

HB

79

HOUSE COMMITTEE REPORT

(7)
Date Referred: May 8, 1991

FURTHER REFERRALS:

Judiciary
Finance

Date of Committee Action: 5-9-91

The HEALTH, EDUCATION AND SOCIAL SERVICES Committee considered:

SSHB 79

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 *(omit)*

RECOMMENDATIONS:
be replaced with CS SSHB 79 (RES) 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) _____

fiscal impact _____

fiscal note(s) _____

zero fiscal note _____

zero fiscal note(s) House Resources 5/7/91

SIGNING DO PASS	DP	OTHER RECOMMENDATIONS	DNP	NR	AM
<i>Betty Davis</i>	✓				
<i>Patricia Gray (CARNEY)</i>	✓				
<i>Cheri Davis</i>				✓	
<i>Mark Hanley (HANLEY)</i>				X	
<i>(LINCOLN)</i>	✓				
<i>(GONZALES)</i>	✓				

[Signature]
CO-CHAIRMAN'S SIGNATURE

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

IN THE LEGISLATURE OF THE STATE OF ALASKA

SEVENTEENTH LEGISLATURE - FIRST SESSION

BY THE HOUSE RESOURCES 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 administration of the trust established by the Alaska Mental
3 Health Enabling Act of 1956 and to appropriations made to it, and to an integrated
4 comprehensive mental health program for the people of the state; abolishing the Interim
5 Mental Health Trust Commission; relating to the Older Alaskans Commission and the
6 Governor's Council for the Handicapped and Gifted, and services provided under the
7 Uniform Alcoholism and Intoxication Treatment Act; amending the duties of the Alaska
8 Permanent Fund Corporation and the membership and duties of the Advisory Board on
9 Alcoholism and Drug Abuse and the Alaska Mental Health Board; exempting trust property
10 from municipal taxation; amending Alaska Rule of Civil Procedure 82; and providing for
11 an effective date."

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

1 * Section 1. PURPOSE. (a) It is the purpose of this Act to implement the state's obligation as the
2 trustee of the trust established by the Alaska Mental Health Enabling Act of 1956, P.L. 84-830, 70 Stat.
3 709, by providing an integrated comprehensive mental health program for the people of the state and
4 by resolving the serious and significant legal questions attending the status of that trust

5 (1) in accordance with the holding in the decision State v. Weiss, 706 P.2d 681 (Alaska
6 1985), and the principles that guided the development and enactment of ch. 48, SLA 1987;

7 (2) in a manner that

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

10 (B) provides adequate assurances that the trust will be administered properly and
11 in a way that determines and meets the necessary expenses of an integrated comprehensive
12 mental health program for the people of the state;

13 (C) assures appropriate expenditures from the trust; and

14 (D) establishes an independent trust authority.

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

18 (c) In enacting sec. 53 of this Act, the legislature

19 (1) seeks, in conjunction with other conveyances and payments authorized by law, to
20 satisfy the mandate of State v. Weiss, 706 P.2d 681 at 684 (Alaska 1985), to reconstitute the trust
21 established under the Alaska Mental Health Enabling Act of 1956;

22 (2) determines that the conveyances to the trust of state land within the boundary of the
23 Kuparuk River Unit Agreement will provide revenue from royalties sufficient to

24 (A) substantially reimburse the reestablished trust for the fair market value of
25 former mental health land sold since the date of its conveyance under 1978 legislation
26 redesignating the former trust land; and

27 (B) provide sufficient contribution of money to the trust corpus to allow the
28 Alaska Mental Health Trust Authority to assume responsibility for the development and
29 implementation of a comprehensive service program for the trust beneficiaries.

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

31 (a) The uninterrupted adverse notorious possession of real property under color and claim

1 of title for seven years or more is conclusively presumed to give title to the property except as
2 against the state or the United States. For the purpose of this subsection, land that is included
3 in the corpus of the trust established by the Alaska Mental Health Enabling Act of 1956,
4 P.L. 84-830, 70 Stat. 709, is land owned by the state.

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

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

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

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

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

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

18 (5) money on deposit;

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

21 (7) real property or an interest in real property that is exempt from taxation under
22 43 U.S.C. 1620(d), as amended.

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

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

26 (1) grants;

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

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

31 (4) contracts for medical doctors and dentists;

- 1 (5) acquisitions or disposals of real property or interest in real property, except
2 as provided in AS 36.30.080;
- 3 (6) disposals under AS 38.05;
- 4 (7) contracts for the preparation of ballots under AS 15.15.030;
- 5 (8) acquisitions or disposals of property and other contracts relating to airports
6 under AS 02.15.070, 02.15.090, and 02.15.091;
- 7 (9) disposals of obsolete property under AS 19.05.060;
- 8 (10) disposals of obsolete material or equipment under AS 35.20.060;
- 9 (11) agreements with providers of services under AS 44.47.250; AS 47.07;
10 AS 47.08; AS 47.10; AS 47.17; AS 47.24; AS 47.25.195, and 47.25.310;
- 11 (12) contracts of the Department of Fish and Game for flights that involve
12 specialized flying and piloting skills and are not point-to-point;
- 13 (13) purchases of income-producing assets for the state treasury or a public
14 corporation of the state;
- 15 (14) operation of the state boarding school established under AS 14.16, if the
16 State Board of Education or the commissioner of education adopts regulations for use by the state
17 boarding school in procurement and contracting;
- 18 (15) a contract that is a delegation, in whole or in part, of investment powers held
19 by the commissioner of revenue under AS 14.25.180, AS 14.40.400, AS 14.42.200, 14.42.210,
20 AS 18.56.095, AS 22.25.048, AS 26.05.228, AS 37.10.070, 37.10.071, AS 37.14, or
21 AS 39.35.080;
- 22 (16) a contract that is a delegation, in whole or in part, of investment powers of
23 (A) the Board of Trustees of the Alaska Permanent Fund Corporation
24 under AS 37.13;
- 25 (B) the Alaska Mental Health Trust Authority under AS 37.14.001 -
26 37.14.099;
- 27 (17) the purchase of books, book binding services, newspapers, periodicals,
28 audio-visual materials, network information services access, approval plans, professional
29 memberships, archival materials, objects of art, and items for museum or archival acquisition
30 having cultural, historical, or archaeological significance; in this paragraph
31 (A) "approval plans" means book selection services in which current book

1 titles meeting an agency's customized specifications are provided to the agency subject
2 to the right of the agency to return those books that do not meet with the agency's
3 approval;

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

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

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

12 (18) contracts for the purchase of standardized examinations for licensure under
13 AS 08;

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

16 (20) contracts for supplies or services for research projects funded by money
17 received from the federal government or private grants; [OR]

18 (21) guest speakers or performers for an educational or cultural activity; or

19 (22) contracts for services that are entered into by the Alaska Mental Health

20 Trust Authority.

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

22 (b) Except for appropriations to the permanent fund or for Alaska permanent fund
23 dividends, appropriations to the budget reserve fund, appropriations of revenue bond proceeds,
24 appropriations required to pay the principal and interest on general obligation bonds, [AND]
25 appropriations of money received from a nonstate source in trust for a specific purpose, including
26 revenue of a public enterprise or public corporation of the state that issues revenue bonds, and
27 appropriations authorized by AS 37.14.031(a)(5), appropriations from the treasury made in a
28 fiscal year may not exceed appropriations made in the preceding fiscal year by more than five
29 percent plus the change in population and inflation since the beginning of the preceding fiscal
30 year. For purposes of applying this limit an appropriation is considered to be made in the fiscal
31 year in which it is enacted and a reappropriation remains attributed to the fiscal year in which

1 the original appropriation is enacted. The determination of the change in population for purposes
2 of this subsection shall be based on an annual estimate of population by the Department of Labor.
3 The determination of the change in inflation for purposes of this subsection shall be based on the
4 Consumer Price Index for all urban consumers for Anchorage prepared by the United States
5 Bureau of Labor Statistics. The amount of money received by the state that is subject to the
6 appropriation limit includes the balance in the general fund carried forward from the preceding
7 fiscal year.

8 * Sec. 6. AS 37.13.030 is amended to read:

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

13 * Sec. 7. AS 37.13.040 is amended to read:

14 Sec. 37.13.040. ALASKA PERMANENT FUND CORPORATION. There is established
15 the Alaska Permanent Fund Corporation. The corporation is a public corporation and government
16 instrumentality in the Department of Revenue managed by the board of trustees. The purpose
17 of the board is to manage and invest the assets of the corporation in accordance with
18 AS 37.13.010 - 37.13.210 [THIS CHAPTER].

19 * Sec. 8. AS 37.13. is amended by adding a new section to read:

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

25 (b) The corporation shall

26 (1) continually hold and invest the cash assets of the corpus of the trust subject
27 to AS 37.13.120;

28 (2) at least quarterly, prepare, publish, and distribute to the Board of Trustees of
29 the Alaska Mental Health Trust Authority a financial report indicating investment revenue and
30 expenditures, and including a statement setting out the allocation of the cash assets of the trust
31 among investment vehicles;

1 (3) annually prepare, publish, and distribute to the Board of Trustees of the Alaska
2 Mental Health Trust Authority externally audited financial statements and an external audit
3 opinion as to the fair presentation of the financial position of the Alaska mental health trust in
4 conformity with generally accepted accounting principles; and

5 (4) periodically advise the Board of Trustees of the Alaska Mental Health Trust
6 Authority of potential changes to long-range investment policy, including pending asset allocation
7 policy changes, and provide an opportunity for consultation and comment on the potential
8 changes.

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

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

13 Sec. 37.14.001. CO-TRUSTEES OF MENTAL HEALTH TRUST. (a) Each of the
14 following is a co-trustee of the trust established under the Alaska Mental Health Enabling Act
15 of 1956:

16 (1) the governor;

17 (2) the legislature;

18 (3) the Alaska Mental Health Trust Authority established by AS 47.30.011.

19 (b) The discharge of a fiduciary duty of a co-trustee is subject to review by the superior
20 court to determine whether a co-trustee, or any contribution of co-trustees, has properly
21 discharged a duty set out in AS 37.14.003, 37.14.005, 37.14.007, or the Alaska Mental Health
22 Enabling Act of 1956. In making its determination, the court has jurisdiction over property of
23 the trust to the extent the court finds it necessary to implement its decisions respecting the proper
24 discharge of a duty under AS 37.14.003, 37.14.005, 37.14.007, or the Alaska Mental Health
25 Enabling Act of 1956.

26 Sec. 37.14.003. GOVERNOR AS CO-TRUSTEE. (a) The governor is a co-trustee of
27 the mental health trust income account and, as a co-trustee, is subject to the provisions of this
28 section.

29 (b) In the appointment of the public members of the Alaska Mental Health Trust
30 Authority under AS 47.30.016(b)(2), the governor is acting as a trustee of the trust.

31 (c) In reviewing the budget recommendations of the authority for inclusion in the

1 proposed budget for the next fiscal year under art. IX, sec. 12, of the Constitution of the State
2 of Alaska. the governor shall act solely in the best interests of the beneficiaries of the trust and
3 without regard to other potential objects of state expenditure.

4 (d) To the extent that the proposed budget transmitted under art. IX, sec. 12, Constitution
5 of the State of Alaska, differs from the budget recommendations of the authority, the governor
6 shall

7 (1) issue a report justifying the changes; the report must state with particularity,
8 with respect to each difference from the authority's proposed budget, the facts and circumstances
9 relied upon by the governor in determining that the best interests of the beneficiaries of the trust
10 require a different budget recommendation;

11 (2) provide the report prepared under (1) of this subsection to the legislature, the
12 authority, and all entities providing services with money from the mental health trust income
13 account for further distribution by the entities to the beneficiaries of the trust and their
14 representatives; and

15 (3) make the report available to the public upon request.

16 (e) In reviewing appropriations of money from the mental health trust income account
17 for possible veto, the governor shall act solely in the best interests of the beneficiaries of the trust
18 and without regard to other potential objects of state expenditures. If the governor vetoes all or
19 a portion of an appropriation by the legislature of money from the mental health trust income
20 account, the governor shall issue a report justifying the vetoes as being in the best interests of
21 the beneficiaries of the trust. The governor's report must state with particularity, with respect
22 to each item vetoed, the facts and circumstances relied upon by the governor in determining that
23 the best interests of the beneficiaries of the trust require a reduction or elimination of the
24 appropriation.

25 Sec. 37.14.005. LEGISLATURE AS CO-TRUSTEE. (a) The legislature is a co-trustee
26 of the mental health trust income account and, as co-trustee, is subject to the provisions of this
27 section.

28 (b) The legislature shall annually adopt and transmit to the governor a bill making a
29 separate appropriation of money in the mental health trust income account no later than the 60th
30 day of the regular session. However, the legislature may extend the deadline established by this
31 subsection to the 80th day of the regular session by adopting a concurrent resolution adopted by

1 a two-thirds vote of each house.

2 (c) A legislative committee taking action on the bill making an appropriation from the
3 mental health trust income account shall take action on the bill that is solely in the best interests
4 of the beneficiaries of the trust and without regard to other potential objects of state expenditure,
5 and shall proceed substantially as follows:

6 (1) if the committee action differs from the recommendations of the authority, the
7 committee shall issue written findings stating with particularity the facts and circumstances upon
8 which it relied in determining that it is in the best interests of the beneficiaries of the trust to
9 deviate from the budget recommendations of the authority;

10 (2) if the committee acts to reduce mental health trust income account
11 expenditures from those proposed by the authority, the written findings must include, but are not
12 limited to, specific evidence that the budget recommendations of the authority proposed for
13 reduction are not needed, or that the authority has overstated the costs of providing the services;

14 (3) if the committee acts to make expenditures that have not been recommended
15 by the authority, the written findings must include, but are not limited to, specific evidence that
16 the proposed addition meets the requirements of AS 47.30.056, is a necessary expense for
17 beneficiaries of the trust, is consistent with the legislature's fiduciary obligations as co-trustee,
18 and is in the best interests of the beneficiaries of the trust;

19 (4) if, as to the authority's recommendation under AS 47.30.046(a)(3) for use of
20 the amount of surplus, if any, in the mental health trust income account for transfer to the general
21 fund, the committee acts to increase the amount of money to be transferred from the trust to the
22 general fund over the authority's recommendations, the committee's written findings must
23 include, but are not limited to, specific evidence that the additional money the committee action
24 would transfer from the trust account to the general fund is not reasonably or foreseeably needed
25 to meet the necessary operating and capital expenses of the integrated comprehensive mental
26 health program for the people of the state to be funded from the trust.

27 (d) In taking action on the bill appropriating money from the mental health trust income
28 account, the legislature shall base its action solely in the best interests of the beneficiaries of the
29 trust without regard to other potential objects of state expenditure and shall proceed substantially
30 as follows:

31 (1) if the appropriation differs from the recommendations of the authority, the

1 (f) The legislature shall

2 (1) transmit copies of the report prepared under (e) of this section to the governor,
3 the Office of Management and Budget, the commissioner of health and social services, and all
4 other entities providing services with trust funds for further distribution by the entities to the
5 beneficiaries of the trust and their representatives; and

6 (2) make copies of the report available to the public upon request.

7 Sec. 37.14.007. AUTHORITY AS CO-TRUSTEE. The Alaska Mental Health Trust
8 Authority, established by AS 47.30.011, is a co-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 37.14.021.

12 Sec. 37.14.009. TRUST MANAGEMENT. (a) The Alaska Mental Health Trust
13 Authority

14 (1) shall manage the assets of the trust, except the assets of the trust managed
15 by the Alaska Permanent Fund Corporation under AS 37.13.300; the assets of the trust managed
16 by the authority shall be managed according to the prudent-person rule; the prudent-person rule
17 as applied to investments of the authority means that in making investments the board shall
18 exercise the judgment and care under the circumstances then prevailing that an institutional
19 investor of ordinary prudence, discretion, and intelligence exercises in the management of large
20 investments entrusted to it not for speculation but for the permanent disposition of funds,
21 considering probable safety of capital as well as probable income; an evaluation to determine
22 whether the board has exercised the requisite judgment and care in its management of the
23 investments of the trust must be

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

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

28 (2) may, notwithstanding (1) of this subsection, retain assets of the trust that have
29 been incorporated into the trust with the trust's establishment until the board determines that it
30 is in the best interests of the trust to exchange or otherwise dispose of those assets;

31 (3) may, notwithstanding (1) of this subsection, use land that is an asset of the

1 trust directly for an integrated comprehensive mental health program for the people of the state;
2 (4) shall delegate management of trust land described in AS 37.14.031(a)(3) to
3 the Department of Natural Resources; and

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

7 (b) At the end of each fiscal year, the authority shall transfer from the trust income
8 account established in AS 37.14.021 to the mental health trust corpus an amount appropriated by
9 the legislature to offset the effect of inflation on the money in the trust corpus during the year
10 for which the determination of the effect of inflation was made.

11 (c) At least annually, the authority shall prepare, publish, and distribute to the legislature
12 and make available to the public a financial report indicating trust revenue and expenditures, and
13 including a statement of its method of allocating the assets of the trust among appropriate
14 investment vehicles. The asset allocation policy shall be designed to provide for prudent
15 diversification and to meet the investment objectives and needs of the authority.

16 * Sec. 10. AS 37.14.021 is repealed and reenacted to read:

17 Sec. 37.14.021. TRUST INCOME ACCOUNT. (a) The mental health trust income
18 account is established as an account separate from the trust corpus. The mental health trust
19 income account consists of money

20 (1) earned by the authority on its investment of the assets of the trust corpus
21 during the fiscal year;

22 (2) paid by the state under AS 37.14.041; and

23 (3) transferred to the account by the board from any source.

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

26 (c) Expenditure of money from the mental health trust income account is subject to
27 AS 37.07 (Executive Budget Act).

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

29 Sec. 37.14.031. TRUST CORPUS RECONSTITUTED. (a) On the effective date of this
30 section, the mental health trust corpus is reconstituted to include

31 (1) land granted to the state under the enabling Act and not transferred or

1 encumbered by the state;

2 (2) land granted to the state under the enabling Act that, on the effective date of
3 this section, is subject to a land use permit issued by the Department of Natural Resources under
4 AS 38.05;

5 (3) land granted to the state under the enabling Act and subsequently established
6 as legislatively-designated land;

7 (4) land transferred by the state by law or land that is selected under (b) of this
8 section; and

9 (5) money paid by the state and directed by a law to be placed in the trust corpus.

10 (b) As partial compensation for land granted under the enabling Act that is not retained
11 by the trust, the authority

12 (1) shall select, from vacant, unappropriated, and unreserved land of the state, and
13 the state shall convey to the trust, an amount of land equal in value at the time of its selection
14 to \$200,000,000; and

15 (2) may, in addition to the land selected and conveyed under (1) of this
16 subsection, select, from vacant, unappropriated, and unreserved land of the state, and the state
17 shall convey to the trust, other land that is mutually agreeable to the authority and the
18 commissioner of natural resources.

19 (c) For purposes of (a) of this section, land granted under the enabling Act is encumbered
20 land not to be included in the trust if the land

21 (1) has been conveyed by patent to a municipality before the effective date of this
22 section;

23 (2) is a municipal land selection made under AS 29.65 or under former
24 AS 29.18.190 - 29.18.200 and

25 (A) is an approved selection, as that term is defined by AS 29.65.130,
26 approved in writing by the director of lands, Department of Natural Resources, before the
27 effective date of this section; or

28 (B) has been selected by a municipality and on the effective date of this
29 section the selection has been neither approved nor disapproved by the director of lands,
30 Department of Natural Resources, and the land selected is necessary to fulfill the
31 municipality's entitlement authorized by AS 29.65 or by former AS 29.18.190 - 29.18.200

1 after all land other than former mental health trust land selected by the municipality is
2 included in the entitlement;

3 (3) was subject to an application for an easement or right-of-way under
4 AS 38.05.850 and, on or before July 9, 1990, the applicant had filed with the Department of
5 Natural Resources an as-built survey for construction of a road within the easement or right-of-
6 way for which the application was submitted; or

7 (4) except as to a municipal selection under (2) of this subsection or an
8 application made under (3) of this subsection, has been

9 (A) conveyed by deed;

10 (B) made subject to a lease or to a contract for sale or lease;

11 (C) made subject to an easement or right-of-way;

12 (D) made subject to a mineral lease;

13 (E) made subject to a reservation for public use by statute;

14 (F) made subject to interagency land management assignments made by
15 the Department of Natural Resources; or

16 (G) encumbered before the effective date of this section by the
17 commissioner of natural resources by a land use authorization, lease, or conveyance when
18 specifically authorized by law or under terms and conditions established by law.

19 Sec. 37.14.041. RENT PAYABLE FOR LEGISLATIVELY-DESIGNATED LAND. (a)
20 On July 1 of each year, for trust land identified in AS 37.14.031(a)(3), the state shall pay rent
21 for that fiscal year to the authority as appropriated by the legislature to meet the obligation of
22 this section.

23 (b) Unless adjusted under (c) of this section or as required by law, the annual rent
24 payable for the land identified in this section is \$61,000,000.

25 (c) When a principal payment in addition to the required annual payment under (b) of
26 this section is appropriated by the legislature and made by the state, or when land is conveyed
27 by the state to the trust under AS 37.14.031(b)(2),

28 (1) the amount due the trust under (b) of this section shall be reduced by the
29 amount of the payment or the value of the land conveyed; and

30 (2) the state and the authority shall recalculate the rent, the recalculated rent to
31 be effective as of the next annual payment date under (a) of this section.

1 Sec. 37.14.051. ENFORCEMENT OF PAYMENTS DUE THE TRUST. (a) If the state
2 fails to make a payment required under AS 37.14.041, the chief executive officer of the authority
3 shall notify each of the following of the state's failure to make the payment:

- 4 (1) the governor;
- 5 (2) the commissioner of revenue;
- 6 (3) the president of the senate; and
- 7 (4) the speaker of the house of representatives.

8 (b) The notice shall be in writing and must include a statement of the remedies available
9 to the authority to secure enforcement of its claim for payment.

10 (c) If payment is not made within 15 days after giving notice under (a) of this section,
11 the chair of the board shall convene the board to determine whether the authority shall exercise
12 its rights under this section to collect the payment.

13 (d) If authorized by the board, the authority may apply to the superior court to require
14 payment. In a proceeding under this subsection, the court is limited to a determination of
15 whether a payment due the authority is due and unpaid and the amount that is due and unpaid.
16 The court shall include in the judgment the authority's full attorney fees. The judgment bears
17 interest at the rate of 10.5 percent per year. The clerk of the court shall provide copies of a
18 judgment and order entered under this subsection to the officials named in (a) of this section.

19 Sec. 37.14.061. 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 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 (4) "land granted under the enabling Act" means
- 6 (A) that land identified by the Department of Natural Resources to be
- 7 valued by the commissioner of natural resources under procedures approved by the
- 8 Interim Mental Health Trust Commission more specifically described in documents
- 9 labeled "Exhibit A" and attached to each of the re-notices of lis pendens that were
- 10 recorded in September 1990 at
- 11 (i) book 2073, pages 388 - 416, Anchorage Recording Office;
- 12 (ii) book 62, pages 394 - 399, Cordova Recording Office;
- 13 (iii) book 677, pages 62 - 100, Fairbanks Recording Office;
- 14 (iv) book 19, pages 926 - 954, Haines Recording Office
- 15 (v) book 201, pages 488 - 491, Homer Recording Office;
- 16 (vi) book 335, pages 748 - 765, Juneau Recording Office;
- 17 (vii) book 371, pages 117 - 158, Kenai Recording Office;
- 18 (viii) book 181, pages 728 - 757, Ketchikan Recording Office;
- 19 (ix) book 102, pages 869 - 872, Kodiak Recording Office;
- 20 (x) book 25, pages 195 - 198, McKinley Recording Office;
- 21 (xi) book 46, pages 001 - 023, Nenana Recording Office;
- 22 (xii) book 16, pages 393 - 397, Nulato Recording Office;
- 23 (xiii) book 629, pages 869 - 916, Palmer Recording Office;
- 24 (xiv) book 35, pages 518 - 534, Petersburg Recording Office;
- 25 (xv) book 31, pages 621 - 626, Seldovia Recording Office;
- 26 (xvi) book 90, pages 524 - 538, Sitka Recording Office;
- 27 (xvii) book 6, pages 286 - 294, Skagway Recording Office;
- 28 (xviii) book 131, pages 585 - 590, Talkeetna Recording Office;
- 29 (xix) book 18, pages 643 - 650, Wrangell Recording Office; and
- 30 (B) all land approved for conveyance and patented under sec. 202 of the
- 31 enabling Act after September 7, 1987;

1 (5) "legislatively-designated land" means land granted under the enabling Act and
2 subsequently designated by law as a state park, state forest, state game refuge, state wildlife
3 refuge, state game sanctuary, state recreational area, state recreational river, state wilderness park,
4 state marine park, state special management area, state public use area, critical habitat area, bald
5 eagle preserve, bison range, or moose range.

6 * Sec. 12. AS 38.05.290(b) is amended to read:

7 (b) Consistent with the best interests of the state, in the selection of land under the
8 Alaska Statehood Act after the effective date of this section and until January 3, 1994,

9 (1) it is the policy of the state to make available the maximum land area for
10 the corpus of the trust established under the Alaska Mental Health Enabling Act of 1956,
11 P.L. 84-830, 70 Stat. 709, and reconstituted by AS 37.14.001; and

12 (2) subject to the prior right of the Alaska Mental Health Trust Authority
13 to nominate land for conveyance or exchange, in the selection of general grant land it is the
14 policy of the state to make available the maximum land area from which municipalities may
15 fulfill land entitlements under AS 29.65 or former AS 29.18.201 - 29.18.213.

16 * Sec. 13. AS 38.05.800 is repealed and reenacted to read:

17 Sec. 38.05.800. ADMINISTRATION OF CERTAIN LAND WITHIN THE MENTAL
18 HEALTH TRUST. The department shall manage land identified in AS 37.14.031(a)(3) on behalf
19 of the Alaska Mental Health Trust Authority for the land's legislatively-designated purpose. The
20 state shall continue to manage the land and its resources in accordance with state law and policy.
21 The management authority of the state includes

22 (1) the right to issue permits, rights-of-ways, mining leases, oil and gas leases,
23 coal leases, and timber contracts;

24 (2) the right to take other actions that do not constitute a conveyance in fee
25 simple; and

26 (3) the right to receive the income from the land managed.

27 * Sec. 14. AS 39.25.120(c)(9) is amended to read:

28 (9) the principal executive officer of the following boards, councils, or
29 commissions:

30 (A) Alaska Public Broadcasting Commission;

31 (B) Professional Teaching Practices Commission;

- 1 (C) Parole Board;
 2 (D) Board of Nursing;
 3 (E) Real Estate Commission;
 4 (F) Alaska Royalty Oil and Gas Development Advisory Board;
 5 (G) Alaska Historical Commission;
 6 (H) Alaska State Council on the Arts;
 7 (I) Alaska Police Standards Council;
 8 (J) Older Alaskans Commission;
 9 (K) Alaska Mental Health Board;
 10 (L) State Medical Board;
 11 **(M) Governor's Council for the Handicapped and Gifted;**
 12 **(N) Advisory Board on Alcoholism and Drug Abuse;**

13 * Sec. 15. AS 41.15 is amended by adding a new section to read:

14 Sec. 41.15.025. FIRE PROTECTION ON MENTAL HEALTH TRUST LAND. Land
 15 that is included in the corpus of the trust established by the Alaska Mental Health Enabling Act
 16 of 1956 is, for the purpose of wild fire suppression, land owned by the state, and the state
 17 remains responsible for providing and paying for suppression of wild fires on that land.

18 * Sec. 16. AS 44.21.230(a) is amended to read:

19 (a) The commission shall

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

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

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

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

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

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

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

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

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

9 (10) provide recommendations to the Alaska Mental Health Trust Authority
10 concerning the integrated comprehensive mental health program for the people of the state
11 who are described in AS 47.30.056(b)(4) and the use of the money in the mental health trust
12 income account in a manner consistent with AS 47.30.056; in making recommendations
13 affecting the trust, members of the commission assume a duty of loyalty to the trust
14 equivalent to the responsibilities of a private trustee.

15 * Sec. 17. AS 44.29.022 is amended by adding a new subsection to read:

16 (d) A regulation that establishes a fee for services under AS 44.29.020(a)(7) that affect
17 the integrated comprehensive mental health program for the people of the state established under
18 AS 47.30.011 - 47.30.061 may not be adopted under this section unless it has been approved by
19 the Alaska Mental Health Trust Authority.

20 * Sec. 18. AS 44.29.024 is amended by adding a new subsection to read:

21 (c) A regulation that establishes a schedule of reasonable fees for services provided by
22 a contractor or grantee that affect the integrated comprehensive mental health program for the
23 people of the state established under AS 47.30.011 - 47.30.061 may not be adopted under this
24 section unless it has been approved by the Alaska Mental Health Trust Authority.

25 * Sec. 19. AS 44.29.100 is amended to read:

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

30 * Sec. 20. AS 44.29.110 is amended to read:

31 Sec. 44.29.110. COMPOSITION. The board consists of 15 [12] members, 14 of whom

1 are public members appointed by the governor, and the 15th who is the director of the
2 division of alcoholism and drug abuse ex officio.

3 * Sec. 21. AS 44.29.115 is amended to read:

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

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

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

10 (3) four members who are chronic alcoholics with psychoses who are
11 recovering;

12 (4) three members who are substance abuse treatment professionals who
13 represent public and private providers of substance abuse prevention and treatment
14 services; and

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

18 (4) ONE MEMBER WHO IS A REPRESENTATIVE OF THE LIQUOR
19 INDUSTRY].

20 * Sec. 22. AS 44.29.120 is amended to read:

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

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

25 (c) Public [BOARD] members of the board serve at the pleasure of the governor. The
26 governor shall replace a public [ANY] member who by poor attendance or lack of contribution
27 to the board's work demonstrates ineffectiveness as a board member. In this subsection, "poor
28 attendance" means the failure to attend three or more consecutive meetings.

29 * Sec. 23. AS 44.29.130 is amended to read:

30 Sec. 44.29.130. COMPENSATION, PER DIEM, AND EXPENSES. The public
31 members [MEMBERS] of the board are not entitled to a salary, but are entitled to per diem.

1 reimbursement for travel, and other expenses authorized by law for other boards.

2 * Sec. 24. AS 44.29 is amended by adding a new section to read:

3 Sec. 44.29.135. OFFICERS AND STAFF. (a) The board, by a majority of its
4 membership, shall annually elect a chair and other officers it considers necessary from among
5 its membership.

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

13 * Sec. 25. AS 44.29.140 is amended to read:

14 Sec. 44.29.140. DUTIES. The board shall

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

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

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

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

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

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

28 (F) [(6)] REVIEW OF APPLICATIONS AND SUBSEQUENT
29 RECOMMENDATIONS TO THE COMMISSIONER OF HEALTH AND SOCIAL
30 SERVICES ON USE OF FUNDS FOR GRANTS FOR LOCAL ALCOHOLISM OR
31 DRUG ABUSE PROJECTS AND PROGRAMS;

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

3 (2) provide recommendations to the Alaska Mental Health Trust Authority
4 concerning the integrated comprehensive mental health program for the people of the state
5 who are described in AS 47.30.056(b)(3), and concerning the use of money in the mental
6 health trust income account in a manner consistent with regulations adopted under
7 AS 47.30.031; in making recommendations affecting the mental health trust, the members
8 of the board assume a duty of loyalty to the mental health trust equivalent to the
9 responsibilities of a private trustee.

10 Sec. 26. AS 44.29.140 is amended by adding new subsections to read:

11 (b) The board is the state planning and coordinating body for purposes of federal and
12 state laws relating to alcohol and drug abuse prevention and treatment services.

13 (c) The board shall prepare and maintain a comprehensive plan of services for the
14 prevention and treatment of alcohol and drug abuse.

15 * Sec. 27. AS 47.30 is amended by adding new sections to read:

16 Sec. 47.30.011. ALASKA MENTAL HEALTH TRUST AUTHORITY. (a) The Alaska
17 Mental Health Trust Authority is established as a public corporation of the state that has a legal
18 existence independent of and separate from the state.

19 (b) The purpose of the authority is to ensure an integrated comprehensive mental health
20 program for the people of the state.

21 (c) The authority

22 (1) serves under AS 37.14.001 - 37.14.099 as a co-trustee of the trust established
23 under the Alaska Mental Health Enabling Act of 1956 and of the mental health trust income
24 account established under AS 37.14.021;

25 (2) may sue and be sued;

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

28 (4) shall insure or indemnify and protect the board, a member of the board, or an
29 agent or employee of the authority against financial loss and expense, including reasonable legal
30 fees and costs, arising out of a claim, demand, suit, or judgment by reason of alleged negligence,
31 alleged violation of civil rights, or alleged wrongful act resulting in death or bodily injury to a

1 person or accidental damage to or destruction of property if the board member, agent, or
2 employee, at the time of the occurrence, was acting under the direction of the authority within
3 the course or scope of the duties of the board member, agent, or employee; and

4 (5) is exempt from AS 36.30 (State Procurement Code).

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

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

9 (b) The board consists of

10 (1) the commissioners of health and social services, natural resources, and
11 revenue, or their designees, who are nonvoting ex officio trustees;

12 (2) seven public members appointed by the governor; the members appointed
13 under this paragraph shall be appointed

14 (A) based upon their recognized expertise or experience in financial
15 management and investment, in land management, or in services for the beneficiaries of
16 the trust;

17 (B) after the governor has considered a list of persons prepared by a panel
18 of six persons who are beneficiaries, or who are the guardians, family members, or
19 representatives of beneficiaries; the panel consists of

20 (i) one person selected by the Alaska Mental Health Board
21 (AS 47.30.661);

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

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

26 (iv) one person selected by the Older Alaskans Commission
27 (AS 44.21.200);

28 (v) one person selected by the Alaska Native Health Board; and

29 (vi) one person selected by the authority.

30 (c) A public member of the board appointed by the governor under (b)(2) of this section
31 may not

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

2 (2) within the preceding two years or during the member's term of office have
3 had an interest in, served on the governing board of, or been employed by an organization that
4 has an interest in, a contract entered into by the authority.

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

6 (e) The members of the board who are commissioners or their designees are entitled to
7 per diem and travel expenses authorized for state employees. The public members of the board
8 appointed under (b)(2) of this section

9 (1) receive an honorarium of \$200 for each day or any part of a day spent at a
10 meeting of the board, at a meeting of a subcommittee of the board, or as a representative of the
11 board; and

12 (2) are entitled to per diem and travel expenses authorized for boards and
13 commissions under AS 39.20.180.

14 Sec. 47.30.021. TERM OF OFFICE, VACANCIES, AND REMOVAL. (a) The public
15 members of the board appointed under AS 47.30.016(b)(2) serve staggered five-year terms. A
16 public member shall continue to serve until the member's successor is appointed and confirmed.

17 (b) A vacancy occurring in the membership of the public members of the board of
18 trustees of the authority appointed under AS 47.30.016(b)(2) shall be filled within 60 days by
19 appointment of the governor for the unexpired portion of the vacated term.

20 (c) The governor may remove a public member of the board appointed under
21 AS 47.30.016(b)(2) only for cause, including incompetence, neglect of duty, misconduct in office,
22 poor attendance, or lack of contribution to the board's work. A member being removed for cause
23 shall be given a copy of the charges and afforded an opportunity to publicly present a defense
24 in person or by counsel upon not less than 10 days' written notice. If a member is removed for
25 cause, the governor shall file with the lieutenant governor a complete statement of all charges
26 made against the member and the governor's findings based on the charges, together with a
27 complete record of the proceedings. The removal of a member for cause constitutes a final
28 administrative order. A member seeking to appeal the governor's removal of a member for cause
29 under this subsection shall file a notice of appeal with the superior court under AS 44.62.560.

30 (d) Except for a trustee who has served two consecutive five-year terms, a public member
31 of the board appointed under AS 47.30.016(b)(2) may be reappointed. A public member of the

1 board appointed under AS 47.30.016(b)(2) who has served two consecutive five-year terms is not
2 eligible for reappointment to the board until one year has intervened.

3 Sec. 47.30.026. OFFICERS AND STAFF. (a) The board shall annually elect a chair
4 and other officers it considers necessary from among its membership.

5 (b) The board shall employ a chief executive officer who shall be selected by the board.
6 The chief executive officer shall be compensated at no less than range 26 of the pay plan for
7 state employees under AS 39.27.011(a). The chief executive officer may

8 (1) hire additional employees:

9 (2) appoint hearing officers to perform the responsibilities set out in
10 AS 47.30.031(b)(7); and

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

12 (c) The chief executive officer is directly responsible to the board for the performance
13 of the director's duties.

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

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

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

20 (2) provisions governing the administration and management of the mental health
21 trust corpus and mental health trust income account under AS 37.14.001 - 37.14.099;

22 (3) provisions concerning the equitable distribution of the earnings of the trust;

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

26 (5) procedures by which income earned through the provision of trust funded
27 services by any entity can be used to augment or enhance the entity's services;

28 (6) provisions that allow and encourage entities providing trust funded services
29 to integrate those services with other community human services funded by other sources;

30 (7) administrative adjudication procedures, including but not limited to

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

- 1 (B) investigations;
- 2 (C) hearings; and
- 3 (D) the issuance of administrative orders, as necessary;
- 4 (8) procurement procedures; and
- 5 (9) provisions that establish a process for planning a comprehensive mental health
- 6 service delivery system to be paid for from the mental health trust income account.

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

- 8 (1) preserve and protect the trust corpus in perpetuity;
- 9 (2) coordinate with other state agencies involved with programs affecting persons
- 10 in need of mental health services;
- 11 (3) adopt bylaws governing its meetings, selection of officers, proceedings, and
- 12 other aspects of board procedure;
- 13 (4) make an annual written report of its activities to the legislature, governor, and
- 14 the public; and
- 15 (5) fulfill its obligations under S 47.30.046.

16 Sec. 47.30.041. INDIVIDUAL RESPONSIBILITIES OF TRUSTEES. (a) By accepting

17 appointment to the board a person accepts the position as co-trustee of the trust and recognizes

18 that, in exercising its powers, duties, and responsibilities, the board is under a duty to the public

19 and the trust beneficiaries to

- 20 (1) administer the trust solely in the interests of the beneficiaries;
- 21 (2) keep and render clear and accurate accounts with respect to the administration
- 22 of the trust;
- 23 (3) make public and available complete and accurate information as to the nature
- 24 and amount of the trust property;
- 25 (4) exercise an equal or higher degree of care in administering the trust than in
- 26 the management of the person's own personal business;
- 27 (5) take reasonable steps to take and keep control of the trust property;
- 28 (6) use care and skill to preserve the trust property;
- 29 (7) take reasonable steps to realize on claims that are held in the trust;
- 30 (8) defend against actions that may result in a loss to the trust estate, unless under
- 31 all the circumstances, considering the other duties owed to the trust, it is reasonable not to make

1 that defense;

2 (9) keep trust property separate from the person's own property;

3 (10) keep trust property separate from other property not subject to the trust so
4 far as it is reasonable to do so;

5 (11) see that trust property is designated as property of the trust;

6 (12) use care in selecting the bank when making general deposits of trust money
7 in a bank, and properly identify the deposit as a deposit by the authority as trustee;

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

11 (14) deal impartially with the different trust beneficiaries under the priorities set
12 out in AS 47.30.056; and

13 (15) participate in the administration of the trust with the other members of the
14 board, and use care to prevent a co-trustee from committing a breach of trust or to compel a co-
15 trustee to redress a breach of trust.

16 (b) By accepting appointment to the board, a person accepts the position as co-trustee
17 of the trust and recognizes that, in exercising its powers, duties, and responsibilities, the board
18 is otherwise subject to the same fiduciary duties as a private trustee under private trust law
19 principles.

20 Sec. 47.30.046. MANAGEMENT OF MENTAL HEALTH TRUST INCOME
21 ACCOUNT. (a) The board shall annually, not later than September 15, submit to the governor
22 and the Alaska Legislative Council a budget for the next fiscal year. The budget must include
23 the authority's determination of the amount

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

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

27 (B) offset the effect of inflation on the value of the trust corpus as
28 required under AS 37.14.009(b); and

29 (C) meet the necessary operating and capital expenses of the integrated
30 comprehensive mental health program for the people of the state;

31 (2) recommended for expenditure from the general fund, if any, during the next

1 fiscal year to meet the necessary operating and capital expenses of the integrated comprehensive
2 mental health program for the people of the state; and

3 (3) in the mental health trust income account, if any, that is not reasonably or
4 foreseeably needed to meet the necessary operating and capital expenses of the integrated
5 comprehensive mental health program for the people of the state that may be transferred into the
6 general fund to be used for other public purposes.

7 (b) When the authority submits its proposed budget under (a) of this section, the authority
8 shall also provide to the legislative council, the governor, the Office of Management and Budget,
9 the commissioner of health and social services, and all entities providing services with money
10 in the mental health trust income account for further distribution by the entities to the
11 beneficiaries of the trust and their representatives, and shall make available to the public, upon
12 request, a written financial report of the authority. The report must describe at least the
13 following:

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

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

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

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

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

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

28 (7) projections of the resources required to provide the necessary services and
29 facilities; and

30 (8) reviews of the status of the integrated comprehensive mental health program
31 for the people of the state, including evaluation of program goals, objectives, targets and

1 timelines, and overall effectiveness.

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

5 Sec. 47.30.056. USE OF MONEY IN THE MENTAL HEALTH TRUST INCOME
6 ACCOUNT. (a) If appropriated by law or if authorized by the court under AS 37.14.001(b), the
7 authority shall use money in the mental health trust income account established in AS 37.14.021
8 to

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

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

12 (b) In making expenditures under (a)(1) of this section, the authority shall, at a minimum,
13 provide for a reasonable level of necessary services to

14 (1) the mentally ill;

15 (2) the mentally defective and retarded;

16 (3) chronic alcoholics suffering from psychoses; and

17 (4) senile people who as a result of their senility suffer major mental illness.

18 (c) The integrated comprehensive mental health program for the people of the state for
19 which expenditures are made under this section

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

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

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

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

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

29 (1) schizophrenia;

30 (2) delusional (paranoid) disorder;

31 (3) mood disorders;

- 1 (4) anxiety disorders;
- 2 (5) somatoform disorders;
- 3 (6) organic mental disorders;
- 4 (7) personality disorders;
- 5 (8) dissociative disorders;
- 6 (9) other psychotic or severe and persistent mental disorders manifested by
- 7 behavioral changes and symptoms of comparable severity to those manifested by persons with
- 8 mental disorders listed in this subsection; and

9 (10) persons who have been diagnosed by a licensed psychologist, psychiatrist,

10 or physician licensed to practice medicine in the state and, as a result of the diagnosis, have been

11 determined to have a childhood disorder manifested by behaviors or symptoms suggesting risk

12 of developing a mental disorder listed in this subsection.

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

14 the following neurologic or mental disorders:

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

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

25 persons with the following disorders:

- 26 (1) alcohol withdrawal delirium (delirium tremens);
- 27 (2) alcohol hallucinosis;
- 28 (3) alcohol amnestic disorder;
- 29 (4) dementia associated with alcoholism;
- 30 (5) alcohol-induced organic mental disorder;
- 31 (6) alcoholic depressive disorder;

1 (7) other severe and persistent disorders associated with a history of prolonged
2 or excessive drinking or episodes of drinking out of control and manifested by behavioral
3 changes and symptoms similar to those manifested by persons with disorders listed in this
4 subsection.

5 (g) In (b)(4) of this section, "senile people who as a result of their senility suffer major
6 mental illness" includes persons with the following mental disorders:

7 (1) primary degenerative dementia of the Alzheimer type;

8 (2) multi-infarct dementia;

9 (3) senile dementia;

10 (4) presenile dementia;

11 (5) other severe and persistent mental disorders manifested by behaviors and
12 symptoms similar to those manifested by persons with disorders listed in this subsection.

13 (h) The authority shall adopt regulations defining the disorders identified in this section
14 to reflect revisions in the diagnostic nomenclature of the health professions serving the
15 beneficiaries of the trust. The authority shall review and revise the regulations as necessary.
16 Regulations adopted under this subsection must be in the long term best interest of the trust and
17 of persons with disorders equivalent to those identified in (b) and (c) of this section.

18 (i) In this section, "an integrated comprehensive mental health program for the people
19 of the state"

20 (1) means public health programs and services that, on the effective date of this
21 section, are separately recognizable and administered as community mental health services,
22 services for the developmentally disabled, alcoholism services, and services for older Alaskans
23 suffering from Alzheimer's disease and related disorders, without regard to the administrative unit
24 directly responsible for the delivery of the service;

25 (2) includes, at a minimum, each of the following services for the beneficiaries
26 of the trust as appropriate:

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

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

30 (C) inpatient care;

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

- 1 (i) active community outreach;
- 2 (ii) in-hospital contact;
- 3 (iii) mobile crisis teams of mental health professionals;
- 4 (iv) crisis beds to provide a short term residential program for
- 5 persons experiencing an acute episode of mental illness that requires temporary
- 6 removal from a home environment;
- 7 (E) treatment services, which may include
- 8 (i) diagnosis, testing, and evaluation of medical needs;
- 9 (ii) medication monitoring;
- 10 (iii) physical examinations;
- 11 (iv) dispensing psychotropic and other medication;
- 12 (v) detoxification;
- 13 (vi) individual or group therapy;
- 14 (vii) aftercare;
- 15 (F) case management, which may include
- 16 (i) evaluation of needs;
- 17 (ii) development of individualized treatment plans;
- 18 (iii) enhancement of access to available resources and programs;
- 19 (iv) development of interagency contacts and family involvement;
- 20 (v) advocacy;
- 21 (G) daily structure and support, which may include
- 22 (i) daily living skills training;
- 23 (ii) socialization activities;
- 24 (iii) recreation;
- 25 (iv) transportation;
- 26 (v) day care services;
- 27 (vi) client and care provider education and support services;
- 28 (H) residential services, which may include
- 29 (i) crisis or respite care;
- 30 (ii) board and care;
- 31 (iii) foster care, group homes, halfway houses, or supervised

- 1 apartments;
- 2 (iv) intermediate care facilities;
- 3 (v) long-term care facilities;
- 4 (vi) in-home care;
- 5 (I) vocational services, which may include
- 6 (i) prevocational services;
- 7 (ii) work adjustment;
- 8 (iii) supported work;
- 9 (iv) sheltered work;
- 10 (v) training in which participants achieve useful work experience;
- 11 (J) outpatient screening, diagnosis, and treatment services, including
- 12 individual, family, and group psychotherapy, counseling, and referral; and
- 13 (K) administrative services, including appropriate operating expenses of
- 14 state agencies and other service providers.

15 (j) The authority shall adopt regulations regarding the services described in (i) of this

16 section to reflect advances in the appropriate professions serving the beneficiaries of the trust.

17 The authority shall review and revise the regulations as necessary. Regulations adopted under

18 this subsection must be in the long term best interest of the mental health trust.

19 (k) The authority may not enter into a contract for services unless the services to be

20 provided under the contract are consistent with the plan for the integrated comprehensive mental

21 health program for the people of the state.

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

23 (1) "authority" means the Alaska Mental Health Trust Authority established by

24 AS 47.30.011;

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

26 (3) "trust" means the trust established by the Alaska Mental Health Enabling Act

27 of 1956, P.L.84-830, 70 Stat. 709.

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

29 Sec. 47.30.472. POWERS AND DUTIES OF ALASKA MENTAL HEALTH TRUST

30 AUTHORITY. The Alaska Mental Health Trust Authority established by AS 47.30.011

31 (1) shall include within the plan for the integrated comprehensive mental health

1 program for the people of the state the services and facilities that are necessary for the care and
2 treatment of persons identified as chronic alcoholics suffering from psychoses, as defined in
3 AS 47.30.056(b)(3) and (f); in preparing the plan of services for persons identified in this
4 paragraph, the authority shall coordinate with the Advisory Board on Alcoholism and Drug
5 Abuse;

6 (2) shall use money appropriated from the mental health trust income account
7 established under AS 37.14.021 to provide the necessary services identified in (1) of this section
8 and in accordance with AS 47.30.056;

9 (3) may accept and deposit in accounts established for that purpose, grants from
10 the federal government or gifts or contributions from other sources to assist in implementing this
11 section.

12 * Sec. 29. AS 47.30.520 is amended to read:

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

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

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

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

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

26 (5) [(2)] improve the effectiveness of existing mental health services;

27 (6) [(3)] integrate state-operated and community mental health programs into a
28 unified mental health system;

29 (7) ensure that consumers, families, and representatives of [(4) PROVIDE A
30 MEANS FOR PARTICIPATION BY LOCAL] communities within mental health planning
31 regions can participate in determining [THE DETERMINATION OF] the need for and the

1 allocation of mental health resources;

2 (8) [(5) ESTABLISH A UNIFORM RATIO OF LOCAL AND STATE
3 GOVERNMENT RESPONSIBILITY FOR FINANCING MENTAL HEALTH SERVICES;

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

6 (9) [(7)] encourage the full use of all existing public or private agencies, facilities,
7 personnel, and funds to accomplish these objectives; and

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

10 * Sec. 30. AS 47.30 is amended by adding a new section to read:

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

13 (1) the community mental health program provide a comprehensive and integrated
14 system of community based facilities, supports, and mental health services including child and
15 adolescent screening and diagnosis, inpatient, outpatient, prevention, consultation, and education
16 services;

17 (2) persons most in need of community mental health services be afforded an
18 enforceable priority for receiving appropriate services;

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

22 (b) Community mental health program service delivery principles include the principles
23 that persons

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

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

27 (3) be provided community mental health services by staff a. programs that
28 reflect the culture, linguistic, and other social characteristics of their community and that
29 incorporate multidisciplinary professional staff to meet client functional levels and diagnostic and
30 treatment needs;

31 (4) in need of community mental health services, and their families, be

1 encouraged to participate in formulating, delivering, and evaluating treatment and rehabilitation;
2 (5) in need of community mental health services be provided treatment and
3 rehabilitation services designed to minimize institutionalization and maximize individual potential;
4 (6) be treated in the least restrictive alternative environment consistent with their
5 treatment needs, enabling the person to live as normally as possible;
6 (7) be provided necessary treatment as close to the person's home as possible;
7 (8) be informed of and allowed to participate in planning their own treatment as
8 much as possible.

9 * Sec. 31. AS 47.30.530 is amended by adding a new subsection to read:

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

12 * Sec. 32. AS 47.30.540 is amended to read:

13 Sec. 47.30.540. ELIGIBLE LOCAL COMMUNITY ENTITIES. (a) A city or borough
14 government or other political subdivision of the state, a nonprofit corporation, or a combination
15 of these, is eligible to receive funds and administer local programs under AS 47.30.520 -
16 47.30.620. In order to ensure equitable access to funds and programs through the state, the
17 authority, in consultation with the department, shall determine appropriate geographical areas
18 to be served by local programs in consultation with representatives of the geographical areas in
19 question.

20 (b) An [THE] entity designated by the authority [DEPARTMENT IN THE LOCAL
21 AREA AS THE ORGANIZATIONAL UNIT] to receive money [FUNDS] under AS 47.30.520 -
22 47.30.620 [AND TO ADMINISTER THE PROGRAM] shall ensure a broad base of community
23 support as evidenced by a governing board reasonably representative of the professional, civic,
24 and citizen groups in the community and including persons with mental disorders or family
25 members of persons with mental disorders. No more than two members, or 40 percent of the
26 membership, whichever is greater, may be providers of services under the program. In order to
27 receive funds under AS 47.30.520 - 47.30.620, a local community entity shall agree to

28 (1) give priority to mental health programs and services consistent with the
29 priorities set out in AS 47.30.056 and that provide the [HAVE A] maximum services for the
30 least expenditure of money from the mental health trust income account [EFFECT ON
31 OTHER TAX FUNDED PROGRAMS];

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

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

7 (4) maintain adequate clinical and administrative records and furnish periodic
8 reports to the division [DEPARTMENT];

9 (5) furnish the authority and the division [DEPARTMENT] an annual report of
10 the preceding fiscal year, including an evaluation of the effectiveness of the previous year's
11 programs and their costs; and

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

18 (c) Members of local governing boards may be reimbursed for necessary travel expenses
19 incurred in the organization and operation of local programs as may be determined by the
20 authority [DEPARTMENT].

21 * Sec. 33. AS 47.30.545 is repealed and reenacted to read:

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

25 * Sec. 34. AS 47.30.547 is amended to read:

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

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

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

31 (3) establish staffing patterns of qualified and trained personnel that reflect the

1 cultural, linguistic, and other social characteristics of the community and that incorporate
2 multidisciplinary professional staff to meet client functional levels and diagnostic and treatment
3 needs;

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

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

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

10 * Sec. 35. AS 47.30.590 is amended to read:

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

21 * Sec. 36. AS 47.30.610 is repealed and reenacted to read:

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

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

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

26 (3) "division" means the division of mental health and developmental disabilities
27 in the Department of Health and Social Services;

28 (4) "persons with mental disorders" means persons with disorders currently
29 included within nationally accepted diagnostic systems of the mental health professions;

30 (5) "poverty area" means an election district in which 15 percent or more of the
31 population, based upon the most recent census data, falls under 125 percent of the Office of

1 Economic Opportunity poverty guidelines;

2 (6) "trust" has the meaning given in AS 47.30.066.

3 * Sec. 37. AS 47.30.660 is amended to read:

4 Sec. 47.30.660. POWERS AND DUTIES OF DEPARTMENT. (a) The department
5 shall

6 (1) prepare, and periodically revise and amend, a plan for an integrated
7 comprehensive mental health program for the people of the state; the preparation of the
8 plan and any revision or amendment of it must

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

10 Authority;

11 (B) coordinate with federal, state, regional, local, and private entities
12 involved in mental health services;

13 (C) conform to the regulations adopted by the Alaska Mental Health
14 Trust Authority under AS 47.30.031(b)(9); and

15 (2) implement an integrated comprehensive system of care that meets the
16 service needs of the beneficiaries of the trust established under the Alaska Mental Health
17 Enabling Act of 1956, as determined by the plan.

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

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

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

30 (3) administer AS 47.30.660 - 47.30.915;

31 (4) designate, operate, and maintain treatment facilities equipped and qualified to

1 provide inpatient and outpatient care and treatment for persons with mental disorders [THE
2 MENTALLY ILL];

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

5 (6) enter into arrangements with governmental agencies for the care or treatment
6 of persons with mental disorders [THE MENTALLY ILL] in facilities of the governmental
7 agencies in the state or in another state;

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

11 (8) enter into contracts, which incorporate safeguards consistent with
12 AS 47.30.660 - 47.30.915 and the preservation of the civil rights of the patients [,] with another
13 state for the custody and care or treatment of patients previously committed from this state under
14 48 U.S.C. 46 et seq., and P.L. 84-830 [P.L. 830, 84TH CONGRESS, 2ND SESSION], 70 Stat.
15 709;

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

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

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

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

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

27 (14) propose to the Alaska Mental Health Trust Authority [ADOPT]
28 regulations to implement the provisions of AS 47.30.660 - 47.30.915; and

29 (15) provide technical assistance and training to providers of mental health
30 services.

31 * Sec. 38. AS 47.30.662 is repealed and reenacted to read:

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

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

7 (c) The board members

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

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

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

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

19 * Sec. 39. AS 47.30.664(b) is amended to read:

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

29 * Sec. 40. AS 47.30.666 is repealed and reenacted to read:

30 Sec. 47.30.666. DUTIES OF THE BOARD. The board is the state planning and
31 coordinating body for the purpose of federal and state laws relating to mental health services for

1 persons with mental disorders identified in AS 47.30.056(b)(1) and (4). On behalf of those
2 persons, the board shall

3 (1) prepare and maintain a comprehensive plan of treatment and rehabilitation
4 services;

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

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

9 (4) advocate the needs of persons with mental disorders before executive agencies
10 and the legislature and the public;

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

14 (A) development of necessary services for diagnosis, treatment, and
15 rehabilitation;

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

18 (C) legal processes that affect screening, diagnosis, treatment, and
19 rehabilitation;

20 (6) provide recommendations to the Alaska Mental Health Trust Authority
21 concerning the integrated comprehensive mental health program for the people of the state who
22 are described in AS 47.30.056(b)(1) and (4) and the use of money in the mental health trust
23 income account in a manner consistent with regulations adopted under AS 47.30.031; in making
24 recommendations affecting the mental health trust, the members of the board assume a duty of
25 loyalty to the mental health trust equivalent to that of a private trustee; and

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

28 * **Sec. 41.** AS 47.30 is amended by adding a new section to read:

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

1 under AS 39.20.180.

2 * Sec. 42. AS 47.30.910(d) is amended to read:

3 (d) All money paid by the patient or on the patient's behalf to the department under this
4 section shall be deposited in the mental health trust income account established in
5 AS 37.14.021 [GENERAL FUND].

6 * Sec. 43. AS 47.30.910(g) is amended to read:

7 (g) The Alaska Mental Health Trust Authority [COMMISSIONER OF
8 ADMINISTRATION] shall separately account for medical care and treatment fees collected under
9 this section. Notwithstanding AS 37.10.050, the authority shall deposit the fees collected in
10 the mental health trust income account [THAT THE DEPARTMENT DEPOSITS IN THE
11 GENERAL FUND. THE ANNUAL ESTIMATED BALANCE IN THE ACCOUNT MAY BE
12 USED BY THE LEGISLATURE TO MAKE APPROPRIATIONS TO THE DEPARTMENT
13 TO CARRY OUT THE PURPOSES OF THIS SECTION].

14 * Sec. 44. AS 47.30.910 is amended by adding a new subsection to read:

15 (h) The Alaska Mental Health Trust Authority shall adopt regulations establishing
16 procedures to be used under this section.

17 * Sec. 45. AS 47.30.915 is amended by adding a new paragraph to read:

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

19 * Sec. 46. AS 47.37.040 is amended by adding a new paragraph to read:

20 (20) conduct program planning activities approved by the Advisory Board on
21 Alcoholism and Drug Abuse.

22 * Sec. 47. AS 47.37 is amended by adding a new section to read:

23 Sec. 47.37.125. PAYMENT FOR SERVICES. Subject to appropriation by the legislature
24 or court order entered under AS 37.14.001(b), money in the mental health trust income account
25 established in AS 37.14.021 may be used to support a service provided under the authority given
26 in this chapter.

27 * Sec. 48. AS 47.80.070(b) is amended to read:

28 (b) The council shall have a paid staff provided by the department, including an
29 executive director selected by the council. The executive director is in the partially exempt
30 service and shall be compensated at no less than range 21 of the pay plan for state
31 employees under AS 39.27.011(a). The executive director may hire additional employees

1 in the classified service of the state. The department shall provide for the assignment of
2 personnel to the council to ensure that the council has the capacity to fulfill its responsibilities.
3 The personnel shall be directly responsible to the council for performance of their duties.

4 * Sec. 49. AS 47.80.090 is amended by adding a new paragraph to read:

5 (13) recommend to the Alaska Mental Health Trust Authority concerning the
6 integrated comprehensive mental health program for the people of the state who are described
7 in AS 47.30.056(b)(2) and the use of the money in the mental health trust income account in a
8 manner consistent with regulations adopted under AS 47.30.031; in making recommendations
9 affecting the trust, members of the council assume a duty of loyalty to the trust equivalent to that
10 of a private trustee.

11 * Sec. 50. AS 47.80.110 is amended to read:

12 Sec. 47.80.110. PROGRAM PRINCIPLES. The system of services and facilities required
13 under AS 47.80.100 shall accord with the principles [PRINCIPLE] that service providers shall

14 (1) make services available at times and locations that enable residents of the
15 provider's service area to obtain services readily;

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

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

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

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

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

26 * Sec. 51. AS 47.30.546 and 47.30.560; secs. 1, 2, 4, and 5, ch. 132, SLA 1986; and secs. 7 - 10,
27 ch. 48, SLA 1987 are repealed.

28 * Sec. 52. AS 37.14.011(b) and 37.14.011(c) are repealed.

29 * Sec. 53. CONVEYANCE OF STATE LAND, TIDELAND, AND SUBMERGED LAND. (a)
30 Subject to reservation of the interests described in (b) of this section, the upland, tide, and submerged
31 land within the following parcels is conveyed to the Alaska Mental Health Trust Authority:

- 1 (1) Township 14 North, Range 8 East, Umiat Meridian
2 Section 19
3 Sections 30 - 31
4 (2) Township 14 North, Range 9 East, Umiat Meridian
5 Sections 24 - 25
6 Section 36
7 (3) Township 13 North, Range 8 East, Umiat Meridian
8 Sections 1 - 3
9 Sections 10 - 15
10 Sections 19 - 36
11 (4) Township 13 North, Range 9 East, Umiat Meridian
12 Sections 1 - 12
13 Sections 15 - 22
14 Sections 25 - 36
15 (5) Township 12 North, Range 8 East, Umiat Meridian
16 (6) Township 12 North, Range 9 East, Umiat Meridian
17 (7) Township 12 North, Range 10 East, Umiat Meridian
18 Sections 1 - 12
19 Sections 14 - 23
20 Sections 25 - 36
21 (8) Township 12 North, Range 11 East, Umiat Meridian
22 Sections 5 - 8
23 Section 31
24 (9) Township 11 North, Range 7 East, Umiat Meridian
25 Sections 24 - 26
26 Sections 34 - 36
27 (10) Township 11 North, Range 8 East, Umiat Meridian
28 (11) Township 11 North, Range 9 East, Umiat Meridian
29 (12) Township 11 North, Range 10 East, Umiat Meridian
30 (13) Township 11 North, Range 11 East, Umiat Meridian
31 Sections 5 - 8

- 1 Sections 16 - 22
- 2 Sections 27 - 33
- 3 (14) Township 10 North, Range 7 East, Umiat Meridian
- 4 Sections 1 - 4
- 5 Sections 9 - 16
- 6 Sections 21 - 28
- 7 Sections 33 - 36
- 8 (15) Township 10 North, Range 8 East, Umiat Meridian
- 9 (16) Township 10 North, Range 9 East, Umiat Meridian
- 10 (17) Township 10 North, Range 10 East, Umiat Meridian
- 11 (18) Township 10 North, Range 11 East, Umiat Meridian
- 12 Sections 5- 8
- 13 Sections 17 - 20
- 14 Sections 29 - 32
- 15 (19) Township 9 North, Range 9 East
- 16 Sections 1 - 24
- 17 (20) Township 9 North, Range 10 East
- 18 Sections 1 - 24
- 19 Sections 27 - 34
- 20 (21) Township 9 North, Range 11 East
- 21 Sections 5 - 8
- 22 Sections 17 - 20.

23 (b) The conveyance made by (a) of this section does not include the conveyance or transfer to
 24 the Alaska Mental Health Trust Authority of mineral lease rentals, royalties, royalty sale proceeds,
 25 federal mineral revenue sharing payments, and bonuses received by the state from land conveyed to the
 26 trust under (a) of this section that are subject to placement in the Alaska permanent fund under art. IX,
 27 sec. 15, Constitution of the State of Alaska, and under AS 37.13.010.

28 * **Sec. 54. INTERPRETATION.** (a) The conveyance made by sec. 53(a) of this Act is a conveyance
 29 made under AS 37.14.031(a)(4) as compensation to the corpus of the trust under the Alaska Mental
 30 Health Enabling Act, and is made in order to partially compensate the trust for the value of land granted
 31 to the trust under the Alaska Mental Health Enabling Act of 1956 and not thereafter retained in trust

1 status.

2 (b) The conveyance made by sec. 53(a) of this Act constitutes a transfer by the state to the trust
3 of a portion of the state's interest in North Slope land managed for the development of oil under the
4 Kuparuk River Unit Agreement authorized by AS 31.05.110 and entered into on _____.

5 * Sec. 55. APPLICABILITY. Nothing in this Act is intended to affect

6 (1) the payment of money due the Alaska permanent fund under art. IX, sec. 15,
7 Constitution of the State of Alaska and AS 37.13.010;

8 (2) the state's levy and collection of taxes under AS 43.

9 * Sec. 56. INTERIM ADMINISTRATION. (a) The commissioner of administration shall establish
10 and maintain a separate account for receipts due the state under AS 38 from the land conveyed under
11 sec. 53(a) of this Act for money that is not subject to deposit in the permanent fund under art. IX, sec.
12 15, Constitution of the State of Alaska, and AS 37.13.010 and that is received by the state on and after
13 the effective date of this section and before the date that is 91 days after the execution of the oath of
14 office by the members of the board of trustees of the Alaska Mental Health Trust Authority first
15 appointed under AS 47.30.016, enacted by sec. 27 of this Act.

16 (b) The legislature may appropriate the receipts accounted for under (a) of this section to the
17 trust corpus of the Alaska Mental Health Trust Authority.

18 * Sec. 57. EXTENSION AUTHORIZED. The board of trustees and the commissioner of
19 administration may negotiate an extension of the commissioner's responsibilities under sec. 56(a) of this
20 Act for a period not to exceed one year.

21 * Sec. 58. CONTINGENT EFFECTIVENESS. Sections 1(c) and 53 - 56 of this Act take effect only
22 if the conveyance set out in sec. 53(a) of this Act is approved by the board of trustees of the Alaska
23 Mental Health Trust Authority within 90 days of the effective date of this section.

24 * Sec. 59. PROCEEDS OF RENTAL VALUE OF LAND DURING FISCAL YEAR 1992
25 AUTHORIZED FOR ALLOCATION TO THE MENTAL HEALTH TRUST INCOME ACCOUNT.
26 After June 30, 1991, and until June 30, 1992, the rental value of land constituting the mental health trust
27 corpus is equal to six percent of the unrestricted general fund revenue of the state for the fiscal year.
28 The commissioner of revenue shall allocate that amount from the general fund to the mental health trust
29 income account established by AS 37.14.021(a), as amended by sec. 10 of this Act.

30 * Sec. 60. REDEMPTION OF LEGISLATIVELY-DESIGNATED LAND. (a) The state shall
31 redeem trust land identified in AS 37.14.031(a)(3) by exchanging land under AS 37.14.061 or by paying

1 to the authority the value of the land at the time of the land's redemption. Unless there is a dispute as
2 to the value of the land proposed for redemption, the authority is required to accept the state payment
3 tendered for the land and release claims the trust may have on the land.

4 (b) Land that is redeemed by the state under this subsection may not thereafter be treated as trust
5 land identified in AS 37.14.031(a)(3). When the state pays for redemption of legislatively-designated
6 land under this section, the amount due the state under AS 37.14.041 shall be reduced by the amount
7 of the payment for the land conveyed, the adjustment to be effective as of the date of the next rent
8 payment to the trust due under AS 37.14.041.

9 (c) Notwithstanding any other provision of law, unless the authority and the commissioner of
10 natural resources agree on the land's value, the Alaska Supreme Court has original jurisdiction to hear
11 and establish the value of land redeemed under (a) of this section. The court

12 (1) shall determine the value of the land;

13 (2) may refer the proceedings for the valuation of the land to a special master; if
14 appointed, the special master

15 (A) may exercise the powers authorized by Rule 53(b) of the Alaska Rules of
16 Civil Procedure;

17 (B) shall proceed substantially in the manner required by Rule 53(c) and 53(d)
18 of the Alaska Rules of Civil Procedure;

19 (C) is entitled to the compensation payable to a special master under Rule 53(a)
20 of the Alaska Rules of Civil Procedure; and

21 (D) shall make a recommended decision to the court.

22 * **Sec. 61. LAND SELECTION.** After the effective date of this section and until January 3, 1994,
23 the board of trustees of the Alaska Mental Health Trust Authority may nominate federal land it
24 determines may be valuable to the trust for selection under the Alaska Statehood Act (P.L. 85-508, 72
25 Stat. 339), as amended, and request the commissioner of natural resources to select the land for the state
26 through the federal land selection process.

27 * **Sec. 62. TRANSITIONAL PROVISIONS: DEVELOPMENT OF TRUST INCOME ACCOUNT**
28 **DISTRIBUTION MECHANISM.** Not later than January 1, 1993, the Board of Trustees of the Alaska
29 Mental Health Trust Authority, after consulting with organizations and persons affected by this section,
30 shall

31 (1) consistent with AS 47.30.056(h), added by sec. 27 of this Act, adopt regulations

1 regarding persons who are to receive services funded by money in the mental health trust income
2 account under AS 37.14.021, as amended by sec. 10 of this Act;

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

5 (3) consistent with AS 47.30.056(j), added by sec. 27 of this Act, adopt regulations
6 regarding the services and facilities upon which expenditures are to be made from money in the mental
7 health trust income account under AS 37.14.021, as amended by sec. 10 of this Act; the regulations may
8 permit the use of the mental health trust income account money for programs or services to which
9 beneficiaries of the trust established by the Alaska Mental Health Enabling Act of 1956 are otherwise
10 entitled without spending trust assets, but the use of the money is limited to the additional costs of
11 providing specific mental health services for beneficiaries of the trust; the money may be expended for
12 services that are provided to the public generally by the state, but the expenditure of the earnings is
13 limited to the additional costs of providing specific mental health services for beneficiaries of the trust;
14 and

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

19 * Sec. 63. INITIAL APPOINTMENT OF MEMBERS TO THE BOARD OF TRUSTEES.
20 Notwithstanding AS 47.30.016, added by sec. 27 of this Act,

21 (1) the initial appointments of the public members of the Board of Trustees of the Alaska
22 Mental Health Trust Authority appointed under AS 47.30.016(b)(2), added by sec. 27 of this Act, shall
23 be made by the governor after considering a list of candidates submitted to the governor by the Alaska
24 Mental Health Board;

25 (2) the initial appointees shall be appointed to initial terms as follows: one shall be
26 appointed for a term of one year, one shall be appointed for a term of two years, one shall be appointed
27 for a term of three years, two shall be appointed for terms of four years, and two shall be appointed for
28 terms of five years.

29 * Sec. 64. TRANSITIONAL PROVISIONS: MEMBERS OF ADVISORY BOARD ON
30 ALCOHOLISM AND DRUG ABUSE. Notwithstanding AS 44.29.110 and 44.29.115, as amended by
31 secs. 20 and 21 of this Act, the members of the Advisory Board on Alcoholism and Drug Abuse who

1 are serving on the effective date of this section continue to serve their unexpired terms. Vacancies on
2 the advisory board occurring after the effective date of this section shall be filled by the governor under
3 the provisions of AS 44.29.115, as amended by sec. 21 of this Act.

4 * Sec. 65. TRANSITIONAL PROVISIONS: MEMBERS OF THE ALASKA MENTAL HEALTH
5 BOARD. Notwithstanding AS 47.30.662, as amended by sec. 38 of this Act, the members of the Alaska
6 Mental Health Board who are serving on the effective date of this section continue to serve their
7 unexpired terms. Vacancies on the board occurring after the effective date of this section, and new
8 positions created by this Act, shall be filled by the governor under the provisions of AS 47.30.662, as
9 amended by sec. 38 of this Act. When making appointments to new positions on the board, the governor
10 shall ensure that the initial terms of new members maintain the staggered term requirement of
11 AS 47.30.663.

12 * Sec. 66. TRANSITIONAL PROVISIONS: ENCUMBERED LAND. The commissioner of natural
13 resources shall, not later than six months after the effective date of this section or not later than March 1,
14 1992, whichever is earlier, prepare and transmit to the legislature a report providing a description of
15 former mental health trust land encumbered by the state on the effective date of this section under
16 AS 37.14.031(a)(1), added by sec. 11 of this Act.

17 * Sec. 67. The provisions of AS 37.14.051(d), as added by sec. 11 of this Act, have the effect of
18 amending Alaska Rule of Civil Procedure 82 by requiring the court to award full attorney fees in certain
19 actions.

20 * Sec. 68. Section 58 of this Act takes effect on the date of execution of the oath of office by the
21 members of the board of trustees of the Alaska Mental Health Trust Authority first appointed under
22 AS 47.30.016, added by sec. 27 of this Act.

23 * Sec. 69. Sections 53 - 57 of this Act take effect on the date of receipt by the governor of a
24 resolution approved by a majority of the members of the board of trustees of the Alaska Mental Health
25 Trust Authority first appointed under AS 47.30.016, added by sec. 27 of this Act. The governor shall
26 advise the lieutenant governor and the revisor of statutes of receipt of the resolution under this section.

27 * Sec. 70. Section 66 of this Act takes effect immediately under AS 01.10.070(c).

28 * Sec. 71. Section 52 of this Act takes effect July 1, 1991.

29 * Sec. 72. Section 60 of this Act is repealed June 30, 2007.

30 * Sec. 73. Except for secs. 52 - 58, and 66, this Act takes effect upon incorporation into a final
31 settlement and order approved by the superior court in Weiss v. State of Alaska, 4FA-82-2208 Civil.

- 1 The superior court shall advise the lieutenant governor and the revisor of statutes when the final
- 2 settlement and order of Weiss v. State of Alaska has been approved.



LEGISLATIVE SETTLEMENT OF THE MENTAL HEALTH LAND TRUST ISSUE

CAST OF PLAYERS

ATTORNEYS

David Walker, Lead Council	586-3537
Jim Gottstien	274-7686
Jeff Jessee	344-1002
Phillip Voland	276-5231

Only the attorneys are authorized to negotiate terms of a settlement.

THE MENTAL HEALTH LAND TRUST COALITION

Jim Parsons, Chair 561-1589
Jerry Rienwand is the Lobbyist for the coalition.

The Mental Health Land Trust Coalition is composed of representatives from the court designated beneficiary groups and other individuals and organizations committed to a resolution of the MHLT Issue.

OTHER LOBBYISTS

Kent Dawson - Usibelli Coal
Clark Gruening - Assoc. of Developmentally Disabled
Sharon Lobaugh - Alaska Alliance for the Mentally Ill
Ashley Reed - Idemitsu & CIRI

OBJECTIONS TO CSSSHB79

Page 19, lines 15-24:

These two sections establish veto authority for the MHTA over regulations proposed by the Department. It is an unwarranted delegation of authority to allow an entity that has "a legal existence independent of and separate from the state" to exercise this kind of power over a state agency.

Page 21, lines 6-12:

This allows the Board of Alcoholism and Drug Abuse to choose its own Executive Director, allows the Executive Director to hire unlimited personnel, and mandates that the Department assign personnel to the Board. The Department objects to these provisions because they create the potential for a bifurcation of management in the Division by creating a parallel entity.

Page 22, lines 13 & 14:

This section appears to remove authority for planning of services for the prevention and treatment of alcohol and drug abuse from the Department and vests that authority in the Board. The Department objects because this would fragment its comprehensive planning responsibility.

Page 25, lines 25 & 26:

This appears to be a delegation of the Legislature's authority to appropriate program receipts; if it is, it should be deleted.

Page 26, line 6:

Add language requiring the Authority to develop criteria to use in determining necessary services and necessary expenditures for the beneficiaries from the Trust Account.

Page 29, line 5 - page 33, line 21:

1. Sub/Section (a) establishes the framework for an independent Mental Health Department parallel to the Department's Division of Mental Health and Developmental Disabilities. The Department objects to a bifurcation of mental health duties between it and the Authority.
2. Sub/Section (b) is unnecessary since the beneficiaries have been established by the Court and it is redundant to recount them here.
3. Sub/Sections (d), (e), (f), and (g) are unnecessary if section (b) is eliminated and, further, are too specific

and too stationary in a rapidly moving field to be set out in statute. These lists are more appropriately embodied in regulations.

4. Sub/Section (h) is unnecessary if (d), (e), (f), and (g) are deleted. This section demonstrates why the previous sections should be removed and reserved for regulations in that it recognizes that diagnosis is not static.
5. Sub/Section (i) is descriptive of services which are more appropriately set in regulations than in statute. The field of services and treatment is much too dynamic to codify in this manner.

Page 34, lines 6-8:

1. Sub-section (2) once again seems to provide the MHTA with the authority to run programs for beneficiaries thus bifurcating the mental health program and creating a separate and independent agency of government. The Department objects to the vesting of this power in the MHTA.

Page 39, line 13-14:

The Department objects to being regulated by the MHTA.

MENTAL HEALTH TRUST LANDS INVENTORY

<u>KEY</u>	<u>CATEGORY</u>	<u>ACRES</u>
	1. TRUST LAND BASE	1,000,000
[]	2. LAND SALES	51,286
	*Land Sales to Individuals *Chena River Water Project Condemnation	
[]	3. LAND EXCHANGES	39,269
	*CIRI/USA (1979) *Seldovia (1979) *U of A Settlement (1982)	
[]	4. MUNICIPAL DISPOSAL	43,088
[]	5. PARKS, FORESTS, REFUGES, etc.	372,268
	*State Refuge and Habitat Areas *State Forests *State Parks *Interagency Transfers	
[]	6. ENCUMBERED WITH LEASE, CONTRACT, etc.	281,791
	*Land Leases *Mining Claims *Coal Leases *Oil and Gas Leases *Material and Timber Sale Contracts *Permits	
[]	7. UNENCUMBERED	212,300

SOURCE: Alaska Department of Natural Resources (all figures \pm 5%)

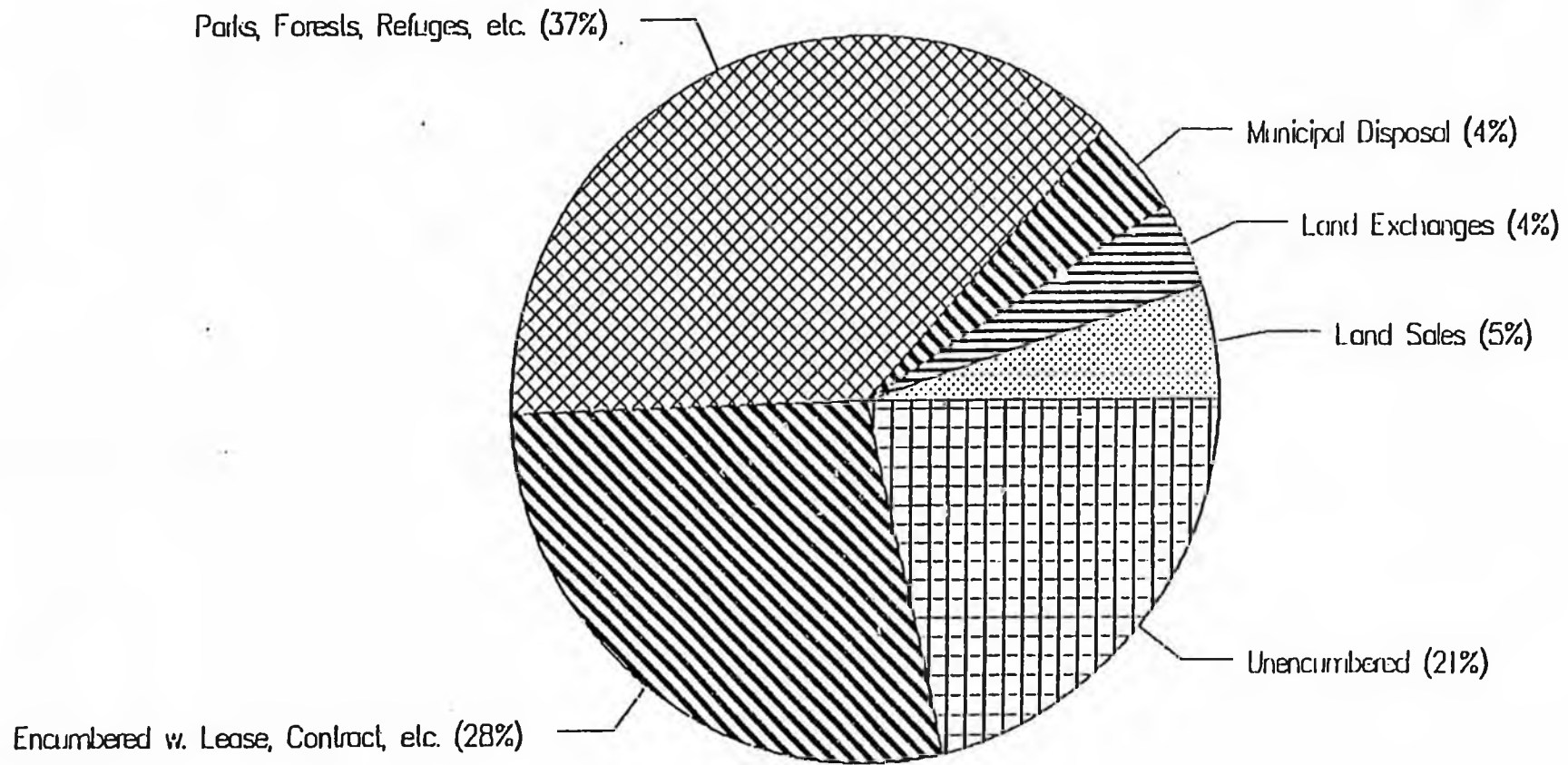
Table 1 - MENTAL HEALTH TRUST LANDS
Inventory by status as of October 4, 1985

	<u>Acres</u>	<u>Acres Remaining</u>
1. <u>Trust Land Base (as corrected 1/23/87)</u>		
Patented to state	845,838.84	
Approved for patent	159,872.00	
Possible overconveyance	<u>(5,710.84)</u>	1,000,000 ^a
2. <u>Conveyed Out of Trust and State Ownership</u>		
Land sales to individuals	46,137.49 ^b	
Condemned for Chena River Lakes Project (1978)	<u>5,148.86</u>	
Total Out of Trust and State Ownership	51,286.35	948,713.65
3. <u>Conveyed Out of Trust & State, by Exchange and Settlement of Litigation^c</u>		
Native Corporation land exchanges		
- CIRI/USA (1979)	34,507.70	
- Seldovia (1979)	1,768.11	
U of A Settlement (1982)	<u>2,993.37</u>	
Total Out Of Trust & State	39,269.08	909,446.27
4. <u>Conveyed Out of Trust to Municipalities^d</u>		
- Patented to municipalities	22,680.73	
- Approved for patent	<u>20,407.01</u>	
Total Conveyed to Municipalities, Ownership in Question	43,087.74	866,358.53
5. <u>Conveyed Out of Trust, In State Ownership for Non-trust Purposes</u>		
State Refuge & Habitat Areas	85,709.61	
State Forests	131,955.00	
State Parks	150,576.35	
Interagency Land Management/Transfer Agreements (ILMA's & ILMT's)	<u>4,027.27</u>	
Total former M.H. Lands Designated For Non-trust Purposes	372,268.23	494,090.30
6. <u>Immediately Returnable to Trust, Encumbered with Lease & Sale Contracts</u>		
Land Leases	1,913.74	
Mining Claims ^e	61,825.71	
Coal Leases	54,563.22	
Oil & Gas Leases	131,904.40	
Material & Timber Sale Contracts	29,815.63	
Permits	<u>1,767.87</u>	
Total Returnable with Encumbrances	281,790.57	212,299.73
6. <u>Immediately Returnable Unencumbered^f</u>	212,299.73	

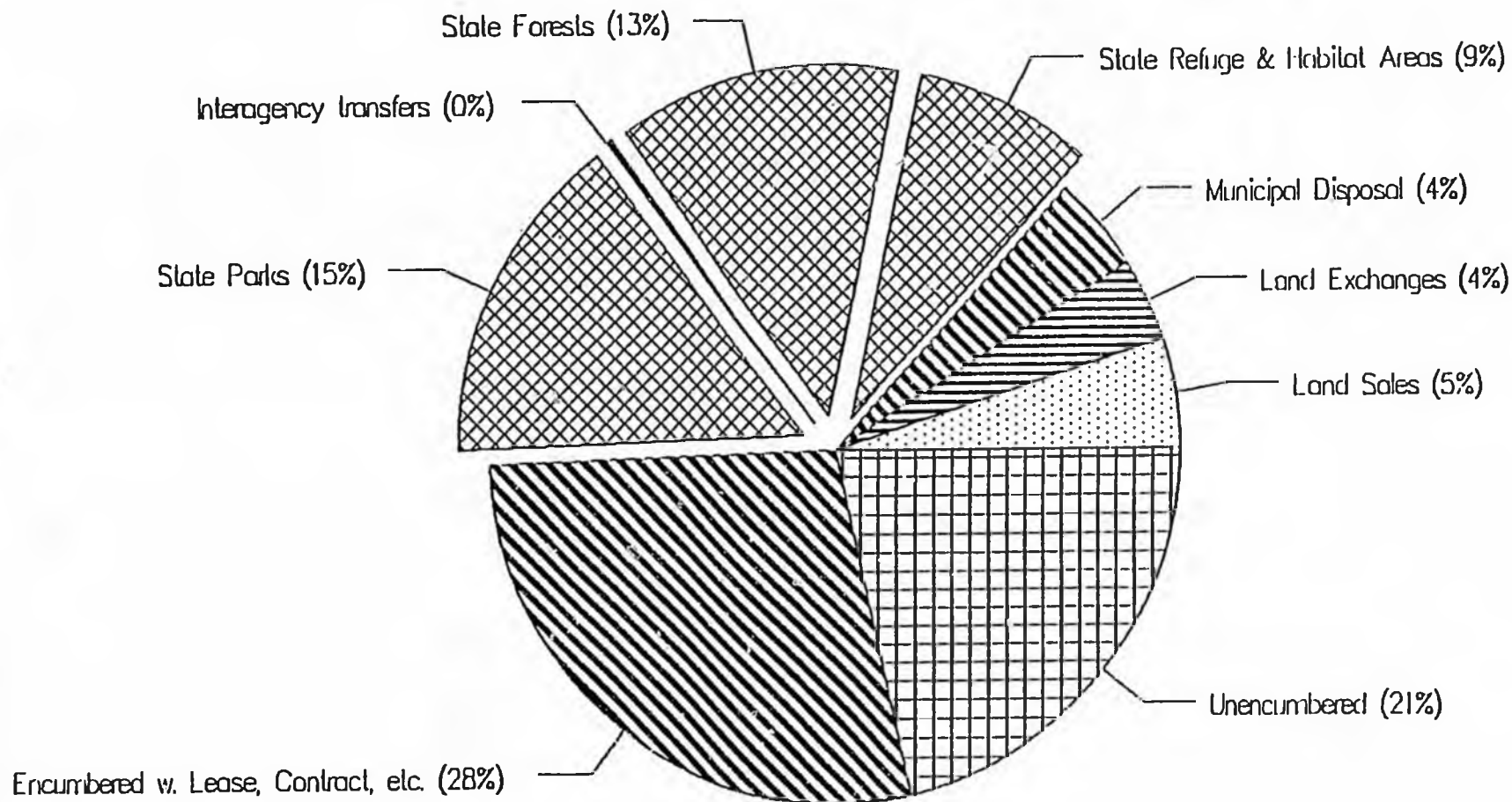
- ^a The state--and therefore the trust-- retains all mineral rights on former mental health trust lands, except the 36,275 acres conveyed to Native corporations.
- ^b Includes 19,797.52 acres conveyed prior to 7/19/78. Includes patented lands and lands under sales contracts in which vested interests exist.
- ^c Lands received by state in exchange not readily identifiable.
- ^d State may have legal authority to rescind, in which case title uncertain.
- ^e Not tied to revenue production for trust. Holders required only to perform \$200 of "annual labor."
- ^f Includes 12,552.33 acres selected by municipalities but not yet approved for patent.

SOURCE: Alaska Department of Natural Resources, Inventory of Land Activities On Mental Health Lands, July 19, 1978 - October 4, 1985.

Mental Health Trust Lands Inventory



Mental Health Trust Lands Inventory



State of Alaska

Legislatively Designated Areas



Alaska Department of
**NATURAL
RESOURCES**

Areas designated by the legislature include sanctuaries, game and wildlife refuges, critical habitat areas, state forests and parks, public use areas, recreation rivers, recreational mining areas, and bison and moose ranges. Please note that most figures are approximate and many acres included are tidal or submerged.

Fish & Game Designations (AS 16.20)	Statute	Acres
Sanctuaries		
McNeil River State Game Sanctuary	(AS 16.20.160-170)	83,800
Walrus Island State Game Sanctuary	(AS 16.20.090-140)	9,700
Stan Price State Wildlife Sanctuary	(AS 16.20.150)	613
	Total sanctuary acres	94,113
Game Refuges		
Anchorage Coastal Wildlife Refuge	(AS 16.20.031)	32,500
Cape Newenham State Game Refuge	(AS 16.20.030)	14,000
Creamer's Field Migratory Waterfowl Refuge	(AS 16.20.039)	1,664
Goose Bay State Game Refuge	(AS 16.20.030)	10,880
Izembek (Lagoon) State Game Refuge	(AS 16.20.030)	181,440
Mendenhall Wetlands State Game Refuge	(AS 16.20.034)	3,800
Minto Flats State Game Refuge	(AS 16.20.037)	500,000
Palmer Hay Flats State Game Refuge	(AS 16.20.032)	26,000
Susitna Flats State Game Refuge	(AS 16.20.036)	300,800
Trading Bay State Game Refuge	(AS 16.20.038)	160,960
Yakataga State Game Refuge	(AS 16.20.033)	82,000
	Total refuge acres	1,314,044
Critical Habitat Areas		
Anchor River & Fritz Creek Critical Habitat Area	(AS 16.20.605)	19,000
Chilkat River Critical Habitat Area	(AS 16.20.585)	4,800
Cinder River Critical Habitat Area	(AS 16.20.560)	26,000
Clam Gulch Critical Habitat Area	(AS 16.20.595)	2,500
Copper River Delta Critical Habitat Area	(AS 16.20.600)	597,000
Dude Creek Critical Habitat Area	(AS 16.20.610)	4,083
Egegik Critical Habitat Area	(AS 16.20.565)	8,000
Fox River Flats Critical Habitat Area	(AS 16.20.580)	7,100
Kachemak Bay Critical Habitat Area	(AS 16.20.590)	222,000
Kalgin Island Critical Habitat Area	(AS 16.20.575)	3,500
Pilot Point Critical Habitat Area	(AS 16.20.570)	46,000
Port Heiden Critical Habitat Area	(AS 16.20.555)	72,000
Port Moller Critical Habitat Area	(AS 16.20.550)	127,000
Redoubt Bay Critical Habitat Area	(AS 16.20.625)	183,640
Tugidak Island Critical Habitat Area	(AS 16.20.615)	50,240
Willow Mountain Critical Habitat Area	(AS 16.20.620)	22,720
	Total critical habitat acres	1,395,583
Forestry Designations (AS 41.15-17)		
Haines State Forest Resource Management Area	(AS 41.15.300-330)	247,000
Tanana Valley State Forest	(AS 41.17.400)	1,786,000
	Total forestry acres	2,033,000

Park Units (AS 41.21-23)

Alaska Chilkat Bald Eagle Preserve	(AS 41.21.611-630)	49,000
Caines Head State Recreation Area	(AS 41.21.435-445)	5,961
Captain Cook State Recreation Area	(AS 41.21.415-425)	3,620
Chena River State Recreation Area	(AS 41.21.475-490)	254,080
Chilkat State Park	(AS 41.21.111-120)	6,045
Chugach State Park	(AS 41.21.121-125)	495,000
Denali State Park	(AS 41.21.151-152)	421,120
Kachemak Bay State Park	(AS 41.21.131-134)	165,370
Kachemak Bay State Wilderness Park	(AS 41.21.140-143)	210,240
Kenai River Special Management Area	(AS 41.21.502-514)	2,693
Nancy Lake State Recreation Area	(AS 41.21.455-465)	22,685
Point Bridget State Park	(AS 41.21.181-183)	2,800
Shuyak Island State Park	(AS 41.21.172-178)	11,000
Willow Creek State Recreation Area	(AS 41.21.491-495)	3,583
Wood/Tikchik State Park	(AS 41.21.161-167)	1,428,320
Marine Parks:	(AS 41.21.300-306)	*31,882
Beecher Pass	Entry Cove	Oliver Inlet
Berles Bay	Funter Bay	Safety Cove
Big Bear/Baby Bear Bays	Granite Bay	Saint James Bay
Boswell Bay Beaches	Horseshoe Bay	Sandspit Point
Canoe Passage	Jack Bay	Sawmill Bay
Chilkat Islands	Joe Mace Island	Security Bay
Dall Bay	Kayak Island	Shelter Island
Decision Point	Magoun Islands	Shoup Bay
Driftwood Bay		South Esther Island
		Sullivan Island
		Sunny Cove
		Surprise Cove
		Taku Harbor
		Thoms Place
		Thumb Cove
		Zeigler Cove
*does not include acres of water	Total park acres	3,113,399

Other Designations

Caribou Creek Recreational Mining Area	(AS 41.23.600-620)	250
Delta Junction Bison Range Area	(AS 16.20.300-320)	*72,000
Ernie Haugen Public Use Area	(AS 41.23.050-080)	420
Goldstream Public Use Area	(AS 41.23.140-170)	3,115
Hatcher Pass Public Use Area	(AS 41.23.100-130)	5,100
Matanuska Valley Moose Range	(AS 16.20.340-360)	**132,500
Nelchina Public Use Area	(AS 41.23.010-040)	2,350,000
Recreation Rivers:	(AS 41.23.400-510)	***243,000
Alexander Creek	Kroto & Moose Creek	
Lake Creek	Little Susima River	
Talachulitna River	Talkeetna River	
	Total other designations	2,806,385

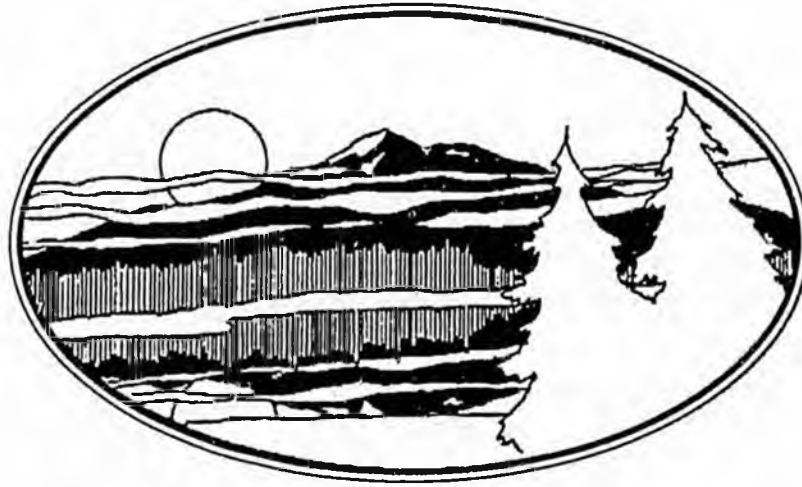
- does not include additional 17,500 acres within military withdrawal
- ** does not include selected land
- *** does not include borough or private land

Total Acreage

Fish & Game designations	2,803,740
Forestry designations	2,033,000
Park designations	3,113,399
Other designations	2,806,385
TOTAL	10,756,524

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 Alaska 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.

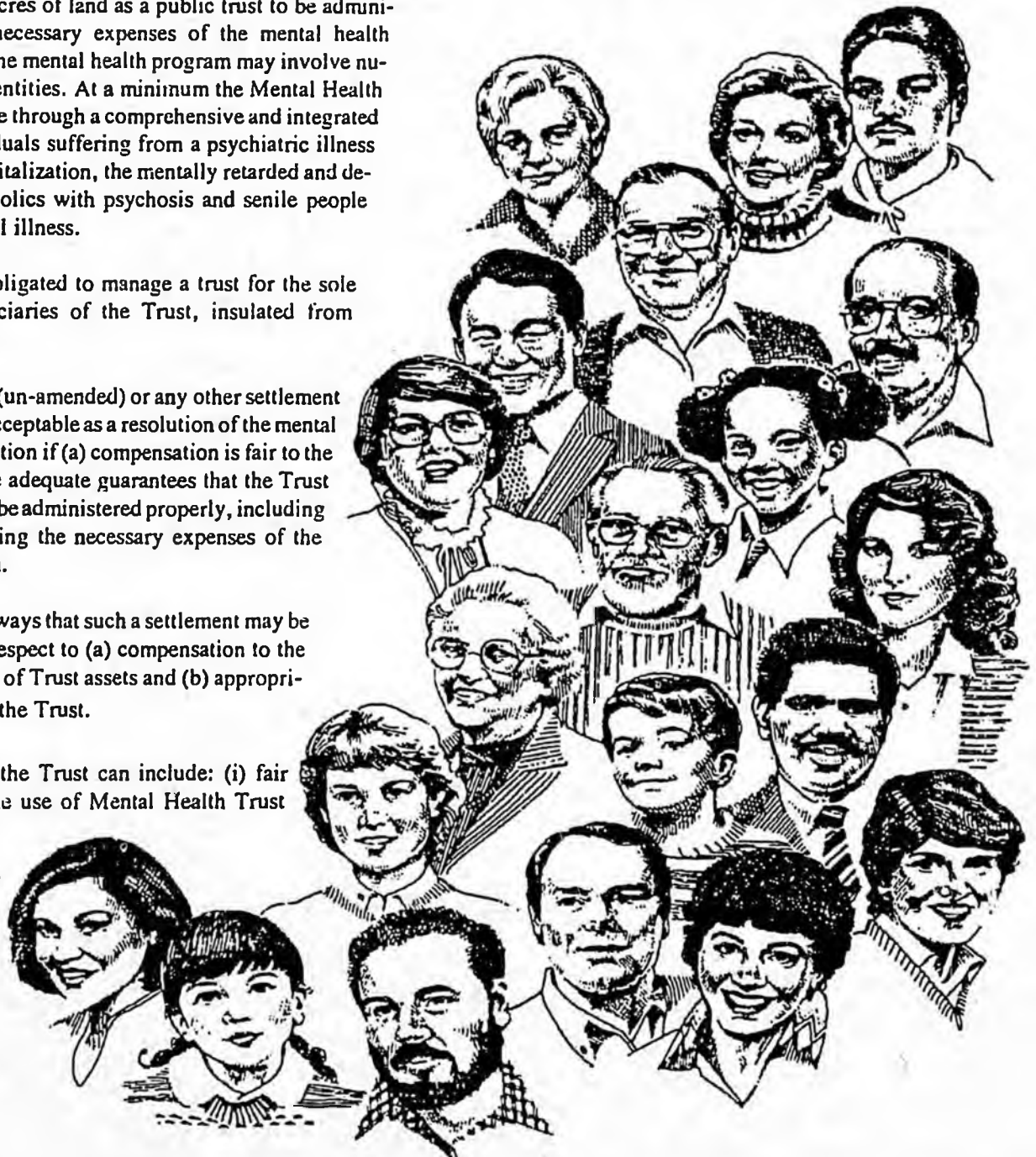
There are a number of ways that such a settlement may be fashioned, both with respect to (a) compensation to the Trust and management of Trust assets and (b) appropriate expenditures from the Trust.

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.



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 1,005,843.38 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 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
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:

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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. 8/

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. 9/ 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

8/ 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.

9/ 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.