Social Services, and Natural Resources while continuing to provide for reconveyance. Most of these wrongful conveyances pertain to federal Native allotments which should never have been conveyed to the state.

9. Page 3, lines 24 and 25: after "and" delete [may be appropriated by the legislature.] and insert shall first be applied to meet the necessary expenses of the mental health program of the state.

Rationale: Mental health advocates argued strongly for language which sought to limit the appropriation of any proceeds from the management of mental health lands to mental health programs only. In an effort to express the intent that proceeds should be first applied to meet these needs without prejudicing future legislative consideration of this question, the language from the federal Enabling Act is proposed.

10. Page 3, line 29; and page 4, lines 1 - 7: are rewritten from the Senate version. The effect of the changes is to eliminate the need for an independent audit of mental health expenditures of the state by requiring the legislative auditor to perform the audit under guidelines and procedures established by the Commissioner of Health and Social services with approval of the commission.

MEMORANDUM

State of Alaska


DEPARTMENT OF NATURAL RESOURCES

TO: Mark Boyer

DATE: May 2, 1986

FILE NO:

TELEPHONE NO: 465-2400

FROM: Mike Vediner 
DLWM, Commissioner's Office

SUBJECT: SB 472 Fiscal Note:
Personnel Requirement

The department's fiscal note, prepared for Senate Finance, contained brief descriptions of and duties for four new positions. These included a Natural Resource Manager, an Accounting Technician, a Natural Resource Officer, and an Executive Director. The Senate passed fiscal note recognized these necessary functions and chose to provide the funding as a single item leaving discretion with the Commissioner on allocating the funds. I am providing a detailed description of duties relative to the accounting and manager positions for your use in preparing a CS.

The Supreme Court decision in Weiss v. Alaska requires the department to manage mental health land as a trust consistent with the Alaska Mental Health Enabling Act. In order to comply in a defensible and consistent manner the department created an interim Mental Health Lands Officer which is currently staffed by an existing position in the director's office of Land and Water Management. As a result this position's normal duties are not being completed. These duties include: preparing findings on appeals; adjudicating preference rights; casefile review of decisions requiring the director's signature; preparation of decision memoranda, department orders, requests for AG opinions, draft regulations, updates to the policy and procedure manual, and fact sheets; and other special projects such as land exchanges.

We are now requesting the new Natural Resource Manager (NRM) position to oversee all actions taken by the department on mental health land. Over the last eight years we have averaged approximately 60 cases per month where some (former) mental health land was involved. These include mining locations, park permits, oil and gas lease sales, rights-of-way, ILMAs, municipal selections, leases, land sales, and nearly anything else in which the department is involved. One of the major duties of the NRM will be review of these cases to ensure compliance with court decision and prepare briefing packets for review by the commission. In addition the NRM will: prepare mental health land management notices to the department; prepare audit reports; oversee implementation of Department Order 121 relating to interim mental health land management; research trust land management problems; coordinate review and responses by various agencies; continue to update audit reports;

implement procedure to recognize various trust lands on the LAS computer system; establish, maintain, and continue to improve departmental mental health land records system; prepare fact sheets and informational notices regarding mental health lands; and, oversee and assist in the activities of the NRO (see below) and coordinate with the accountant position to ensure an accurate and expeditious procedure for distribution of monies.

We estimate nearly 6,000 cases involving mental health land since 1978 which now require audit to determine the dollar amount received or appraised and also identify any discount offered. This task will keep the requested Natural Resource Officer occupied for at least one year.

Finally, the accounting position is required to distribute the appropriate percentage of income to the proper accounts for each post-October 4, 1986 transaction involving mental health land. In addition to percentage distributions among land types this position must also identify the percentage distribution between interest, principle, and penalty payments for entry into AKSAS. Many of these transactions are manually posted. A large portion of the work this position must accomplish will be the large number of monthly transactions from pre-1978 and continuing leases which must be corrected to reflect the proper distribution of income monies between the general and trust accounts. This is a continuing prospective function for each of the several thousand transactions which include mental health land.

cc: Bob Arnold
Sally Slaughter
Hilton Wolfe

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cc: Bob Arnold
Sally Slaughter
Hilton Wolfe



Official Business

Alaska State Legislature

Senate

Pouch V
State Capitol
Juneau, Alaska 99811

SENATE FINANCE COMMITTEE

LETTER OF INTENT

CS SB 472 (RESOURCES)

It is the intent of the legislature that the Interim Mental Health Trust Commission established by CS SB-472 shall include at least one member besides the Commissioner of Natural Resources who has experience and knowledge in Alaskan based property and resource values.

(2) knowingly refrains from performing a duty which is imposed upon the public servant by law or is clearly inherent in the nature of the public servant's office.

(b) Official misconduct is a class A misdemeanor. (§ 6 ch 166 SLA 1978)

Sec. 11.56.860. Misuse of confidential information. (a) A person who is or has been a public servant commits the crime of misuse of confidential information if the person

(1) learns confidential information through employment as a public servant; and

(2) while in office or after leaving office, uses the confidential information for personal gain or in a manner not connected with the performance of official duties other than by giving sworn testimony or evidence in a legal proceeding in conformity with a court order.

(b) As used in this section, "confidential information" means information which has been classified confidential by law.

(c) Misuse of confidential information is a class A misdemeanor. (§ 6 ch 166 SLA 1978)

Article 7. General Provisions.

Section

900. Definitions

Sec. 11.56.900. Definitions. In this chapter, unless the context requires otherwise,

(1) "improperly influence a witness" means to cause or induce a witness to

(A) testify falsely, offer misleading testimony, or unlawfully withhold testimony in an official proceeding;

(B) avoid or attempt to avoid legal process summoning the witness to testify in an official proceeding, regardless of whether legal process has issued;

(C) be absent from an official proceeding to which the witness has been summoned; or

(D) engage in conduct described in AS 11.56.610;

(2) "judicial officer" means a supreme court justice, including the chief justice, a judge of the court of appeals, a judge of the superior court, a district court judge, or a magistrate;

(3) "juror" means a person who is a member of an impanelled jury or a person who has been drawn or summoned to attend as a prospective juror;

(4) "physical evidence" means an article, object, document, record, or other thing of physical substance;

(5) "testimony" means oral or written statements, documents, or other material that may be offered by a witness in an official proceeding;

Alaska State Legislature

BETTYE FAHRENKAMP, Chairman
ARLISS STURGULEWSKI, Vice Chairman
JOE JOSEPHSON
PAUL FISCHER
EDNA ARMSTRONG-DE VRIES

P. O. BOX V
STATE CAPITOL
JUNEAU, ALASKA 99811
(907) 465-3834
(907) 465-3762

Senate Committee on Health, Education and Social Services

April 18, 1986

Senator John Sackett, Co-Chairman
Senator Jan Faiks, Co-Chairman
Senate Finance Committee
P.O. Box V
Juneau, AK 99811

Dear Senators:

Thank you for your attention to SB 472, an act relating to the interim management of the mental health trust. As you know, the bill has received the approval of the Senate Committee on Health, Education and Social Services and the Senate Resources Committee, and is scheduled for a hearing before Senate Finance on April 22, 1986. In my estimation, passage of the bill is an essential step in resolution of the mental health lands lawsuit.

By way of background, as you will recall, in 1956 Congress granted Alaska one million acres of land to be managed as a public trust to provide funds for Alaska's mental health program. The lands were selected and patented, but no trust fund was established. In 1978 the state legislature redesignated the trust lands as general grant lands and created in their place a mental health fund to receive 1.5% of annual receipts from all state land. However, no monies were deposited into the fund, and in 1982 the Alaska Mental Health Association filed a class action suit against the state contesting the 1978 redesignation law. In October 1985, the State Supreme Court ruled that the state had breached the trust and must reconstitute it to match as nearly as possible its holdings when the 1978 law became effective.

The intent of SB 472 is twofold: to ensure that activities required by the court are undertaken, and to protect the trust lands from alienation pending final resolution of the litigation. Specifically, the bill calls on the Department of Natural Resources to inventory and catalog the mental health trust land, audit past transactions involving mental health land, appraise lands that are no longer in the trust, and manage the mental health land as a public trust. The Department of Health and Social Services is to audit the state's past mental health program expenditures and propose guidelines for determining future levels of expenditures.

A third and equally important function of SB 472 is to facilitate involvement of the mental health community in settling the litigation. To this end, the bill includes on the commission three members nominated by the mental health community, and calls on the commission to approve the audits and appraisals conducted by the Departments of Natural Resources and Health and Social Services, and to approve land management decisions.

What SB 472 does not do is propose any long term solutions. SCR 36, which is also pending before the Senate Finance Committee, would establish a legislative committee to develop a proposal to resolve the mental health trust litigation. Implementation of SB 472 will assist the state, and the legislative committee specifically, in this task and protect the trust until resolution is reached.

Senators, I think many of us in the legislature share a long-term goal of developing a trust of sufficient size to adequately fund mental health programs throughout our state. However, a number of actions must be taken before the state is in a position to enact a long-term solution. I hope you will agree that to accomplish these goals SB 472 is the appropriate mechanism.

Thank you for your consideration.

Sincerely,



Bettye Fahrenkamp
Chairman

BF/ss

HISTORY

1956 Public Law 80, Title II, Section 202
U.S. Congress granted the Territory of Alaska 1 million acres of land to be managed as a public trust to provide funds for Alaska's Mental Health program. Monies left after mental health program costs could be used for other public needs.

1958 Public Law 85-508, Section 6
Transferred grants to the State of Alaska.

Lands were selected and patented, but no trust fund was established.

1978 Ch. 181, SLA 1978,
The legislature redesignated the trust lands as general grant lands. In their place a mental health fund was created and subject to an appropriation by the legislature, was to receive 1.5% of revenues paid to the State each year as proceeds from the management of State lands.

No monies were deposited into the Mental Health fund.

1982 Weiss et.al. v. Alaska

Alaska Mental Health Association filed a class action suit against the state contending that the plaintiffs were in need of mental health services which they could not receive in Alaska and raised questions about the 1978 redesignation law.

1984
State Superior Court directed the state to reimburse the trust for the full value of the land that was redesignated in 1978. The state appealed.

October, 1985

State Supreme Court ruled that the state had breached the trust and that it must be reconstituted.

December, 1985 Mental Health Lands Interim Management
Department of Natural Resources issued Department Order 121, which establishes criteria for management based on receipt of fair market value or reimbursement of the trust in land or money for all transactions.

SENATE HESS
March 18, 1986

THE SUPREME COURT DECISION

On October 4, 1985 the State Supreme Court ruled:

- 1) the state had breached the mental health lands trust.
- 2) the 1978 law redesignating mental health lands as general grant lands was invalid.
- 3) the trust must be reconstituted to match as nearly as possible the holdings which comprised the trust when the 1978 law became effective.

The Supreme Court remanded the case to the Superior Court so that findings could be made and provided the following specific directions.

- 1) General grant lands which were once mental health lands be returned to their former trust status.
- 2) Lands that can be traced to an exchange involving mental health lands be included in the trust.
- 3) The trust be reimbursed for mental health lands that have been sold, based on fair market value at the time of sale.
- 4) A set-off against the value of lands sold be granted for mental health expenditures made by the state, and in the event that expenditures exceed the value, the state need not furnish cash as part of the reconstitution.

Offered: 4/15/85
Referred: Finance

Original sponsor: Health, Education and
Social Services Committee

1 IN THE SENATE BY THE RESOURCES COMMITTEE
2 CS FOR SENATE BILL NO. 472 (Resources)
3 IN THE LEGISLATURE OF THE STATE OF ALASKA
4 FOURTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to the interim management of the
7 mental health trust; and providing for an effective
8 date."

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

10 * Section 1. The legislature finds that

11 (1) the Congress granted 1,000,000 acres of land to the Terri-
12 tory of Alaska to be administered as a public trust for the necessary
13 expenses of the support of mental health in the territory;

14 (2) the land authorized to be granted to the Territory of Alaska
15 has been selected by the territory and since statehood by the state and
16 most of the 1,000,000 acres has been conveyed to the state;

17 (3) the Alaska Supreme Court ruled in State v. Weiss, 706 P.2d
18 681 (Alaska 1985) that the legislation redesignating mental health trust
19 land as general grant land had actually breached the trust established by
20 Congress and the court ordered the trust reconstituted;

21 (4) there is presently no statutory authority providing for the
22 management of the mental health trust land as trust land;

23 (5) the Alaska Mental Health Association as the original sponsor
24 of the litigation regarding the management of the mental health trust land,
25 more recently participating as intervenor in the litigation, and the plain-
26 tiffs have performed and continue to perform an important public function
27 in their efforts to reconstitute the mental health trust land and to pro-
28 vide for the proper management of the trust land; and

29 (6) there is a need for the interim management of the trust land

1 as a public trust.

2 * Sec. 2. INTERIM MENTAL HEALTH TRUST COMMISSION ESTABLISHED. (a) The
3 interim mental health trust commission is established in the Department of
4 Natural Resources.

5 (b) The commission established under (a) of this section consists of
6 five members, including the commissioner of natural resources and the
7 commissioner of health and social services, or their designees, and three
8 members appointed by the governor as follows:

9 (1) a member representing the plaintiffs, appointed by the
10 governor from a list of three names submitted to the governor by the plain-
11 tiffs in State v. Weiss, 706 P.2d 681 (Alaska 1985);

12 (2) a member representing the intervenors, appointed by the
13 governor from a list of three names submitted to the governor by the inter-
14 venors in State v. Weiss, 706 P.2d 681 (Alaska 1985); and

15 (3) a member representing the Governor's Mental Health Advisory
16 Council, appointed by the governor from a list of three names submitted to
17 the governor by the Governor's Mental Health Advisory Council.

18 (c) The members of the commission shall elect a presiding officer. A
19 majority of the commission constitutes a quorum. The affirmative vote of
20 three members is required to take official action. A vacancy does not
21 impair the power of the remaining members to exercise the powers of the
22 commission.

23 (d) Members of the commission serve without compensation but are
24 entitled to per diem and travel expenses authorized by law for other boards
25 under AS 39.20.180.

26 (e) The commission shall meet at least quarterly and may meet more
27 frequently, either in person or by teleconference.

28 (f) The commission may employ an executive director and staff to
29 assist it in fulfilling its responsibilities under this Act. The employees

1 shall be in the exempt service.

2 (g) The commission may contract with parties or individuals for the
3 performance of functions assigned to it.

4 * Sec. 3. RESPONSIBILITIES OF THE COMMISSIONER OF NATURAL RESOURCES AND
5 THE COMMISSION. (a) The commissioner of natural resources shall inventory
6 and catalog the mental health trust land of the state, shall audit and
7 appraise each land transaction involving land that has been part of the
8 mental health trust land of the state, and determine the status of mental
9 health trust land on the effective date of this Act under procedures and
10 guidelines established by the commissioner of natural resources with the
11 approval of the commission. In the exercise of the commission's respon-
12 sibilities under this section, the commission may review the records of the
13 Department of Natural Resources.

14 (b) The commissioner of natural resources shall, with the approval of
15 the commission, retain an appraiser or appraisers to appraise all or a
16 portion of land that, at any time, was part of the mental health trust land
17 of the state. The commissioner shall provide an appraiser conducting an
18 appraisal with written procedures and instructions that have been approved
19 by the commission.

20 (c) The commissioner of natural resources is responsible for the
21 management of the mental health land of the state as a public trust under
22 P.L. 84-830, 70 Stat. 709. Except for a transfer authorized under AS 38.-
23 05.035(b)(9), the commissioner of natural resources may not sell, lease, or
24 exchange mental health trust land of the state or an interest in the mental
25 health trust land of the state without the prior approval of the commis-
26 sion. In reviewing a proposal for the sale, lease, or exchange of mental
27 health trust land from the commissioner of natural resources, the commis-
28 sion may approve the proposal of the commissioner on its determination that
29 the proposal is consistent with the terms of the trust established by the

1 Alaska Mental Health Enabling Act.

2 (d) The proceeds from the management of the mental health trust land
3 of the state shall be deposited in a special trust account in the general
4 fund of the state and are subject to appropriation by the legislature.

5 * Sec. 4. RESPONSIBILITIES OF THE COMMISSIONER OF HEALTH AND SOCIAL
6 SERVICES AND THE COMMISSION. (a) The commissioner of health and social
7 services, with the approval of the commission, shall

8 (1) select an independent auditor to audit the state's mental
9 health program;

10 (2) establish the procedures and guidelines to guide the auditor
11 selected under this subsection;

12 (3) propose the guidelines and procedures to be used in de-
13 termining a range of expenditures for mental health programs necessary to
14 comply with the state's comprehensive mental health plan.

15 (b) The commission may review the records of the Department of Health
16 and Social Services that involve mental health expenditures under the
17 state's comprehensive mental health plan.

18 * Sec. 5. ADDITIONAL RESPONSIBILITIES OF THE COMMISSION. The commis-
19 sion shall submit a report to the legislature by the 10th day of the first
20 session of the fifteenth state legislature on matters of concern to the
21 commission. The report shall include its recommendations for amendment of
22 the laws relating to the management of the mental health trust, the mental
23 health trust land, and the mental health program of the state.

24 * Sec. 6. DEFINITION. In this Act "commission" means the interim
25 mental health trust commission established in sec. 2 of this Act.

26 * Sec. 7. This Act is repealed July 1, 1987.

27 * Sec. 8. This Act takes effect immediately in accordance with AS 01.-
28 10.070(c).

Introduced: 4/4/86
Referred: Health, Education and
Social Services, Resources
and Finance

BY THE HEALTH, EDUCATION AND
SOCIAL SERVICES COMMITTEE

1 IN THE SENATE

2

SENATE BILL NO. 472

3

IN THE LEGISLATURE OF THE STATE OF ALASKA

4

FOURTEENTH LEGISLATURE - SECOND SESSION

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A BILL

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18 681 (Alaska 1985) that the legislation redesignating mental health trust
19 land as general grant land had actually breached the trust established by
20 Congress and the court ordered the trust reconstituted;

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22 management of the mental health trust land as trust land;

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7 commissioner of health and social services, or their designees, and three
8 members appointed by the governor as follows:

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10 governor from a list of three names submitted to the governor by the plain-
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15 (3) a member representing the Governor's Mental Health Advisory
16 Council, appointed by the governor from a list of three names submitted to
17 the governor by the Governor's Mental Health Advisory Council.

18 (c) The members of the commission shall elect a presiding officer. A
19 majority of the commission constitutes a quorum. The affirmative vote of
20 three members is required to take official action. A vacancy does not
21 impair the power of the remaining members to exercise the powers of the
22 commission.

23 (d) Members of the commission serve without compensation but are
24 entitled to per diem and travel expenses authorized by law for other boards
25 under AS 39.20.130.

26 (e) The commission shall meet at least quarterly and may meet more
27 frequently, either in person or by teleconference.

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27 sources, the commission may approve the proposal of the commissioner on its
28 determination that the proposal is consistent with the terms of the trust
29 established by the Alaska Mental Health Enabling Act.

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