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HOUSE  
COMMITTEE REPORT

JUDICIARY

(7)

Date referred: 2/27/86

FURTHER REFERRALS: FINANCE

DATE: April 7, 1986

The HEALTH, EDUCATION AND SOCIAL SERVICES Committee has considered HB 625

"An Act making a special appropriation relating to mental health trust land; and providing for an effective date."

and recommends:

- do pass
- do not pass
- do pass with attached amendment(s)
- no recommendation
- replace with C.S. HB 625 (H&SS)  same title
- new title

and recommends do pass

further referral to the \_\_\_\_\_ Committee

- and attaches:
- letter of intent
  - first fiscal note
  - new fiscal note
  - zero fiscal note

SIGNING DO PASS:

SIGNING OTHER RECOMMENDATIONS:

\_\_\_\_\_

*Walter G. ...*

*...*

*...*

*...*

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*David ... - NO REC*

*Wynne ... - No Rec*

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*...*

Chairman

*...*

STATE OF ALASKA  
THE LEGISLATURE

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

LEGISLATIVE AFFAIRS AGENCY

M E M O R A N D U M

April 3, 1986

SUBJECT: Appropriation bill addressing mental health  
trust land litigation  
[CSHB 625(HESS)]

TO: Representative Max Gruenberg

FROM: Richard A. Bradley  
Legislative Counsel

I have prepared the bill as Jim Nordland requested. As I advised him, I felt that the "technical" changes that this office normally makes to a bill would, in this case, have taken the bill back to its previous version, essentially identical to the March 24 draft that we prepared for the HESS committee. Since it was clear that you didn't want that version, we have not made our usual revisions.

But because we do believe that the draft has substantive legal problems, I have noted them for your consideration.

*done 5/1/86* ① The title of the bill is changed as you requested. I suggest that you may wish to say "implementing Weiss v. State" rather than "in Weiss v. State;" the latter thought seems incomplete.

② As you requested, secs. 2 - 4 of the draft do not appropriate to an executive department; no recipient whatever is identified.

*Talk to Bradley - add language per his suggestion in secs 2-4*

While we believe that it is clear that the legislature may appropriate to a nongovernmental entity (and thus sec. 5 is valid), we believe that it is equally clear that the appropriation must go to someone, even if the someone has orders to grant the money on elaborately specified conditions to a third party. Thus we recommend against the format of secs. 2 - 4 of the bill where appropriations are made but no grantee is specified.

I hesitate to predict what may happen should the bill pass in that fashion; I assume that the Department of Administration may be obliged to undertake implementation of the bill. Please note that the bill as you requested it is not self-enforcing. It does not even rely solely on orders of the superior court for its implementation; note that sec. 7 of the bill requires a determination that a court order is "consistent with the purposes stated in those sections."

While I am not familiar with the litigation, it seems to me that it is wholly possible that the court might order a disbursement for a purpose not stated in secs. 2 - 5 of the bill.

I note, however, that where an appropriation is made to a named department but the department may not spend the funds except accordingly to an order of a court that is determined consistent with the purposes stated in the bill, the department has a very narrow discretion on the expenditure and is merely authorized to write checks according to the court order.

Since I understand this to be your goal, I recommend that the executive departments be named in the bill.

I take sec. 7 of the bill to bring each of the appropriations into effect on the issuance of the first court \* order that is consistent with a purpose stated in secs. 2 - 5. But since the appropriations may only occur by a court order, your goal seems to be achieved.

Finally, I note that a settlement of the case [see sec. 1(a)] apart from a court order [see sec. 1(a) and 1(c)], would not permit a disbursement of the funds appropriated. See sec. 7.

If I may be of further assistance, please advise.

RAB:mkr  
m4/068

Enclosure

\* No - each section takes effect on the issuance of an appropriate court order implementing that section  
Max agrees that the point is not significant - a difference between effect and pay.

2a ?  
Make sure there is no discretion  
draw accordingly

3

change (4) it to accomplish this

Introduced: 2/17/86  
Referred: Health, Education & Social  
Services, Judiciary and Finance

Funding Information  
General Fund \$300,000  
Other Funds -0-  
\$300,000

1 IN THE HOUSE

BY PIGNALBERI ANE M.M.MILLER

2

HOUSE BILL NO. 625

3

IN THE LEGISLATURE OF THE STATE OF ALASKA

4

FOURTEENTH LEGISLATURE - SECOND SESSION

5

A BILL

6 For an Act entitled: "An Act making a special appropriation relating to  
7 mental health trust land; and providing for an effective  
8 date."

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

10 \* Section 1. The sum of \$300,000 is appropriated from the general fund  
11 to the Department of Health and Social Services for payment as a grant  
12 under AS 37.05.316 to the Alaska Mental Health Association for reimburse-  
13 ment of the costs and attorney fees incurred by the plaintiffs and inter-  
14 venors in Weiss v. State, Civil No. 4FA 82-2208, and for payment of the  
15 costs of plaintiffs and intervenors in a reconstruction of the trust estab-  
16 lished by the Congress regarding the mental health trust land and to audit  
17 past actions of the state regarding mental health trust land.

18 \* Sec. 2. The unexpended and unobligated portion of the appropriation  
19 made by sec. 1 of this Act lapses into the general fund June 30, 1987.

20 \* Sec. 3. This Act takes effect July 1, 1986.

Introduced: 2/17/86  
Referred: Health, Education &  
Social Services, Judiciary and  
Finance

Funding Information  
General Fund \$300,000  
Other Funds -0-  
\$300,000

1 IN THE HOUSE

BY PIGNALBERI AND M.M. MILLER

2 HOUSE BILL NO. 625

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FOURTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act making a special appropriation relating to  
7 mental health trust land; and providing for an effective  
8 date."

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

10 \* Section 1. The sum of \$300,000 is appropriated from the general fund  
11 to the Department of Health and Social Services for payment as a grant  
12 under AS 37.05.316 to the Alaska Mental Health Association for reimburse-  
13 ment of the costs and attorney fees incurred by the plaintiffs and inter-  
14 venors in Weiss v. State, Civil No. 4FA 82-2208, and for payment of the  
15 costs of plaintiffs and intervenors in a reconstruction of the trust estab-  
16 lished by the Congress regarding the mental health trust land and to audit  
17 past actions of the state regarding mental health trust land.

18 \* Sec. 2. The unexpended and unobligated portion of the appropriation  
19 made by sec. 1 of this Act lapses into the general fund June 30, 1987.

20 \* Sec. 3. This Act takes effect July 1, 1986.  
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PROPOSED COMMITTEE SUBSTITUTE

FOR

HOUSE BILL 625

A BILL

For an Act entitled: "An Act making a special appropriation relating to mental health trust land; and providing for an effective date."

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

\*Section 1. The sum of \$75,000 is appropriated from the general fund to the Department of Health and Social Services for payment as a grant under AS 37.05.316 to the Alaska Mental Health Association for reimbursement of the administrative costs incurred by the plaintiffs and intervenors in Weiss v. State, Civil No. 4FA 82-2208, for overseeing activities of the mental health lands trust and DNR in achieving consensus among the class on issues.

\*Section 2. The sum of \$71,000 is appropriated from the general fund to the Department of Health and Social Services for payment as a grant under AS 37.05.316 to the Alaska Alliance for Mentally Ill for reimbursement of the administrative costs incurred by the plaintiffs and intervenors in Weiss v. State, Civil No. 4FA 82-2208, for overseeing activities of the mental health lands trust and DNR in achieving consensus among the class on issues.

\*Section 3. The unexpended and unobligated portion of the appropriation made by sec 1 of this Act lapses into the general fund June 30, 1967.

\*Section 4. This Act takes effect immediately.

Bradley  
4/7/86.

Original sponsors: Pignalberi and M.M.Miller

Funding Information

General Fund	\$797,500
Other Funds	-0-
	<u>\$797,500</u>

1 IN THE HOUSE

BY THE HEALTH, EDUCATION AND  
SOCIAL SERVICES COMMITTEE

2 CS FOR HOUSE BILL NO. 625 (HESS)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FOURTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act making a special appropriation in Weiss v.  
7 State; and providing for an effective date."

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

9 \* Section 1. PURPOSE. (a) The Alaska Supreme Court has issued its  
10 decision in the mental health trust land litigation: State v. Weiss, 706  
11 P.2d 681 (Alaska 1985). In Weiss v. State, 4FA 2208 Civil, the superior  
12 court is considering the issuance of orders implementing the supreme's  
13 court's decision. It is the purpose of this Act to provide interim funding  
14 to comply with any orders of the supreme or superior court and to allow the  
15 parties to resolve the lawsuit, either by settlement or court order.

16 (b) To effectuate the beneficial purposes of this Act, the legisla-  
17 ture intends that secs. 4 and 5 of this Act be liberally construed by the  
18 supreme court and the superior court to permit the expenditure of funds to  
19 allow the plaintiffs and the intervenors to participate fully in the liti-  
20 gation and the settlement.

21 (c) The legislature intends that funds appropriated under this Act  
22 may be released only upon court order in Weiss v. State.

23 \* Sec. 2. The sum of \$487,500 is appropriated from the general fund, to  
24 be allocated as follows:

25 (1) for the identification and appraisal of land that has had  
26 status as Alaska mental health trust land: \$304,000;

27 (2) for an accounting of Alaska mental health trust land and the  
28 income received by the state from the land from 1978 through

29 1985: \$40,800;

1 (3) to provide management oversight of all transactions involv-  
2 ing Alaska mental health trust land and income received from Alaska mental  
3 health trust land: \$142,700.

4 \* Sec. 3. The sum of \$20,000 is appropriated from the general fund for  
5 a determination of expenditures for the mental health program from 1978  
6 through 1985.

7 \* Sec. 4. The sum of \$250,000 is appropriated from the general fund for  
8 payment for past and present attorney fees and costs of the plaintiffs and  
9 intervenors in Weiss v. State.

10 \* Sec. 5. The sum of \$40,000 is appropriated to the Alaska Alliance for  
11 the Mentally Ill and to the Alaska Mental Health Association for expenses  
12 directly related to Weiss v. State and its settlement.

13 \* Sec. 6. The unexpended and unobligated portion of the appropriations  
14 made by secs. 2 - 5 of this Act lapses into the general fund June 30, 1987.

15 \* Sec. 7. Sections 2 - 5 of this Act take effect on the issuance of  
16 court orders in Weiss v. State directing payments consistent with the  
17 purposes stated in those sections.  
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1986 BUDGET  
for  
ALASKA MENTAL HEALTH LANDS PROJECT

SALARIES/FEES:

Land Status & Management Review/Support Staff \$50,000

OFFICE:

Supplies and equipment \$13,000

Rent DONATED

Utilities, including telephone \$ 3,500

Printing and copies/Records \$ 5,000

Travel \$ 3,500

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TOTAL 1986 BUDGET \$75,000

Bradley  
4/7/86.

Original sponsors: Fignalberi and M.M.Miller

<u>Funding Information</u>	
General Fund	\$797,500
Other Funds	-0-
	<u>\$797,500</u>

BY THE HEALTH, EDUCATION AND  
SOCIAL SERVICES COMMITTEE

1 IN THE HOUSE

2 CS FOR HOUSE BILL NO. 625 (HESS)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FOURTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act making a special appropriation in Weiss v.  
7 State; and providing for an effective date."

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

9 \* Section 1. PURPOSE. (a) The Alaska Supreme Court has issued its  
10 decision in the mental health trust land litigation: State v. Weiss, 706  
11 P.2d 681 (Alaska 1985). In Weiss v. State, 4FA 2208 Civil, the superior  
12 court is considering the issuance of orders implementing the supreme's  
13 court's decision. It is the purpose of this Act to provide interim funding  
14 to comply with <sup>the</sup> any orders of the supreme <sup>court and the</sup> [or] superior court <sup>in this case</sup> and to allow the  
15 parties to resolve the lawsuit, either by settlement or court order.

16 (b) To effectuate the beneficial purposes of this Act, the legisla-  
17 ture intends that secs. 4 and 5 of this Act be liberally construed by the  
18 supreme court and the superior court to permit the expenditure of funds to  
19 allow the plaintiffs and the intervenors to participate fully in the liti-  
20 gation and the settlement.

21 (c) The legislature intends that funds appropriated under this Act  
22 <sup>shall</sup> [may] be released only upon <sup>of the supreme court and the superior court</sup> [court] order in Weiss v. State.

23 \* Sec. 2. The sum of \$487,500 is appropriated from the general fund, to  
24 be allocated as follows:

25 (1) for the identification and appraisal of land that has had  
26 status as Alaska mental health trust land: \$304,000;

27 (2) for an accounting of Alaska mental health trust land and the  
28 income received by the state from the land from 1978 through

29 1985: \$40,800;

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9 intervenors in Weiss v. State.

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11 the Mentally Ill and to the Alaska Mental Health Association for expenses  
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13 \* Sec. 6. The unexpended and unobligated portion of the appropriations  
14 made by secs. 2 - 5 of this Act lapses into the general fund June 30, 1987.

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16 court orders in Weiss v. State directing payments consistent with the  
17 purposes stated in those sections.

1986 BUDGET  
for  
ALASKA MENTAL HEALTH LANDS PROJECT

SALARIES/FEES:

Land Status & Management Review/Support Staff \$50,000

OFFICE:

Supplies and equipment \$13,000

Rent DONATED

Utilities, including telephone \$ 3,500

Printing and copies/Records \$ 5,000

Travel \$ 3,500

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TOTAL 1986 BUDGET \$75,000

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IN THE SUPERIOR COURT FOR THE STATE OF ALASKA  
FOURTH JUDICIAL DISTRICT AT FAIRBANKS

VERN T. WEISS, father and next )  
friend of CARAL WEISS, a minor )  
child, and EARL HILLIKER, on )  
behalf of themselves and all )  
others similarly situated, )  
Plaintiffs, )  
v. )  
STATE OF ALASKA, )  
Defendant. )

FILED In the Trial Courts  
State of Alaska, Fourth District

MAR 17 1986

By \_\_\_\_\_  
Clerk, Trial Courts  
Deputy

No. 4FA-82-2208

ORDER GRANTING PLAINTIFFS' MOTION FOR  
INTERIM AWARD OF COSTS AND ATTORNEY'S FEES

Plaintiffs have moved for an interim order that,  
upon a showing by the attorneys for the plaintiff class  
that costs and attorney's fees, reasonable in amount, have  
been necessarily incurred in protecting the interests of  
the beneficiaries, and a determination by the court to that  
effect, a further order will be entered directing the State  
to make payment for those costs and fees on an interim  
basis. Good cause having been shown,

IT IS SO ORDERED.

DATED: MARCH 15, 1986

*D. Mary E. Greene*  
Superior Court Judge

*1-28-86*

Law Office of  
**COUNCIL & CROSBY**  
A PROFESSIONAL CORPORATION  
424 NORTH FRANKLIN STREET  
JUNEAU, ALASKA 99801  
(907) 586-1780

I certify that on 3-17-86  
copies of this form were sent to  
CLERK: *[Signature]*

*[Handwritten notes]*  
C & C  
Foster (A) Jan.

Service and receipt of copy  
acknowledged this 27th day  
of January, 1986.

*G. Drona Hunt*  
Attorney for

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

FOURTH JUDICIAL DISTRICT AT FAIRBANKS

VERN T. WEISS, father and next friend of CARL WEISS, a minor child, and EARL HILLIKER, on behalf of themselves and all others similarly situated,

Plaintiffs,

v.

STATE OF ALASKA,

Defendant.

No. 4FA-82-2208

FILED In the Trial Courts  
State of Alaska, Fourth District

MAR 17 1986

By \_\_\_\_\_  
Clerk, Trial Courts  
Deputy

ORDER GRANTING INTERIM AWARD OF COSTS AND ATTORNEY'S FEES

Plaintiffs have moved for an interim order that, upon a showing by the attorneys for the Plaintiff class that costs and attorney's fees, reasonable in amount, have been necessarily incurred in protecting the interests of the beneficiaries, and a determination by the court to that effect, a further order will be entered directing the State to make payment for those costs and fees on an interim basis.

The Alaska Mental Health Association, Mary C. Nanuwak and John Martin on behalf of themselves and all others similarly situated (Intervenors), have responded that they should also be entitled to receive costs and attorney's fees on the same basis.

The State has filed a qualified non-opposition, essentially reserving the right to object to a specific request for costs and attorney's fees.

After due consideration, it is ORDERED that Plaintiffs and Intervenors may recover costs and attorneys fees from Defendant, reasonable in amount, upon presentation of a statement of such costs and attorneys fees.

DATED: \_\_\_\_\_

*Denied as to Intervenors who prejudice.  
Intervenors must show by way of  
proof an inability to carry on necessary  
work not being done by Plaintiffs  
before court will grant extraordinary  
relief of interim fees.*

*J. G. [Signature]  
3/15/86*

\_\_\_\_\_  
Superior Court Judge

3-17-86  
[Stamp: This form was sent to...]  
Kachlenski

*Attorney  
C. G. C.  
Kouster, Jr.*

JAMES B. GOTTSTEIN  
ATTORNEY AT LAW  
406 G STREET, SUITE 206  
ANCHORAGE, ALASKA 99501  
(907) 274-7686

*Adj  
2-21-86*



Bradley ✓  
4/8/86

Original sponsors: Pignalberi and M.M. Miller

<u>Funding Information</u>	
General Fund	\$797,500
Other Funds	-0-
	<u>\$797,500</u>

1 IN THE HOUSE

BY THE HEALTH, EDUCATION AND  
SOCIAL SERVICES COMMITTEE

2 CS FOR HOUSE BILL NO. 625 (HESS)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FOURTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act making a special appropriation implementing  
7 Weiss v. State; and providing for an effective date."

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

9 \* Section 1. PURPOSE. (a) The Alaska Supreme Court has issued its  
10 decision in the mental health trust land litigation: State v. Weiss, 706  
11 P.2d 681 (Alaska 1985). In Weiss v. State, 4FA 2208 Civil, the superior  
12 court is considering the issuance of orders implementing the supreme's  
13 court's decision. It is the purpose of this Act to provide interim funding  
14 to comply with the orders of the supreme court and the superior court in  
15 this case and to allow the parties to resolve the lawsuit, either by set-  
16 tlement or court order.

17 (b) To effectuate the beneficial purposes of this Act, the legisla-  
18 ture intends that secs. 4 and 5 of this Act be liberally construed by the  
19 supreme court and the superior court to permit the expenditure of funds to  
20 allow the plaintiffs and the intervenors to participate fully in the liti-  
21 gation and the settlement.

22 (c) The legislature intends that funds appropriated under this Act  
23 may be released only upon an order of the supreme court or the superior  
24 court in Weiss v. State.

25 \* Sec. 2. The sum of \$487,500 is appropriated from the general fund to  
26 the Department of Natural Resources, to be allocated as follows:

27 (1) for the identification and appraisal of land that has had  
28 status as Alaska mental health trust land: \$304,000;

29 (2) for an accounting of Alaska mental health trust land and the

1 income received by the state from the land from 1978 through  
2 1985: \$40,800;

3 (3) to provide management oversight of all transactions involv-  
4 ing Alaska mental health trust land and income received from Alaska mental  
5 health trust land: \$142,700.

6 \* Sec. 3. The sum of \$20,000 is appropriated from the general fund to  
7 the Department of Health and Social Services for a determination of ex-  
8 penditures for the mental health program from 1978 through 1985.

9 \* Sec. 4. The sum of \$250,000 is appropriated from the general fund to  
10 the Department of Law for payment for past and present attorney fees and  
11 costs of the plaintiffs and intervenors in Weiss v. State.

12 \* Sec. 5. The sum of \$40,000 is appropriated from the general fund to  
13 the Department of Health and Social Services for payment as a grant to the  
14 Alaska Alliance for the Mentally Ill and to the Alaska Mental Health Asso-  
15 ciation for expenses directly related to Weiss v. State and its settlement.

16 \* Sec. 6. The unexpended and unobligated portion of the appropriations  
17 made by secs. 2 - 5 of this Act lapses into the general fund June 30, 1987.

18 \* Sec. 7. Each appropriation made in secs. 2 - 5 of this Act is con-  
19 ditioned on the issuance of a court order in Weiss v. State directing a  
20 payment consistent with the purpose stated in the section.

21 \* Sec. 8. This Act takes effect immediately in accordance with AS 01.-  
22 10.070(c).