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4193

# SENATE FINANCE COMMITTEE REPORT

DATE: 5/1/90

FURTHER: \_\_\_\_\_

DATE TURNED INTO OFFICE: 5/6/90

The Finance Committee considered

SB 493

"An Act relating to the reconstitution and administration of the mental health trust."

and recommended:

replace with \_\_\_\_\_ CS SB 493 (Fin)  same title  
 or adopt \_\_\_\_\_ CS \_\_\_\_\_  new title  
 attached amendment(s)  technical  
 Finance letter of intent adopted  title change  
(HB only)

do pass

do not pass

no recommendation

individual recommendations

further referral to \_\_\_\_\_

ATTACHES NEW FISCAL NOTE(S):

Dept/Date:

fiscal note(s) \_\_\_\_\_

zero fiscal note(s) SFC/DNR  
5/6/90

APPROVES PREVIOUS:

Dept/Date:

fiscal note(s) \_\_\_\_\_

zero fiscal note(s) DHSS 5/2/90

appropriation-no fiscal note

SIGNING DO PASS:

[Signature]  
[Signature]

OTHER RECOMMENDATIONS:

[Signature] No Rec

[Signature] No Rec

[Signature] No Rec

[Signature] No Rec

1. [Signature] Do Pass

2. [Signature] No Rec

Co-Chairs Signatures and Recommendations

## FISCAL NOTE

**REQUEST:**

Revision Date: \_\_\_\_\_ Agency Affected: Dept Natural Resources  
 Title: Reconstitution & administration of the mental health trust BRU: Management & Administration  
 Sponsor: Senator Coghill Components: Information Resource Management  
 Requestor: \_\_\_\_\_

**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						
<b>TOTAL OPERATING</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>

<b>CAPITAL</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>
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<b>REVENUE</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>
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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
<b>TOTAL</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>

**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 Coahill 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
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REVENUE	0.0	0.0	0.0	0.0	0.0	0.0
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**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. Hanson 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 csw

5/6/90  
ADOPTED

DRAFT LETTER OF INTENT TO ACCOMPANY FINANCE CS FOR CSSB 493 (Res) <sup>FIN</sup> ~~(Res)~~

The Finance Committee has adopted a committee substitute for CSSB 493 (Res) which takes a different approach to compensating the reconstituted mental health trust for the use of its land from the approach taken in the committee substitute adopted by the Natural Resources Committee. Instead of basing the compensation on an arbitrarily selected value for the original one million acre land grant as in the Natural Resources Committee substitute, the Finance Committee substitute dispenses with a compensation formula based on valuing the original grant and simply establishes a guaranteed income stream for the mental health trust by annually allocating a fixed percentage of the state's unrestricted general fund revenues to the mental health trust income account.

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

(1) in chapter 48, SLA 1987, the legislature enacted a framework for settlement of the mental health trust controversy;

(2) under chapter 48, it was contemplated that (i) the state and the plaintiffs and intervenors in the mental health trust land litigation, Weiss v. State, 4FA-82-7208, would reach consensus on the value of the original one million acre mental health land grant, (ii) the original mental health land not in legislatively designated areas (e.g., parks, game refuges; etc.) would be exchanged for equal value general grant land in such areas, (iii) the original mental health

land and the equal value exchange land in those areas would constitute the mental health trust corpus which the state would lease from the trust for eight percent of its fair market value per year, and (iv) the original mental health land not in legislatively designated areas would be removed from trust status;

(3) the state and the plaintiffs and intervenors in the Weiss case have been unable to reach consensus on the procedures to be used to value the original one million acre land grant and the pool of potential exchange land, the plaintiffs and intervenors arguing that procedures producing a value of \$2.243 billion should be used and the state arguing that procedures producing a value of \$564.7 million should be used;

(4) this 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;

(5) while the legislative findings in chapter 48 are still true, the potential for continued costly, time-consuming, and divisive litigation over the value of the original one million acre grant, a matter having nothing to do with the state's mental health program, makes it no longer 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;

(6) instead, 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 as contemplated in chapter 48 but, instead of attempting to determine a rental value for the reconstituted corpus based on fair market value, a goal which cannot be achieved by consensus, compensating the trust for the use of the reconstituted corpus through the establishment of a permanent mental health trust income account into which five percent of the state's unrestricted revenue is allocated annually, and from which the legislature must first appropriate funds to meet the necessary of the state's mental health program; and

(7) annually allocating five percent of the state's unrestricted general funds in perpetuity will fairly compensate the mental health trust for the loss of its land because (i) even the most aggressive management of the land for the purpose of generating revenue cannot be guaranteed to generate any given amount of funds, (ii) the dedication of five percent of the state's unrestricted revenues to the mental health trust income account will provide greater predictability in the amount of funds available in that account annually, (iii) there will be no administrative expenses associated with generating funds for the account, as there would be if funds had to be generated for the account

through aggressive management of the land for that purpose, and (iv) 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 five percent of the state's unrestricted revenue will result in per acre earnings of approximately \$125 per acre for the the mental health trust in fiscal year 1991.

The purposes of the Finance Committee substitute for CSSB 493 (Res) accordingly are:

- (1) to accomplish the purposes of chapter 48, SLA 1987, as set out in subsections 1(b)(1)-1(b)(7) of that Act; and
- (2) to establish, as full and complete compensation to the trust, and to "obtain," as that term is used in section 202(e) of the Alaska Mental Health Enabling Act, a permanent allocation of five percent of the state's unrestricted revenues from the general fund to the mental health trust income account.

Original sponsor(s): SEN. COGHILL

1 IN THE SENATE BY THE FINANCE COMMITTEE  
2 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 five 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  
19 policy; 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 general fund.

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 identify replacement land, equal in  
28 value at the time of replacement, within legislative designations and  
29 incorporate them into the mental health trust corpus. The

1        commissioner annually shall report any actions under this subsection  
2        to the board established under AS 47.30.661.

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

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

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

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

Sen. Pouchot  
May 4, 1990

MENTAL HEALTH LANDS TRUST  
VALUATION AND RECONSTITUTION

SB 493 has been introduced to solve problems encountered in implementing Chapter 48 SLA 1987, the proposed settlement of the Mental Health Trust Lands litigation.

Ch. 48 directed the Commissioner of DNR to determine the fair market value of the original Mental Health Trust lands under procedures approved by the Interim Mental Health Trust Commission. The State would pay 8% of this value annually into the mental health trust account to be used first for the necessary expenses of the mental health program. Chapter 48 also directed the Commissioner to identify land within legislative designations (parks, refuges, etc.) equal in value to the original trust to become the reconstituted trust. The 8% payment noted above would compensate the trust for continued use of these lands for their designated purposes. These lands would be revalued every five years.

The Commissioner has declared impasse because the Commission developed its own procedures rather than simply approving procedures developed by DNR -- procedures which, in her view, do not result in fair market value. The Commission's procedures result in a value of \$2.243 billion, while DNR's valuation is some \$700 million.

Due to this impasse, the Commission has stopped all transfers of Mental Health Trust Lands because there is no assurance the settlement will ever be implemented. In addition, the beneficiaries of the trust may be able to reverse dispositions by the State of up to 750,000 acres of trust land.

SB 493 is designed to prevent these problems by doing three things:

1. Establish the value. SB 493 sets the value at \$2,243 billion. CSSB 493(Res) sets the value at \$1.8 billion.
2. Reconstitute the trust. The bill presumes a rough equality in the value of the original 1 million acres of trust land and the legislative designations. CSSB 493(Res) includes all legislative designations as of 9/7/87 (approximately 9 million acres) as the reconstituted trust.
3. Establish a formula for revaluation. All parties agree that they do not want to go through a contentious valuation process every five years and that an indexing system is desirable. The bill does this.

WHILE THE BENEFICIARIES CONTINUE TO SUPPORT THE \$2.243 BILLION VALUATION, THE RESOURCES C.S. IS A GOOD-FAITH ATTEMPT AT A REASONABLE COMPROMISE. WHILE ADOPTING THE RESOURCES C.S. MAY NOT AVOID FURTHER LITIGATION, DOING NOTHING WILL ABSOLUTELY ENSURE CONTINUED LAWSUITS AND LAND DISRUPTION.

# State of Alaska

## Refuges, Forests and Parks

February 1990

Name	Statute	Acres
<b>Fish &amp; Game Designations (AS 16.20)</b>		
Walrus Island State Game Sanctuary	(AS 16.20.090-140)	9,700
McNeil River State Game Sanctuary	(AS 16.20.160-170)	83,800
	<b>Total sanctuary acres</b>	<b>93,500</b>
Palmer Hay Flats State Game Refuge	(AS 16.20.032)	26,000
Mendenhall Wetlands State Game Refuge	(AS 16.20.034)	3,800
Susitna Flats State Game Refuge	(AS 16.20.036)	300,800
Trading Bay State Game Refuge	(AS 16.20.038)	160,960
Cape Newenham State Game Refuge	(AS 16.20.030)	14,000
Izembek (Lagoon) State Game Refuge	(AS 16.20.030)	181,440
Creamer's Field Migratory Waterfowl Refuge	(AS 16.20.039)	1,664
Goose Bay State Game Refuge	(AS 16.20.030)	10,880
Anchorage Coastal Wildlife Refuge	(AS 16.20.031)	32,500
Minto Flats State Game Refuge	(AS 16.20.037)	500,000
	<b>Total refuge acres</b>	<b>1,232,044</b>
Port Moller Critical Habitat Area	(AS 16.20.550)	127,000
Port Heiden Critical Habitat Area	(AS 16.20.555)	72,000
Cinder River Critical Habitat Area	AS 16.20.560)	26,000
Egegik Critical Habitat Area	(AS 16.20.565)	8,000
Pilot Point Critical Habitat Area	(AS 16.20.570)	46,000
Kalgin Island Critical Habitat Area	(AS 16.20.575)	3,500
Fox River Flats Critical Habitat Area	(AS 16.20.580)	7,100
Chilkat River Critical Habitat Area	(AS 16.20.585)	4,800
Kachemak Bay Critical Habitat Area	(AS 16.20.590)	222,000
Clam Gulch Critical Habitat Area	(AS 16.20.595)	2,500
Copper River Delta Critical Habitat Area	(AS 16.20.600)	597,000
Anchor River & Fritz Creek Critical Habitat Area	(AS 16.20.605)	19,000
Tugidak Island Critical Habitat Area	(AS 16.20.615)	50,240
Dude Creek Critical Habitat Area	(AS 16.20.610)	4,083
Willow Mountain Critical Habitat Area	(AS 16.20.620)	22,720
Redoubt Bay Critical Habitat Area	(AS 16.20.625)	183,640
	<b>Total critical habitat area acres</b>	<b>1,395,583</b>
<b>Forestry Designations (AS 41.15-17)</b>		
Tanana Valley State Forest	(AS 41.17.400)	1,786,000
Haines State Forest Resource Mgmt. Area	(AS 41.15.300-330)	247,000
	<b>Total forestry acres</b>	<b>2,033,000</b>

### Park Units (AS 41.21-23)

Chilkat State Park	(AS 41.21.111-120)	6,045
Chugach State Park	(AS 41.21.121-125)	495,000
Kachemak Bay State Park	(AS 41.21.131-134)	165,370
Kachemak Bay State Wilderness Park	(AS 41.21.140-'43)	210,240
Denali State Park	(AS 41.21.151-152)	421,120
Wood/Tikchik State Park	(AS 41.21.161-167)	1,428,320
Shuyak Island State Park	(AS 41.21.172-178)	11,000
Pt. Bridget State Park	(AS 41.21.181-183)	2,800
Marine Parks:	(AS 41.21.300-306)	*14,440

Beecher Pass, Bettles Bay, Chilkat Islands, Dall Bay, Funter Bay, Horseshoe Bay, Joe Mace Island, Oliver Inlet, Saint James Bay, Sawmill Bay, Security Bay, Shelter Island, Shoup Bay, South Esther Island, Sullivan Island, Surprise Cove, Taku Harbor, Thoms Place, Zeigler Cove

\* does not include 22,510 acres of water

Captain Cook State Recreation Area	(AS 41.21.415-425)	3,620
Caines Head State Recreation Area	(AS 41.21.435-445)	5,961
Nancy Lake State Recreation Area	(AS 41.21.455-465)	22,685
Chena River State Recreation Area	(AS 41.21.475-490)	254,080
Willow Creek State Recreation Area	(AS 41.21.491-495)	3,583
Kenai River Special Management Area	(AS 41.21.502-514)	2,693
Alaska Chilkat Bald Eagle Preserve	(AS 41.21.611-630)	49,000
<b>Total Park Acres</b>		<b>3,095,957</b>

### Other Designations

Delta Junction Bison Range Area	(AS 16.20.300)	*72,000
Matanuska Valley Moose Range	(AS 16.20.340)	**132,500
Nelchina Public Use Area	(AS 41.23.010-040)	2,350,000
Hatcher Pass Public Use Area	(AS 41.23.100-130)	5,100
Ernie Haugen Public Use Area	(AS 41.23.050-080)	420
Recreation Rivers:	(AS 41.23.400-510)	***243,000

Alexander Creek, Kroto Creek & Moose Creek, Lake Creek, Little Susitna River, Talachulitna River, Talkeetna River

**Total other designations 2,803,020**

\* does not include additional 17,500 acres within military withdrawal

\*\* does not include selected land

\*\*\* does not include borough or private land

NOTE: Most figures are approximate and many include tide and submerged acreage. Fish & Game estimates that half of the acreage designated in Title 16 is submerged.

Fish & Game designations	2,721,127
Forestry designations	2,033,000
Park designations	3,095,957
Other designations	2,803,020
<b>Total legislative designations</b>	<b>10,653,104</b>



Alaska Department of  
**NATURAL  
RESOURCES**

# STATE OF ALASKA

## DEPARTMENT OF NATURAL RESOURCES

OFFICE OF THE COMMISSIONER

STEVE COWPER, GOVERNOR

400 WILLOUGHBY AVE.  
JUNEAU, ALASKA 99801-1796  
PHONE: (907) 485-2400

April 17, 1990

Ms. Thelma Langdon  
Chair  
Alaska Mental Health Board  
2363 Captain Cook Drive  
Anchorage, AK 99517

Dear Ms. Langdon:

In accord with AS 38.05.800(a), the commissioner of natural resources is charged with determining the fair market value of the original one million acre mental health land grant under procedures approved by the Interim Mental Health Trust Commission (commission). In addition, the commissioner, with the approval of the commission, is to identify land within legislative designations that is equal in value to the original mental health trust lands.

On February 1, 1990, my designee to the commission submitted a minority report regarding procedures to determine the fair market value of the mental health trust and replacement lands. The report detailed the reasons for his dissent from the majority report, and outlined procedures used by the Department of Natural Resources (department) to produce a fair market value of \$564,700,782.82 for the total original mental health trust lands.

On March 20, 1990, I received the final majority report of the commission. The report critiqued the minority report and confirmed a December 20, 1989 draft as the commission's final report. The December 20, 1989 report of the commission specifically approved procedures for determining the fair market value of the original mental health trust lands. The procedures produced a value of \$2,243,000,000 for all land selected by or patented to the state under the Alaska Mental Health Enabling Act.

After reviewing the two reports and their respective valuation procedures, I have concluded that I cannot use either set of procedures and still act consistently with the law. Therefore, I have no choice but to declare an impasse as I am prevented from

fulfilling my statutory mandate of determining the fair market value of the mental health land grant, as well as to identify equal value replacement land.

In retrospect, I believe Chapter 48, SLA 1987 set an unrealistic goal when it contemplated that all parties could work together on a consensus basis to implement the law. Initially, it appeared as though the consensus approach would be successful. Later in the process, particularly after initial land values began to emerge, the consensus process began to deteriorate as the parties began to disagree over valuation approaches. Since the legislation provided no specific mechanism to resolve such disagreements other than through the commission, the process soon became unworkable as the parties gravitated to their respective positions.

#### **The Commission's Report**

Chapter 48, SLA 1987 specifically required a determination of "fair market value." However, my reading of the commission's December 20, 1989 report causes me to conclude that fair market value is not what is produced by the procedures the commission majority approved.

For example, the review appraisers (who examined the work of the three opinion of value geo-panels valuing the surface estate) were instructed in writing by the lawyers for the plaintiffs and intervenors to determine "the highest value that can be supported in the market." Under the procedures approved by the commission majority, the resultant value was later averaged with the final adjusted fair market value determined by the geo-panels. These same review appraisers were also instructed by the same lawyers to look only at those individual mental health parcels which might have been "undervalued" by the geo-panels. As there was no corresponding search or review of any "overvalued" parcels, I believe this approach was disproportionately weighted to the high value end of the spectrum. I also conclude the commission acted arbitrarily when it decided to establish a final value of the surface estate by simply splitting the difference between the revised parcel values determined by the geo-panels and the unadjusted values determined by the review appraisers. In my opinion, the resultant compromise value bears no relationship to fair market value.

The most significant problem in the procedures approved by the commission majority in the December 20, 1989 report, however, lies with the hard rock mineral valuation. The commission

majority based its hard rock mineral value on the work and recommendations of two consultants hired independently by the lawyers for the plaintiffs and intervenors. The consultants used a discounted cash flow approach, producing a hard rock mineral value of \$1.51 billion for the original mental health land grant. The minority member used a comparable sales approach, the standard for determining fair market value, producing a value of \$73.5 million.

While I do not necessarily disagree with the income value approach, several assumptions used in that approach were incorrect. Dr. DeVerle Harris, a nationally recognized expert on valuation procedures and the discounted cash flow approach, noted several incorrect assumptions used by the consultants which resulted in a gross overestimation of the hardrock mineral value, as did the University of Alaska's Institute for Social and Economic Research. One such assumption was that there was full mineral production from all one million acres of the original grant on the date of valuation. The reality is that there is little if any production even today. The unreasonableness of the \$1.5 billion value is clear when it is recognized that more than \$4 billion in annual mineral production would be required to support that figure. Annual statewide production in 1987 was only \$200 million.

Finally, in my view, the majority report also fails to adhere to the statutory requirement that there be consensus on the valuation procedures used. Section 2 of chapter 132, SLA 1986, as amended by section 9 of chapter 48, requires the commission to review valuation procedures proposed by the commissioner. AS 38.05.800(a), also enacted as part of chapter 48, requires the commissioner to use valuation procedures approved by the commission. Section 2 of chapter 132, as amended, requires the commission to then review the value thus determined. Particularly when it is remembered that chapter 48 was viewed by all parties as a framework for settlement, the only reasonable construction of these provisions is that neither the plaintiffs and intervenors nor the department can adopt valuation procedures over the other's objection. Yet that is what the commission majority has done. The December 20, 1989 majority report reflects the use of numerous procedures which were not proposed by the commissioner and are unacceptable to the department.

**The Minority Report**

AS 38.05.800(a) requires the commissioner to determine "fair market value" based on procedures approved by the commission. Several of the procedures included in the minority report were not approved by the commission.

I do believe, however, that the department took very seriously its charge to determine the fair market value of the mental health lands. Under the statutes the department normally operates under, there are numerous references to "fair market value" (i.e. AS 38.05.055, 38.05.057, 38.05.067, 38.05.068, 38.05.075, 38.05.087, 38.05.102, 38.05.105, etc.). The department has operated most of its disposal and lease programs using this appraisal standard. The interpretation of fair market value has been consistently interpreted and applied by the department over the years. I also believe that the values provided in the minority report accurately reflect fair market value.

Among the first procedural decisions made by the commission in September, 1987 was its adoption of the definition of "fair market value" proposed by the department. This definition was the same as that used by the American Institute of Real Estate Appraisers/Society of Real Estate Appraisers, and the same one used over the years by the department. Based upon this action, the department consistently used this definition while the commission later departed from its use.

**Summary**

Although I have no recourse but to declare an impasse, I believe there are ways to break this procedural logjam so as to achieve the primary goal of all affected parties--namely **to ensure that there is a guaranteed source of state funds from which the legislature would first appropriate to cover the needs of the state's mental health programs:**

1. Request that the court issue instructions prior to any further legislative action. There are several legal questions which could be answered before policy options are pursued. The Department of Law has advised that the court will issue advisory opinions which involve a trust, and trustees can obtain such instructions as they relate to their trust administration powers and responsibilities. I believe these instructions could be timely obtained and pledge to assist in their

development. The interim provision in Chapter 48, SLA 1987 that pays the trust five percent of the state's unrestricted general fund per annum could remain in effect until an advisory opinion is rendered.

2. Replace "fair market value" with "value" as it appears in AS 38.05.800(a).
3. Remove the requirement in AS 38.05.800(a) that the commission approve the procedures to be used to value the original grant and the replacement lands.
4. Again, consistent with #1 above, another possibility (although one which would not provide a guaranteed source of funds for the state's mental health program in perpetuity) would be to purchase the lands from the trust at fair market value over time and appropriate the proceeds for the state's mental health program. Over time, this would result in all the mental health lands being purchased from the trust and removed from trust status, with the proceeds of the sales going to the state's mental health income trust account. The Alaska Supreme Court seemed to authorize this approach in the Weiss decision when it stated that the remedy for lands which the state has sold is to pay the trust the fair market value of the lands at the time of sale, but that the state should receive a set-off against that liability for money it has spent for the state's mental health program, and that this could result in the state having no monetary liability to the trust (In pointing out this alternative, I am not suggesting that this is an appropriate policy for funding the state's mental health program. As the state's land manager, however, I feel compelled to point it out as a possible option for removing mental health lands from trust status so they can be managed for their highest and best use and not merely to raise revenue).
5. Replace the five year reappraisal requirement in Chapter 48, SLA 1987 with a simple index formula which accounts for inflation and appreciation. This index could then be implemented automatically, with the mental health income trust account adjusted on an annual basis.

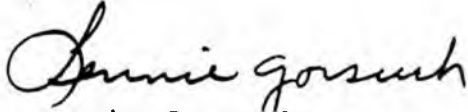
Ms. Thelma Langdon

-6-

April 17, 1990

I appreciate the immense importance and timely resolution of this very complex and sensitive matter. Accordingly, the department is prepared to offer any assistance that may be required to resolve this dilemma consistent with the Alaska Mental Health Enabling Act.

Sincerely,

A handwritten signature in cursive script that reads "Lennie Gorsuch". The signature is written in dark ink and is positioned above the printed name and title.

Lennie Gorsuch  
Commissioner

**USIBELLI COAL MINE, INC.**

122 First Avenue - Suite 302  
Fairbanks, Alaska 99701

Telephone (907) 452-2625  
Facsimile (907) 451-6643

April 11, 1990

Representative Mike Miller  
Alaska State Legislature  
P.O. Box "V" ( MS 3100 )  
Juneau, Alaska 99811

Dear Representative Miller:

I was advised by your staff that you were interested in receiving material and information regarding the impact of the current mental health situation as it relates to Usibelli Coal Mine (UCM). The following information is supplied for your consideration.

All of the state coal leases that UCM holds are situated on patented mental health (PMH) lands. Much of the unappropriated state land that lies adjacent or contiguous to these coal lease is also designated PMH. Also common to the Healy area are material sale sites for gravel and rock extraction that are located on PMH lands.

The problems have become visible by virtue of an ADNR administrative decision, in late January of this year, to suspend all lease or material sales that were in process. One of the in process material sales was for 50,000 cubic yards of gravel that UCM needs to complete the topping of a currently used haul road that links the Gold Run Pass mine to the rail head tipple facility. The attached paperwork indicates our application and request dated July 26, 1989 has yet to be acted upon. The latest letter, dated February 2, 1990 relays to UCM that we will be notified as soon as there is a resolution to this issue.

The administrative order that halted all transactions on PMH lands was executed so that an argument could not be made later, that present-day decisions relating to PMH lands diminished the corpus of the mental health fund. In my humble estimation, the inaction we are currently experiencing is doing just that, and additionally is frustrating efforts by companies like UCM who have major projects on hold pending the outcome of this problem.

Looming larger in the background is the need that UCM has to secure a surface lease on adjacent PMH property to continue development of the Poker Flats Mine, in particular an area east of the current operation. This area, named Runaway Ridge, contains minable reserves of approximately 2.9 million tons of sub-bituminous coal, and is due for initial development this summer. Overburden from this area is being designed to be disposed of in a permanent storage facility that will be located to the south of the current mining area. The site is once again on PMH land, so we are locked out from even applying for a lease on this area. It is fruitless to proceed with ancillary development plans, when the disposal site needed in conjunction with the mining can't be secured.

UCM supports the mental health community in it's attempt to make sure the money received from PMH lands is legislatively appropriated to provide for the proper care of those in need. However, during this interim period we need to proceed with normal functions in the consideration of material sales and leases that have been conducted in a workmanlike manner by the competent staff of the Division of Land and Water Management.

Your support in resolving this most important issue is appreciated. Please contact me if I can be of further assistance. With best regards, I remain,  
Cordially yours,



Charles P. Boddy  
Regulatory Compliance Manager

cc: JEUj, WAM, MDU, RCH, LPJ, file  
attachments

me/CPB

al041190

## STATE OF ALASKA

STEVE COWPER, GOVERNOR

## DEPARTMENT OF NATURAL RESOURCES

## DIVISION OF LAND AND WATER MANAGEMENT

NORTHERN REGION  
3700 AIRPORT WAY  
FAIRBANKS, ALASKA 99703-4613  
PHONE: (907) 451-2700

December 19, 1989

Charles P. Boddy  
Usibelli Coal Mine, Inc.  
P.O. Box 1000  
Healy, Alaska 99743

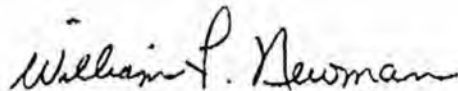
Re: Material Contract, ADL No. 414143

Dear Mr. Boddy,

Your request for gravel from Section 3, Township 12 South, Range 6 West, Fairbanks Meridian was scheduled to be reviewed by the Mental Health Board on December 1, 1989. It was decided that no action would be taken on any casefile at that meeting. It was rescheduled to be heard on December 18th. That meeting was cancelled.

Since the affected property is on mental health trust lands approval of the Commission is required. I cannot issue the contract without this approval. It is not known at this time when, or if, the Commission will meet again. I regret to inform you that I must hold your application in abeyance until such time as the Commission meets and takes affirmative action on your request.

Sincerely,

FREDERICK L. SMITH  
Acting Regional ManagerBy: William F. Newman  
Natural Resource Officer

WFN/kz

**USIBELLI COAL MINE, INC.**

P.O. Box 1000  
Healy, Alaska 99743  
(907) 683-2226  
Telecopier (907) 683-2253

July 26, 1989

Mr. William F. Newman  
Alaska Department of Natural Resources  
Division of Land & Water Management  
3700 Airport Way  
Fairbanks, Alaska 99709-4613

Dear Mr. Newman:

Please find attached the completed material application for an additional 50,000 cubic yards of gravel from the site near the Gold Run Pass mine area.

Usibelli Coal Mine Incorporated request that the division conduct a public oral outcry auction for this competitive sale of material.

Your prompt attention to this matter is appreciated, and either myself or Mr. Larry Jackson may be used as your contact. My number locally is 452-2625, and Mr. Jackson may be reached at the Healy office number, 683-2226.

With best regards, I remain,

Sincerely,



Charles P. Boddy  
Regulatory Compliance Manager

CC: JEUj, WAM, MDU, LPJ  
mw: dl072689

# STATE OF ALASKA

STEVE COWPER, GOVERNOR

## DEPARTMENT OF NATURAL RESOURCES

### DIVISION OF LAND AND WATER MANAGEMENT

NORTHERN REGION  
3700 AIRPORT WAY  
FAIRBANKS, ALASKA 99709-4513  
PHONE: (907) 451-2700

February 2, 1990

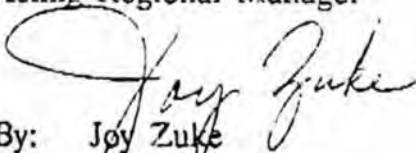
Usibelli Coal Mines, Inc.  
Attn: Charles P. Boddy  
P.O. Box 1000  
Healy, Alaska 99743

Enclosed is the latest announcement for all uses of Mental Health lands (both pending and existing). Our instructions are clear and your pending casefile is now being held in abeyance until such time that we receive further instructions.

We will notify you as soon as there is a resolution to this issue.

Sincerely,

FREDERICK L. SMITH  
Acting Regional Manager

  
By: Joy Zuke  
Natural Resource Officer

cc: Birch, Horton, Bittner, Cherot and Anderson Law Offices

JZ/kz

STATE OF ALASKA  
DEPARTMENT OF NATURAL RESOURCES  
DIVISION OF LAND & WATER MANAGEMENT  
3601 C Street  
Anchorage, AK 99503

SS# \_\_\_\_\_

\$50.00 Filing Fee

MATERIAL APPLICATION

ADL# 414143

1. Name and address (please include zip code) USIBELLI COAL MINE, INC.  
P.O. BOX 1000, HEALY, ALASKA 99743 ATTN: Charles P. Boddy REG/COMI
2. Applicant is at least 19 years old YES Yes \_\_\_\_\_ No
3. Applicant is a citizen of the U.S. YES Yes \_\_\_\_\_ No
4. Quantity of material desired (cubic yards) 50,000 Fifty thousand
5. Length of time requested for removal 180 Days
6. When will removal operation begin? Upon Approval
7. Location of material site (please include section, township, range and meridian) Within ADL#68139 Referenced to the Fairbanks Meridian as follows: Section 3, Range 6 W, Township 13 S.
8. Approximate size of material site in acres 7.2
9. For what purpose will the material be used Road Construction/Overlayment
10. Are there any existing permits or leases covering any part of the land applied for? YES Yes \_\_\_\_\_ No \_\_\_\_\_ Lease \_\_\_\_\_ Permit
11. If 10 is answered yes, state name and last known address of permittee or lessee Right-Of-Way ADL # 68139
12. Are there any improvements on the lands applied for? Yes NO No
13. If 12 is answered yes, describe and state approximate value and name and address of last known owner \_\_\_\_\_
14. Describe the proposed method of excavation including the type of equipment to be used Front end loader or hydraulic shovel and Wabco haul trucks.

# MEMORANDUM

## State of Alaska

Community and Regional Affairs

TO: G. Thomas Koester  
Asst. Attorney General  
Department of Law

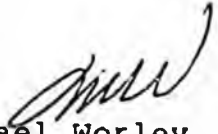
DATE: April 26, 1990

FILE NO: 0526T/MW/cbs/1410.12

TELEPHONE NO: 465-4750

THRU:

SUBJECT: CS HB 493 (HESS)

  
FROM: Michael Worley  
State Assessor  
Municipal and Regional  
Assistance Division

You have requested my comments with regard to the revaluation formula contained in CS HB 493 (HESS).

Under the proposed formula, the actual assessed value for land in property taxing municipalities would be used to develop the ratios and resulting "revaluation factor" for time-adjusting the estimated values for these lands. That approach raises three concerns:

1. Municipalities have the flexibility under AS 29.45.050 to exempt property from local taxation by local option. Property values which are optionally exempted, or for which an optional exemption is removed, would change the levels of actual local assessed values. Changes in assessed land values resulting from these actions would skew the ratios and factors set out in the current version of the revaluation procedure.
2. The proposed revaluation procedure does not provide for geographic differentials in the increases (or reductions) in land values. The proposal calls for land value changes only in property taxing jurisdictions to serve as a basis for all of these lands statewide. In fact, there are often wide disparities in the rates of property value changes, based on their geographic location within the State. In addition, Alaska's property taxing jurisdictions tend to be more highly populated than other jurisdictions and areas of the State. In highly populated areas, supply and demand generally causes annual property appreciation rates to be higher than those in lower populated areas. Therefore, under the current proposal, remote properties would likely be revalued using rates which are too high, and therefore inaccurate.

Mr. G. Thomas Koester  
RE: CS HB 493 (HESS)  
April 26, 1990  
Page Two

3. The proposal calls for these properties to be revalued every five years. In the five year period from 1980 through 1985, taxable property values in Alaska experienced a change equal to plus 64.25%. In the four year period from 1986 through 1989, those values dropped 24.23%. Because Alaska's boom and bust history, it is likely similar drastic changes in property values will occur in the future. To reflect a true picture of the rises or drops in property values, a revaluation of these lands should be conducted annually.

Each of three concerns noted above could be successfully addressed if, instead of using the actual local assessed values in the proposal procedure, the Full Value Determination (under AS 14.17.140) were used. The Full Value Determination takes into account locally exempted property values and is estimated virtually for all areas of the State, not just for those municipalities which levy a property tax. Therefore, the Full Values could, and should be, geographically segregated to reflect more accurate adjustments to these lands according to their location. In addition, the Full Value Determination is already required under statutes to be developed annually. Therefore, an annual revaluation of the lands would be relatively simple to accomplish.

In the event the Full Value Determination were used for this purpose, and assuming geographic differential adjustment factors were established in regulations, the cost to the Department of Community and Regional Affairs for the public hearing process would be approximately \$5,000.

STATE OF ALASKA  
1990 LEGISLATIVE SESSION

BILL VERSION: CSSB 493  
PUBLISH DATE: \_\_\_\_\_

FISCAL NOTE

REQUEST:

Revision Date: 3-May-90  
Title: Relating to reconstitution  
and administration of the mental health trust  
Sponsor: Coghill  
Requestor: Senate Resources

Agency Affected: Natural Resources  
BRU: Management and 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	54.5	37.9	37.9	37.9	37.9	37.9
TRAVEL						
CONTRACTUAL						
SUPPLIES	0.5	0.5	0.5	0.5	0.5	0.5
EQUIPMENT	1.0					
LAND&STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	56.0	38.4	38.4	38.4	38.4	38.4
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND	56.0	38.4	38.4	38.4	38.4	38.4
FEDERAL FUNDS						
OTHER						
TOTAL	56.0	38.4	38.4	38.4	38.4	38.4

POSITIONS:

FULL-TIME	1.0	1.0	1.0	1.0	1.0	1.0
PART-TIME						
TEMPORARY	1.0					

ANALYSIS:

See Attached

Prepared by: Sharon Barton Phone: 465-2406  
Division: Management and Administration Date: 3-May-90

Approved by Commissioner: [Signature] Lennie Gorsuch Date: 3-May-90  
Agency: Department of Natural Resources

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

*0 by JFC*

boundary information.

Funding would be from the general fund.

By maintaining the integrity of the computerized and graphic land records data base, the State reduces the risk of unsound land management, such as allowing conflicting activities on the same piece of land (critical in the replacement land process). Keeping the data base current and accurate will allow the State to move in a timely, efficient manner when redetermining the value of the Mental Health Enabling Act land.

**Computations:**

The Drafting Technician III is a permanent position requiring office furniture, office supplies and an area to work. The Analyst/Programmer II is a temporary position that will not require any special equipment or supplies.

FY91

Position	Personal Svs.	Supplies	Equipment	Total
DTIII	37.9	0.5	1.0	\$39.4
A/PII	16.6	0.0	0.0	\$16.6
Total	\$54.5	\$0.5	\$1.0	\$56.0

The DTIII is an on-going position, therefore \$38.4 (37.9 + 0.5) will be necessary in FY92 - FY96.

land records;

- c. developing the specialized computer program that accesses the LAS data base (both the Land and Case Subsystems) to determine the number of acres as required by CSSB No. 493; and
- d. setting up a job stream that will run the specialized program on an on-going basis.

It is necessary to keep the data base current and accurate in order to correctly redetermine the value of the Alaska Mental Health Enabling Act land. Therefore, it is an incremental on-going responsibility to research, update and load:

- a. new and changing municipal boundary information into the LAS Land Subsystem; and
- b. additional land received under the Alaska Mental Health Enabling Act into the LAS Case Subsystem.

2. It is an incremental and on-going responsibility to note the public record that, in addition to being a legislatively designated area (LDA), the land within the legislative designation constitutes the corpus of the mental health land trust. This requires:

- a. loading the LDA into the LAS Case Subsystem, as of 1989; there were 76 LDA's;
- b. notating the boundaries of the LDA to the graphic record, covering approximately 10.65 million acres of state land; and
- c. annotating the LDA as to the corpus of the mental health trust.

3. It is an incremental and on-going responsibility to identify replacement land to the corpus of the mental health trust. This requires:

- a. researching and identifying suitable replacement land;
- b. loading the information into LAS Case Subsystem; and
- c. notating the boundaries of the replacement land to the graphic record as part of the corpus of the mental health trust.

To implement this legislation is an incremental impact to the department that cannot be done with current operating funds. To adequately do this project requires:

- a. one temporary Analyst/Programmer II for six months in FY91 to complete the specialized computer program; and
- b. one full time Drafting Technician III capable of research, data entry, computer graphics and manual drafting for determining the municipal boundaries, updating the data base, and noting the graphic record with current and accurate

**Fiscal Note for CSSB No. 493 (HESS)**

An act relating to the reconstitution and administration of the mental health trust.

**Assumptions:**

1. Through the formula defined in the CSSB No. 493, DNR must redetermine the value of the Alaska Mental Health Enabling Act land every five years, commencing in 1992.

To accomplish this task, DNR must:

- a. Determine the number of acres of Alaska Mental Health Enabling Act land in each municipality that assesses land for property tax purposes;
- b. Calculate the "weighting factor" for each municipality and determine the "revaluation factor";
- c. Apply the "revaluation factor" to the determine the current value of the Mental Health Enabling Act land.

The most efficient way to determine the number of acres in each municipality is through a specialized computer tracking program.

Keeping the data base current and accurate is required in order to accomplish this task. Therefore, as municipal boundaries change and new municipalities are created, the data base must be updated and the public record noted.

2. DNR must note to the public record all land within legislative designations, which constitute the corpus of the mental health land trust. Since the legislature will continue to establish new legislatively designated areas, it is a continuing responsibility to keep the public record current and accurate.

3. DNR must identify replacement land before the state may remove land from the corpus of the mental health land trust, i.e. before the state may remove land from a legislatively designated area. It is critical that the replacement land is quickly and accurately noted to the public record to avoid mismanagement of trust lands.

**Program Summary:**

1. To redetermine the value of the Alaska Mental Health Enabling Act land requires:

- a. researching municipal boundaries;
- b. loading the data into the Land Administration System (LAS), Land Subsystem, which requires updating approximately 525,000

STATE OF ALASKA  
1990 LEGISLATIVE SESSION

BILL VERSION: CSSB 493 (HESS) (b)  
PUBLISH DATE: 3/7/90

FISCAL NOTE

REQUEST:

Revision Date: <u>2-Mar-90</u>	Agency Affected: <u>Natural Resources</u>
Title: <u>An Act relating to the reconstitution and administration of the mental health trust.</u>	BRU: <u>Land &amp; Water Mgmt Management &amp; Administration</u>
Sponsor: <u>Coghill</u>	Components: <u>Land &amp; Water Mgmt</u>
Requestor: <u>Senate HESS</u>	<u>Commissioner's Office</u>

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	0.0	0.0	0.0
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

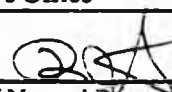
GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

See Attached

Prepared by: <u>Larry Ostrovsky</u>	Phone: <u>465-2400</u>
Division: <u>Commissioner's Office</u>	Date: <u>2-Mar-90</u>
Approved by Commissioner: <u> Lennie Gorsuch</u>	Date: <u>2-Mar-90</u>
Agency: <u>Department of Natural Resources</u>	

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