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STATE OF ALASKA THE LEGISLATURE

LEGISLATIVE AFFAIRS AGENCY

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JUNEAU, ALASKA 99811
907-465-3800

May, 1986

Copies of minutes listed below were originally included in this file. The minutes are available on the STAIRS date base CM 14. In order to save space copies of minutes have not been left in the files.

Jeanie Henry

House Judiciary	4/7/86	8 Am
" "	4/8/86	8 Am
" "	4/15/86	1:30 pm
" "	4/16/86	1:30 pm

Original sponsors: Pignatieri, Gruenberg,
Beucher, et al

1 IN THE HOUSE

BY THE JUDICIARY COMMITTEE

2 CS FOR SPONSOR SUBSTITUTE FOR HOUSE BILL NO. 128 (Judiciary)

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 mental
7 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. INTERIM MENTAL HEALTH TRUST LAND COMMISSION ESTABLISHED.

11 (a) The interim mental health trust land commission is established in the
12 Department 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 and three members appointed by
16 the governor as follows:

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

20 (2) a member representing the intervenors, appointed by the
21 governor from a list of three names submitted to the governor by the inter-
22 veners in State v. Weiss; and

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

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

1 commission. A member of the commission may designate an individual to
2 represent the member at a meeting of the commission. An individual des-
3 ignated under this subsection may vote and has all the powers of a member.

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

7 (e) The commission may employ an executive director and staff to
8 assist it in fulfilling its responsibilities under this Act. The executive
9 director of the commission is in the exempt service under AS 39.25.110.

10 * Sec. 2. RESPONSIBILITIES OF THE COMMISSIONER OF NATURAL RESOURCES AND
11 THE COMMISSION. (a) The commissioner of natural resources shall inventory
12 and catalog the mental health trust land, shall audit each transaction
13 involving land that has been part of the mental health trust land, and
14 shall determine the status of mental health trust land under procedures and
15 guidelines established by the commissioner of natural resources as directed
16 by the commission.

17 (b) As directed by the commission, the commissioner of natural re-
18 sources shall retain appraisers to appraise land that was part of the
19 mental health trust. The commissioner shall provide the appraisers with
20 written procedures and instructions that have been adopted by the commis-
21 sion.

22 (c) The commissioner of natural resources shall manage the mental
23 health trust land as a public trust under P.L. 84-830, 70 Stat. 709, under
24 the direction of the commission. The commissioner of natural resources may
25 not sell, lease, or exchange mental health trust land or an interest in the
26 mental health trust land without the prior approval of the commission. The
27 commissioner of natural resources shall sell, lease, and exchange mental
28 health trust land as directed by the commission. The commissioner of
29 natural resources may transfer trust land to the federal government under

1 AS 36.05.035(b)(9) without the approval of the commission. The commis-
2 sioner of natural resources shall advise the commission of an intention to
3 transfer any trust land to the federal government and, after the transfer,
4 shall make every effort to ensure that the federal government will transfer
5 to the state trust land of equal value. In managing the trust and the
6 trust land the commission and the commissioner shall be guided by the
7 principles established for the Board of Trustees of the Alaska Permanent
8 Fund Corporation under AS 37.13.120(a).

9 (d) The income from the management of the mental health trust land
10 shall be deposited in a special trust account in the general fund of the
11 state and may be appropriated by the legislature only for the support of
12 the mental health program in the state.

13 * Sec. 3. RESPONSIBILITIES OF THE COMMISSIONER OF HEALTH AND SOCIAL
14 SERVICES AND THE COMMISSION. The commissioner of health and social ser-
15 vices, as directed by the commission, shall

- 16 (1) select auditors to audit the state's mental health program;
17 (2) establish the procedures and guidelines to guide the audi-
18 tors selected under this subsection;
19 (3) propose the guidelines and procedures to be used in de-
20 termining a range of expenditures for mental health programs necessary to
21 comply with the state's comprehensive mental health plan.

22 * Sec. 4. ADDITIONAL RESPONSIBILITIES OF THE COMMISSION. The commis-
23 sion shall report to the legislature on February 1 of each year on matters
24 of concern to it including recommendations for amendment of laws relating
25 to the management of the mental health trust, the mental health trust land,
26 and the mental health program of the state.

27 * Sec. 5. DEFINITION. In secs. 1 - 4 of this Act "commission" means
28 the interim mental health trust land commission established in sec. 1 of
29 this Act.

1 * Sec. 6. Sections 1 - 5 of this Act are repealed July 1, 1978.

2 * Sec. 7. This Act takes effect immediately in accordance with AS 01.-
3 10.070(c).
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Bradley
4/15/86 ✓

Original sponsors: Pignalberi, Gruenberg,
Boucher, et al

1 IN THE HOUSE BY THE JUDICIARY COMMITTEE
 2 CS FOR SPONSOR SUBSTITUTE FOR HOUSE BILL NO. 128 (Judiciary)
 3 IN THE LEGISLATURE OF THE STATE OF ALASKA
 4 FOURTEENTH LEGISLATURE - SECOND SESSION

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 14 five members, including the commissioner of natural resources and the
 15 commissioner of health and social services and three members appointed by
 16 the governor as follows:

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

20 (2) a member representing the intervenors, appointed by the
 21 governor from a list of three names submitted to the governor by the inter-
 22 venors in State v. Weiss; and

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

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

1 commission. A member of the commission may designate an individual to
2 represent the member at a meeting of the commission. An individual des-
3 ignated under this subsection may vote and has all the powers of a member.

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

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8 assist it in fulfilling its responsibilities under this Act.

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18 mental health trust. The commissioner shall provide the appraisers with
19 written procedures and instructions that have been adopted by the commis-
20 sion.

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22 health trust land as a public trust under P.L. 84-830, 70 Stat. 709, under
23 the direction of the commission. The commissioner of natural resources may
24 not sell, lease, or exchange mental health trust land or an interest in the
25 mental health trust land without the prior approval of the commission. The
26 commissioner of natural resources shall sell, lease, and exchange mental
27 health trust land as directed by the commission. The commissioner of
28 natural resource. may transfer trust land to the federal government under
29 AS 38.05.035(b)(9) without the approval of the commission. The

1 commissioner of natural resources shall advise the commission of an inten-
2 tion to transfer any trust land to the federal government and, after the
3 transfer, shall make every effort to ensure that the federal government
4 will transfer to the state trust land of equal value. In managing the
5 trust and the trust land the commission and the commissioner shall be
6 guided by the principles established for the Board of Trustees of the
7 Alaska Permanent Fund Corporation under AS 37.13.120(a).

8 (d) The income from the management of the mental health trust land
9 shall be deposited in a special trust account in the general fund of the
10 state and shall be appropriated by the legislature for the support of the
11 mental health program in the state.

12 * Sec. 3. RESPONSIBILITIES OF THE COMMISSIONER OF HEALTH AND SOCIAL
13 SERVICES AND THE COMMISSION. The commissioner of health and social ser-
14 vices, as directed by the commission, shall

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16 (2) establish the procedures and guidelines to guide the audi-
17 tors selected under this subsection;

18 (3) propose the guidelines and procedures to be used in de-
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20 comply with the state's comprehensive mental health plan.

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23 of concern to it including recommendations for amendment of laws relating
24 to the management of the mental health trust, the mental health trust land,
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26 * Sec. 5. DEFINITION. In secs. 1 - 4 of this Act "commission" means
27 the interim mental health trust land commission established in sec. 1 of
28 this Act.

29 * Sec. 6. Sections 1 - 5 of this Act are repealed July 1, 1988.

1 * Sec. 7. This Act takes effect immediately in accordance with AS 01.-
2 10.070(c).
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A M E N D M E N T

Offered in the House Judiciary Committee

By: Goll

TO: CS SSHB 128 (Resources)

Page 3, line 24:

Delete "The" and insert "Except as authorized under AS
38.05.035(b)(9), the"

Pignalberi
April 8, 1986

Proposed revisions of Goll amendment

Proposal #1:

Page 3, Line 29:

state as directed by the commission. Subsequent to quit claiming mental health land or an interest in land under AS 38.05.035(b)(9) the commissioner shall replenish the trust with lands of equal value.

Proposal #2:

Page 3, Line 29:

state as directed by the commission. The commissioner may transfer trust land to the federal government under AS 38.05.035(b)(9) in exchange for lands of equivalent value. The equivalent land to be conveyed to the trust need not be identified at the time of the transfer.

Investment: procedure language revision

Page 4, Line 1:

land the commission and the commissioner shall be guided by the principles established for the Board of Trustees of the Alaska Permanent Fund under AS 37.13.120 [SEEK TO MAXIMIZE THE INCOME EARNED AND RECEIVED BY THE TRUST CONSISTENT WITH A TRUSTEE'S OBLIGATION TO PROTECT AND PERPETUATE THE TRUST].



Alaska State Legislature

House

Official Business

Pouch V
State Capitol
Juneau, Alaska 99811

M E M O R A N D U M

TO: The Honorable Mike M. Miller, Chair
House Judiciary Committee

FROM: *M. Miller* Representative Marco A. Pignalberi

DATE: April 10, 1986

RE: Suggested Amendments to CSSSHB 128 (res)

Per our conversation about expediting subcommittee deliberation, I have attached amendment proposals which address several of the concerns raised by Judiciary Committee members at the April 8 hearing on CSSSHB 128 (res).

cc: The Honorable Max Gruenberg
The Honorable Robin Taylor

Pignalberi
April 10, 1986

Amendments suggested during 4/8/86 Judiciary Hearing

Page 2, Sec. 2.(B) amended to read:

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

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

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

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

(4) two members representing the general public appointed by the governor .

Page 3, subsection (c) is amended to read:

(c) The commissioner of natural resources is responsible for the management of the mental health land of the state as a public trust under P.L. 84-830, 70 Stat. 709, under the direction of the commission. [THE COMMISSION MAY CONTRACT WITH THE PLAINTIFFS OR THE INTERVENORS FOR THE PERFORMANCE OF FUNCTIONS ASSIGNED TO IT] The commissioner of natural resources may not sell, lease, or exchange mental health trust land of the state without the prior approval of the commission. The commissioner of natural resources shall sell, lease, and exchange mental health trust land of the state as directed by the commission. Subsequent to quit claiming mental health land or an interest in land under AS 38.05.035(b)(9) the commissioner shall make every effort to ensure that the federal government replenish the trust with lands of equal value. In managing the trust and the trust land the commission and the commissioner shall be guided by the principles established for the Board of Trustees of the Alaska Permanent Fund under AS 37.13.120.

Page 3, Line 5 is amended to read:

THE COMMISSION. (a) The commissioner of natural resources
shall inventory and

Page 3, Line 8 is amended to read:

land of the state, and shall determine the status of mental
health trust land on

Page 4, Line 4 is amended to read:

(d) The [PROCEEDS] income from the management of the
mental health trust land

Page 4, delete Line 29:

[* Sec. 7. Sections 1-6 of this Act are repealed July 1,
1988.]

STATE OF ALASKA

DEPARTMENT OF NATURAL RESOURCES

OFFICE OF THE COMMISSIONER

BILL SHEFFIELD, GOVERNOR

POUCH M
JUNEAU, ALASKA 99811
PHONE: 907-465-2400

April 7, 1986

The Honorable M. Mike Miller
Chair, House Judiciary Committee
Alaska State Legislature
P.O. Box V
Juneau, AK 99811

Dear Representative Miller:

I am writing to provide Department of Natural Resources comments on HB 128 which is scheduled for hearing in your committee today. This bill would establish an interim committee to oversee mental health land management by the department. I understand that HB 651 is not formally scheduled but can be discussed. Since your intent is to move HB 128, I will address several areas for which the department offers amendment.

Amendment 1

Section 3 requires several actions by the department, some of which are already completed or will be completed this fiscal year. As a technical amendment I suggest the following:

Amend Section 3, page 3, commencing on line 5 as follows:

- (a) The commissioner of natural resources shall inventory and maintain appropriate title and status records pertaining to [CATALOG] the mental health trust land of the state and, to the extent necessary, shall audit...

Amendment 2

I recommend deleting the last sentence in subsection 3(a), page 3, lines 11-13, since all such department records are freely available.

Amendment 3

Subsection 3(c) requires the commissioner to take whatever disposal actions the commission desires in maximizing the income earned from mental health land. Since there is substantial disagreement about the meaning of the Supreme Court's decision in Weiss v. Alaska, the Attorney General is

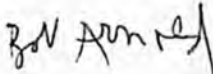
April 7, 1986

considering seeking clarification of that decision by the Superior Court. One of the questions that would be posed is whether the state has an affirmative obligation to manage mental health lands for maximum revenue generation. In order to avoid prejudging this issue, we suggest that subsection 3(c) be amended as follows:

(c) The commissioner of natural resources is responsible for the management of the mental health land of the state as a public trust under P.L. 84-830, 70 Stat. 709, under the direction of the commission. [THE COMMISSION MAY CONTRACT WITH THE PLAINTIFFS OR THE INTERVENORS FOR THE PERFORMANCE OF FUNCTIONS ASSIGNED TO IT.] The commissioner of natural resources may not sell, lease, or exchange mental health trust land of the state or an interest in the mental health trust land of the state without the prior approval of the commission. [THE COMMISSIONER OF NATURAL RESOURCES SHALL SELL, LEASE, AND EXCHANGE MENTAL HEALTH TRUST LAND OF THE STATE AS DIRECTED BY THE COMMISSION.] In managing the trust and the trust land the commission [AND THE COMMISSIONER] shall deny or approve actions consistent with the terms of the trust established by the Alaska Mental Health Enabling Act. [SEEK TO MAXIMIZE THE INCOME EARNED AND RECEIVED BY THE TRUST CONSISTENT WITH A TRUSTEE'S OBLIGATION TO PROTECT AND PERPETUATE THE TRUST.]

I will be available to testify and answer questions at today's hearing. If there is additional information I might supply, please let me know.

Sincerely,



Robert D. Arnold
Deputy Commissioner

cc: Representative Pignalberi
Representative Gruenberg
Senator Fahrerkamp
Senator Sturgulewski
Senator Josephson
Jim Gottstein
David Walker
Tom Koester, Department of Law
Jim Ayers, Governor's Office
Molly McCammon, Governor's Office
Tom Hawkins, DLWM
Salli Slaughter, DLWM

STATE OF ALASKA

BILL SHEFFIELD, GOVERNOR

DEPARTMENT OF FISH AND GAME

OFFICE OF THE COMMISSIONER

P.O. BOX 3-2000
JUNEAU, ALASKA 99802
PHONE: 907 / 465-4100

April 15, 1986

The Ponorable Mike M. Miller
Alaska State Legislature
P. O. Box V
Juneau, AK 99811

Dear Representative Miller:

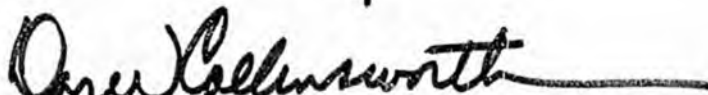
I understand that at a recent hearing on Mental Health Grant Lands questions arose regarding commercial timber volume and beach frontage lands in the proposed Dude Creek Critical Habitat Area near Gustavus.

The area encompassed by the proposed Critical Habitat Area is, for the most part, a perched wetland covered with sedge meadows and willow thickets. The only timber stands are limited to areas immediately adjacent to the two streams that flow through the area. Given the limited volume available and the roading required for access to it, the stands are probably not commercially viable.

With regard to the beach frontage question, a review of the enclosed map of the proposed Critical Habitat Area clearly illustrates that no beach frontage is included.

I hope this clears up any misunderstandings that have arisen. If I can be of further assistance, please let me know.

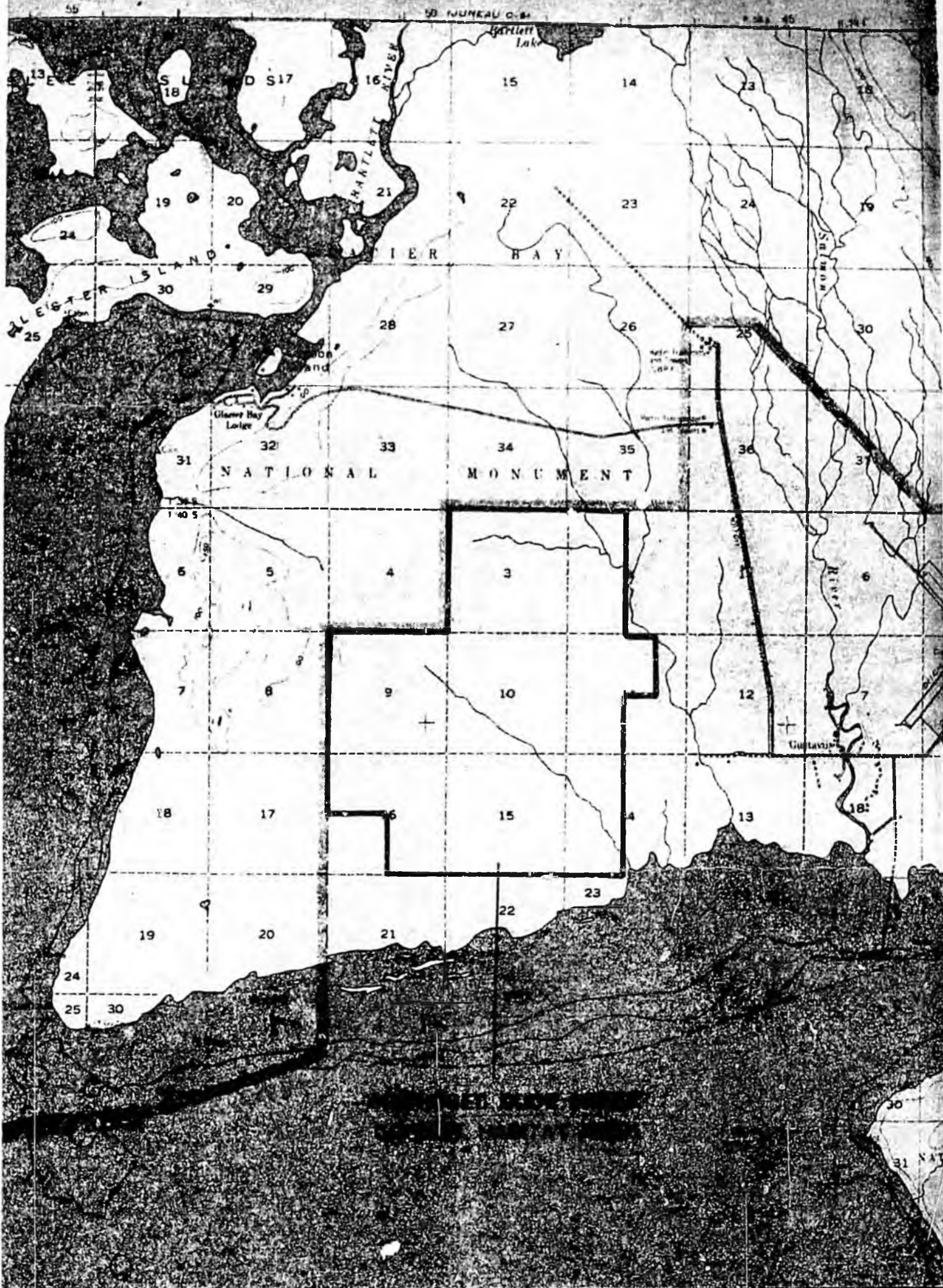
Sincerely,



Don W. Collinsworth
Commissioner

Enclosure

cc: Dr. George Rogers
Esther Wunnicke, Commissioner, ADNR



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STATE OF ALASKA
THE LEGISLATURE

POUCH Y - STATE CAPITOL

JUNEAU, ALASKA 99811

907-465-3800

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

April 8, 1986

SUBJECT: Conflicts of interest: CSHB 128(Resources)

TO: Representative M. M. Miller
Chair, House Judiciary Committee

FROM: Richard A. Bradley
Legislative Counsel

Nancy Groszek has asked that I comment on the question whether there is a conflict of interest raised under CSHB 128(Resources). In sec. 3(c), the bill provides that "The (interim mental health trust land) commission may contract with the plaintiffs or the intervenors for the performance of functions assigned to it." The "plaintiffs" and "intervenors" are the respective parties so described in State v. Weiss, 706 P.2d 681 (Alaska 1985).

I agree that the commission is representative of the parties to the litigation; the plaintiffs and intervenors are assured representation on the commission by virtue of the limited discretion granted to the governor in making appointments to the commission under sec. 2 of the bill; I note that Sec. 2 of the bill comes close to treading (if it does not in fact tread) on the governor's constitutional powers of appointment.

But I must assume that there is no conflict of interest, as such, if the legislature itself authorizes the commission to contract with its members. This follows necessarily from the authorization; in the absence of the authorization, a conflict would seem to be presented.

If I may be of further assistance, please advise.

RAB:csh
c6/068

POSITION PAPER
CSSSHB 128

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

Section 4 of CSSSHB 128 requires the department to establish guidelines for and obtain an independent audit of mental health expenditures. It also requires the department to prepare guidelines to determine by some mechanism the level of funding necessary to comply with the state's mental health plan. It requires the department to seek the approval of the commission prior to embarking on these tasks.

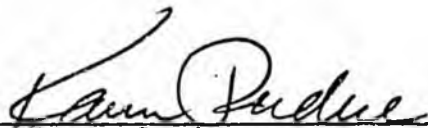
Position

The department has been asked to comment on Section 4 of this bill. The department believes an audit of mental health expenditures needs to be performed. The commission provides a valuable forum for this agreement to be reached.

It would be prudent for all parties to agree on the guidelines for such an audit prior to commitment of funds for that purpose. The department would work with the commission to achieve consensus on such a set of guidelines.

With regard to the second section, the department feels it important that the interim commission examine the needs for mental health services and be involved in a needs assessment which would result in determining what is "necessary" for the state to implement a comprehensive mental health program. A broad based effort to come to an agreement on the level and range of services needed to meet Alaskan's mental health program would provide a valuable yard stick by which to measure how existing services fail to meet the true need and what level of commitment is needed in the future.

Recommended by:


Karen Perdue
Assistant Commissioner
for Administration

Date:

4/7/86

Approved by:


John R. Pugh
Commissioner

Date:

4/8/86

STATE OF ALASKA 1986 LEGISLATIVE SESSION FISCAL NOTE

Revision Date : _____

REQUEST

Bill/Resolution No. : CSSSHB 128
 Title : An Act relating to the interim management of mental health trust land; and providing for an effective date.
 Sponsor : Pignalberi, Gruenberg, Boucher
 Requestor : Pignalberi
 Date of Request : March 24, 1986

FISCAL DETAIL

Agency Affected : Health & Social Services
 BRU : DHSS Administrative Services
 Components : Audit

EXPENDITURES/REVENUES : (Thousands of Dollars)

OPERATING	FY 86	FY 87	FY 88	FY 89	FY 90	FY 91
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL		81.0	0			
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING		81.0	0	0	0	0

CAPITAL						
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REVENUE						
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FUNDING : (Thousands of Dollars)

GENERAL FUND		81.0				
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS :

FULL-TIME		0				
PART-TIME		0				
TEMPORARY						

ANALYSIS : Attach a separate page if necessary

Prepared by : *Karen Perdue* Karen Perdue, Assistant Commissioner
 Division : Commissioner's Office Phone : 465-3030
 Date : 3/26/86

Approved by Commissioner : *Jan R. O'Byrne* Date : 4/1/86
 Agency : Health and Social Services

Distribution (by Agency preparing fiscal note):

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

The definition of mental health is not clear, and was not defined by the courts. The parties may agree to a definition or the court may be asked to define it for these purposes.

The department's cost estimate for an independent audit includes the accounting for a broad range of possible mental health expenditures. Auditing all possible expenditures and then applying those relevant to the final definition would be cheaper than presupposing the definition of mental health and then reperforming the audit should the definition be expanded beyond the original scope.

Department audit staff could perform this audit at a negligible cost if it is determined that a private firm is not needed. DHSS audit staff includes 3 CPAs who regularly perform hundreds of audits per year.

STATE OF ALASKA

DEPARTMENT OF NATURAL RESOURCES

OFFICE OF THE COMMISSIONER

BILL SHEFFIELD, GOVERNOR

POUCH M
JUNEAU, ALASKA 99811
PHONE: 907-465-2400

April 8, 1986

The Honorable M. Mike Miller
Chair, House Judiciary Committee
Alaska State Legislature
P.O. Box V
Juneau, AK 99811

Dear Representative Miller:

During yesterday afternoon's hearing on CSSSHB 128, related to a mental health lands commission, a member of your committee asserted that the proposed commission was the proper forum for determining the disposition of mental health lands, since the Alaska Mental Health Enabling Act (AMHEA) made clear that the lands were to be used for mental health purposes.

The AMHEA assigns to the legislature of Alaska the authority to determine the disposition of mental health lands. Section 202(e) of the Act provides as follows:

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. (emphasis added)

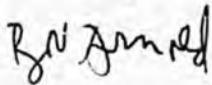
The Honorable M. Mike Miller

-2-

April 8, 1986

I hope this information is useful to your committee's deliberations.

Sincerely,



Robert D. Arnold
Deputy Commissioner

MEMORANDUM

State of Alaska

TO: DISTRIBUTION

DATE: April 9, 1986

FILE NO:

TELEPHONE NO: 465-2400

FROM: Mike Vediner *MV*
Land and Water Management
Department of Natural Resources

SUBJECT: Acreage Correction
Anch. Coastal State
Wildlife Refuge

Please note on the attached chart a correction for the total acreage of mental health land within the proposed Anchorage Coastal State Wildlife Refuge (HB 186, SB 19). The original chart indicated 516 acres and the corrected figure is 740.5 acres.

Attachment

DISTRIBUTION

Honorable Al Adams
Honorable Mike Szymanski
Honorable M. Mike Miller
Honorable Marco Pignalberi
Honorable Max Gruenberg
Honorable Peter Goll
Honorable Dick Shultz
Honorable Adelheid Herrmann
Honorable Jan Faiks
Honorable John Sackett
Honorable Vic Fischer
Honorable Arliss Sturgulewski
Honorable Joe Josephson
Honorable Bettye Fahrenkamp
Honorable Edna DeVries
Jim Gottstein
David Walker
Jim Ayres
Molly McCammon
Bob Arnold
Tom Koester
John Pugh
Karen Perdue
Dana LaTour
Norm Cohen
Tom Hawkins
Salli Slaughter
Meg Hayes

PENDING LEGISLATION CONTAINING MENTAL HEALTH LAND
December, 1985

This chart pertains to legislative bills containing mental health lands which were left pending at the close of the 1985 session. This information was obtained through the Legislative Affairs computer system. See attached sheet for a listing of all bills reviewed for the inclusion of mental health land.

Bill #	Description of Bill	Sponsor	Legal Description of Mental Health Lands	Approximate* Total Acreage	Approximate MH Acreage
HB 44	Establishment of Additional State Land as Marine Park Units of the State Park System	M. M. Miller, Goll, Duncan	T. 58 S., R. 79 E., C.R.M. within secs. 18, 19, 20, 29 and 32	16,611	1512.41
HB 86	Lands designated as Willow Creek State Recreation Area	Rules Committee at the request of the Governor	T. 20 N., R. 4 W., S.M. within Sec. 31	3,669	76
HB 93	Establishment of a system of Recreation Rivers	Rules Committee at the request of the Governor	T. 17 N., R. 4 W., S.M. within Secs. 4, 6, 7, 17 and 18 T. 26 N., R. 4 W., S.M. within Sec. 7 and 18 T. 26 N., R. 5 W., S.M. within Secs. 12, 13, and 23 T. 18 N., R. 3 W., S.M. within Secs. 28, 29 and 30	226,070	3,893
HB 312	Establishment of the Dude Creek Critical Habitat Area	Goll, Duncan, M. M. Miller, Brinkley	T. 40 S., R. 58 E., C.R.M. within Secs. 2, 3, 9, 10, 11, 14 and 15	4,083	3,443
SB 19 HB 186	Creation of Anchorage Coastal State Wildlife Refuge	V. Fischer, Kerttula Szymanski	T. 12 N., R. 4 W., S.M. within Secs. 15, 22, 23, 25 and 26 T. 12 N., R. 3 W., S.M. within Secs. 30, 31 and 32 T. 11 N., R. 3 W., S.M. within Sec. 10	**1,653	**516 740.5
SB 30	Yakataga State Forest	Eliason, V. Fischer, Kerttula	T. 22 S., R. 19-22 E., C.R.M. within all secs T. 23 S., R. 21-22 E., C.R.M. within all secs	360,834	47,316

*Pertains to uplands only. The mental health lands in SB 19 are currently included in the Potter Point State Game Refuge.

**These estimates were made from the legal descriptions provided in the bills and may contain non-state land or lands already encumbered.

POSITION PAPER
CSSSHB 128

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

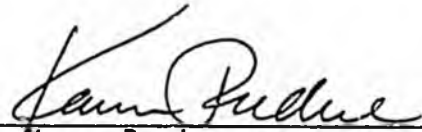
Section 4 of CSSSHB 128 requires the department to establish guidelines for and obtain an independent audit of mental health expenditures. It also requires the department to prepare guidelines to determine by some mechanism the level of funding necessary to comply with the state's mental health plan. It requires the department to seek the approval of commission prior to embarking on these tasks.

Position

The department has been asked to comment on Section 4 of this bill. The department believes an audit of mental health expenditures needs to be performed.

It would be prudent for all parties to agree on the guidelines for such an audit prior to commitment of funds for that purpose. The department would work with the commission to achieve consensus on such a set of guidelines. If agreement cannot be reached however, the parties may want to request that the court adjudicate the appropriateness of certain guidelines i.e. the definition of mental health.

With regard to the second section, the department feels it important that the interim commission examine the needs for mental health services and be involved in a needs assessment which would result in determining what is "necessary" for the state to implement a comprehensive mental health program. However, it should be noted that the Mental Health Advisory Council (AS 47.30.605) has a statutory mandate to oversee and review the mental health plan for the state. The Commission's work should not conflict with functions already in statute.

Recommended by: 
Karen Perdue
Assistant Commissioner
for Administration

Date: 3/28/86

Approved by: 
John R. Pugh
Commissioner

Date: 4/1/86

STATE OF ALASKA

BILL SHEFFIELD, GOVERNOR

DEPARTMENT OF NATURAL RESOURCES

POUCH M
JUNEAU, ALASKA 99811
PHONE: 907-465-2400

OFFICE OF THE COMMISSIONER

March 21, 1986

The Honorable Dick Shultz
The Honorable Adelheid Herrmann
Alaska State Legislature
P.O. Box V
Juneau, Alaska 99811

Dear Representatives Shultz and Herrmann:

I am writing to provide comments on SSHB 128, which creates an interim mental health trust land commission. The bill is scheduled for hearing in your committee on Monday, March 24, 1986.

Although we have no objection to oversight of this department's administration of mental health lands, SSHB 128 is unclear regarding the roles of the commission and the department. For example, the bill would assign the commission its responsibilities for trust land management. Indeed, one provision would allow the commission to contract with the intervenors for the performance of its duties. The same section, however, implies that management is the responsibility of the department, with the additional requirement that all actions obtain the approval of the commission and counsel for the plaintiffs and intervenors, or approval by the court. If the department retains management responsibility, the multiple approvals required would likely cause substantial delay, possibly to the detriment of the trust as well as to citizens generally.

Four responsibilities that would be assigned to the commission (inventory, catalog, audit transactions of, and determination of status of mental health land) are presently being carried out by the department and, except for the audit, will be accomplished this fiscal year; other tasks required by the Supreme Court's decision would apparently be performed by the department since they are not listed in the bill.

It should be noted that this bill would assign all proceeds to a fund for appropriations to support mental health programs, but the federal enabling legislation allows the use of such funds for other public purposes once mental health needs are funded.

Hon. Rep. Shultz
Hon. Rep. Herrmann

-2-

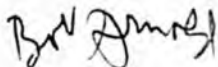
March 21, 1986

In a letter to Representative M. Mike Miller, a copy of which is enclosed, we commented on HB 651 which is similar to SSHB 128 in that it would create a commission for mental health land management. However, the commission established under HB 651 is established within the Department of Natural Resources and may include persons with necessary land management expertise. The commission formed under SSHB 128 however is not within the department and its membership includes the commissioners of health and social services and revenue and three members from mental health advocacy groups with no required land management experience.

Our understanding of this bill suggests there would be no fiscal impact upon the department arising from its passage.

Please let me know whether there is further information I might provide.

Sincerely,



rc Esther C. Wunnicke
Commissioner

Enclosure

cc: The Honorable Marco Pignalberi
The Honorable M. Mike Miller
SSHB 128 Sponsors
Tom Koester
Molly McCammon
Dana Latour
Karen Perdue
Norm Cohen
Tom Hawkins



Alaska State Legislature

HOUSE OF REPRESENTATIVES
COMMITTEE ON RESOURCES

POUCH V
JUNEAU, ALASKA 99811
(907) 465-3715

MEMORANDUM

March 21, 1985

TO: Representative Mike Miller
Chairman, House Judiciary

FROM: Representative Dick Shultz *DS*
Co-Chair, House Resources

SUBJ: HB 128: Mental Health Lands

The Resources Committee has had under consideration HB 128 and has reported the bill out of committee. This legislation which deals with the topic of mental health lands is fairly straight forward, however, there was one question raised by Representative Thompson that DNR has promised to try and answer. In the interest of time Resources members decided to move this bill on to your committee after DNR indicated they would provide, if possible, the total value of the mental health lands in question. Deputy Commissioner Bob Arnold from DNR stated that the Department has calculated the value, however, he was not sure that it could be released to the legislature because of the present litigation of this issue. I would encourage you as Chairman to follow through and obtain the mental health land values if at all possible. It is a question that needs to be answered before it goes to the floor and it is one that both Representative Thompson and other members of the Resources Committee feel is relevant to this difficult issue.

Dick Shultz
Rep. Dick Shultz, Co-Chair

Rep. Adelheid Herrmann, Co-Chair

Rep. May Wallace, Vice-Chair

Bette Cato
Rep. Bette Cato

Michael W. Miller
Rep. Mike Miller

David W. Thompson
Rep. David Thompson

John Sund
Rep. John Sund

Roger L. Jenkins
Rep. Roger Jenkins

Rep. Drue Pearce

STATE OF ALASKA

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

BILL SHEFFIELD, GOVERNOR

REPLY TO:

1031 W 4th AVENUE
SUITE 200
ANCHORAGE, ALASKA 99501
PHONE: (907) 276-3550

1st NATIONAL CENTER
100 CUSHMAN ST.
SUITE 400
FAIRBANKS, ALASKA 99701
PHONE: (907) 452-1568

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

March 21, 1985

The Honorable Richard Shultz
Alaska State House of Representatives
Pouch V
Juneau, AK 99811

Re: HB 128 (Mental Health Trust Lands)

Dear Representative Shultz:

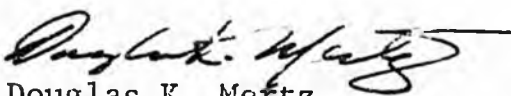
At the House Resources hearing yesterday on HB 128, relating to mental health trust lands, some interest was expressed by committee members in seeing the results of DNR appraisals on the lands. Last week DNR completed the preliminary appraisals, for the mental health lands in state ownership as of their redesignation as general grant lands in 1978. By May 15, DNR will have a final appraisal, including mental health lands on which third party interests were created before 1978.

The appraisal documents are court-ordered discovery requested by the plaintiffs' attorney, Stephen Cowper of Fairbanks. We are willing to release the documents to the committee, but since they are still privileged attorney/client materials not yet filed with the court, we must ask that Mr. Cowper's agreement be secured first. As soon as that agreement is received, we will be happy to deliver to the committee the appraisal summaries to date.

We regret that because of time constraints we were not able to present our position on HB 128 to the committee yesterday. We are available to discuss it with any member who wishes to hear our views.

Sincerely,

NORMAN C. GORSUCH
ATTORNEY GENERAL

By: 
Douglas K. Mertz
Assistant Attorney General

DKM:d.1
cc: Stephen Cowper, Esq.

STATE OF ALASKA

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

April 10, 1985

BILL SHEFFIELD, GOVERNOR

REPLY TO:

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

The Honorable Peter Goll
Alaska State House of Representatives
Pouch V
Juneau, AK 99811

Re: HB 128 (mental health trust land)

Dear Representative Goll:

You asked "[h]ow will HB 128, relating to mental health trust lands, affect any wrongfully conveyed Mental Health lands?" The thrust of your inquiry appears to be whether HB 128, which would preclude the state from conveying or otherwise disposing of any land owned in fee, which the state received from the federal government under section 202 of the Alaska Mental Health Enabling Act of 1956, P.L. 84-830, would preclude the state from implementing ch. 152, SLA 1984. That statute authorized the state to transfer land back to the federal government if the land was wrongfully or erroneously conveyed by the federal government to the state in the first place. It was designed particularly to facilitate the granting of certain Native allotments.

The short answer to your question is that HB 128, if enacted, probably would preclude the state from transferring the land back to the federal government. The general rule is that a subsequently passed law takes precedence over a previously passed law to the extent of any inconsistency. However, if there was sufficient legislative history indicating that the legislature did not intend HB 128 to prevent the state from implementing ch. 152, SLA 1984, it is possible that HB 128 would not preclude the transfer back to the federal government which that earlier statute authorized. In other words, there is no clear answer to your question, although (in the absence of rather clear evidence of legislative intent to the contrary) it is likely that HB 128 would preclude a transfer back to the federal government.

To ensure that HB 128 does not have that effect, you suggest that an amendment to HB 128 might solve the problem. You propose that the word "properly" be inserted on line 12 after the word "was." We would suggest, as a possible alternative, that

The Honorable Peter Goll

April 10, 1985
Page 2

the following phrase be inserted at the end of line 13 after the reference to "(P.L. 84-830):" ", except as authorized by AS 38.-05.035(b)(9)." This would make it abundantly clear that HB 128 was not intended to preclude the state from implementing the 1984 statute which added paragraph (9) to AS 38.05.035(b).

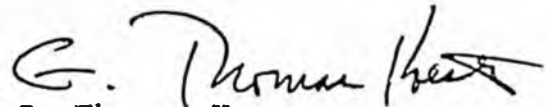
As you may know, the Administration has not yet had an opportunity to comment in detail on HB 128. We believe that there are a number of considerations that have not yet been brought to the legislature's attention regarding this bill, and look forward to an opportunity to make our concerns known. As a result, our suggestion of the foregoing amendment to take care of the problem you raise should not be considered as Administration approval or agreement with the bill as a whole.

If we can provide further information or answer any additional questions, please contact us at your convenience.

Sincerely,

NORMAN C. GORSUCH
ATTORNEY GENERAL

By:



G. Thomas Koester
Assistant Attorney General

GTK:dlm

cc: Honorable Esther C. Wunnicke
Commissioner
Department of Natural Resources

STATE OF ALASKA

BILL SHEFFIELD, GOVERNOR

DEPARTMENT OF NATURAL RESOURCES

POUCH M
JUNEAU, ALASKA 99811
PHONE: 907-465-2400

OFFICE OF THE COMMISSIONER

March 8, 1985

The Honorable Richard Shu'tz
Alaska State House
Pouch V
Juneau, AK 99811

Dear Representative ^{Shu'tz} Shultz:

I am writing each member of the Legislature to provide current information on two issues of rising concern to Alaskans: the management of the state's mental health lands and progress in negotiations between the state and Seldovia Native Association, Inc. (SNA) regarding a possible land exchange in Kachemak Bay State Park. These two issues are largely unrelated, but they are summarized in this letter owing to the broad interest that has been exhibited in them.

Mental Health Lands Status

I am enclosing a briefing packet on the mental health lands issue, but let me also provide a summary progress report.

The current issue regarding mental health land management arises from a class action lawsuit that has reached the Alaska Supreme Court, in which plaintiffs contest 1978 legislation that redesignated mental health lands for general use and provided for a mental health trust fund to which appropriations have not been made (AS 37.14.010-.050).

The mental health lands include valuable acreage in the Swanson River oil and gas field, Beluga coal field, Trans Alaska Gasline System project, and Eklutna water project. Pursuant to the 1978 legislation, other mental health lands have been conveyed to municipalities in fulfillment of their entitlements and to individuals under land disposal programs. At the Court's direction we are conducting an audit and inventory of mental health lands that will produce preliminary results in mid-March and will be complete in mid-May. The audit will indicate more clearly what is at stake, but we are already aware that the mental health lands could be very valuable

March 8, 1985

because of their location and resources. I will keep you informed as this information becomes available.

The state has expressed to the sponsors of HB 128 (providing for a moratorium on conveyances of mental health lands) its interest in discussing settlement of the litigation that is pending in the State Supreme Court or of possible litigation in federal court (as threatened by the Alaska Mental Health Association). Our attorney, Tom Koester of the Department of Law, has been designated by the administration to serve as the point of contact in these negotiations. Either Tom or members of my staff remain available to brief you further.

I believe that passage of legislation such as HB 128 could have an adverse effect on the state's management of these lands without corresponding benefits for the plaintiffs in the suit. I want to be sure that you are aware of our interest in constructive resolution of the litigation.

Kachemak Park Land Exchange

A 1978 agreement between the state and the Seldovia Native Association, Inc., (SNA) provides for a full trade-out of the corporation's land within Kachemak Bay State Park for an equal-value amount of state land outside the park. This exchange has been under way for several years, during which time the state has exchanged for about 3,500 acres of SNA land within the park. At present, there are another 23,000 acres of SNA land within the park.

To the frustration of both parties, completion of the trade has been delayed by several factors. Foremost is the difficulty of identifying a sufficient amount of state land of interest to SNA which can be made available for the trade. Our experience indicates that Seldovia is primarily interested in developable state land with road access or water frontage. Obviously, this type of state land is in short supply and in high demand from other competing interests (particularly on the Kenai Peninsula).

In an attempt to complete this trade as soon as possible in a single action (rather than in phases), I have instructed my staff to identify a large inventory of potential trade land, including land outside the Kenai Peninsula area. We will identify a pool of land well in excess of that needed to complete an equal value exchange, so as to afford Seldovia and the state the flexibility to refine the land pool as needed. Mr. Fred Elvsaas,

March 8, 1985

President of the SNA, has received a preliminary list of some available state land, and I've explained to him that our statutes require our preliminary agreement to undergo public and legislative review. The department cannot unilaterally commit state land to the trade without this review.

In recent correspondence copied to members of the Legislature, the president of SNA signalled a lack of confidence in the department's approach to the exchange. I have met with Mr. Elvsaas on numerous occasions and each time I have reiterated my interest in and commitment to the trade -- but I also have tried to clarify that land exchanges are subject to a public process and that no agreement can be considered final unless it passes through the required process. I want you also to be aware of this process and my interest in the trade.

As you will see in the enclosed briefing paper on land exchanges, an exchange of such magnitude is subject to legislative approval. AS 38.05.020 requires legislative approval if an exchange involves the land having an appraised or estimated fair market value of more than \$5,000,000, or is for other than equal appraised fair market value. The department will continue attempts to negotiate the trade this spring and summer with SNA. Assuming we reach an agreement, I expect to hold public hearings on the trade this fall and submit the exchange for legislative review under AS 38.50.140 at the beginning of the 1986 session.

I will do my best to keep you advised as we continue to negotiate with SNA. I would be pleased to arrange a briefing on the trade for you if you are interested.

Sincerely,



Esther C. Wunnicke
Commissioner

Enclosures

cc: Governor Bill Sheffield
John Shively, Office of the Governor
Attorney General Norm Gorsuch
Tom Koester, Department of Law
Tom Hawkins, Division of Land
and Water Management
Fred Elvsaas, Seldovia Native Association, Inc.



THE ALASKA
ALLIANCE FOR THE MENTALLY ILL

"An affiliate of the National Alliance for the Mentally Ill"

March 11, 1986

Honorable Don Bennett
President of Alaska State Senate
Alaska State Legislature
Juneau, Alaska 99801

Dear Senator Bennett and Members of the Senate:

The Alaska Alliance for the Mentally Ill believes it is essential that some legislation address the mental health lands dispute this session and appreciates the opportunity to present its position to the members of the Senate.

In addition to the proposed interim joint committee (either SCR 36 or HCR 50) the Alliance supports HB 128 as a further vehicle needed for resolution of the mental health lands dispute. Basic concepts embodied in this bill which we believe are essential to this or any other legislation are:

- The direction of the Supreme Court to reconstruct the trust must be implemented.
- A process for resolution of the mental health lands dispute must be set in motion
- Authority must be vested in an independent interim board to direct the necessary appraisals, inventories, and research; to oversee the management of the trust lands; draft proposed settlement legislation acceptable to all parties; and conduct other trust responsibilities.
- Representatives of the plaintiffs and intervenors (as well as legislators) must be part of the interim board and be funded sufficiently to responsibly review the State's audits, appraisals, and program expenditures and participate in consensus building efforts between the mental health community and the State.
- Sufficient funding must be made available for the departments of Natural Resources and Health and Social Services to conduct the necessary appraisals, audits, research and inventories required by the court order.
- Increased funding for the Division of Mental Health to address needs through the operation budget and SB 388/HB 412 initiating programs for the chronically mentally ill to demonstrate the legislature's intent to correct past inadequacies in mental health programming.

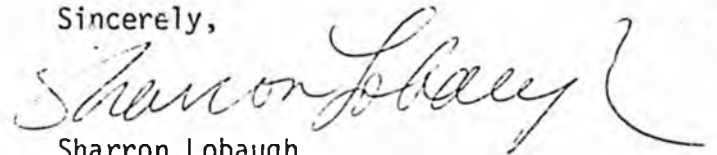
Our overall goal in resolving the mental health lands issue is to develop a

trust of sufficient size to adequately fund mental health programs for future generations.

The Alliance has voted to endorse the transfer of representation for the class from William Council to David T. Walker both of Juneau. The Alliance has agreed to serve as advisory to Mr. Walker on behalf of the class and are working closely with him on this issue. If you have any questions regarding the legal issues of this legislation, please contact him at 586-3537.

This session, Pat Clasby (789-2317) and George Rogers (586-1202) are legislative liaisons for the Alliance. We also have active professionals and family members statewide who are available to participate at any time. Please feel free to contact me if there are further questions.

Sincerely,



Sharron Lobaugh
Vice President, Alaska Alliance
for the Mentally Ill

cc: Representatives:
Pignalberi, Miller, Gruenberg
Office of the Governor
Commissioners HESS and DNR
Alaska Mental Health Association
David Walker
Alliance Chapters

POSITION OF THE ALASKA ALLIANCE ON MENTAL HEALTH LANDS

Before transferring care of the mentally ill to Alaska, Congress in 1956 provided \$12.5 million in transition appropriations and one million acres of land to be managed as a "public trust" to carry out "plans for an integrated mental health program for the Territory, including outpatient and inpatient care and treatment." This would be the basis for determining "necessary expenses" which had a first claim on the proceeds of the trust.

Except 1977-81 Alaska operated without a plan, the program simply being budgeted annually without needs assessments or program priorities. Without a plan there is no basis for a mental health program or its "necessary expenses."

Furthermore, mental health lands were treated as general lands without separate accounting. This was formalized by 1978 legislation redesignating these lands as general grant lands. This was challenged in 1982 and on October 4, 1985 the Alaska Supreme Court ruled that the trust established by the Congress had been breached and ordered it reconstituted.

The Legislature has recognized the necessity for responding to the issues raised by the court's order and the past mismanagement of the trust lands both in protecting the welfare of mentally ill Alaskans and removing restraints on future land management. There is need, however, to make a choice among the several proposals under consideration and the Alaska Alliance for the Mentally Ill and its community alliances has its recommendations.

The Legislature recognizes the complexity of problems thirty years in the making and that their resolution cannot be arrived at within one session. Accordingly each house has introduced concurrent resolutions (SCR 36 and HCR 50) to create an interim joint committee to study and propose resolution of the trust litigation and recommend an adequate mental health program. These are very similar, but the Alliance has a preference for the Senate version.

The Legislature also recognizes that at present there is no statutory authority providing for interim management of the trust lands as a trust and two proposals have been introduced to meet this need. HB 651 proposes a non-paid six member management commission within the Department of Natural Resources to manage the lands and seek to maximize the income. HB 128 proposes an interim and independent commission which in addition to these trust responsibilities would also carry out all the necessary inventory, accounting and appraisal functions necessary for settlement of the litigation. The Alliance recommends passage of HB 128 because it holds the greatest promise for a resolution in keeping with the original intent of the Congress and the Court.

The lack of an appropriate mental health program for Alaska is being addressed by the Department of Health and Social Services in a five year plan currently being drafted and in two companion bills (HB 412 and SB 388) providing for community based and locally or regionally coordinated care and treatment. This legislation is critically needed and the Alliance urges its passage this session.

George W. Rogers

George W. Rogers

March 11, 1986

NOTICE: This opinion is subject to formal correction before publication in the Pacific Reporter. Readers are requested to bring typographical or other formal errors to the attention of the Clerk of the Appellate Courts, 303 K Street, Anchorage, Alaska 99501, in order that corrections may be made prior to permanent publication.

THE SUPREME COURT OF THE STATE OF ALASKA

STATE OF ALASKA,)
)
Appellant/Cross-Appellee,) File Nos. S-653/678
)
v.) O P I N I O N
)
VERN T. WEISS, et al.,)
)
Appellee/Cross-Appellant.) [No. 2987 - October 4, 1985]
)
_____)

Appeal from the Superior Court of the State of Alaska, Fourth Judicial District, Fairbanks, Warren W. Taylor, Judge.

Appearances: G. Thomas Koester, Assistant Attorney General, Norman C. Gorsuch, Attorney General, Juneau, for Appellant/Cross-Appellee. Stephen C. Cowper, Fairbanks, for Appellee/Cross-Appellant. Russ Winner, McGrath & Associates, Anchorage, for Amicus Curiae Cook Inlet Region, Inc.

Before: Rabinowitz, Chief Justice, Burke, Matthews and Compton, Justices. [Moore, Justice, not participating]

COMPTON, Justice.

The State of Alaska ("state") appeals from a judgment of the superior court holding that the state breached its duty as trustee of federal mental health grant lands when the legislature redesignated the property as "general grant land." For the reasons set forth below, we

affirm the holding to this extent, but reverse the superior court's conclusion that the redesignation legislation was valid.

I. FACTUAL AND PROCEDURAL BACKGROUND

In 1956 the United States Congress passed the Alaska Mental Health Enabling Act (AMHEA) which, insofar as it concerns this case, granted the Territory of Alaska one million acres of federal land to be held in public trust to help effectuate the creation and operation of mental health care facilities in Alaska. Pub. L. No. 84-830, 70 Stat. 709 (1956). Section 202(e) of the Act specifically provides:

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. (emphasis added)

The state managed these lands without maintaining a separate account until 1978. The Alaska State Legislature made its practice law in 1978 when it passed the following statutory provision:

REDESIGNATION AND DISPOSAL OF MENTAL HEALTH LAND

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

Ch. 181, § 3(a), SLA (1978).

Alaska has provided continuous mental health care since statehood. The record indicates that between 1959 and 1982 the state spent over \$222,000,000 on mental health care. Generally speaking, there has been a constant increase from 1959 to the present in mental health expenditures: slightly less than \$1,200,000 was expended in 1959, and slightly more than \$29,000,000 was expended in 1982. The record does not indicate how much of the trust land at issue has been disposed of, nor the total value of such disposed land. In the state's answer to the complaint, it alleges that "state expenditures for mental health purposes exceeded revenues from mental health grant lands in all years for which revenues from those lands were tabulated

separately." The record does indicate that as of 1973, total revenues from these mental health trust lands amounted to \$19,555,582. The state's total expenditures to that point amounted to \$66,726,176.

Weiss et al. filed a class action in 1982 alleging that the state breached the public trust by 1) failing to account for revenues realized, 2) using revenues for purposes other than mental health care and 3) passing legislation redesignating the property "general grant land." Plaintiffs sought declaratory relief invalidating the redesignation legislation; injunctive relief compelling the state to administer the trust according to the law; general relief establishing a trust account "for the receipt of funds generated from all lands selected by the State of Alaska under the aforesaid mental health land grant"

The superior court ruled that invalidation of the redesignation legislation was not an available remedy used on State v. University of Alaska, 624 P.2d 807, 815 (Alaska 1981). However, the court did hold that the state breached its duties as trustee by removing the federal grant lands from the trust. As a remedy, the court ordered that

[t]he public trust established by P. L. 84-830, 70 Stat. 709, shall recover from the defendant State of Alaska an amount equal to the fair market value of all lands conveyed from the trust as of the date of conveyance, plus prejudgment interest from the date of each conveyance. For the purposes of this judgment, all lands remaining in the trust as of July 19, 1978, shall be considered

as having been removed from trust status
by the State of Alaska on that date . . .

The court also ordered a set-off for all monies spent by the state on mental health care.

The state appeals from the judgment, except the holding that the redesignation legislation was valid. Weiss et al. cross-appealed the trial court's failure to rule the legislation invalid.

II. DID THE STATE BREACH THE PUBLIC TRUST
CREATED BY CONGRESS WHEN IT REDESIGNATED
PROPERTY IN THE TRUST AS "GENERAL
GRANT LAND?"

A. Nature of the Trust.

The state argues, essentially, that the redesignation is of no legal consequence because the state has always provided public mental health programs in the past and, implicitly, will provide them in the future. The state maintains that providing such programs fulfills its obligations according to AMHEA, freeing the grant lands for other public purposes. Textual support for this position comes from the portion of Section 202(e) which states that "proceeds and income shall first be applied to meet the necessary expenses of the mental health program of Alaska." It is suggested that this language means Congress intended that the land grant serve as a revenue base guarantee. Great emphasis is placed on the legislative history of AMHEA

which establishes that Congress did not wish to limit the use of grant lands exclusively to mental health programs.¹

Despite these observations, we think it irrefutable that Congress intended to create a trust, to be based on a corpus of one million acres of federal land. It is a commonplace of the law that without trust property there can be no trust. Restatement (Second) of Trusts § 74 (1959).² When the state, through the legislature, altered the status of the property grant the trust was thereby effectively terminated. The state, as trustee, had no power to do this

1. The debates in the House and Senate are too lengthy to reproduce in their entirety here, but certain remarks are representative of the discussions. Senator Jackson commented that "[t]he income from sales or leases will be used to support the mental health program in Alaska. The income will be held in trust for that purpose. Any money received over and above the need for the mental health program may be used for other public purposes." He further noted that the language change was not of a fundamental nature, and thus said that, "[t]he purpose of granting 1 million acres is the same as in all other similar grants, such as the public school land-grant program." 102 Cong. Rec. 9761 (June 7, 1956).

We note that the language in the federal grant was changed from designating the proceeds of the land grant to be used as a public trust for Alaska's mental health program, to saying that the proceeds "shall first be applied to meet the necessary expenses of the mental health program" only because of worry among members of Congress that the land may actually have a value far in excess of the necessary health care expenses. The record in this case shows that income from the land grant was actually less than state expenditures for mental health programs.

2. Section 74 provides: "A trust cannot be created unless there is trust property."

and consequently breached its duty to preserve the corpus.³
The fact that the state has provided mental health care in the past and will most likely do so in the future is no justification for termination of the trust. Whether a beneficiary can rely on the bona fides of a trustee to continue voluntarily to uphold the terms of a defunct trust is quite beside the point. We decline the opportunity to encourage the state, or any trustee for that matter, to determine unilaterally when to terminate a trust without specific auth. ty to do so.

B. Remedy.

Having concluded that the state breached the trust, we find it necessary on the facts of this case to invalidate the redesignation statute, Ch. 181, § 3(a), SLA (1978). State v. University of Alaska, 624 P.2d 807, 815 (Alaska 1981) does not compel a different result. In that case, the federal government had granted 100,000 acres to the state "for the exclusive use and benefit" of the

3. Our reliance upon basic trust law principles finds ample support in the precedents of this court and the United States Supreme Court. See Lassen v. Arizona, 385 U.S. 458, 17 L.Ed.2d 515 (1967); State v. University of Alaska, 624 P.2d 807 (Alaska 1981). Both Lassen and University of Alaska involved federal grants to be used by states for school purposes. Those cases stand for the proposition "that the same private trust law principles are to apply to federal land granted to the states for school purposes." University of Alaska, 624 P.2d at 813. There is no reason to treat federal lands granted for mental health purposes differently.

University. Id. at 811. Years after the grant, the state included 5,040 acres of the trust land in a state park. This action was not in itself a breach of the trust so long as the University was paid fair market value for the land. We inferred that the legislature intended to pay the University for this disposition, stating:

It is also logical to assume that the legislature intended to compensate the University for the loss of its land. This view gives the statute creating [the park] a reading that is in accord with the well recognized canon of statutory construction that, when possible, legislation should be construed in a way that upholds its validity.

524 P.2d at 816.

Unlike the situation in University of Alaska, the present case does not involve a disposition of a portion of trust lands for a specific use. Instead, the entire corpus of the trust is intermingled with the general grant lands of the state. No particular use of the trust lands is specified and it may be years before much of the land is used. While it was reasonable to infer a legislative intent to pay for 5,040 acres for which there was a present park land use in University of Alaska, it is not reasonable to infer that the legislature meant to pay for a quantity of trust land approaching one million acres for which in large part there is no present use. Thus, the payment remedy imposed in University of Alaska is not appropriate here. Because the state in passing the redesignation act went

beyond the power which had been granted it with respect to the trust lands by Congress, the redesignation act must be declared invalid.

It follows from our conclusion that the redesignation legislation is invalid that the trust must be reconstituted to match as nearly as possible the holdings which comprised the trust when the 1978 law became effective. The case is remanded so that requisite findings can be made. We take this opportunity to provide some guidance to the trial court to simplify its task.

Those general grant lands which were once mental health lands will return to their former trust status. In the event exchanges have been made, those properties which can be traced to an exchange involving mental health lands will also be included in the trust. To the extent that former mental health lands have been sold since the date of the conveyance the trust must be reimbursed for the fair market value at the time of sale. In calculating the total amount owed, the trial court should grant a set-off for mental health expenditures made by the state during the same period. In the event that expenditures exceeded the value of lands sold, the state need not furnish cash as part of the reconstitution. The goal is to restore the trust to its

★
CSHB 128
Commission
would be
responsible
for approving
the state's
actions in
carrying
out the
activities
directed
herein.

position just prior to the conveyance effected by the
redesignation legislation.⁴

AFFIRMED in part, REVERSED in part and REMANDED
for further proceedings consistent with this opinion.

ORDER

Pursuant to Appellate Rules 503(e) and
(f) (i), attorney fees of \$1,000.00 are
awarded to appellee and
the appellee shall serve and
file with this court an itemized and verified
cost bill by 10-14-85 Entered
by direction of Justice Compton
Dated: 10-2-85 Deputy: C. Hulbert

4. Amicus raises questions regarding the title held by conveyancees and bona fide purchasers of mental health lands. In view of our disposition of this case, we deem it unnecessary to address those issues at the present time.

HOUSE

COMMITTEE REPORT

JUDICIARY

(7)

Date referred: 2/17/86

FURTHER REFERRALS: FINANCE

DATE: March 25, 1986

The RESOURCES Committee has considered SSHB 128

"An Act relating to the interim management of 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 CS for SSHB 128 (Resources) same title
- new title

and recommends No recommendation

further referral to the _____ Committee

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

SIGNING DC PASS:

SIGNING OTHER RECOMMENDATIONS:

~~_____~~ *Dick Shultz*

~~_____~~ *Bette Carr*

~~_____~~ *F. Kay Wallis*

~~_____~~ *NO REC*

~~_____~~ *David W. Shonk NO REC*

~~_____~~ *Albert H. Bertram NO REC*

~~_____~~ *John L. ...*

Dick Shultz
 CHAIRMAN

MENTAL HEALTH ANNOTATED CHRONOLOGY

- 1) 1956 - Mental Health Enabling Act
[1956 Public Law 830, Title II, Sec. 202, July 28, 1956]
 - a. Granted 1 million acres of land, including mineral rights, to Territory of Alaska as base for a public trust.
 - b. Established a public trust for the mentally ill in Alaska of the above lands and any income generated by these lands. Monies left over after mental health program costs were met could be used for other public needs. (A 12/7/68 memo from Peter Froelich, Assistant AG, states that this statute "neither required a dedicated or permanent fund nor created a true trust as did the statutes when granted school land.")
- 2) 1958 - Alaska Statehood Act, Sec. 6 (k) [1958 Public Law 85-508], reconfirmed the grant and transferred the grant from the territory to the state.
- 3) 1964 - "Selection of Mental Health School and University Lands by Boroughs", 1964 Opinions of the Attorney General No. 7, (Warren C. Colver), concluded that mental health and university lands were not unappropriated and unreserved (having been appropriated and reserved to support the designated programs) and therefore could not be selected by boroughs.
- 4) 1967 - An informal attorney general's opinion (memorandum) was issued by Deputy Attorney General Edward Reasor on "Mental Health Lands Exchange". This memorandum concluded that the state could exchange mental health lands for general grant lands as long as the exchange was for legitimate state purpose, the integrity of the trust was preserved, and the exchange supported the mental health program (it did not deal with the severance of estate issue).
- 5) 1976 - According to Dr. Jerry Shrader in an article for "Coping" magazine (see #8) a Mental Health Land Board was created within DHSS, Division of Mental Health. I can find no evidence in statutes.
- 6) 1978 - New state legislation dealing with redesignation of mental health, school and university lands was passed. (Chapters 180, 181 and 182, Alaska Session Law 1978). Chapter 180 allowed for the municipal selection of mental health land subject to "DNR-led" land exchange. Chapters 181 and 182 redesignated mental health land as general grant land effective July 1, 1978 (the bill was signed July 18, 1978). The effect of chapters 181 and 182 was that exchanges of mental health land were no longer necessary.

An accounting of income produced from mental health land was required for possible legislation: the total was \$25,110,430 from 1959 thru 1977.

In order to comply with the intent of the original trust legislation, the legislature set up:

- A. A Mental Health Fund,
 - B. A Mental Health Fund Advisory Board within the Department of Revenue (members: Director, Division of Mental Health; Chair, Mental Health Advisory Council; Commissioner, Department of Revenue), and
 - C. The funding source for the fund: 1.5% of total revenue derived from the management of (all) state land.
- 7) 1981-1979 - No money deposited in the Mental Health Fund; no meeting of the Mental Health Fund Advisory Board held. However, money was appropriated by the legislature for the purpose of mental health treatment (e.g. DHSS, Div of Mental Health).
- 8) 1981 - House Bills 151 and 152 were introduced to appropriate \$84,000,000 to the Mental Health Fund (i.e., the amount owed to the fund from 1978-1981), and provide for oversight of the fund and income. Senate Bills 710 and 711 were also introduced to satisfy the Mental Health Fund requirements.

An article by Dr. Jerry Schrader appeared in "Coping" magazine calling for litigation if the legislation was not passed (it did not).

- 9) 1982 - (Feb) Laurz Davis, Assistant AG, did an analysis of the Mental Health Trust Fund (J66-534-81A) at the request of Hugh Malone, state legislator. This analysis points out the following:
- a. That the 1.5% funding established in 1978 legislation was not based on an appraisal of mental health land, therefore, it is not possible to judge its fairness. The funding will exceed the value of the trust land at some future time (prohibited by Article IX Section 7 of the Alaska Constitution);
 - b. Although the legislature has not funded a mental health fund, it has made mental health appropriations;
 - c. Money from the fund established by the Mental Health Enabling Act were not to be used exclusively for mental health. Mental health funding is simply the first priority.
 - d. If the substitution of revenue for the trust imposed by the 1978 legislation was not equal to the fair market value of the trust lands, then the trust has been breached (the failure to appropriate may also be a breach).
 - e. There existed three alternative courses of legislative action:
 1. Do nothing to fund the Mental Health Trust Fund. Litigation was likely with the course, but the state may be immune from enforcement as the MH Enabling Act didn't provide for enforcement. Also, the case can be made that past appropriations have taken care of reasonable mental health needs in Alaska.

2. Comply with the MH Enabling Act. This would entail an assessment of the fair market value of MH land as of the date of redesignation, regular legislative review of mental health needs in the state with recommended funding levels, and the transfer of money to the fund until the fund has received money equal to the fair market value of the trust land (recommends direct transfer without appropriation into the fund as it must be appropriated out).
3. Seek the repeal of the Alaska Mental Health Enabling Act by congress.

(Nov.) Lawsuit filed (Weiss v. State) claiming that the state violated the terms of the MH Enabling Act.

- a. Seeks to void AS 37.14.070 claiming it was illegal to redesignate the land.
- b. The State has or will realize revenue from redesignated mental health land that is not being placed in trust, wants a trust established.
- c. The State violated public trust by disposing of mental health land at less than fair market value. Wants the court to direct the State to administer the land in accordance with the public trust.

The Assistant AG on the case, Tom Koester, asks DNR to provide information regarding:

- a. The land obtained under the MH Enabling Act.
- b. The disposition of those lands, and
- c. The value of those lands.

DHSS is asked to provide documentation on state expenditures for mental health purposes.

- 10) 1983 - (June) Memorandum Decision (partial summary judgement) entered against the state. Requires the state to account for the value of land removed from the MH Trust. States that the remedy might be monetary rather than a invalidation of 1978 legislation.

(July) Appeal and cross appeal entered and denied.

(Aug) Cowper, the Weiss attorney, states that he will not begin negotiations until the state accounts for all MH land and its disposition.

(Sept) Meeting with DNR/AGO/DHSS reveals that DHSS thinks that all monies derived from MH land must be spent exclusively on MH. DHSS expressed an interest in setting up a DHSS land management section (similar to the university settlement).

(Dec) Court orders the state to comply with an accounting and an appraisal of MH land by March 30, 1984.

- 11) 1984 - (Jan) Tom Hawkins deposition ordered for Feb 2. Required information on land selected under MH Enabling Act and the disposition of that land.

(Feb) Koester drew up a judgment to be entered in the court which specifies that:

- a. The 1978 legislation is constitutional, and
- b. The MH public trust is entitled to be reimbursed for value of land redesignated as of July 19, 1978

(Judgment not signed).

(April) Survey of mental health land completed by DLWM.

(May) Cowper filed a motion to levy a sanction against the state (restraining the state from disposing of mental health land) for non-compliance with the discovery request. The hearing was held in Fairbanks the next day (June 1). At hearing the motion was divided into two parts: sanctions and a temporary restraining order. Frank Mielke testified about our compliance with the discovery request and Koester made a case for the state's solvency. The motions were denied.

(June) Koester drew up a stipulation re: the accounting process:

- a. Value of MH land to be computed by determining fair market value as of July 19, 1978 and simple interest of 10.5% per year;
- b. Appraisals shall be complete by 3/15/85;
- c. Plaintiff (Cowper) has right to review RFP, contract, and list of approved appraisers. The plaintiff will receive copies of the appraisal as they are completed;
- d. The state will develop value estimates of revenues and appraisals made of other 3rd party interests created in MH land prior to July 19, 1978. These estimates are to be based on estimates of revenues and appraisals made of other 3rd party interests on MH land prior to July 19, 1978. Estimates are to be based on appraisals of revenues and appraisals; and
- e. In calculating final judgment the state shall receive credit for appropriations for mental health purposes prior to July 19, 1978 (stipulation not signed).

(August) Notice of Lis Pendens filed August 1, 1984 by Cowper against all land selected by the state.

Koester drew up a stipulation stating that the state will:

- a. Draw up a legal description of all land selected by the state to fulfill the MH land grant;
- b. Provide a listing of the current acquisition status of the MH selections;
- c. Note whether the MH land had been alienated or conveyed and if so, how;
- d. Estimate the fair market value of the interests conveyed or alienated based on appraisals, done at the time of conveyance and revenues derived from the conveyance;
- e. Appraise the fair market value of all mental health land remaining in the MH trust on July 19, 1978; and

- f. Compute the value of all mental health land converted to general grant land by adding simple interest of 10.5% per year to the appraised value (a, b, c, e and f are due by March 15, 1985; d is due May 15, 1985).

The stipulation was signed by Koester August 30, 1984; was signed and filed with the court by Cowper on September 4, 1984.

At the same time, Koester drew up a judgement that stated:

- a. The mental health enabling act created a public trust for which the state is trustee.
- b. The redesignation of mental land to GG land was constitutional.
- c. The public trust shall recover the value of land conveyed from the trust as of the date of conveyance plus prejudgement interest (the redesignation is considered a conveyance).
- d. The state will receive credit for mental health expenditures when calculating the final judgement.

The judgement was filed September 14, 1984.

(September) - The state moved to have the Lis Pendens expunged. Plaintiffs filed an opposing motion. The state counter filed.

The state filed an appeal of the judgement September 18, 1984. The appeal is based on the following:

- a. The mental health trust land is not for the exclusive benefit of mental health.
- b. The redesignation of mental health land was not a breach of the public trust.
- c. The mental health trust fund is not entitled to be reimbursed for the full value of all mental health land received by the state.

A cross appeal is also filed. The appeal challenges the constitutionality of the 1978 redesignation.

(October) plans finalized for completing "appraisals" of the converted land by using a "valuation panel" consisting of three senior appraisers.

The appraisals contracted for in August are complete. This group of 183 parcels (81 tracts) is valued at \$14,233,800.00. Much of the information gathered in this process will be used to aid the valuation panel.

A motion to intervene (plaintiffs) is brought by the Alaska Mental Health Association, Mary C. Nanuwak and John Martin. The motion seeks to bring up other issues in the case:

- a. Is the state deliberately creating barriers to the enforcement the MH trust?
- b. Have third parties receiving MH land been notified of the trust status of the land?

- c. Are the conveyances in b. null and void?
- d. Should the 1.5% of land revenue dedicated to the MH trust by the 1978 legislation be automatically deposited?
- e. Are MH expenditures inadequate or misallocated?
- f. Should the state be replaced as trustee?
- g. Should punitive damages be awarded?
- h. Should the court appoint an independent board to oversee the land?

The prospective interveners were associated with Cowper, but apparently disagree with his tactics and strategy. An opposing motion was filed by Knester. The motion to intervene was denied October 31, 1984 because it was not timely filed.

(November) Order expunging Lis Pendens signed November 15, 1984.

(December) Opinion of Value (appraisal) Panel chosen. The panel consists of three senior designated appraisers each representing a geographic area of the state. They are tasked with evaluating 4,600 parcels of mental health land as of July 19, 1978.

The Mental Health Association announced that it will file a separate lawsuit in federal court.



LAND EXCHANGE FACT SHEET

The disposal of state land or interests in state land by exchange is governed by Alaska Statutes - Title 38.50 and Alaska Administrative Code - 11 AAC 67.200 to 11 AAC 67.280. These statutes and regulations ensure that the commissioner may exchange state land or interests only to achieve public purposes, after proper consideration of alternatives, agency coordination, public notice and public hearing(s). Unless the land or interests which the state receives in an exchange equals, or exceeds, the appraised fair market value of the land or interests exchanged by the state, the Alaska legislature must approve the exchange. Legislative review is also necessary if a exchange involves state land having an appraised or estimated fair market value of more than \$5,000,000.

The land exchange process is usually detailed and time consuming. The department must adhere to the following chronological regulatory steps in order to complete a land exchange:

1. Initial pre-application discussions.
2. Application filed with department.
3. Department reviews application and responds within 60 days.
4. Land status checked.
5. Preliminary exchange agreement signed.
6. Notation of state title records to segregate land from third-party interests.
7. Fair market value appraisal report initiated.
8. Mineral closing order.
9. Land classification action.
10. Land survey completed, if necessary.
11. State agency coordination.
12. Appraisal report completed, reviewed and approved.
13. Preparation of alternative findings and exchange report.
14. Public notice.
15. Public hearing(s) and comment period.
16. Final exchange agreement signed.
17. Deed preparation and review.
18. Execution of exchange.

In addition, if the exchange requires legislative approval, the governor must transmit the proposal to the legislature within ten days of the convening of a regular legislative session. The department is authorized to conclude the exchange upon approval by the legislature of the proposed exchange agreement.

The commissioner may also revise a proposed land exchange to reflect comments or other information provided through the agency and public comment period [AS 38.50.130(b)].

Land Exchange Fact Sheet

Page 2

Land exchange application forms may be obtained and submitted at any of the Division of Land and Water's Regional Offices located in Anchorage, Fairbanks or Juneau. If the exchange proposal involves a small tract of state land it will usually be negotiated directly by the applicable regional office. If, however, the exchange proposal involves either a large tract of state land, a federal government agency or Native corporation, or is considered by the department to be unusually complex or sensitive, the exchange will be negotiated by the division's Central Office Land Management Section.



Alaska Department of
**NATURAL
RESOURCES**

Mental Health Land Grant Fact Sheet
January, 1985

History

In July 1956, congress passed Alaska's Mental Health Enabling Act. The act established a public trust fund to be used primarily for the treatment of the mentally ill in Alaska. Any monies left over after mental health program costs were met could be spent for other public purposes at the discretion of the legislature. One million acres of federal land were granted to the Territory of Alaska to form the economic base for the trust.

Land selections were subsequently made between 1956 and 1966, primarily around centers of population (Anchorage, Fairbanks, Juneau, Kenai etc.), the railbelt and other areas believed to be valuable for subsurface resources (Beluga coal, Kenai oil, etc.). State records show that approximately 950,000 acres are now in state ownership. The lands are administered by the Department of Natural Resources along with land acquired through other land grants.

Although a formal trust fund was never established, the Alaska Legislature made appropriations for mental health programs. Total income produced from the mental health land from 1959-1977 was \$25,110,430. Mental health expenditures in Alaska by the state for the same period of time were \$115,364,054, with an additional \$16,430,771 being spent on alcohol and drug abuse programs.

In 1978 the legislature passed a law which redesignated mental health, school, and university trust lands as general grant lands. The redesignation provided for a more compact land base which made the land easier and more cost effective to administer. The legislation also established a trust fund for mental health programs to be financed by 1.5% of the annual receipts for all state land. However, the trust fund has never been funded by the legislature.

In April 1979, the University of Alaska challenged the constitutionality of the 1978 redesignation legislation (it also affected university land). The court upheld the law, but a settlement reached in June, 1982, granted land and money to the university. Heartened by the university's success, the Alaska Mental Health Association filed a class action lawsuit in Fairbanks Superior Court on November 26, 1982 on behalf of Carl Weiss, a seven year old boy from Nenana, and Earl Hilliker, a Fairbanks resident. The suit contends that the plaintiffs were in need of mental health services which they could not receive in Alaska. It also raised questions about the constitutionality of the 1978 law; challenged the state's stewardship of mental health land; and asked that a mental health trust fund be established. A judgement was entered by Justice Warren W. Taylor in September 1984. That judgement stated that the mental health trust fund is exclusively dedicated to Alaska's mentally ill, that it had been breached by the legislative redesignation and is entitled to be reimbursed full value of the mental health land. The state has appealed that decision to the Alaska Supreme Court. Mr. Stephen Cowper of Fairbanks represents the plaintiffs, and Mr. Thomas Koester, Attorney General's Office, represents the state.

It has been reported that Mr. Cowper and the Mental Health Association do not agree over the direction of the case. Accordingly, attorney Jim Gottstein of the association board has attempted to intervene in the case. To date the intervention has not been allowed, and Mr. Gottstein has announced that the association will file a separate suit in federal court.

State Compliance

In the spring of 1984, at the direction of the court, the state produced a report which accounted, by acre, for the mental health grant land as of the date of redesignation. The legislature then appropriated \$250,000 for the department to continue the compliance with the discovery request. Stipulations for discovery were agreed to in September 1984, and the state is now in the process of complying with them. These stipulations provide:

1. The state will describe all mental health grant land selected by the state and provide current acquisition status of same by March 15, 1985: The Division of Technical Services within DNR is currently auditing all pertinent selection files. The Bureau of Land Management is auditing corresponding federal title files. Although the audit of state files will be completed by March, further adjudication by the BLM is expected to take another year to bring federal and state records into agreement.
2. By March 15, 1985 the state must estimate the fair market value of all land in state ownership as of the 1978 redesignation. Approximately 4,600 individual parcels are being evaluated by a panel consisting of three independent senior designated appraisers: Mr. Stephen J. MacSwain (representing the northcentral area); Mr. Frank King (representing the southcentral area) and Mr. Barry Thompson (representing the southeastern area). To bring the appraisals current, a simple interest of 10.5% per year will be added to the valuation figure.
3. By May 15, 1985 the state must identify and account for all mental health land alienated or conveyed prior to the 1978 redesignation. An audit and accounting will begin in February.

The remaining issues involved in this litigation are whether the mental health fund is dedicated solely to support mental health programs; whether the state breached the public trust in its management of the mental health grant land prior to 1978 and whether the state should be ordered to reimburse the public trust the full value of the mental health land. There is tremendous potential liability to the State of Alaska as a result of this lawsuit. It has been speculated that these lands may be worth over 1 billion dollars.

For further information contact Salli Slaughter, Pouch 7-005, Anchorage, Alaska 99510, (907) 265-4375.

BACK-UP FOR CSSSHB 128

PRESENTED TO HOUSE RESOURCES COMMITTEE MARCH 24, 1986

BY REPRESENTATIVE MARCO A. PIGNALBERI

C O N T E N T S

<u>Tab</u>	<u>Description</u>
A	Proposed Committee Substitute SSHB 128
B	Sectional Summary: Proposed CSSSHB 128
C	Supreme Court of Alaska Opinion: <u>State of Alaska v. Vern T. Weiss, et al.,</u>
D	Components of Recommended Committee Bill: Submitted by the Alaska Alliance For the Mentally Ill to House Resources - 03/24/86
E	DNR Memo: Bob Arnold to Max Gruenberg: Budget for court ordered mental health land activities
F	HSS Memo: Millie D. Duxbury, Audit Manager to Karen Perdue, Assistant Commissioner HSS: Estimated cost of mental health program audit
G	Intervenor Budget estimate for Alaska Mental Health Lands Project
H	Plaintiff Budget estimate for involvement in mental health lands trust settlement

CS128PAK.MHL

A

Bradley
3/21/86

Original sponsors: Pignalberi, Gruenberg,
Boucher, et al

1 IN THE HOUSE BY THE RESOURCES COMMITTEE
2 CS FOR SPONSOR SUBSTITUTE FOR HOUSE BILL NO. 128 (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 mental
7 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 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
24 (5) the Alaska Mental Health Association as the original sponsor
25 of the litigation regarding the management of the mental health trust land,
26 more recently participating as intervenor in the litigation, and the plain-
27 tiffs have performed and continue to perform an important public function
28 in their efforts to reconstitute the mental health trust land and to pro-
29 vide for the proper management of the trust land;

1 (6) there is an immediate need for funds to facilitate the
2 reconstruction of the trust land and to conclude the litigation over the
3 status of the mental health trust land; and

4 (7) there is an immediate need for the interim management of the
5 trust land as a public trust.

6 * Sec. 2. INTERIM MENTAL HEALTH TRUST LAND COMMISSION ESTABLISHED. (a)
7 The interim mental health trust land commission is established in the
8 Department of Natural Resources.

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

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

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

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

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

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

(g) The commission may contract with the plaintiffs or intervenors for the performance of functions assigned to it.

1 (e) The commission shall meet at least once a month.

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

4 * Sec. 3. RESPONSIBILITIES OF THE COMMISSIONER OF NATURAL RESOURCES AND
5 THE COMMISSION. (a) The commissioner of natural resources ^{shall} inventory and
6 catalog the mental health trust land of the state, and appraise at fair market value
7 each land transaction involving land that has been part of the mental health trust
8 land of the state, and determine the status of mental health trust land on
9 the effective date of this Act under procedures and guidelines established
10 by the commissioner of natural resources with the approval of the commis-
11 sion. In the exercise of the commission's responsibilities under this
12 section, the commission may review the records of the Department of Natural
13 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 portion of land
16 that, at any time, was part of the mental health trust land of the state.
17 The commissioner shall provide the appraiser conducting the appraisal with
18 written procedures and instructions that have been approved by the commis-
19 sion.

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, under the direction of the commission.

23
24 The commissioner of natural
25 resources may not sell, lease, or exchange mental health trust land of the
26 state or an interest in the mental health trust land of the state without
27 the prior approval of the commission. The commissioner of natural re-
28 sources shall sell, lease, and exchange mental health trust land of the
29 state as directed by the commission. In managing the trust and the trust

1 land the commission and the commissioner shall seek to maximize the income
2 earned and received by the trust consistent with a trustee's obligation to
3 protect and perpetuate the trust.

4 (d) The proceeds from the management of the mental health trust land
5 of the state shall be deposited in a special trust account in the general
6 fund of the state and may be appropriated by the legislature for the sup-
7 port of the mental health program in the state.

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

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

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

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

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

21 * Sec. 5. ADDITIONAL RESPONSIBILITIES OF THE COMMISSION. The commis-
22 sion shall make an annual report to the legislature on matters of concern
23 to it including recommendations of the commission for amendment of the laws
24 relating the management of mental health trust, the mental health trust
25 land, and the mental health program of the state.

26 * Sec. 6. DEFINITION. In secs. 2 - 5 of this Act "commission" means
27 the interim mental health trust land commission established in sec. 2 of
28 this Act.

29 * Sec. 7. Sections 1 - 6 of this Act are repealed July 1, 1988.

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

B

SECTIONAL SUMMARY PROPOSED CS SSB 128

Section 1.: Legislative Findings

States that there is currently no statutory authority for the management of the 1,000,000 acres of mental health trust land granted by Congress to the territory of Alaska and conveyed to the state and that there is an immediate need to provide interim management during the process of reconstituting the trust.

Section 2.: Interim Mental Health Trust Land Management Commission

Establishes a five-member commission within the Department of Natural Resources consisting of the Commissioner of the Department of Natural Resources, the Commissioner of the Department of Health and Social Services, and three members appointed by the governor as follows: one member from lists of three submitted by the plaintiffs, the intervenors, and the Governor's Mental Health Advisory Board. Members of the commission are to serve without compensation, but are entitled to per diem and travel expenses.

The commission shall meet at least once a month, may employ an executive director and staff and may contract with the plaintiffs or intervenors for the performance of functions assigned to it.

Section 3.: Responsibilities of the Commissioner of Natural Resource and the Commission

Subsection (a): Assigns the Commissioner of DNR the responsibilities of inventorying and cataloging the mental health trust land of the state as well as auditing and appraising at fair market value every transaction involving the land and the current status of the land, all under the prior approval of the commission.

Subsection (b): Gives the commission prior approval in DNR's retention of appraiser or appraisers.

Subsection (c): Gives the commission power to direct the Commissioner of DNR to manage the mental health trust lands as a public trust under P.L. 84-830, 70 Stat. 709. Specifies maximization of income earned and received by the trust, consistent with a trustee's obligation to protect and perpetuate the trust, as management objective.

Subsection (d): Requires that the proceeds from mental health trust land shall be deposited in a special trust account and states that such funds may be appropriated by the legislature for state mental health program support.

Section 4.: Responsibilities of the Commissioner of Health and Social Services and the Commission

Requires the Commissioner of Health and Social Services with prior approval of the commission to select and establish guidelines for an independent auditor who will audit the state's mental health program. The Commissioner, with prior approval of the commission is also instructed to propose guidelines and procedures for determining a range of expenditures for mental health programs necessary to comply with the state's comprehensive mental health plan.

Section 5.: Additional Responsibilities of the Commission

The commission shall make an annual report to the legislature of its findings.

Section 6.: Definition of "commission"

Section 7.: Provides for termination of commission July 1, 1988.

Section 8.: Immediate effective date

D

COMPONENTS OF RECOMMENDED COMMITTEE BILL
Submitted by the Alaska Alliance For the Mentally Ill to
House Resources
03/24/86

ESTABLISH INTERIM LAND MANAGEMENT COMMISSION (Charged with these duties):

<u>Responsible Department</u>	<u>Purpose</u>	<u>Budget</u>
DNR	Identify, survey, appraise, mental health land inventory status, etc	1 304,000
DNR	Account for all funds or lands from 1978-1985	2 40,800
DNR	Provide management oversight on all transactions and funds received: Approve all land actions	3 142,700
DOR	Establish trust account fund	0
HSS	Oversee audit of mental health program expenditures 1978-1985	4 21,000
HSS	Oversee the department of Health and Social Services determination of the necessary expenditures for the Mental Health Program	0
HSS	Contract for Plaintiff and intervenor involvement in resolution process	5 146,000
Estimated Sub-total:		\$ <u>654,500</u>

ADMINISTRATION OF COMMISSION:

<u>Responsible Department</u>	<u>Purpose</u>	<u>Budget</u>
DNR	The department shall provide the administrative support	
	Provide for monthly meeting	6 15,000
	(Composition: 1 representative each from a list of three nominated by the plaintiffs, intervenors, and governor's advisory on mental health and the commissioners of: Health and Social Services and Natural Resources)	

DNR	Travel and per diem for five com- mission members	7 18,000
DNR	Executive Director and other staff as necessary to meet responsibilities of the commission	8 150,000
	Estimated Sub-total: \$	<u>183,000</u>
	Estimated Total: \$	<u>837,500</u>

1-3

Budget figures taken from 10/27/86 DNR memo to
Representative Gruenberg

4

Budget figure from 02/05/86 HSS Audit Department memo to
Karen Perdue, p.4

5

Budget figure is sum of plaintiff and intervenor projected
settlement budgets

6-8

Budget figures reflect estimated costs associated with
CSSSHB 120 Interim Commission (DNR fiscal note pending)

STATE OF ALASKA

DEPARTMENT OF NATURAL RESOURCES

OFFICE OF THE COMMISSIONER

E
BILL SHEFFIELD, GOVERNOR

POUCH M
JUNEAU, ALASKA 99811
PHONE: 907-465-2400

February 27, 1986

The Honorable Max Gruenberg
Alaska State Legislature
P.O. Box V
Juneau, AK 99811

Dear Representative Gruenberg:

During our meeting this week on the subject of mental health lands legislation, you asked that I provide you with a list of the tasks required of the department by the Supreme Court in its decision in Weiss v. Alaska, and an estimate of the funding required to accomplish these tasks. Although our budget amendment is yet to be submitted, I am pleased to provide you with our estimates.

Of the tasks identified by the Department of Law as required by the court, two will be accomplished during the current fiscal year. These are (1) to identify all mental health lands returned to the trust; and (2) to identify all existing encumbrances for mental health lands, such as interagency land management assignments, parks, and refuges.

Tasks also required by the court, for which no funding is presently available, are as follows:

1. Account for all funds or land received from conveyances and exchanges made between July 19, 1978 and October 4, 1985. Estimated costs: \$40,800.

BUDGET
ITEM # 2

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.

The Honorable Max Gruenberg -2-

February 27, 1986

2. Identify and appraise all less than fair market value conveyances and encumbrances. Estimated costs: \$304,800.

BUDGET
ITEM # 1

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.

The reports and maps must take approximately 1,100 parcels into consideration. We expect this project to take a single Natural Resource Officer I three months to complete. Additionally, the project will need funding for supplies and contractual clerical services.

The appraisals are expected to cost \$294,600. We project that approximately 820 parcels totalling 268,000 acres will need appraisals at an estimated cost of \$215,000. In addition, approximately 276 leases must be reappraised at five-year intervals (the Legislature created a first term of 25 years during which time rents cannot be raised). The approximate cost of these lease reappraisals is \$70,600.

3. Provide management oversight of all transactions and account for funds received from mental health lands. Estimated costs: \$142,700.

BUDGET
ITEM #3

Statewide trust management oversight can be provided by a Natural Resource Manager II with support from a Natural Resource Officer I. That manager would be expected to review a large number of transactions, with research assistance from a subordinate, to ensure that the trust is not breached. It is expected that the manager will also provide the necessary coordination between the Department and the plaintiffs, and will be required to travel.

Accounting functions can be broken into two parts: ongoing accounting services, and an independent audit. An accounting Technician I will be needed to receive and separately process that portion of the approximately \$1.5 billion taken in by DNR annually that should be assigned to the mental health accounts.

Please let me know if there is additional information I might provide you.

Sincerely,



Robert D. Arnold
Deputy Commissioner

MEMORANDUM

State of Alaska

TO Karen Perdue, Assistant Commissioner
Department of Health & Social Services

DATE: February 5, 1986

FILE NO:

TELEPHONE NO:

465-3120

FROM Millie D. Duxbury, CPA, Audit Manager
Audit - Office of the Commissioner
Department of Health & Social Services

SUBJECT: Mental Health Audit

You requested an estimate of the cost of an independent audit of State mental health expenditures from July 1, 1978 through June 30, 1986.

Based on a discussion with Tom Koester of the Attorney General's Office, it was decided that I should give you two estimates which hinge on the definition of "mental health expenditures".

Tom feels that we should request an audit of all expenditures which could conceivably be construed as having been made for mental health purposes. Such costs would include, but not be limited to, the following expenditures:

- I. Department of Health and Social Services
 - A. Department of Mental Health and Developmental Disability - Operating and Capital expenditures for:
 1. Community Mental Health Programs;
 2. Developmental Disability Programs;
 3. Alaska Psychiatric Institute;
 4. Harborview;
 5. Regional Administration (not currently funded as such); and
 6. Fairbanks Mental Health Services Complex
 - B. Division of Family and Youth Services
 1. Adult Residential Care Program;
 2. Child Residential Care Programs - some portions thereof;
 3. Foster Care - some portions thereof;
 4. Youth Services BRU - purchase of psychological services and psychiatric services; and
 5. Preventive Services - some portions
 - C. State Office of Alcoholism and Drug Abuse - some portions thereof
 - D. Division of Medical Assistance - payments to private providers under the GRM program for generic mental health services.

II. Department of Public Safety

- A. Violent Crimes Compensation Board - portions of programs covered thereunder
- B. Council on Domestic Violence and Sexual Assault - portions thereof

III. Department of Administration

- A. Division of Pioneers' Benefits - Care of persons occupying long term care beds in Pioneer homes who are being treated for Alzheimer's Disease
- B. Older Alaskan Commission - portions of programs

IV. Department of Corrections

- A. Payments for psychological and psychiatric care of inmates
- B. Costs associated with facility operations where persons are held as a result of mental health related problems

V. Department of Education

- A. Division of Education Program Support - Special Education Programs
- B. Division of Vocational Rehabilitation - some portions thereof

VI. Community and Regional Affairs

- A. Revenue Sharing Programs
 - 1. Portion thereof relating to money expended for mental health services in the health care centers which are part of the revenue sharing formula
 - 2. Pass through money used for mental health care related services

VII. Department of Law

- A. Costs of litigation related to mental health lands

VIII. Department of Natural Resources

- A. Costs associated with Mental Health Lands Management

IX. Specific Designated Grants to Native Corporations used for mental health:

- A. Maniilaq
- B. Norton Sound Health Corporation
- C. Tanana Chiefs Conference

X. Governor's Council on the Handicapped and Gifted

Costs outlined above would be separately presented by the CPA firm in order to allow the costs to be examined on their own merit as to whether or not they fall within the definition of "mental health expenditures".

I would estimate that an audit of all the above expenditures for the eight year period ended June 30, 1986 would require 1000 hours to complete and would cost \$81,000 or \$101,250 including Department of Law litigation costs. The estimate is broken down as follows:

Audit

Partner's Time - 100 hours @ \$125	= \$ 12,500
Senior's Time 600 hours @ \$ 65	= 39,000
Junior's Time 300 hours @ \$ 45	= 13,500
Out of pocket expenses for travel, per diem, telephone	= <u>16,000</u>

Total Estimated Audit Costs	81,000
-----------------------------	--------

<u>Litigation Costs by Dept. of Law-</u> 25% of Audit	
--	--

	<u>20,250</u>
--	---------------

Total Amount Required	
-----------------------	--

	<u><u>\$ 101,250</u></u>
--	--------------------------

The second estimate is based on the assumption that mental health is the primary presenting condition which allows an individual to fall within the doors of the State. In that instance "mental health expenditures" would be interpreted as those funds appropriated by the Legislature to the Department of Health and Social Services, Division of Mental Health and Developmental Disabilities. The scope of an audit of those expenditures would be clearly defined and would probably be completed in 200 hours.

I estimate the cost of this audit to be \$16,500 or \$21,000 with litigation costs by Department of Law. The estimate is broken down as follows:

Audit

Partner's Time - 20 hours @ \$125	=	\$ 2,500
Senior's Time 120 hours @ \$ 65	=	7,800
Junior's Time 60 hours @ \$ 45	=	2,700
Out of pocket expenses for travel, per diem, telephone	=	<u>3,500</u>

Total Estimated Audit Costs	16,500
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<u>Litigation Costs by Dept. of Law-</u> 27% of Audit	<u>4,500</u>
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Total Amount Required	<u>\$ 21,000</u>
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BUDGET
ITEM #4

These estimates have been discussed with Tom Koester and he feels they are reasonably accurate. Based on the quality of work I've seen done on other audits of governmental units and non-profits, I would recommend the bids for this work go out to the following CPA firms in Anchorage:

Arthur Young
Coopers Lybrand
Ernst & Whinney

Should you have further questions, please call.

1986 BUDGET
for
ALASKA MENTAL HEALTH LANDS PROJECT

SALARIES/FEES:

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

OFFICE:

Supplies and equipment \$13,000

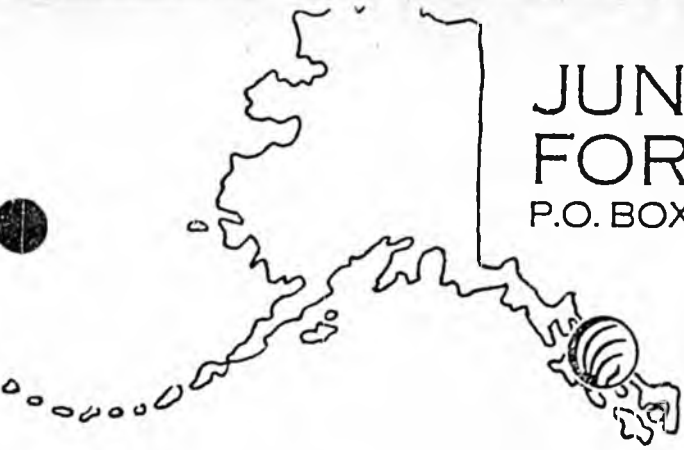
Rent DONATED

Utilities, including telephone \$ 3,500

Printing and copies/Records \$ 5,000

Travel \$ 3,500

TOTAL 1986 BUDGET \$75,000



PLAINTIFF

H.

JUNEAU ALLIANCE FOR THE MENTALLY ILL

P.O. BOX 211247, ANCHORAGE, AK 99521. (907) 789-5028

HALF OF BUDGET ITEM #5

PROPOSED BUDGET FOR INVOLVEMENT IN MENTAL HEALTH
LANDS TRUST SETTLEMENT

STAFF		
Research Coordinator		\$32,000.
Clerical (part-time)		12,000.
TRAVEL		
Meetings of Alliance Board (4/year)		12,000.
OFFICE		
Rental, Equipment, Supplies		12,000.
COMMUNICATIONS		
Telephone, Teleconference, Mailings		<u>3,600.</u>
	TOTAL	\$71,600.

TESTIMONY

Representative Marco A. Pignalberi

House Resources Committee

HB 128 Mental Health Trust

March 20, 1985

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HB 128

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Testimony by Representative Marco A. Pignalberi
House Resources Committee on HB 128
March 20, 1985

Mr. Chairman, members of the Committee, let me repeat the last provision of the Supreme Court ruling: the Trust is entitled to be reimbursed by the state of Alaska for the fair market value of the mental health trust lands.

WHAT DOES THIS MEAN TO THE STATE OF ALASKA?

What this means to the State is that Alaska is facing a potential liability of immense proportions. Several estimates of reimbursement have ranged upwards of five billion dollars! Unlike other states which received mental health lands from the Federal Government by each section 16 & 32 in every township, Alaska was able to select whatever million acres it wanted in whatever part of the state it wanted.

Accordingly, the state selected prime real estate in most of the major population areas of the state. No mountain tops or barren tundra was selected. Examples of lands that were selected and are now subject to fair market appraisal for reimbursement to the Trust include valuable acreage in the Swanson River oil and gas field, Beluga Coal field, Trans Alaska Gasline System project, Eklutna water project and the Kachemak Bay State Park. Additionally, other mental health lands have already been conveyed to municipalities in fulfillment of their entitlement programs. You can look at the map I've brought and see exactly where the impacted areas are located.

What this means is the state is faced with a staggering liability. If a negotiated settlement is not reached between the parties of the suit, it is possible that the court will mandate a settlement. If this occurs, the state may be required to establish a mental health trust account and deposit a specific amount of money to be maintained as a trust fund exclusively for mental health purposes. It could be the equivalent of transferring the amount in the Alaska Permanent Fund to the mental health trust account.

Is this a possibility? Yes. There are many who believe it is a distinct possibility due to the dismal performance of the state in funding mental health programs. Although there is no clear definition of just what constitutes a "mental health program", the Department of Health & Social Services budget for Alaska Psychiatric Institute, Community Mental Health Centers and all administrative services total only just over 22 million dollars.

Testimony Rep. Marco Pignalberi
March 20, 1985

According to testimony by the Commissioner of Health & Social services, Alaska is serving only a third of the people with mental health needs. A study by the U.S. Dept. of Health & Human Services, 1983 found that Alaska ranks last among the fifty states in a number of mental health service areas. Not only is our state the poorest in the nation in funding mental health programs, but we spend less than one-half as much as the next poorest state, and less than one-sixth of the national average.

Alaska has such a poor track record in funding mental health programs that if the court steps in to establish a trust fund settlement, Alaska may be required to substantially increase these program funds as well as transfer billions of dollars into a special trust account.

This bill would prevent the state from making a bad situation worse by stopping the disposition of any more trust lands.

The background files on this issue are voluminous. Attached are summary papers prepared by parties with different viewpoints. I think they are good chronological synopsis of the issues. Thank you

Historical perspective:

In 1956 the United States Congress passed the Alaska Mental Health Enabling Act which transferred the fiscal and functional responsibility for activities in the field of mental health from the Federal Government to the Territory.

To ensure that the Territory had adequate financial resources to discharge the responsibilities in the mental health field, the Congress granted Alaska one million acres of federal lands. These lands are located in Interior, Southcentral and Southeastern Alaska. The enabling Act stated:

"...all lands granted to the Territory 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 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..."

The state did not establish and maintain a separate account into which income or proceeds derived from mental health lands were deposited. Then in 1978, the State redesignated mental health lands as general grant lands and changed the record method of accounting for income from public lands.

Superior Court Class Action Suit

In 1982 a class action court suit was filed by the Alaska Mental Health Association. It filed the suit for "all persons who are residents of the State of Alaska and who will require mental health services in the future which are not available in the state.

The Superior Court entered a partial summary judgement in June 1983 which found that the state was not required to invalidate prior legislative action but was required to compensate the trust for fair market value of the lands in question. A year later, in September 1984, the Superior Court ruled in Final Summary Judgement that:

- 1) the Alaska Mental Health Enabling Act "established a public trust for the benefit of the mentally ill in Alaska;"
- 2) "the approximately one million acres of land granted to the state was dedicated for the use and benefit of the mentally ill in Alaska;"
- 3) Chapters 181 and 182, SLA 1978, effectively removed lands from the trust established by the federal Act;
- 4) invalidation of the state legislation was an improper remedy; and
- 5) "the trust is entitled to be reimbursed by the State of Alaska for the fair market value of the mental health trust lands."

Introduced: 1/25/85
Referred: Resources, Judiciary
and Finance

BY PIGNALBERI, GRUENBERG, BOUCHER,
JENKINS, KOPONEN AND TAYLOR

1 IN THE HOUSE

2 HOUSE BILL NO. 128

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FOURTEENTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act relating to mental health trust lands; and
7 providing for an effective date."

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

9 * Section 1. AS 38.05 is amended by adding a new section to read:

10 Sec. 38.05.880. DISPOSITION OF STATE MENTAL HEALTH TRUST LANDS.

11 The state may not convey or otherwise dispose of land owned in fee by
12 the state that was received from the federal government under sec. 202
13 of the Alaska Mental Health Enabling Act of 1956 (P.L. 84-830).

14 * Sec. 2. This Act takes effect immediately in accordance with AS 01.-
15 10.070(c).

HB 128

5

DEPT. OF HEALTH AND SOCIAL SERVICES

OFFICE OF THE COMMISSIONER

POUCH H 01
JUNEAU, ALASKA 99817
PHONE: 465-3030

March 19, 1985

The Honorable Marco Pignalberi
Alaska State House
Pouch V
Juneau, Alaska 99811

Dear Representative Pignalberi:

The Department of Health and Social Services, Division of Mental Health and Developmental Disabilities, provides core services for mentally ill persons through a grant-funded network of community mental health centers and the State-operated Alaska Psychiatric Institute (API). Alaska statutes which give authority to the Department to provide mental health services do not define these services in explicit, all inclusive language. They speak in terms of "carrying out a comprehensive mental health program" and "treatment of the mentally ill." Mental illness is defined in AS 47.30.915 and related words and processes also are defined which apply to the delivery of mental health care, but we are left uninformed about when a service, such as is delivered by a public school counselor, becomes a mental health service.

The Alaska Administrative Code 7 AAC 71.135 defines the populations which will be served by grant-funded community mental health centers, and establishes the prioritized order in which these populations are to receive service:

- 1) acutely disturbed persons,
- 2) chronically, severely disturbed persons,
- 3) children and adolescents,
- 4) other persons or agencies requiring direct mental health intervention, and
- 5) other persons or agencies requiring non-direct mental health intervention.

In addition to these populations the centers are, in priority, to provide evaluation services and treatment services which emphasize a brief therapy

The Honorable Marco Pignalberi

March 19, 1985

and crisis intervention model including the following:

- a) 24-hour inpatient voluntary and involuntary psychiatric treatment; and
- b) outpatient care including crisis and 24-hour emergency services, individual counseling/psychotherapy, group counseling/psychotherapy, case management and supportive care for chronic patients, referral services to other agencies, and consultation and education services.

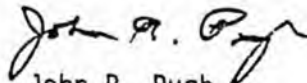
The services just cited are basic core mental health services which the State is now providing and they can be financially quantified, i.e., appropriations are made each year for these specific services. We will furnish dollar amounts for any period in which you may have an interest.

The issue of what to include in the expanded, all inclusive scope of mental health services and the calculation of the costs of these services is very complex. As an example, services to persons who are developmentally disabled were included as a mental health type service and continue to be included in some presentations, as are counseling services available to substance and alcohol abuse clients. Dollar descriptions of these services are relatively easy to capture. Another more bothersome dimension to the problem is the school counselor or social worker, public health nurse, etc., who may spend part of their time doing "mental health work" but do not record this fact in any logical format. The vocational training efforts and the special education programs sponsored by State and local school systems likewise present a similar dilemma. Is theirs a mental health service and if so, what percent of the total cost is captured as the mental health effort?

In the utilization of mental health land trust funds the statute states that the income of the fund will not be appropriated for a purpose other than the support of the State mental health program (AS 47.14.040). There is no definition of the "the State mental health program". Consequently, there is no clear legislative direction as to what should be funded if the appropriation was made from the trust income.

Please let me know if there are any specific programs for which you need cost data.

Sincerely,



John R. Pugh
Commissioner

MENTAL HEALTH ANNOTATED CHRONOLOGY

- 1) 1956 - Mental Health Enabling Act
[1956 Public Law 830, Title II, Sec. 202, July 28, 1956]
 - a. Granted 1 million acres of land, including mineral rights, to Territory of Alaska as base for a public trust.
 - b. Established a public trust for the mentally ill in Alaska of the above lands and any income generated by these lands. Monies left over after mental health program costs were met could be used for other public needs. (A 12/7/68 memo from Peter Froelich, Assistant AG, states that this statute "neither required a dedicated or permanent fund nor created a true trust as did the statutes when granted school land.")
- 2) 1958 - Alaska Statehood Act, Sec. 6 (k) [1958 Public Law 85-508], reconfirmed the grant and transferred the grant from the territory to the state.
- 3) 1964 - "Selection of Mental Health School and University Lands by Boroughs", 1964 Opinions of the Attorney General No. 7, (Warren C. Colver), concluded that mental health and university lands were not unappropriated and unreserved (having been appropriated and reserved to support the designated programs) and therefore could not be selected by boroughs.
- 4) 1967 - An informal attorney general's opinion (memorandum) was issued by Deputy Attorney General Edward Reasor on "Mental Health Lands Exchange". This memorandum concluded that the state could exchange mental health lands for general grant lands as long as the exchange was for legitimate state purpose, the integrity of the trust was preserved, and the exchange supported the mental health program (it did not deal with the severance of estate issue).
- 5) 1976 - According to Dr. Jerry Shrader in an article for "Coping" magazine (see #8) a Mental Health Land Board was created within DHSS, Division of Mental Health. I can find no evidence in statutes.
- 6) 1978 - New state legislation dealing with redesignation of mental health, school and university lands was passed. (Chapters 180, 181 and 182, Alaska Session Law 1978). Chapter 180 allowed for the municipal selection of mental health land subject to "DNR-led" land exchange. Chapters 181 and 182 redesignated mental health land as general grant land effective July 1, 1978 (the bill was signed July 18, 1978). The effect of chapters 181 and 182 was that exchanges of mental health land were no longer necessary.

An accounting of income produced from mental health land was required for possible legislation: the total was \$25,110,430 from 1959 thru 1977.

DEPARTMENT OF
NATIONAL RESOURCES

DEC 21 1984

COMM. ON RESOURCES

8

In order to comply with the intent of the original trust legislation, the legislature set up:

- A. A Mental Health Fund,
 - B. A Mental Health Fund Advisory Board within the Department of Revenue (members: Director, Division of Mental Health; Chair, Mental Health Advisory Council; Commissioner, Department of Revenue), and
 - C. The funding source for the fund: 1.5% of total revenue derived from the management of (all) state land.
- 7) 1981-1979 - No money deposited in the Mental Health Fund; no meeting of the Mental Health Fund Advisory Board held. However, money was appropriated by the legislature for the purpose of mental health treatment (e.g. DHSS, Div of Mental Health).
- 8) 1981 - House Bills 151 and 152 were introduced to appropriate \$84,000,000 to the Mental Health Fund (i.e., the amount owed to the fund from 1978-1981), and provide for oversight of the fund and income. Senate Bills 710 and 711 were also introduced to satisfy the Mental Health Fund requirements.

An article by Dr. Jerry Schrader appeared in "Coping" magazine calling for litigation if the legislation was not passed (it did not).

- 9) 1982 - (Feb) Laura Davis, Assistant AG, did an analysis of the Mental Health Trust Fund (J66-534-81A) at the request of Hugh Malone, state legislator. This analysis points out the following:
- a. That the 1.5% funding established in 1978 legislation was not based on an appraisal of mental health land, therefore, it is not possible to judge its fairness. The funding will exceed the value of the trust land at some future time (prohibited by Article IX Section 7 of the Alaska Constitution);
 - b. Although the legislature has not funded a mental health fund, it has made mental health appropriations;
 - c. Money from the fund established by the Mental Health Enabling Act were not to be used exclusively for mental health. Mental health funding is simply the first priority.
 - d. If the substitution of revenue for the trust imposed by the 1978 legislation was not equal to the fair market value of the trust lands, then the trust has been breached (the failure to appropriate may also be a breach).
 - e. There existed three alternative courses of legislative action:
 1. Do nothing to fund the Mental Health Trust Fund. Litigation was likely with the course, but the state may be immune from enforcement as the MH Enabling Act didn't provide for enforcement. Also, the case can be made that past appropriations have taken care of reasonable mental health needs in Alaska.

2. Comply with the MH Enabling Act. This would entail an assessment of the fair market value of MH land as of the date of redesignation, regular legislative review of mental health needs in the state with recommended funding levels, and the transfer of money to the fund until the fund has received money equal to the fair market value of the trust land (recommends direct transfer without appropriation into the fund as it must be appropriated out).
3. Seek the repeal of the Alaska Mental Health Enabling Act by congress.

(Nov.) Lawsuit filed (Weiss v. State) claiming that the state violated the terms of the MH Enabling Act.

- a. Seeks to void AS 37.14.070 claiming it was illegal to redesignate the land.
- b. The State has or will realize revenue from redesignated mental health land that is not being placed in trust, wants a trust established.
- c. The State violated public trust by disposing of mental health land at less than fair market value. Wants the court to direct the State to administer the land in accordance with the public trust.

The Assistant AG on the case, Tom Koester, asks DNR to provide information regarding:

- a. The land obtained under the MH Enabling Act.
- b. The disposition of those lands, and
- c. The value of those lands.

DHSS is asked to provide documentation on state expenditures for mental health purposes.

- 10) 1983 - (June) Memorandum Decision (partial summary judgement) entered against the state. Requires the state to account for the value of land removed from the MH Trust. States that the remedy might be monetary rather than a invalidation of 1978 legislation.

(July) Appeal and cross appeal entered and denied.

(Aug) Cowper, the Weiss attorney, states that he will not begin negotiations until the state accounts for all MH land and its disposition.

(Sept) Meeting with DNR/AGO/DHSS reveals that DHSS thinks that all monies derived from MH land must be spent exclusively on MH. DHSS expressed an interest in setting up a DHSS land management section (similar to the university settlement).

(Dec) Court orders the state to comply with an accounting and an appraisal of MH land by March 30, 1984.

- 11) 1984 - (Jan) Tom Hawkins deposition ordered for Feb 2. Required information on land selected under MH Enabling Act and the disposition of that land.

(Feb) Koester drew up a judgment to be entered in the court which specifies that:

- a. The 1978 legislation is constitutional, and
- b. The MH public trust is entitled to be reimbursed for value of land redesignated as of July 19, 1978

(Judgment not signed).

(April) Survey of mental health land completed by DLWM.

(May) Cowper filed a motion to levy a sanction against the state (restraining the state from disposing of mental health land) for non-compliance with the discovery request. The hearing was held in Fairbanks the next day (June 1). At hearing the motion was divided into two parts: sanctions and a temporary restraining order. Frank Mielke testified about our compliance with the discovery request and Koester made a case for the state's solvency. The motions were denied.

(June) Koester drew up a stipulation re: the accounting process:

- a. Value of MH land to be computed by determining fair market value as of July 19, 1978 and simple interest of 10.5% per year;
- b. Appraisals shall be complete by 3/15/85;
- c. Plaintiff (Cowper) has right to review RFP, contract, and list of approved appraisers. The plaintiff will receive copies of the appraisal as they are completed;
- d. The state will develop value estimates of revenues and appraisals made of other 3rd party interests created in MH land prior to July 19, 1978. These estimates are to be based on estimates of revenues and appraisals made of other 3rd party interests on MH land prior to July 19, 1978. Estimates are to be based on appraisals of revenues and appraisals; and
- e. In calculating final judgment the state shall receive credit for appropriations for mental health purposes prior to July 19, 1978 (stipulation not signed).

(August) Notice of Lis Pendens filed August 1, 1984 by Cowper against all land selected by the state.

Koester drew up a stipulation stating that the state will:

- a. Draw up a legal description of all land selected by the state to fulfill the MH land grant;
- b. Provide a listing of the current acquisition status of the MH selections;
- c. Note whether the MH land had been alienated or conveyed and if so, how;
- d. Estimate the fair market value of the interests conveyed or alienated based on appraisals, done at the time of conveyance and revenues derived from the conveyance;
- e. Appraise the fair market value of all mental health land remaining in the MH trust on July 19, 1978; and

- f. Compute the value of all mental health land converted to general grant land by adding simple interest of 10.5% per year to the appraised value (a, b, c, e and f are due by March 15, 1985; d is due May 15, 1985).

The stipulation was signed by Koester August 30, 1984; was signed and filed with the court by Cowper on September 4, 1984.

At the same time, Koester drew up a judgement that stated:

- a. The mental health enabling act created a public trust for which the state is trustee.
- b. The redesignation of mental land to GG land was constitutional.
- c. The public trust shall recover the value of land conveyed from the trust as of the date of conveyance plus prejudgement interest (the redesignation is considered a conveyance).
- d. The state will receive credit for mental health expenditures when calculating the final judgement.

The judgement was filed September 14, 1984.

(September) - The state moved to have the Lis Pendens expunged. Plaintiffs filed an opposing motion. The state counter filed.

The state filed an appeal of the judgement September 18, 1984. The appeal is based on the following:

- a. The mental health trust land is not for the exclusive benefit of mental health.
- b. The redesignation of mental health land was not a breach of the public trust.
- c. The mental health trust fund is not entitled to be reimbursed for the full value of all mental health land received by the state.

A cross appeal is also filed. The appeal challenges the constitutionality of the 1978 redesignation.

(October) plans finalized for completing "appraisals" of the converted land by using a "valuation panel" consisting of three senior appraisers.

The appraisals contracted for in August are complete. This group of 183 parcels (81 tracts) is valued at \$14,233,800.00. Much of the information gathered in this process will be used to aid the valuation panel.

A motion to intervene (plaintiffs) is brought by the Alaska Mental Health Association, Mary C. Nanuwak and John Martin. The motion seeks to bring up other issues in the case:

- a. Is the state deliberately creating barriers to the enforcement the MH trust?
- b. Have third parties receiving MH land been notified of the trust status of the land?

- c. Are the conveyances in b. null and void?
- d. Should the 1.5% of land revenue dedicated to the MH trust by the 1978 legislation be automatically deposited?
- e. Are MH expenditures inadequate or misallocated?
- f. Should the state be replaced as trustee?
- g. Should punitive damages be awarded?
- h. Should the court appoint an independent board to oversee the land?

The prospective interveners were associated with Cowper, but apparently disagree with his tactics and strategy. An opposing motion was filed by Koester. The motion to intervene was denied October 31, 1984 because it was not timely filed.

(November) Order expunging Lis Pendens signed November 15, 1984.

(December) Opinion of Value (appraisal) Panel chosen. The panel consists of three senior designated appraisers each representing a geographic area of the state. They are tasked with evaluating 4,600 parcels of mental health land as of July 19, 1978.

The Mental Health Association announced that it will file a separate lawsuit in federal court.



Alaska Department of
**NATURAL
RESOURCES**

Mental Health Land Grant Fact Sheet
January, 1985

History

In July 1956, congress passed Alaska's Mental Health Enabling Act. The act established a public trust fund to be used primarily for the treatment of the mentally ill in Alaska. Any monies left over after mental health program costs were met could be spent for other public purposes at the discretion of the legislature. One million acres of federal land were granted to the Territory of Alaska to form the economic base for the trust.

Land selections were subsequently made between 1956 and 1966, primarily around centers of population (Anchorage, Fairbanks, Juneau, Kenai etc.), the railbelt and other areas believed to be valuable for subsurface resources (Beluga coal, Kenai oil, etc.). State records show that approximately 950,000 acres are now in state ownership. The lands are administered by the Department of Natural Resources along with land acquired through other land grants.

Although a formal trust fund was never established, the Alaska Legislature made appropriations for mental health programs. Total income produced from the mental health land from 1959-1977 was \$25,110,430. Mental health expenditures in Alaska by the state for the same period of time were \$115,364,054, with an additional \$16,430,771 being spent on alcohol and drug abuse programs.

In 1978 the legislature passed a law which redesignated mental health, school, and university trust lands as general grant lands. The redesignation provided for a more compact land base which made the land easier and more cost effective to administer. The legislation also established a trust fund for mental health programs to be financed by 1.5% of the annual receipts for all state land. However, the trust fund has never been funded by the legislature.

In April 1979, the University of Alaska challenged the constitutionality of the 1978 redesignation legislation (it also affected university land). The court upheld the law, but a settlement reached in June, 1982, granted land and money to the university. Heartened by the university's success, the Alaska Mental Health Association filed a class action lawsuit in Fairbanks Superior Court on November 26, 1982 on behalf of Carl Weiss, a seven year old boy from Nenana, and Earl Hilliker, a Fairbanks resident. The suit contends that the plaintiffs were in need of mental health services which they could not receive in Alaska. It also raised questions about the constitutionality of the 1978 law; challenged the state's stewardship of mental health land; and asked that a mental health trust fund be established. A judgement was entered by Justice Warren W. Taylor in September 1984. That judgement stated that the mental health trust fund is exclusively dedicated to Alaska's mentally ill, that it had been breached by the legislative redesignation and is entitled to be reimbursed full value of the mental health land. The state has appealed that decision to the Alaska Supreme Court. Mr. Stephen Cowper of Fairbanks represents the plaintiffs, and Mr. Thomas Koester, Attorney General's Office, represents the state.

It has been reported that Mr. Cowper and the Mental Health Association do not agree over the direction of the case. Accordingly, attorney Jim Gottstein of the association board has attempted to intervene in the case. To date the intervention has not been allowed, and Mr. Gottstein has announced that the association will file a separate suit in federal court.

State Compliance

In the spring of 1984, at the direction of the court, the state produced a report which accounted, by acre, for the mental health grant land as of the date of redesignation. The legislature then appropriated \$250,000 for the department to continue the compliance with the discovery request. Stipulations for discovery were agreed to in September 1984, and the state is now in the process of complying with them. These stipulations provide:

1. The state will describe all mental health grant land selected by the state and provide current acquisition status of same by March 15, 1985: The Division of Technical Services within DNR is currently auditing all pertinent selection files. The Bureau of Land Management is auditing corresponding federal title files. Although the audit of state files will be completed by March, further adjudication by the BLM is expected to take another year to bring federal and state records into agreement.
2. By March 15, 1985 the state must estimate the fair market value of all land in state ownership as of the 1978 redesignation. Approximately 4,600 individual parcels are being evaluated by a panel consisting of three independent senior designated appraisers: Mr. Stephen J. MacSwain (representing the northcentral area); Mr. Frank King (representing the southcentral area) and Mr. Barry Thompson (representing the southeastern area). To bring the appraisals current, a simple interest of 10.5% per year will be added to the valuation figure.
3. By May 15, 1985 the state must identify and account for all mental health land alienated or conveyed prior to the 1978 redesignation. An audit and accounting will begin in February.

The remaining issues involved in this litigation are whether the mental health fund is dedicated solely to support mental health programs; whether the state breached the public trust in its management of the mental health grant land prior to 1978 and whether the state should be ordered to reimburse the public trust the full value of the mental health land. There is tremendous potential liability to the State of Alaska as a result of this lawsuit. It has been speculated that these lands may be worth over 1 billion dollars.

For further information contact Salli Slaughter, Pouch 7-005, Anchorage, Alaska 99510, (907) 265-4375.

POSITION OF THE ALASKA MENTAL HEALTH ASSOCIATION
REGARDING
ADMINISTRATION OF MENTAL HEALTH TRUST LANDS

SUMMARY

On July 28, 1956, the "Alaska Mental Health Enabling Act" (P.L. 83-830, 70 Stat. 709) was enacted providing for selection and conveyance of one million acres of public lands into state ownership to be held and dealt with as a "public trust" to permanently serve the needs of the mental health program of Alaska.

PUBLIC LAW 83-830 July 28, 1956

Sec. 202

- (a) The Territory of Alaska is hereby granted and shall be entitled to select...one million acres from the public lands of the United States in Alaska...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 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...
- (c) All grants made or confirmed under this section shall include mineral deposits: ...
- (d) Following the selections 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 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.

(Emphasis Added)

The grants and selections made under this Act were confirmed by the Statehood Act and the responsibility for managing the lands as a Trust was accepted by the State of Alaska.

INTENT

The Act as written and passed by the U.S. Congress clearly intended for these lands to be used to serve the needs of the mental health program of Alaska for all time. It established a permanent "Trust" whose assets were a million acres of land. This "Trust" was to be administered so that the Mental Health Lands would provide a permanent source of revenues to meet the needs of the mental health program of Alaska.

STATE MANAGEMENT OF MENTAL HEALTH LANDS

As set forth previously, subsection (e) of the Alaska Mental Health Enabling Act provides that the Mental Health Lands,

...proceeds and income therefrom shall be administered 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...

and that

... The authority of the Legislature of Alaska under this subsection be exercised in a manner compatible with the conditions and requirements imposed by other provisions of the Act.

Even a cursory examination reveals that the state has knowingly flaunted its trust obligations regarding the administration of Mental Health Lands.¹ The Mental Health Lands have been and are being dealt with as if they are no different than any other state lands and, in fact, are sometimes given away more freely

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James B. Gottstein, attorney for the Alaska Mental Health Association, has available upon request documentation of the state's knowledge of its illegal actions. Mr. Gottstein can be contacted at 564-2424, 6401 A Street, Anchorage, Alaska 99502.

than other state lands with inadequate or no compensation. The Legislature has passed laws that have transferred Mental Health Lands into non-revenue producing uses such as State Parks and Wildlife Withdrawals and finally, in 1978, purported to abolish the Mental Health Lands designation altogether with no compensation given to the Mental Health Trust. As a result the Trust has lost a great deal of its original assets and revenue-generating potential. Since 1978, the state has illegally purported to convey to third parties tremendous amounts of Mental Health Lands, again with inadequate or no compensation to the state and no compensation at all to the Mental Health Trust.

DESCRIPTION OF MENTAL HEALTH LANDS

The lands in question here are those lands selected by Alaska under the authority of the Act of 1956. They are described in 155 casefiles which are maintained by the Bureau of Land Management, part of the United States Department of the Interior. These descriptions of the selections made by Alaska in these casefiles describe lands in the following resource areas:

Kenai Peninsula	67 Casefiles
McGrath	47 Casefiles
Glennallen	7 Casefiles
Yukon	32 Casefiles
Fortymile	2 Casefiles

The numbers above describe casefiles only. In many cases, the selections were very small while other selections were for very large tracts of land.

The lands are located in 186 townships across the state. Appendix I has a complete listing of all townships statewide that have Mental Health Lands within them. The following list describes the number of townships affected in the various geographical areas:

1)	Copper River Meridian (Gulf of Alaska & Southeast)	60 Townships
2)	Northeast Seward Meridian	15 Townships
	Southeast Seward Meridian	1 Township
	Northwest Seward Meridian	55 Townships
	Southwest Seward Meridian	12 Townships
3)	Northeast Fairbanks Meridian	9 Townships
	Southeast Fairbanks Meridian	10 Townships
	Northwest Fairbanks Meridian	4 Townships
	Southwest Fairbanks Meridian	20 Townships

The following figures approximate the total conveyance from federal to state holdings of Mental Health Lands:

Patented Lands	719,703.83 Acres
Tentatively Approved Lands	219,655.92 Acres
Selected and Not Yet Conveyed	357,986.18 Acres

It is clear that the state has not yet received its full entitlement of Mental Health Lands from the federal government.

Mental Health Lands contain a great deal of resources. The Mental Health Lands grant includes both surface and subsurface title. Many of the lands lie on or near producing oil and gas fields; others lie within high potential coal and other mineral areas; and much of the others were selected for their surface value. Millions of dollars have been collected in purchases, rentals, and royalties on oil and mineral exploration leases, while untold other millions of dollars have been foregone by the state. A detailed inventory is needed to determine the extent of these resources on Mental Health Lands.

POSITION OF THE ALASKA MENTAL HEALTH ASSOCIATION

It is clear from the language of the Alaska Mental Health Enabling Act that: (a) the state is obligated to manage Mental Health Lands, and proceeds and income from those lands as a public trust; and (b) the mental health program of the state is to be the primary beneficiary of this Trust. This position is reinforced by the specific language used in testimony presented in the Congressional Record (Senate, page 9760, June 1956):

... This million-acre grant is in exactly the same category, and has the same legal status as the grants of public lands which have been made to all of our Western States for public schools and other public purposes. It is to be administered by the Territory of Alaska as a public trust, and the mental health program will have first call on the income and proceeds from it.

Over the years, the state has recognized its illegal management of the Mental Health Trust but has failed to correct the situation (see footnote 1, page 2).

NECESSARY ACTIONS

In order to remedy the situation created by mismanagement of the Mental Health Trust the Alaska Mental Health Association recommends that the following actions be undertaken immediately:

- 1) Alaska must fulfill the purpose for which the Mental Health Lands were originally granted.

- 2) The state must differentiate between Mental Health Lands and state public domain lands by providing separate and distinct land management to ensure the future management of Mental Health Lands in accordance with recognized trust principles and applicable law.
- 3) A permanent Mental Health Trust should be created. Allocated to this fund should be all funds collected from transactions involving Mental Health Lands.
- 4) Steps must be taken to resolve conflicts resulting from the past management of all lands granted to the state under the Alaska Mental Health Enabling Act. This must include an equal-value exchange of all lands on which irreversible encumbrances have been created which preclude the management of those lands as Mental Health Lands.
- 5) A method should be established to calculate the dollar amount due, with interest, to the Mental Health Trust from the state with regard to the management and disposal of Mental Health Lands, and the dollar amount due, with interest, for Mental Health Lands and resources therefrom which have been disposed of at less than their current fair market value.
- 6) An independent Mental Health Lands Managing Agency must be created and staffed. This agency will be charged with the responsibility of administering the Mental Health Trust in accordance with law. This agency will be governed by these rules:
 - a) The Mental Health Lands shall be administered as a permanent public trust.
 - b) The purpose of the Mental Health Lands is to generate revenues to be used first to meet the necessary expenses of the mental health program of Alaska.

The Mental Health Lands Managing Agency must have sufficient safeguards to prevent future abuses of Mental Health Lands.

- 7) A legitimate, impartial and objective method be established for determining the necessary expenses of the mental health program of Alaska must be established with sufficient safeguards to prevent future abuses.

STATE MENTAL HEALTH PROGRAM

SUMMARY FACT SHEET

Prepared December 14, 1984

ALASKA PROVIDES THE LOWEST PERCENTAGE OF STATE REVENUES TO MENTAL HEALTH PROGRAMS OF ALL 50 STATES. On average, the other 49 states provide a percentage of state revenues to mental health programs that is more than six times larger than Alaska provides (0.3%). More than half of the states provide at least five times larger percentages than does Alaska. The 49th state in the ranking provides double that of Alaska, while the first state in the ranking provides a percentage that is more than 11 times greater than Alaska provides (Reference: The Final Report - Funding Sources and Expenditures for State Mental Health Agencies, NASMHPD, 1984).

ON A PER CAPITA BASIS, ALASKANS HAVE RECEIVED ONLY 27 PERCENT OF THE LEVEL OF FEDERALLY SUPPORTED COMMUNITY MENTAL HEALTH CENTER SERVICES RECEIVED BY THE CITIZENS OF THE OTHER STATES. Based on a survey of all federally supported community mental health centers, Alaskan centers provided less than 27% of the episodes of care per 100,000 population per year than did centers in all other states (Reference: Provisional Data on Federally Funded Community Mental Health Centers, NIMH, 1981).

SERVICES FOR THE CHRONICALLY MENTALLY ILL IN ALASKA (A HIGH PRIORITY ACCORDING TO STATE REGULATIONS) SUFFER FROM INEQUITABLE DISTRIBUTION OF PROGRAM FUNDS. As one example, a State DMHDD Request for Proposal last month announced \$403,000 for vocational services to developmentally disabled persons and only \$30,000 for vocational services to mentally ill persons. The chronically mentally ill also suffer from a lack of other rehabilitation services, residential facilities, continuity of care, and support services available to the chronically mentally ill in other parts of the nation. Clinical staffing for aftercare services for the chronically mentally ill in Anchorage is only 37% of the median staffing level of "lower 48" mental health centers on a per capita basis (Reference: Guidebook on Numerical Indicators for Performance Evaluation of Community Mental Health Centers, Medical College of Pennsylvania, 1982).

SERVICES FOR CHILDREN AND ADOLESCENTS IN ALASKA (A HIGH PRIORITY ACCORDING TO STATE REGULATIONS) HAVE BEEN HARDEST HIT BY STATE AND LOCAL MENTAL HEALTH FUNDING REDUCTIONS. Based on the National Institute of Mental Health standards of service for community mental health programs, children have been consistently underserved every year by the Alaska Community Mental Health Program. To make matters even worse, in 1984 a 76% cutback in staffing for children and adolescent services occurred at the Southcentral Counseling Center, which has a service area covering half of the State's population, due to public program funding cuts. These program cuts have resulted in a 42% reduction in children and adolescent caseload since November, 1983. Currently State Community Mental Health Program funds only provide for one-half of one full-time position to deliver mental health services to children and adolescents for all of Anchorage! Total clinical staffing for children and adolescent mental health center services in Anchorage is only 14% of the median staffing level of "lower 48" mental health centers on a per capita basis (Reference: Guidebook listed above). The Southcentral Counseling Center currently has a long waiting list for outpatient services.

HOUSE HEALTH, EDUCATION & SOCIAL SERVICES
STANDING COMMITTEE
February 26, 1985
4:30 p.m.

Members Present: Co-Chairman Max Gruenberg
Rep. Robin Taylor
Rep. Alyce Hanley
Rep. Fritz Pettyjohn
Rep. Katie Hurley

Members Absent: Co-Chairman Niilo Koponen
Rep. David Thompson

COMMITTEE CALENDAR

Testimony from the Mental Health Planning
and Needs Assistance Committee

WITNESS REGISTER

Beth Trawick
Committee for Mental Health Planning in Fairbanks
503 7th Avenue
Fairbanks, AK
(907) 452-4148
Position Statement: Supports mental health services

Kathy Whitzell
Committee for SB 520
P.O. Box 10081
Fairbanks, AK
(907) 457-7223
Position Statement: Supports SB 520 and mental health services

Mark Mattaini
Committee for SB 520
1302 21st
Fairbanks, AK
(907) 452-2446
Position Statement: Supports SB 520 and mental health services

Glade Birch
Southcentral Counseling Center
Mental Health Dir. Assoc.
4020 Folker St.
Anchorage, AK 99508
(907) 563-1000
Position Statement: Supports mental health services

Vince VanDerHyde
Division of M.H. & D.D.

3470 Meadow Way
Juneau, AK
(907) 465-3370
Position Statement: Supports mental health services

Tom Koestet
Department of Law
Pouch K
Juneau, AK 99811
(907) 465-3600
Position Statement: To provide information on mental health
lands litigation

Commissioner John Pugh
Department of Health and Social Services
Pouch H-01
Juneau, AK 99811
(907) 465-3030
Position Statement: To provide information on mental health

PREVIOUS ACTION

No previous action to record.

ACTION NARRATIVE

TAPE #32, SIDE ONE
Recording
Number 000

Co-Chairman Gruenberg called the meeting to order at 4:37 p.m. to discuss mental health planning and needs. Reps. Koponen and Thompson were absent.

Number 029

Co-Chairman Gruenberg announced the arrival of Rep. Taylor.

Number 064

Beth Trawick, a private psychiatrist in Fairbanks, representing the Mental Health Committee, testified. She said when it came time to discharge a chronically ill patient from the hospital to a halfway house, there were no accommodations, thus leaving them out on the street only to return to the hospital later.

On the subject of children, she said they didn't have facilities for intensive out-patient psycho-therapy for them and their families. If the family was wealthy or had good insurance coverage they could afford private care. She said children end up "drifting" through the system, becoming non-

functional or progressing towards chronic mental illness, which sometimes, early treatment could have prevented.

In summary, she supported more treatment facilities such as vocational rehabilitation, halfway homes, and community based facilities, which would help patients more and cost less.

Number 277

Kathy Whitzell, representing the Resource Committee for SB 520, and the Fairbanks Memorial Hospital, testified. She spoke for the mentally ill adults whose illness often begins in early adulthood: a gradual withdrawal from others, losing touch with reality and inability to function. She said lack of facilities for these adults, including "road people" who have no shelter and are often ill, resulted in an overcrowded API.

Ms. Whitzell said most evening and weekend emergencies for families are dealt with by phone with no personal interventions, although the hospitals are available. If an adult won't voluntarily commit himself, and a relative won't involuntarily commit them, they wander the street, get into trouble, and often end up in jail until evaluation. Families attempting to maintain the ill individual at home have problems within the family and the neighborhood. In summary, Ms. Whitzell supported a care facility where such adults would be receive services and function in a safe environment.

Number 450

Mark Mattaini, Director of Mental Health Programs for Tanana Chiefs Conference, and Chairman of the Children's Subcommittee for the Resource Committee for SB 520 testified. He said in developing their plan for children, they looked at the most serious cases (suicidal, severe depression, personality problems, etc.). He emphasized the need for out-patient treatment, a diagnostic and crisis unit with residential capacities, individualized foster homes, small group homes, day treatment programs, facilities for young adults (halfway houses), and a family hostel operation for rural and bush areas.

Number 582

Glade Birch, Executive Director of the

Southcentral Counseling Center in Anchorage, and a representative of the Alaska Mental Health Program Director's Association testified. He said the turnover at centers is 170% per year. He said the suicide explosion could be predicted when they failed to give mental health care. He mentioned 7 days before he arrived in Juneau, he knew of 22 serious attempts by school kids (2 successful). He knows of a village without mental health care due to funding that average 2 attempts per month with a population of 350.

Mr. Birch said in the initiative to identify child abuse victims, there was a problem of not doing anything after this is done. He supported a community based setting which would cost far less than jail or API.

He said there would be a problem of an accredited institution such as API running into problems of overcrowding, and being able to keep their accreditation.

CHANGE TAPE TO SIDE TWO

Number 000

Mr. Birch continues his discussion in support of community based mental health care facilities versus cost of jail or API.

Number 077

Rep. Hanley asked Mr. Birch what is covered in API for accreditation; the physical plant, program, or methods of treatment. He said everything.

Number 091

Rep. Taylor asked Mr. Birch if in the requested increment for treatment of children, have they included in it cost that child abuse legislation would incur. Mr. Birch said no. He said they were only funded for 3 1/2 people for their mental health needs. Rep. Taylor said he shared Mr. Birch's concerns but he was informed it was appropriate to keep the budget where it's at and spend \$32 million on asbestos removal. Rep. Taylor said he had a hard time prioritizing between the risk from asbestos exposure versus risk of suicide, though he supported mental health needs.

Number 140

Vincent VanDerHyde, Research Analyst for Division of Mental Health distributed to the committee a paper presented in May of last

year at the American Association of Sociotology meetings in Anchorage concerning suicide. He said the Division wanted to further research suicide by working with the Alaska Native Health Board who had research money to look at suicide attempts, village public safety officer logs, state trooper logs, emergency treatment logs, etc.

Number 178

Mr. VanDerHyde showed a set of 8 slides to the committee. The slides look at the trend in mental health service delivery across the state of Alaska.

Slide 1 shows the need for mental health services in Alaska by showing the population growth rate. Between 1980 and 1984 the growth rate was around 30%. In 1984, Alaska led the nation in population growth at 5-1/2%. The growth rate will then decline slightly.

Slide 2 shows the number of admissions to the community centers. From 1974 through 1984, there was a 285% increase. In 1984, there was a 15% increase. The projections based on the data, shows there will be around a 23% increase over the next 5 years.

Slide 3 shows the expansion of services. From 1975, the admissions were 42 per 10,000 population. By 1984, it increased to 120 per 10,000 population (9.4% increase).

Slide 4 shows comparisons between admissions, end-of-year caseloads and clients seen for the period 1979 through 1984, while in the past 5 years, the population has increased 30%, admissions over 100%, and case-loads 105%. He said during fiscal year 1984, a little over 8,000 clients were served (1.5% of Alaska's population).

Slide 5 shows admissions to the Alaska Psychiatric Institute. Between 1970 and 1982 admissions increased by 175%. In 1983, there was a slight decline due to changes in delivery of services. In 1984, admissions increased by another 5% due to the population growth.

Slide 6 shows a count of in-patient days (beds available). For 1983, the API

utilized 95% of in-patient days. For 1984, they utilized 98%.

Slide 7 shows discharge data. A little over 50% of patients are released in 4 to 5 weeks. 5 or 6% are in API around 6 months.

Slide 8 shows as population pressures occur, shows over the years the populations which become re-admissions in the system, for example, FY83's admissions drop off and FY84's length of stay goes down and the re-admissions increase. He said there were two things driving the API's population: the state population as it increases and the maximum utilization of the facility driving re-admission rates up.

Number 436

Tom Koester, Attorney General's Office, Department of Law, testified regarding the mental health lands litigation. He said the mental health enabling act, a federal statute passed in 1956 by the U.S. Congress, was passed because mental health services in Alaska were unacceptable. In the 1911 Organic Act, Congress precluded the Alaska Territorial Legislature from dealing with mental health problems in Alaska and retained the sole responsibility for the federal government.

In territorial days, the federal government's program for dealing with a person believed to be insane was for the U.S. Attorney to bring an indictment against them, try them before a jury, and if found insane, would be sent to Morningside Portland hospital in Oregon. If not, they'd be released without follow-up, etc. The Congress saw as a way to economize during a budget crunch, to transfer this responsibility to Alaska. The problem was there was no means to raise revenue, which was costing \$1.2 million per year. Congress came up with a phased 10-year grant program of funds to Alaska in a declining revenue set-up, plus a cash grant to build API. To provide a source of funds, Congress authorized the territory to select 1 million acres of land (from vacant and unappropriated federal lands in Alaska).

Mr. Koester said because Congress didn't know the program cost in Alaska or the worth

of Alaska-selected lands, they declined to earmark all proceeds from the lands to the mental health program. Its rationale was they didn't know the cost of the programs or how much money would be generated from the lands. They didn't want Alaska to think they had to use all the money for mental health programs.

Mr. Koester said language from the bill said proceeds and income from the land shall first be used for expenses from the mental health programs. Additional funds can be used for other purposes. In 1978, there was pressure for Alaska lands to be made available to Alaskans and municipalities. Since Alaska could select its lands, it began to build on them: U of A, Juneau, Hillside and some of the Chugach State Park, Swanson River oil fields, many intersections between the Alaska Railroad, and the highway between Anchorage and Fairbanks, etc.

Mr. Koester said the 1978 legislature converted statutorily mental health lands to general grant lands, in effect, directing the Department of Natural Resources to deal with the lands as if they were already received. The alternative was a statutory dedicated fund of 1-1/2% of general funds revenues and because the language of the statute is subject to appropriation, the legislature has never appropriated the 1-1/2%.

Number 530

Co-Chairman Gruenberg said in 1978 the legislature passed 2 bills, and 1 mandated 1-1/2% and the other made it discretionary. He said the Governor signed the discretionary bill after he signed the mandatory bill, thereby making the operative law discretionary.

Number 543

Mr. Koester said the lawsuit was brought by Alaskan citizens who needed mental health services that weren't available. The object was to regain title to equivalent land. Judge Taylor in Fairbanks ruled it was an exclusive trust. Mr. Koester said most attorneys agree with the analysis that they are not dedicated exclusively ("shall first be used"). The Attorney General's office has appealed the entire judgement made by Mr. Taylor, which was that the 1978

redesignation was a breach of the trust, which is currently pending before the Alaska Supreme Court.

Mr. Koester stated Judge Taylor ruled it was permissible for the Legislature to redesignate the lands, however, if they make the decision to treat them as general grant lands, it must compensate the trust with the fair market value. He said the cross-appeal is of Judge Taylor's determination that the legislature has the power to exchange land for money, it has not funded it, so if the case proceeds, the final judgement is Judge Taylor ruled the state will have a liability of a significant amount of money. He said they've attempted to communicate to the plaintiffs that they may be able to settle the lawsuit by coming forward with a proposal.

Mr. Kester said the proposal is on file, and in brief, the concept proposed is a way to develop a process which would satisfy the expectation of the U. S. Congress in 1956. The process is to continue with an accounting effort to identify the value of the land, converts it to an unfunded liability and then identifies proceeds from that liability (or what they would have been had it been funded) and then have the necessary expenses for the mental health needs first, and the rest for other expenses. Rep. Taylor asked Commissioner Pugh what the present mental health budget was. He said around \$20 million for mental health only.

CHANGE TO TAPE #33, SIDE ONE

Number 000

Mr. Koester's testimony on the lands issue continues. Rep. Taylor asked why they couldn't take care of mental health needs the way it was intended. Mr. Koester said the problem was they are trying not to go beyond what Congress contemplated. He said the lands were not dedicated exclusively to mental health. Rep. Taylor said that the first use for mental health. Mr. Koester said the point was that Congress contemplated the territorial legislature making the mental health needs determination. When it made the determination, it would appropriate the

necessary revenues from the lands to fulfill that program. The 1956 law did not specify what the mental health program was to look like. Since then, Alaska has funded a mental health program. The problems with putting together a settlement proposal is the Attorney General's office does not feel free, given the 1978 law which governs the performance of the AG's duties and obligations, that they have the latitude to propose a settlement which would require the legislature to undo what it did in 1978. He said the position they have always held was no legislature can bind a subsequent legislature, but a previous legislature could bind the administration, and that's what happened.

Number 336

Co-Chairman Gruenberg adjourned the meeting at 6:27 p.m.

MENTAL HEALTH SERVICES IN THE STATE OF ALASKA
TREND ANALYSIS THROUGH FISCAL YEAR 1984

DEPARTMENT OF HEALTH AND SOCIAL SERVICES
DIVISION OF MENTAL HEALTH AND DEVELOPMENTAL DISABILITIES
RESEARCH AND DATA SUPPORT SECTION

(FOR INCLUSION IN THE FY1984 ANNUAL REPORT)

Trend Analysis

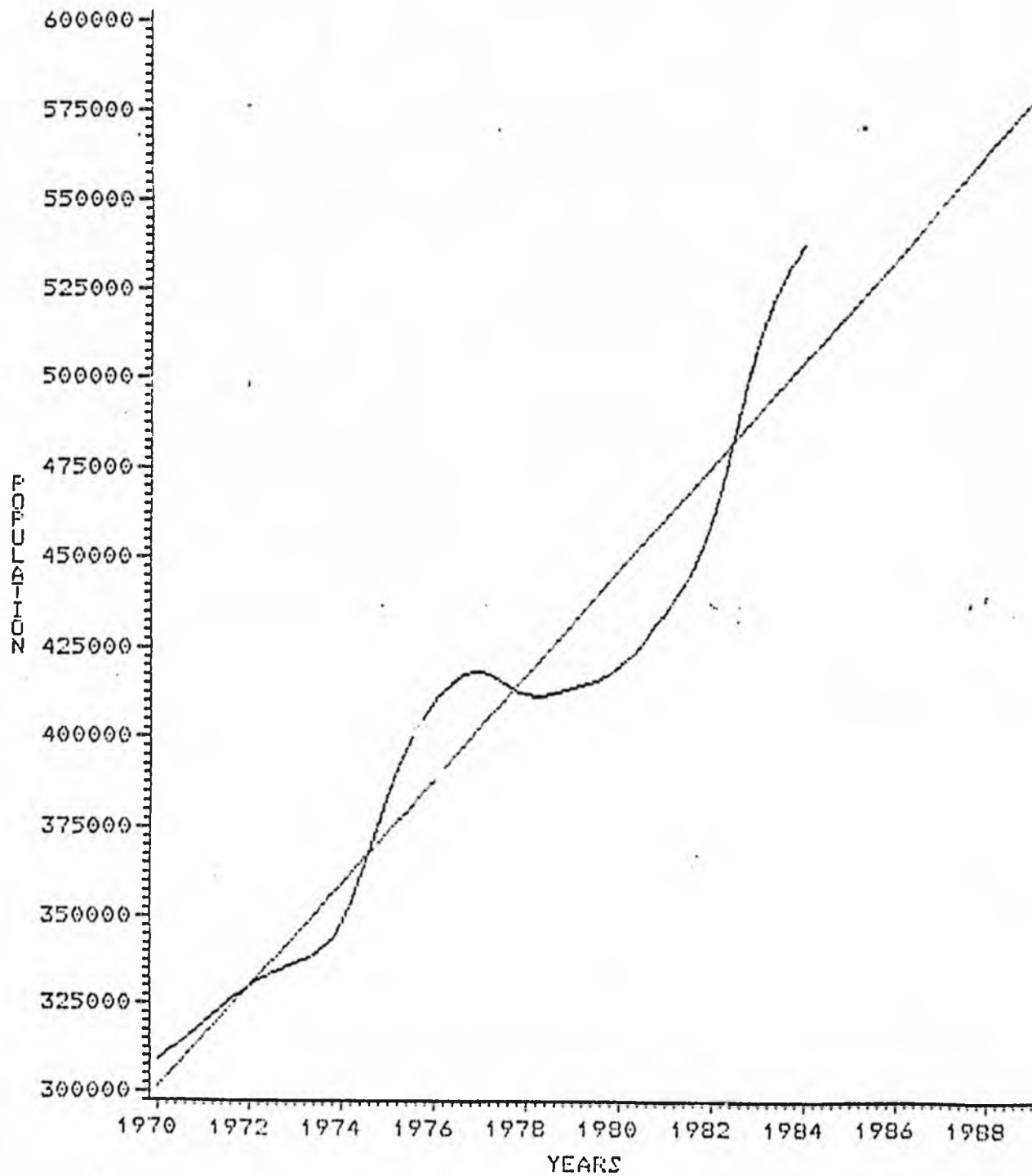
This section presents a discussion of a series of graphs based on data for the past several years showing the growth in mental health services in the state of Alaska. Taken collectively, these data reflect the publically funded portion of the state's mental health system, the impact of population growth, and the expanding need for services in both the inpatient and community mental health center systems.

Graph 1 on the following page shows Alaska state population estimates from 1970 through 1989. Actual population figures form the curved lines while projected and estimated figures are shown as a straight line.* The states' population increased rapidly during the period of oil pipeline construction and development in 1974-1976, then leveled off and declined during 1977-1979. A second increase began in 1980 and appears to be increasing, though projections indicate that the rate of growth may decrease somewhat.

Since 1980 the state population has grown by 28.2%. In 1984 alone population increased by 5.4%. This rapid increase in growth should be kept in mind while reviewing the following trend data on mental health services in Alaska.

*Population projections for the years 1985-1989 are based on the ordinary least squares regression estimates using prior years data for 1970-1984. The five years projected data is thus an estimate based on the straight line which best fits the actual population data for prior years. The population figure for 1984 is a Dept. of Labor estimate.

ALASKA STATE POPULATION

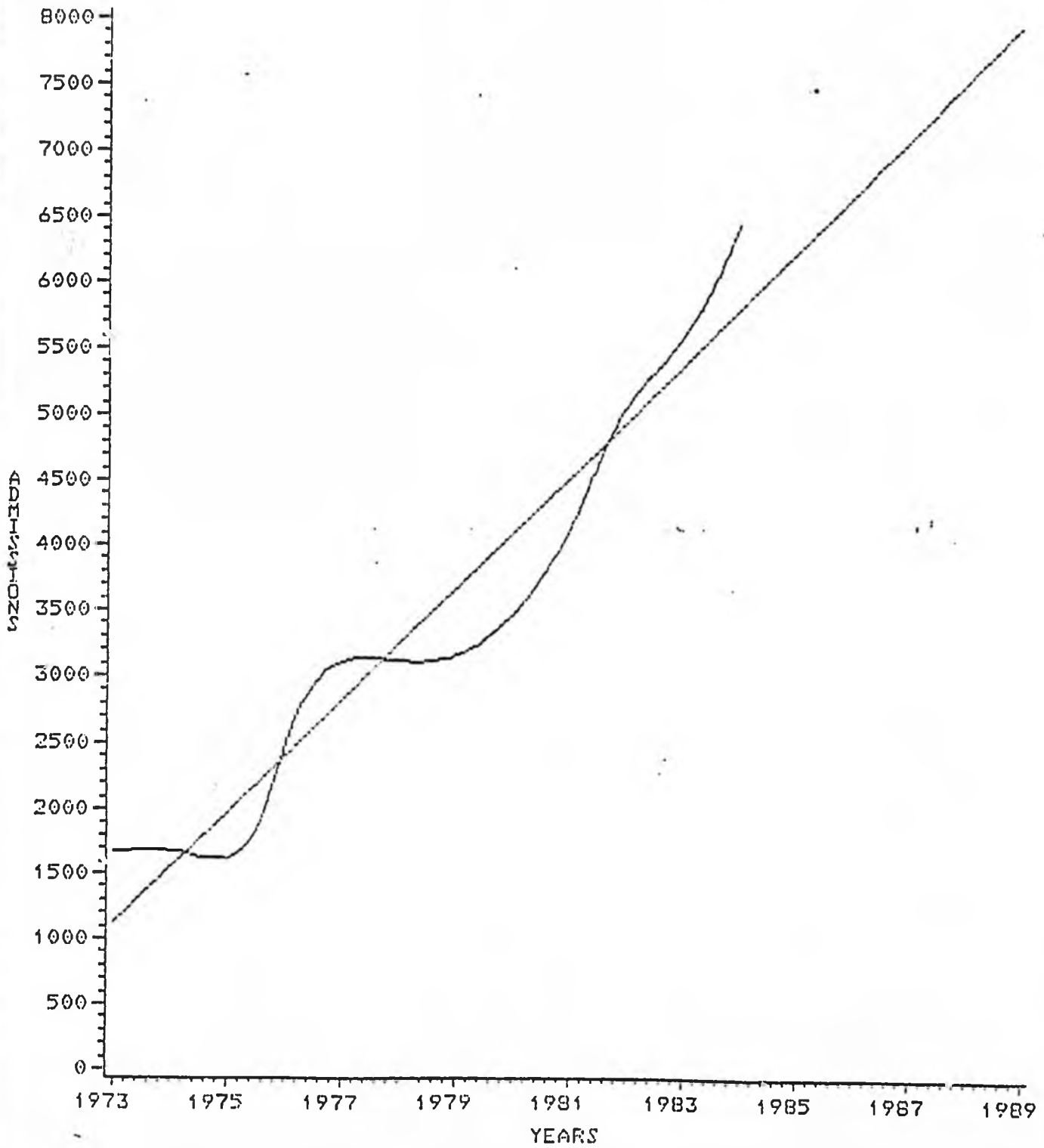


POPULATION WITH FIVE YEAR PROJECTIONS

Graph 2 presents data on the admission of new cases to the community mental health center's caseload. A total of 26 such centers are funded across the state, located in major population areas and in a number of rural or bush communities. They provide essential mental health services in their catchment areas, and are often the only source of such services in the more rural areas. From 1974 through 1984 admissions to this system have gone from 1,678 to 6,456, a 285% increase. During fiscal year 1984 alone admissions increased 15.2%.

Comparing Graph 1 with its population data, and Graph 2 on CMHC admissions, it is evident that admissions closely followed population growth. With the continued growth of the states' population an increase of 23% in admissions is expected over the next five years due to this fact alone.

COMMUNITY MENTAL HEALTH CENTERS ADMISSIONS

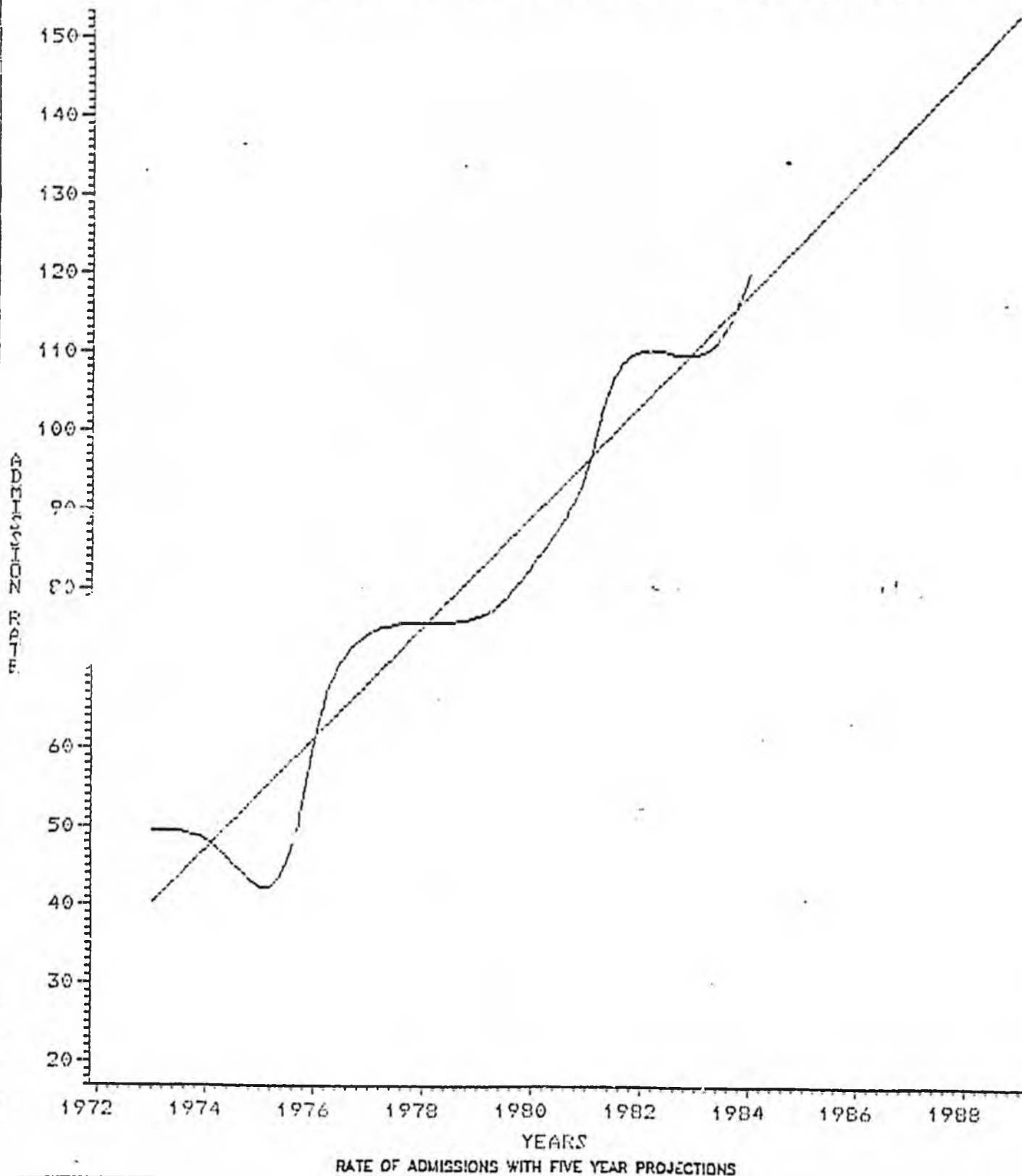


ADMISSIONS WITH FIVE YEAR PROJECTIONS

Rates of admission to the community mental health center system per 10,000 state population is one measure of the workload of those who deliver mental health services throughout the state. During the period from 1975 through 1984 this rate has increased from 42 per 10,000 population to 120 per 10,000 population, an increase of 185%. During fiscal year 1984 the admission rate increased 9.4% compared to the population growth rate of 5.4%. It is evident from this graph and the preceding one taken together that the growth in community mental health center admissions is a function of both population growth and of their providing services to a greater proportion of the state population.

Still, there remains an unknown fraction of the state population which does not receive the minimum level of essential mental health services. To some degree this is reflected in the continuing increase in the rate of admissions to the community programs. It is expected that these programs will continue to expand their service delivery to the extent that they are able to do so based on the availability of staff and funds, and that one result of this will be a continuing increase in admission rates. This will, of course, further increase the number of admissions and the size of caseloads in the system.

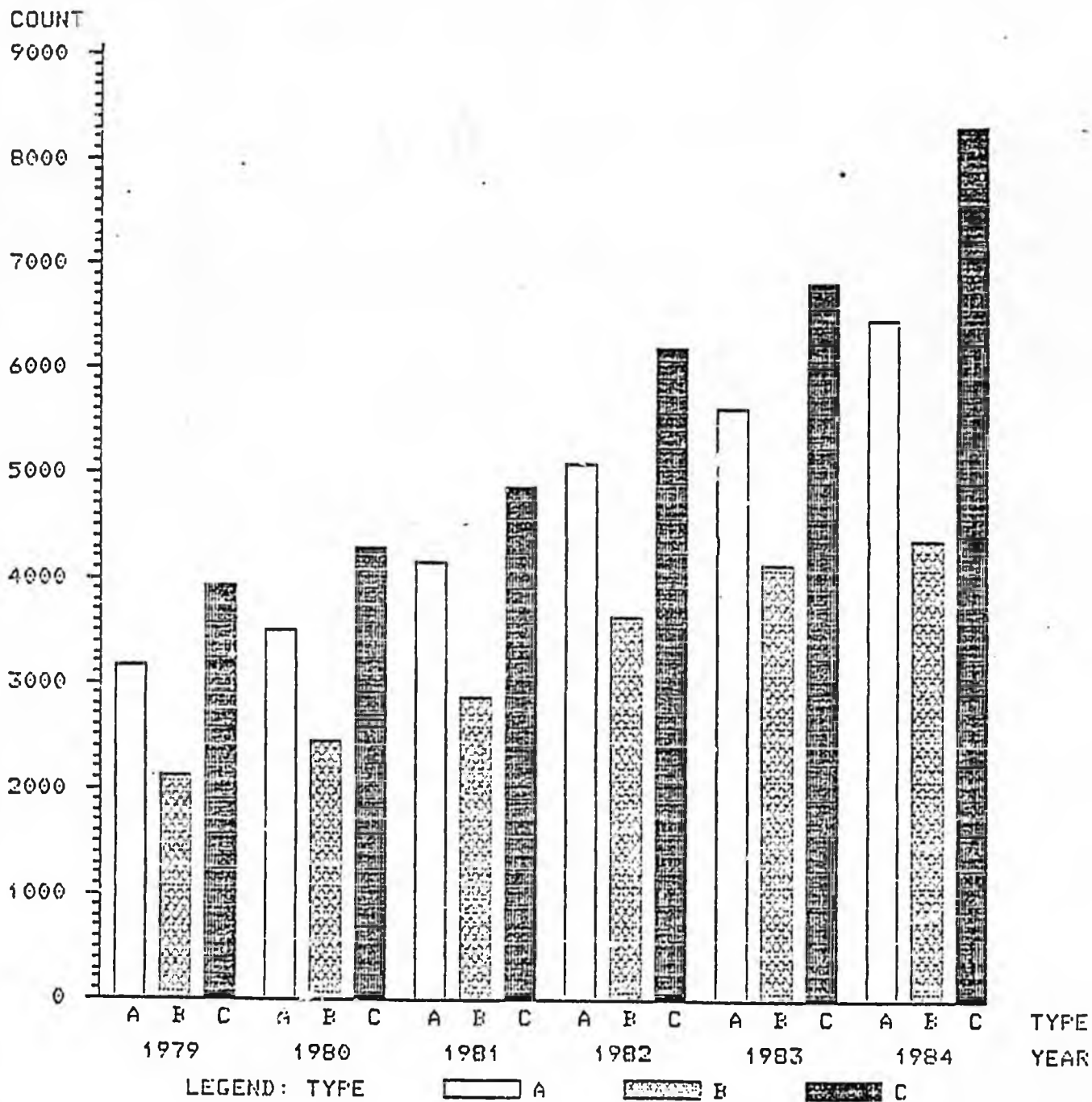
COMMUNITY MENTAL HEALTH CENTERS RATE OF ADMISSIONS PER 10,000 POPULATION



.The graph on the following page presents three different measures of the services provided by the community mental health center system; admissions, caseloads, and the unduplicated client count. Admissions represent new clients coming into the system for treatment. The caseload represents unique individuals receiving services during the last 90 days of the fiscal year and are considered as the "open cases" in the system. The unduplicated count of clients reflects the total number of specific individuals who received service at any time during the fiscal year.

During the past five years there has been a consistent increase in growth in all three of these indicators. Admissions increased 104%, the caseload increased 105%, and the unduplicated count of cases increased 111 percent. During the same five years population increased 30%.

COMMUNITY MENTAL HEALTH CENTERS ADMISSIONS, CASELOADS, AND CLIENTS SERVED



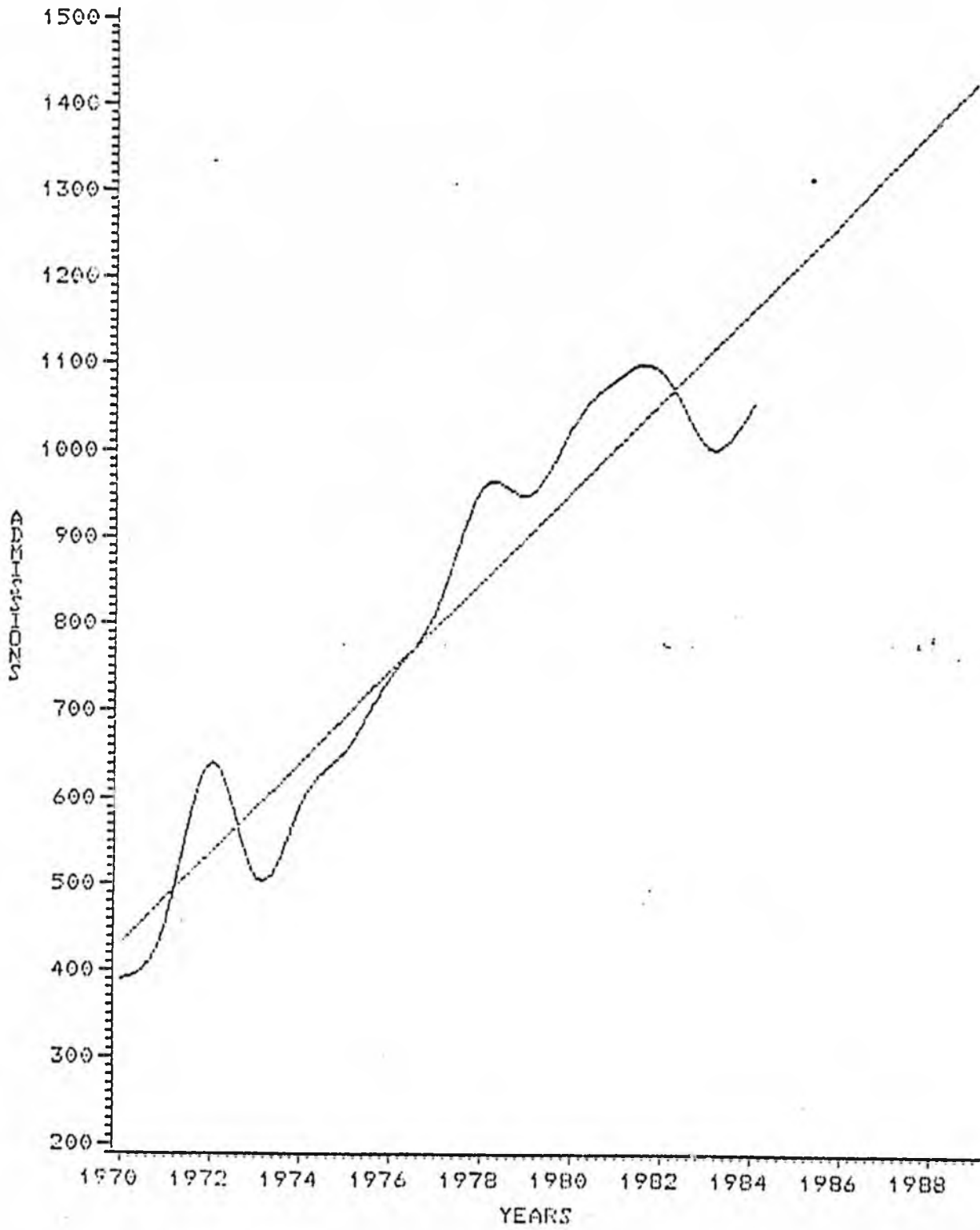
LEGEND: TYPE A B C

A=ADMISSIONS B=CASES C=CLIENTS
 FOOTNOTE 1: OPEN CASES RECEIVING SERVICES
 IN LAST 90 DAYS OF FISCAL YEAR
 FOOTNOTE 2: UNDUPLICATED COUNT OF OPEN CASES
 RECEIVING SERVICES DURING FISCAL YEAR

The Division of Mental Health and Developmental Disabilities operates the state's sole public psychiatric hospital, the Alaska Psychiatric Institute, in Anchorage. This facility receives both voluntary and involuntary admissions from across the state and also provides forensic services to the Department of Corrections. Graph 5 shows admissions from 1970 through 1984.

During the period 1970-1982 admissions rose from just under 400 to almost 1100, and increase of 175%. The decline in admissions in fiscal year 1983 was largely due to the provision of mental health services in correctional facilities in place of the transfer of the incarcerated patient to the psychiatric hospital in an effort both to provide better services to forensic patients as well as more security during treatment and in an effort to control population growth at the hospital. Population pressures were again felt in fiscal 1984 however, as admissions kept pace with population growth by rising almost 5%. It is very likely that pressures on the Alaska Psychiatric Institute are similar to those in the community outpatient system, a combination of population growth and the need to expand services to a greater proportion of the population.

ALASKA PSYCHIATRIC INSTITUTE ADMISSIONS

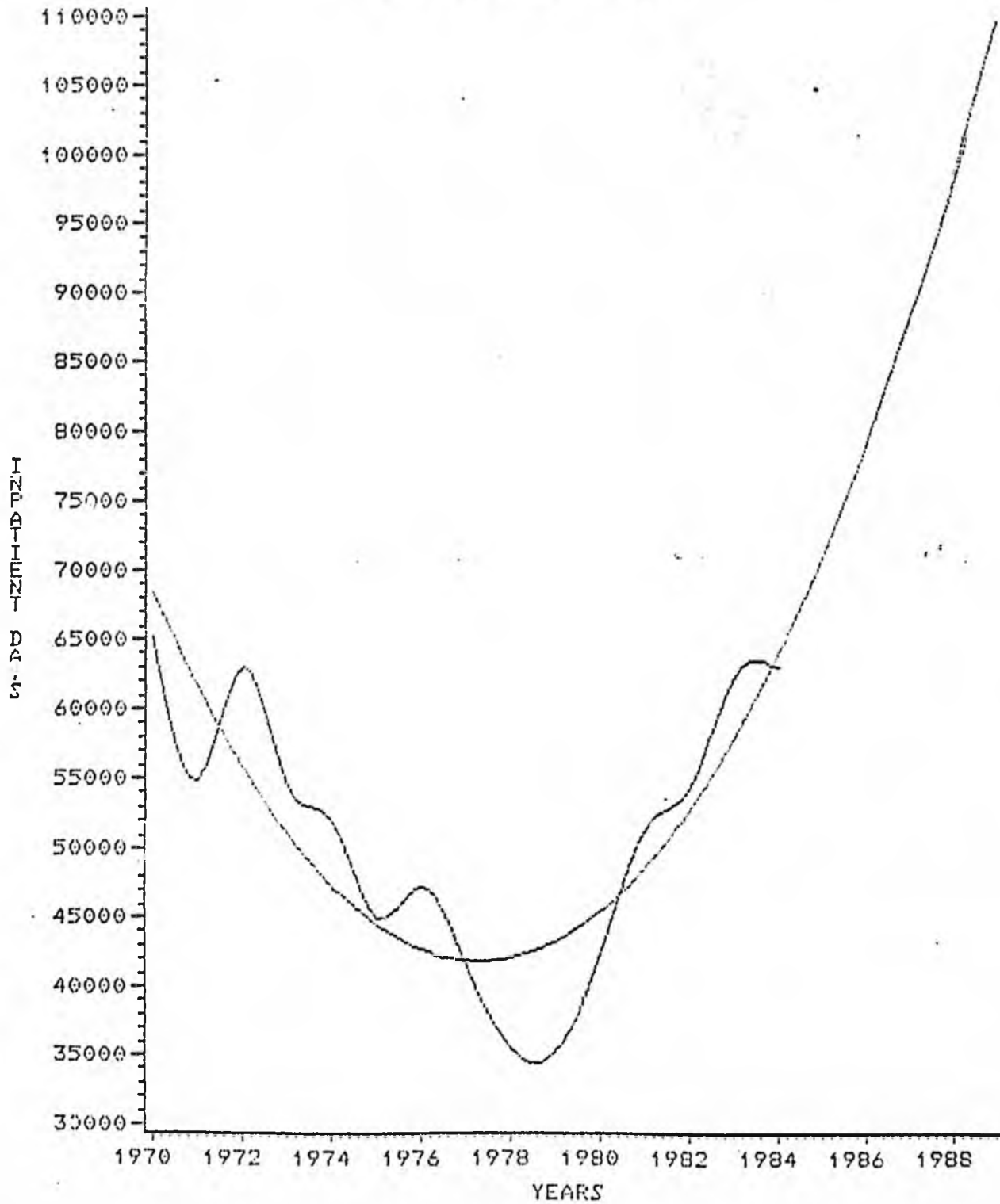


ADMISSIONS WITH FIVE YEAR PROJECTIONS

.The Alaska Psychiatric Institute has one restriction that the community mental health center outpatient system does not face, and that is the limitation of the number of beds available for patients. Currently the hospital is an accredited 176 bed facility. In terms of inpatient days this means a maximum of 365×176 or 64,240 inpatient days are available for service delivery. In fiscal year 1984, 62,904 inpatient days were delivered, or 98% of the total available. This is an increase from the previous years 95%, and represents an ever thinner operating margin.

Given the maximum use of available bedspace that these figures represent, the ceiling on the number of beds available, and the population growth which pushes the number of potential admissions higher each year, the only systems constraint which can change is that of length-of-stay in the facility. Essentially, it becomes necessary to shorten the period of treatment at the hospital, on the average, in order to make beds available for further admissions. This is, of course, the solution of last resort, and the hospital, whenever possible, attempts to increase the efficient utilization of existing resources rather than decrease treatment time.

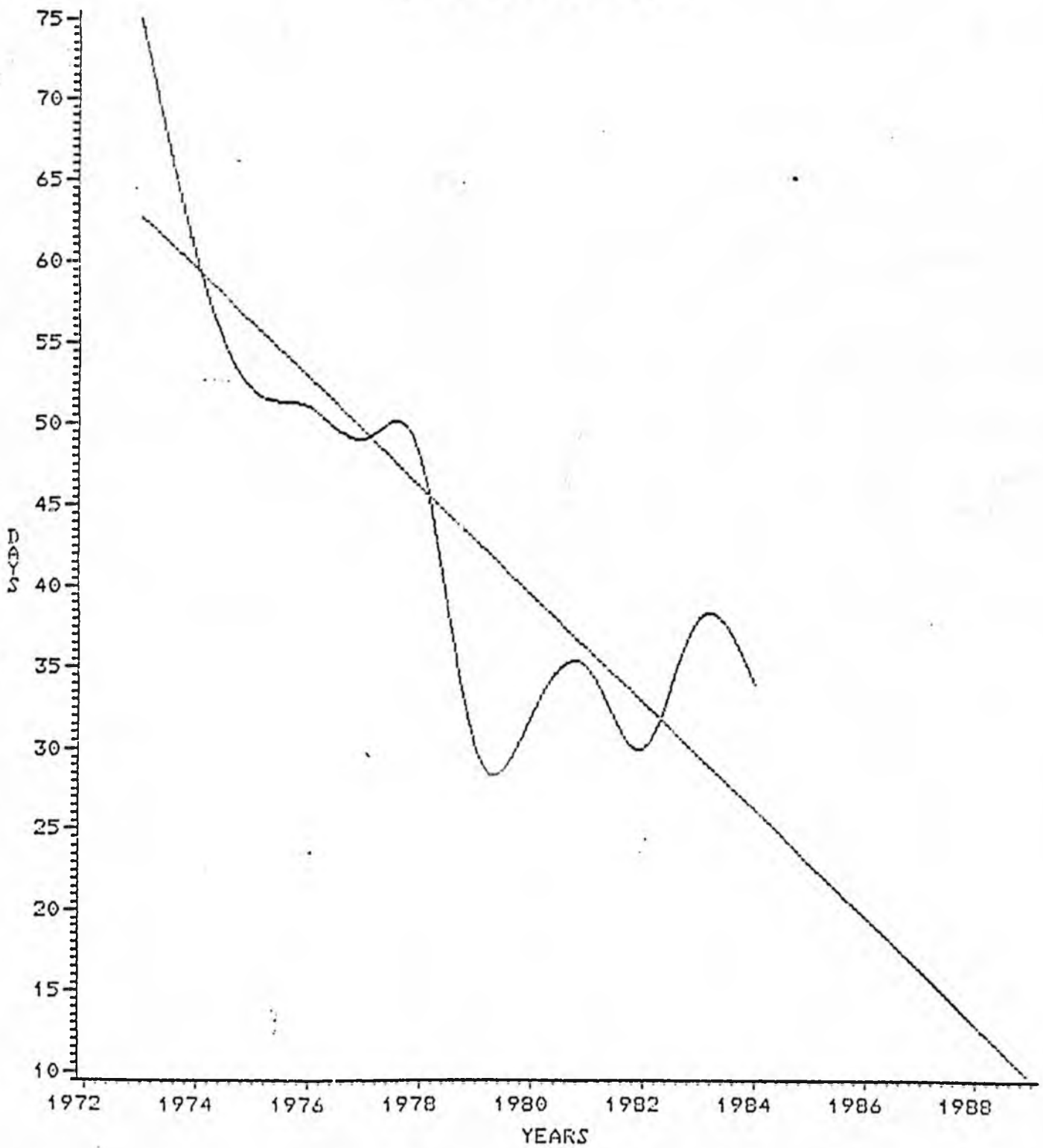
ALASKA PSYCHIATRIC INSTITUTE INPATIENT DAYS



INPATIENT DAYS WITH FIVE YEAR PROJECTIONS

Graph 7 on the following page presents data on the length-of-stay at the Alaska Psychiatric Institute. In 1983 when admissions decreased slightly the length-of-stay increased; in 1984 when admissions increased the length-of-stay decreased. This relationship between length-of-stay and admissions is a reflection of the fact that the resources of the API, as shown by the 98% utilization of inpatient days, is at its maximum effective limit. The basic problem for the facility is to balance pressures from further admissions with the need for completion of a course of treatment for patients. If population pressures continue to mount and no alternative to admission to the hospital is found, length-of-stay is predicted to further fall as patients are released with fewer days under treatment.

ALASKA PSYCHIATRIC INSTITUTE LENGTH-OF-STAY

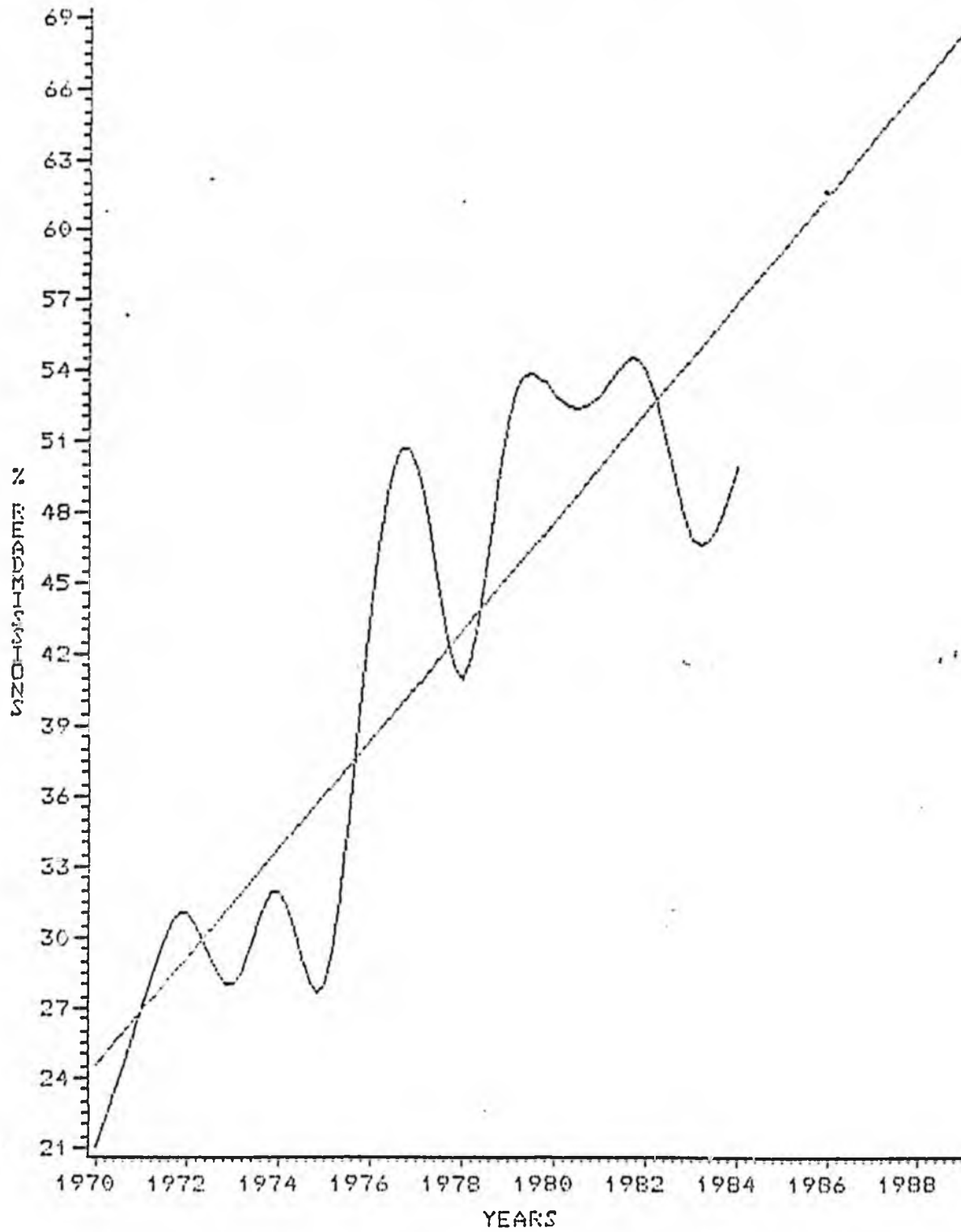


LENGTH-OF-STAY WITH FIVE YEAR PROJECTIONS

Graph B, on the percent readmissions to the Alaska Psychiatric Institute, shows the results of decreasing length-of-stay on readmission rates. As length-of-stay decreases the readmission rate for former hospital patients tends to increase. There are thus two driving forces at work to raise the number of admissions to the hospital; the growing Alaska state population and the revolving door of readmissions.

The data represented in these graphs depicts a mental health delivery system under considerable stress and likely very near to operating at the extremes of its capacity. If the predicted trends continue over the next very few years some hard choices are going to have to be faced. Expansion of costly services, new construction, expanded community support systems, alternative hospital and community placements, the prioritization of service delivery, the designation of target populations, and the reduction in the overall availability of services are all possible outcomes.

ALASKA PSYCHIATRIC INSTITUTE PERCENT READMISSIONS



PERCENT READMISSIONS WITH FIVE YEAR PROJECTIONS

EXCERPTS
of
TWO DECADES OF UNANIMOUS STATE LEGAL OPINION
SUPPORTING
THE POSITION OF
THE ALASKA MENTAL HEALTH ASSOCIATION
REGARDING THE ADMINISTRATION OF MENTAL HEALTH LANDS

In 1964 Opinions of the Attorney General No. 7, September 14, 1964, Re: Selection of Mental Health [.] School and University Lands by Boroughs Attorney General Warren C. Colver wrote in part:

Mental Health lands in Alaska were established under a Federal grant which directed that the lands be administered as a public trust and the income therefrom "be applied to meet the necessary expenses of the mental Health program of Alaska." . . .

The grants by the Federal Government of School and University lands and Mental Health lands were confirmed and transferred to the State of Alaska upon its admission to the Union under Section 6K of the Alaska Statehood Act (72 Stat. 339), with the express proviso that they be used for the purposes for which they were reserved. (emphasis added)

Since Statehood, the State of Alaska has continued to use these lands and the proceeds derived therefrom for the special purposes for which the Federal Government originally granted these lands to the Territory of Alaska. The Director of the Division of Lands is authorized by As. 38.05.035 to select, administer and dispose of Mental Health lands for the support of the Mental Health program. As 38.05.035(a)(13) provides as follows:

"select, administer, and dispose of mental health lands for the support of the mental health program (emphasis added in Colver letter)

The Legislature has clearly established a policy that the Mental Health lands continue to be dedicated for the support of the Mental Health program.

In conclusion, it is our opinion that the Mental Health School and University lands of the State are not unappropriated, unreserved State lands within the meaning of As 07.10.150 and are not subject to selection by a borough under that Act.

However, in the actual administration of Mental Health Lands the State:

-- Transferred Mental Health Lands to various State of Alaska agencies with no or inadequate compensation and/or accounting to the Mental Health Lands Trust;

— Transferred Mental Health Lands into State Parks or

other non-revenue producing categories with no or inadequate compensation and/or accounting to the Mental Health Lands Trust;

-- Took public rights-of-ways from Mental Health Lands with no or inadequate compensation and/or accounting to the Mental Health Lands Trust;

___ Took gravel and other valuable materials from Mental Health Lands with no or inadequate compensation and/or accounting to the Mental Health Lands Trust;

-- Purportedly sold, leased, exchanged, or otherwise purported to convey Mental Health Lands or interests therein to third parties with no or inadequate compensation and/or accounting to the Mental Health Lands Trust;

___ Otherwise violated its trust responsibilities in the management of Mental Health Lands;

all in violation of clearly established legal requirements for the administration of federal trust lands.

By 1975 there had been enough questions raised with regard to the administration of Mental Health Lands and other trust lands by the State of Alaska (University and School) that a paper on the subject was written by a State of Alaska, Division of Lands Summer Law Clerk, Ronald L. McGowan entitled A Report On Alaska's School, University And Mental Health Lands (The McGowan Report). See Exhibit A.

Among other things the McGowan Report states:

... Some State of Alaska agencies are currently using these lands without making any compensation.

This practice appears to be in violation of law. (p.12)

...the Attorney General held that such [Mental Health] lands could be exchanged for general grant lands under certain contingencies; specifically: 1. such exchange will further a legitimate state purpose; 2. the integrity of the mental health trust be preserved; and, 3. the exchange, at least in part, supports the mental health program. (p.8)

... In the final analysis Alaska must see to it that its school, university and mental health lands continue to be in support of the purposes for which they were granted. (p.14)

... To assure that these lands continue to support the purposes for which they were granted, any proceeds, income, or other funds derived from them must go to the support of the appropriate program. (p.15)

(Emphasis Added)

By 1976 there had been general recognition within the State of Alaska's Division of Lands, that the Alaska Mental Health Enabling Act was being violated by the State of Alaska in its administration of Mental Health Lands.

On January 28, 1976 Dale P. Tubbs, Deputy Director, Division of Lands, Department of Natural Resources, State of Alaska wrote to George E. Utermohle, Legislative Intern, Legislative Affairs Agency in response to a series of written questions in part:

The criteria used in selecting mental health grant lands was to create money for the fund from the management and disposal of the lands and resources involved. Lands were picked adjacent to communities knowing that the expansion would involve the land and be needed for economic reasons. Also large blocks of land were picked where known resources were involved that would create revenue.

. . . In many instances recommendation by any of these agencies [various State agencies] may have an adverse impact on the production of revenue.

. . . It can be estimated however that not more than 5000 acres of mental health lands have been sold.

. . . Also past legislation and state use has appropriated some of the lands without generating revenue.

. . . It would be recommended that any legislation that tends to appropriate mental health lands require a fiscal note determining the land value that is being taken from the mental health grant to the benefit of the legislation. To compensate the loss by putting the lands into a non-revenue producing category it could be suggested that the Legislature be required to put into the mental health fund account the market value of the lands appropriated.

On April 27, 1976 Michael C. T. Smith, Director, Division of Lands, Department of Natural Resources, State of Alaska wrote to Guy R. Martin, Commissioner, Department of Natural Resources on School, University, and Mental Health Grant Lands - Lack of Effective Programs in part:

The primary purpose for the existence of these lands is to generate revenues from their lease or sale, the revenues then to be used in furtherance of the respective program.

At this time there is no trust fund for the Mental Health Land revenues, although a strict accounting of revenues received from Mental Health Lands is kept as these monies enter the General Fund.

. . . However, it is unfair to the university program, as well as technically flaunting the purposes for which lands were given to University, for these lands to be permanently tied up in a nonrevenue producing classification. Other examples include considerable acreages of Mental Health, School and University lands presently withdrawn within Chugach State Park and Palmer Hay Flats Wildlife Refuge.

On February 8, 1977, Assistant Attorney General Thomas E. Meacham, wrote a "Brief Synopsis of School, University and Mental Health Land Statutes" (Meacham Synopsis). Portions of the Meacham Synopsis are:

State courts in other states have discussed the trust responsibilities of states regarding lands granted them under the terms of a particular federal act, and have generally held that the administration of the lands must

STATE OF ALASKA 1986 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date : 4/7/86

REQUEST

Bill/Resolution No. : CSSSHB 128
 Title : Interim Mental Health Land Management Commission
 Sponsor : Pignalberi
 Requestor : House Judiciary
 Date of Request : 3/24/86

FISCAL DETAIL

Agency Affected : Natural Resources
 BRU : Land & Water Management
 Components : _____

EXPENDITURES/REVENUES : (Thousands of Dollars)

OPERATING	FY 86	FY 87	FY 88	FY 89	FY 90	FY 91
PERSONAL SERVICES		308.5	270.7			
TRAVEL		33.0	32.0			
CONTRACTUAL		333.9	37.8			
SUPPLIES		9.6	9.1			
EQUIPMENT		3.0				
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING		688.0	349.6			

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

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

FUNDING : (Thousands of Dollars)

GENERAL FUND		688.0	349.6			
FEDERAL FUNDS						
OTHER						
TOTAL		688.0	349.6			

POSITIONS :

FULL-TIME		7	6			
PART-TIME						
TEMPORARY						

ANALYSIS : Attach a separate page if necessary

SEE ATTACHED

Prepared by : Mike Vediner Phone : 465-2400
 Division : Commissioner's Office Date : 4/7/86
 Approved by Commissioner : [Signature] Date : 4/7/86
 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
4-7-86
CSSSHB 128
Revised 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. No funding is included for contracting with the plaintiffs and intervenors in the case.

FY 87

1. Account for all funds or land received from conveyances and exchanges made between July 19, 1978 and October 4, 1985. Estimated costs: \$40,800

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 (37.8 personal services; 1.0 travel; 1.5 contractual; 0.5 commodities).

2. Identify and appraise all less than fair market value conveyances and encumbrances. Estimated costs: \$304,800.

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. If section 3(b) of the bill intends that all mental health land be appraised, then the cost will be \$1,206,100.

The reports and maps must take approximately 1,100 parcels into consideration. We expect this project to take a single Natural Resource Officer I three months to complete. Additionally, the project will need funding for supplies and contractual clerical services (9.5 personal services; .5 contractual; .2 commodities).

The appraisals are expected to cost \$294,600. We project that approximately 820 parcels totalling 268,000 acres will need appraisals at an estimated cost of \$215,000. This figure could be reduced to \$28,000 if the department uses

the Opinion of Value panel method similar to that used in meeting the court stipulated appraisal for mental health land values as of July 19, 1978. 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. The approximate cost of these lease reappraisals is \$79,600.

3. Provide management oversight of all transactions and account for funds received from mental health lands.
Estimated costs: \$142,700.

Statewide trust management oversight can be provided by a Natural Resource Manager II with support from a Natural Resource Officer I. That manager would be expected to review a large number of transactions, with research assistance from a subordinate, to ensure that the trust is not breached. It is expected that the manager will also provide the necessary coordination between the department and the plaintiffs, and will be required to travel.

Accounting functions can be broken into two parts: ongoing accounting services, and an independent audit. An accounting Technician I will be needed to receive and separately process that portion of the approximately \$1.5 billion taken in by DNR annually that should be assigned to the mental health accounts.

Line items in this total are: 124.0 personal services; 6.0 travel; 11.3 contractual; and, 1.4 commodities.

4. Provide administrative support to the commission.
Estimated costs: \$53,600.

The department would need to provide administrative support to the commission which includes arranging meetings, preparing briefing packets, documenting meeting results, and clerical support. The Natural Resource Officer I listed in item 3 above could assist with the details of action review and a Clerk Typist III would be needed to assist with typing and organization of meetings. Contractual monies would cover duplication costs, phone charges, postage, etc. Travel and per diem funding is for meetings of the commission. Commodities money is to cover routine supplies and maps (27.1 personal services; 18.0 travel; 6.0 contractual; 2.5 commodities).

5. Executive Director and secretary for Commission.
Estimated costs: \$146,100.

The executive director receives a monthly salary at the division director level (range 26). Office support is provided by a secretary (range 10). Both persons serve in the exempt service. Travel funding enables the director to meet regularly with the diverse mental health constituent groups. Contractual funding provides office space and overhead. Equipment funding is for a one time purchase of office equipment. Line item totals are: 110.1 personal services; 8.0 travel; 20.0 contractual; 5.0 commodities, and, 3.0 equipment.

FY 88

All anticipated court ordered reports will be completed in FY 87. Therefore, FY 88 costs will be substantially reduced. Support for the commission will include 3 months of an NRO I, the clerk typist III, and similar support costs (36.6 personal services; 18.0 travel; 6.5 contractual; 2.7 commodities).

The department would continue to provide the oversight function described in item 3 for FY 87 with costs of 124.0 personal services, 6.0 travel, 11.3 contractual, and 1.4 commodities.

The executive director, staff, and support costs, minus equipment, continue in FY 88: 110.1 personal services; 8.0 travel; 20.0 contractual; and, 5.0 commodities.

STATE OF ALASKA 1986 LEGISLATIVE SESSION FISCAL NOTE

Revision Date : 4/3/86

REQUEST

Bill/Resolution No. : CSSSHB 128
 Title : Interim Mental Health Land Management Commission
 Sponsor : Pignalberi
 Requestor : House Judiciary
 Date of Request : 3/24/86

FISCAL DETAIL

Agency Affected : Natural Resources
 BRU : Land & Water Management
 Components : _____

EXPENDITURES/REVENUES : (Thousands of Dollars)

OPERATING	FY 86	FY 87	FY 88	FY 89	FY 90	FY 91
PERSONAL SERVICES		308.5	270.7			
TRAVEL		33.0	32.0			
CONTRACTUAL		323.9	37.8			
SUPPLIES		9.6	6.4			
EQUIPMENT		3.0				
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING		678.0	346.9			

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

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

FUNDING : (Thousands of Dollars)

GENERAL FUND		678.0	346.9			
FEDERAL FUNDS						
OTHER						
TOTAL		678.0	346.9			

POSITIONS :

FULL TIME		7	6			
PART-TIME						
TEMPORARY						

ANALYSIS : Attach a separate page if necessary

see attached

Prepared by : Mike Vediner
 Division : Commissioner's Office

Phone : 465-2400
 Date : 4/3/86

Approved by Commissioner : *Mike D. Jensen*
 Agency : Department of Natural Resources

Date : 4/3/86

Distribution (by Agency preparing fiscal note) :

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

Department of Natural Resources
4-3-86
CSSSHB 128
Revised 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. No funding is included for contracting with the plaintiffs and intervenors in the case.

FY 87

1. Account for all funds or land received from conveyances and exchanges made between July 19, 1978 and October 4, 1985. Estimated costs: \$40,800.

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 (37.8 personal services; 1.0 travel; 1.5 contractual; 0.5 commodities).

2. Identify and appraise all less than fair market value conveyances and encumbrances. Estimated costs: \$304,800.

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. If section 3(b) of the bill intends that all mental health land be appraised, then the cost will be \$1,206,100.

The reports and maps must take approximately 1,100 parcels into consideration. We expect this project to take a single Natural Resource Officer I three months to complete. Additionally, the project will need funding for supplies and contractual clerical services (9.5 personal services; .5 contractual; .2 commodities).

The appraisals are expected to cost \$294,600. We project that approximately 820 parcels totalling 268,000 acres will need appraisals at an estimated cost of \$215,000. This figure could be reduced to \$28,000 if the department uses

the Opinion of Value panel method similar to that used in meeting the court stipulated appraisal for mental health land values as of July 19, 1978. 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. The approximate cost of these lease reappraisals is \$79,600.

3. Provide management oversight of all transactions and account for funds received from mental health lands.
Estimated costs: \$142,700.

Statewide trust management oversight can be provided by a Natural Resource Manager II with support from a Natural Resource Officer I. That manager would be expected to review a large number of transactions, with research assistance from a subordinate, to ensure that the trust is not breached. It is expected that the manager will also provide the necessary coordination between the department and the plaintiffs, and will be required to travel.

Accounting functions can be broken into two parts: ongoing accounting services, and an independent audit. An accounting Technician I will be needed to receive and separately process that portion of the approximately \$1.5 billion taken in by DNR annually that should be assigned to the mental health accounts.

Line items in this total are: 124.0 personal services; 6.0 travel; 11.3 contractual; and, 1.4 commodities.

4. Provide administrative support to the commission.
Estimated costs: \$53,600.

The department would need to provide administrative support to the commission which includes arranging meetings, preparing briefing packets, documenting meeting results, and clerical support. The Natural Resource Officer I listed in item 3 above could assist with the details of action review and a Clerk Typist III would be needed to assist with typing and organization of meetings. Contractual monies would cover duplication costs, phone charges, postage, etc. Travel and per diem funding is for meetings of the commission. Commodities money is to cover routine supplies and maps (27.1 personal services; 18.0 travel; 6.0 contractual; 2.5 commodities).

5. Executive Director and secretary for Commission.
Estimated costs: \$146,100.

The executive director receives a monthly salary at the division director level (range 26). Office support is provided by a secretary (range 10). Both persons serve in the exempt service. Travel funding enables the director to meet regularly with the diverse mental health constituent groups. Contractual funding provides office space and overhead. Equipment funding is for a one time purchase of office equipment. Line item totals are: 110.1 personal services; 8.0 travel; 20.0 contractual; 5.0 commodities; and, 3.0 equipment.

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The executive director, staff, and support costs, minus equipment, continue in FY 88: 110.1 personal services; 8.0 travel; 20.0 contractual; and, 5.0 commodities.

STATE OF ALASKA 1986 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date : _____

REQUEST

Bill/Resolution No. : CSSSHB 128
 Title : Interim Mental Health Land Management Commission

Sponsor : Pignalberi
 Requestor House Resources
 Date of Request : 3-24-86

FISCAL DETAIL

Agency Affected : DNR
 BRU : Land/Water Mgmt.

Components : _____

EXPENDITURES/REVENUES : (Thousands of Dollars)

OPERATING	FY 86	FY 87	FY 88	FY 89	FY 90	FY 91
PERSONAL SERVICES		198.4	160.6			
TRAVEL		25.0	24			
CONTRACTUAL		303.0	17.8			
SUPPLIES		4.6	1.4			
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING		531.9	203.8			

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

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

FUNDING : (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL		531.9	203.8			

POSITIONS :

FULL-TIME		5	4			
PART-TIME						
TEMPORARY						

ANALYSIS : Attach a separate page if necessary

See Attached

Prepared by : Mike Vediner Phone : 465-2400

Division : Commissioner's Office Date : _____

Approved by Commissioner : Wm D. Spindel Date : 3/24/86

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
3-24-86
CSSSHB 128
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. No funding is included for contracting with the plaintiffs and intervenors in the case.

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The appraisals are expected to cost \$294,600. We project that approximately 820 parcels totalling 268,000 acres will need appraisals at an estimated cost of \$215,000. In

addition, approximately 276 leases must be reappraised at five-year intervals (the Legislature created a first term of 25 years during which time rents cannot be raised). The approximate cost of these lease reappraisals is \$79,600.

In meeting the court stipulated appraisal for mental health land values as of July 19, 1978, the department used an Opinion of Value Panel approach which has subsequently caused the plaintiffs and intervenors much concern. Using this approach here, the estimate for appraisals reduces to \$28,000.

3. Provide management oversight of all transactions and account for funds received from mental health lands.
Estimated costs: \$142,700.

Statewide trust management oversight can be provided by a Natural Resource Manager II with support from a Natural Resource Officer I. That manager would be expected to review a large number of transactions, with research assistance from a subordinate, to ensure that the trust is not breached. It is expected that the manager will also provide the necessary coordination between the department and the plaintiffs, and will be required to travel.

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The department would continue to provide the oversight function described in item 3 for FY 87 with costs of 124.0 personal services, 6.0 travel, 11.3 contractual, and 1.4 commodities .

STATE OF ALASKA 1985 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date: _____

REQUEST

Bill/Resolution No.: HB 128
 Title: Mental Health Trust Lands
 Sponsor: Signalberi, et al.
 Requestor: _____
 Date of Request: _____

FISCAL DETAIL

Agency Affected: Natural Resources
 Program Category Affected: _____
 BRU, Program or Subprogram(s) Affected: Land and Water Management

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 85	FY 86	FY 87	FY 88	FY 89	FY 90
OPERATING						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 SUPPLIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS						
800 MISCELLANEOUS						
TOTAL OPERATING						
CAPITAL						
REVENUE		(1,500)	(1,500)	(1,500)	(1,500)	(1,500)

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: Attach a separate page if necessary

Projected lost revenue is based on an average income from state land sales of \$15,000,000 annually, 10 percent of which is from mental health land.

Prepared By: Michael E. Vediner Phone: 465-2400
 Division: Land and Water Management Date: March 20, 1985
 Approved by Commissioner: Thomas D. Arnold, Deputy Date: March 20, 1985
 Agency: Dept. Natural Resources

Distribution (by Agency preparing fiscal note):

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

7/1/84

STATE OF ALASKA

DEPARTMENT OF NATURAL RESOURCES

OFFICE OF THE COMMISSIONER

BILL SHEFFIELD, GOVERNOR

POUCH M
JUNEAU, ALASKA 99811
PHONE: 907-485-2400

April 25, 1985

Mr. Michael Penfold
State Director
Bureau of Land Management
701 C Street, Box 13
Anchorage, AK 99513


Dear ^{Mike} Mr. Penfold:

Thank you for your comments regarding HB 128 (mental health lands).

As you know from my past actions on allotment reconveyances, I agree with you that the State should reconvey valid Native allotments whether or not they are on mental health lands. This is a concern that we have raised with the bill's sponsors and with each member of the House of Representatives (see attachment).

I hope that BLM will not permit the consideration of this bill by the Legislature to impede expeditious action on valid allotments. As I have stated before in writing and in person, the State remains committed to timely federal, review, survey, and conveyance of valid allotments. This is a high priority for the State and we will continue to do everything we can to cooperate.

Sincerely,



Esther C. Wunnicke

Attachment: March 8 letter to all legislators

cc: w/incoming -

Rep. M. M. Miller, Chair, House Judiciary
Rep. Marco Pignalbert, Sponsor, HB 128
Rep. Ben Grussendorf, Speaker of the House
Rep. Al Adams, Chair, House Finance
Rep. Peter Goll
Senator Richard Eliason

*If was a great day
Tuesday. The next
morning it
snowed!
E.*

March 8, 1985

The Honorable Mitchell Abood, Jr.
Alaska State Senate
Pouch V
Juneau, AK 99811

Dear Senator Abood:

I am writing each member of the Legislature to provide current information on two issues of rising concern to Alaskans: the management of the state's mental health lands and progress in negotiations between the state and Seldovia Native Association, Inc. (SNA) regarding a possible land exchange in Kachemak Bay State Park. These two issues are largely unrelated, but they are summarized in this letter owing to the broad interest that has been exhibited in them.

Mental Health Lands Status

I am enclosing a briefing packet on the mental health lands issue, but let me also provide a summary progress report.

The current issue regarding mental health land management arises from a class action lawsuit that has reached the Alaska Supreme Court, in which plaintiffs contest 1978 legislation that redesignated mental health lands for general use and provided for a mental health trust fund to which appropriations have not been made (AS 37.14.010-.050).

The mental health lands include valuable acreage in the Swanson River oil and gas field, Beluga coal field, Trans Alaska Gasline System project, and Eklutna water project. Pursuant to the 1978 legislation, other mental health lands have been conveyed to municipalities in fulfillment of their entitlements and to individuals under land disposal programs. At the Court's direction we are conducting an audit and inventory of mental health lands that will produce preliminary results in mid-March and will be complete in mid-May. The audit will indicate more clearly what is at stake, but we are already aware that the mental health lands could be very valuable

March 8, 1985

because of their location and resources. I will keep you informed as this information becomes available.

The state has expressed to the sponsors of HB 128 (providing for a moratorium on conveyances of mental health lands) its interest in discussing settlement of the litigation that is pending in the State Supreme Court or of possible litigation in federal court (as threatened by the Alaska Mental Health Association). Our attorney, Tom Koester of the Department of Law, has been designated by the administration to serve as the point of contact in these negotiations. Either Tom or members of my staff remain available to brief you further.

I believe that passage of legislation such as HB 128 could have an adverse effect on the state's management of these lands without corresponding benefits for the plaintiffs in the suit. I want to be sure that you are aware of our interest in constructive resolution of the litigation.

Kachemak Park Land Exchange

A 1978 agreement between the state and the Seldovia Native Association, Inc., (SNA) provides for a full trade-out of the corporation's land within Kachemak Bay State Park for an equal-value amount of state land outside the park. This exchange has been under way for several years, during which time the state has exchanged for about 3,500 acres of SNA land within the park. At present, there are another 23,000 acres of SNA land within the park.

To the frustration of both parties, completion of the trade has been delayed by several factors. Foremost is the difficulty of identifying a sufficient amount of state land of interest to SNA which can be made available for the trade. Our experience indicates that Seldovia is primarily interested in developable state land with road access or water frontage. Obviously, this type of state land is in short supply and in high demand from other competing interests (particularly on the Kenai Peninsula).

In an attempt to complete this trade as soon as possible in a single action (rather than in phases), I have instructed my staff to identify a large inventory of potential trade land, including land outside the Kenai Peninsula area. We will identify a pool of land well in excess of that needed to complete an equal value exchange, so as to afford Seldovia and the state the flexibility to refine the land pool as needed. Mr. Fred Elvsaas,

March 8, 1985

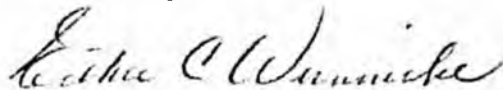
President of the SNA, has received a preliminary list of some available state land, and I've explained to him that our statutes require our preliminary agreement to undergo public and legislative review. The department cannot unilaterally commit state land to the trade without this review.

In recent correspondence copied to members of the Legislature, the president of SNA signalled a lack of confidence in the department's approach to the exchange. I have met with Mr. Elvsaaas on numerous occasions and each time I have reiterated my interest in and commitment to the trade -- but I also have tried to clarify that land exchanges are subject to a public process and that no agreement can be considered final unless it passes through the required process. I want you also to be aware of this process and my interest in the trade.

As you will see in the enclosed briefing paper on land exchanges, an exchange of such magnitude is subject to legislative approval. AS 38.05.020(a) requires legislative approval if an exchange involves state land having an appraised or estimated fair market value of more than \$5,000,000, or is for other than equal appraised fair market value. The department will continue attempts to negotiate the trade this spring and summer with SNA. Assuming we reach an agreement, I expect to hold public hearings on the trade this fall and submit the exchange for legislative review under AS 38.50.140 at the beginning of the 1986 session.

I will do my best to keep you advised as we continue to negotiate with SNA. I would be pleased to arrange a briefing on the trade for you if you are interested.

Sincerely,



Esther C. Wunnicke
Commissioner

Enclosures

cc: Governor Bill Sheffield
John Shively, Office of the Governor
Attorney General Norm Gorsuch
Tom Koester, Department of Law
Tom Hawkins, Division of Land
and Water Management
Fred Elvsaaas, Seldovia Native Association, Inc.



United States Department of the Interior

BUREAU OF LAND MANAGEMENT

(965)

Alaska State Office
701 C Street, Box 13
Anchorage, Alaska 99513

April 12, 1985

Mrs. Esther C. Wunnicke
Commissioner
Department of Natural Resources
Pouch M
Juneau, Alaska 99811

DEPARTMENT OF
NATURAL RESOURCES

APR 15 1985

COMMISSIONER'S OFFICE
JUNEAU

Dear Mrs. Wunnicke:

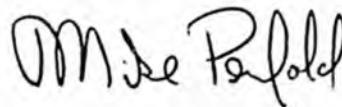
We, at the Bureau of Land Management, were dismayed to learn recently of the introduction of House Bill No. 128 in the present legislative session. Its intent is to prohibit the State of Alaska from conveying or disposing of Mental Health Trust lands received from the Federal government. We would like to share our concern with your office because this proposed legislation is in partial contradiction to legislation passed last year permitting such reconveyance.

Senate Bill No. 375 was passed in the 1984 session as enabling legislation to permit the State of Alaska to quitclaim lands wrongfully or erroneously conveyed by the Federal government. Both the State of Alaska and the Bureau of Land Management are presently in the process of preparing reconveyance procedures to implement last year's legislation, an action necessitated by the issuance of Stipulated Procedures by the United States District Court which resulted from the Ethel Aguilar, et al, class action lawsuit. These procedures direct the return of valid claims under the Native Allotment Act of 1906 where land had inadvertently been patented to the State of Alaska.

House Bill No. 128, presently in the Judiciary Committee, is not only contradictory in part to the enabling legislation passed last year, it is in opposition to work already accomplished in the Haines area, an area of priority by request of the State of Alaska. Specifically, there are 19 Native allotments in the Haines vicinity which involve Mental Health Trust lands. The Haines locality is not an isolated situation; there are other areas throughout the State involving Native allotments and Mental Health Trust lands.

It is hoped your office will bring House Bill No. 128 to the attention of the Chief Executive or mediate its outcome in committee to the satisfaction of all concerned.

Sincerely yours,

A handwritten signature in cursive script that reads "Mike Penfold". The signature is written in dark ink and is positioned above the typed name.

Michael J. Penfold
State Director

STATE OF ALASKA

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

April 10, 1985

BILL SHEFFIELD, GOVERNOR

REPLY TO:

1031 W 4th AVENUE
SUITE 200
ANCHORAGE, ALASKA 99501
PHONE: (907) 276-3550

1st NATIONAL CENTER
100 CUSHMAN ST.
SUITE 400
FAIRBANKS, ALASKA 99701
PHONE: (907) 452-1568

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

The Honorable Peter Goll
Alaska State House of Representatives
Pouch V
Juneau, AK 99811

Re: HB 128 (mental health trust land)

Dear Representative Goll:

You asked "[h]ow will HB 128, relating to mental health trust lands, affect any wrongfully conveyed Mental Health lands?" The thrust of your inquiry appears to be whether HB 128, which would preclude the state from conveying or otherwise disposing of any land owned in fee, which the state received from the federal government under section 202 of the Alaska Mental Health Enabling Act of 1956, P.L. 84-830, would preclude the state from implementing ch. 152, SLA 1984. That statute authorized the state to transfer land back to the federal government if the land was wrongfully or erroneously conveyed by the federal government to the state in the first place. It was designed particularly to facilitate the granting of certain Native allotments.

The short answer to your question is that HB 128, if enacted, probably would preclude the state from transferring the land back to the federal government. The general rule is that a subsequently passed law takes precedence over a previously passed law to the extent of any inconsistency. However, if there was sufficient legislative history indicating that the legislature did not intend HB 128 to prevent the state from implementing ch. 152, SLA 1984, it is possible that HB 128 would not preclude the transfer back to the federal government which that earlier statute authorized. In other words, there is no clear answer to your question, although (in the absence of rather clear evidence of legislative intent to the contrary) it is likely that HB 128 would preclude a transfer back to the federal government.

To ensure that HB 128 does not have that effect, you suggest that an amendment to HB 128 might solve the problem. You propose that the word "properly" be inserted on line 12 after the word "was." We would suggest, as a possible alternative, that

The Honorable Peter Goll

April 10, 1985
Page 2

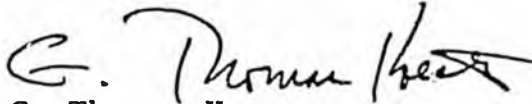
the following phrase be inserted at the end of line 13 after the reference to "(P.L. 84-830):" ", except as authorized by AS 38.-05.035(b)(9)." This would make it abundantly clear that HB 128 was not intended to preclude the state from implementing the 1984 statute which added paragraph (9) to AS 38.05.035(b).

As you may know, the Administration has not yet had an opportunity to comment in detail on HB 128. We believe that there are a number of considerations that have not yet been brought to the legislature's attention regarding this bill, and look forward to an opportunity to make our concerns known. As a result, our suggestion of the foregoing amendment to take care of the problem you raise should not be considered as Administration approval or agreement with the bill as a whole.

If we can provide further information or answer any additional questions, please contact us at your convenience.

Sincerely,

NORMAN C. GORSUCH
ATTORNEY GENERAL

By: 
G. Thomas Koester
Assistant Attorney General

GTK:dln

cc: Honorable Esther C. Wunnicke
Commissioner
Department of Natural Resources



ALASKA STATE LEGISLATURE
Katie Hurley, House of Representatives

Pouch V
Juneau, Alaska 99811
Ph: (907) 465-4763
Box 870157
Wasilla, Alaska 99687

Chair, State Affairs Committee
Member, Health Education & Social Services
Member, Alaska Legislative Council
Member, House Special Committee on Fisheries

April 4, 1985

Representative Mike M. Miller
Chair, House Judiciary Committee
Pouch V
Juneau, Alaska 99811

Re: House Bill No. 128 -
No Conveyance of Mental
Health Lands

Dear Mike:

A constituent of mine, Dallas Nichols, P. O. Box 520111, Big Lake, Alaska 99652, has called to seek assistance in protecting his application to purchase a piece of mental health land. He has built a home on leased mental health land and has an application in to purchase the land. Is it possible to amend the bill to insert language that would include any applications for purchase that are currently pending?

You will receive a letter from Mr. Nichols this week detailing his problem. I will appreciate your consideration of this request.

Sincerely,

A handwritten signature in cursive script that reads "Katie".

Katie Hurley
Representative

cc: Dallas Nichols
Representative Pignalberi



CITY/BOROUGH OF JUNEAU

★ ALASKA'S CAPITAL CITY

April 4, 1985

House Judiciary Committee
Pouch V
Juneau, AK 99811

Re: HB 128 (Mental Health Lands)

Gentlemen:

The City and Borough of Juneau is acutely aware of the inadequacy of the state revenues available for the support of mental health and is certainly in sympathy with the ultimate goals of those who support HB 128. However, we believe there are problems with the approach taken in HB 128 that dictate a different or modified course of action.

When the legislature adopted 182 SLA 1978, it not only released the mental health lands from the mental health trust, it also established a money trust as a substitute for the land trust. See AS 37.14.010 through 050. As provided in AS 37.14.050, the Commissioner of the Department of Revenue was to transfer to this trust fund an amount equal to one and one-half percent of the total revenue derived from the management of state land, including rents and royalties. Of course, the transfer was subject to legislative appropriation of sufficient funds. The legislation also established a Mental Health Fund Advisory Board consisting of the Director of the Division of Mental Health, the Chairman of the Mental Health Advisory Council and the Commissioner of the Department of Revenue.

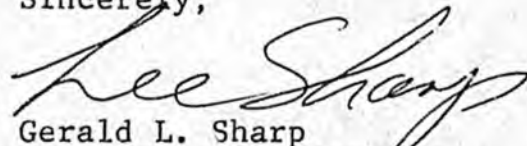
When the redesignation concepts found in 182 SLA 1978 were being discussed in the legislature, there were two clearly identified goals the legislature sought to accomplish. First, it was perceived that the mental health trust lands had not been put to productive use and were not producing income to be used for mental health programs. The trustees for the mental health land trust fund did not appear to be making any effort to make the land either productive or available for use by the citizens of the state. Because the land was unproductive, there was no income to be used for mental health purposes. Changing the trust from a land trust to a money trust would create a trust with a much higher probability of having income that could be devoted to mental health programs in the state.

April 4, 1985

In addition, in the mid and late 1970's, there was a vocal and widespread outcry for the state to make available large quantities of land for private ownership and development. This Act was one of several adopted by the legislature in response to that outcry. By redesignating the mental health land as general grant land, land became available for conveyance by the state to private individuals under the various land disposal programs established by the legislature. In addition, it made the land available for selection by municipalities to meet the land entitlements they had received under 180 SLA 1978.

The City and Borough of Juneau is one of several Alaskan municipalities that has selected former mental health lands as a part of its entitlement. Currently over 3,800 acres of former mental health lands within the City and Borough of Juneau have been selected as a part of our land entitlement, but have not yet been conveyed to us. We made our selections in reliance on the statute and do not believe it would be either fair or equitable for the legislature to now renege on its prior action, at least as to the lands selected and tentatively approved under the Municipal Land Entitlement Act. The state is already involved in enough litigation in this matter without putting municipalities in the position of having to consider litigation to protect their selections. We all have better things to do with our time than to spend it in court. We urge you either to appropriate to the mental health fund the monies promised by the legislature or, if you believe the mental health lands still held by the state should be restored to the trust, then you should except from this bill those lands that have been selected by a municipality and tentatively approved for conveyance by the state.

Sincerely,



Gerald L. Sharp
City-Borough Attorney

GLS:jr

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* DELIVER TO: JFOM *
*
* ORIGINAL *
* SENT: 04/02/85 TIME: 12:58 *
* FROM: ANNIE NEUBAUER *
* SUBJECT: FOM/FAIRBANKS *
* PRINT DATE: 04/02/85 TIME: 12:58 *
*

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TO: HOUSE JUDICIAL COMMITTEE

REPS: M.M. MILLER, SUND, GRUENBERG, TAYLOR, CLOCKSIN,
PETTYJOHN, PHILLIPS

INTERIOR DELEGATION
REPS: FRANK, RINGSTAD, M.W. MILLER, KOPONEN, DAVIS
SENS: FAHRENKAMP, BENNETT, COGHILL

FROM: ANDREA BRICE, 611 BONNIFIELD, FAIRBANKS 99701

PHONE: 456-8698

R E: HB128 STOP SALE OF LAND ALLOCATED FOR MENTAL
HEALTH

I'D LIKE THIS BILL PASSED. IT WOULD HELP PAY FOR PROJECTS THAT
WE'RE TRYING TO PROMOTE.