

SB

96

**STATE OF ALASKA 1987 LEGISLATIVE SESSION  
FISCAL NOTE**

REQUEST: \_\_\_\_\_

Bill Version: CS SR 96 (Hess)  
Publish Date: 4-21-87

Revision Date: \_\_\_\_\_

Agency Affected: DHSS/DHDD

Title: \_\_\_\_\_

BRU: Inst. & Administration

Sponsor: \_\_\_\_\_

Components: Mental Health Admin.

Requestor: \_\_\_\_\_

*Benn*

**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	73.8	78.8
SUPPLIES		1.8	1.8	1.8	1.8	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
<b>TOTAL OPERATING</b>	<b>0</b>	<b>267.7</b>	<b>267.7</b>	<b>267.7</b>	<b>267.7</b>	<b>267.7</b>

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						
<b>TOTAL</b>		<b>267.7</b>	<b>267.7</b>	<b>267.7</b>	<b>267.7</b>	<b>267.7</b>

**POSITIONS:**

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

**ANALYSIS :**

\_\_\_\_\_

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

Phone: 465-3370  
Date: 4/4/87

Approved by Commissioner: Mona M. McCann  
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

CSSB 96 HBSS  
~~HB 91-1~~

## 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	27,004
		<u>\$140,061</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 3000 X 3 =	<u>\$ 9,000</u>
3 Printers	
Software	

TOTAL	<u>\$267,661</u>
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\*The amount of \$10.0 is also available from the DMHDD/s budget.

CSB 964ES  
HB 91

FISCAL NOTE #1

Mental Health Board

House Bill 91 (CMI) 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. 47.30.030), 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

Bush ... 11/20

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.

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.

## FACT SHEET - MENTAL HEALTH LEGISLATION

### 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.

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1. It reconstitutes a permanent land trust and gets everybody out of court.
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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



# ALASKA MENTAL HEALTH ASSOCIATION

2811 Fairbanks Street, Suite A  
Telephone 276-1705

Anchorage, Alaska 99503

A Division of the National Mental Health Association

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February 19, 1987

Rep. Pourchot  
Sen. Halford  
Sen. Fahrenkamp  
P.O. Box V  
Juneau, Alaska 99811

Rep. Gruenberg  
Sen. Fischer  
Sen. Josephson

FEB 24 1987

Re: Proposed Legislation to Settle the Mental Health Trust  
Lands Litigation (HB 92 & SB 97)

After consultation with our attorney, Jim Gottstein, we are writing you to express our position, as a party plaintiff in the Mental Health Trust Lands litigation regarding the above referenced legislation to resolve the litigation. Our position was developed after a couple of lengthy discussions by the entire board of directors with Jim.

First, we wish to thank all of you for your tremendous efforts and support in working towards a solution to the problem. Your commitment to better mental health services has shown through, as well as your interest in a resolution of the lawsuit. Of course, our primary concern, as yours, is to provide at least an adequate mental health program. The Trust is simply a mechanism to achieve this.

As another preliminary matter, we wish to acknowledge that the bills as drafted are simply an outline of the proposal the parties have agreed merit further development, but which all understand must be significantly fleshed out before it will be accepted by any party. The purpose of this letter is to indicate what would have to be included before we could accept this type of a proposal and also to offer a slightly different alternative which we prefer at this point. As a litigant in the lawsuit, we will not accept any proposal that we do not agree with in every particular. We understand this is not a normal situation for the Legislature to be in, but do not see how we can take any other approach.

This leads us to our first substantive comment on the bill, which is it must be much more explicit and detailed that it is part of a stipulated settlement of the lawsuit. Our attorney advises us, in order to protect the beneficiaries of the Trust, any negotiated solution should be incorporated into a "court ordered settlement". In connection with this, we are advised that the

legislation should explicitly state it is being enacted in connection with a court ordered settlement, with detailed findings and statements of purpose. It is imperative for people who may be in the position of reviewing the legislation many years from now to be able to understand the reasons for the legislation.

As to the specific proposal of substituting a trust corpus with 5% of general revenues to be used first for the necessary expenses of the Alaska's mental health program, when we first learned of it, our initial reaction was that it sounded very similar to the promise made in 1978 that was never lived up to. However, Jim explained that the bill provides for an enforcement mechanism that is designed to come into play if the state does not live up to its commitment. According to Jim, there is still some question about the enforceability of even the waiver of sovereign immunity contained in the bill, and, of course, this question will have to be resolved satisfactorily before we could ever accept a settlement that does not provide for a reconstructed trust corpus. Also, it is our position that the enforcement mechanism should have the option of enforcing the 5% provision, and not have the only choice being to reconstitute the entire trust corpus. In other words, if the Legislature in 2015 should fail to appropriate for the mental health program out of the 5% first, the enforcement mechanism should be able to be brought into play and require the 5% approach and not force the beneficiaries of the trust to attempt to recreate a multiple billion dollar trust.

One of our absolute bottom lines is that any resolution of the lawsuit that eliminates a trust corpus per se must include a commitment to the mental health program. To the extent there is even an argument the State can assert it is expending funds "first for mental health" without actually providing an adequate mental health program, in any settlement proposal, it is simply unacceptable to us. A mechanism with appropriate public participation must be established to legitimately and objectively determine the real needs for mental health services and then there must be some sort of standard to determine when "the necessary expenses of the mental health program" have been met. For example, if the determination of needs results in the finding that there is potential need for X mental health services, the state would have to fund 90% of X before it could use the 5% of general revenues for other purposes. Of course, we recognize the need for a phase in over the next few years in order to develop an efficient and cost effective program.

This leads to the issue of the Mental Health Board established under the bills. First, the Powers of the Board must be carefully defined and greatly strengthened. The Board's powers must be on the order of the Fish and Game Boards and the University of Alaska Regents. Second, it seems to us the Board is really a beefing up of the Governor's Mental Health Advisory Council and should be approached that way.

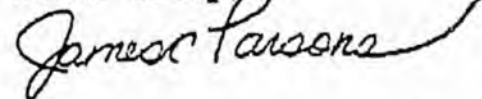
In light of our very grave concern about the illusory nature of simply providing the 5% will be spent "first" on mental health without a firm agreement about what this means, we feel that this legislative session should be considered a Dry Run. We believe the mechanism set out in the bill should be followed this year to see how it comes out. To the extent that none or little more is appropriated than would have otherwise been funded, there is absolutely no reason for us to give up the land and we will not agree to it. Our review of the current mental health budget leads us to believe that it should be increased from approximately \$23.5 million to \$35 million with the primary emphasis in the increased funding on community support programs and services to children and adolescents. We think the program for Alaska Natives also desperately needs to be expanded, but do not believe the Division is in a position to really do much for the fiscal year in question, other than to try and develop its program.

Another issue which should be addressed explicitly is the provision for capital construction. Suitable planning and provision for capital construction costs must be made. Our first inclination is that a 5 year capital construction plan be developed annually and a sinking fund from the 5% be created to pay for it.

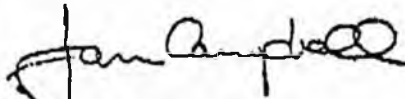
The adjustment to the basic 5% proposal the Board discussed and would like the Legislature to adopt is to use the 5% first to fund the necessary expenses of the mental health program and then to fund an actual trust corpus, in an amount to be determined, with the idea it will replace the 5% when it is fully funded. The figure for the trust corpus would of course have to be preserved, inflation proofed and population adjusted.

We thank you for the opportunity to provide you with our comments and welcome the opportunity to discuss and testify as to them as well as continue to negotiate a settlement of the litigation.

Yours truly,



Dr. James C. Parsons,  
President

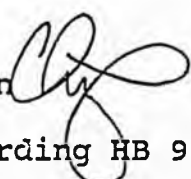


Jan Campbell,  
Executive Director

cc: James B. Gottstein, Esq.  
Alaska Alliance For the Mentally Ill  
Governor's Mental Health Advisory Council  
David Walker, Esq.  
G. Thomas Koester, Esq.

4/10 BK  
Rec'd

MEMORANDUM

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

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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 courts, and that the parties do not alter the deal. In this light, the above questions should be clearly answered on the record. Thank you.