

HB

79

HOUSE COMMITTEE REPORT

5/16/91

(11)
Date Referred: May 9, 1991

FURTHER REFERRALS:

Judiciary

Date of Committee Action: 5-16-91

waived 5/14/91
TO RIS
SSHB 79

The FINANCE Committee considered:

SPONSOR SUBSTITUTE FOR HOUSE BILL NO. 79

MENTAL HEALTH TRUST LAND ADMINISTRATION

"An Act establishing the Alaska Mental Health Trust Authority and defining its powers and duties; relating to the administration of the trust established by the Alaska Mental Health Enabling Act of 1956 and to appropriations made to it, and to a comprehensive service program for the beneficiaries of the trust; abolishing (over

RECOMMENDATIONS:

be replaced with CSSSH 79 (fin) the same title a new title

have attached amendments(s)

do pass

do not pass

no recommendations

individual recommendations

additional referral to the _____ Committee

ADOPTS: _____ letter of Intent

ATTACHES NEW FISCAL NOTE(S): (Dept)

APPROVES PREVIOUS: (Dept/Date)

(4) fiscal impact Admin, Courts, H&SS

fiscal note(s) _____

zero fiscal note RCU

zero fiscal note(s) _____

SIGNING DO PASS	DP	OTHER RECOMMENDATIONS	DNP	NR	AM
_____		Eileen P. Maclean Maclean		X	
Danora Barnes Barnes	X	Tom Ulmer Ulmer		X	
Mike Savane Savane		Koponen Koponen		✓	
Mark Boyer Boyer	X	Ronald J. Larson Larson		X	
Kay Brown Brown	✓	Bob Sharp Sharp		X	
		Paul E. Phillip Phillip		✓	

Mike Savane EP Maclean
Co-CHAIRMAN'S SIGNATURE

CS FOR SPONSOR SUBSTITUTE FOR HOUSE BILL NO. 79 (FINANCE)

IN THE LEGISLATURE OF THE STATE OF ALASKA

SEVENTEENTH LEGISLATURE - FIRST SESSION

BY THE HOUSE FINANCE COMMITTEE

Offered:

Referred:

Sponsor(s): REPRESENTATIVES BOYER, Gonzales, Moyer

A BILL

FOR AN ACT ENTITLED

1 "An Act establishing the Alaska Mental Health Trust Authority and defining its powers
2 and duties; relating to the trust established by the Alaska Mental Health Enabling Act
3 of 1956 and to an integrated comprehensive mental health program; abolishing the Interim
4 Mental Health Trust Commission; relating to the Older Alaskans Commission and the
5 Governor's Council for the Handicapped and Gifted, and services provided under the
6 Uniform Alcoholism and Intoxication Treatment Act; amending the duties of the Alaska
7 Permanent Fund Corporation and the membership and duties of the Advisory Board on
8 Alcoholism and Drug Abuse and the Alaska Mental Health Board; amending the
9 jurisdiction of courts; exempting trust property from municipal taxation; and providing for
10 an effective date."

11 **BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

12 * Section 1. PURPOSE. (a) It is the purpose of this Act to implement the state's obligation as the

1 trustee of the trust established by the Alaska Mental Health Enabling Act of 1956, P.L. 84-830, 70 Stat.
2 709, by providing an integrated comprehensive mental health program and by resolving the serious and
3 significant legal questions attending the status of that trust

4 (1) in accordance with State v. Weiss, 706 P.2d 681 (Alaska 1985);

5 (2) in a manner that

6 (A) provides fair compensation to the trust as agreed upon by the parties to the
7 litigation, subject to approval by the court as fair and equitable to the beneficiaries of the trust;

8 (B) provides adequate assurances that the trust will be administered properly and
9 in a way that determines and meets the necessary expenses of a comprehensive service program
10 for the beneficiaries of the trust;

11 (C) assures appropriate expenditures from the trust;

12 (D) establishes an independent trust authority; and

13 (E) is enforceable.

14 (b) It is the further purpose of this Act that the trust serve, at a minimum, the mentally ill, the
15 mentally defective and retarded, chronic alcoholics suffering from psychoses, and senile people who as
16 a result of their senility suffer major mental illness.

17 * Sec. 2. AS 09.25.050(a) is amended to read:

18 (a) The uninterrupted adverse notorious possession of real property under color and claim
19 of title for seven years or more is conclusively presumed to give title to the property except as
20 against the state or the United States. For the purpose of this section, land that is included
21 in the corpus of the trust established by the Alaska Mental Health Enabling Act of 1956,
22 P.L. 84-830, 70 Stat. 709, is land owned by the state.

23 * Sec. 3. AS 29.45.030(a) is amended to read:

24 (a) The following property is exempt from general taxation:

25 (1) municipal, state, or federally owned property, or land that is included in the
26 corpus of the trust established by the Alaska Mental Health Enabling Act of 1956, P.L. 84-
27 830, 70 Stat. 709, except that a private leasehold, contract, or other interest in the property is
28 taxable to the extent of the interest;

29 (2) household furniture and personal effects of members of a household;

30 (3) property used exclusively for nonprofit religious, charitable, cemetery,
31 hospital, or educational purposes;

1 (4) property of a nonbusiness organization composed entirely of persons with 90
2 days or more of active service in the armed forces of the United States whose conditions of
3 service and separation were other than dishonorable, or the property of an auxiliary of that
4 organization;

5 (5) money on deposit;

6 (6) the real property of certain residents of the state to the extent and subject to
7 the conditions provided in (e) of this section;

8 (7) real property or an interest in real property that is exempt from taxation under
9 43 U.S.C. 1620(d), as amended.

10 * Sec. 4. AS 36.30.850(b) is amended to read:

11 (b) This chapter applies to every expenditure of state money by the state, acting through
12 an agency, under a contract, except that this chapter does not apply to

13 (1) grants;

14 (2) contracts for professional witnesses to provide for professional services or
15 testimony relating to existing or probable lawsuits in which the state is or may become a party;

16 (3) contracts of the University of Alaska where the work is to be performed
17 substantially by students enrolled in the university;

18 (4) contracts for medical doctors and dentists;

19 (5) acquisitions or disposals of real property or interest in real property, except
20 as provided in AS 36.30.080;

21 (6) disposals under AS 38.05;

22 (7) contracts for the preparation of ballots under AS 15.15.030;

23 (8) acquisitions or disposals of property and other contracts relating to airports
24 under AS 02.15.070, 02.15.090, and 02.15.091;

25 (9) disposals of obsolete property under AS 19.05.060;

26 (10) disposals of obsolete material or equipment under AS 35.20.060;

27 (11) agreements with providers of services under AS 44.47.250; AS 47.07;
28 AS 47.08; AS 47.10; AS 47.17; AS 47.24; AS 47.25.195, and 47.25.310;

29 (12) contracts of the Department of Fish and Game for flights that involve
30 specialized flying and piloting skills and are not point-to-point;

31 (13) purchases of income-producing assets for the state treasury or a public

1 corporation of the state;

2 (14) operation of the state boarding school established under AS 14.16, if the
3 State Board of Education or the commissioner of education adopts regulations for use by the state
4 boarding school in procurement and contracting;

5 (15) a contract that is a delegation, in whole or in part, of investment powers held
6 by the commissioner of revenue under AS 14.25.180, AS 14.40.400, AS 14.42.200, 14.42.210,
7 AS 18.56.095, AS 22.25.048, AS 26.05.228, AS 37.10.070, 37.10.071, AS 37.14, or
8 AS 39.35.080;

9 (16) a contract that is a delegation, in whole or in part, of investment powers of

10 (A) the Board of Trustees of the Alaska Permanent Fund Corporation
11 under AS 37.13;

12 (B) the Alaska Mental Health Trust Authority under AS 37.14.001 -
13 37.14.099;

14 (17) the purchase of books, book binding services, newspapers, periodicals,
15 audio-visual materials, network information services access, approval plans, professional
16 memberships, archival materials, objects of art, and items for museum or archival acquisition
17 having cultural, historical, or archaeological significance; in this paragraph

18 (A) "approval plans" means book selection services in which current book
19 titles meeting an agency's customized specifications are provided to the agency subject
20 to the right of the agency to return those books that do not meet with the agency's
21 approval;

22 (B) "archival materials" means the noncurrent records of an agency that are
23 preserved after appraisal because of their value;

24 (C) "audio-visual materials" means nonbook prerecorded materials,
25 including records, tapes, slides, transparencies, films, filmstrips, cassettes, videos, compact
26 discs, laser discs, and items that require the use of equipment to render them usable;

27 (D) "network information services" means a group of resources from which
28 cataloging information, holdings records, inter-library loans, acquisitions information, and
29 other reference resources can be obtained;

30 (18) contracts for the purchase of standardized examinations for licensure under
31 AS 08;

1 (19) contracts for home health care and adult residential and foster care services
2 provided under regulations adopted by the Department of Health and Social Services;

3 (20) contracts for supplies or services for research projects funded by money
4 received from the federal government or private grants; or

5 (21) guest speakers or performers for an educational or cultural activity.

6 * Sec. 5. AS 37.05.146 is amended to read:

7 Sec. 37.05.146. DEFINITION OF PROGRAM RECEIPTS. In AS 37.05.142 - 37.05.146
8 and AS 37.07.080, "program receipts" means fees, charges, income earned on assets, and other
9 state money received by a state agency in connection with the performance of its functions; all
10 program receipts except the following are general fund program receipts:

11 (1) federal receipts;

12 (2) University of Alaska receipts (AS 14.40.491);

13 (3) individual, foundation, or corporation gifts, grants, or bequests that by their
14 terms are restricted to a specific purpose;

15 (4) receipts of the following funds:

16 (A) highway working capital fund (AS 44.68.210);

17 (B) correctional industries fund (AS 33.32.020);

18 (C) loan funds;

19 (D) international airport revenue fund (AS 37.15.430);

20 (E) funds managed by the Alaska State Housing Authority (AS 18.55.020),
21 the Alaska Housing Finance Corporation (AS 18.56.020), the Medical Indemnity
22 Corporation of Alaska (AS 21.88.020), the Alaska Railroad Corporation (AS 42.40.010),
23 the Municipal Bond Bank Authority (AS 44.85.020), or the Alaska Industrial
24 Development and Export Authority (AS 44.88.020);

25 (F) fish and game fund (AS 16.05.100);

26 (G) school fund (AS 43.50.140);

27 (H) training and building fund (AS 23.20.130);

28 (I) retirement funds (AS 14.25, AS 22.25, AS 26.05.222, AS 39.35, and
29 former AS 39.37);

30 (J) permanent fund (art. IX, sec. 15, Alaska Constitution);

31 (K) public school trust fund (AS 37.14.110);

- 1 (L) second injury fund (AS 23.30.040);
2 (M) fishermen's fund (AS 23.35.060);
3 (N) FICA administration fund (AS 39.30.050);
4 (O) mental health trust fund (AS 37.14.031).

5 * Sec. 6. AS 37.05.540(b) is amended to read:

6 (b) Except for appropriations to the permanent fund or for Alaska permanent fund
7 dividends, appropriations to the budget reserve fund, appropriations of revenue bond proceeds,
8 appropriations required to pay the principal and interest on general obligation bonds, [AND]
9 appropriations of money received from a nonstate source in trust for a specific purpose, including
10 revenue of a public enterprise or public corporation of the state that issues revenue bonds, and
11 appropriations from the mental health trust income account (AS 37.14.036) made to the
12 mental health trust fund (AS 37.14.031), appropriations from the treasury made in a fiscal year
13 may not exceed appropriations made in the preceding fiscal year by more than five percent plus
14 the change in population and inflation since the beginning of the preceding fiscal year. For
15 purposes of applying this limit an appropriation is considered to be made in the fiscal year in
16 which it is enacted and a reappropriation remains attributed to the fiscal year in which the
17 original appropriation is enacted. The determination of the change in population for purposes of
18 this subsection shall be based on an annual estimate of population by the Department of Labor.
19 The determination of the change in inflation for purposes of this subsection shall be based on the
20 Consumer Price Index for all urban consumers for Anchorage prepared by the United States
21 Bureau of Labor Statistics. The amount of money received by the state that is subject to the
22 appropriation limit includes the balance in the general fund carried forward from the preceding
23 fiscal year.

24 * Sec. 7. AS 37.13.030 is amended to read:

25 Sec. 37.13.030. PURPOSE. It is the purpose of AS 37.13.010 - 37.13.210 [THIS
26 CHAPTER] to provide a mechanism for the management and investment of those permanent fund
27 assets allocated to the Alaska Permanent Fund Corporation in a manner consistent with the
28 findings in AS 37.13.020.

29 * Sec. 8. AS 37.13.040 is amended to read:

30 Sec. 37.13.040. ALASKA PERMANENT FUND CORPORATION. There is established
31 the Alaska Permanent Fund Corporation. The corporation is a public corporation and government

1 instrumentality in the Department of Revenue managed by the board of trustees. The purpose
2 of the board is to manage and invest the assets of the corporation in accordance with
3 AS 37.13.010 - 37.13.210 [THIS CHAPTER].

4 * Sec. 9. AS 37.13. is amended by adding a new section to read:

5 Sec. 37.13.300. CORPORATION TO MANAGE CERTAIN ASSETS OF THE MENTAL
6 HEALTH TRUST. (a) Subject to agreement with the Alaska Mental Health Trust Authority
7 entered into under AS 37.14.009(a)(4), the corporation shall manage the cash assets of the corpus
8 of the trust established under the Alaska Mental Health Enabling Act of 1956, P.L. 84-830, 70
9 Stat. 709.

10 (b) The corporation shall

11 (1) hold and invest the cash assets of the corpus of the trust that are transferred
12 to its custody subject to AS 37.13.120;

13 (2) at least quarterly, prepare, publish, and distribute to the Board of Trustees of
14 the Alaska Mental Health Trust Authority a financial report showing investment revenue and
15 expenditures, including the allocation of the cash assets of the trust among investments;

16 (3) annually prepare, publish, and distribute to the Board of Trustees of the Alaska
17 Mental Health Trust Authority financial statements prepared in accordance with generally
18 accepted accounting principles consistently applied, and an audit report prepared by a certified
19 public accountant; and

20 (4) periodically advise the Board of Trustees of the Alaska Mental Health Trust
21 Authority when revisions to long-range investment policy, including asset allocation changes, are
22 contemplated, and provide an opportunity for consultation and comment on the changes before
23 they are implemented.

24 (c) Net income from the cash assets of the corpus of the trust managed under this section
25 may not be included in the computation of net income available for distribution under
26 AS 37.13.140.

27 * Sec. 10. AS 37.14 is amended by adding new sections to read:

28 Sec. 37.14.001. MENTAL HEALTH TRUST. The state is the trustee of the trust
29 established under the Mental Health Enabling Act of 1956. In carrying out its trust obligations,
30 the state acts through the governor, the legislature, and the Alaska Mental Health Trust Authority
31 (AS 47.30.014).

1 Sec. 37.14.003. RESPONSIBILITIES OF THE GOVERNOR. (a) In reviewing
2 appropriations from the mental health trust income account proposed by the authority, the
3 governor shall consider the needs of the beneficiaries of the trust without regard to other potential
4 objects of state expenditure. The governor shall introduce a separate appropriation bill for
5 consideration by the legislature. The appropriation bill shall be limited to appropriations from
6 the mental health trust income account.

7 (b) If the appropriations in the bill introduced by the governor under (a) of this section
8 differ from those prepared by the authority, the bill must contain findings indicating the reasons
9 for the differences and explaining the governor's determination that the proposed appropriations
10 meet the needs of the beneficiaries of the trust. If the governor proposes to increase the amount
11 of money to be transferred from the mental health trust income account to the unrestricted
12 general fund over the authority's recommendation made under AS 47.30.046(a)(3), the bill must
13 contain findings supporting the governor's determination that the additional money is not
14 reasonably necessary to meet the projected operating and capital expenses of the integrated
15 comprehensive mental health program to be financed from the trust.

16 (c) In reviewing the appropriations of money from the mental health trust income account
17 for possible veto, the governor shall consider only the needs of the beneficiaries of the trust
18 without regard to other potential objects of state expenditures. If the governor vetoes all or a part
19 of an appropriation of money from the mental health trust income account, the governor's veto
20 message must include the reasons the governor believes the remaining appropriations meet the
21 needs of the beneficiaries of the trust.

22 Sec. 37.14.005. RESPONSIBILITIES OF THE LEGISLATURE. (a) The legislature
23 shall annually pass and transmit to the governor a bill making appropriations of money from the
24 mental health trust income account no later than the 75th day of the regular session.

25 (b) Before taking action on appropriations from the mental health trust income account
26 proposed by the governor, the legislature shall consider the needs of the beneficiaries of the trust
27 without regard to other potential objects of state expenditure. The legislature shall make
28 appropriations from the mental health trust income account in a separate appropriation bill. The
29 appropriation bill shall be limited to appropriations from the mental health trust income account.

30 (c) If the appropriation bill passed by the legislature differs from the budget submitted
31 by the authority, the bill must contain findings explaining the reasons for the differences and the

1 legislature's determination that the appropriations meet the needs of the beneficiaries of the trust.
2 If the legislature increases the amount of money to be transferred from the trust to the general
3 fund over the authority's recommendation made under AS 47.30.046(a)(3), the bill must contain
4 findings stating that the legislature determined that the additional money is not reasonably
5 necessary to meet the projected operating and capital expenses of the integrated comprehensive
6 mental health program to be financed from the trust.

7 Sec. 37.14.007. AUTHORITY AS TRUSTEE. (a) The Alaska Mental Health Trust
8 Authority, established by AS 47.30.011, is the trustee of

9 (1) the trust established under the Alaska Mental Health Enabling Act of 1956,
10 P.L. 84-830, 70 Stat. 709; and

11 (2) the mental health trust income account established under AS 37.14.036.

12 (b) In exercising the powers, duties, and responsibilities of a trustee, the state is under
13 a duty to the public and the trust beneficiaries to

14 (1) administer the trust to meet the needs of the beneficiaries and the public;

15 (2) keep and render clear and accurate accounts with respect to the administration
16 of the trust;

17 (3) make public and available complete and accurate information as to the nature
18 and amount of the trust property;

19 (4) exercise a high degree of care in administering the trust;

20 (5) take reasonable steps to take and keep control of the trust property;

21 (6) use care and skill to preserve the trust property;

22 (7) take reasonable steps to realize on claims that are held in trust;

23 (8) defend against actions that may result in a loss to the trust estate, unless under
24 all the circumstances, considering the other duties owed to the trust, it is reasonable not to make
25 the defense;

26 (9) separately account for trust property;

27 (10) ensure that trust property is designated as property of the trust;

28 (11) use care and skill to make the trust property productive; however, nothing
29 in this paragraph shall prevent the state from using trust property directly or indirectly, by
30 contractual stipulation or otherwise, as a component of the state's mental health trust program;
31 and

1 (12) deal impartially with the different trust beneficiaries.

2 Sec. 37.14.009. TRUST MANAGEMENT. The Alaska Mental Health Trust Authority

3 (1) shall manage the assets of the trust in a fiduciary manner to fulfill the
4 purposes of the trust; a determination of whether the board has exercised the requisite judgment
5 and care in its management of the assets of the trust must be

6 (A) based on the facts and circumstances prevailing at the time the asset
7 was incorporated into the trust; and

8 (B) made on an asset-by-asset basis taking into account the entire
9 investment portfolio of the trust;

10 (2) may, notwithstanding (1) of this subsection, retain assets of the trust until the
11 board determines that it is in the best interests of the trust to exchange or otherwise dispose of
12 those assets;

13 (3) may, notwithstanding (1) of this subsection, use land that is an asset of the
14 trust directly for the integrated comprehensive mental health program; and

15 (4) shall contract with the Alaska Permanent Fund Corporation for management
16 of the trust's cash assets, unless the authority finds that the best interests of trust beneficiaries
17 would be served by contracting with another entity.

18 * Sec. 11. AS 37.14 is amended by adding new sections to read:

19 Sec. 37.14.026. TRUST LAND CONVEYANCES. (a) The authority may convey trust
20 land to the state or to a person in exchange for land or money.

21 (b) Before the authority conveys land that is part of the trust, and in addition to any other
22 requirements of law, the authority shall negotiate with the conveyee to establish

23 (1) the value of the land to be conveyed and the value of replacement land, if any,
24 to be incorporated into the trust; if the conveyee proposes to exchange trust land for other land,
25 the conveyee shall make available to the trust replacement land that is of at least equal value and
26 with at least equal income production potential at the time of its transfer or conveyance to the
27 trust; or

28 (2) the amount of compensation due the trust for the land conveyed based on the
29 value of that land at the time of its transfer or conveyance from the trust.

30 (c) In exercising its power under this section, the authority is not bound by the provisions
31 of AS 38.04 or AS 38.05.

1 Sec. 37.14.031. TRUST FUND ESTABLISHED. The mental health trust fund is
2 established as a separate fund within the state treasury. The fund consists of the cash assets of
3 the principal of the trust.

4 Sec. 37.14.036. TRUST INCOME ACCOUNT ESTABLISHED. (a) The mental health
5 trust income account is established as a separate account within the general fund of the state.
6 The mental health trust income account consists of

7 (1) money earned on assets of the trust;

8 (2) money deposited in the account in accordance with appropriations or
9 allocations made by law;

10 (3) the amounts allocated to it under (c) of this section.

11 (b) The authority may establish subaccounts within the mental health trust income
12 account.

13 (c) In each of the following state fiscal years, the commissioner of revenue shall allocate
14 from the general fund of the state to the mental health trust income account in the general fund
15 an amount equal to the percent of the unrestricted revenue of the state specified for that fiscal
16 year:

17	FISCAL YEAR ENDING	PERCENT OF UNRESTRICTED STATE REVENUE
18	June 30, 1992	six percent
19	June 30, 1993	six percent
20	June 30, 1994	five percent
21	June 30, 1995	five percent
22	June 30, 1996	four percent
23	June 30, 1997	four percent
24	June 30, 1998	three percent
25	June 30, 1999	three percent
26	June 30, 2000	two percent
27	June 30, 2001	two percent
28	June 30, 2002	one percent
29	June 30, 2003	one percent

30 Sec. 37.14.099. DEFINITIONS. In AS 37.14.001 - 37.14.099,

31 (1) "authority" means the Alaska Mental Health Trust Authority established under

1 AS 47.30.011;

2 (2) "board" means the board of trustees of the authority;

3 (3) "enabling Act" means the Alaska Mental Health Enabling Act of 1956, P.L.
4 84-830, 70 Stat. 709.

5 * Sec. 12. AS 39.25.120(c)(9) is amended to read:

6 (9) the principal executive officer of the following boards, councils, or
7 commissions:

8 (A) Alaska Public Broadcasting Commission;

9 (B) Professional Teaching Practices Commission;

10 (C) Parole Board;

11 (D) Board of Nursing;

12 (E) Real Estate Commission;

13 (F) Alaska Royalty Oil and Gas Development Advisory Board;

14 (G) Alaska Historical Commission;

15 (H) Alaska State Council on the Arts;

16 (I) Alaska Police Standards Council;

17 (J) Older Alaskans Commission;

18 (K) Alaska Mental Health Board;

19 (L) State Medical Board;

20 (M) Governor's Council for the Handicapped and Gifted;

21 (N) Advisory Board on Alcoholism and Drug Abuse;

22 * Sec. 13. AS 41.15 is amended by adding a new section to read:

23 Sec. 41.15.025. FIRE PROTECTION ON MENTAL HEALTH TRUST LAND. Land
24 that is in the corpus of the mental health trust is, for the purpose of wild fire suppression, land
25 owned by the state.

26 * Sec. 14. AS 44.21.230(a) is amended to read:

27 (a) The commission shall

28 (1) formulate a comprehensive statewide plan that identifies the concerns and
29 needs of older Alaskans and, with reference to the plan adopted, prepare and submit to the
30 governor and legislature an annual analysis and evaluation of the services that are provided to
31 older Alaskans;

1 (2) make recommendations directly to the governor and legislature with respect
2 to legislation, regulations, and appropriations for programs or services that benefit older Alaskans;

3 (3) encourage and aid the development of municipal commissions serving older
4 Alaskans and community-oriented programs and services for the benefit of older Alaskans;

5 (4) employ an executive director who serves at the pleasure of the commission;

6 (5) help older Alaskans lead dignified, independent, and useful lives;

7 (6) request and receive reports and audits from state agencies and local institutions
8 concerned with the conditions and needs of older Alaskans;

9 (7) administer, with the approval of the commissioner of administration, federal
10 programs as provided under 42 U.S.C. 3001 - 3045i (Older Americans Act), as amended;

11 (8) administer, with the approval of the commissioner of administration, state
12 programs as provided under AS 47.65; [AND]

13 (9) give assistance, on request, to the senior housing office in the Department of
14 Community and Regional Affairs in administration of the senior housing loan program under
15 AS 44.47.587 - 44.47.609 and in the performance of the office's other duties under
16 AS 44.47.585; and

17 (10) provide to the Alaska Mental Health Trust Authority, for its review and
18 consideration, recommendations concerning the integrated comprehensive mental health
19 program for persons who are described in AS 47.30.056(b)(4) and the use of the money in
20 the mental health trust income account in a manner consistent with regulations adopted
21 under AS 47.30.031.

22 * Sec. 15. AS 44.29.022 is amended by adding a new subsection to read:

23 (d) A regulation that establishes a fee for services under AS 44.29.020(a)(7) that affect
24 the integrated comprehensive mental health program under AS 47.30 may be adopted under this
25 section after consultation with the Alaska Mental Health Trust Authority.

26 * Sec. 16. AS 44.29.024 is amended by adding a new subsection to read:

27 (c) A regulation that establishes a schedule of reasonable fees for services provided by
28 a contractor or grantee that affect the integrated comprehensive mental health program established
29 under AS 47.30 may be adopted under this section after consultation with the Alaska Mental
30 Health Trust Authority.

31 * Sec. 17. AS 44.29.100 is amended to read:

1 Sec. 44.29.100. ADVISORY BOARD ON ALCOHOLISM AND DRUG ABUSE. There
2 is established in the Department of Health and Social Services an advisory board on alcoholism
3 and drug abuse. [THE BOARD SHALL FUNCTION AS A STANDING COMMITTEE OF THE
4 STATEWIDE HEALTH COORDINATING COUNCIL ESTABLISHED UNDER AS 18.07.011.]

5 * Sec. 18. AS 44.29.110 is amended to read:

6 Sec. 44.29.110. COMPOSITION. The board consists of 15 [12] members, 14 of whom
7 are public members appointed by the governor, and the 15th who is the director of the
8 division of alcoholism and drug abuse ex officio.

9 * Sec. 19. AS 44.29.115 is amended to read:

10 Sec. 44.29.115. QUALIFICATIONS OF BOARD MEMBERS. The governor shall
11 appoint the 14 public [12] members so that the board consists of the following public members:

12 (1) one member [TWO MEMBERS] who is [ARE] licensed to practice
13 medicine in the state [, ONE OF WHOM IS CERTIFIED IN PSYCHIATRY BY THE
14 AMERICAN BOARD OF PSYCHIATRY AND NEUROLOGY];

15 (2) one member who is admitted to practice law in the state [ALASKA];

16 (3) four members who are chronic alcoholics with psychoses who are
17 recovering;

18 (4) three members who are substance abuse treatment professionals who
19 represent public and private providers of substance abuse prevention and treatment
20 services; and

21 (5) five [EIGHT] members who have shown an interest in the problems of
22 alcoholism or drug abuse and who have knowledge of the social problems associated with
23 alcoholism or drug abuse [; AND

24 (4) ONE MEMBER WHO IS A REPRESENTATIVE OF THE LIQUOR
25 INDUSTRY].

26 * Sec. 20. AS 44.29.120 is amended to read:

27 Sec. 44.29.120. TERM OF OFFICE. (a) The governor shall appoint the public
28 members of the board for staggered terms of four years.

29 (b) The governor shall fill a vacancy of a public member on the board by appointment
30 for the unexpired part of the vacated term.

31 (c) Public [BOARD] members of the board serve at the pleasure of the governor. The

1 governor shall replace a public [ANY] member who by poor attendance or lack of contribution
2 to the board's work demonstrates ineffectiveness as a board member. In this subsection, "poor
3 attendance" means the failure to attend three or more consecutive meetings.

4 * Sec. 21. AS 44.29.130 is amended to read:

5 Sec. 44.29.130. COMPENSATION, PER DIEM, AND EXPENSES. The public
6 members [MEMBERS] of the board are not entitled to a salary, but are entitled to per diem,
7 reimbursement for travel, and other expenses authorized by law for other boards.

8 * Sec. 22. AS 44.29 is amended by adding a new section to read:

9 Sec. 44.29.135. OFFICERS AND STAFF. (a) The board, by a majority of its
10 membership, shall annually elect a presiding officer and other officers it considers necessary from
11 among its membership.

12 (b) The board shall have a paid staff provided by the department, including an executive
13 director who shall be selected by the board. The executive director is in the partially exempt
14 service and shall be compensated at no less than range 21 of the pay plan for state employees
15 under AS 39.27.011(a). The executive director may hire additional employees in the classified
16 service of the state. The department shall provide for the assignment of personnel to the board
17 to ensure the board has the capacity to fulfill its responsibilities. The executive director of the
18 board shall be directly responsible to the board in the performance of the director's duty.

19 * Sec. 23. AS 44.29.140 is amended to read:

20 Sec. 44.29.140. DUTIES. The board shall

21 (1) act in an advisory capacity to the legislature, the governor, and state
22 agencies [COMMISSIONER OF HEALTH AND SOCIAL SERVICES] in the following matters:

23 (A) [(1)] special problems affecting mental health that alcoholism or drug
24 abuse may present;

25 (B) [(2)] educational research and public informational activities
26 [CONDUCTED BY THE DEPARTMENT OF HEALTH AND SOCIAL SERVICES
27 AND OTHERS] in respect to the problems presented by alcoholism or drug abuse;

28 (C) [(3)] social problems that affect rehabilitation of alcoholics and drug
29 abusers;

30 (D) [(4)] legal processes that affect the treatment and rehabilitation of
31 alcoholics and drug abusers;

1 (E) [(5)] development of programs of prevention, treatment, and
2 rehabilitation for alcoholics and drug abusers; and

3 (F) [(6) REVIEW OF APPLICATIONS AND SUBSEQUENT
4 RECOMMENDATIONS TO THE COMMISSIONER OF HEALTH AND SOCIAL
5 SERVICES ON USE OF FUNDS FOR GRANTS FOR LOCAL ALCOHOLISM OR
6 DRUG ABUSE PROJECTS AND PROGRAMS;

7 (7)] evaluation of effectiveness of alcoholism and drug abuse programs in the
8 state;

9 (2) provide to the Alaska Mental Health Trust Authority for its review and
10 consideration recommendations concerning the integrated comprehensive mental health
11 program for the people who are described in AS 47.30.056(b)(3), and concerning the use of
12 money in the mental health trust income account in a manner consistent with regulations
13 adopted under AS 47.30.031.

14 * Sec. 24. AS 44.29.140 is amended by adding new subsections to read:

15 (b) The board is the state planning and coordinating body for purposes of federal and
16 state laws relating to alcohol, and for drug and other substance abuse prevention and treatment
17 services.

18 (c) The board shall prepare and maintain a comprehensive plan of services for the
19 prevention and treatment of alcohol and drug and other substance abuse.

20 * Sec. 25. AS 47.30 is amended by adding new sections to read:

21 Sec. 47.30.011. ALASKA MENTAL HEALTH TRUST AUTHORITY. (a) The Alaska
22 Mental Health Trust Authority is established as a public corporation of the state within the
23 Department of Revenue.

24 (b) The purpose of the authority is to ensure an integrated comprehensive mental health
25 program.

26 (c) The authority

27 (1) shall administer the trust established under the Alaska Mental Health Enabling
28 Act of 1956;

29 (2) may sue and be sued;

30 (3) may retain the services of independent counsel when, in the judgment of the
31 authority's board of trustees, independent counsel is needed;

1 (4) shall insure or indemnify and protect the board, a member of the board, or an
2 agent or employee of the authority against financial loss and expense, including reasonable legal
3 fees and costs, arising out of a claim, demand, suit, or judgment by reason of alleged negligence,
4 alleged violation of civil rights, or alleged wrongful act resulting in death or bodily injury to a
5 person or accidental damage to or destruction of property if the board member, agent, or
6 employee, at the time of the occurrence, was acting under the direction of the authority within
7 the course or scope of the duties of the board member, agent, or employee.

8 (d) The provisions of AS 44.62.330 - 44.62.630 do not apply to the Alaska Mental Health
9 Trust Authority.

10 Sec. 47.30.016. MEMBERSHIP OF THE BOARD. (a) The authority shall be governed
11 by its board of trustees.

12 (b) The board consists of seven members appointed by the governor. The members
13 appointed under this subsection shall be appointed

14 (1) based upon their ability in financial management and investment, in land
15 management, or in services for the beneficiaries of the trust;

16 (2) after the governor has considered a list of persons prepared by a panel of six
17 persons who are beneficiaries, or who are the guardians, family members, or representatives of
18 beneficiaries; the panel shall consist of

19 (A) one person selected by the Alaska Mental Health Board
20 (AS 47.30.661);

21 (B) one person selected by the Governor's Council for the Handicapped
22 and Gifted (AS 47.80.030);

23 (C) one person selected by the Advisory Board on Alcoholism and Drug
24 Abuse (AS 44.29.110);

25 (D) one person selected by the Older Alaskans Commission
26 (AS 44.21.200);

27 (E) one person selected by the Alaska Native Health Board; and

28 (F) one person selected by the authority.

29 (c) A member of the board appointed by the governor under (b) of this section may not

30 (1) be an officer or employee of the state; or

31 (2) within the preceding two years or during the member's term of office have

1 had an interest in, served on the governing board of, or been employed by an organization that
2 has an interest in, a contract entered into by the authority.

3 (d) A quorum of the board is four members.

4 (e) A member of the board is entitled to

5 (1) an honorarium of \$200 for each day or any part of a day spent at a meeting
6 of the board, at a meeting of a subcommittee of the board, or as a representative of the board;
7 and

8 (2) per diem and travel expenses authorized for boards and commissions under
9 AS 39.20.180.

10 Sec. 47.30.021. TERM OF OFFICE, VACANCIES, AND REMOVAL. (a) The
11 members of the board serve staggered five-year terms. A member shall continue to serve until
12 the member's successor is appointed and confirmed.

13 (b) A vacancy occurring in the membership of the board shall be filled within 60 days
14 by appointment of the governor for the unexpired portion of the vacated term.

15 (c) The governor may remove a member of the board only for cause, including
16 incompetence, neglect of duty, misconduct in office, poor attendance, or lack of contribution to
17 the board's work. A member being removed for cause shall be given a copy of the charges and
18 afforded an opportunity to publicly present a defense in person or by counsel upon not less than
19 10 days' written notice. If a member is removed for cause, the governor shall file with the
20 lieutenant governor a complete statement of all charges made against the member and the
21 governor's findings based on the charges, together with a complete record of the proceedings.
22 The removal of a member for cause constitutes a final administrative order. A member seeking
23 to appeal the governor's removal of a member for cause under this subsection shall file a notice
24 of appeal with the superior court under AS 44.62.560.

25 (d) Except for a trustee who has served two consecutive five-year terms, a member of
26 the board may be reappointed. A member of the board who has served two consecutive five-year
27 terms is not eligible for reappointment to the board until one year has intervened.

28 Sec. 47.30.026. OFFICERS AND STAFF. (a) The board shall annually elect a presiding
29 officer and other officers it considers necessary from among its membership.

30 (b) The board shall employ a chief executive officer who shall be selected by the board.
31 The chief executive officer shall be compensated at no less than range 26 of the pay plan for

1 state employees under AS 39.27.011(a). The chief executive officer may

2 (1) hire additional employees;

3 (2) appoint hearing officers to perform the responsibilities set out in
4 AS 47.30.031(b)(5); and

5 (3) contract for the services of consultants and others.

6 (c) The chief executive officer is directly responsible to the board.

7 Sec. 47.30.031. REGULATIONS. (a) The board shall adopt regulations under the
8 Administrative Procedure Act (AS 44.62) consistent with state law and the fiduciary
9 responsibilities imposed by law on members of boards of directors of corporations having trust
10 responsibilities.

11 (b) The regulations shall address, but are not limited to,

12 (1) the requirements of AS 47.30.056(h) and (j);

13 (2) provisions governing the administration and management of the mental health
14 trust corpus;

15 (3) procedures by which an aggrieved person or group who believe they have not
16 received services that should be provided from the trust may apply to the authority for the
17 provision of the service from trust funds;

18 (4) provisions that allow and encourage entities providing trust funded services
19 to integrate those services with other community human services funded by other sources;

20 (5) administrative adjudication procedures, including but not limited to

21 (A) the acceptance of applications under (4) of this subsection;

22 (B) investigations;

23 (C) hearings; and

24 (D) the issuance of administrative orders, as necessary;

25 (6) provisions that establish a process for long-range planning for expenditures
26 from the mental health trust income account; and

27 (7) criteria for determining the nature and extent of necessary services and related
28 expenses to be funded by the trust.

29 Sec. 47.30.036. DUTIES OF THE BOARD. The board shall

30 (1) preserve and protect the trust corpus;

31 (2) coordinate with other state agencies involved with programs affecting persons

1 in need of mental health services;

2 (3) review and consider the recommendations submitted under
3 AS 44.21.230(a)(10), AS 44.29.140(2), AS 47.30.666(6), and AS 47.80.090(13);

4 (4) adopt bylaws governing its meetings, selection of officers, proceedings, and
5 other aspects of board procedure;

6 (5) make an annual written report of its activities to the legislature, governor, and
7 the public; and

8 (6) fulfill its obligations under AS 47.30.046.

9 Sec. 47.30.041. BOARD ADVISORS. The commissioners of health and social services,
10 natural resources, and revenue, or their respective designees, are advisors to the board.

11 Sec. 47.30.046. BUDGET RECOMMENDATIONS; REPORTS. (a) The board shall
12 annually, not later than September 15, submit to the governor and the Legislative Budget and
13 Audit Committee a budget for the next fiscal year and a proposed plan of implementation based
14 on the integrated comprehensive mental health program plan prepared under AS 47.30.660(a)(1).
15 The budget must include the authority's determination of the amount

16 (1) recommended for expenditure from the mental health trust income account
17 during the next fiscal year to

18 (A) meet the administrative expenses of the authority;

19 (B) offset the effect of inflation on the value of the trust corpus; and

20 (C) meet the necessary operating and capital expenses of the integrated
21 comprehensive mental health program;

22 (2) recommended for expenditure from the general fund, if any, during the next
23 fiscal year to meet the necessary operating and capital expenses of the integrated comprehensive
24 mental health program; and

25 (3) in the mental health trust income account, if any, that is not reasonably
26 necessary to meet the anticipated operating and capital expenses of the integrated comprehensive
27 mental health program that may be transferred into the general fund.

28 (b) When the authority submits its proposed budget under (a) of this section, the authority
29 shall also provide a report to the Legislative Budget and Audit Committee, the governor, the
30 Office of Management and Budget, the commissioner of health and social services, and all
31 entities providing services with money in the mental health trust income account, and shall make

1 it available to the public. The report must describe at least the following:

2 (1) the assets, earnings, and expenditures of the trust as of the end of the
3 preceding fiscal year;

4 (2) comparisons of the trust's assets, earnings, and expenditures with the prior five
5 fiscal years;

6 (3) projections of the trust's assets, earnings, and expenditures for the next five
7 fiscal years;

8 (4) the authority's budget recommendations submitted under (a) of this section,
9 and its reasons under AS 47.30.056 for making those recommendations;

10 (5) the authority's guidelines for the establishment of services; the provision of
11 services shall be based on the principle that services paid for from the trust are provided to
12 recipients as close to the recipient's home and family as practical with due consideration of
13 demographics, mental health service requirements, use of mental health services, economic
14 feasibility, and capital expenditures required for provision of minimum levels of service;

15 (6) forecasts of the number of persons needing services;

16 (7) projections of the resources required to provide the necessary services and
17 facilities; and

18 (8) reviews of the status of the integrated comprehensive mental health program,
19 including evaluation of program goals, objectives, targets and timelines, and overall effectiveness.

20 Sec. 47.30.051. SUBMISSIONS REQUIRING USE OF TRUST MONEY. An agency
21 or entity proposing an expenditure of money by the trust shall present its proposal to the
22 authority under regulations adopted under AS 47.30.031.

23 Sec. 47.30.056. USE OF MONEY IN THE MENTAL HEALTH TRUST INCOME
24 ACCOUNT. (a) If appropriated by law, the money in the mental health trust income account
25 established in AS 37.14.036 shall be used to

26 (1) provide an integrated comprehensive mental health program for the people
27 of the state, as required by this section; and

28 (2) meet the authority's annual administrative expenses.

29 (b) Expenditures under (a)(1) of this section shall provide for a reasonable level of
30 necessary services to

31 (1) the mentally ill;

- 1 (2) the mentally defective and retarded;
- 2 (3) chronic alcoholics suffering from psychoses;
- 3 (4) senile people who as a result of their senility suffer major mental illness; and
- 4 (5) other persons needing mental health services, as the legislature may determine.

5 (c) The integrated comprehensive mental health program for which expenditures are made
6 under this section

7 (1) shall give priority in service delivery to persons who, as a result of a mental
8 disorder or of a disorder identified in (b) of this section;

9 (A) may require or are at risk of hospitalization; or

10 (B) experience such major impairment of self-care, self-direction, or social
11 and economic functioning that they require continuing or intensive services;

12 (2) may, at the discretion of the board, include services to persons who are not
13 included under (b) or (c)(1) of this section.

14 (d) In (b)(1) of this section, "the mentally ill" includes persons with the following mental
15 disorders:

16 (1) schizophrenia;

17 (2) delusional (paranoid) disorder;

18 (3) mood disorders;

19 (4) anxiety disorders;

20 (5) somatoform disorders;

21 (6) organic mental disorders;

22 (7) personality disorders;

23 (8) dissociative disorders;

24 (9) other psychotic or severe and persistent mental disorders manifested by
25 behavioral changes and symptoms of comparable severity to those manifested by persons with
26 mental disorders listed in this subsection; and

27 (10) persons who have been diagnosed by a licensed psychologist, psychiatrist,
28 or physician licensed to practice medicine in the state and, as a result of the diagnosis, have been
29 determined to have a childhood disorder manifested by behaviors or symptoms suggesting risk
30 of developing a mental disorder listed in this subsection.

31 (e) In (b)(2) of this section, "the mentally defective and retarded" includes persons with

1 the following neurologic or mental disorders:

- 2 (1) cerebral palsy;
- 3 (2) epilepsy;
- 4 (3) mental retardation;
- 5 (4) autistic disorder;
- 6 (5) severe organic brain impairment;
- 7 (6) significant developmental delay during early childhood indicating risk of
- 8 developing a disorder listed in this subsection;
- 9 (7) other severe and persistent mental disorders manifested by behaviors and
- 10 symptoms similar to those manifested by persons with disorders listed in this subsection.

11 (f) In (b)(3) of this section, "chronic alcoholics suffering from psychoses" includes

12 persons with the following disorders:

- 13 (1) alcohol withdrawal delirium (delirium tremens);
- 14 (2) alcohol hallucinosis;
- 15 (3) alcohol amnestic disorder;
- 16 (4) dementia associated with alcoholism;
- 17 (5) alcohol-induced organic mental disorder;
- 18 (6) alcoholic depressive disorder;
- 19 (7) other severe and persistent disorders associated with a history of prolonged
- 20 or excessive drinking or episodes of drinking out of control and manifested by behavioral
- 21 changes and symptoms similar to those manifested by persons with disorders listed in this
- 22 subsection.

23 (g) In (b)(4) of this section, "senile people who as a result of their senility suffer major

24 mental illness" includes persons with the following mental disorders:

- 25 (1) primary degenerative dementia of the Alzheimer type;
- 26 (2) multi-infarct dementia;
- 27 (3) senile dementia;
- 28 (4) presenile dementia;
- 29 (5) other severe and persistent mental disorders manifested by behaviors and
- 30 symptoms similar to those manifested by persons with disorders listed in this subsection.

31 (h) The authority shall adopt regulations defining the disorders identified in this section

1 to reflect revisions in the diagnostic nomenclature of the health professions serving the
2 beneficiaries of the trust. The authority shall review and revise the regulations as necessary.
3 Regulations adopted under this subsection must be in the long term best interest of the trust and
4 of persons with disorders equivalent to those identified in (b) and (c) of this section.

5 (i) In this section, "an integrated comprehensive mental health program"

6 (1) means public health programs and services that, on the effective date of this
7 Act, are separately recognizable and administered, without regard to the administrative unit
8 directly responsible for the delivery of the service; among the services included are services for
9 the mentally ill, community mental health services, services for the developmentally disabled,
10 alcoholism services, and services for children, youth, adults, and seniors with mental disorders;

11 (2) includes, at a minimum, each of the following services as appropriate:

12 (A) emergency services on a 24-hour basis;

13 (B) screening examination and evaluation services required to complete
14 the involuntary commitment process under AS 47.30.700 - 47.30.815;

15 (C) inpatient care;

16 (D) crisis stabilization services, which may include:

17 (i) active community outreach;

18 (ii) in-hospital contact;

19 (iii) mobile crisis teams of mental health professionals;

20 (iv) crisis beds to provide a short term residential program for
21 persons experiencing an acute episode of mental illness that requires temporary
22 removal from a home environment;

23 (E) treatment services, which may include

24 (i) diagnosis, testing, and evaluation of medical needs;

25 (ii) medication monitoring;

26 (iii) physical examinations;

27 (iv) dispensing psychotropic and other medication;

28 (v) detoxification;

29 (vi) individual or group therapy;

30 (vii) aftercare;

31 (F) case management, which may include

- 1 (i) evaluation of needs;
- 2 (ii) development of individualized treatment plans;
- 3 (iii) enhancement of access to available resources and programs;
- 4 (iv) development of interagency contacts and family involvement;
- 5 (v) advocacy;
- 6 (G) daily structure and support, which may include
- 7 (i) daily living skills training;
- 8 (ii) socialization activities;
- 9 (iii) recreation;
- 10 (iv) transportation;
- 11 (v) day care services;
- 12 (vi) client and care provider education and support services;
- 13 (H) residential services, which may include
- 14 (i) crisis or respite care;
- 15 (ii) board and care;
- 16 (iii) foster care, group homes, halfway houses, or supervised
- 17 apartments;
- 18 (iv) intermediate care facilities;
- 19 (v) long-term care facilities;
- 20 (vi) in-home care;
- 21 (I) vocational services, which may include
- 22 (i) prevocational services;
- 23 (ii) work adjustment;
- 24 (iii) supported work;
- 25 (iv) sheltered work;
- 26 (v) training in which participants achieve useful work experience;
- 27 (J) outpatient screening, diagnosis, and treatment services, including
- 28 individual, family, and group psychotherapy, counseling, and referral;
- 29 (K) prevention and education services, including consultation with
- 30 organizations, providers, and the public; and
- 31 (L) administrative services, including appropriate operating expenses of

1 state agencies and other service providers.

2 (j) The authority shall adopt regulations regarding the services described in (i) of this
3 section to reflect advances in the appropriate professions. The authority shall review and revise
4 the regulations as necessary. Regulations adopted under this subsection must be in the long term
5 best interest of the mental health trust.

6 Sec. 47.30.061. DEFINITIONS. In AS 47.30.011 - 47.30.061,

7 (1) "authority" means the Alaska Mental Health Trust Authority established by
8 AS 47.30.011;

9 (2) "board" means the board of trustees of the authority;

10 (3) "trust" means the trust established by the Alaska Mental Health Enabling Act
11 of 1956, P.L.84-830, 70 Stat. 709.

12 * Sec. 26. AS 47.30.470 is amended by adding new paragraphs to read:

13 (8) prepare that part of the plan for the integrated comprehensive mental health
14 program under AS 47.30.056 that relates to the services and facilities that are necessary for the
15 care and treatment of persons identified as chronic alcoholics suffering from psychoses, as
16 defined in AS 47.30.056(b)(3) and (f); in preparing the plan of services for persons identified in
17 this paragraph, the department shall coordinate with the Alaska Mental Health Trust Authority
18 and the Advisory Board on Alcoholism and Drug Abuse;

19 (9) use money appropriated from the mental health trust income account
20 established under AS 37.14.036 to provide the necessary services identified in (8) of this section
21 and in accordance with AS 47.30.056.

22 * Sec. 27. AS 47.30.520 is amended to read:

23 Sec. 47.30.520. LEGISLATIVE PURPOSE. It is the purpose of the [LEGISLATURE
24 IN ENACTING THE] Community Mental Health Services Act to

25 (1) [TO] provide a range of community based inpatient, outpatient, and
26 support services for persons with mental disorders;

27 (2) [OR EMOTIONAL DISTURBANCES AND TO] assist [LOCAL]
28 communities in planning, organizing, and financing community mental health services through
29 locally developed, administered, and controlled community mental health programs;

30 (3) [. IT IS FURTHER INTENDED TO] better develop and use [UTILIZE
31 EXISTING] resources at both state and local levels;

1 (4) [IN ORDER TO (1)] develop and implement plans for comprehensive
2 [INITIATING MAXIMUM] mental health services based on demonstrated need on a regional
3 basis [FOR SERVICES IN EACH GEOGRAPHICAL PLANNING AREA, AS WELL AS
4 REGIONALIZED COMPREHENSIVE MENTAL HEALTH SERVICES];

5 (5) [(2)] improve the effectiveness of existing mental health services;

6 (6) [(3)] integrate state-operated and community mental health programs into a
7 unified mental health system;

8 (7) ensure that consumers, families, and representatives of [(4) PROVIDE A
9 MEANS FOR PARTICIPATION BY LOCAL] communities within mental health planning
10 regions can participate in determining [THE DETERMINATION OF] the need for and the
11 allocation of mental health resources;

12 (8) [(5) ESTABLISH A UNIFORM RATIO OF LOCAL AND STATE
13 GOVERNMENT RESPONSIBILITY FOR FINANCING MENTAL HEALTH SERVICES;

14 (6)] provide a means of allocating money available for state mental health
15 services [FUNDS] according to community needs;

16 (9) [(7)] encourage the full use of all existing public or private agencies, facilities,
17 personnel, and funds to accomplish these objectives; and

18 (10) [(8)] prevent unnecessary duplication and fragmentation of services and
19 expenditures.

20 * Sec. 28. AS 47.30 is amended by adding a new section to read:

21 Sec. 47.30.523. COMMUNITY MENTAL HEALTH PROGRAM POLICY AND
22 PRINCIPLES. (a) It is the policy of the state that

23 (1) the community mental health program provide a comprehensive and integrated
24 system of community based facilities, supports, and mental health services including child and
25 adolescent screening and diagnosis, inpatient, outpatient, prevention, consultation, and education
26 services;

27 (2) persons most in need of community mental health services receive appropriate
28 services as provided under AS 47.30.056;

29 (3) the community mental health program be coordinated, to the maximum extent
30 possible, with the programs established under AS 47.37, AS 47.65, AS 47.80, and other programs
31 affecting the well being of persons in need of mental health services.

1 (b) Community mental health program service delivery principles include the principles
2 that persons

3 (1) have ready and prompt access to necessary screening, diagnosis, and treatment;

4 (2) receiving community mental health services be informed of their rights,
5 including their rights to confidentiality and to treatment with dignity;

6 (3) be provided community mental health services by staff and programs that
7 reflect the culture, linguistic, and other social characteristics of their community and that
8 incorporate multidisciplinary professional staff to meet client functional levels and diagnostic and
9 treatment needs;

10 (4) in need of community mental health services, and their families, be
11 encouraged to participate in formulating, delivering, and evaluating treatment and rehabilitation;

12 (5) in need of community mental health services be provided treatment and
13 rehabilitation services designed to minimize institutionalization and maximize individual potential;

14 (6) be treated in the least restrictive alternative environment consistent with their
15 treatment needs, enabling the person to live as normally as possible;

16 (7) be provided necessary treatment as close to the person's home as possible;

17 (8) be informed of and allowed to participate in planning their own treatment as
18 much as possible

19 * Sec. 29. AS 47.30.530 is amended by adding a new subsection to read:

20 (b) In performing its duties under (a) of this section, the department shall coordinate with
21 the Alaska Mental Health Trust Authority established in AS 47.30.011.

22 * Sec. 30. AS 47.30.540(b) is amended to read:

23 (b) An [THE] entity designated by the department [IN THE LOCAL AREA AS THE
24 ORGANIZATIONAL UNIT] to receive money [FUNDS] under AS 47.30.520 - 47.30.620 [AND
25 TO ADMINISTER THE PROGRAM] shall ensure a broad base of community support as
26 evidenced by a governing board reasonably representative of the professional, civic, and citizen
27 groups in the community and including persons with mental disorders or family members
28 of persons with mental disorders. No more than two members, or 40 percent of the
29 membership, whichever is greater, may be providers of services under the program. In order to
30 receive funds under AS 47.30.520 - 47.30.620, a local community entity shall agree to

31 (1) give priority to mental health programs and services consistent with the

1 priorities set out in AS 47.30.056 and that provide the [HAVE A] maximum services for the
2 least expenditure of money from the mental health trust income account [EFFECT ON
3 OTHER TAX FUNDED PROGRAMS];

4 (2) furnish services through a qualified staff meeting reasonable standards of
5 experience and training;

6 (3) conform to a state cost accounting system showing the true cost of services
7 rendered, collect fees for services according to a schedule based on an analysis of reasonable
8 ability to pay, and provide that a person may not be refused services because of inability to pay
9 for those services;

10 (4) maintain adequate clinical and administrative records and furnish periodic
11 reports to the department;

12 (5) furnish the authority and the department an annual report of the preceding
13 fiscal year, including an evaluation of the effectiveness of the previous year's programs and their
14 costs; and

15 (6) furnish the authority and the department [EACH YEAR A] satisfactory
16 needs assessments for the population and area it serves and an annual update of a long-range
17 planning and budget statement that describes program goals for the coming year, the steps and
18 resources necessary to implement the goals, the projected means by which these resources will
19 be secured, and the procedures necessary to evaluate the program.

20 * Sec. 31. AS 47.30.545 is repealed and reenacted to read:

21 Sec. 47.30.545. POPULATIONS TO BE SERVED. The entities designated by the
22 department to receive money under AS 47.30.540(b) shall provide one or more of the services
23 that are set out in AS 47.30.056(i) to persons identified in AS 47.30.056.

24 * Sec. 32. AS 47.30.547 is amended to read

25 Sec. 47.30.547. STANDARDS FOR COMMUNITY MENTAL HEALTH SERVICES.
26 An entity that provides community mental health services shall

27 (1) make services available at times and locations that enable residents of the
28 entity's service area to obtain services readily;

29 (2) ensure each client's right to confidentiality and treatment with dignity;

30 (3) establish staffing patterns of qualified and trained personnel that reflect the
31 cultural, linguistic, and other social characteristics of the community and that incorporate

1 multidisciplinary professional staff to meet client functional levels and diagnostic and treatment
2 needs;

3 (4) promote client and family participation in formulating, delivering, and
4 evaluating treatment and rehabilitation;

5 (5) design screening, diagnosis, treatment, and rehabilitation services to
6 maximize individual potential and to minimize institutionalization; and

7 (6) provide services in the least restrictive setting, enabling the person
8 receiving the services to live as normally as possible.

9 * Sec. 33. AS 47.30.590 is amended to read:

10 Sec. 47.30.590. PATIENT RIGHTS AND THE CONFIDENTIAL NATURE OF
11 RECORDS AND INFORMATION. The department shall adopt regulations to assure patient
12 rights and to safeguard the confidential nature of records and information about the recipients of
13 services provided under this chapter [AS 47.30.520 - 47.30.620]. The regulations must require
14 that [LOCAL COMMUNITY] entities identified in AS 47.30.540(b) develop and include in any
15 plan submitted for approval adequate provisions for safeguarding confidential information. The
16 [DEPARTMENT'S] regulations must provide for disclosure of confidential information to
17 parents or guardians, to mental health professionals providing services to a recipient, and to
18 other appropriate service agencies when it is in the defined best interests of the patient.

19 * Sec. 34. AS 47.30.610 is repealed and reenacted to read:

20 Sec. 47.30.610. DEFINITIONS. In AS 47.30.520 - 47.30.610,

21 (1) "authority" means the Alaska Mental Health Trust Authority established in
22 AS 47.30.011;

23 (2) "department" means the Department of Health and Social Services;

24 (3) "persons with mental disorders" means persons with disorders currently
25 included within nationally accepted diagnostic systems of the mental health professions;

26 (4) "trust" has the meaning given in AS 47.30.061.

27 * Sec. 35. AS 47.30.660 is amended to read:

28 Sec. 47.30.660. POWERS AND DUTIES OF DEPARTMENT. (a) The department
29 shall

30 (1) prepare, and periodically revise and amend, a plan for an integrated
31 comprehensive mental health program; the preparation of the plan and any revision or

1 amendment of it shall

2 (A) be made in conjunction with the Alaska Mental Health Trust

3 Authority;

4 (B) be coordinated with federal, state, regional, local, and private
5 entities involved in mental health services; and

6 (2) in planning expenditures from the mental health trust income account,
7 conform to the regulations adopted by the Alaska Mental Health Trust Authority under
8 AS 47.30.031(b)(6); and

9 (3) implement an integrated comprehensive system of care that meets the
10 service needs of the beneficiaries of the trust established under the Alaska Mental Health
11 Enabling Act of 1956, as determined by the plan.

12 (b) The department, in fulfilling its duties under this section and through its division
13 of mental health and developmental disabilities, [IS THE MENTAL HEALTH AUTHORITY
14 OF THE STATE AND] shall

15 (1) administer a comprehensive program of services for persons with mental
16 disorders [FOR THE PREVENTION OF MENTAL ILLNESS AND THE CARE AND
17 TREATMENT OF THE MENTALLY ILL, INCLUDING INPATIENT AND OUTPATIENT
18 CARE AND TREATMENT AND THE PROCUREMENT OF SERVICES OF SPECIALISTS
19 OR OTHER PERSONS ON A CONTRACTUAL OR OTHER BASIS];

20 (2) take the actions and undertake the obligations that are necessary to participate
21 in federal grants-in-aid programs and accept federal or other financial aid from whatever sources
22 for the study, examination, care, and treatment of persons with mental disorders [THE
23 MENTALLY ILL];

24 (3) administer AS 47.30.660 - 47.30.915;

25 (4) designate, operate, and maintain treatment facilities equipped and qualified to
26 provide inpatient and outpatient care and treatment for persons with mental disorders [THE
27 MENTALLY ILL];

28 (5) provide for the placement of [MENTALLY ILL] patients with mental
29 disorders in designated treatment facilities;

30 (6) enter into arrangements with governmental agencies for the care or treatment
31 of persons with mental disorders [THE MENTALLY ILL] in facilities of the governmental

1 agencies in the state or in another state;

2 (7) enter into contracts with treatment facilities for the custody and care or
3 treatment of persons with mental disorders [THE MENTALLY ILL]; contracts under this
4 paragraph are governed by AS 36.30 (State Procurement Code);

5 (8) enter into contracts, which incorporate safeguards consistent with
6 AS 47.30.660 - 47.30.915 and the preservation of the civil rights of the patients [,] with another
7 state for the custody and care or treatment of patients previously committed from this state under
8 48 U.S.C. 46 et seq., and P.L. 84-830 [P.L. 830, 84TH CONGRESS, 2ND SESSION], 70 Stat.
9 709;

10 (9) prescribe the form of applications, records, reports, requests for release, and
11 consents to medical or psychological treatment required by AS 47.30.660 - 47.30.915;

12 (10) require reports from the head of a treatment facility concerning the care of
13 patients;

14 (11) visit each treatment facility at least annually to review methods of care or
15 treatment for patients;

16 (12) investigate complaints made by a patient or an interested party on behalf of
17 a patient;

18 (13) delegate upon mutual agreement to another officer or agency of it, or a
19 political subdivision of the state, or a treatment facility designated, any of the duties and powers
20 imposed upon it by AS 47.30.660 - 47.30.915; [AND]

21 (14) after coordination with the Alaska Mental Health Trust Authority, adopt
22 regulations to implement the provisions of AS 47.30.660 - 47.30.915; and

23 (15) provide technical assistance and training to providers of mental health
24 services.

25 * Sec. 36. AS 47.30.662 is repealed and reenacted to read:

26 Sec. 47.30.662. COMPOSITION. (a) The board consists of not fewer than 18 nor more
27 than 24 members appointed by the governor, with due regard for the demographics of the state
28 and balanced geographic representation of the state. The membership and committees of the
29 board shall fulfill the requirements of P.L. 99-660, as amended.

30 (b) Not less than one-half of the members shall be persons with a mental disorder
31 identified in AS 47.30.056(b)(1) or members of their families.

1 (c) The board members

2 (1) shall include the director of the division of mental health and developmental
3 disabilities in the department; and

4 (2) may include representatives of the principal state agencies with respect to
5 education, vocational rehabilitation, criminal justice, housing, social services, medical assistance,
6 substance abuse, and aging.

7 (d) Board members appointed under (c) of this section may not vote on matters before
8 the board.

9 (e) The board members shall include at least two licensed mental health professionals
10 who represent public and private providers of mental health services and at least one member
11 who is admitted to practice law in the state. Members appointed under this subsection may also
12 be family members identified under (b) of this section.

13 * Sec. 37. AS 47.30.664(b) is amended to read:

14 (b) The board shall have a paid staff provided by the department, including, but not
15 limited to, an executive director who shall be selected by the board [FROM CANDIDATES
16 PROVIDED BY THE DEPARTMENT]. The executive director is in the partially exempt service
17 and shall be compensated at no less than range 21 of the pay plan for state employees under
18 AS 39.27.011(a). The executive director may hire additional employees in the classified service
19 of the state. The department shall provide for the assignment of personnel to the board to
20 ensure the board has the capacity to fulfill its responsibilities. The executive director [AND
21 THE STAFF] of the board shall be directly responsible to the board in the performance of the
22 director's [THEIR] duties.

23 * Sec. 38. AS 47.30.666 is repealed and reenacted to read:

24 Sec. 47.30.666. DUTIES OF THE BOARD. The board is the state planning and
25 coordinating body for the purpose of federal and state laws relating to mental health services for
26 persons with mental disorders identified in AS 47.30.056(b)(1) and (4). On behalf of those
27 persons, the board shall

28 (1) prepare and maintain a comprehensive plan of treatment and rehabilitation
29 services;

30 (2) propose an annual implementation plan consistent with the comprehensive plan
31 and with due regard for the findings from evaluation of existing programs;

1 (3) provide a public forum for the discussion of issues related to the mental health
2 services for which the board has planning and coordinating responsibility;

3 (4) advocate the needs of persons with mental disorders before the governor,
4 executive agencies, the legislature, and the public;

5 (5) advise the legislature, the governor, the Alaska Mental Health Trust Authority,
6 and other state agencies in matters affecting persons with mental disorders, including, but not
7 limited to,

8 (A) development of necessary services for diagnosis, treatment, and
9 rehabilitation;

10 (B) evaluation of the effectiveness of programs in the state for diagnosis,
11 treatment, and rehabilitation;

12 (C) legal processes that affect screening, diagnosis, treatment, and
13 rehabilitation;

14 (6) provide to the Alaska Mental Health Trust Authority for its review and
15 consideration recommendations concerning the integrated comprehensive mental health program
16 for those persons who are described in AS 47.30.056(b)(1) and (4) and the use of money in the
17 mental health trust income account in a manner consistent with regulations adopted under
18 AS 47.30.031; and

19 (7) submit periodic reports regarding its planning, evaluation, advocacy, and other
20 activities.

21 * Sec. 39. AS 47.30 is amended by adding a new section to read:

22 Sec. 47.30.667. COMPENSATION, PER DIEM, AND EXPENSES. The board members
23 appointed under AS 47.30.662(b) and (e) are not entitled to a salary, but are entitled to per diem,
24 reimbursement for travel, and other expenses authorized by law for boards and commissions
25 under AS 39.20.180.

26 * Sec. 40. AS 47.30.910(d) is amended to read:

27 (d) All money paid by the patient or on the patient's behalf to the department under this
28 section shall be deposited in the mental health trust income account established in
29 AS 37.14.036 [GENERAL FUND].

30 * Sec. 41. AS 47.30.910(g) is amended to read:

31 (g) The commissioner of administration shall separately account for medical care and

1 treatment fees collected under this section. [THAT THE DEPARTMENT DEPOSITS IN THE
2 GENERAL FUND. THE ANNUAL ESTIMATED BALANCE IN THE ACCOUNT MAY BE
3 USED BY THE LEGISLATURE TO MAKE APPROPRIATIONS TO THE DEPARTMENT
4 TO CARRY OUT THE PURPOSES OF THIS SECTION].

5 * Sec. 42. AS 47.30.915 is amended by adding a new paragraph to read:

6 (18) "persons with mental disorders" has the meaning given in AS 47.30.610.

7 * Sec. 43. AS 47.37.040(10) is repealed and reenacted to read:

8 (10) conduct program planning activities approved by the Advisory Board on
9 Alcoholism and Drug Abuse.

10 * Sec. 44. AS 47.37 is amended by adding a new section to read:

11 Sec. 47.37.125. PAYMENT FOR SERVICES. Subject to appropriation by the
12 legislature, money in the mental health trust income account established in AS 37.14.036 may
13 be used to support a service provided under the authority given in this chapter.

14 * Sec. 45. AS 47.80.070(b) is amended to read:

15 (b) The council shall have a paid staff provided by the department, including an
16 executive director selected by the council. The executive director is in the partially exempt
17 service and shall be compensated at no less than range 21 of the pay plan for state
18 employees under AS 39.27.011(a). The executive director may hire additional employees
19 in the classified service of the state. The department shall provide for the assignment of
20 personnel to the council to ensure that the council has the capacity to fulfill its responsibilities.
21 The personnel shall be directly responsible to the council for performance of their duties.

22 * Sec. 46. AS 47.80.090 is amended by adding a new paragraph to read:

23 (13) provide to the Alaska Mental Health Trust Authority for its review and
24 consideration recommendations concerning the integrated comprehensive mental health program
25 for the people of the state who are described in AS 47.30.056(b)(2) and the use of the money in
26 the mental health trust income account in a manner consistent with regulations adopted under
27 AS 47.30.031.

28 * Sec. 47. AS 47.80.110 is amended to read:

29 Sec. 47.80.110. PROGRAM PRINCIPLES. The system of services and facilities required
30 under AS 47.80.100 shall accord with the principles [PRINCIPLE] that service providers shall
31 (1) make services available at times and locations that enable residents of the

1 provider's service area to obtain services readily;

2 (2) ensure each client's right to confidentiality and treatment with dignity;

3 (3) establish staffing patterns that reflect the cultural, linguistic, and other
4 social characteristics of the community and that incorporate multidisciplinary professional
5 staff to meet client functional levels and diagnostic and treatment needs;

6 (4) promote client and family participation in formulating, delivering, and
7 evaluating treatment and rehabilitation;

8 (5) design treatment [, SERVICES,] and habilitation [SHALL BE DESIGNED]
9 to maximize individual potential and [,] minimize institutionalization; [,] and

10 (6) provide services [SHALL BE PROVIDED] in the least restrictive setting,
11 enabling a person to live as normally as possible within the limitations of the handicap.

12 * Sec. 48. AS 37.14.011, 37.14.021, AS 47.30.546, secs. 1, 2, 4, and 5, ch. 132, SLA 1986; and
13 secs. 7 - 10, ch. 48, SLA 1987 are repealed.

14 * Sec. 49. TRANSITIONAL PROVISIONS: DEVELOPMENT OF TRUST INCOME ACCOUNT
15 DISTRIBUTION MECHANISM. Not later than January 1, 1993, the Board of Trustees of the Alaska
16 Mental Health Trust Authority, after consulting with organizations and persons affected by this Act, shall

17 (1) consistent with AS 47.30.056(h), added by sec. 25 of this Act, adopt regulations
18 regarding persons who are to receive services funded by money in the mental health trust income
19 account under AS 37.14.036, as added by sec. 11 of this Act;

20 (2) publish its finding and estimates regarding the number of persons in need under the
21 regulations adopted under (1) of this section;

22 (3) consistent with AS 47.30.056(j), added by sec. 25 of this Act, adopt regulations
23 regarding the services and facilities upon which expenditures are to be made from money in the mental
24 health trust income account under AS 37.14.036, as added by sec. 11 of this Act;

25 (4) publish its findings and projections regarding the necessary expenditure of money
26 from the mental health trust income account for the services and facilities identified under (3) of this
27 section; the projections may be based on a formula that considers distribution, demographics, and level
28 of functioning of the persons to be served and the cost of service delivery on a regional basis.

29 * Sec. 50. INITIAL APPOINTMENT OF MEMBERS TO THE BOARD OF TRUSTEES.
30 Notwithstanding AS 47.30.016 and 47.30.021, added by sec. 25 of this Act,

31 (1) the initial appointments of the members of the Board of Trustees of the Alaska

1 Mental Health Trust Authority added by sec. 25 of this Act, shall be made by the governor after
2 considering a list of candidates submitted to the governor by the Alaska Mental Health Board;

3 (2) the initial appointees shall be appointed to initial terms as follows: one shall be
4 appointed for a term of one year, one shall be appointed for a term of two years, one shall be appointed
5 for a term of three years, two shall be appointed for terms of four years, and two shall be appointed for
6 terms of five years.

7 * **Sec. 51. TRANSITIONAL PROVISIONS: MEMBERS OF ADVISORY BOARD ON**
8 **ALCOHOLISM AND DRUG ABUSE.** Notwithstanding AS 44.29.110 and 44.29.115, as amended by
9 secs. 18 and 19 of this Act, the members of the Advisory Board on Alcoholism and Drug Abuse who
10 are serving on the effective date of this Act continue to serve their unexpired terms. Vacancies on the
11 advisory board occurring after the effective date of this Act shall be filled by the governor under the
12 provisions of AS 44.29.115, as amended by sec. 19 of this Act.

13 * **Sec. 52. TRANSITIONAL PROVISIONS: MEMBERS OF THE ALASKA MENTAL HEALTH**
14 **BOARD.** Notwithstanding AS 47.30.662, as amended by sec. 36 of this Act, the members of the Alaska
15 Mental Health Board who are serving on the effective date of this Act continue to serve their unexpired
16 terms. Vacancies on the board occurring after the effective date of this Act, and new positions created
17 by this Act, shall be filled by the governor under the provisions of AS 47.30.662, as amended by sec. 36
18 of this Act. When making appointments to new positions on the board, the governor shall ensure that
19 the initial terms of new members maintain the staggered term requirement of AS 47.30.663.

20 * **Sec. 53. TRUST CORPUS RECONSTITUTED.** For the purpose of reconstituting the mental health
21 trust established under the Alaska Mental Health Enabling Act, P.L. 84-830, 70 Stat. 709 (1956), the
22 commissioner of natural resources shall convey to the mental health trust authority established under
23 AS 47.30.011, the following land in trust:

24 (1) land granted to the state under the Alaska Mental Health Enabling Act and not
25 conveyed or encumbered by the state on or before the effective date of this Act;

26 (2) land granted to the state under the Alaska Mental Health Enabling Act and, on the
27 effective date of this Act, subject to oil and gas leases, coal leases, or timber contracts, excluding,
28 however, land subject to surface or mining leases or mining claims;

29 (3) land granted to the state under the Alaska Mental Health Enabling Act that has been
30 selected, on or before the effective date of this Act, by a municipality under AS 29.65 or under former
31 AS 29.18.190 - 29.18.200 and which on the effective date of this Act has been neither approved nor

1 disapproved by the director of the division of lands, Department of Natural Resources;

2 (4) land granted to the state under the Alaska Mental Health Enabling Act, that is, on the
3 effective date of this Act, subject to a land use permit or a right-of-way issued by the Department of
4 Natural Resources under AS 38.05;

5 (5) land granted to the state under the Alaska Mental Health Enabling Act and included,
6 on the effective date of this Act, in the Haines State Forest Resource Management Area (AS 41.15.300)
7 and the Tanana Valley State Forest (AS 41.17.400); and

8 (6) additional land to be conveyed to the authority under sec. 54 of this Act.

9 * **Sec. 54. COMPENSATION TO TRUST FOR ORIGINAL MENTAL HEALTH LAND NOT**
10 **RETURNED TO TRUST CORPUS.** (a) The commissioner of natural resources shall convey to the
11 Alaska Mental Health Trust Authority established under AS 47.30.011, added by sec. 25 of this Act,
12 state land in trust in exchange for the original mental health land not returned to the corpus under sec.
13 53(1) - (5) of this Act.

14 (b) The commissioner may not convey under this section land in legislatively-designated areas
15 unless specifically authorized by law. In this subsection, "legislatively-designated areas" means land
16 granted under the enabling Act and subsequently designated by law as a state park, state forest, state
17 game refuge, state wildlife refuge, state game sanctuary, state recreational area, state recreational river,
18 state wilderness park, state marine park, state special management area, state public use area, critical
19 habitat area, bald eagle preserve, bison range, or moose range.

20 (c) Exchanges under this section shall be based on equal fair market value.

21 (d) Exchanges under this section shall involve, as nearly as practicable, land of comparable
22 character. In determining whether land proposed for exchange is of comparable character, the factors
23 to be considered are:

24 (1) terrain;

25 (2) use;

26 (3) location;

27 (4) development potential;

28 (5) income potential;

29 (6) accessibility; and

30 (7) other physical characteristics.

31 (e) Additional factors that shall be considered in determining whether land proposed for

1 exchange under this section should be conveyed by the commissioner of natural resources in trust to the
2 authority are:

- 3 (1) ensuring an appropriate diversity in the character of land in the trust corpus and in
4 state ownership;
- 5 (2) additional development and income generating potential as a result of trust ownership;
- 6 (3) the public interest in retaining specific land in state ownership;
- 7 (4) public benefits resulting from the exchange;
- 8 (5) benefits to the trust resulting from the exchange; and
- 9 (6) efficiency of land management resulting from the exchange.

10 (f) Exchanges under this section shall be negotiated by the plaintiffs in Weiss v. State of Alaska,
11 4FA-82-2208 Civil, and the commissioner of natural resources.

12 (g) The provisions of AS 38.50 do not apply to exchanges under this section.

13 (h) If agreement cannot be reached between the plaintiffs in Weiss v. State of Alaska, 4FA-82-
14 2208 Civil, and the commissioner of natural resources under (f) of this section as to appropriate lands
15 to be conveyed to the trust as compensation or as to the value of the original lands taken or of
16 replacement lands, the Alaska Supreme Court shall resolve the disagreements using the criteria set out
17 in this section. The Alaska Supreme Court may order the commissioner of natural resources to convey
18 appropriate state land to the trust without further legislative authorization.

19 * **Sec. 55. SECURITY FOR COMPENSATION TO TRUST.** (a) To secure the reconstitution of
20 the trust as provided in secs. 53 and 54 of this Act, land mutually agreeable to the commissioner of
21 natural resources and the representatives of the plaintiffs in Weiss v. State, 4FA-82-2208 Civil is
22 hypothecated to the mental health trust.

23 (b) Title to the land specified in (a) of this section remains with the state, and any income from
24 that land shall be deposited in the general fund and considered unrestricted general funds of the state,
25 subject to the reconstitution of the trust as provided in this Act.

26 (c) As the trust is reconstituted, and upon request, the hypothecated land shall be released on
27 a pro rata basis.

28 * **Sec 56. JURISDICTION ASSIGNED TO THE ALASKA SUPREME COURT.** (a)
29 Notwithstanding any other provision of law, the Alaska Supreme Court has original and exclusive
30 jurisdiction to hear and determine any dispute arising under secs. 53 - 55 of this Act.

31 (b) If for any reason the Alaska Supreme Court determines that the jurisdiction conferred under

1 this Act is invalid, the superior court shall have jurisdiction over proceedings described in (a) of this
2 section.

3 (c) The Alaska Supreme Court or the Superior Court may refer the proceedings under this
4 section to a special master.

5 * Sec. 57. This Act takes effect upon entry of a final order dismissing Weiss v. State of Alaska, 4FA-
6 82-2208 Civil, and the expiration of any time for appeal. The superior court shall advise the lieutenant
7 governor and the revisor of statutes when the final settlement and order of Weiss v. State of Alaska has
8 been approved.

FISCAL NOTE

STATE OF ALASKA
1991 LEGISLATIVE SESSION

Bill No. CS SSHB 79 (FIN)

Revision Date: _____ Department Affected: Alaska Court System
 Title: An Act establishing the Alaska BRU: Appellate Courts
Mental Health Trust Authority... Components: _____
 Sponsor: Resources Committee
 Requestor: Finance COMPONENT SERIAL NO.

000 000	000 768
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EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 92	FY 93	FY 94	FY 95	FY 96	FY 97
PERSONAL SERVICES	19.5 99.0	39.0	39.0	39.0	39.0	39.0
TRAVEL	7.5 46.0	15.0	15.0	15.0	15.0	15.0
CONTRACTUAL	148.8 297.5	297.5	297.5	297.5	297.5	297.5
SUPPLIES	1.5 3.0	3.0	3.0	3.0	3.0	3.0
EQUIPMENT	18.0 18.0					
LAND & STRUCTURES						
GRANTS & CLAIMS						
TOTAL OPERATING	195.3 372.5	354.5	354.5	354.5	354.5	354.5

CAPITAL						
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REVENUE						
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FUNDING: (Thousands of Dollars)

GENERAL FUNDS	372.5	354.5	354.5	354.5	354.5	354.5
FEDERAL FUNDS						
OTHER						
TOTAL	372.5	354.5	354.5	354.5	354.5	354.5

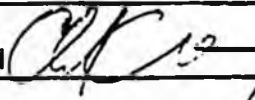
POSITIONS:

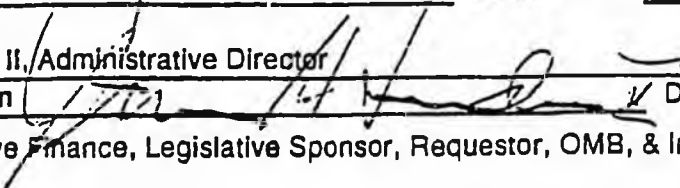
FULL-TIME	1.0	1.0	1.0	1.0	1.0	1.0
PART-TIME						
TEMPORARY						

Estimate of current year impact: _____

ANALYSIS: (Attach a separate page if necessary)

See attached analysis

Prepared by: C. S. Christensen III, Staff Counsel  Phone: 264-8228
 Division: Alaska Court System Date: 05/10/91

Approved by: Arthur H. Snowden, II, Administrative Director 
 Agency: Alaska Court System Date: 05/10/91

Distribution (by preparer): Legislative Finance, Legislative Sponsor, Requestor, OMB, & Impacted Agency(ies).

Alaska Court System

Fiscal Analysis
CS SSHB 79 (Resources)

Personal Services

	<u>Salary</u>	<u>Benefits</u>	<u>Total</u>
In-Court Clerk, 12B, Anchorage, permanent full-time	13,296 \$26,592	6,204 \$12,408	19,500 \$39,000

Travel

Travel by special master to view parcels and conduct hearings and investigations			7,500 15,000
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Contractual Services

Professional services - special master for 1,500 hours at \$125 an hour		93,750	487,500
Professional services - paralegal assistant, full-time position		22,500	45,000
Professional services - secretary, full-time position		17,500	35,000
Office rental - 1,000 square feet at \$2.50 a foot		15,000	<u>30,000</u>
Total		148,750	297,500

Supplies

Office supplies		1,500	3,000
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Equipment

Desks, chairs, computers, typewriters, filing cabinets, printer, statutes and reference materials			<u>18,000</u>
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Total First Year Cost

195,250
372,500

FISCAL NOTE

BILL NO. CSSS HB 79 (FIN)

STATE OF ALASKA
1991 LEGISLATIVE SESSION

Revision Date: _____
 Title: An Act establishing the Alaska Mental Health Trust
 Authority: _____
 Sponsor: Boyer, Gonzales, Moyer
 Requestor: _____

Department Affected: Administration
 BRU: Older Alaskans Commission
 Component: Older Alaskans Services

COMPONENT SERIAL NO.

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Expenditures/Revenues: (Thousands of Dollars)

OPERATING	FY 92	FY 93	FY 94	FY 95	FY 96	FY 97
PERSONAL SERVICES	59.4	61.0	62.4	64.2	65.7	67.5
TRAVEL	20.1	20.1	20.1	20.1	20.1	20.1
CONTRACTUAL	3.5	3.5	3.5	3.5	3.5	3.5
SUPPLIES	2.0	2.0	2.0	2.0	2.0	2.0
EQUIPMENT	3.5	0.0	0.0	0.0	0.0	0.0
LAND & STRUCTURES	0.0	0.0	0.0	0.0	0.0	0.0
GRANTS, CLAIMS	0.0	0.0	0.0	0.0	0.0	0.0
MISCELLANEOUS	0.0	0.0	0.0	0.0	0.0	0.0
TOTAL OPERATING	88.5	86.6	88.0	89.8	91.3	93.1

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	0.0	0.0	0.0	0.0	0.0	0.0
FEDERAL FUNDS	0.0	0.0	0.0	0.0	0.0	0.0
OTHER/MHT	88.5	86.6	88.0	89.8	91.3	93.1
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

POSITIONS:

FULL-TIME	1.0	1.0	1.0	1.0	1.0	1.0
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

Estimate of current year impact: _____

ANALYSIS: (Attach a separate page if necessary.) To meet its expanded duties under this bill, the Older Alaskans Commission (OAC) needs: (1) funds to increase commission meetings from three to four per year, one meeting for mental health (Alzheimer's) planning duties and public hearings; and (2) one staffer to carry out OAC's new planning duties and to monitor the mental health services funded by OAC. Staffer will attend, report back, and coordinate with the meetings, planning sessions, and regulatory requirements of the new Mental Health Authority, the Division of Mental Health, and the other three "coordinating" boards for mental health services.

Prepared by: Connie J. Sipe *Connie J. Sipe*
 Division: Older Alaskans Commission

Phone: 465-3250
 Date: May 9, 1991

Approved by Commissioner: Millett Keller *Millett Keller*
 Agency: Administration

Date: 5/10/91

Distribution (by preparer): Legislative Finance, Legislative Sponsor, Requestor, OMB, & Impacted Agency(ies).

Department of Administration
Older Alaskans Commission
May 9, 1991

DETAIL OF FISCAL NOTE ON CSSSHB 79

100	<u>PERSONAL SERVICES</u>	
	1 PFT Health Program Spec. II (Range 19) Juneau -	\$59.4
200	<u>TRAVEL</u>	
	1 three-day Commission meeting in Anchorage including a half-day statewide teleconference to specifically focus on OAC's responsibilities under the mental health trust (\$14.0); travel funds to allow the position and Commission member to attend numerous meetings of the Alaska Mental Health Authority, the Mental Health Board, and the annual planning session of the Division of Mental Health and Developmental Disabilities (\$6.1).	\$20.1
300	<u>CONTRACTUAL</u>	
	RSA with DOA word processing for reports, copying, and mailing; telephone and related fixed costs.	\$ 3.5
400	<u>SUPPLIES</u>	\$ 2.0
500	<u>EQUIPMENT</u>	
	Includes as one time expenses: computer, software, related office equipment	<u>\$ 3.5</u>
	1-Y 92 TOTAL:	\$88.5

STATE OF ALASKA
1991 LEGISLATIVE SESSION

BILL NO. CS HB 79 (FIN)

Revision Date: _____ Department Affected: Health & Social Services
 Title: _____ BRU: Administrative Services
 Component: Alaska Mental Health Board

Sponsor: _____
 Requestor: _____ COMPONENT SERIAL NO.

--	--	--	--

Expenditures/Revenues (Thousands of Dollars)

OPERATING	FY 92	FY 93	FY 94	FY 95	FY 96	FY 97
PERSONAL SERVICES	48.4	50.8	53.3	56.0	58.8	61.7
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS/CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING						

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

REVENUE	48.4	50.8	53.3	56.0	58.8	61.7
---------	------	------	------	------	------	------

FUNDING (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER <u>MHT/GF</u>	48.4	50.8	53.3	56.0	58.8	61.7
TOTAL						

POSITIONS:

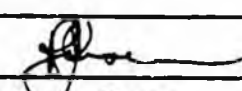
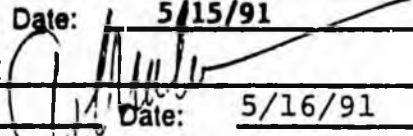
FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of current year impact: _____

ANALYSIS: (Attach a separate page if necessary.)

\$4,400/yr. average cost per Board member X 11 = 48.4

..... Inflation projected @ 5%/yr.

Prepared By: Ray Jensen  Phone: 586-6201
 Division: Alcoholism & Drug Abuse Date: 5/15/91
 Approved by Commissioner: Theodore Mala, M.D., MPH 
 Agency: _____ Date: 5/16/91

Distribution (by preparer): Legislative Finance, Legislative Sponsor, Requestor, OMB, & Impacted Agency(ies).

STATE OF ALASKA
1991 LEGISLATIVE SESSION

BILL NO. SB 79 (FIN)

Revision Date: _____ Department Affected: _____
Title: _____ BRU: Alcoholism & Drug Abuse
Component: Advisory Board on Alcoholism & Drug Abuse
Sponsor: _____
Requestor: _____ COMPONENT SERIAL NO.

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Expenditures/Revenues: (Thousands of Dollars)

OPERATING	FY 92	FY 93	FY 94	FY 95	FY 96	FY 97
PERSONAL SERVICES	169.1 109.6	177.5	177.5	177.5	177.5	177.5
TRAVEL	90.0 50.0	94.5	99.2	104.2	109.4	114.9
CONTRACTUAL	47.5	49.9	52.4	55.0	57.8	60.7
SUPPLIES	5.8	6.0	6.3	6.6	6.9	7.2
EQUIPMENT	20.0 14.0	0	0	0	0	0
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	332.4 232.9	327.9	335.4	343.3	351.6	360.3

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

REVENUE	332.4	327.9	335.4	343.3	351.6	360.3
---------	------------------	-------	-------	-------	-------	-------

FUNDING: (Thousands of Dollars)

GENERAL FUND	232.9					
FEDERAL FUNDS	332.4	327.9	335.4	343.3	351.6	360.3
OTHER						
TOTAL						

POSITIONS:

FULL-TIME	3.0	3.0	3.0	3.0	3.0	3.0
PART-TIME						
TEMPORARY						

Estimate of current year impact:

ANALYSIS: (Attach a separate page if necessary.)

See Attached

Prepared By: Ray Jensen Phone: 586-6201
 Division: Alcoholism & Drug Abuse Date: 5/15/91
 Approved by Commissioner: Theodore Mala, M.D., MPH
 Agency: _____ Date: 5/16/91

Distribution (by preparer): Legislative Finance, Legislative Sponsor, Requestor, OMB, & Impacted Agency(ies).

State of Alaska
Department of Health & Social Services
Division of Alcoholism & Drug Abuse

HB 79 Analysis

The following budget is comprised of three positions and associated costs comparable to the Alaska Mental Health Board.

Personal Services:

Executive Director, Range 21	72.4	
Secretary I, Range 10	37.2	
Research Analyst III, Range 18	59.5 0	

Total	169.1	109.6

Travel:

Statewide travel by professional staff	49.0	15.0
Three additional board members	11.0	
Per Diem	30.0	

Total	90.0	56.0

Contractual:

Communication	15.0	
Advertising, Printing & Binding	15.0	
Minor Repair & Maintenance	.5	
Space Rental	10.0	
Rental Machinery	7.0	

Total	47.5	

Commodities:

Office Supplies	5.8	
-----------------	-----	--

Equipment (one-time only)

Workstations for 3 employees	18.0	12.0
Computer Software	2.0	

Total	20.0	14.0

Grand Total for FY 92

332.4	232.9
=====	

FISCAL NOTE

STATE OF ALASKA
1991 LEGISLATIVE SESSION

BILL NO. CS SS HB 79 (FI

Revision Date: May 10, 1991
 Title: An Act establishing the Ak. Mental Health Trust
Authority and defining its powers and duties..."
 Sponsor: Boyer
 Requestor: _____

Department Affected: Revenue
 BRU: Treasury
 Component: _____

Component Serial No.

--	--	--	--

Expenditures/Revenues: (Thousands of Dollars)

OPERATING	FY 92	FY 93	FY 94	FY 95	FY 96	FY 97
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0	0	0	0	0	0

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

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

FUNDING: (Thousands of Dollars)

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

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of current year impact: _____

ANALYSIS: See attached bill analysis.

Prepared by: Brian C. Andrews

Phone: 465-2350

Division: Treasury

Date: May 10, 1991

Approved by Commissioner: *Daniel Rasmussen*

Agency: Revenue

Distribution (by preparer): Legislative Finance, Legislative Sponsor, Requestor, OMB, & Impacted Agency(ies).

Bill Analysis
CSSSHB_79

The Department of Revenue views the investment management of the assets of the Alaska Mental Health Trust as the responsibility of the State's Treasury. The statutory purpose of the Permanent Fund Corporation (37.13.030) is to manage and invest the assets allocated by law (37.13.010) to the Alaska Permanent Fund. The purpose of the State's Treasury is to manage all other investment and trust funds for the State. Currently, there are nine funds under Treasury's investment management which total more than six billion dollars. Of these nine funds there are two, the Public School Investment Trust Fund and the University of Alaska Investment Trust Fund, which are managed as endowment trust funds for which the corpus or principal is invested for perpetuity.

The Treasury has investment management expertise equal to the Permanent Fund Corporation. Simply stated, the State's Treasury has a track record which is competitive in all areas of investment management such as operational costs, investment performance, accounting, auditing etc. The State has a Treasury which is governed by laws and regulations that are based on the prudent-investor rule.

The State's Treasury is the proper organizational entity from either a statutory or competitive perspective. The Department of Revenue believes that the State's Treasury is the proper entity to carry out the investment management functions of the assets of the Alaska Mental Health Trust.

CHRONOLOGY OF ALASKA MENTAL HEALTH TRUST AND PROGRAM
LEGISLATION AND ACTIONS

1904: U.S. Department of the Interior Contracts with Morningside Hospital, Portland, Oregon For Custody of Alaska Insane. Prior to 1956, the federal government dealt with Alaska's mentally ill by trying them for the "crime of being an insane person at large" and if convicted transporting them to a state-side asylum for custodial care. When the states refused to continue providing these minimal services, the Department in 1904 contracted with a private sanitarium, Morningside Hospital. Until the Alaska Psychiatric Institute was opened in 1961, Morningside continued as Alaska's "insane asylum."

1948-1956: Investigations and Reports on Alaska's Mental Health. The 1948 Overholser Report prepared for the Dept. of the Interior concluded that "there is no mental health program in Alaska." The 1954 University of Pittsburgh Graduate School of Public Health study corroborated these findings and a 1955 investigation by the General Accounting Office found that because of the minimal care offered the per-patient costs at Morning side were one-quarter that of other states. The 1956 study by the Western Interstate Commission for Higher Education found that Alaska offered "practically no psychiatric care." These rallied support for congressional action reforming the Alaska-Morningside approach.

Public Law 84-830, the Alaska Mental Health Enabling Act of 1956. "To confer upon Alaska autonomy in the field of mental health," the 1956 legislation transferred from the Federal to the Territorial government "the fiscal and functional responsibility for the hospitalization of committed mental patients and for other purposes." Operating and construction grants totalling \$12.5 million were provided over a ten year transitional period and during this period the territory was entitled to select one million acres from available public lands to be managed to provide ongoing revenue. The selection was unique among federal land grants in that the selection process was unrestricted and mineral deposits were included. These lands were to be administered as a public trust with the income derived from their active management to "first be applied to meet the necessary expenses of the mental health program of Alaska."

1958-1967: Transition From Federal to Alaskan Responsibility. Annual federal operating grants were made available from fiscal year 1958 through 1967 upon submission to the U.S. Surgeon General of annual plans for the programs required by the 1956 legislation. Federal construction grants

were expended primarily for construction of API. Under the chairmanship of Natural Resources Commissioner Phil Holdsworth, urban and suburban and natural resources lands with the highest potential of producing income in perpetuity were selected.

1965. Alaska Comprehensive Community Mental Health Planning. In response to the 1964 National Community Mental Health Centers Act a 1965 state plan was implemented with clinics in Ketchikan, Juneau, Anchorage, Kodiak and Fairbanks funded by federal grants. This program was an initial step in the "de-institutionalization" of the mentally ill.

1975. Alaska Community Mental Health Center Enabling Act. Provided basis for statewide services at local level. Within ten years an additional 23 clinics were established.

Ch.181-182, SLA 1978. Redesignation and Disposal of Mental Health Land. After selection of the trust lands, no trust administration was established, no trust fund created, and no direction given the Department of Natural Resources as to how to manage the lands as a trustee. Consequently the lands were treated as though they were general grant lands and no proper accounting made, in order to "legalize" these practices and in response to municipal and private pressures to make mental health lands available, in 1978 the Legislature abolished the trust and redesignated it as general grant lands. The trust was to be compensated by creation of an income stream calculated at 1.5% of the revenues from all state lands. This was subject to appropriation, however, which was never made.

1982. The "Weiss Litigation." After failure to achieve legislative remedies for the State's failure to discharge its fiduciary obligations as trustee of the MHLT and provide a comprehensive program, the Alaska Mental Health Association and others turned to litigation (Weiss et al. v. Alaska) to redress violation of the 1956 federal law.

The 1985 Alaska Supreme Court Decision. On October 4, 1985 the Alaska Supreme Court ordered that the "trust must be reconstituted to match as nearly as possible the holdings which comprised the trust when the 1978 legislation became effective." At the time of the decision more than three quarters of the trust corpus had been illegally conveyed in whole or in part.

Chapter 132, SLA 1986, Creating the Interim Mental Health Trust Commission and Senate Concurrent Resolution 36, 1986 Establishing the Joint Special Committee on Mental Health Trust Land. In response to the court order, the Legislature created the joint committee to develop a proposal for resolving the

litigation and the commission to protect the trust corpus from further diminution, oversee appraisals and audits necessary for reconstituting the trust and to work with the joint committee on developing a mechanism for resolution.

The 1987 Reports of the Commission and Joint Special Committee. In January and February 1987 the joint committee and the commission presented reports on their findings and recommendations which provided the basis for a proposed settlement.

Chapter 48 SLA 1987, Legislatively Proposed Settlement of the Mental Health Trust Lands Litigation. The proposed settlement provided for releasing the original one million acres from trust status, the creation of an alternative land trust of equal value from legislatively designated lands and the "rental" by the state of these lands at 8% of its fair market per year (the value to be redetermined at least every five years). A revised three person Interim Mental Health Trust Commission was designated to determine and approve the appropriate valuation procedures needed to implement Chapter 48. Finally, to determine the "necessary expenses of the mental health program, including capital needs," the act created the Alaska Mental Health Board.

April 27, 1988, "The Greene Decision." The intervention of a number of advocacy groups as plaintiffs caused the superior court to define the beneficiaries of the "comprehensive mental health program" as including the "mentally ill who may require hospitalization and the mentally defective and retarded," This "operative definition" does not exclude "chronic alcoholics suffering from psychoses or senile persons who as a result of their senility suffer major mental illness."

Obstruction to Implementation of Chapter 48. The IMHTC worked from passage of Chapter 48 until January 1990. On November 7, 1989 the Commission adopted by a two to one vote (the State dissenting) its final approved procedures for determining the value of the MHTL which resulted in a value of \$2.243 billion. The DNR issued a minority report on February 1, 1990 in which they contended that the value was only \$565 million. The Commissioner of DNR declared an "impasse." SB 493 was introduced based on the Commission's procedures. In the final days of the session the Administration sponsored a Finance Committee substitute which changed compensation to the trust from the value of the lands to 6 % of the unrestricted general fund revenues of the State (1990 SLA Ch. 210).



Alaska Department of
**NATURAL
RESOURCES**

MENTAL HEALTH LAND SUMMARY
November, 1990

In 1956, the U.S. Congress granted the Territory of Alaska one million acres of land to be used first to fund mental health programs. Any funds left over could be used for other public purposes at the discretion of the legislature.

Land was selected under the Mental Health Enabling Act between 1956 and 1966¹, and included areas along transportation routes and near the state's population centers. Mental health lands were managed by the state as trust land, and, in 1976, the Mental Health Trust Board was established to provide oversight.

Under the enabling act, mental health land could be sold. By 1978, 19,800 acres had been sold to individuals. Income received from mental health land and resources was placed in a separate account within the general fund. As the state's population grew, so did pressure to use these lands for purposes that might produce little or no revenue. Among those uses were municipal expansion, public facilities, utilities, recreation and charitable activities.

In 1978, the legislature "redesignated" the mental health land as general statehood grant land to be managed similar to other state land. In return, the legislature was to annually appropriate 1.5 percent of the state's annual income from land and resources to the mental health trust. However, the legislature did not appropriate the money², and on November 26, 1982, a class action law suit was filed in Superior Court on behalf of several mental health beneficiaries (Weiss v. State of Alaska).

In 1984, the Superior Court directed the state to pay the trust for the mental health land redesignated as general statehood grant land in 1978. In order to value that land, the state produced an accounting of mental health land and assembled a panel of three appraisers to assign a 1978 value to the redesignated lands³.

The Superior Court decision was appealed to the Alaska Supreme Court and, on October 4, 1985 that court invalidated the 1978 redesignation. The court required the state to restore the mental health land holdings as much as possible to their pre-1978 status and to compensate the trust for the value of the land already conveyed, minus prior state expenditures made for mental health

¹State records show that 1,035,843.38 acres of mental health land have been received by the state under the mental health grant. The state is involved in a survey recalculation project to rectify this apparent over-conveyance.

²The 1.5% appropriation would have amounted to approximately \$71 million by the end of FY 82; it would have grown to \$147 million by the 1985 Supreme Court decision.

³The 1978 value of mental health land in state ownership as of the redesignation in 1978 was established under this process as \$281,997,805. Brought forward to July, 1985 at 10.5% settlement interest, the total was estimated at \$567,259,354.

programs⁴. The Supreme Court decision also returned the case to the Superior Court so that the remaining issues could be decided. As a result, income from mental health land transactions again began to flow into a specially designated mental health trust account within the state's general fund. In addition, the Department of Natural Resources adopted safeguards to prevent further diminution of the trust (Department Order 121); appointed an Interim Mental Health Trust Officer; and audited mental health land status as of the 1985 court decision⁵.

In 1986, the legislature passed two bills affecting mental health land. The bills established two bodies: a five-member Interim Mental Health Trust Commission to oversee management of mental health trust land and to develop recommendations for legislation relating to those lands and mental health programs of the state; and a Joint Special Committee on Mental Health Trust Land to hold public hearings and develop a proposal to resolve the mental health trust litigation, particularly from the aspect of annual funding levels for mental health programs.

Based upon the recommendations of the Commission and the Committee, the 1987 legislature passed a bill initiating a mechanism for settlement. A three-member Interim Mental Health Trust Commission was established and charged with approving procedures for the Department of Natural Resources' commissioner to use to determine the fair-market-value of mental health land as of September 7, 1987 (the effective date of the bill); selecting land within legislative designations to equal the value of the original mental health land granted to the state; and continuing oversight of mental health land management. The framers of the bill envisioned a designation "switch," that would release existing mental land from trust status, and replace it with land within legislative designations, such as parks and refuges. The designated land would then be leased from the trust at eight percent of its value. The proposal would secure the trust with land already removed from the Public Domain, and provide income to the trust through rental of the land. The 1987 bill also established a separate board to consider state mental health needs and funding levels.

⁴Total income for mental health land from 1959-1977 was \$25,110,430. State mental health expenditures during this same period were \$115,364,054 with an additional \$16,430,771 being spent on alcohol and drug abuse programs.

⁵1985 mental health land status:

Mental health land no longer in State ownership

The following conveyances were not disputed by mental health plaintiffs in 1985:

46,000 acres were sold to individuals

5,000 acres were condemned for the Chena River Lakes flood control project.

(Total remaining mental health land: 949,000 acres)

The following conveyances were disputed by the mental health plaintiffs:

43,000 acres conveyed to municipalities

*36,000 acres were conveyed to Native corporations

*3,000 acres were conveyed to the University of Alaska

(Total remaining mental health land: 945,000 acres)

*These conveyances were made under litigation settlement agreements and land exchanges.

Encumbrances

368,000 acres were legislatively designated for parks, etc.

6,685 acres were under land lease

54,600 acres were under coal lease

131,900 were under oil and gas lease

4,500 acres were covered by inter-agency land management assignments or transfers (e.g. for state facilities)

1,900 acres were covered by material sales

28,000 acres supported timber sales

62,000 acres were covered by state mining claims

In 1988, the commission contracted with nine independent fee appraisers to determine the fair-market-value of the surface estate of mental health land. The appraisers set that value at \$511.9 million. However, attorneys for the plaintiffs and intervenors disagreed and hired their own review appraisers. These review appraisers, operating under the direction to determine "the highest value supported by market data" concluded that the surface estate was worth \$833.3 million.

The commission initially decided that there were insufficient data to establish a sub-surface value. Instead, lands with mineral potential were to be replaced with lands of similar potential. However, the attorneys for the plaintiffs and intervenors hired a consultant who established a sub-surface value of \$1.5 billion. This value was challenged by several independent experts who concluded that it was not fair-market-value and could not be supported.

In December, 1989, the commission adopted a value of \$2.23 billion for all mental health land. A minority report was prepared by the department establishing the fair-market-value of mental health land at \$564.7 million. The Commissioner of Natural Resources disagreed with both values, stating that they did not reflect the fair-market-value required by the legislation, and declared an impasse.

In the 1990 legislative session, several alternatives were proposed to resolve this issue. A bill was introduced removing the fair-market-value requirement from the 1987 legislation, adopting the commission's \$2.23 billion figure and providing for a periodic land revaluation index based on municipal land assessments. This value would then be the basis for future mental health program expenditures. However, many legislators opposed this approach because it would cause the mental health revenue account to exceed the entire state general fund within a relatively short time-frame.

The 1990 legislature eventually passed SB 493 allocating up to six percent of the state's annual unrestricted general fund revenue to the mental health income account, and redesignating over nine million acres of legislatively designated land as mental health land to secure the trust. In return, the original mental health trust land was redesignated to general state land status. The legislature remains responsible for determining mental health program expenditure levels. However, mental health advocates did not support the bill.

On July 9, 1990, the Superior Court granted a temporary injunction preventing the state from taking any further action on mental health land. On September 7, 10, and 11, attorneys for the mental health litigants filed a Notice of Lis Pendens on the million acres of mental health land. The notice warns people that the title to the property is in litigation, and that they are in danger of being affected by an adverse judgement. This notice is affecting many private transactions as Alaskans attempt to sell their properties, or use them as collateral.

The state petitioned the court to mitigate the effects on third party owners of mental health land and allow the state to issue patent for land that has been paid for. The court refused, however, stating that the plaintiffs "would be within their rights to litigate the issue of third-party rights." Still pending is a motion by the state for declaratory judgement to determine whether the plaintiffs are entitled only to monetary compensation for the prior transfer of mental health land to third parties.

Another outstanding issue yet to be addressed by the court is whether the 1990 legislation complies with the 1985 Supreme Court Weiss decision.

MENTAL HEALTH TRUST LANDS CHRONOLOGY

1956

CONGRESS CREATES
1 MILLION ACRE
MENTAL HEALTH
LANDS TRUST

1959

CONGRESS CONFIRMS
TRANSFER OF TRUST
LANDS

1960's

ALASKA SELECTS MENTAL
HEALTH TRUST LANDS

1970's

DEMAND FOR UTILIZATION
OF MENTAL HEALTH TRUST
LAND INCREASES

1978

ALASKA LEGISLATURE
REDESIGNATES MENTAL
HEALTH TRUST LANDS --
LANDS REMOVED FROM
TRUST STATUS

1982

CLASS ACTION LAWSUIT
INITIATED SEEKING
INVALIDATION OF 1978
LAW

1985

ALASKA SUPREME COURT
ISSUES WEISS DECISION
REQUIRING RECONSTITUTION
OF TRUST

1986

LEGISLATURE ESTABLISHES
INTERIM MENTAL HEALTH
TRUST COMMISSION
AND
JOINT SPECIAL COMMITTEE
TO MAKE RECOMMENDATIONS
ON SETTLEMENT, INCLUDING
NECESSARY LEGISLATION

1987

LEGISLATURE ENACTS
CHAPTER 48, SLA 1987
RECONSTITUTING TRUST
AND
GIVING THE INTERIM
MENTAL HEALTH TRUST
COMMISSION LIMITED AUTHORITY
TO ASSIST WITH VALUATION OF
LANDS TAKEN
AND
ESTABLISHING "RENTAL
RATE" FOR LANDS
TAKEN

1988-89

APPRAISAL AND VALUATION
PER 1987 LEGISLATION
(STATE VALUE = \$556 M;
INTERIM MENTAL HEALTH
COMMISSION VALUE =
\$2.243 B)

1990

LEGISLATURE ENACTS
CHAPTER 210, SLA 1990
TO AMEND 1987 ACT BY
CHANGING "RENTAL RATE"
FOR LAND VALUES
AND
REPEALING PORTION OF
INTERIM MENTAL HEALTH
TRUST COMMISSION
AUTHORITY

SUPERIOR COURT
ENTERS ORDER
PROHIBITING STATE FROM
CONVEYING TRUST LANDS

1991

INTRODUCTION OF SB-65/HB 79
AND HB-59

ESTABLISHMENT OF
MENTAL HEALTH
TASK FORCE
BY
GOVERNOR HICKEL

STATE OF ALASKA

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

WALTER J. HICKEL GOVERNOR

REPLY TO:

- 1031 W 4th AVENUE SUITE 200
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- 1st NATIONAL CENTER
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FAX: (907) 458-1317
- P.O. BOX K—STATE CAPITOL
JUNEAU, ALASKA 99811-0300
PHONE: (907) 465-3600
FAX: (907) 463-5295

January 29, 1991

Hon. Jim Duncan, Senator
Alaska State Senate
P.O. Box V
Juneau, AK 99811

Re: Weiss v. State

Dear Sen. Duncan:

While, as the prime sponsor of SB 65, you are well acquainted with the mental health lands litigation, others may not be, so the Department of Law has prepared an "Overview" of the litigation, a copy of which is enclosed. We hope you and the other members of the Legislature find it helpful in terms of background and the need to resolve the case.

In my short tenure as Attorney General, I have become aware of the contentious nature of this case. As a consequence I have personally reviewed the enclosed "Overview," and endeavoured to make it as neutral and factually accurate as possible. In my view, a proper evaluation of the various policy alternatives must be premised on a complete and unbiased understanding of the factual and legal background of the case.

If you or other legislators have questions, I am available to answer them at your convenience.

Very truly yours,

CHARLES E. COLE
ATTORNEY GENERAL

WEISS v. STATE: AN OVERVIEW

January 23, 1991

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.

State administration of the land 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, among other things, that (1) the 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 remove 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 "AMHA"), even though at that time they were not parties to the action. AMHA 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 AMHA's motion to intervene.

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

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.

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 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. AMHA renewed their motion to intervene, and Judge Mary E. Greene (to whom the case was assigned following Judge Taylor's retirement) granted the motion. 4/ 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. 5/

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 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

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

4/ Except where necessary, plaintiffs and intervenors will hereafter be referred to collectively as "plaintiffs."

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

those considered mentally ill in the traditional sense. The original plaintiffs also opposed Advocacy Service's motion and agreed with the state. AMHA 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.

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 senility, suffer major mental illness.

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 ^{6/} under procedures proposed by the commissioner and approved by the commission; ^{7/} (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 at least 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

^{6/} September 7, 1987.

^{7/} The commission also was reduced to three: the commissioner and two plaintiffs' representatives.

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 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 court 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 for review 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 injunction. Chapter 210 became effective on July 10, 1990, and there was confusion whether the injunction covers only the original mental health lands, the reconstituted

("new") trust lands in legislatively designated areas, or both. Judge Greene clarified that the injunction covers only the original mental health lands and not the lands in legislatively designated areas 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 wanted to do some exploratory drilling on mental health lands it has under lease, which Judge Greene allowed; Idemitsu needs a mining plan approved, which has not been ruled on. 2/

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. 2/ 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 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

2/ 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.

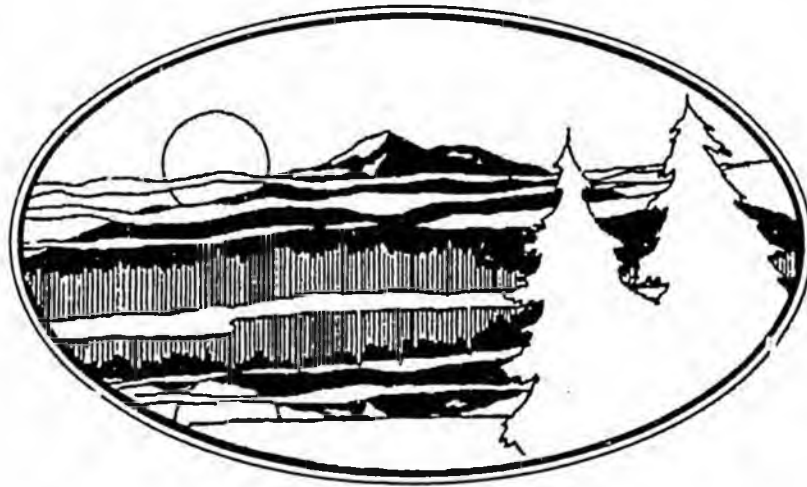
2/ The five percent totaled \$125 million; \$44 million was appropriated for the state's mental health program, leaving an unappropriated balance of \$81 million.

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.

Mental Health Trust Lands Litigation and Settlement Prospects

Briefing Paper



Prepared By:

The Mental Health Trust Coalition

October 2, 1990

The Federal Grant

During Territorial days, the Territory of Alaska was prohibited from enacting any laws with respect to mental health. At that time the federal government had complete control and only addressed the mentally ill by trying them under the crime of being "an insane person at large," and if convicted of that crime, transporting these "criminals" to Morningside Hospital in Portland, Oregon. In 1956, in response to public outrage in Alaska over this system, the U.S. Congress passed the Alaska Mental Health Enabling Act, granting authority to the Territory of Alaska to administer its own mental health program, and in order to provide funds to run the program, granting Alaska the right to select one million acres of land to be administered as a public trust, with the funds derived therefrom to "first be applied to the necessary expenses of the mental health program of Alaska." The mental health program was to be a comprehensive mental health program, with the trust serving those individuals suffering from a psychiatric illness who may require hospitalization, the mentally retarded and defective, chronic alcoholics with psychosis and senile people suffering major mental illness.

Recognizing that the purpose of the Trust was to earn income, the Territory, and then the State of Alaska¹ selected what was known to be the most valuable property in the State available at the time of selection. These included urban and suburban lands in Anchorage, Fairbanks, Juneau, Sitka, Ketchikan, Petersburg, Wrangell, Haines, Homer, Kodiak and Skagway, lands on the Kenai peninsula, in the Matanuska and Susitna Valleys and on Kachemak Bay. In addition high value resource lands were selected, such as 60

percent of what is now known as the Haines State Forest, forest lands at Cape Yakataga, a significant percentage of the known coal resources of Alaska, oil and gas prospects, and in the prime mineral districts of Alaska. As a result, this land is probably the most valuable million acres of land in the State, with the possible exception of Prudhoe Bay, and is better suited to the production of income in perpetuity than Prudhoe Bay.

Although the land was selected for the Trust, and was supposed to earn money in support of the mental health program, no trust administration was established, no trust fund was created, and the State Division of Lands received no direction on managing the trust lands as a trustee. In this vacuum some of the land was improperly disposed of and no proper accounting was made. In addition, due to the valuable nature of the land, there was tremendous pressure by municipalities and individuals to make Mental Health Trust Lands available.

The Legislative Redesignation

In response to this pressure, in 1978 the Alaska Legislature purported to abolish the Trust by "redesignating" Mental Health Trust Lands as general grant lands. This 1978 legislation also purported to compensate the Trust with 1.5 percent of revenues from all State lands. This was to be "subject to appropriation" which was never made.

1. Section 6(k) of the Alaska Statehood Act confirms the Mental Health Lands Trust Grant, and the State accepted the grant on its original terms.

The Weiss Litigation

After failing to achieve legislative redress of this blatant violation of federal law and the State's fiduciary obligation to the Mental Health Lands Trust, and after being told "we don't care if it is illegal - sue us," in 1982 the Alaska Mental Health Association sponsored commencement of the litigation. Vern Weiss, on behalf of his son Carl, and Earl Hilliker, on behalf of themselves and the class of people entitled to benefits under the trust (beneficiaries of the trust) were named as plaintiffs in the lawsuit. Since that time, the Alaska Mental Health Association, representatives of the mentally retarded and mentally defective (developmentally disabled) and chronic alcoholics with psychosis have formally intervened to participate together with the original plaintiffs in the lawsuit.

The 1985 Alaska Supreme Court Decision

In 1985, in what is known as the Weiss Decision, the Alaska Supreme Court rejected the State's arguments that there really was no trust, and even if there was a trust, that by having any mental health program it didn't really matter. The Alaska Supreme Court then ordered that the "trust must be reconstituted to match as nearly as possible the holdings which comprised the trust when the 1978 law became effective."

At the time of the Weiss Decision, the following legally questionable actions had been taken by the State with respect to Mental Health Trust Lands:

370,000	acres designated as state parks, refuges, etc.;
40,000	acres to Municipalities;
40,000	acres to Native corporations ² ;
45,000	acres to individuals;
3,000	acres to the University of Alaska; and
<u>280,000</u>	<u>acres in less than total conveyances.</u>
778,000	total

The 1987 Settlement Proposal

Not surprisingly, the State (and other third parties) didn't want to give the land back and reverse illegal dispositions of Mental Health Trust Lands. So in 1986, the legislature appointed a special committee to develop a means of settling the lawsuit without disturbing previous dispositions of Trust Lands. The Interim Mental Health Trust Commission was also created to oversee management of Trust Lands and make recommendations for settling the litigation. In addition to the problem of the status of the Trust Land and its administration, the Beneficiaries were concerned about the Legislature's conflict of interest in being legally obligated in administering the Trust to do so solely in the Trust's benefit, but also being able to use any funds not "necessary for the mental health program" for other public purposes. All parties

worked together and agreed on a proposed settlement mechanism, which was enacted as Chapter 48 Session Laws of Alaska 1987 (Chapter 48).

Chapter 48 had four elements. The first element involved the determination of fair market value of the original one million acre mental health land grant under procedures approved by the Interim Mental Health Trust Commission. The second element involved an equal value exchange of those original Mental Health Trust Lands not in legislatively designated areas such as parks and wildlife refuge areas for land of equal value within such areas so that the reconstituted Mental Health Lands Trust corpus would consist entirely of lands within such legislatively designated areas approved by the Interim Mental Health Trust Commission. The original Mental Health Trust Lands not in such areas were to be released from trust status and dispositions with respect to those lands would be ratified. The third element was for the State to "rent" the reconstituted trust for eight percent of its fair market per year, with the value to be redetermined at least every five years. Until the value was established, 5 percent of the State's unrestricted general fund revenues was to be the compensation to the Trust. The fourth element was the creation of the Alaska Mental Health Board to study and determine the needs of the mental health program, including those unmet and transmit to the Governor and Legislature its recommendations of the funding required to meet the necessary expenses of the mental health program, including capital needs.

The Plaintiffs, the State, and third parties saw numerous advantages in the Chapter 48 approach.

1. Assuming sufficient guaranties of enforceability, it satisfied the State's legal obligation under federal law to administer a permanent land trust for the benefit of people in need of mental health program services.

2. It allowed the original one million acres of Mental Health Trust Land to be used for general public purposes, removing the "cloud" on title and/or use of some 6,000+ dispositions of Mental Health Trust Lands.

3. It provided for immediate financial support for the mental health program, but doesn't require a major "up front" payment.

4. It provided a legitimate method for determining the necessary expenses of the mental health program.

5. It was designed to avoid costly and time consuming litigation.

6. It is relatively easy to administer.

The Obstruction to Implementation of Chapter 48

The Interim Mental Health Trust Commission worked from the passage of Chapter 48 until January of 1990, to determine and approve the appropriate valuation procedures to implement Chap-

2. It does not appear this would include a large portion of the Beluga Coal Field conveyed to Cook Inlet Region Inc., as a result of its exchange under the Alaska Native Claims Settlement Act.

ter 48. On November 7, 1989, the Commission adopted by a two to one vote (the State's representative dissenting) its final approved procedures for determining the value of the original Mental Health Trust Lands. Utilizing these approved procedures the value of Mental Health Trust Lands, as of September 7, 1987, is \$2.243 Billion. However, on January 23, 1990, the State Department of Natural Resources announced a creative interpretation of Chapter 48 that the Commission could not approve any valuation procedures that the Commissioner of Natural Resources did not accept. On February 1, 1990, the Department of Natural Resources issued its Minority Recommendations, indicating it believed the value of the Trust Lands were only \$565 Million. The Commissioner of Natural Resources then declared an "impasse".

The Proposed Legislative Solution

(and its derailing by the Administration)

In order to overcome this obstruction to the implementation of Chapter 48, SB 493 was introduced. As originally formulated, SB 493 would have (1) established the value of the original one million acres at the \$2.243 Billion figure arrived at under the procedures approved by the Interim Mental Health Trust Commission, (2) reconstituted the Trust with all legislatively designated areas that existed as of September 7, 1987, and (3) provided for a formula to revalue the lands based upon the changes in assessed values. The attorneys for the Beneficiaries advised the Legislature all session that unless the problem was solved this session that third party title to Mental Health Trust Land would be brought into question and there would be widespread economic disruption with respect to third party plans for Mental Health Trust Lands. Representatives of the Administration, on the other hand, were telling the Legislature that the plaintiffs in the lawsuit would not be able to prevent actions on Mental Health Trust Lands.

The Legislature apparently relied upon the Administration's interpretation. Instead of enacting SB 493 as originally contemplated to implement Chapter 48, just before the end of the session, the Administration sponsored a Finance Committee substitute that ultimately passed, which changed compensation to the Trust from the value of the Trust Lands to 6 percent of the unrestricted general revenues of the State.

The Beneficiaries commissioned an economic analysis of this change, and not surprisingly, the result was that changing the form of compensation from the value of the land to a percentage of declining state revenues seriously undercompensates the Trust.³

3. See "Analysis of State General Forecasts and the Future Value of the Mental Health Trust Lands," by The McDowell Group, July 12, 1990.

4. These are the Alaska Mental Health Board recommended increases to move toward meeting the necessary expenses of the Mental Health Program.

5. Estimated.

6. On the other hand, the Beneficiaries have tried to eliminate unnecessary hardship, and when no harm to the trust is apparent, the Beneficiaries have uniformly agreed to modify the injunction to allow things to proceed.

Expenditure of Trust Funds

For every year since the enactment of Chapter 48, the Legislature has substantially underfunded the needs of the mental health program in order to raid the Trust fund for other state programs. A summary is as follows:

Fiscal Year	AMHB Rec. ⁴ Increments	Legislative Appropriation	Trust Funds Used on Non-Trust Purposes
1989	\$15,322,400	\$8,868,900	
1990	15,791,800	5,026,000	\$47,072,734
1991	19,179,050	10,249,200	81,500,000 ⁵

Current Status

Faced with yet another example of the State's breaking its commitments and breach of its fiduciary responsibilities to the Trust the Beneficiaries went back to court and obtained an injunction prohibiting the State from transferring any more Mental Health Trust Lands or issuing any permits or leases, and confirmation that the Beneficiaries were entitled to challenge the status of previous dispositions of Mental Health Trust Lands. As mentioned there are over 6,000 questionable actions that have occurred on Mental Health Trust Lands that are open for reversal. Prospective activities on Mental Health Trust Lands have been suspended, or are in limbo. For example, the Wishbone Hill Coal Mining Project has been put on hold pending determination of certain legal questions. Usibelli Coal Mine operates substantially on Mental Health Trust Lands and its future operations are planned to be substantially on Mental Health Trust Lands. The Diamond Shamrock Coal Project in the Beluga Coal Field is also impacted. People who have received patents to Mental Health Trust Lands may be divested of title. Lessees of Mental Health Trust Lands may have their leases declared invalid.⁶

In terms of the legalities, a third party does not receive good title to Mental Health Trust Lands unless that party paid value for the land and had no reason to know of the breach of trust. Beneficiaries believe that all persons will be found to have "constructive knowledge" of the breach of trust because it was a matter of public record. The difficulties that third parties are now experiencing are the difficulties the State, the Beneficiaries and others tried to avoid in agreeing to Chapter 48 as a proposed settlement mechanism.

The Beneficiaries are still interested in a settlement of the litigation and have formulated the following settlement principles. The basic bottom line is, as it always has been, that the settlement must be fair to and in the best interests of the beneficiaries of the Trust. In this context fair includes that the settlement must be enforceable and not subject to dismantling by the State. There are a number of ways this could be accomplished and fairness is the only precondition.

The Mental Health Trust Coalition hopes to be able to garner widespread, bipartisan support for the principles set forth below, in trying to fashion a permanent solution next session.

Lands Litigation Settlement Statement of Principles

The Alaska Mental Health Enabling Act is a Federal law, enacted before statehood, confirmed by the Statehood Act, which granted Alaska One Million acres of land as a public trust to be administered first for the necessary expenses of the mental health program of Alaska. The mental health program may involve numerous agencies and entities. At a minimum the Mental Health Lands Trust must serve through a comprehensive and integrated program those individuals suffering from a psychiatric illness who may require hospitalization, the mentally retarded and defective, chronic alcoholics with psychosis and senile people suffering major mental illness.

A trustee is legally obligated to manage a trust for the sole benefit of the beneficiaries of the Trust, insulated from political interference,

Chapter 48 SLA 1987 (un-amended) or any other settlement proposal can only be acceptable as a resolution of the mental health trust lands litigation if (a) compensation is fair to the Trust and (b) there are adequate guarantees that the Trust is enforceable and will be administered properly, including determining and meeting the necessary expenses of the mental health program.

There are a number of ways that such a settlement may be fashioned, both with respect to (a) compensation to the Trust and management of Trust assets and (b) appropriate expenditures from the Trust.

Fair compensation to the Trust can include: (i) fair rental payments for the use of Mental Health Trust Lands and the ratification of previous questionable dispositions of Trust Lands, such as provided in Chapter 48 (un-amended); (ii) transfer of Trust Assets at an agreed upon price with preservation of the cor-

pus in perpetuity; (iii) proper trust management of Trust Lands, with preservation of the corpus in perpetuity, or (iv) any combination of these elements.

The State of Alaska, as trustee of the Mental Health Trust, has a built in conflict of interest. This conflict of interest arises because it is generally obligated to meet all the governmental needs of the citizens of Alaska, may spend Trust Funds on non-mental health program needs only after it has first met the necessary expenses of the mental health program, and must determine and meet the necessary expenses of the mental health program without consideration of the other needs of the state.

The conflict of interest can be eliminated by the creation of an independent Trust Authority, whose sole interest is proper management of the Trust, with appropriate powers and duties to administer and enforce the Trust, under specific guidelines agreed to in advance and so ordered by the Court.



FISCAL Note ATTACHED

STATE OF ALASKA

WALTER J. HICKEL, GOVERNOR

DEPARTMENT OF NATURAL RESOURCES

OFFICE OF THE COMMISSIONER

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May 10, 1991

The Honorable Mike Navarre
The Honorable Eileen MacLean
Co-Chairs, House Finance Committee
P.O. Box V
Juneau, AK 99811

Re: CSSH B 79 (Res)

Dear Representatives Navarre and MacLean:

Due to the numerous amendments to the former SSB 79 which occurred in the Resources Committee, the Department of Natural Resources submits these additional comments in response to CSSH B 79 (Res).

In addition to these technical comments, we are extremely concerned with the dramatic effect this bill would have upon the state budget. We estimate that CSSH B 79 (Res) would cost Alaskans the following: (see attached fiscal note).

Net present value (NPV) of 75 percent of Kuparuk	\$1,329,900,000
NPV of 75 percent of West Sak	843,800,000
\$200 million in land	200,000,000
\$107 million in unencumbered land	107,000,000
NPV of rent for legislatively designated area (LDAs) - \$61 million per year for 15 years	707,600,000
Abandonment of set-off (1991 dollars)	<u>1,128,500,000</u>
Total settlement costs	\$4,316,800,000

Outlined below are specific comments related to individual sections of the bill.

Section 11

Page 13, Lines 2-4 - Subsection (a)(2) is unnecessary as the department issues AS 38.05 land use permits for no longer than one year terms. No new land use permits have been issued for over one year and no mental health lands are subject to AS 38.05 permits.

Page 13, Lines 12-18 - should include a date by which all selections from state vacant, unappropriated, and unreserved (VUU) lands must be completed. Otherwise, future management

of state VUU land will be unnecessarily clouded. In addition, the Legislature should carefully weight the impact upon the public interest of a transfer of \$200,000,000 worth of state land to the Trust Authority. The Trust Authority will necessarily manage this land for revenue production. Conversely, the department now manages the land for multiple uses as provided by AS 38. The department also notifies the public of all proposed land use authorizations and involves the public in a best interest determination, necessary to decide whether a proposed use is appropriate. The Authority will not be subject to these requirements.

Page 13, Lines 28-31; Page 14, Lines 1-2 - This subsection confirms all pending municipal land selections under AS 29.65 as encumbered land. However, these pending selections are not vested rights as the department has not yet determined whether it is in the state's best interest to approve them. Further, most municipalities have selected more land than they are entitled to receive. Therefore, it is impossible to determine whether all municipal selections pending on mental health land are necessary to fulfill remaining entitlements. It also seems inequitable to consider pending municipal selections as encumbered when pending lease or purchase applications are not considered encumbered. The Haines, Juneau, Sitka, Ketchikan, Mat-Su, Houston, Kenai, Anchorage and Fairbanks municipalities all contain some mental health land.

Page 14, Lines 3-6 - This subsection counts right-of-way applications as encumbered where the applicant has filed an as-built survey. This interpretation will result in the exclusion of many roads and easements from the surrounding mental health trust land. Where these are private right-of-ways, this could effectively preclude access to the surrounding trust lands and devalue them. It would also increase survey costs as perimeter surveys would then be required in addition to center-line surveys. Conveying a parcel of land subject to an existing right-of-way or easement is the practical course.

Page 14, Line 12 - This should be clarified to specify whether "mineral leases" includes oil and gas leases and coal leases. Because mental health lands were closed to mineral entry in 1987 by emergency order, there are no new mineral leases. Also, are state mining claims included in this definition?

Page 14, Lines 14-15 - The Alaska Psychiatric Institute (API) is located on mental health land subject to an interagency management assignment.

Page 14, Lines 16-18 - Land use authorizations generally include all activities permitted on state land, including permits. If this is the intent, subsections (c) (4) (B-F) are unnecessary.

Page 15, Line 22 - There is no parameter under which the authority will "negotiate" with the conveyee. This could make it difficult to impossible to ever arrive at a mutually agreeable value.

Page 16, Lines 5-31 - This subsection defines "land granted under the enabling Act" as that land referenced by the plaintiffs in the lis pendens re-notices recorded in September, 1990. However, the department believes these legal descriptions are inaccurate and incomplete. A generalized definition is a more practical approach for all parties involved.

Section 12

Page 17, Lines 7-11 - AS 38.05.290(b) provides that state land selections shall give preference to land which will provide maximum benefits to all people of the state. This subsection could have the effect of influencing the state's remaining selections to focus only upon land capable of near-term development, thereby maximizing the opportunity for the trust to generate revenue.

Page 17, Lines 12-15 - It should be recognized that the authority and municipalities will generally compete for the same land.

Page 17, Lines 22-23 - Land leases should be included. For instance, the Division of Parks and Outdoor Recreation may wish to issue a commercial recreational lease for a lodge in a marine park.

Section 15

Page 18, Lines 14-17 - BLM and the state currently divide fire suppression responsibilities in Alaska. BLM controls all wildfires north of the Alaska Range with the state responsible for all land south of the Alaska Range. However, this section requires the state to be responsible for all mental health land, including those areas north of the Alaska Range. This will result in substantial additional costs to the state.

Section 53

Reference should not be to the Kuparuk Oil Field. The department does not use "field" to refer to a single reservoir or formation. Reference should be to the Kuparuk Participation Area within the Kuparuk River Unit.

The administration by the authority of the Kuparuk River Unit (KRU) and the Kuparuk River Unit Agreement would be complicated because the royalty owners would be different. The department has specific statutes and regulations that deal with the administration of state oil and gas units. Who would administer the unit-expansion and contractions of the unit area and participating area, enforcement and monitoring with respect to metering and well tests, etc.? Would the trust be bound by the existing Kuparuk River Unit Agreement, the existing statutes and regulations?

A proposal to produce the West Sak sands within the Kuparuk River Unit involves combining the West Sak and Kuparuk Formation reservoirs into a single participating area, and producing the reservoirs through the existing surface facilities. 11 AAC 83.351(b) currently permits the department to combine two or more reservoirs into one participating area. Would the Trust be bound by a department decision to combine multiple reservoirs if that is what satisfies 11 AAC 83.303? Multiple royalty owners would make this a difficult task.

Another proposal involves using the existing surface facilities to produce the reservoirs, but keeping the ownership of each reservoir separate, that is, two separate participating areas. If the royalty owners were different, then there would be disagreements over comminglings of production, allocation of the commingled production, timing of production and rate of production.

Enhanced oil recovery at Kuparuk will likely involve injecting miscible injectant or natural gas liquids which were brought over from the Prudhoe Bay Unit. These outside substances would be easier to deal with from a royalty accounting and reservoir management stand point if the royalty owner was the same at both Prudhoe and Kuparuk River. Even if the royalty owners are the same, this will still be a difficult proposition to structure and implement. Existing agreements, especially the Kuparuk River Unit Agreement would need to be renegotiated with respect to these issues to account for the separate royalty ownerships.

Representative Navarre
Representative MacLean

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May 10, 1991

Who will lease the Kuparuk Formation if some of the acreage becomes open in the future? The Kuparuk River Unit will contract to the Kuparuk Participating Area on December 1, 1991. Who will do the royalty audits on the existing leases, especially since some of the lands described are Net Profit Share Leases? Is the trust fund bound by the ARCO royalty settlement? What about the pending Amerada Hess royalty settlements, the NGL dispute within the KRU? Would the trust do their own settlement for Kuparuk Formation?

Notwithstanding the above, there is the potential for increased environmental impacts from the separate development of competing mineral interest on the same piece of land.

Section 61

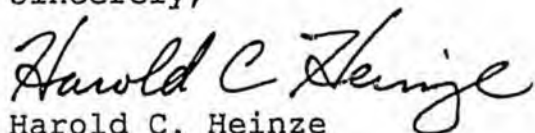
This section has the effect of altering the direction of the entire state general grant land selection project. The Authority would likely only nominate developable land capable of generating near-term income, while the state would otherwise consider selecting land for a wide variety of purposes. In addition, this section appears to contradict AS 38.05.290 and 38.50.080, which prohibit the state from alienating its selection rights.

Section 66

This section will require a massive staff effort to complete within the required timeframe. There are approximately 12,000 casefiles to review and exact legal descriptions are impossible until all rights-of-way and easements are surveyed.

In summary, the department opposes this bill as it seriously undermines the stability of statewide land management programs and adversely affects the stability of the state budget.

Sincerely,



Harold C. Heinze
Commissioner

Attachments

cc: Representative Boyer
Finance Committee Members
Bruce Kendall, Legislative Liaison
Office of the Governor

FISCAL NOTE

STATE OF ALASKA
1991 LEGISLATIVE SESSION

BILL NO. CSSSHB 79

Revision Date: _____ Department Affected: Natural Resources
 Title: Mental Health Trust BRU: Management & Administration
Land Administration Components: Commissioner's Office
 Sponsor: Representative Boyer
 Requestor: House Finance COMPONENT SERIAL NO. 423

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 92	FY 93	FY 94	FY 95	FY 96	FY 97
PERSONAL SERVICES	817.3	430.6				
TRAVEL	3.5	4.0				
CONTRACTUAL	1,138.1	2,060.1				
SUPPLIES	28.0	25.0				
EQUIPMENT	30.5					
LAND&STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	2,017.4	2,519.7	0.0	0.0	0.0	0.0

CAPITAL						
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REVENUE **	(290,000.0)	(290,000.0)	(290,000.0)	(290,000.0)	(290,000.0)	(290,000.0)
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FUNDING: (Thousands of Dollars)

GENERAL FUND	2,017.4	2,519.7				
FEDERAL FUNDS						
OTHER						
TOTAL	2,017.4	2,519.7	0.0	0.0	0.0	0.0

POSITIONS:

FULL-TIME	9.0	8.0				
PART-TIME	15.0	2.0				
TEMPORARY	1.0					

Estimate of Current year impact:

ANALYSIS: (Attach a separate page if necessary)

See Attached

** See Settlement Cost Information - \$4,316,900.0 cost spread over 15 years.

Prepared by: Carol Wilson Phone: 465-2400
 Division: Commissioner's Office Date: 10-May-91

Approved by Commissioner: Harold Heinze Date: 10-May-91
 Agency: Department of Natural Resources

Distribution (by preparer) : Legislative Finance, legislative Sponsor, Requestor, OMB, & Impacted Agency(ies).

Fiscal Note CSSSHB 79 (Res)

The following reflects Division of Land and Water needs for researching, appraising, and reporting to the Legislature all unencumbered mental health lands to be conveyed to the trust and all encumbered land to be retained by the state, for the first six months of FY 92:

100 Personal Services

Title Administration

2 NRO II @ 49.8 per year (for 6 mo.)	49.8
5 NRO I @ 45.0 " " " "	112.5
2 NRT II @ 40.0 " " " "	40.0
2 NRM I @ 56.4 " " " "	56.4
1 NRM II @ 63.8 " " " "	31.9
2 Clk III @ 32.0 " " " "	32.0
1 Part-Time Temporary Data Entry Clk	8.0

Contract Administration (case-file research)

1 NRT II @ 40.0 per year (for 6 mo.)	20.0
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Regional Offices (case file research)

3 NRO I @ 45.0 per year (for 6 mo.)	67.5
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Central Office (Fair Market Value Appraisals of 1786 conveyed parcels)

1 Appraiser @ 56.4 per year (for 6 mo.)	28.2
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300 Contractual (miscellaneous research costs) 4.0

400 Supplies (miscellaneous office supplies, computer paper, paper plats, toner, etc.) 10.0

The following reflects Division of Land and Water needs for updating records, surveying land, and conveying unencumbered surveyed land to the trust, for the second six months of FY 92:

100 Personal Services

Title Administration

1 NRO II @ 49.8 per year (for 6 mo.)	24.9
2 NRO I @ 45.0 " " " "	45.0
1 Clk III @ 32.0 " " " "	16.0

Central Office

1 Appraiser @ 56.4 per year (for 6 mo.)	28.2
1 Surveyor @ 63.8 " " " "	31.9

200 Travel 3.5

300 Contractual

Survey Contracts	1,069.0
Space Rental	26.5

400 Supplies 8.0

500 Equipment (computer/printer) 18.5

Division of Land and Water FY 92 Total 1,731.7

The following reflects Division of Management computer support staff needs for extracting/reporting and entering computerized mental health land record information in FY 92:

100 Personal Services

1 Drafting Tech III @ 48.0 per year	48.0
1 NRO I " " "	48.0
1 Doc. Processor II @ 34.0 per year	34.0
1 Analyst Programmer IV @ 65.0 per year	65.0
1 Anal. Progr. III @ 60.0 per year (for 6 mo.)	30.0

300 Contractual

2 DOA Mainframe IDs	3.0
DOA Data Processing Chargeback	20.0
7% Indirect Charge / Div. Mgmt. Support	15.7

400 Supplies (Plotter, Software, etc.) 10.0

500 Equipment (Workstation, Terminal, Furniture) 12.0

Division of Management FY 92 Total 285.7

The following reflects the FY 93 needs of the Division of Land and Water for updating records, surveying land, and conveying unencumbered surveyed land to the trust:

100 Personal Services

1 NRO II @ 49.8 per year	49.8
2 NRO I @ 45.0 per year	90.0
1 Clk Typ III @ 32.0 per year	32.0
1 Surveyor @ 63.8 per year	63.8

200 Travel 4.0

300 Contractual

Survey Contracts	2,000.0
Space Rental	26.4

400 Supplies 16.0

Division of Land and Water FY 93 Total 2,282.0

The following reflects Division of Management computer support staff needs for extracting/reporting and entering computerized mental health land record information in FY 93:

100 Personal Services		
1 Drafting Tech III		51.0
1 NRO I		51.0
1 Doc. Processor II		36.0
1 Anal. Progr. III @ 60.0 per year (for 6 mo.)		30.0
1 NRO II @ 54.0 per year (for 6 mo.)		27.0
300 Contractual		
DOA Data Processing Chargeback		20.0
7% Indirect Charge / Div. Mgmt. Support		13.7
400 Supplies (Plotter, computer, etc.)		9.0
Division of Management	FY 93 Total	237.7

ADDITIONAL COSTS:

Fighting Fires on Mental Health Land (HB 79 requires the state to protect mental health lands at no cost to the trust)

Other Settlement Costs:

HB 79 gives the Kuparuk River Unit to the Mental Health Trust. The trust will take 75% of the state's royalty revenues (25% will continue to go to the Permanent Fund) from the Kuparuk and West Sak. The bill also gives the trust \$200 million in land, \$107 million in unencumbered land and rent for legislatively designated areas for 15 years. In addition, it does not allow the state to set off against settlement costs the \$1,128,500,000 the state has paid for mental health programs in the past. Costs are as follows:

Net present value (NPV) of 75 percent of Kuparuk	\$1,329,900,000
Approximate NPV of 75% of West Sak	843,800,000
Unencumbered land (I.M.H. Commission Value)	107,000,000
Land	200,000,000
Rent @ \$61 million per year for 15 years	707,600,000
Abandonment of set-off (1991 dollars, Leg. Rch.)	1,128,500,000
Total Settlement Costs	\$4,316,800,000

THE "SETTLEMENT" COST OF CSSSHB 79 (Res.)

Net present value (NPV) of 75 percent of Kuparuk	\$1,329.9 million
Approx. NPV of 75 percent of West Sak	843.8 million
\$200 million in land	200.0 million
\$107 million in unencumbered land	107.0 million
NPV of rent for legislatively designated areas (LDAs) @ \$61 million per year for 15 years 1/	707.6 million
Abandonment of set-off (1991 dollars)	<u>1,128.5 million</u> 2/
GRAND TOTAL	\$4,316.8 million

This does not include annual general fund contributions to mental health expenditures (operating and capital) over and above the \$61 million in rent for the LDAs and whatever income the trust might earn from the land. The current total budget figure for operating and capital for FY 1992 is approx. \$145 million, or \$81 million more than the \$61 million LDA rental figure.

1/ The annual rental would be reduced if land in the legislatively designated areas is "traded out" for other land of equal value. The \$61 million annual rental value for 15 years, however, was based on the value of the LDAs as determined under the procedures developed by the majority of the Interim Mental Health Trust Commission.

2/ This number was developed by the Legislative Research Agency. For fiscal years 1979-1985, figures prepared for the Interim Mental Health Trust Commission by Legislative Audit were used. For fiscal years 1986-1991, the percentages of program expenditures attributed to the mental health trust in the FY 1991 budget were used. Those percentages were developed by the House Finance Committee, Department of Health and Social Services Subcommittee, chaired by Rep. Boyer. Not adjusted to 1991 dollars, the figure is \$893.8 million. The Finance Division of the Legislative Budget and Audit Committee conducted a similar audit. Its figure, not adjusted to 1991 dollars, is \$839.3 million, and does not include some items included in the Legislative Research Agency figure. If those items were included and it were adjusted to 1991 dollars, it would be virtually identical to the Legislative Research Agency figure.