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HOUSE COMMITTEE REPORT

(11)

Date referred: 4/15/87

FURTHER REFERRALS:

DATE: 4/27/87

The Finance Committee has considered HB 92

"An Act implementing a settlement relating to the federally created mental health trust; and providing for an effective date."

RECOMMENDS:

- replace with CS HB 92 (Fin) the same title
- attached amendment(s) a new title
- do pass
- do not pass
- no recommendation
- individual recommendations
- additional referral to the _____ Committee

ADOPTS: _____ letter of intent

ATTACHES NEW FISCAL NOTE(S):

- fiscal impact same as previous fiscal note published _____
- zero fiscal note same as previous zero fiscal note published _____
- zero with analysis

SIGNING DO PASS:

SIGNING OTHER RECOMMENDATIONS:

POWREHOT <u>Pat Powell</u>	LARSON <u>Ronald J Larson No Rec</u>
BROWN <u>Fay Brown</u>	FRANK <u>J Frank No Rec</u>
DAVIS <u>Michael Davis</u>	ADAMS <u>Al Adams</u>
BOYER <u>Mark Boyer</u>	RIEGER <u>Steve Rieger DO NOT PASS</u>
WALLIS <u>Ray Wallis</u>	GOLL <u>Peter Goll NO REC</u>

Al Adams
Chairman's signature

R.O HFC
4/27/87

STATE OF ALASKA 1987 LEGISLATIVE SESSION
FISCAL NOTE

(FIN)

REQUEST: _____

Bill Version: CS.B 92
Publish Date: 4/15/87

Revision Date: 4/23/87
Title: An Act relating to the Alaska
Mental Health Land Trust

Agency Affected: DHSS/DMHDD
BRU: Inst. & Admin.

Sponsor: Pourchot/Mental Health Comm.
Requestor: _____

Components: Mental Health Admin.

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 87	FY 88	FY 89	FY 90	FY 91	FY 92
PERSONAL SERVICES		115.6	126.1	126.1	126.1	126.1
TRAVEL		34.0	34.0	34.0	34.0	34.0
CONTRACTUAL		45.9	47.2	47.2	47.2	47.2
SUPPLIES		1.6	1.8	1.8	1.8	1.8
EQUIPMENT		6.0	0	0	0	0
LAND & STRUCTURES		0	0	0	0	0
GRANTS, CLAIMS		0	0	0	0	0
MISCELLANEOUS		0	0	0	0	0
TOTAL OPERATING		203.1	209.1	209.1	209.0	209.1

CAPITAL						
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REVENUE						
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FUNDING: (Thousands of Dollars)

GENERAL FUND		193.1	209.1	209.1	209.1	209.1
FEDERAL FUNDS						
OTHER		10.0*				
TOTAL						

POSITIONS:

FULL-TIME		3	3	3	3	3
PART-TIME						
TEMPORARY						

ANALYSIS : (Attach a separate page if necessary)

10.0 in travel funds will be transferred from DMHDD Administration to the Mental Health Board.

Prepared by: Pat Pourchot, Vice-Chair
Division: House Finance Committee

Phone: 465-3712
Date: 4/23/87

Approved by Commissioner: *Pat Pourchot*
Agency: _____

Date: 4/23/87

- Distribution (by preparer):
- Legislative Finance
 - Legislative Sponsor
 - Requestor
 - Office of Management and Budget
 - Impacted Agency(ies)
 - Senate Secretary

FISCAL NOTE
 CSHB 92 (HESS)
 MENTAL HEALTH BOARD

Personnel Services (11 months funding):

(1) Mental Health Board Coord.	Range 22	\$ 52,718
(1) Research Analyst III	Range 18	40,554
(1) Clerk Typist III	Range 8	22,279
		<u>\$115,551</u>

Travel:

Board travel and per diem	\$ 24,000*
4 meetings/year X 6,000/meeting	
Staff travel	10,000
5000/per prof. staff X 2	
	<u>\$ 34,000</u>

Contractual:

Phone, copying, printing, advertising	\$ 8,000
Professional services	20,000
Lease space 519 sq ft X 2.57 sq ft/mo X 11 mo.	14,666
Computer hook up 1600 X 2	3,200
	<u>\$ 45,867</u>

Supplies:

50/mo. X 11 X 3 staff	\$ 1,650
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Equipment:

2 personal computers 3000 X 2	\$ 6,000
2 printers	
Software	

TOTAL	<u>\$203,068</u>
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* Includes 10.0 from the DMHDD budget, currently identified for travel costs for the Governor's Mental Health Advisory Council. The 10.0 will be transferred from DMHDD Administration to the Mental Health Board.

STATE OF ALASKA 1987 LEGISLATIVE SESSION
FISCAL NOTE

REQUEST: _____

Bill Version: CS HB 92 (FIN)
Publish Date: _____

Revision Date: _____
Title: An Act relating to the federally created mental health trust
Sponsor: Rep. Pourchor
Requestor: House HESS

Agency Affected: Natural Resources
BRU: Land and water management

Components: _____

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 87	FY 88	FY 89	FY 90	FY 91	FY 92
PERSONAL SERVICES		126.9				126.9
TRAVEL		29.0				14.0
CONTRACTUAL		535.0				535.0
SUPPLIES		1.0				1.0
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING		690.9				576.9

CAPITAL						
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REVENUE						
---------	--	--	--	--	--	--

FUNDING: (Thousands of Dollars)

GENERAL FUND		690.9				576.9
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS:

FULL-TIME		3				3
PART-TIME						
TEMPORARY						

ANALYSIS : (Attach a separate page if necessary)

Prepared by: Tom Hawkins Phone: _____
Division: DNIR Date: _____

Approved by Commissioner: Al Adams Date: 4/23/87
Agency: House Finance Comm.

Distribution (by preparer):

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

CONTINUATION of FISCAL NOTE ANALYSIS

-- For Bill/Resolution No. CSHB 92/CSSB 96

With the passage of CSHB 92/CSSB 96 state-owned lands which have a substantial probability of remaining in state ownership in perpetuity would be used to reconstitute the Mental Health Trust. The Department of Natural Resources will be responsible for providing necessary staff support to the Interim Mental Health Trust Commission. Additionally, the department will also be responsible for the process of valuing the lands originally obtained by the state under the Alaska Mental Health Enabling Act and the replacement lands which are of equal value within legislative designations, this fiscal note assumes use of an opinion of value panel. If traditional appraisals are required to establish values, the cost of valuing the land will increase by \$700,000 for FY 88. The redetermination of the fair market value to be conducted in FY 92 would not require a traditional appraisal should one be accomplished this year. (Attached are a summary of an opinion of value covering approximately 52,000 acres of former mental health land which were selected, approved or patented to municipalities, traditional appraisals on 14 of those parcels and a comparison of the values for the 14 parcels which reveals a 7% difference in the total values between the two processes.)

Line Item Explanation

100 - Three positions - NRMI (18C) Staff - NRMI (18C) Review Appraiser - CT III (8A) Clerk,	126.9
200 - Travel to Interim Mental Health Trust Commission Meetings by Staff and the Commission members,	28.0
300 - Advertising, preparation of opinion of values on the original one million acres of MH Grant land and the equal value replacement lands, taking into account the differences in geographic areas, experience of the appraiser in the area, and any other conditions required by the Interim Mental Health Trust Commission.	535.0
400 - Supplies and commodities for Staff,	1.0

COST ESTIMATES - OPINION OF VALUE

3 member panel = \$2,200/day

3,000,000 acres to be valued
Approximately 5,000 parcels per 1,000,000 acres

15,000 parcels total

65 parcels valued per day

230 days work for the panel = \$507.7

Contract typing = \$7.8

Advertising = \$2.0

Purchase Maps, Plats = \$15.0

Publication of Final Values Forms = \$2.5

Total \$535.0

MEMORANDUM

State of Alaska

TO: HB 92 (Mental Health lands) file DATE: 4/23/87

FILE NO.:

THRU:

TELEPHONE NO.:

FROM: *jam*
Frank Mielke

SUBJECT: Breakdown of costs in
fiscal note to CSHB 92-
Mental Health Lands

The breakdown of the costs for implementing CSHB 92 are as follows:

- (1) Personal services - \$126,900 for 2 Natural Resource Manager I (range 18); 1 NRM I to advertise, negotiate contracts, issue instructions, review opinions of value, etc. ; 1 NRM I land manager to prepare maps, plats, aerial photography, legal descriptions and to generally assist the commission in selecting and reviewing lands.
+ CTCB who actually does the work.
- (2) Travel - \$28,000 for board travel and per diem; the commission established by section 5 will be reviewing lands for replacement, holding public hearings on those lands, and meeting with other interests groups potentially affected by the replacement and redesignation of the land.
- (3) Contractual - \$535,000 is for (a) \$500,000 for contractual services by private appraisers to prepare opinions of value for MH land within legislatively designated areas (\$200,000) and for replacement land (\$300,000); (b) \$35,000 is for contractual services in analyzing replacement lands, including mapping, platting, minor surveys, aerial photography, soil analysis and other consultant services.
- (4) Supplies - \$1,000 is principally for map reproduction copy paper, and other office supplies.

DELIVER TO: <i>Tom Hawkins</i>	LOCATION: <i>Comm Ofc. JNU</i>
FROM: <i>Frank Mielke / LBSUM</i>	LOCATION: <i>Anchorage</i>
TELEPHONE/TELECOPIER # <i>586-2254</i>	TOTAL NUMBER OF PAGES: <i>1</i>
TRANSMITTING ON/SPEED: <i>Fast</i>	DATE: <i>4/23/87</i> TIME: <i>1:15</i>
PHONE FOR PROBLEMS-NAME/NUMBER: <i>Charlotte Spence / 569-2066</i>	
COMMENTS:	

OPINION OF VALUE

The opinion of value process involves three knowledgeable appraisers one from each of three geographic areas of the state (Southeast, Southcentral, and Northern). These appraisers sit as a panel, examine plats, maps and legal descriptions of mineral health land and, without benefit of field inspection of the subject or comparables, render an opinion of value for each parcel of property examined. Panel members bring appraisal reports and/or market data with them to panel sessions to use as support in the valuation process. The comprehensive appraisal files of the Department of Natural Resources are also made available to the panel.

The values rendered by the panel are not considered "market value" in the strictest accepted definition of the term. Proper appraisal reports are not required nor are field inspections conducted. The panel's findings are recorded on forms provided by the Department of Natural Resources. This form contains all available information relative to the parcel and is supplemented by plats and maps. At least two members of the three member panel sign signature blocks on each form indicating that they concur with the opinion of value. The lead appraiser for the affected geo-area must be one of the two signatures appearing on each parcel form.

The objective of using the panel method is to obtain a reasonable value estimate, at reasonable expense, in the shortest possible timeframe of the lands in total. The success of this process depends upon the expertise, appraisal background and market data resource each member brings to the panel.

personal ANCHORAGE-APPRAISAL/OPINION OF VALUE
on-site *panel w/pics, etc.*

Parcel	Appraisal		Opinion of Value		Percent Change
	Date	Value	Date	Value	
SM 196	2/27/79	805,000	2/27/79	792,000	...1.6%
SM 221	11/30/79	2,882,000	11/30/79	2,541,500	13.4%
SM 223	7/19/78	1,778,000	7/19/78	2,613,600	47%
SM 223	12/5/86	(5,691,000)	None for this date		
SM 224	11/30/79	2,292,000	11/30/79	1,760,000	30%
SM 271	7/19/78	(1,043,000)	None for this date		
SM 271	12/5/86	1,639,000	10/4/85	1,280,000	.28%

*7% higher -
as an average*

Ct. says do full blown appraisal

JUNEAU-APPRAISAL/OPINION OF VALUE

<u>Parcel</u>	<u>Appraisal</u>		<u>Opinion of Value</u>		<u>Percent Change</u>
	<u>Date</u>	<u>Value</u>	<u>Date</u>	<u>Value</u>	
CRM 86	7/19/78	42,750	7/19/78	20,000	214%
CRM 86	7/14/81	59,000	7/14/81	24,000	246%
CRM 90	7/19/78	(1,450,000)	None for this date		
CRM 90	7/14/81	1,900,000	7/14/81	407,000	467%
CRM 110	7/19/78	14,000	7/19/78	30,000	214%
CRM 110	5/1/80	19,275	5/1/80	35,000	182%
CRM 151	7/19/78	547,000	7/19/78	972,500	178%
CRM 151	7/14/81	607,000	7/14/81	1,215,600	200%
CRM 177	7/19/78	31,300	7/19/78	47,000	50%
CRM 177	7/14/81	46,950	7/14/81	54,800	17%
CRM 211	7/19/78	1,475,000	7/19/78	1,145,700	29%
CRM 211	7/14/81	2,000,000	7/14/81	1,309,400	53%

FAIRBANKS-APPRAISAL/OPINION OF VALUE

<u>Parcel</u>	<u>Appraisal</u>		<u>Opinion of Value</u>		<u>Percent Change</u>
	<u>Date</u>	<u>Value</u>	<u>Date</u>	<u>Value</u>	
FM 23	7/19/78	15,000	7/19/78	40,200	268%
FM 28	6/27/80	15,000	6/27/80	40,200	268%
FM 38	7/19/78	44,000	7/19/78	25,000	76%
FM 38	6/27/80	44,000	6/27/80	25,000	76%
FM 45	7/19/78	349,000	7/19/78	699,300	200%
FM 45	6/27/80	349,000	6/27/80	1,165,000	344%
FM 93	7/19/78	23,800	7/19/78	190,000	798%
FM 93	4/23/81	24,700	4/23/81	190,000	769%

Original sponsor: Pourchot/Joint Special Committee
on Mental Health Trust Land

1 IN THE HOUSE

BY THE FINANCE COMMITTEE

2 CS FOR HOUSE BILL NO. 92 (Finance)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FIFTEENTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act relating to the Alaska Mental Health Trust;
7 and providing for an effective date."

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

9 * Section 1. FINDINGS AND PURPOSE. (a) The legislature finds

10 (1) the United States Congress passed the Alaska Mental Health
11 Enabling Act of 1956, P.L. No. 84-830, 70 Stat. 709, "To confer upon Alaska
12 autonomy in the field of mental health, transfer from the Federal Govern-
13 ment to the Territory the fiscal and functional responsibility for the
14 hospitalization of committed mental patients, and for other purposes;"

15 (2) in sec. 202 of the Alaska Mental Health Enabling Act, the
16 Congress granted the territory the right to select up to one million acres
17 of federal land to serve as a source of funds to support the territory's
18 mental health program;

19 (3) in subsection 202(e), the Congress specifically provided
20 that the land so granted, as well as any income from the land and proceeds
21 from dispositions of the land, were to be administered as "a public trust
22 and such proceeds and income shall first be applied to meet the necessary
23 expenses of the mental health program of Alaska," that "Such lands, income,
24 and proceeds shall be managed and utilized in such manner as the Legisla-
25 ture of Alaska may provide," that the land may be "sold, leased, mortgaged,
26 exchanged or otherwise disposed of in such manner as the Legislature of
27 Alaska may provide, in order to obtain funds or other property to be in-
28 vested, expended or used by the Territory of Alaska," and that the Alaska
29 legislature must exercise this broad authority "in a manner compatible with

1 the conditions and requirements imposed by this Act;"

2 (4) in requiring that the proceeds and income of the 1,000,000-
3 acre land grant "first be applied to meet the necessary expenses of the
4 mental health program of Alaska," it was the intent of the Congress that
5 additional public funds be appropriated by the legislature to supplement
6 the proceeds and income from the land grant if those proceeds and income
7 are insufficient to meet the necessary expenses of the mental health pro-
8 gram of Alaska;

9 (5) if the proceeds and income from the 1,000,000-acre land
10 grant exceed the necessary expenses of the mental health program of Alaska,
11 the Congress authorized the legislature to appropriate the excess proceeds
12 and income for other public purposes;

13 (6) because of the highly desirable location and character of
14 much of the land selected by the state under the Act, for example, in and
15 around major population centers, suitable for parks and game refuges, and
16 other uses, and the difficulties associated with disposing of or dedicating
17 the land for purposes that would not result in the receipt of funds that
18 could be used for mental health purposes, for example, satisfaction of
19 municipal entitlements, placement in parks and game refuges, and other
20 uses, without compensation to the trust, the Tenth Alaska State Legislature
21 enacted ch. 181 and 182, SLA 1978, which, among other things, redesignated
22 all mental health lands as general grant lands;

23 (7) both ch. 181 and 182, SLA 1978, also created the mental
24 health fund into which, as compensation to the trust, a sum equal to one
25 and one-half percent of all revenue received from the management of state
26 land was to be deposited and from which only the income could be appro-
27 priated exclusively for mental health purposes;

28 (8) a significant difference between ch. 181 and 182, SLA 1978,
29 was that ch. 182 made the deposit of one and one-half percent of all public
CSHB 92(Fin)

1 land revenue into the mental health fund "subject to legislative appropri-
2 ation of sufficient funds";

3 (9) because ch. 182, SLA 1978 became law after ch. 181, SLA 1978
4 became law, the provisions of ch. 182, SLA 1978 have been considered con-
5 trolling, including specifically the provision that deposits to the mental
6 health fund would be "subject to legislative appropriation of sufficient
7 funds";

8 (10) the legislature has never appropriated funds to the mental
9 health fund;

10 (11) a class-action lawsuit, Weiss v. State, 4FA-82-2208, was
11 filed on November 26, 1982, seeking a judicial determination that the
12 Alaska Mental Health Enabling Act had established a "public trust" under
13 which the state had received the 1,000,000-acre land grant, that the 1978
14 legislation redesignating mental health land as general grant land was a
15 breach of that trust, and that the appropriate remedy was to invalidate the
16 1978 legislation and return mental health land to trust status;

17 (12) in State v. Weiss, 706 P.2d 681 (Alaska 1985), the Alaska
18 Supreme Court held that the Alaska Mental Health Enabling Act established a
19 public trust, that the 1978 legislation redesignating mental health land as
20 general grant land was a breach of the trust, and that the appropriate
21 remedy was to return mental health land still in state ownership to trust
22 status and, for mental health land that the state had "sold" between 1978
23 and the date of the court's decision, to compensate the trust for the fair
24 market value of mental health land so "sold" as of the date of their
25 "sale," subject to a set-off for state mental health expenditures during
26 the same period;

27 (13) while the court returned mental health land to trust status,
28 it did not specify the nature of the state's obligations with respect to
29 managing the trust land, leaving significant questions unanswered that may

1 require additional costly and time-consuming litigation;

2 (14) continued costly and time-consuming litigation over mental
3 health trust land management is not in the public interest because it
4 diverts attention from the goal the Congress sought to achieve through the
5 Act's land grant, the funding of a mental health program;

6 (15) continued costly and time-consuming litigation over mental
7 health trust land management is not in the public interest because it has
8 the potential to be extremely divisive, pitting the advocates of stringent
9 mental health trust land management against those who envision state-owned
10 mental health land managed for its highest and best use, including convey-
11 ance to municipalities in satisfaction of municipal entitlements, placement
12 in parks and game refuges, and other uses, without a major expenditure to
13 compensate the mental health trust for the fair market value of the land;

14 (16) continued costly and time-consuming litigation over mental
15 health trust land management is not in the public interest because advo-
16 cates of stringent mental health trust land management may seek the in-
17 validation of state conveyances of mental health land to third parties,
18 particularly municipalities and Native corporations organized under the
19 Alaska Native Claims Settlement Act, a course of action that at best will
20 place a cloud on the third parties' title to those lands and at worst will
21 result in those third parties losing title to their lands, causing economic
22 and other harm and further dividing those who advocate stringent mental
23 health trust land management from those who believe all state-owned land,
24 including mental health land, should be managed for its highest and best
25 use;

26 (17) continued costly and time-consuming litigation over mental
27 health trust land management is not in the public interest because advo-
28 cates of stringent mental health trust land management may seek the in-
29 validation of legislative designations of mental health land as state
CSHB 92(Fin)

1 parks, state game refuges, state forests, etc., placing the future use of
2 the land for the designated purposes in doubt and further dividing those
3 who advocate stringent mental health trust land management from those who
4 believe all state-owned land, including mental health land, should be
5 managed for its highest and best use;

6 (18) the failure of the Alaska Legislature to deal with the
7 current situation by properly reconstituting the mental health trust at
8 this time will lead to continued costly, time-consuming, and divisive liti-
9 gation, which is not in the public interest;

10 (19) the same problems that led to the 1978 redesignation of
11 mental health land as general grant land, for example, the desirability of
12 managing mental health land for its highest and best use, including the
13 satisfaction of municipal entitlements, inclusion in parks and game ref-
14 uges, will continue to pose difficulties in the state's efforts to accom-
15 modate the public's needs generally with the obligation to administer
16 mental health land as a trust;

17 (20) under art. VIII, sec. 2, Constitution of the State of
18 Alaska, as construed by the Alaska Supreme Court in State v. University of
19 Alaska, 624 P.2d 807 (1981), the legislature has the authority to remove
20 land from trust status if the trust is compensated for the fair market
21 value of the land;

22 (21) the state is not now, and in the foreseeable future will not
23 be, in a position to compensate the mental health trust in money for the
24 fair market value of mental health land;

25 (22) even if the state were able to compensate the mental health
26 trust in money for the fair market value of mental health land, there is a
27 substantial legal question whether that compensation, as the corpus of the
28 trust, could be preserved in perpetuity or whether the prohibition on
29 dedicated funds in art. IX, sec. 7, Constitution of the State of Alaska,

1 would require that those funds be made available for appropriation by the
2 legislature under the terms of the Alaska Mental Health Enabling Act;

3 (23) under art. VIII, sec. 2, Constitution of the State of
4 Alaska, and subsection 202(e) of the Alaska Mental Health Enabling Act, the
5 legislature has broad authority over all state land, including mental
6 health land, and can permissibly remove mental health land from trust
7 status if, consistent with its trust responsibilities, it simultaneously
8 designates other state land of equivalent value as mental health land;

9 (24) the Congress' goal of funding a mental health program, and
10 the public interest in having attention focused on the problems of the
11 mentally ill and not questions regarding mental health trust land manage-
12 ment, will be best served by establishing a mechanism for generating reve-
13 nue from mental health land that minimizes the number and complexity of
14 related land management decisions;

15 (25) reconstituting the mental health trust with state land that
16 has a substantial likelihood of remaining in state ownership in perpetuity,
17 and compensating the mental health trust for state use of that land through
18 annual identification of an amount of state general fund revenue equal to
19 the fair market rental value of the land as a separate account in the
20 general fund, would minimize the number and complexity of land management
21 decisions and would result in the following benefits to the mental health
22 trust:

23 (A) it would ensure that the mental health trust corpus
24 will be preserved in perpetuity;

25 (B) it would reconstitute a mental health trust corpus
26 equal in value to the original 1,000,000-acre mental health trust
27 corpus, with no reduction (in the nature of a set-off) for state
28 mental health expenditures;

29 (C) it would make the entire mental health trust corpus

1 productive in that each acre of mental health trust land would produce
2 its fair market rental value annually;

3 (D) the mental health trust would not incur administrative
4 expenses;

5 (E) it would focus attention on questions related to the
6 state's mental health programs and the levels of appropriations for
7 those programs;

8 (26) reconstituting the mental health trust with state land that
9 has a substantial probability of remaining in state ownership in perpetuity
10 would result in the following benefits to the state generally:

11 (A) it would free all mental health land not in legisla-
12 tively designated areas for nontrust uses;

13 (B) the only significant expenditure of public funds that
14 would be required would be appropriations for appraisal of the land to
15 ensure equal value, an expenditure that would be required no matter
16 what form of trust reconstitution is selected; and

17 (C) it would establish an additional safeguard against
18 disposal of the newly designated mental health trust land, that is,
19 those in legislatively designated areas, in that, prior to such dis-
20 posal, equal value replacement land would have to be identified and
21 redesignated as trust land;

22 (27) the legislature will best serve the public interest by
23 reconstituting the mental health trust with land in legislatively des-
24 ignated areas, continuing to use that land for the legislatively designated
25 purposes, compensating the trust for the use of the land through annual
26 identification of an amount of general fund revenue equal to the fair
27 market rental value of the land and designation in the general fund of that
28 amount of funds as the special mental health trust income account, and
29 creating a board to assist and advise the legislative and executive

1 branches of government on matters relating to the mental health program of
2 Alaska.

3 (b) The purposes of this Act are

4 (1) to implement the intent of the Congress underlying sec. 202
5 of the Alaska Mental Health Enabling Act that mental health land be admin-
6 istered in a way that makes funds available for the support of Alaska's
7 mental health program;

8 (2) to the extent practicable, to eliminate the need for costly,
9 time-consuming and divisive litigation over the state's management of
10 mental health land;

11 (3) to ensure that the attention of the public and the govern-
12 ment is focused on mental health programs, as contemplated by the Congress,
13 and not on issues relating to the management of mental health land;

14 (4) to reconstitute a mental health land trust through identi-
15 fication of land in legislatively designated areas that is equal in value
16 to the land selected by and patented to the state under sec. 202 of the
17 Alaska Mental Health Enabling Act;

18 (5) to remove from trust status the land selected by and pat-
19 ented to the state under sec. 202 of the Alaska Mental Health Enabling Act
20 that is not in legislative designated areas, thereby freeing them for other
21 uses;

22 (6) to validate each deed, contract for sale, lease, easement,
23 right-of-way, permit, mineral lease disposal, reservation of land for
24 public use by statute, or land management actions, including use classi-
25 fications under AS 38.05.300 and interagency land management assignments by
26 the Department of Natural Resources, that may have been called into ques-
27 tion by the Supreme Court's decision in State v. Weiss, 706 P.2d 681
28 (Alaska 1985), returning mental health land to trust status;

29 (7) to identify a portion of annual state general fund revenue,
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1 equal in amount to the fair market rental value of mental health land, as
2 compensation to the trust for the continued use of the land in legisla-
3 tively designated areas for the legislatively designated purposes; and

4 (8) to create a board to assist and advise the legislative and
5 executive branches of government on matters relating to the mental health
6 program of Alaska.

7 * Sec. 2. AS 37.14 is amended by adding a new section to read:

8 Sec. 37.14.011. MENTAL HEALTH TRUST INCOME ACCOUNT. (a) The
9 mental health trust income account is established as a separate ac-
10 count in the general fund.

11 (b) The amount determined under (c) of this section as the fair
12 market rental of the land constituting the mental health trust corpus
13 is the earnings of the trust and the commissioner of revenue shall
14 annually allocate that amount from the general fund of the state to
15 the mental health trust income account in the general fund of the
16 state.

17 (c) The fair market rental value of the land constituting the
18 mental health trust corpus is equal to eight percent of the fair
19 market value of the land. Following the initial determination of the
20 fair market value of the land selected by and patented to the state
21 under sec. 202 of the Alaska Mental Health Enabling Act, the com-
22 missioner of natural resources shall redetermine the fair market value
23 of the land constituting the mental health trust corpus at least every
24 five years, and provide the redetermined value to the commissioner of
25 revenue and the board established under AS 47.30.661.

26 * Sec. 3. AS 37.14 is amended by adding a new section to read:

27 Sec. 37.14.021. UTILIZATION OF THE MENTAL HEALTH TRUST INCOME
28 ACCOUNT. Money in the mental health trust income account established
29 in AS 37.14.011(a) shall first be appropriated by the legislature to

1 meet the necessary expenses of the mental health program of the state.
2 In making annual appropriations from the mental health trust income
3 account, the legislature shall consider the recommendations of the
4 Alaska Mental Health Board established under AS 47.30.661, including
5 recommendations regarding capital improvements. After the necessary
6 expenses of the state's mental health program have been funded, the
7 legislature may make appropriations from the mental health trust
8 income account for other public purposes.

9 * Sec. 4. AS 38.05 is amended by adding a new section to article 11 to
10 read:

11 Sec. 38.05.800. RECONSTITUTION AND ADMINISTRATION OF MENTAL
12 HEALTH LAND TRUST. (a) The commissioner of natural resources, under
13 procedures approved by the interim mental health trust commission,
14 shall determine the fair market value, as of the effective date of
15 this section, of all land selected by and patented to the state under
16 the Alaska Mental Health Enabling Act. The commissioner shall report
17 the determination of that value to the board established under AS 47.-
18 30.661.

19 (b) The commissioner of natural resources, with the approval of
20 the interim mental health trust commission, shall identify land within
21 legislative designations that is equal in value to all land selected
22 by and patented to the state under sec. 202 of the Alaska Mental
23 Health Enabling Act that is not in legislative designations.

24 (c) All land selected by and patented to the state under the
25 Alaska Mental Health Enabling Act that is within legislative desig-
26 nations, together with all land identified by the commissioner under
27 (b) of this section, constitutes the corpus of the mental health land
28 trust.

29 (d) Upon reconstitution of the trust under this subsection, land

1 selected by and patented to the state under sec. 202 of the Alaska
2 Mental Health Enabling Act that is not within legislative designations
3 is removed from trust status.

4 (e) The land within legislative designations that constitutes
5 the mental health land trust shall continue to be administered for the
6 legislatively designated purposes. The trust shall be compensated for
7 the continued use of the mental health trust land for the legisla-
8 tively designated purposes as provided in AS 37.14.011.

9 (f) Before the state may remove land that is part of the mental
10 health trust corpus from trust status, and in addition to any other
11 requirements of law, the commissioner of natural resources, consistent
12 with the state's trust responsibilities, shall identify replacement
13 land, equal in value at the time of replacement, within legislative
14 designations and incorporate them into the mental health trust corpus.
15 The commissioner of natural resources annually shall report any
16 actions under this subsection to the board established under AS 47.-
17 30.661.

18 * Sec. 5. AS 39.25.120(c)(9) is amended by adding a new subparagraph to
19 read:

20 (L) Alaska Mental Health Board;

21 * Sec. 6. AS 47.30 is amended by adding new sections to read:

22 Sec. 47.30.661. ALASKA MENTAL HEALTH BOARD. The Alaska Mental
23 Health Board is established. For budgetary purposes, the board is
24 located within the Department of Health and Social Services. The
25 board is the state planning and coordinating agency for the purposes
26 of federal and state laws relating to the mental health program of the
27 state. The purpose of the board is to assist the state in ensuring an
28 integrated comprehensive mental health program.

29 Sec. 47.30.662. COMPOSITION. (a) The board consists of the

1 commissioner of health and social services, or the commissioner's
2 designee, and not fewer than nine nor more than 12 other members,
3 appointed by the governor, with due regard for balanced geographic
4 representation of the state.

5 (b) At least one-third of the members shall be consumers of
6 mental health services, or parents or guardians of consumers.

7 (c) At least one-third of the members shall be either public or
8 private providers of mental health services.

9 (d) The remaining members shall be representatives of the public
10 at large.

11 Sec. 47.30.663. TERM OF OFFICE. (a) Board members serve
12 staggered terms of three years.

13 (b) A vacancy occurring in the membership of the board shall be
14 filled by appointment of the governor for the unexpired portion of the
15 vacated term.

16 (c) Members may be removed only for cause, including, but not
17 limited to, poor attendance or lack of contribution to the board's
18 work.

19 Sec. 47.30.664. OFFICERS AND STAFF. (a) The board, by a major-
20 ity of its membership, shall annually elect a chair and other officers
21 it considers necessary from among its membership.

22 (b) The board will have a paid staff provided by the Department
23 of Health and Social Services, including, but not limited to, an
24 executive director who shall be selected by the board from candidates
25 provided by the department. The executive director is in the partial-
26 ly exempt service and may hire additional employees in the classified
27 service of the state. The executive director and the staff of the
28 board shall be directly responsible to the board in the performance of
29 their duties.

1 Sec. 47.30.665. BYLAWS. The board, on approval of a majority of
2 its membership and consistent with state law, shall adopt and amend
3 bylaws governing its composition, proceedings, and other activities
4 consistent with state law and including, but not limited to, pro-
5 visions concerning a quorum to transact board business and other
6 aspects of procedure, frequency and location of meetings, and estab-
7 lishment, functions, and membership of committees.

8 Sec. 47.30.666. POWERS, DUTIES, AND RESPONSIBILITIES OF THE
9 BOARD. The board shall

10 (1) measure the extent of the mental health need and, as
11 necessary, conduct independent studies, evaluate the statewide mental
12 health information system, and review the current mental health pro-
13 gram of the state;

14 (2) provide a public forum for discussion of issues regard-
15 ing current and potential services to persons served by the mental
16 health program of the state;

17 (3) determine the needs, including those currently unmet,
18 of the persons to be served by the mental health program of the state;

19 (4) review reports from the Department of Natural Resources
20 regarding the valuation of the mental health land trust and the status
21 of mental health trust land, from the Department of Revenue regarding
22 allocations to the mental health income account, and from other de-
23 partments regarding the current and projected revenue for the support
24 of the mental health program of the state;

25 (5) subject to disclosure restrictions imposed by state or
26 federal confidentiality or privacy laws, have access to information in
27 the possession of state agencies;

28 (6) in conjunction with the Department of Health and Social
29 Services, prepare and annually update a long-term comprehensive state

1 mental health plan, to include the projected need and the services,
2 facilities, and resources for the mental health program of the state
3 to meet that need;

4 (7) in conjunction with the Department of Health and Social
5 Services, develop, prepare, adopt, and periodically review and revise
6 as necessary an annual state implementation plan to meet the needs of
7 persons served by the mental health program of the state;

8 (8) in conjunction with the Department of Health and Social
9 Services, and before developing the annual state implementation plan,
10 evaluate the effectiveness of the prior year's implementation plan and
11 evaluate program performance and recommend improvements, set priori-
12 ties, and establish criteria to utilize in funding allocations;

13 (9) report at least annually to the legislature, governor,
14 and commissioner of health and social services, and meet with appro-
15 priate legislative committees, concerning the board's activities,
16 including its evaluation of the effectiveness of the prior year's
17 implementation plan, and its recommendations to meet the necessary
18 operating and capital expenses of the mental health program of the
19 state;

20 (10) serve as an advocate before the executive and legisla-
21 tive branches of government and the public on behalf of those served
22 by the mental health program of the state;

23 (11) discourage duplication of services and promote effi-
24 cient and coordinated use of federal, state, and private resources in
25 the provision of mental health services; and

26 (12) review applicable statutes, regulations, and policies
27 and recommend appropriate changes.

28 Sec. 47.30.669. DEFINITION. In AS 47.30.661 - 47.30.669,
29 "board" means the Alaska Mental Health Board established in

1 AS 47.30.661.

2 * Sec. 7. Section 1(b), ch. 132, SLA 1986, is amended to read:

3 (b) The commission established under (a) of this section con-
4 sists of three [FIVE] members, including the commissioner of natural
5 resources, or the commissioner's designee [AND THE COMMISSIONER OF
6 HEALTH AND SOCIAL SERVICES, OR THEIR DESIGNEES], and two [THREE]
7 members and two [THREE] alternates [APPOINTED BY THE GOVERNOR] as
8 follows:

9 (1) a member and an alternate representing the plaintiffs
10 who were [,] appointed by the governor from a list of three names
11 submitted to the governor by the plaintiffs in Weiss v. State, 4 FA
12 82-2208 Civil;

13 (2) a member and an alternate representing the intervenors
14 who were [,] appointed by the governor from a list of three names
15 submitted to the governor by the intervenors in Weiss v. State, 4 FA
16 82-2208 Civil [; AND

17 (3) A MEMBER AND AN ALTERNATE REPRESENTING THE GOVERNOR'S
18 MENTAL HEALTH ADVISORY COUNCIL, APPOINTED BY THE GOVERNOR FROM A LIST
19 OF THREE NAMES SUBMITTED TO THE GOVERNOR BY THE GOVERNOR'S MENTAL
20 HEALTH ADVISORY COUNCIL].

21 * Sec. 8. Section 1(c), ch. 132, SLA 1986, is amended to read:

22 (c) The members of the commission shall elect a presiding offi-
23 cer. A majority of the commission constitutes a quorum. The affirma-
24 tive vote of two [THREE] members is required to take official action.
25 A vacancy does not impair the power of the remaining members to exer-
26 cise the powers of the commission.

27 * Sec. 9. Section 2, ch. 132, SLA 1986, is repealed and reenacted to
28 read:

29 Sec. 2. RESPONSIBILITIES OF THE COMMISSIONER OF NATURAL RE-

1 SOURCES AND THE COMMISSION. (a) The commission shall review proce-
2 dures proposed by the commissioner of natural resources to determine
3 the fair market value, as of the effective date of AS 38.05.800, of
4 all land selected by and patented to the state under sec. 202 of the
5 Alaska Mental Health Enabling Act, and review the final determination
6 of the fair market value determined under those procedures.

7 (b) The commission shall review the identification by the com-
8 missioner of natural resources under AS 38.05.800 of land within
9 legislative designations that is equal in value to all land selected
10 by and patented to the state under sec. 202 of the Alaska Mental
11 Health Enabling Act that is not in legislative designations.

12 (c) In the exercise of the commission's responsibilities under
13 this section, the commission and its staff may review the records of
14 the Department of Natural Resources that are made confidential by law
15 or regulation. An individual who acquires information made confiden-
16 tial by law or regulation in the performance of functions authorized
17 by this Act and discloses it without proper authority violates AS 11.-
18 56.860.

19 (d) The commissioner of natural resources is responsible for the
20 management of the mental health land of the state as a public trust
21 under P.L. 84-830, 70 Stat. 709. Except as provided in (e) of this
22 section, the commissioner of natural resources may not sell, lease, or
23 exchange mental health trust land of the state or an interest in the
24 mental health trust land of the state without the prior approval of
25 the commission. In reviewing a proposal for the sale, lease, or ex-
26 change of mental health trust land from the commissioner of natural
27 resources, the commission may approve the proposal of the commissioner
28 on its determination that the proposal is consistent with the terms of
29 the trust established by the Alaska Mental Health Enabling Act.

1 (e) The commissioner of natural resources may transfer trust
2 land to the federal government under AS 38.05.035(b)(9) without ap-
3 proval of the commission. The commissioner of natural resources shall
4 advise the commission of an intention to transfer trust land to the
5 federal government and, after the transfer, shall make every effort to
6 acquire replacement land to fulfill the state's remaining entitlement
7 based on a prioritization, approved by the commission, of existing
8 valid mental health selections.

9 * Sec. 10. Section 6, ch. 132, SLA 1986, is repealed and reenacted to
10 read:

11 Sec. 6. This Act is repealed on the certification of the commis-
12 sioner of natural resources that the mental health land trust has been
13 reconstituted under AS 38.05.800 to

14 (1) the Alaska Mental Health Board established under
15 AS 47.30.661;

16 (2) the lieutenant governor; and

17 (3) the revisor of statutes.

18 * Sec. 11. TRANSITIONAL PROVISIONS. Beginning with fiscal year 1989
19 and continuing until the commissioner of natural resources certifies to the
20 commissioner of revenue that the mental health land trust has been recon-
21 stituted under AS 38.05.800, as enacted in sec. 4 of this Act, the commis-
22 sioner of revenue shall annually allocate from the general fund of the
23 state to the mental health trust income account in the general fund an
24 amount equal to five percent of the unrestricted revenue of the state for
25 the fiscal year.

26 * Sec. 12. Notwithstanding AS 47.30.663(a), as added by sec. 6 of this
27 Act, of the initial appointees to the Alaska Mental Health Board appointed
28 under AS 47.30.662, as added by sec. 6 of this Act, one-third shall serve
29 for one year terms, one-third shall serve for two year terms, and one-third

1 for three year terms.

2 * Sec. 13. AS 37.14.010, 37.14.020, 37.14.030, 37.14.040, 37.14.050;
3 AS 47.30.605; and sec. 3, ch. 132, SLA 1986, are repealed.

4 * Sec. 14. Sections 7 - 10 of this Act take effect July 1, 1987.
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**STATE OF ALASKA 1987 LEGISLATIVE SESSION
FISCAL NOTE**

REQUEST: _____

Bill Version: CSHB 92 (HESS)

Publish Date: _____

Revision Date: April 9, 1987

Title: An Act relating to the Alaska Mental Health Land Trust

Agency Affected: DHSS/DHDD

BRU: Inst. & Administration

Sponsor: Pourchot/Mental Health Land Comm

Components: Mental Health Admin.

Requestor: _____

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 87	FY 88	FY 89	FY 90	FY 91	FY 92
PERSONAL SERVICES		140.1	140.1	140.1	140.1	140.1
TRAVEL		38.0	38.0	38.0	38.0	38.0
CONTRACTUAL		78.8	78.8	78.8	73.3	78.8
SUPPLIES		1.8	1.8	1.3	1.3	1.8
EQUIPMENT		9.0	0	0	0	0
LAND & STRUCTURES		0	0	0	0	0
GRANTS, CLAIMS		0	0	0	0	0
MISCELLANEOUS		0	0	0	0	0
TOTAL OPERATING	0	267.7	267.7	267.7	267.7	267.7

CAPITAL	0	0	0	0	0	0
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REVENUE	0	0	0	0	0	0
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FUNDING: (Thousands of Dollars)

GENERAL FUND		267.7	267.7	267.7	267.7	267.7
FEDERAL FUNDS						
OTHER						
TOTAL		267.7	267.7	267.7	267.7	267.7

POSITIONS:

FULL-TIME		3	3	3	3	3
PART-TIME						
TEMPORARY						

ANALYSIS : (Attach a separate page if necessary)

Prepared by: Mel Henry, Director
Division: Mental Health & Dev. Disabilities

Phone: 465-3370

Date: 4/4/87

Approved by Commissioner: Mary M. McManis
Agency: Department of Health & Social Services

Date: 4/6/87

Distribution (by preparer):

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

FISCAL NOTE
CSHB 92 (HESS)

Mental Health Board

Personnel Services:

one (1) Mental Health Board Coord.	Range 22	\$ 63,900
one (1) Research Analyst III	Range 18	49,157
one (1) Clerk Typist III	Range 8	27,034
		<u>\$140,091</u>

Travel:

*Board travel and per diem 4 meetings/year X 6,000/meeting =		\$ 24,000
Staff travel 7000/per prof. staff X 2 =		14,000
		<u>\$ 38,000</u>

Contractual:

Phone, copying, printing, advertizing	\$ 8,000
Professional Services	50,000
Lease space 519 sq. ft. X 2.57 sq. ft./mo X 12 mo. =	16,000
Computer hook up 1600 X 3	4,800
	<u>\$ 78,800</u>

Supplies:

50/mo. X 12 X 3 staff	<u>\$ 1,800</u>
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Equipment:

3 Personal Computers 300C X 3 =	\$ 9,000
3 Printers	
Software	

TOTAL	<u>\$267,551</u>
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*The amount of \$10.0 is also available from the DMHDD/s budget.

CSHB 92 (HESS)

FISCAL NOTE

Mental Health Board

The Department recommends the establishment of a statewide Mental Health Board that would influence the actions and directions of the Department of Health and Social Services in attaining the overall mission of the mental health system in Alaska. The duties and responsibilities of the existing Governor's Mental Health Advisory Council (Sec. 47.30.605) would be absorbed and expanded by this new board structure.

Modeled after the Governor's Council for the Handicapped and Gifted (Sec. 47.80.030), the attached document describes the functions and responsibilities of the new board. Although advisory in scope, this Board will be significantly more influential than the "old" Council with respect to legislative/executive advocacy, impact on departmental policies, regulations and procedures, budget and program oversight, short and long range planning and quality assurance.

In order to effectively accomplish its goals and objectives, the Mental Health Board will be staffed by three full time professional and clerical staff. The Senior staff position, the Executive Director, will be partially exempt, and be hired by the balance of candidates submitted by the Commissioner. The remaining staff will be hired through the classified service by the Executive Director. Although the staff will be employees of

the Department of Health and Social Services, Division of Mental Health and Developmental Disabilities, and be guided by the policies and procedures of the Department, they will be directly responsible to the Board for their assignments and performance. They will work directly for the Board and not the Department. Ideally, the staff should be located in the Division of Mental Health and Developmental Disabilities regional office in Anchorage.

The staff for the Board will comprise three permanent full time employees:

- (1) Executive Director (Range 22). This person, a Mental Health Clinician or a Health Planner, would have responsibility for working directly with the Board to accomplish its mission, the overall coordination and supervision of the office, and coordinating and collaborating with the Department. In addition to the established requirements of a Mental Health Clinician III or a Health Planner, this individual must possess special knowledge in the areas of mental health administration and supervision, planning, research, program monitoring and evaluation, skills in oral and written communication, broad knowledge of Alaska's mental health system (including the private sector), previous experience in working with advisory or governing boards, and skilled at interagency coordination, collaboration and cooperation.

- (2) Research Analyst III (Range 18) who would have responsibility for planning and social indication forecasting, designing and conducting independent research and studies, collecting and analyzing data, providing reports and analysis for both policy and management recommendations. Ability to interface with the private sector is important.
- (3) Clerk Typist III (Range 8) will provide secretarial support to the two professional staff and the Board.

STATE OF ALASKA 1987 LEGISLATIVE SESSION
FISCAL NOTE

REQUEST: _____

Bill Version : HB 92
Publish Date : _____

Revision Date: _____
Title: An Act relating to the federally created mental health trust
Sponsor: Rep. Pourchot
Requestor: House HESS

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

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 87	FY 88	FY 89	FY 90	FY 91	FY 92
PERSONAL SERVICES		126.9				
TRAVEL		28.0				
CONTRACTUAL		535.0				
SUPPLIES		1.0				
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING		690.9				

CAPITAL						
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REVENUE						
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FUNDING: (Thousands of Dollars)

GENERAL FUND		690.9				
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS:

FULL-TIME		3				
PART-TIME						
TEMPORARY						

ANALYSIS : (Attach a separate page if necessary) If appraisals are required to establish values, cost of valuing lands will be increased by \$700,000. Fiscal note assumes use of opinions of value. Two NRM I (review appraiser & land staff) and CT III, positions for calculation of 670 acres of mental health land outs de legislatively designated areas; locate and appraise replacement lands with legislative areas from 8.3 million acres designated; board funding - Sec. 5.

Prepared by: Frank Mielke Phone: 465-2400
Division: Land and Water Management Date: 4-6-87

Approved by Commissioner Judith M. Bunt Date: 4-6-87
Agency: Natural Resources

Distribution (by preparer):
Legislative Finance
Legislative Sponsor
Requestor
Office of Management and Budget
Impacted Agency(ies)
Senate Secretary

APR 07 1987
LEGISLATIVE FINANCE

STATE OF ALASKA 1987 LEGISLATIVE SESSION
FISCAL NOTE

Bill Version: HB 92
Publish Date: _____

REQUEST: _____

Revision Date: _____
Title: Implementing Settlement of
Mental Health Trust
Sponsor: Proposed by Request
Requestor: House HESS

Agency Affected: Department of Revenue
BRU: Treasury

Components: _____

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 87	FY 88	FY 89	FY 90	FY 91	FY 92
OPERATING						
PERSONAL SERVICES	-	-	-	-	-	-
TRAVEL	-	-	-	-	-	-
CONTRACTUAL	-	-	-	-	-	-
SUPPLIES	-	-	-	-	-	-
EQUIPMENT	-	-	-	-	-	-
LANDS & STRUCTURES	-	-	-	-	-	-
GRANTS, CLAIMS	-	-	-	-	-	-
MISCELLANEOUS	-	-	-	-	-	-
TOTAL OPERATING	-	-	-	-	-	-
CAPITAL	-	-	-	-	-	-
REVENUE	-	-	-	-	-	-

FUNDING: (Thousands of Dollars)

GENERAL FUND	-	-	-	-	-	-
FEDERAL FUNDS	-	-	-	-	-	-
OTHER	-	-	-	-	-	-
TOTAL	-	-	-	-	-	-

POSITIONS:

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

ANALYSIS: Attach a separate page for analysis.

Prepared By: Milt Barker MB
Division: Treasury

Phone: 465-2350
Date: April 2, 1987

Approved by Commissioner: [Signature]
Agency: Department of Revenue

Date: 4/2/87

Distribution (by preparer):
Legislative Finance
Legislative Sponsor
Requestor
Office of Management and Budget
Impacted Agency(ies)
Senate Secretary

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APR 07 1987

page 1 of 1

LEGISLATIVE FINANCE

STATE OF ALASKA 1987 LEGISLATIVE SESSION
FISCAL NOTE

Bill Version: CSHB 92(HESS)
Publish Date: _____

REQUEST _____

Revision Date: _____
Title: An Act Relating to the Alaska
Mental Health Trust; and Providing for
an Effective Date.
Sponsor: House HESS Committee
Requestor: _____

Agency Affected: Administration
BRU: Personnel
Components: Personnel

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 87	FY 88	FY 89	FY 90	FY 91	FY 92
OPERATING						
PERSONAL SERVICES	0	0	0	0	0	0
TRAVEL	0	0	0	0	0	0
CONTRACTUAL	0	0	0	0	0	0
SUPPLIES	0	0	0	0	0	0
EQUIPMENT	0	0	0	0	0	0
LAND & STRUCTURES	0	0	0	0	0	0
GRANTS, CLAIMS	0	0	0	0	0	0
MISCELLANEOUS	0	0	0	0	0	0
TOTAL OPERATING	0	0	0	0	0	0
CAPITAL	0	0	0	0	0	0
REVENUE	0	0	0	0	0	0

FUNDING: (Thousands of Dollars)

GENERAL FUND	0	0	0	0	0	0
FEDERAL FUNDS	0	0	0	0	0	0
OTHER	0	0	0	0	0	0
TOTAL	0	0	0	0	0	0

POSITIONS:

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

ANALYSIS: Attach a separate page if necessary

Prepared By: Diana DeSimone *DD* *AK* Phone: 465-4430
Division: Personnel Date: April 23, 1987

Approved by Commissioner: Garrey Peska *[Signature]* Date: 4/24/87
Agency: Department of Administration

Distribution (by preparer):
Legislative Finance
Legislative Sponsor
Requestor
Office of Management and Budget
Impacted Agency(ies)
Senate Secretary

[Stamp]
APR 27 1987

LEGISLATIVE FINANCE

POSITION PAPER
CSHB 92(HESS)

Committee Substitute for House Bill 92 (Health and Social Services Committee) establishes the Alaska Mental Health Board.

Section 47.30.664 specifies that the board shall hire an executive director and other staff. The proposed language clearly and appropriately places the employees of the board in the classified service. This section also stipulates that the executive director is in the partially exempt service. This legislation requires an amendment to AS 39.25.120 in order to list the executive director in the partially exempt service.

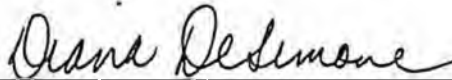
The following amendments are suggested:

1. On Page 12, Line 24 add "under AS 39.25.120" after the word "service."
2. Add another section to the bill which states:

AS 39.25.120(9) is amended by adding a new paragraph to read:

(L) the executive director of the Alaska Mental Health Board.

The Department of Administration's position on this bill is neutral.



Diana DeSimone, Director
Division of Personnel

4/23/87
Date



Commissioner Garrey Peska
Department of Administration

4/27/87
Date

CSHB 92 (HESS) RELATING TO THE ALASKA MENTAL HEALTH TRUST

Sec. 1

Findings, which lay out the history of the mental health trust, and purposes, which explain the settlement proposal.

Sec. 2

Establishes the mental health trust income account in the general fund. Specifies the trust earnings as 8% of the fair market value of the land constituting the mental health trust corpus. Earnings are to be annually allocated from the general fund to the mental health account.

Sec. 3

Provides that funds in the mental health account shall first be appropriated to meet the necessary expenses of the state's mental health program, with the balance available for appropriation for other public purposes.

Sec. 4

Calls upon DNR to determine the fair market value of the original 1 million acres of trust land, and identify replacement land of equal value within legislative designations (parks, refuges, forests). Once this reconstitution of the trust is accomplished, all original trust land is removed from trust status.

Sec. 5

Adds employees of the Mental Health Board to the partially exempt service.

Sec. 6

Establishes a Mental Health Board in the Department of Health and Social Services to assist the state in ensuring an integrated comprehensive mental health program. Membership of consumers, providers, and others; staff; duties.

Sec. 7 - 8

Continues the Interim Mental Health Trust Commission (established last year), with a reduced membership and new duties.

Sec. 9

Outlines commission's duties to include oversight of the trust reconstitution and oversight of trust land management by DNR.

Sec. 10

Terminates the commission upon reconstitution of the trust.

Sec. 11

Provides that until the trust is reconstituted, and beginning with FY 89, the mental health trust income account shall consist of 5% of the state's unrestricted revenue each year.


Sec. 12

Addresses initial appointment of Mental Health Board members.

Sec. 13

Repeals the Governor's Mental Health Advisory Council statute and the existing mental health fund.

MEMORANDUM

To: Anchorage Caucus members
From: Chip Dennerlein 
Subject: Mental Health Trust Lands

The Municipality of Anchorage strongly urges passage of CSHB 92.

The Municipality has worked with the Mental Health Trust lands issue for a number of years. I have represented the interests of Anchorage and of other communities (on behalf of the Alaska Municipal League) which are severely affected by the present controversy regarding the Mental Health trust. We have participated in the deliberations of the Interim Legislative Committee on Mental Health Trust Lands.

The solution embodied in CSHB 92 is the most equitable and most workable I have seen in all my years of familiarity with this issue. It is very creative, while at the same time simple and straightforward. It protects the interests of many constituencies - the Mental Health class, local communities, sportsmen and recreationists, and commodity resource users. All of these groups have established (or been granted by the legislature) legitimate interests in various mental health lands over the years.

It is important that legislation pass this session. Failure to act will result in further protracted litigation which will create land management havoc in and around communities throughout the state. Many of the lands at issue are located around population centers and subject to existing uses and designations. Additional litigation which will undoubtedly tie up these lands and cloud title will make the Udall land freezes of the late 60s seem mild by comparison.

I have scrutinized the bill carefully. As a result of earlier testimony I submitted several questions to the Attorney General in writing. The Attorney General has provided a written response which I can make available. I am satisfied with the response which is now part of the record of this legislation.

I cannot see a better way to settle this significant issue. Please support passage of CSHB 92.

FACT SHEET - MENTAL HEALTH LEGISLATION

File 1-10-37

HB 92/SB 96 - Mental Health Trust Lands Settlement

BACKGROUND:

In 1956, the U.S. Congress gave the Territory of Alaska approval to select 1 million acres of federal land to create a "trust" -- the income of which was first to be used "to fund the necessary expenses of the mental health program of Alaska."

Although the Territory and State selected the million acres, no income from the acreage was ever identified for mental health uses.

In 1978, the legislature passed a law redesignating mental health trust lands as general grant lands. The law established a trust fund for mental health programs and specified that 1.5% of the annual receipts from all state land would go to the fund.

No appropriations were ever made into the fund.

In 1982 a suit was filed in Fairbanks Superior Court on behalf of Carl Weiss, a seven-year-old boy from Nenana and Earl Hilliker, a Fairbanks resident. Weiss v. State of Alaska contended that the plaintiffs were in need of mental health services which were not available in Alaska. They questioned the constitutionality of the 1978 law which abolished the land trust.

The court, in 1984, stated that the million acres of land was, indeed, intended to produce revenues for the benefit of Alaska's mentally ill and that the 1978 law was unconstitutional. The Supreme Court agreed with the lower court and stated that the million acre trust had to be reconstituted as nearly as possible. The court said further that the trust had to be reimbursed for lands sold since 1978.

The state, to the extent possible, has "tried to put Humpty Dumpty together again" but only 207 thousand of the original million acres remain as "unencumbered land." Nearly 300 thousand acres are described as "less than fee disposals." These include oil leased lands, coal leases, timber sales and other such uses. Proceeds from these lands are currently being credited to a special mental health account.

More than 360 thousand acres have gone into such limited-use designations as parks, game refuges, habitat areas, and state forests.

More than 40,000 acres have been allocated to municipalities. The Attorney General has advised the legislature that, without some sort of settlement, these lands may have to be returned to the trust.

The Legislature, in response to the decision, created a Joint Special Committee charged with trying to come up with a legislative solution to the decision that would meet with the approval of all concerned. It also created the Interim Mental Health Trust Commission and charged it with protecting the present diminished land trust, approving rentals and other administrative actions, and with making a report of its own concerning possible solutions to the problem.

WHY IS A LEGISLATIVE SOLUTION DESIRABLE?

At the present time, the court decision creates a cloud over many thousands of acres of land which have been transferred to municipalities, designated as state parks or set aside for other public uses. The decision effectively places a "freeze" not only on the use of mental health lands but potentially creates a "freeze" as well over additional lands which may have to be designated as mental health lands to make up for original lands which have been disposed of.

Too, it is not considered in the state's best interest for mental health lands to be administered separately from its other land holdings. Estimates are that it might cost as much as 25% of income generated for the state to administer the trust.

It will be far better -- assuming everyone concerned can have their needs met -- if the legislature can come up with a solution that satisfies the original Congressional grant language and yet avoids creation of a costly bureaucratic process.

PROPOSED LEGISLATION

HB 92 and SB 96, introduced in each house at the request of the Special Joint Committee, would attempt to fund the equivalent of trust lands earnings each year by designating 5% of the state's general revenues as being available for appropriation to the mental health program. The plan, sometimes called "the 5% solution," does not however reconstitute the trust in any form.

A new approach, suggested by the Interim Mental Health Commission and adopted as a Committee Substitute by both the House and Senate HESS committees, would do the following:

*It would establish the value of the original mental health lands.

*It would specify that a new mental health trust is created from certain legislatively-designated lands which have value equal in dollars to the former trust. These lands would be re-appraised every five years.

*It would mandate that each year the Commissioner of Revenue would make rent or lease payments to the trust by depositing 8% of the value of the trust lands into a special account.

*From this account, the Legislature would appropriate enough money to fund the necessary expenses of Alaska's mental health program. Excess moneys not necessary to fund mental health could be appropriated to meet other needs of the state.

*A strong mental health board would be established, a prime function of which would be to determine each year what the necessary expenses of the program would cost.

*As an interim measure, until valuations are made and the new trust is established, the "5% solution" proposed in the original House and Senate bills would go into effect. This would give the mental health program a temporary source of funds.

The advantages of the proposal are these:

1. It reconstitutes a permanent land trust and gets everybody out of court.
2. It allows mental health professionals to focus on mental health needs and on adequate budgeting, not on land management.
3. It eliminates all clouded land titles and frees lands for all other uses.
4. It is relatively easy to administer.
5. It requires no cash reimbursement for lands disposed of; its only special costs are for lands appraisal.
6. Most important, it creates a vehicle for the state -- three decades after the 1956 Congressional act -- to adequately fund the long neglected needs of the mentally ill.

BACKGROUND:

Historically in Alaska, the needs of the mentally ill have not been adequately recognized and funded. This situation has existed for a number of reasons, one of which is that until very recently people with mentally ill family members or friends were extremely hesitant to talk about it in any public forum. Treatment for the chronically mentally ill was an area of particular underfunding and therefore undertreatment.

Too, until the 1984 Weiss decision by the Alaska Supreme Court, there was no identifiable source of funding which advocates could point to as being available for treatment of mentally ill persons. That, of course, has now changed. The court has ruled that the 1954 million-acre federal grant of lands for a mental health trust must be reconstituted. From income off of these lands, the money must first go to meet expenses of the mental health program of Alaska. (Moneys excess to those needs may be appropriated for other public uses.)

Some members of the 14th Alaska Legislature attempted to remedy the underattention and underfunding of needs of the chronically mentally ill (CMI) last year. They introduced legislation which would have specifically mandated treatment for these individuals. The bill, however, took a considerable amount of time to develop and by the time it was in shape for consideration the legislature was approaching adjournment. The bill did, however, receive favorable attention from the House HESS Committee and was passed out of that committee with a majority do-pass recommendation.

The 1986 interim Joint Special Committee created by the legislature to look into mental health matters also recognized the need for legislation of this kind. In both houses of the 15th Alaska Legislature the committee prefiled legislation similar to the former bill. The identical bills are HB 91 and SB 97.

PRESENT STATUS:

HB 91 has been considered by the House HESS Committee and has been passed out of committee in the form of a recommended committee substitute, the principal features of which are these:

*Priorities for treatment are established, the highest priority being for those facing immediate risk of hospitalization, for those in need of continuing services, for those who pose a hazard to themselves or others, and for severely mentally ill youth; second level priority would go to those who, because of geographic or income limitations, are not capable of obtaining assistance in the private sector; third

level attention would go to those suffering from mental or emotional disturbances of a less severe or persistent nature not requiring hospitalization in the foreseeable future.

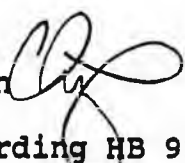
*General treatment services -- both outpatient and inpatient -- available to treat all types of mental illness are described. (These include such services as emergency services, counseling, screening, evaluation, prevention, education, etc.)

*In addition, the particular needs of the chronically mentally ill -- never before truly recognized in statute -- are set out. Language identifying the services to meet these needs was taken from a model federal program initiated by the National Institute of Mental Health. These include such services as crisis stabilization, unique patient treatment services such as psychotropic medication, case management, residential living, vocation assistance and other services. Recent NIMH research demonstrates that acute psychotic episodes are significantly reduced when a community has an array of such services. (Many of these services, incidentally, have long been available for other needy individuals, but have not, until recently, been available for CMI individuals even in a limited way.)

*The bill provides that in cases where the usual funding "match" for CMI services and other community mental health services cannot realistically be expected from a community or a local organization, the Department of Health and Social Services will fund the percent of costs that is necessary to ensure the services will be provided. (In some instances, this may be 100% of program costs.)

*The bill also establishes broad standards for community health services.

MEMORANDUM

To: Tom Koester
From: Chip Dennerlein 
Subject: Questions regarding HB 92, Mental Health Trust Lands

During my oral testimony before House H&SS regarding HB 92 I raised several questions which I felt should be clearly answered for the record before the bill is acted upon. Rep. Ellis asked you to address the questions, and I am forwarding them to you in writing so you can respond.

1. HB 92 reconstitutes the trust from lands already designated by the legislature as parks, refuges, forests and other public purpose lands. In essence, general grant park and refuge lands are disposed of and trust lands are substituted. During the testimony of several individuals there was a fair amount of discussion about the "leasing" of these new park/trust lands by the state to create a revenue stream for the trust. I am disturbed by the use of the term "lease" and believe it is incorrect. Park lands in particular derive their statutory existence from Article 8, Sec.7 of the Constitution. This is the "special purpose sites" provision. These lands are reserved from the public domain. All of the general statutory authority for leasing and disposal of state lands stems from Art.8, Sec.8. These are the lands in the public domain. Former Attorney General opinions have confirmed that "special purpose site" lands cannot be leased. Once the legislature enacts HB 92, the Mental Health Trust lands are (at least in some cases) state park lands. These lands cannot be "leased" - to the state or otherwise. How does the proposed legislation avoid the issue of "leasing" of state park lands (and other special purpose site lands)? As a matter of public policy, the bill should neither imply, nor open the door for future discussions about the leasing of these lands.

2. You have testified that the reconstitution of the trust from existing legislatively designated areas acts to provide an extra layer of protection for these areas. In essence, the lands will not only be covered by the statutory protection of

their original designations as refuges or forests, but will now also be protected by trust responsibilities. However, could the trust status also become a reason someday to abolish park and refuge lands where no other reason might exist? For example, suppose, the legislature fails to appropriate the required revenue stream payment in a given year or years. A reason might be that state revenues are extremely limited. Could the trust then move to "free" their lands from park and refuge designation in order to turn the lands directly into cash via disposal? Could the legislature decide to "pay" the trust in lands by abolishing parks and refuges in order to avoid the cash debt? In essence, could the proposed legislation create a lever which does not now exist and which may well be used in the future to pry lands out of parks, refuges and forests? If no, how does the bill ensure that the remedy to the trust for failure of a future legislature to appropriate funds is action to secure the money, not secure lands, thereby destroying public purpose areas?

3. From the perspective of municipalities, one of the major virtues of the bill is that it removes the cloud which currently hangs over many acres of municipal selections. However, the bill is not specific as to when this cloud is removed. Are the municipal selections freed upon passage of the legislation? Are they freed bit by bit as the trust is reconstituted? If so, in what order are individual municipal selections freed? The appraisal and reconstitution process may take some time to complete. How long do communities have to wait?

4. The Mental Health Trust issue is a matter of litigation. By enacting the proposed legislation, the legislature does not actually settle that litigation. Rather, the legislature merely provides the terms of settlement. To ensure that a future legislature cannot change the deal, the legislation should be adopted by the court as the settlement. What plans does the state have to ensure that the court adopts the proposed legislation as final settlement of the issue? Does the state view the legislation as the terms of settlement or as a "framework" within which to further negotiate a court settlement? Municipalities would not view the legislation as a basis for settlement, but as the final deal. Do you see any room for departure?

HB 92 has tremendous merit. The Municipality of Anchorage is inclined to strongly support its passage this session. Failure to act soon will, we believe result in further litigation which will create land management havoc in and around many communities throughout the state. Since the lands at issue in the debate are around population centers and are subject to existing resource uses, additional litigation will make the Udall lands freezes of the late 60s seem mild by comparison. However, we believe it is also important to protect the interests of the broad constituency of all Alaskans as well as

the members of the mental health class who are seeking to remedy their existing situation. Thousands of Alaskans worked long and hard to establish parks, refuges, state forests, and other public purpose areas. It is incumbent that we assure ourselves that the proposed legislation creates no hidden booby traps which would promote or cause destruction of these areas in the future. Communities throughout the state have selected certain lands in good faith and in accordance with past legislative direction in fulfillment of their municipal entitlements. We should be clear about the removal of the cloud which now hangs over many of these lands, remembering that these are lands which will be put to the benefit of local people around the state. Many people are working to secure passage of this legislation in the hopes of achieving a final resolution to this difficult issue. We must make certain that it is affirmed by the court, and that the parties do not alter the deal. In this light, the above questions should be clearly answered on the record. Thank you.

STATE OF ALASKA

STEVE COWPER, GOVERNOR

DEPARTMENT OF LAW

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

OFFICE OF THE ATTORNEY GENERAL

April 20, 1987

The Honorable Johnny Ellis
Co-Chairman
House Health, Education & Social
Services Committee
P.O. Box V
Juneau, AK 99811

Re: CSHB 92 (relating to the
mental health trust)

Dear Representative Ellis:

At the House Health, Education and Social Services Committee meeting on Tuesday, April 14, 1987, Chip Dennerlein of the Municipality of Anchorage asked a number of questions regarding Committee Substitute for House Bill 92, which relates to the mental health trust. Following the meeting, you asked me to address Mr. Dennerlein's concerns, which Mr. Dennerlein subsequently included in a memorandum to me (a copy of which is enclosed), and to forward my response to you and to Representative Pourchot.

1. Mr. Dennerlein's first question relates to the legislature's authority to administer state lands. Under article VIII, section 7 of the Alaska Constitution, the legislature may establish special purpose sites. These special purpose sites constitute the "legislatively designated areas" referred to in CSHB 92. The legislature's authority over the disposal of state lands stems from article VIII, section 8 of the Alaska Constitution. Mr. Dennerlein is concerned that this bill not confuse (the continued use of replacement mental health trust lands in legislatively designated areas for the legislatively designated purposes) with (the leasing and other disposal of state lands which are not in legislatively designated areas).

In our view, there should be no such confusion. In this bill, the legislature would be exercising its authority under section 202(e) of the Alaska Mental Health Enabling Act, P.L. 84-830, to "exchange" the lands the state

originally obtained under the Act for the lands in the legislatively designated areas. It then would be exercising its authority under article VIII, section 8 of the Alaska Constitution to preserve the use of those lands for the legislatively designated purposes while, simultaneously, compensating the mental health trust for the continued use of those lands for those legislatively designated purposes through the establishment of the Mental Health Trust Income Account.

This solution is not the same as a true disposal of state lands, which is a contractual relationship between the state and a third party, because there is no actual transfer of an ownership interest. In this case, the state simultaneously is the landowner, the land user, and the trustee. While the lands will in fact be trust lands at the conclusion of the process set out in the bill, the use to which those trust lands will be put has already been determined by the legislature; establishment of the Mental Health Trust Income Account ensures that the trust is fully compensated for the continued use of those lands for the legislatively designated purposes. In this way, the trust is fully compensated while the user conflicts which have developed over the original lands selected by and patented to the state under the Alaska Mental Health Enabling Act are eliminated.

2. Mr. Dennlerlein's second question is whether the trust status of lands in legislatively designated areas might eventually place additional pressure on the legislature to remove those lands from the legislatively designated area for disposal or for other purposes. In our view, no such additional pressure would be placed on the legislature. The combination of existing state law and a principle of general trust law, a principle incorporated as an explicit provision in the bill (proposed AS 38.05.800(f), found at p. 11, lines 7-15), would require that two separate actions occur before such lands could be disposed of. First, the existing provisions of law creating the legislatively designated area would have to be amended to remove the lands from the legislatively designated area. Second, before the lands could be removed from trust status and disposed of, replacement land of equal value at the time of replacement would have to be identified and incorporated into the corpus of the mental health trust. In our view, this creates a substantial additional disincentive to the disposal of these lands, not an additional threat to them.

A second possible concern in this context is that the plaintiffs may seek to divest the state of title to these lands and dispose of them to generate revenue if the commissioner of revenue does not make the required deposit to the Mental Health Trust Income Account or the legislature attempts to appropriate money from the account for purposes other than mental health before it appropriates from the account to meet the necessary expenses of the state's mental health program. Initially, we would point out that it would be extremely unlikely that either of those events would ever occur because the state would gain absolutely nothing from either of those actions.

In the unlikely event that one of them does occur, however, a suit to divest the state of title almost undoubtedly would be unsuccessful. See State v. University of Alaska, 624 P.2d 807 (1981)). Moreover, the plaintiffs have much easier remedies than seeking to divest the state of title to the lands.

If the commissioner of revenue fails to make the required deposit, he would be acting contrary to statute. Accordingly, the plaintiffs could bring an injunctive action against the commissioner, seeking a court order directing him to follow the statute.

If the legislature attempts to appropriate from the Mental Health Trust Income Account for purposes other than mental health before it appropriates from the account to meet the necessary expenses of the state's mental health program, the plaintiffs again could seek an injunction enjoining the state from disbursing any of the funds in that account prior to the state satisfying the federal precondition on the use of those funds for purposes other than mental health -- i.e., first using funds in the account to meet the necessary expenses of the state's mental health program.

In other words, the plaintiffs have simple and almost certainly successful remedies available should either of those unlikely events occur, and would have no need to seek to divest the state of title to the lands (an action which almost certainly would be unsuccessful in any event).

3. Mr. Dennerlein's third question relates specifically to municipal entitlements to land which currently are in limbo because of the mental health lands controversy. In brief, he asks when the existing cloud over municipal

selections will be removed and when conveyances to municipalities will be resumed.

There are two answers to Mr. Dennerlein's question, depending on whether the lands have already been patented to the municipalities or whether patent has not yet issued. With respect to lands already patented to municipalities, subsection 1(b)(6) of the bill (p. 8, lines 22-28) states that one of the purposes of the bill is to validate prior transactions involving lands selected by and patented to the state under the Alaska Mental Health Enabling Act. Accordingly, with respect to lands which already have been patented to municipalities, we believe passage of this bill as a practical matter would validate those patents and minimize any cloud on title to lands which have already been patented to municipalities.

With respect to lands which have been selected by but not yet patented to municipalities, proposed AS 38.05.-800(d) (pp. 10-11, lines 27-29 and 1 respectively) provides that lands selected by and patented to the state under the Alaska Mental Health Enabling Act which are not within legislative designations are removed from trust status upon reconstitution of the trust. At that time, conveyances to municipalities could resume without question. In the meantime, however, it is conceivable that such conveyances could occur since ch. 132, SLA 1986, makes clear that the commissioner of natural resources can convey lands selected by and patented to the state under the Alaska Mental Health Enabling Act if the conveyance is approved by the Interim Mental Health Trust Commission. As the land identification process goes forward, it certainly is possible that the commissioner, with the commission's approval, could proceed with municipal conveyances.

-- 4. Mr. Dennerlein's final question relates to the interplay between this legislation and the litigation in court. We believe this legislation, standing alone, satisfies the state's legal obligations under the Alaska Mental Health Enabling Act. If we are correct, the court could make such a determination even if the plaintiffs and intervenors argue that it does not.

At the same time, we do not believe that the plaintiffs and intervenors will oppose this resolution and indeed will support it. In that respect, we look at this bill as establishing the basic parameters for final judicial resolution of the litigation. Before the litigation can be

The Honorable Johnny Ellis

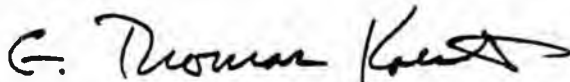
April 20, 1987
Page 5

finally resolved, some other actions may have to occur (e.g., valuation of lands selected by and patented to the state under the Alaska Mental Health Enabling Act; identification of replacement lands; appointment of members to the Alaska Mental Health Board; determination of class membership; resolution of questions relating to attorney's fees; etc.). However, in our view, none of those matters will have any effect on the basic principles established under this bill. In other words, those subsidiary matters relate either to implementation of the provisions of this bill or to matters unique to the litigation context in which they are raised.

We hope this information is useful. As always, we remain ready to answer your questions at your convenience.

Sincerely,

GRACE BERG SCHAIBLE
ATTORNEY GENERAL

By: 
G. Thomas Koester
Assistant Attorney General

GTK/dlm
Enclosed

cc w/enc.: Senator Rick Halford
Representative Pat Pourchot
Commissioner Judith Brady
Commissioner Myra Munson
Caren Robinson, Office of the Governor
David Walker, Esq.
James Gottstein, Esq.
Cooper Geraty, Esq.
Philip Volland, Esq.
Chip Dennerlein
Scot Burgess
Interim Mental Health Trust Commission

Original sponsor: Pourchot/Joint Special Committee
on Mental Health Trust Land

1 IN THE HOUSE

BY THE HEALTH, EDUCATION AND
SOCIAL SERVICES COMMITTEE

2

CS FOR HOUSE BILL NO. 92 (HESS)

3

IN THE LEGISLATURE OF THE STATE OF ALASKA

4

FIFTEENTH LEGISLATURE - FIRST SESSION

5

A BILL

6

For an Act entitled: "An Act relating to the Alaska Mental Health Trust;
and providing for an effective date."

7

8

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

9

* Section 1. FINDINGS AND PURPOSE. (a) The legislature finds

10

(1) the United States Congress passed the Alaska Mental Health
Enabling Act of 1956, P.L. No. 84-830, 70 Stat. 709, "To confer upon Alaska
autonomy in the field of mental health, transfer from the Federal Govern-
ment to the Territory the fiscal and functional responsibility for the
hospitalization of committed mental patients, and for other purposes;"

15

(2) in sec. 202 of the Alaska Mental Health Enabling Act, the
Congress granted the territory the right to select up to one million acres
of federal land to serve as a source of funds to support the territory's
mental health program;

19

(3) in subsection 202(e), the Congress specifically provided
that the land so granted, as well as any income from the land and proceeds
from dispositions of the land, were to 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," that "Such lands, income,
and proceeds shall be managed and utilized in such manner as the Legisla-
ture of Alaska may provide," that the land 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 in-
vested, expended or used by the Territory of Alaska," and that the Alaska
legislature must exercise this broad authority "in a manner compatible with

1 the conditions and requirements imposed by this Act;"

2 (4) in requiring that the proceeds and income of the 1,000,000-
3 acre land grant "first be applied to meet the necessary expenses of the
4 mental health program of Alaska," it was the intent of the Congress that
5 additional public funds be appropriated by the legislature to supplement
6 the proceeds and income from the land grant if those proceeds and income
7 are insufficient to meet the necessary expenses of the mental health pro-
8 gram of Alaska;

9 (5) if the proceeds and income from the 1,000,000-acre land
10 grant exceed the necessary expenses of the mental health program of Alaska,
11 the Congress authorized the legislature to appropriate the excess proceeds
12 and income for other public purposes;

13 (6) because of the highly desirable location and character of
14 much of the land selected by the state under the Act, for example, in and
15 around major population centers, suitable for parks and game refuges, and
16 other uses, and the difficulties associated with disposing of or dedicating
17 the land for purposes that would not result in the receipt of funds that
18 could be used for mental health purposes, for example, satisfaction of
19 municipal entitlements, placement in parks and game refuges, and other
20 uses, without compensation to the trust, the Tenth Alaska State Legislature
21 enacted ch. 181 and 182, SLA 1978, which, among other things, redesignated
22 all mental health lands as general grant lands;

23 (7) both ch. 181 and 182, SLA 1978, also created the mental
24 health fund into which, as compensation to the trust, a sum equal to one
25 and one-half percent of all revenue received from the management of state
26 land was to be deposited and from which only the income could be appro-
27 priated exclusively for mental health purposes;

28 (8) a significant difference between ch. 181 and 182, SLA 1978,
29 was that ch. 182 made the deposit of one and one-half percent of all public

1 land revenue into the mental health fund "subject to legislative appropri-
2 ation of sufficient funds";

3 (9) because ch. 182, SLA 1978 became law after ch. 181, SLA 1978
4 became law, the provisions of ch. 182, SLA 1978 have been considered con-
5 trolling, including specifically the provision that deposits to the mental
6 health fund would be "subject to legislative appropriation of sufficient
7 funds";

8 (10) the legislature has never appropriated funds to the mental
9 health fund;

10 (11) a class-action lawsuit, Weiss v. State, 4FA-82-2208, was
11 filed on November 26, 1982, seeking a judicial determination that the
12 Alaska Mental Health Enabling Act had established a "public trust" under
13 which the state had received the 1,000,000-acre land grant, that the 1978
14 legislation redesignating mental health land as general grant land was a
15 breach of that trust, and that the appropriate remedy was to invalidate the
16 1978 legislation and return mental health land to trust status;

17 (12) in State v. Weiss, 706 P.2d 681 (Alaska 1985), the Alaska
18 Supreme Court held that the Alaska Mental Health Enabling Act established a
19 public trust, that the 1978 legislation redesignating mental health land as
20 general grant land was a breach of the trust, and that the appropriate
21 remedy was to return mental health land still in state ownership to trust
22 status and, for mental health land that the state had "sold" between 1978
23 and the date of the court's decision, to compensate the trust for the fair
24 market value of mental health land so "sold" as of the date of their
25 "sale," subject to a set-off for state mental health expenditures during
26 the same period;

27 (13) while the court returned mental health land to trust status,
28 it did not specify the nature of the state's obligations with respect to
29 managing the trust land, leaving significant questions unanswered that may

1 require additional costly and time-consuming litigation;

2 (14) continued costly and time-consuming litigation over mental
3 health trust land management is not in the public interest because it
4 diverts attention from the goal the Congress sought to achieve through the
5 Act's land grant, the funding of a mental health program;

6 (15) continued costly and time-consuming litigation over mental
7 health trust land management is not in the public interest because it has
8 the potential to be extremely divisive, pitting the advocates of stringent
9 mental health trust land management against those who envision state-owned
10 mental health land managed for its highest and best use, including convey-
11 ance to municipalities in satisfaction of municipal entitlements, placement
12 in parks and game refuges, and other uses, without a major expenditure to
13 compensate the mental health trust for the fair market value of the land;

14 (16) continued costly and time-consuming litigation over mental
15 health trust land management is not in the public interest because advo-
16 cates of stringent mental health trust land management may seek the in-
17 validation of state conveyances of mental health land to third parties,
18 particularly municipalities and Native corporations organized under the
19 Alaska Native Claims Settlement Act, a course of action that at best will
20 place a cloud on the third parties' title to those lands and at worst will
21 result in those third parties losing title to their lands, causing economic
22 and other harm and further dividing those who advocate stringent mental
23 health trust land management from those who believe all state-owned land,
24 including mental health land, should be managed for its highest and best
25 use;

26 (17) continued costly and time-consuming litigation over mental
27 health trust land management is not in the public interest because advo-
28 cates of stringent mental health trust land management may seek the in-
29 validation of legislative designations of mental health land as state

1 parks, state game refuges, state forests, etc., placing the future use of
2 the land for the designated purposes in doubt and further dividing those
3 who advocate stringent mental health trust land management from those who
4 believe all state-owned land, including mental health land, should be
5 managed for its highest and best use;

6 (18) the failure of the Alaska Legislature to deal with the
7 current situation by properly reconstituting the mental health trust at
8 this time will lead to continued costly, time-consuming, and divisive liti-
9 gation, which is not in the public interest;

10 (19) the same problems that led to the 1978 redesignation of
11 mental health land as general grant land, for example, the desirability of
12 managing mental health land for its highest and best use, including the
13 satisfaction of municipal entitlements, inclusion in parks and game ref-
14 uges, will continue to pose difficulties in the state's efforts to accom-
15 modate the public's needs generally with the obligation to administer
16 mental health land as a trust;

17 (20) under art. VIII, sec. 2, Constitution of the State of
18 Alaska, as construed by the Alaska Supreme Court in State v. University of
19 Alaska, 624 P.2d 807 (1981), the legislature has the authority to remove
20 land from trust status if the trust is compensated for the fair market
21 value of the land;

22 (21) the state is not now, and in the foreseeable future will not
23 be, in a position to compensate the mental health trust in money for the
24 fair market value of mental health land;

25 (22) even if the state were able to compensate the mental health
26 trust in money for the fair market value of mental health land, there is a
27 substantial legal question whether that compensation, as the corpus of the
28 trust, could be preserved in perpetuity or whether the prohibition on
29 dedicated funds in art. IX, sec. 7, Constitution of the State of Alaska,

1 would require that those funds be made available for appropriation by the
2 legislature under the terms of the Alaska Mental Health Enabling Act;

3 (23) under art. VIII, sec. 2, Constitution of the State of
4 Alaska, and subsection 202(e) of the Alaska Mental Health Enabling Act, the
5 legislature has broad authority over all state land, including mental
6 health land, and can permissibly remove mental health land from trust
7 status if, consistent with its trust responsibilities, it simultaneously
8 designates other state land of equivalent value as mental health land;

9 (24) the Congress' goal of funding a mental health program, and
10 the public interest in having attention focused on the problems of the
11 mentally ill and not questions regarding mental health trust land manage-
12 ment, will be best served by establishing a mechanism for generating reve-
13 nue from mental health land that minimizes the number and complexity of
14 related land management decisions;

15 (25) reconstituting the mental health trust with state land that
16 has a substantial likelihood of remaining in state ownership in perpetuity,
17 and compensating the mental health trust for state use of that land through
18 annual identification of an amount of state general fund revenue equal to
19 the fair market rental value of the land, as a separate account in the
20 general fund, would minimize the number and complexity of land management
21 decisions and would result in the following benefits to the mental health
22 trust:

23 (A) it would ensure that the mental health trust corpus
24 will be preserved in perpetuity;

25 (B) it would reconstitute a mental health trust corpus
26 equal in value to the original 1,000,000-acre mental health trust
27 corpus, with no reduction (in the nature of a set-off) for state
28 mental health expenditures;

29 (C) it would make the entire mental health trust corpus

1 productive in that each acre of mental health trust land would produce
2 its fair market rental value annually;

3 (D) the mental health trust would not incur administrative
4 expenses;

5 (E) it would focus attention on questions related to the
6 state's mental health programs and the levels of appropriations for
7 those programs;

8 (26) reconstituting the mental health trust with state land that
9 has a substantial probability of remaining in state ownership in perpetuity
10 would result in the following benefits to the state generally:

11 (A) it would free all mental health land not in legisla-
12 tively designated areas for nontrust uses;

13 (B) the only significant expenditure of public funds that
14 would be required would be appropriations for appraisal of the land to
15 ensure equal value, an expenditure that would be required no matter
16 what form of trust reconstitution is selected; and

17 (C) it would establish an additional safeguard against
18 disposal of the newly designated mental health trust land, that is,
19 those in legislatively designated areas, in that, prior to such dis-
20 posal, equal value replacement land would have to be identified and
21 redesignated as trust land;

22 (27) the legislature will best serve the public interest by
23 reconstituting the mental health trust with land in legislatively des-
24 ignated areas, continuing to use that land for the legislatively designat-
25 ed purposes, compensating the trust for the use of the land through annual
26 identification of an amount of general fund revenue equal to the fair
27 market rental value of the land and designation in the general fund of that
28 amount of funds as the special mental health trust income account, and
29 creating a board to assist and advise the legislative and executive

1 branches of government on matters relating to the mental health program of
2 Alaska.

3 (b) The purposes of this Act are

4 (1) to implement the intent of the Congress underlying sec. 202
5 of the Alaska Mental Health Enabling Act that mental health land be admin-
6 istered in a way that makes funds available for the support of Alaska's
7 mental health program;

8 (2) to the extent practicable, to eliminate the need for costly,
9 time-consuming and divisive litigation over the state's management of
10 mental health land;

11 (3) to ensure that the attention of the public and the govern-
12 ment is focused on mental health programs, as contemplated by the Congress,
13 and not on issues relating to the management of mental health land;

14 (4) to reconstitute a mental health land trust through identi-
15 fication of land in legislatively designated areas that is equal in value
16 to the land selected by and patented to the state under sec. 202 of the
17 Alaska Mental Health Enabling Act;

18 (5) to remove from trust status the land selected by and pat-
19 ented to the state under sec. 202 of the Alaska Mental Health Enabling Act
20 that is not in legislative designated areas, thereby freeing them for other
21 uses;

22 (6) to validate each deed, contract for sale, lease, easement,
23 right-of-way, permit, mineral lease disposal, reservation of land for
24 public use by statute, or land management actions, including use classi-
25 fications under AS 38.05.300 and interagency land management assignments by
26 the Department of Natural Resources, that may have been called into ques-
27 tion by the Supreme Court's decision in State v. Weiss, 706 P.2d 681
28 (Alaska 1985), returning mental health land to trust status;

29 (7) to identify a portion of annual state general fund revenue,

1 equal in amount to the fair market rental value of mental health land, as
2 compensation to the trust for the continued use of the land in legisla-
3 tively designated areas for the legislatively designated purposes; and

4 (8) to create a board to assist and advise the legislative and
5 executive branches of government on matters relating to the mental health
6 program of Alaska.

7 * Sec. 2. AS 37.14 is amended by adding a new section to read:

8 Sec. 37.14.011. MENTAL HEALTH TRUST INCOME ACCOUNT. (a) There
9 is established, as a separate account in the general fund, the mental
10 health trust income account.

11 (b) The amount determined under (c) of this section as the fair
12 market rental of the land constituting the mental health trust corpus
13 is the earnings of the trust and the commissioner of revenue annually
14 shall deposit that amount to the mental health trust income account.

15 (c) The fair market rental value of the land constituting the
16 mental health trust corpus is equal to eight percent of the fair
17 market value of the land. Following the initial determination of the
18 fair market value of the land selected by and patented to the state
19 under sec. 202 of the Alaska Mental Health Enabling Act, the com-
20 missioner of natural resources shall redetermine the fair market value
21 of the land constituting the mental health trust corpus at least every
22 five years, and provide the redetermined value to the commissioner of
23 revenue and the board established under AS 47.30.661.

24 * Sec. 3. AS 37.14 is amended by adding a new section to read:

25 Sec. 37.14.021. UTILIZATION OF THE MENTAL HEALTH TRUST INCOME
26 ACCOUNT. Money in the mental health trust income account established
27 in AS 37.14.011(a) shall first be appropriated by the legislature to
28 meet the necessary expenses of the mental health program of the state.
29 In making annual appropriations from the mental health trust income

1 account, the legislature shall consider the recommendations of the
2 Alaska Mental Health Board established under AS 47.30.661, including
3 recommendations regarding capital improvements. After the necessary
4 expenses of the state's mental health program have been funded, the
5 legislature may make appropriations from the mental health trust
6 income account for other public purposes.

7 * Sec. 4. AS 38.05 is amended by adding a new section to article 11 to
8 read:

9 Sec. 38.05.800. RECONSTITUTION AND ADMINISTRATION OF MENTAL
10 HEALTH LAND TRUST. (a) The commissioner of natural resources, under
11 procedures approved by the interim mental health trust commission,
12 shall determine the fair market value, as of the effective date of
13 this section, of all land selected by and patented to the state under
14 the Alaska Mental Health Enabling Act. The commissioner shall report
15 the determination of that value to the board established under
16 AS 47.30.661.

17 (b) The commissioner of natural resources, with the approval of
18 the interim mental health trust commission, shall identify land within
19 legislative designations that is equal in value to all land selected
20 by and patented to the state under sec. 202 of the Alaska Mental
21 Health Enabling Act that is not in legislative designations.

22 (c) All land selected by and patented to the state under the
23 Alaska Mental Health Enabling Act that is within legislative desig-
24 nations, together with all land identified by the commissioner under
25 (b) of this section, constitutes the corpus of the mental health land
26 trust.

27 (d) Upon reconstitution of the trust under this subsection, land
28 selected by and patented to the state under sec. 202 of the Alaska
29 Mental Health Enabling Act that is not within legislative designations

1 is removed from trust status.

2 (e) The land within legislative designations that constitutes
3 the mental health land trust shall continue to be administered for the
4 legislatively designated purposes. The trust shall be compensated for
5 the continued use of the mental health trust land for the legisla-
6 tively designated purposes as provided in AS 37.14.011.

7 (f) Before the state may remove land that is part of the mental
8 health trust corpus from trust status, and in addition to any other
9 requirements of law, the commissioner of natural resources, consistent
10 with the state's trust responsibilities, shall identify replacement
11 land, equal in value at the time of replacement, within legislative
12 designations and incorporate them into the mental health trust corpus.
13 The commissioner of natural resources annually shall report any
14 actions under this subsection to the board established under AS 47.-
15 30.661.

16 * Sec. 5. AS 39.25.120(c)(9) is amended by adding a new subparagraph to
17 read:

18 (L) Alaska Mental Health Board;

19 * Sec. 6. AS 47.30 is amended by adding new sections to read:

20 Sec. 47.30.661. ALASKA MENTAL HEALTH BOARD. The Alaska Mental
21 Health Board is established. For budgetary purposes, the board is
22 located within the Department of Health and Social Services. The
23 board is the state planning and coordinating agency for the purposes
24 of federal and state laws relating to the mental health program of the
25 state. The purpose of the board is to assist the state in ensuring an
26 integrated comprehensive mental health program.

27 Sec. 47.30.662. COMPOSITION. (a) The board consists of the
28 commissioner of health and social services, or the commissioner's
29 designee, and not fewer than nine nor more than 12 other members,

1 appointed by the governor, with due regard for balanced geographic
2 representation of the state.

3 (b) At least one-third of the members shall be consumers of
4 mental health services, or parents or guardians of consumers.

5 (c) At least one-third of the members shall be either public or
6 private providers of mental health services.

7 (d) The remaining members shall be representatives of the public
8 at large.

9 Sec. 47.30.663. TERM OF OFFICE. (a) Board members serve
10 staggered terms of three years.

11 (b) A vacancy occurring in the membership of the board shall be
12 filled by appointment of the governor for the unexpired portion of the
13 vacated term.

14 (c) Members may be removed only for cause, including, but not
15 limited to, poor attendance or lack of contribution to the board's
16 work.

17 Sec. 47.30.664. OFFICERS AND STAFF. (a) The board, by a major-
18 ity of its membership, shall annually elect a chair and other officers
19 it considers necessary from among its membership.

20 (b) The board will have a paid staff provided by the Department
21 of Health and Social Services, including, but not limited to, an
22 executive director who shall be selected by the board from candidates
23 provided by the department. The executive director is in the partial-
24 ly exempt service and may hire additional employees in the classified
25 service of the state. The executive director and the staff of the
26 board shall be directly responsible to the board in the performance of
27 their duties.

28 Sec. 47.30.665. BYLAWS. The board, on approval of a majority of
29 its membership and consistent with state law, shall adopt and amend

1 bylaws governing its composition, proceedings, and other activities
2 consistent with state law and including, but not limited to, pro-
3 visions concerning a quorum to transact board business and other
4 aspects of procedure, frequency and location of meetings, and estab-
5 lishment, functions, and membership of committees.

6 Sec. 47.30.666. POWERS, DUTIES, AND RESPONSIBILITIES OF THE
7 BOARD. The board shall

8 (1) measure the extent of the mental health need and, as
9 necessary, conduct independent studies, evaluate the statewide mental
10 health information system, and review the current mental health pro-
11 gram of the state;

12 (2) provide a public forum for discussion of issues regard-
13 ing current and potential services to persons served by the mental
14 health program of the state;

15 (3) determine the needs, including those currently unmet,
16 of the persons to be served by the mental health program of the state;

17 (4) review reports from the Department of Natural Resources
18 regarding the valuation of the mental health land trust and the status
19 of mental health trust land, from the Department of Revenue regarding
20 allocations to the mental health income account, and from other de-
21 partments regarding the current and projected revenue for the support
22 of the mental health program of the state;

23 (5) subject to disclosure restrictions imposed by state or
24 federal confidentiality or privacy laws, have access to information in
25 the possession of state agencies;

26 (6) in conjunction with the Department of Health and Social
27 Services, prepare and annually update a long-term comprehensive state
28 mental health plan, to include the projected need and the services,
29 facilities, and resources for the mental health program of the state

1 to meet that need;

2 (7) in conjunction with the Department of Health and Social
3 Services, develop, prepare, adopt, and periodically review and revise
4 as necessary an annual state implementation plan to meet the needs of
5 persons served by the mental health program of the state;

6 (8) in conjunction with the Department of Health and Social
7 Services, and before developing the annual state implementation plan,
8 evaluate the effectiveness of the prior year's implementation plan and
9 evaluate program performance and recommend improvements, set priori-
10 ties, and establish criteria to utilize in funding allocations;

11 (9) report at least annually to the legislature, governor,
12 and commissioner of health and social services, and meet with appro-
13 priate legislative committees, concerning the board's activities,
14 including its evaluation of the effectiveness of the prior year's
15 implementation plan, and its recommendations to meet the necessary
16 operating and capital expenses of the mental health program of the
17 state;

18 (10) serve as an advocate before the executive and legisla-
19 tive branches of government and the public on behalf of those served
20 by the mental health program of the state;

21 (11) discourage duplication of services and promote effi-
22 cient and coordinated use of federal, state, and private resources in
23 the provision of mental health services; and

24 (12) review applicable statutes, regulations, and policies
25 and recommend appropriate changes.

26 Sec. 47.30.669. DEFINITION. In AS 47.30.661 - 47.30.669,
27 "board" means the Alaska Mental Health Board established in AS 47.30.-
28 661.

29 * Sec. 7. Section 1(b), ch. 132, SLA 1986, is amended to read:

1 (b) The commission established under (a) of this section con-
2 sists of three [FIVE] members, including the commissioner of natural
3 resources, or the commissioner's designee [AND THE COMMISSIONER OF
4 HEALTH AND SOCIAL SERVICES, OR THEIR DESIGNEES], and two [THREE]
5 members and two [THREE] alternates [APPOINTED BY THE GOVERNOR] as
6 follows:

7 (1) a member and an alternate representing the plaintiffs
8 who were [,] appointed by the governor from a list of three names
9 submitted to the governor by the plaintiffs in Weiss v. State, 4 FA
10 82-2208 Civil;

11 (2) a member and an alternate representing the intervenors
12 who were [,] appointed by the governor from a list of three names
13 submitted to the governor by the intervenors in Weiss v. State, 4 FA
14 82-2208 Civil [; AND

15 (3) A MEMBER AND AN ALTERNATE REPRESENTING THE GOVERNOR'S
16 MENTAL HEALTH ADVISORY COUNCIL, APPOINTED BY THE GOVERNOR FROM A LIST
17 OF THREE NAMES SUBMITTED TO THE GOVERNOR BY THE GOVERNOR'S MENTAL
18 HEALTH ADVISORY COUNCIL].

19 * Sec. 8. Section 1(c), ch. 132, SLA 1986, is amended to read:

20 (c) The members of the commission shall elect a presiding offi-
21 cer. A majority of the commission constitutes a quorum. The affirma-
22 tive vote of two [THREE] members is required to take official action.
23 A vacancy does not impair the power of the remaining members to exer-
24 cise the powers of the commission.

25 * Sec. 9. Section 2, ch. 132, SLA 1986, is repealed and reenacted to
26 read:

27 Sec. 2. RESPONSIBILITIES OF THE COMMISSION. (a) The commission
28 shall review procedures proposed by the commissioner of natural re-
29 sources to determine the fair market value, as of the effective date

1 of AS 38.05.800, of all land selected by and patented to the state
2 under sec. 202 of the Alaska Mental Health Enabling Act, and review
3 the final determination of the fair market value determined under
4 those procedures.

5 (b) The commission shall review the identification by the com-
6 missioner of natural resources under AS 38.05.800 of land within
7 legislative designations that is equal in value to all land selected
8 by and patented to the state under sec. 202 of the Alaska Mental
9 Health Enabling Act that is not in legislative designations.

10 (c) In the exercise of the commission's responsibilities under
11 this section, the commission and its staff may review the records of
12 the Department of Natural Resources that are made confidential by law
13 or regulation. An individual who acquires information made confiden-
14 tial by law or regulation in the performance of functions authorized
15 by this Act and discloses it without proper authority violates AS 11.-
16 56.860.

17 * Sec. 10. Section 6, ch. 132, SLA 1986, is repealed and reenacted to
18 read:

19 Sec. 6. This Act is repealed on the certification of the commis-
20 sioner of natural resources that the mental health land trust has been
21 reconstituted under AS 38.05.800 to

22 (1) the Alaska Mental Health Board established under
23 AS 47.30.661;

24 (2) the lieutenant governor; and

25 (3) the revisor of statutes.

26 * Sec. 11. TRANSITIONAL PROVISIONS. Beginning in fiscal year 1989, and
27 continuing until the commissioner of natural resources certifies to the
28 commissioner of revenue that the mental health land trust has been recon-
29 stituted under AS 38.05.800, as enacted in sec. 4 of this Act, the

1 commissioner of revenue shall make deposits to the mental health trust
2 income account so that the total of deposits during the year equals five
3 percent of all revenue received by the state's general fund during that
4 fiscal year.

5 * Sec. 12. Notwithstanding AS 47.30.663(a), as added by sec. 6 of this
6 Act, of the initial appointees to the Alaska Mental Health Board appointed
7 under AS 47.30.662, as added by sec. 6 of this Act, one-third shall serve
8 for one year terms, one-third shall serve for two year terms, and one-third
9 for three year terms.

10 * Sec. 13. AS 37.14.010, 37.14.020, 37.14.030, 37.14.040, 37.14.050;
11 AS 47.30.605; and sec. 3, ch. 132, SL\ 1986, are repealed.

12 * Sec. 14. Sections 7 - 10 of this Act take effect July 1, 1987.

Introduced: 1/30/87
 Referred: Health, Education &
 Social Services and Finance

BY POURCHOT BY REQUEST OF
 THE JOINT SPECIAL COMMITTEE
 ON MENTAL HEALTH TRUST LAND

1 IN THE HOUSE

2 HOUSE BILL NO. 92

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FIFTEENTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act implementing a settlement relating to the
 7 federally created mental health trust; and providing
 8 for an effective date."

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

10 * Section 1. FINDINGS AND PURPOSE. (a) The legislature finds that:

11 (1) the United States Congress passed the Alaska Mental Health
 12 Enabling Act of 1956, P.L. 84-830, 70 Stat. 709, to "confer upon Alaska
 13 autonomy in the field of mental health, transfer from the Federal Govern-
 14 ment to the Territory the fiscal and functional responsibility for the
 15 hospitalization of committed mental patients, and for other purposes";

16 (2) in sec. 202 of the Alaska Mental Health Enabling Act, Con-
 17 gress granted the territory the right to select up to 1,000,000 acres of
 18 federal land to serve as a source of funds to support the territory's
 19 mental health program;

20 (3) in subsection 202(e), Congress specifically provided that
 21 the land granted and the proceeds and income from dispositions of the land
 22 were to be administered as "a public trust and such proceeds and income
 23 shall first be applied to meet the necessary expenses of the mental health
 24 program of Alaska";

25 (4) the Tenth Alaska State Legislature, in enacting ch. 181 and
 26 182, SLA 1978, redesignated all mental health land as general grant land
 27 and compensated the mental health trust for the value of the land by creat-
 28 ing the mental health fund into which a sum equal to one and one-half
 29 percent of all revenue received from the management of state land was to be

1 deposited and from which the income was to be appropriated for mental
2 health programs;

3 (5) no funds were ever deposited in this account;

4 (6) a lawsuit, Weiss v. State, 4Fa-82-2208, filed on Novem-
5 ber 26, 1982, sought a judicial determination that the 1,000,000 acres
6 received by the state under the Alaska Mental Health Enabling Act were
7 received as a public trust and that the 1978 legislation redesignating the
8 mental health trust land as general grant land breached the trust;

9 (7) the Alaska Supreme Court held in State v. Weiss, 706 P.2d
10 681 (1985) that the Alaska Mental Health Enabling Act established a public
11 trust, that the 1978 legislation redesignating mental health land as
12 general grant land was a breach of that trust, and that the appropriate
13 remedy was to return mental health land still in state ownership to trust
14 status and to compensate the trust for the fair market value of mental
15 health land disposed of between 1978 and the date of the court's decision
16 subject to a set-off for state mental health expenditures during the same
17 period;

18 (8) while the Alaska Supreme Court returned mental health land
19 to trust status, the decision of the Supreme Court left unanswered signifi-
20 cant questions that may require additional costly and time-consuming liti-
21 gation;

22 (9) further litigation over mental health land management is not
23 in the public interest because it diverts attention from the funding of the
24 mental health program, which was the goal of the Congress in the enactment
25 of the Enabling Act, because it has the potential to be extremely divisive
26 because of incompatibilities between current land use and general trust
27 management principles, and because of transfers of mental health land to
28 third parties;

29 (10) the goal of the Congress in funding a mental health program

1 and the public interest in addressing mental health problems in the state
2 will be better achieved by establishing a reasonable mechanism for funding
3 mental health programs independent of the management of mental health land;

4 (11) subsection 202(e) of the Enabling Act specifically provides
5 that land granted under the Act "may be sold, leased, mortgaged, exchanged,
6 or otherwise disposed of in such manner as the Legislature of Alaska may
7 provide, in order to obtain funds or other property to be invested, ex-
8 pended, or used" as provided in the Act; and

9 (12) the legislature will best serve the public interest by
10 exercising its authority under subsection 202(e) of the Enabling Act to
11 dispose of mental health land by removing it from trust status and by
12 simultaneously redesignating it as general grant land in order to obtain
13 funds to be expended as provided in the Enabling Act, and to compensate the
14 mental health trust for the value of the land removed from the trust
15 through the establishment of a special account in the general fund of the
16 state composed of five percent of all revenue received by the state general
17 fund during each fiscal year.

18 (b) The purposes of this Act are to

19 (1) establish a funding source for the mental health trust to
20 take the place of the land trust established in the Alaska Mental Health
21 Enabling Act as authorized in subsection 202(e) of the Enabling Act and in
22 the exercise of the power of the legislature under art. VIII, sec. 2, of
23 the Alaska Constitution;

24 (2) eliminate, to the extent practicable, the need for costly,
25 time-consuming, and divisive litigation over the management of the mental
26 health land;

27 (3) ensure that the attention of the public and the government
28 is focused on mental health programs as contemplated by Congress and not on
29 issues related to the management of the mental health land;

1 (4) satisfy the public interest in removing state-owned mental
2 health land from its trust status so that the land may be managed for its
3 highest and best use without regard to the maximum generation of income to
4 the trust; and

5 (5) replace the original mental health corpus with a permanent
6 direct funding source while, at the same time, pledging state assets for
7 use in reconstituting the trust corpus if the state should fail to estab-
8 lish the funding source.

9 * Sec. 2. AS 37.14 is amended by adding new sections to read:

10 ARTICLE 1. SPECIAL MENTAL HEALTH ACCOUNT.

11 Sec. 37.14.011. SPECIAL MENTAL HEALTH ACCOUNT ESTABLISHED. (a)
12 The special mental health account is established in the general fund
13 of the state.

14 (b) During each fiscal year, the commissioner of revenue shall
15 make deposits into the special mental health account so that the total
16 of deposits during the year equals five percent of all revenue re-
17 ceived by the state general fund during that fiscal year.

18 Sec. 37.14.021. UTILIZATION OF THE SPECIAL MENTAL HEALTH AC-
19 COUNT. Money in the special mental health account established in
20 AS 37.14.011(a) shall first be appropriated by the legislature to meet
21 the necessary expenses of the mental health program in the state. In
22 making annual appropriations from the special mental health account,
23 the legislature shall consider the recommendations of the Mental
24 Health Board established under AS 37.14.041. After mental health
25 programs have been funded, the legislature may appropriate for other
26 purposes as determined by the legislature.

27 Sec. 37.14.031. PLEDGE OF STATE ASSETS. (a) Notwithstanding
28 AS 09.50.270, the general assets of the state may be executed upon to
29 the extent necessary to reconstitute the mental health trust

1 recognized by the Alaska Supreme Court in State v. Weiss, 706 P.2d 681
2 (Alaska 1985) if the commissioner of revenue fails to make the de-
3 posits required by AS 37.14.011 or if the legislature fails to make
4 the appropriations required by AS 37.14.021.

5 (b) If an execution occurs under (a) of this section, state
6 assets shall be executed upon in a prioritized order as provided by
7 law.

8 Sec. 37.14.041. MENTAL HEALTH BOARD ESTABLISHED. (a) The
9 Mental Health Board is established in the Department of Health and
10 Social Services. The board is composed of the commissioner of health
11 and social services, or a designee of the commissioner, and four
12 public members appointed by the governor. The appointments shall be
13 made from a list of nominees prepared by statewide or regional groups
14 interested in mental health, including groups representing both pro-
15 fessional providers and clients.

16 (b) The members of the Mental Health Board shall elect from its
17 membership a presiding officer. Members of the board serve without
18 compensation but are entitled to travel expenses and per diem au-
19 thorized for members of boards under AS 39.20.180.

20 (c) The Mental Health Board may meet frequently. The board may
21 use the teleconference facilities of the state for its meetings.

22 Sec. 37.14.051. POWERS AND DUTIES OF THE MENTAL HEALTH BOARD.
23 The Mental Health Board shall

24 (1) recommend legislation and funding levels necessary to
25 meet the needs of the mental health program of the state;

26 (2) submit a report to the legislature by the 10th day of
27 each regular session on the use and expenditure of funds in the spe-
28 cial mental health account established under AS 37.14.011.

29 * Sec. 3. AS 37.14.160 is amended to read:

1 Sec. 37.14.160. DUTIES OF COMMISSIONER OF REVENUE. The commis-
2 sioner of revenue is the treasurer of the funds created in AS 37.14.-
3 011 [AS 37.14.010] and 37.14.110 and shall

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

7 (2) receive cash belonging to those funds;

8 (3) collect the principal on securities acquired for each
9 fund established under AS 37.14.011 [AS 37.14.010] and 37.14.110 and
10 credit each fund accordingly;

11 (4) collect interest and dividends earned on investments of
12 the funds established under AS 37.14.011 [AS 37.14.010] and 37.14.110
13 and credit the income reserve account of each fund accordingly;

14 (5) invest and reinvest the principal of each fund in
15 accordance with AS 37.14.170.

16 * Sec. 4. AS 37.14.170(a) is amended to read:

17 (a) The commissioner of revenue, with the approval of each
18 advisory board created in AS 37.14.041 [AS 37.14.020] and 37.14.120,
19 may invest the principal of the funds created in AS 37.14.011 [AS 37.-
20 14.010] and 37.14.110 in the same manner as specified for the invest-
21 ment of surplus pension funds under AS 39.35.110.

22 * Sec. 5. AS 38.05 is amended by adding a new section to read:

23 Sec. 38.05.815. REMOVAL FROM TRUST STATUS AND REDESIGNATION OF
24 MENTAL HEALTH LAND. Land granted to the state under the Mental Health
25 Enabling Act of 1956, 70 Stat. 709, and patented to or approved for
26 patent to the state, and land designated as mental health land that
27 was received by the state in exchange for land granted under that
28 federal Act, is redesignated as general grant land and shall be
29 managed and disposed of by the Department of Natural Resources under

1 applicable provisions of law.

2 * Sec. 6. LEGISLATIVE INTENT. The redesignation of mental health land
3 in AS 38.05.815, as enacted by sec. 5 of this Act, is intended to validate
4 each deed, contract for sale, lease, easement, right-of-way, permit,
5 mineral lease disposal, reservation of land for public use by statute, or
6 land management actions, including use classifications under AS 38.05.300
7 and interagency land management assignments by the Department of Natural
8 Resources that may have been called into question by the Supreme Court's
9 decision in State v. Weiss, 706 P.2d 681 (Alaska 1985) returning mental
10 health land to trust status.

11 * Sec. 7. AS 37.14.010, 37.14.020, 37.14.030, 37.14.040, and 37.14.050
12 are repealed.

13 * Sec. 8. This Act takes effect immediately under AS 01.10.07C(c).