

S B

4193

HOUSE COMMITTEE REPORT

File 5/8

Rules

+ Calendar

(11)

Date Referred: May 7, 1990

FURTHER REFERRALS:

Date of Committee Action: 5/7/90

The FINANCE Committee considered:

CSSB 493 (FINANCE) am

CS SB NO. 493 (Finance) am

MENTAL HEALTH TRUST

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

RECOMMENDATIONS:

- be replaced with HCS CSSB 493 (FIN) the same title
- a new title
- have attached amendment(s)
- do pass
- do not pass
- no recommendation
- individual recommendations
- additional referral to the _____ Committee

ADOPTS: HOUSE FINANCE letter of intent

ATTACHES NEW FISCAL NOTE(S):
(Dept)

APPROVES PREVIOUS:

(Date/Dept)

- fiscal impact _____
- zero fiscal note _____
- zero with analysis _____
- fiscal note(s) _____
- zero fiscal note(s) 5/7/90 SFINANCE
- zero fn/analysis _____

SIGNING DO PASS:

Ronald J. Larson LARSON

SIGNING:

(Check approp. column)

Do Not Pass No Rec Amend

Signature	Do Not Pass	No Rec	Amend
<u>Swackhammer</u> SWACKHAMMER	<input checked="" type="checkbox"/>		
<u>Taylor Brown</u> BROWN	<input checked="" type="checkbox"/>		
<u>Koponen</u> KOPONEN	<input checked="" type="checkbox"/>		
<u>Ulmer</u> ULMER	<input checked="" type="checkbox"/>		
<u>Barnes</u> BARNES	<input checked="" type="checkbox"/>		
<u>Rieger</u> RIEGER	<input checked="" type="checkbox"/>		
<u>Shultz</u> SHULTZ	<input checked="" type="checkbox"/>		
<u>Wallis</u> WALLIS			<input checked="" type="checkbox"/>
<u>Ronald J. Larson</u> LARSON			<input checked="" type="checkbox"/>

Chairman's Signature

FISCAL NOTE

REQUEST:

Revision Date: _____
 Title: Reconstitution & administration of the mental health trust
 Sponsor: Senator Coghill
 Requestor: _____

Agency Affected: Dept Natural Resources
 BRU: Management & Administration
 Components: Information Resource Management

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 91	FY 92	FY 93	FY 94	FY 95	FY 96
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0	0	0	0	0	0

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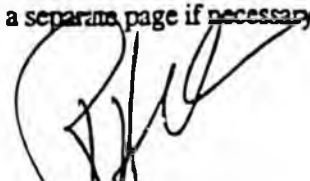
FUNDING: (Thousands of Dollars)

GENERAL FUND	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: Senator Rick Uehling, Co-chairman
 Division: Senate Finance Committee

Phone: 465-4821
 Date: 5/6/90

Approved by Commissioner: _____
 Agency: _____

Date: _____

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

FISCAL NOTE

REQUEST:

Revision Date: _____ Agency Affected: Health & Social Services
 Title: An Act relating to the reconstitution and BRU: _____
administration of the Mental Health Trust
 Sponsor: Senator Coqhill Components: _____
 Requestor: Senate Resource Committee

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 91	FY92	FY93	FY94	FY 95	FY 96
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0
CAPITAL	0.0	0.0	0.0	0.0	0.0	0.0
REVENUE	0.0	0.0	0.0	0.0	0.0	0.0

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

POSITIONS:

FULL-TIME	0.0	0.0	0.0	0.0	0.0	0.0
PART-TIME	0.0	0.0	0.0	0.0	0.0	0.0
TEMPORARY	0.0	0.0	0.0	0.0	0.0	0.0

ANALYSIS: (Attach a separate page if necessary)
FY 90 fiscal impact is "0".

Prepared by: Richard Renninger Phone: 465-3331
 Division: Administrative Services Date: _____
 Approved by Commissioner: Myra M. Manson Date: 5/2/90
 Agency: Department of Health and Social Services

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

Changes in CSSB 493 (Fin)
 have no fiscal impact.
 This fiscal note is
 appropriate. 5/6/90

Original sponsor(s): SEN. COGHILL

1 IN THE SENATE

BY THE FINANCE COMMITTEE

2 HOUSE CS FOR CS FOR SENATE BILL NO. 493 (Finance)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 SIXTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

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

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

10 * Section 1. AS 37.14.011(b) is amended to read:

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

16 * Sec. 2. AS 37.14.011(c) is repealed and reenacted to read:

17 (c) The rental value of the land constituting the mental health
18 trust corpus is equal to six percent of the unrestricted general fund
19 revenue of the state for the fiscal year.

20 * Sec. 3. AS 37.14.021 is amended to read:

21 Sec. 37.14.021. UTILIZATION OF THE MENTAL HEALTH TRUST INCOME
22 ACCOUNT. Money in the mental health trust income account established
23 in AS 37.14.011(a) shall first be appropriated by the legislature to
24 meet the necessary expenses of the mental health program of the state.
25 In making annual appropriations from the mental health trust income
26 account, the legislature shall consider the recommendations of the
27 Alaska Mental Health Board established under AS 47.30.661, including
28 recommendations regarding capital improvements. After the necessary
29 expenses of the state's mental health program have been funded, the

1 legislature may authorize transfer of the unobligated and unappro-
2 priated fiscal year-end balance in the mental health trust income
3 account as of June 30 to the unreserved portion of the general fund
4 [MAKE APPROPRIATIONS FROM THE MENTAL HEALTH TRUST INCOME ACCOUNT] for
5 other public purposes.

6 * Sec. 4. AS 38.05.800 is repealed and reenacted to read:

7 Sec. 38.05.800. RECONSTITUTION AND ADMINISTRATION OF MENTAL
8 HEALTH LAND TRUST. (a) All land within legislative designations on
9 September 7, 1987, constitutes the corpus of the mental health land
10 trust.

11 (b) On reconstitution of the trust under this section, land the
12 state receives under sec. 202 of the Alaska Mental Health Enabling Act
13 that is not within legislative designations is removed from trust
14 status.

15 (c) The land within legislative designations that constitutes
16 the mental health land trust shall be administered for the legisla-
17 tively designated purposes. The state shall continue to manage the
18 legislatively designated areas in accordance with state law and poli-
19 cy; the authority of the state includes the issuance of permits,
20 rights-of-ways, mining leases, oil and gas leases, coal leases, timber
21 contracts, and other actions that do not constitute a conveyance in
22 fee simple. The income from the use of the trust land shall be depos-
23 ited into the mental health trust income account.

24 (d) Before the state may remove land that is part of the mental
25 health trust corpus from trust status, and in addition to any other
26 requirements of law, the commissioner, consistent with the state's
27 trust responsibilities, shall consult with the Alaska Mental Health
28 Board, shall identify replacement land, equal in value at the time of
29 replacement, within legislative designations and incorporate them into

1 the mental health trust corpus. The commissioner annually shall
2 report any actions under this subsection to the board established
3 under AS 47.30.661.

4 * Sec. 5. The provisions of this Act are not severable.

5 * Sec. 6. Section 2(a), ch. 132, SLA 1986, as amended by sec. 9,
6 ch. 48, SLA 1987, is repealed.

7 * Sec. 7. Section 11, ch. 48, SLA 1987 is repealed.

8 * Sec. 8. This Act takes effect immediately under AS 01.10.070(c).



Official Business

Alaska State Legislature

HOUSE OF REPRESENTATIVES

Committee on Finance

HOUSE FINANCE COMMITTEE

P.O. Box V
State Capitol
Juneau, Alaska 99811

LETTER OF INTENT

FOR

HCS CS SB 493 (FINANCE)

The legislature reaffirms 1987 SLA Chapter 48 (Chapter 48) as a proposed mechanism to settle the Mental Health Trust Lands litigation (Weiss v. State, 4FA-82-2208 Civil). The legislature accepts the Final Report of the Interim Mental Health Trust Commission on Approved Procedures for Determining the Fair Market Value of Alaska's Mental Health Trust Lands, dated December 20, 1989, and finds that the Commission has satisfied the procedural requirements and followed the process established by Chapter 48. The value of land selected by or patented to the State under the Alaska Mental Health Enabling Act is the value calculated under the procedures approved by the Interim Mental Health Trust Commission by its resolution of November 7, 1989.

Handwritten signature of Ronald J. Larson in cursive.

Co-Chairman Ron Larson
House Finance Committee

Handwritten signature of Lyman Hoffman in cursive.

Co-Chairman Lyman Hoffman
House Finance Committee

HOUSE FINANCE COMMITTEE LETTER OF INTENT RE CSSB 493 (FIN) am S

This bill adopts a new approach to compensating the mental health trust for the use of its land from that taken in chapter 48, SLA 1987. The chapter 48 approach required that the value of the original one million acre mental health land grant be determined, a task which has proven extremely difficult. The new approach would compensate the mental health trust by annually allocating six percent of the state's unrestricted general fund revenues to the mental health trust income account.

In approving this approach, the House Finance Committee was guided by the following considerations:

(1) the state and the plaintiffs and intervenors in the Weiss case do not agree on the value of the original one million acre land grant, the plaintiffs and intervenors arguing for a value of \$2.243 billion and the state arguing for a value of \$564.7 million;

(2) the impasse over valuation may lead to continued costly, time-consuming, and divisive litigation over land issues, matters having nothing to do with the state's mental health program, leading to all of the adverse consequences noted by the legislature in subsections i(a)(14)-1(a)(17) of chapter 48;

(3) it is not in the best interest of either the trust or the public to try to resolve the mental health trust controversy by determining the value of the original grant;

(4) annually allocating six percent of the state's unrestricted general funds in perpetuity will fairly compensate the mental health trust for the use of its land because (i) there will be no administrative expenses associated with generating funds for the account, and (ii) the average per acre earnings for trust lands in other states in fiscal year 1988 was \$8.97, the highest per acre earnings (in the State of Washington because of its prime and easily accessible timber lands) was \$45.68, and the dedication of six percent of the state's unrestricted revenue will result in per acre earnings (based on the original one million acres) of approximately \$145 per acre for the mental health trust in fiscal year 1991; and

(5) it is in the best interest of both the trust and the public to resolve the mental health trust controversy by reconstituting the mental health trust corpus and compensating the trust for the use of the reconstituted corpus through the establishment of a permanent mental health trust income account into which six percent of the state's unrestricted revenue is allocated annually.

5/7/90 11 pm

Amendments

#1) line 18 pg 1 - substitute 7% for 6%

#2) change words section (c) pg 2
line 23 delete "general fund" ^{trust}
substitute mental health ^{trust} income
account.

#3) pg 3 section 8
takes affect upon final approval
of reconstitution ~~by the act~~ of the
trust by the court.

#4) substitute letter of intent
as ~~for~~ amended which re-affirms
the 1987 SCA Chapter 48 as a
proposed mechanism to settle the
MHT Lands litigation by
accepting the Final Report of the
Interim Mental Health Trust.

Commission on Approval procedures
for determining the Fair Market Value
of All MHT Lands dated Dec 20, 1989.

42

A M E N D M E N T

Offered in the
Senate Resources Committee

TO: CSSB 493 (HESS)

HCS CS SB 493 (F III)

HOUSE

Page 2, lines 15 - 17:

Letter of Intent

~~Delete subsection (a) and insert the following:~~

(a) The legislature reaffirms 1987 SLA Chapter 48 (Chapter 48) as a proposed mechanism to settle the Mental Health Trust Lands litigation (Weiss v. State, 4FA-82-2208 Civil). The legislature accepts the Final Report of the Interim Mental Health Trust Commission on Approved Procedures for Determining the Fair Market Value of Alaska's Mental Health Trust Lands, dated December 20, 1989, and finds that the Commission has satisfied the procedural requirements and followed the process established by Chapter 48. The value of land selected by or patented to the State under the Alaska Mental Health Enabling Act is the value calculated under the procedures approved by the Interim Mental Health Trust Commission by its resolution of November 7, 1989.

RATIONALE FOR RECONSTITUTING THE MENTAL HEALTH TRUST CORPUS
AT 6% AND PLACING APPROXIMATELY 9 MILLION ACRES OF LAND IN
THE LAND TRUST

Since enacted in 1987, program costs have grown:

In 1987, identified mental health expenditures were approximately \$40 million. Since that time, the court has ruled that the program must include not only "traditional" mental health services, but also services for the developmentally disabled, Alzheimer's victims, and the chronic alcoholic.

Mental Health Program is now defined through allocation of expenditures in the operating budget -- total for FY 91 is approximately \$94 million.

Complete accounting of mental health expenditures is not complete. Intent language in the FY 91 operating budget directs OMB to audit additional programs in which mental health dollars may be spent (for example, foster care, Medicaid, child abuse prevention programs, public health nursing). Although some allocations may be adjusted downward, the audit will almost certainly result in increased appropriations from the trust.

This bill will:

Using FY 91 estimates allocate \$145 million toward the mental health trust account (6 percent of the unrestricted general fund revenues), slightly more than FY 91 revenues under the Senate Resources Committee Substitute for this bill (8 percent of the land value of \$1.8 billion).

Allow for necessary growth in the mental health program.

Accommodate additional current expenditures which may be identified as "mental health" expenditures by pending OMB audit.

Reconstitute the land trust by placing all legislatively designated lands, as of 1987, into a land trust.

746-1046

WEISS v. STATE: AN OVERVIEW

September 28, 1990

The mental health trust litigation, Weiss v. State, has substantially affected economic development in Alaska, and probably will continue to do so until it is resolved. To understand the issues, this memorandum is intended to review the history of the case and its current status.

The federal law

Prior to 1956, the Territory of Alaska was precluded from legislating with respect to mental health. Only the federal government -- as distinct from the territorial government -- had the legal authority to take action with respect to mental health problems in the territory.

The mental health "program" administered by the federal government, to the extent it could be called a program, was barbaric. The United States Attorney would file a complaint in court alleging that there was an "insane person at large." The person would be incarcerated, and then tried by a jury. If found "not insane," the person would simply be released back into the community. If found "insane," the person would be shipped to Morningside Hospital in Portland, Ore., and institutionalized in a custodial (as opposed to therapeutic) setting.

Alaskans were outraged by this approach to mental illness, and continually petitioned Congress to be given the authority to deal with the issue. They finally succeeded when Congress enacted the Alaska Mental Health Enabling Act ("AMHEA"), P.L. 84-830, 70 Stat. 709 (1956). In that Act, Congress granted the Territory of Alaska the same authority with respect to the subject of mental health that the other states and territories had. Section 101 of the AMHEA provided:

For the purpose of vesting in the Territory of Alaska authority comparable in scope to that of the States and the other Territories of the United States in the field of mental health, the Territorial legislature is hereby authorized to enact such laws on the subject of mental health as it may deem appropriate, and such legislation may supersede any of the Acts cited in section 301.

The bill that became the AMHEA had not started out that way. Indeed, as introduced, it included detailed and stringent commitment and other procedures, but it was amended in the Senate to delete even a temporary federally-mandated program which the territory could then supersede.

Since the territory had no taxing power, the AMHEA contained two forms of grants-in-aid. The first was in the form of

a temporary transitional grant of decreasing amounts of money, and required that the territory meet certain program minimums. See sec. 201 of the AMHEA. The second was a one million acre land grant, to serve as a source of revenue for the territory since, unlike a state, the territory had no independent power to raise revenue. The land grant has been the focus of the litigation to date.

As introduced, the bill that became the AMHEA included no connection between the income from the lands and the mental health program. To remedy that, it was amended to require the income and proceeds from the lands to be dedicated to the mental health program. Because no one knew either how much the program would cost or how much revenue the lands would generate, however, the bill ultimately provided for a first draw trust in favor of the mental health program:

All lands granted to the Territory of Alaska under this section, together with the income therefrom and the proceeds from any dispositions thereof, shall be administered by the Territory of Alaska as a public trust and such proceeds and income shall first be applied to meet the necessary expenses of the mental health program of Alaska. Such lands, income, and proceeds shall be managed and utilized in such manner as the Legislature of Alaska may provide. Such lands, together with any property acquired in exchange therefor or acquired out of the income or proceeds therefrom, may be sold, leased, mortgaged, exchanged, or otherwise disposed of in such manner as the Legislature of Alaska may provide, in order to obtain funds or other property to be invested, expended, or used by the Territory of Alaska. The authority of the Legislature of Alaska under this subsection shall be exercised in a manner compatible with the conditions and requirements imposed by other provisions of this Act.

Sec. 202(e) of the AMHEA.

The land grant was confirmed to the state in sec. 6(k) of the Alaska Statehood Act.

The state' administration of the grant

Initially, the state did not establish and maintain a separate account for proceeds from the lands. A record of trust land income was kept until 1973, however, and a board was set up to oversee management of the lands. As a rule, mental health expenditures greatly exceeded revenues from the lands.

Municipal and private parties' demands for land in the late 1970s resulted in passage of chs. 181 and 182, SLA 1978, both

of which redesignated all mental health lands as general grant lands. Chapter 181 would have compensated the trust by payment of one and one-half percent of all state land revenues to a permanent trust fund. Chapter 182 did the same thing, but made it subject to legislative appropriation of sufficient funds. As the latter enactment, ch. 182 controlled. The legislature never appropriated any money.

The litigation

On November 26, 1982, a complaint was filed on behalf of a class of plaintiffs needing mental health services. The complaint alleged, *inter alia*, that (1) plaintiffs sought to enforce rights to benefit from the mental health land grant and the trust established thereunder; (2) the state illegally redesignated mental health lands as general grant lands in ch. 181, SLA 1978; (3) pursuant to that legislation, the state disposed of mental health lands without spending the proceeds for trust purposes; (4) the state also disposed of mental health lands for less than adequate consideration; and (5) plaintiffs were entitled to an order invalidating the 1978 legislation, establishing a trust for receipt of funds, directing the state to administer the lands as a trust, and other appropriate relief.

The class was certified on January 26, 1983.

The plaintiffs moved for partial summary judgment that (1) the lands could not be unilaterally converted into general grant lands, and the 1978 legislation was therefore void, and (2) the lands are subject to a federal trust. The state opposed the motion on the ground that the 1978 legislation was consistent with the purpose of the 1956 federal Act -- maintenance by the state of a mental health program -- and cross-moved for summary judgment that the 1978 legislation was valid.

The plaintiffs and the state stipulated to certain facts for summary judgment purposes: (1) because of the 1978 legislation, the state administered mental health lands as general grant lands; (2) the state did not separately administer mental health lands; and (3) the state did not maintain a separate account for the income and proceeds of the lands.

On June 15, 1983, Superior Court Judge Warren Taylor held (1) that the 1978 legislation was a breach of the trust, but (2) that the remedy was not to invalidate the 1978 law but instead to order the state to compensate the trust for the value of the lands.

The state appealed the first holding, and the plaintiffs cross-appealed the second holding.

In the meantime, the plaintiffs filed lis pendens 1/ on all mental health lands, including those which the state had conveyed to third parties. The state moved to expunge the lis pendens on the grounds that (1) title to mental health lands was not at issue in the case; and (2) the lis pendens were overbroad in that (i) they reached lands the state had conveyed away, and (ii) they affected the rights of innocent third parties. The plaintiffs opposed, as did the Alaska Mental Health Association and two individuals (collectively "AMHEA"), even though at that time they were not parties to the action. They also moved to intervene, basically on the ground that the original plaintiffs were not providing the class with adequate representation.

Cook Inlet Region, Inc. ("CIRI"), filed an amicus brief in support of the state's motion to expunge the lis pendens and in opposition to AMHEA's motion to intervene.

On October 31, 1984, Judge Taylor granted the motion to expunge the lis pendens on the ground that the plaintiffs' remedy was money and not the land, and denied AMHEA's motion to intervene on the ground that they had delayed too long before moving to intervene. AMHEA appealed the denial of the motion to intervene.

In State v. Weiss, 706 P.2d 681 (Alaska 1985), the Alaska Supreme Court affirmed the trial court's finding that the 1978 legislation was a breach of trust, but reversed on the monetary compensation remedy and invalidated the 1978 legislation. The Court distinguished State v. University of Alaska, 624 P.2d 807 (Alaska 1981), which held that monetary compensation was the proper remedy (and not invalidation of the law which dedicated trust lands to a specific purpose in violation of the trust), on the ground that one could infer a legislative intent to compensate the trust in the law including university trust lands in Chugach State Park, but such an intent could not be inferred from the 1978 mental health lands legislation. 2/

The Court remanded the case to the superior court to reconstitute the mental health trust with those mental health lands which were still in state ownership. For those "former mental health lands" which the state had "sold," the superior court was instructed that the trust was entitled to receive the fair market value of the lands at the time of sale, less a set-off for

1/ Lis pendens are notices filed with the state recorder's office, giving notice that the lands are the subject of litigation. The filing of a lis pendens on a particular parcel of land makes it difficult to sell the land or use it as collateral to obtain a loan.

2/ The Court did not mention the explicit provision in the 1978 legislation providing that the mental health trust would receive one and one-half percent of all state land revenues as compensation for the redesignation of the trust lands as general grant lands.

state mental health expenditures during the same time period. 3/

On January 24, 1986, the Supreme Court issued a Memorandum Order and Judgment ("MOJ") to the effect that the AMHEA could intervene. AMHEA renewed their motion to intervene, and Judge Mary E. Greene (to whom the case was assigned following Judge Taylor's retirement) granted the motion. She allowed AMHEA to file an amended complaint "only insofar as the Additional Claims relate directly to the reconstitution of the trust ordered by the Alaska Supreme Court in State v. Weiss."

In ch. 132, SLA 1986, the state created the interim mental health trust commission to oversee the state's administration of the lands (no sales, leases, or exchanges were allowed without commission approval), to determine state mental health program expenditures since 1978, and to make recommendations to the legislature on how to fix the problem. 4/

About this time, two additional groups intervened: the mentally retarded and defective (represented by Advocacy Services of Alaska and hereafter referred to as "Advocacy Services"), and Nugen's Ranch and chronic alcoholics with psychosis.

Advocacy Services moved for a declaratory judgment that the beneficiaries of the trust included the mentally retarded and defective on the ground that Congress intended the beneficiaries of the trust to include all those who were at risk of being institutionalized at Morningside Hospital, a group that included the mentally retarded and defective. The state opposed the motion on the ground that such a construction of the AMHEA was contrary to the basic purpose of the Act, which was to give the territory and now the state plenary authority to determine what its program was to include and not include, that the AMHEA accordingly gave the state the power to determine which groups it covered and which groups it did not cover, and that the state's program covered only those considered mentally ill in the traditional sense. The original plaintiffs also opposed Advocacy Service's motion and agreed with the state. AMHEA said Congress only intended those traditionally considered mentally ill to be covered by the territory's mental health program, but even if it intended others it did not intend that the territory (and now the state) could pick and choose. Nugen's Ranch said that Advocacy Services was right, but that chronic alcoholics also were included in Congress' contemplation.

3/ In light of this resolution, the Court saw no need to address questions regarding third party title.

4/ The commission included five members: the commissioners of health and social services and natural resources, and three plaintiffs' representatives.

Judge Greene agreed with Advocacy Services and Nugen's Ranch, and held that the beneficiaries of the trust at minimum include those traditionally thought of as mentally ill, the mentally retarded and defective, chronic alcoholics with psychoses, and the elderly who, as a result of the aging process, have mental problems.

In ch. 48, SLA 1987, the state took what was thought to be a giant step toward settlement by enacting a four-step approach: (1) the commissioner of natural resources would value the original one million acre land grant as of the effective date of ch. 48 ^{5/} under procedures she proposed which would be approved by the commission; ^{6/} (2) the original lands would be exchanged for lands within legislatively designated areas (parks, wildlife refuges, etc.) of equal value (using the same valuation procedures), which would then comprise the reconstituted mental health trust corpus; (3) the state would rent the reconstituted corpus for eight percent of its fair market value annually, adjusted every five years; and (4) pending conclusion of the valuation and exchange process, the state would pay five percent of unrestricted general fund revenues as a transitional measure. The payments would go into the mental health trust income account in the general fund (AS 37.14.011), and the legislature would first have to make appropriations from the fund to meet the necessary expenses of the state's mental health program before it could appropriate any money in the account for other purposes.

The process broke down when the commissioner and the commission could not agree on procedures to determine the value of the one million acre land grant. The commissioner proposed procedures that produced a value of \$574 million; the commission approved procedures that produced a value of \$2.243 billion. The commissioner then declared impasse and suggested that the matter would have to be resolved by the legislature.

The plaintiffs' attorneys wrote letters to a number of third parties to whom the state had conveyed mental health lands, threatening to file title challenges and suggesting that, in order to avoid such litigation, they urge their legislators to accept the plaintiffs' value of the original land grant. The state moved to enjoin the plaintiffs from filing such actions on the grounds that (1) filing quiet title actions in an effort to influence the political process was an abuse of the legal process, (2) the state would be irreparably harmed by that abuse of the legal process, (3) the plaintiffs could be adequately protected under the University of Alaska and Weiss cases' monetary compensation remedy, (4) the state would prevail on the monetary compensation theory, and (5) the public interest would be harmed if the preliminary

^{5/} September 7, 1987.

^{6/} The commission also was reduced to three: the commissioner and two plaintiffs' representatives.

injunction was not granted. No decision was immediately forthcoming, but the plaintiffs held off filing title challenges while the motion remained pending.

The 1990 legislature resolved the valuation impasse by enacting an alternative resolution mechanism which is not predicated on the value of the lands. Chapter 210, SLA 1990, provides that all lands that were in legislatively designated areas on September 7, 1987, are exchanged for the original mental health lands not in such areas, and that the state will pay the trust, as rent, six percent of unrestricted general fund revenues plus all incidental revenues from those lands (camping fees, etc.).

After the bill which became ch. 210 passed the legislature, but before it was signed by the governor, the plaintiffs moved for a preliminary injunction to enjoin the state from issuing any patents, leases, rights-of-way, permits, or other authorizations for activities on the original mental health lands on the ground that doing so might diminish the trust. The state opposed on basically the same grounds on which the state's preliminary injunction motion was based (adequacy of monetary compensation, etc.).

On July 9, 1990, Judge Greene denied the state's motion and granted the plaintiffs' motion. She concluded that it was not clear that the plaintiffs could be adequately compensated in money, that the Alaska Supreme Court had directed the superior to reconstitute the trust as it existed just prior to the 1978 legislation (to the extent that was possible), and that she had no authority to deviate from the Supreme Court's mandate.

The state filed a petition for review in the Alaska Supreme Court. The Supreme Court denied the petition on August 24, 1990, but the order was not entered and filed until September 11, 1990.

The state also moved in superior court for clarification of the July 9, 1990 decision. Chapter 210 became effective on July 10, 1990, and there was confusion whether the injunction runs to the original mental health lands, the reconstituted ("new") trust lands in legislatively designated areas, or both. Judge Greene clarified that the injunction runs only to the original mental health grant lands and not the new trust lands placed in trust status under ch. 210. She also ruled that the state could continue issuing camping permits for original mental health lands in state parks as long as the fee charged was comparable to that charged for similar private camping privileges and the fees generated were deposited in a mental health trust account.

The plaintiffs also filed a motion for leave to file new *lis pendens*. Judge Greene granted the motion on August 12, 1990.

Usibelli Coal Mine, Inc. and Idemitsu Alaska, Inc. (operator of the Wishbone Hill coal project) moved to intervene in

order to seek modifications of the preliminary injunction. Usibelli wants to do some exploratory drilling on mental health lands it has under lease; Idemitsu needs a mining plan approved. 7/

The plaintiffs also filed a motion for a preliminary injunction to prevent the transfer to the general fund of the unappropriated balance in the mental health trust income account for FY 1990 -- that is, the portion of the five percent of unrestricted general fund revenues allocated to that account under the transitional provision of ch. 48 which was not appropriated to fund the state's mental health program. 8/ The state opposed on the grounds that (1) the FY 1991 budget was predicated on the transfer of those funds, and preventing the transfer had the potential to unbalance the budget, and (2) preparation of the FY 1991 budget began in the fall of 1989 and was concluded with legislative passage of the operating budget at the end of the 1990 session, and it was unfair to allow the plaintiffs to challenge the transfer of funds on which the budget was predicated after it already had been enacted. Following oral argument on August 6, 1990, Judge Greene denied the plaintiffs' preliminary injunction motion to prevent the transfer of funds on the ground that the potential harm to the state of an unbalanced budget which granting the motion might cause outweighed any potential harm to the plaintiffs. Judge Greene cautioned, however, that the state should not rely on such transfers to balance the budget in the future unless the state could show that the necessary expenses of the state's mental health program had been met.

The plaintiffs also moved for a declaratory judgment that the AMHEA requires that the legislature consider the state's mental health needs independently of any other state needs and, to the extent that mental health trust revenues are available, must fund programs to meet those needs regardless of any other needs which might exist. That motion is still pending.

The major issues

One major issue is whether ch. 210, SLA 1990, is valid as discharge of the state's obligation as trustee with respect to management of the original mental health land grant or, alternatively, whether the state must attempt to reconstitute the mental health trust with the same lands the state originally received from the federal government. The other major issue is whether the AMHEA places an obligation the state with respect to

7/ The Matanuska-Susitna Borough moved for leave to file an amicus brief in support of Idemitsu; the Wishbone Hill coal project would create approximately 200 new jobs in the Mat-Su Borough.

8/ The five percent totaled \$125 million; \$44 million was appropriated for the state's mental health program, leaving an unappropriated balance of \$81 million.

funding the state's mental health program which is entirely independent of any other state needs.

These are related in the sense that ch. 210 provides for compensation to the mental health trust independent of the value of the original land grant, and there is evidence that the amount of compensation under ch. 210 substantially exceeds what the original land grant might have generated if managed to raise revenue. If the state must fund the state's mental health program independently of other state needs, it may not be in the state's interest to resolve the case in a manner which provides the trust with substantially greater revenue than the original grant could reasonably be expected to earn.

In short, there is no question that the state has a trust obligation under the AMHEA. There are substantial questions, however, over the specifics of that obligation.

HOUSE FINANCE COMMITTEE LETTER OF INTENT RE CSSB 493 (FIN) am S

This bill adopts a new approach to compensating the mental health trust for the use of its land from that taken in chapter 48, SLA 1987. The chapter 48 approach required that the value of the original one million acre mental health land grant be determined, a task which has proven extremely difficult. The new approach would compensate the mental health trust by annually allocating six percent of the state's unrestricted general fund revenues to the mental health trust income account.

In approving this approach, the House Finance Committee was guided by the following considerations:

(1) the state and the plaintiffs and intervenors in the Weiss case do not agree on the value of the original one million acre land grant, the plaintiffs and intervenors arguing for a value of \$2.243 billion and the state arguing for a value of \$564.7 million;

(2) the impasse over valuation may lead to continued costly, time-consuming, and divisive litigation over land issues, matters having nothing to do with the state's mental health program, leading to all of the adverse consequences noted by the legislature in subsections 1(a)(14)-1(a)(17) of chapter 48;

(3) it is not in the best interest of either the trust or the public to try to resolve the mental health trust controversy by determining the value of the original grant;

(4) annually allocating six percent of the state's unrestricted general funds in perpetuity will fairly compensate the mental health trust for the use of its land because (i) there will be no administrative expenses associated with generating funds for the account, and (ii) the average per acre earnings for trust lands in other states in fiscal year 1988 was \$8.97, the highest per acre earnings (in the State of Washington because of its prime and easily accessible timber lands) was \$45.68, and the dedication of six percent of the state's unrestricted revenue will result in per acre earnings (based on the original one million acres) of approximately \$145 per acre for the mental health trust in fiscal year 1991; and

(5) it is in the best interest of both the trust and the public to resolve the mental health trust controversy by reconstituting the mental health trust corpus and compensating the trust for the use of the reconstituted corpus through the establishment of a permanent mental health trust income account into which six percent of the state's unrestricted revenue is allocated annually.

STATE OF ALASKA

OFFICE OF THE GOVERNOR

OFFICE OF MANAGEMENT AND BUDGET DIVISION OF BUDGET REVIEW

STEVE COWPER, GOVERNOR

POUCH AM
JUNEAU, ALASKA 99811
PHONE: (907) 465-3568

May 2, 1990

The Honorable John Binkley
The Honorable Ron Larson
Conference Committee on
the Budget
Alaska State Legislature
P.O. Box V
Juneau, AK 99811

Dear Senator Binkley and Representative Larson:

Attached for the consideration of the Conference Committee on the Budget is documentation in support of the appropriation of an additional \$44,881,300 from the Mental Health Trust Income Account (MHTIA) of the General Fund to meet the necessary expenses of the state's comprehensive mental health program. These changes have already been incorporated in the Senate version of HB 500. The increase in MHTIA funds shown does not represent an increase in funding for mental health programs above the amounts included in either the Governor, House or Senate versions of the FY 91 budget. Rather, each increase in MHTIA funds is offset by a reduction in either general funds or general fund match funds. In total, this request is a net-zero in terms of all classes of general funds.

The purpose of this exercise is to more accurately reflect the total funding for mental health programs. To accomplish this, the affected departments have reviewed their FY 90 base budgets to determine which activities currently funded with general funds or general fund match funds should more appropriately be funded from the MHTIA. The departments were greatly assisted in this effort by the House Finance Committee, Department of Health and Social Services Budget Subcommittee, which held extensive hearings on this subject early in the legislative session. This request is a direct result of the subcommittee's efforts.

Although the Administration is confident that this change represents a sizable step forward in identifying mental health program activities included in the budget base, we recognize that there is additional work that must be done in this regard. The approach taken here has been conservative and the process will be ongoing. There are a number of areas, e.g., the Pioneer Homes system, Special Education and several programs within the Division of Family & Youth Services which, due to time and other administrative constraints, have not yet been reviewed and consequently are not included in the proposal.

May 2, 1990

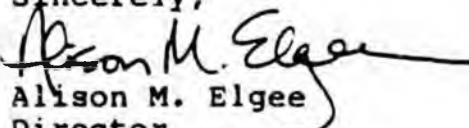
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Likewise, the amounts identified as appropriate for MHTIA funding in those areas which are included in the proposal before the Committee should not be regarded as fixed. Under OMB direction, a formal audit plan will be developed for each of the components in which Mental Health Trust beneficiary services are found. Audits will begin during the interim. This may result in adjustments in the FY 92 budget to the base level in the already identified components and to new components being identified. This audit plan will lay the groundwork for annual or biannual reassessments of the appropriate allocation of MHTIA, GF and GFM fund sources for those components that rely on more than one. No effort will be made in any component to require MHTIA funds appropriated to track to individual clients. Rather, aggregate data will be compiled and analyzed on a periodic basis, probably annually, to determine the level of service provided to Mental Health Trust beneficiaries, which will drive the allocation of MHTIA funds for the succeeding fiscal year.

To assist agencies in their ongoing review of mental health program funding, the Governor's FY 91 budget request includes additional audit staff in the Office of Management & Budget, Division of Management Services. The Conference Committee's approval of this increment would be most helpful as part of our continuing mental health program review efforts.

Attached for your review are individual C-5 forms which provide detail on the individual transactions at the budget component level. Your consideration of this request will be appreciated.

Sincerely,


Alison M. Elgee
Director

Attachments

GF/GFM CONVERSION TO GF MENTAL HEALTH TRUST

DEPARTMENT/COMPONENT	GF	GF	GF
	MENTAL HLTH		MATCH
HEALTH & SOCIAL SERVICES:			
Medicaid Non-Facility	2,096.5		-2,096.5
Medicaid Facilities	8,839.2		-8,839.2
Adult Services	21.6	-21.6	
Foster Care	740.7	-740.7	
Residential Child Care	3,064.2	-3,064.2	
Northern Region	67.1	-67.1	
McLaughlin Youth Center	62.9	-62.9	
Fairbanks Youth Facility	82.6	-82.6	
Nome Youth Facility	0.8	-0.8	
Maniilaq/Alcohol & Drug Abuse	476.5	-476.5	
Norton Sound/Public Health	69.9	-69.9	
Norton Sound/Alcohol & Drug	488.7	-488.7	
Norton Sound/Mental Hlth & DD	49.0	-49.0	
SEARHC/Alcohol & Drug Abuse	146.4	-146.4	
Tanana Chiefs/Alcohol & Drug	294.2	-294.2	
Yukon Kuskokwim/Alcohol & Dru	252.0	-252.0	
Bureau of Vital Statistics	-150.0	150.0	
Infant Learning Program	938.1	-938.1	
SOADA/Administration	981.3	-981.3	
SOADA/Alcohol Abuse Grants	7,830.4	-7,830.4	
Community DD Grants	10,169.6	-10,169.6	
Mental Health Admin	359.4	-359.4	
Harborview	4,047.4	-573.1	-3,474.3
AK Youth Initiative	7.6	-7.6	
Office of Prevention	44.0	-44.0	
EDUCATION:			
112 Schools for the Handicapped	938.5	-938.5	
108 Voc Rehab/Svcs to Clients	640.2	-540.2	
104 Voc Rehab/Counsel & Placement	516.1	-516.1	
Voc Rehab/Administration	130.9	-130.9	
CORRECTIONS:			
Personal Services/Contractual			
Statewide Programs	177.0	-177.0	
Fairbanks CC	74.7	-74.7	
Palmer CC	70.3	-70.3	
Hiland Mountain CC	175.7	-175.7	
Cook Inlet CC	174.2	-174.2	
Wildwox CC	115.9	-115.9	
Spring Creek CC	172.4	-172.4	
Lemon Creek CC	72.5	-72.5	

GF/GFM CONVERSION TO GF MENTAL HEALTH TRUST

DEPARTMENT/COMPONENT	GF	GF	GF
	MENTAL HLTH		MATCH
ADMINISTRATION:			
Office of Public Advocacy	578.1	-578.1	
LAW:			
Legal Services/Operations	64.7	-64.7	
TOTAL	44,881.3	-30,471.3	-14,410.0