HB 201

8-LS0728\I
Chenoweth
3/18/94

CS FOR HOUSE BILL NO. 201( )

IN THE LEGISLATURE OF THE STATE OF ALASKA

EIGHTEENTH LEGISLATURE - SECOND SESSION

BY

Offered:
Referred:

Sponsor(s): HOUSE RESOURCES COMMITTEE

A BILL

FOR AN ACT ENTITLED

"An Act relating to the mental health land trust and the mental health land trust litigation, Weiss v. State, 4FA-82-2208 Civil; and providing for an effective date."

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

*** Section 1.** FINDINGS AND PURPOSE. (a) The legislature finds

(1) the United States Congress passed the Alaska Mental Health Enabling Act, P.L. 84-830, 70 Stat. 709 (1956), "[t]o confer upon Alaska autonomy in the field of mental health, transfer from the Federal Government to the Territory the fiscal and functional responsibility for the hospitalization of committed mental health patients, and for other purposes;".

(2) in sec. 202 of the Alaska Mental Health Enabling Act, the Congress granted the territory the right to select up to 1,000,000 acres of federal land to serve as a source of funds to support the territory's mental health program;

(3) in subsection 202(e) of the Alaska Mental Health Enabling Act, the

Congress provided that the land so granted, along with the income from the land and proceeds from dispositions of the land, were to be administered "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," that "[s]uch lands, income, and proceeds shall be managed and utilized in such manner as the Legislature of Alaska may provide," that the land "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," and that the Alaska legislature must exercise this broad authority "in a manner compatible with the conditions and requirements imposed by this Act";

(4) the Alaska Mental Health Enabling Act grant was "confirmed and transferred to the State of Alaska upon its admission" to the Union under sec. 6(k) of the Alaska Statehood Act, P.L. 85-508, 72 Stat. 339 (1958);

(5) in State v. University of Alaska, 624 P.2d 807 (Alaska 1981), the Alaska Supreme Court held that the Alaska State Legislature has plenary authority over all state land under art. VIII, sec. 2, of the Alaska Constitution, and that the legislature may remove from trust status any land obtained by the state in trust if the trust is compensated for the fair market value of that land;

(6) chapters 181 and 182, SLA 1978, removed from trust status all original mental health land obtained by the state under the Alaska Mental Health Enabling Act and redesignated it as general grant land, but the trust was not directly compensated for that land;

(7) in State v. Weiss, 706 P.2d 681 (Alaska 1985), the Alaska Supreme Court held that the 1978 legislation removing mental health land from trust status and redesignating it as general grant land was a breach of the federally created trust because the trust was never directly compensated for that land, that it was not reasonable to infer that the legislature intended to compensate the mental health trust for all of the original mental health land, that the 1978 redesignation legislation therefore was invalid, and that the appropriate remedy was to return the original mental health land still in state ownership to trust status but, "[t]o the extent former mental health lands have been sold" between 1978 and the date of the court's decision, "the trust must be compensated for the fair market value of the land at the time of sale" with the state entitled to a set-off against that monetary liability for state mental health expenditures during the same period;

(8) since statehood, approximately 500,000 acres of original mental health land have been purchased by, conveyed to, or leased by third parties, have been the object of significant development expenditures by third parties, have been conveyed or tentatively approved for conveyance to municipalities, have been placed in legislatively designated areas such as parks, wildlife refuges, and state forests, and have been used by state agencies;

(9) the plaintiffs in the Weiss litigation have questioned the validity of those dispositions and uses of original mental health land and in 1990 filed lis pendens on all original mental health land, but have not yet presented the question of the validity of those dispositions and uses to the court for adjudication;

(10) not validating those dispositions and uses of original mental health land and, as a result, not removing the legal basis for the lis pendens filed by the Weiss plaintiffs would be contrary to the requirement of art. VIII, sec. 2, of the Alaska Constitution that the legislature "provide for the utilization, development, and conservation of all natural resources belonging to the State, including land and waters, for the maximum benefit of its people;"

(11) the questions the Weiss plaintiffs have raised regarding the validity of those dispositions and uses and the lis pendens that they have filed have resulted in substantial criticism of and hostility directed against the mental health trust and the trust's beneficiaries;

(12) the original 1,000,000 acre mental health land grant has not generated in the past, and is not likely to generate in the future, sufficient income and proceeds to fully fund the state's mental health program, and the beneficiaries of the mental health trust have been, and will continue to be, dependent on unrestricted state revenue to fund much of the state's mental health program;

(13) because of the criticism and hostility directed against the mental health trust and the trust's beneficiaries, failure to resolve the Weiss litigation and validate the dispositions and uses of original mental health land and remove the legal basis for the lis pendens filed by the Weiss plaintiffs will make it increasingly difficult for the beneficiaries of the mental health trust and those concerned about the beneficiaries to obtain appropriations of unrestricted state revenue to fund the state's mental health program;

(14) it therefore is in the public interest and in the best interests of the mental health trust and the trust's beneficiaries to exercise the legislature's power under the Alaska Mental Health Enabling Act and art. VIII, sec. 2, of the Alaska Constitution to confirm and

ratify the validity of the dispositions and uses of original mental health land and, by answering the questions regarding the validity of those dispositions and uses of original mental health land, remove the legal basis for the lis pendens filed by the Weiss plaintiffs;

(15) it is in the best interests of both the public and the beneficiaries of the mental health trust to resolve the Weiss litigation on terms that are fair to both the public and the beneficiaries of the mental health trust;

(16) such a resolution can be accomplished by exercising the legislature's power under the Alaska Mental Health Enabling Act and art. VIII, sec. 2, of the Alaska Constitution, through amending ch. 66, SLA 1991,

(A) to return certain original mental health land to trust status;

(B) to ratify and confirm the removal from trust status of certain original mental health land and the validity of dispositions and uses of that land, including but not necessarily limited to certain original mental health land

(i) that has been purchased by, conveyed to, or leased by third parties;

(ii) on which third parties have made significant development expenditures;

(iii) that has been conveyed to or tentatively approved for conveyance to municipalities;

(iv) that has been placed in legislatively designated areas like parks, wildlife refuges, and state forests; or

(v) that is used by state agencies;

(C) to make clear that the legislature intends to compensate the mental health trust for the original mental health land removed from trust status by this Act through a combination of replacement land and state general fund money;

(D) to designate certain other state land as mental health land as partial compensation and in exchange for original mental health land not returned to trust status;

(E) to identify state mental health expenditures since 1978 to be set-off against state monetary liability to the trust for original mental health land not returned to trust status; and

(F) to satisfy additional state monetary liability to the trust for original mental health land not returned to trust status with state general funds, to provide that those funds will first be appropriated to fund the state's mental health program, and to provide for the transfer of any unappropriated balance to the unrestricted general fund for appropriation for other public purposes as permitted by the Alaska Mental Health Enabling Act;

(17) since 1978, state mental health expenditures have totaled more than $1,300,000,000;

(18) the sum of the value of the other state land designated as mental health trust land under this Act and the total of state mental health expenditures since 1978 exceeds the value of the original mental health land not returned to trust status under this Act;

(19) the management of land designated under this Act as mental health trust land will have significant administrative costs that will reduce the trust's net income and proceeds;

(20) the Department of Natural Resources has considerable expertise in managing state land, and it already has in place the facilities, personnel, and other necessary infrastructure for efficient, cost-effective land management of land designated as mental health trust land under this Act;

(21) it therefore is in the best interest of the public and of the trust and its beneficiaries that the Department of Natural Resources manage the land designated as mental health trust land under this Act; and

(22) if, by December 15, 1994, a final determination has been made by the superior court that the state has satisfied its obligation to reconstitute the mental health trust under State v. Weiss, 706 P.2d 681 (Alaska 1985), the superior court has entered a final order dismissing Weiss v. State, 4FA-82-2208 Civil, and the time for appeals of that determination and that order has expired with no appeals having been taken, even though it is not legally required by the Alaska Mental Health Enabling Act or the Alaska Constitution, it is in the best interest of both the public and the beneficiaries of the mental health trust

(A) to have the provisions of ch. 66, SLA 1991, that establish the Alaska Mental Health Trust Authority become law;

(B) to amend the provisions of ch. 66, SLA 1991, that establish a

procedure for appropriating funds from the mental health trust income account to give the mental health community, acting through the authority, some discretionary control over the expenditure of those funds while retaining the governor's and the legislature's ultimate control over expenditures from the state treasury as required by the Alaska Constitution and to have the provisions, as amended, become law;

(C) to have the provisions of ch. 66, SLA 1991, that improve the state's mental health program become law; and

(D) to allocate to the mental health trust income account $225,000,000 in 15 annual installments of $15,000,000 each as additional compensation for original mental health land not returned to trust status.

(b) The purposes of this Act are

(1) to reconstitute the mental health trust with approximately 500,000 acres of original mental health land and approximately 400,000 acres of other state land;

(2) to ratify and confirm the removal from trust status of approximately 500,000 acres of original mental health land;

(3) to ratify and confirm the validity of the dispositions and uses of the original mental health land removed from trust status;

(4) to define state mental health expenditures since 1978 and provide for them to be considered as additional compensation for original mental health land removed from trust status;

(5) to satisfy any additional state monetary liability to the trust for original mental health land not returned to trust status with state general funds, to provide that those funds will first be appropriated to fund the state's mental health program, and to provide for the transfer of any unappropriated balance to the unrestricted general fund for appropriation for other public purposes as permitted by the Alaska Mental Health Enabling Act; and

(6) if, by December 15, 1994, a final determination has been made by the superior court that the state has satisfied its obligation to reconstitute the mental health trust under State v. Weiss, 706 P.2d 681 (Alaska 1985), the superior court has entered a final order dismissing Weiss v. State, 4FA-82-2208 Civil, and the time for appeals of that determination and that order has expired with no appeals having been taken,

(A) to have the provisions of ch. 66, SLA 1991, that establish the

Alaska Mental Health Trust Authority become law;

(B) to amend the provisions of ch. 66, SLA 1991, governing the management by the authority of the land of the reconstituted mental health trust to provide additional safeguards of the public interest in the management of that land and to have the provisions, as amended, become law;

(C) to amend the provisions of ch. 66, SLA 1991, that establish a procedure for appropriating funds from the mental health trust income account to give the mental health community, acting through the authority, some discretionary control over the expenditure of those funds while retaining the governor's and the legislature's ultimate control over expenditures from the state treasury as required by the Alaska Constitution and to have the provisions, as amended, become law;

(D) to have the provisions of ch. 66, SLA 1991, that improve the state's mental health program become law; and

(E) to allocate to the mental health trust income account $225,000,000 in 15 annual installments of $15,000,000 each as additional compensation for original mental health land not returned to trust status.

* **Sec. 2.** AS 29.65.060 is amended by adding a new subsection to read:

(h) To obtain replacement land for mental health land that was conveyed by the state to the municipality under former AS 29.18.190 - 29.18.200, former AS 29.18.201 - 29.18.202, or under this chapter, a municipality may reconvey to the state mental health land that had been conveyed by the state to the municipality. When a municipality reconveys land to the state under this subsection, the municipality has the right to select an equal number of acres of replacement land. The municipality may exercise its right to select replacement land under this subsection only within two years of the date of the reconveyance of land to the state.

* **Sec. 3.** AS 37.14.007(b), added by sec. 10, ch. 66, SLA 1991, is amended to read:

(b) In exercising the powers, duties, and responsibilities as trustee, the authority is under a duty to the public and the trust beneficiaries to

(1) administer the trust **consistent with AS 37.14.009** [SOLELY] in the interest of the beneficiaries;

(2) keep and render clear and accurate accounts with respect to the

administration of the trust;

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

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

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

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

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

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

(9) separately account for trust property;

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

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

(12) deal impartially with the different trust beneficiaries as provided in AS 47.30.056.

* Sec. 4. AS 37.14.009(a), added by sec. 10, ch. 66, SLA 1991, is amended to read:

(a The Alaska Mental Health Trust Authority

(1) shall manage the assets of the trust, **except assets the management of which is provided for in (2) of this subsection,** in a fiduciary manner to fulfill the purposes of the trust;

(2) **shall** [MAY, CONSISTENT WITH (1) OF THIS SUBSECTION AND AS 47.30.036(1), SELL, LEASE, EXCHANGE, OR OTHERWISE DISPOSE OF LAND IN THE TRUST;

(3) MAY, CONSISTENT WITH (1) OF THIS SUBSECTION, USE LAND THAT IS AN ASSET OF THE TRUST DIRECTLY FOR THE INTEGRATED COMPREHENSIVE MENTAL HEALTH PROGRAM;

(4) MAY] contract with the Department of Natural Resources to manage the land assets of the trust; **when the Department of Natural Resources**

manages land assets of the trust under a contract entered into under this paragraph, the department shall manage in conformity with AS 38.05.801; and

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

* Sec. 5. AS 37.14 is amended by adding a new section to read:

Sec. 37.14.013. MENTAL HEALTH TRUST INCOME AND PRCCEEDS ACCOUNT. (a) The mental health trust income and proceeds account is established as a separate account in the general fund.

(b) The mental health trust income and proceeds account consists of

(1) the net income and net proceeds received by the state from the use, sale, or other disposal of the state land designated as mental health trust land; and

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

* Sec. 6. AS 37.14 is amended by adding a new section to read:

Sec. 37.14.023. UTILIZATION OF THE MENTAL HEALTH TRUST INCOME AND PROCEEDS ACCOUNT. (a) Money in the mental health trust income an ' proceeds account established in AS 37.14.013(a) shall first be appropriated by the legislature to pay the necessary expenses of the mental health program of the state. In making annual appropriations from the mental health trust income and proceeds account, the legislature shall consider the recommendations of the Alaska Mental Health Board established under AS 47.30.661.

(b) After appropriations have been made to pay the necessary expenses of the mental health program of the state, the legislature may authorize the transfer of the unobligated and unappropriated fiscal year-end balance in the mental health trust income and proceeds account as of June 30 to the unrestricted portion of the general fund for use for other public purposes.

* Sec. 7. AS 37.14.036(c), added by sec. 11, ch. 66, SLA 1991, is repealed and reenacted to read:

(c) During each state fiscal year that begins on or after July 1, 1995, and ends not later than June 30, 2010, the commissioner of natural resources shall annually

deposit in the mental health trust income account in the general fund, established in (a) of this section, $15,000,000 from the state's royalty share as lessor of oil and gas leases.

* Sec. 8. AS 38.05 is amended by adding a new section to read:

Sec. 38.05.801. MANAGEMENT OF MENTAL HEALTH TRUST LAND. (a) Mental health trust land shall be managed consistent with the requirements of the Alaska Mental Health Enabling Act, P.L. 84-830, 70 Stat. 709 (1956).

(b) Subject to (a) of this section, the department

(1) shall manage mental health trust land under those provisions of law applicable to other state land;

(2) may exchange other state land for mental health trust land under the procedures set out in AS 38.50; and

(3) may correct errors or omissions in the legal descriptions of mental health trust land.

(c) The commissioner shall adopt regulations under AS 44.62 (Administrative Procedure Act) to implement this section.

* Sec. 9. AS 47.30.016(b), added by sec. 26, ch. 66, SLA 1991, is amended to read:

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

(1) based upon their ability in financial management and investment [, IN LAND MANAGEMENT,] or in services for the beneficiaries of the trust;

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

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

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

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

(D) one person selected by the Older Alaskans Commission

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

(F) one person selected by the authority.

* **Sec. 10.** AS 47.30.470(9), added by sec. 27, ch. 66, SLA 1991, is amended to read:

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

* **Sec. 11.** AS 47.30.660(a)(3), added by sec. 36, ch. 66, SLA 1991, is amended to read:

(3) implement an integrated comprehensive system of care that**, within the limits of money appropriated for that purpose,** meets the service needs of the beneficiaries of the trust established under the Alaska Mental Health Enabling Act of 1956, as determined by the plan.

* **Sec. 12.** AS 47.30.910(d), as amended by sec. 41, ch. 66, SLA 1991, is further amended to read:

(d) All money paid by the patient or on the patient's behalf to the department under this section shall be deposited in the **general fund** [MENTAL HEALTH TRUST INCOME ACCOUNT ESTABLISHED IN AS 37.14.036].

* **Sec. 13.** Section 58, ch. 66, SLA 1991, is repealed and reenacted to read:

Sec. 58. (a) This Act takes effect only if, not later than December 15, 1994,

(1) the superior court of the State of Alaska has made a final determination that the state has satisfied its obligation to reconstitute the mental health trust under State v. Weiss, 706 P.2d 681 (Alaska 1985);

(2) the superior court has entered a final order dismissing Weiss v. State, 4FA-82-2208 Civil; and

(3) the time for appeals of that determination and that order has expired with no appeals having been taken.

(b) The attorney general shall advise the lieutenant governor and the revisor of statutes whether the determination required by (a)(1) of this section has been made, whether the final order required by (a)(2) of this section has been entered, and whether, as required by (a)(3) of this section, the time for appeals of that determination and that order has expired with no appeals having been taken as of that date.

* Sec. 14. Chapter 66, SLA 1991, is amended by adding a new section to read:

Sec. 59. If, under sec. 58 of this Act, this Act takes effect, it takes effect December 16, 1994.

* Sec. 15. AS 37.14.011, 37.14.021; AS 38.05.800; secs. 1, 2, 4, and 5, ch. 132, SLA 1986; secs. 7 - 10, ch. 48, SLA 1987; and secs. 49, 50, and 54 - 57, ch. 66, SLA 1991, are repealed.

* Sec. 16. MENTAL HEALTH TRUST RECONSTITUTED. (a) For the purpose of reconstituting the mental health trust established under the Alaska Mental Health Enabling Act, P.L. 84-830, 70 Stat. 709 (1956), as required by the Alaska Supreme Court's decision in Weiss v. State, 706 P.2d 681 (Alaska 1985), the following land is designated as mental health trust land:

(1) the original mental health land listed in "Original Mental Health Land To Be Designated as Mental Health Trust Land, May 1994," and located in the office of the director of the division of lands, Department of Natural Resources, in Anchorage, Alaska; and

(2) the state land listed in "Other State Land To Be Designated as Mental Health Trust Land, May 1994," and located in the office of the director of the division of lands, Department of Natural Resources, in Anchorage, Alaska.

(b) All land designated as mental health trust land under this section remains subject to all encumbrances of record, noted on records maintained by the Department of Natural Resources, or otherwise existing on the effective date of this section.

* Sec. 17. CONFIRMATION AND RATIFICATION OF CONVERSION OF CERTAIN ORIGINAL MENTAL HEALTH LAND TO GENERAL GRANT LAND AND ACTIONS TAKEN BY THE STATE WITH RESPECT TO THAT LAND. (a) The conversion to general grant land by sec. 3(a), ch. 181, SLA 1978, of the former mental health land listed in "Original Mental Health Land Not To Be Returned to Mental Health Trust Status, May 1994," and located in the office of the director of the division of lands, Department of Natural Resources, in Anchorage, Alaska, is confirmed and ratified.

(b) All dispositions and uses of the land identified under (a) of this section, including without limitation the creation by the state or the transfer by the state of an interest in the land or the designation of the land as part of a state park, state forest, state game refuge, state wildlife refuge, state game sanctuary, state recreational area, state recreational river, state

wilderness park, state marine park, state special management area, state public use area, critical habitat area, bald eagle preserve, bison range, or moose range are confirmed and ratified.

* **Sec. 18.** STATE MENTAL HEALTH EXPENDITURES TO BE SET-OFF AGAINST STATE MONETARY LIABILITY FOR ORIGINAL MENTAL HEALTH LAND NOT RETURNED TO TRUST STATUS. To the extent the state is liable to the mental health trust for the fair market value of any original mental health land not returned to trust status under sec. 16(a)(1) of this Act, after taking into account the fair market value of the state land designated as mental health trust land under sec. 16(a)(2) of this Act, the set-off against that liability for state mental health expenditures since 1978 to which the state is entitled under State v. Weiss, 706 P.2d 681 (Alaska 1985), totals $1,300,000,000.

* **Sec. 19.** TRANSITIONAL PROVISIONS; DEVELOPMENT OF MENTAL HEALTH TRUST INCOME ACCOUNT MECHANISM. Not later than January 1, 1996, the Board of Trustees of the Alaska Mental Health Trust Authority, after consulting with organizations and persons affected by this Act, shall

(1) consistent with AS 47.30.056(h), added by sec. 26, ch. 66, SLA 1991, adopt regulations regarding persons who are to receive services funded by money in the mental health trust income account under AS 37.14.036, as added by sec. 11, ch. 66, SLA 1991, and amended by sec. 7 of this Act;

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

(3) consistent with AS 47.30.056(j), added by sec. 26, ch. 66, SLA 1991, adopt regulations regarding the services and facilities upon which expenditures are to be made from money in the mental health trust income account under AS 37.14.036, added by sec. 11, ch. 66, SLA 1991, and amended by sec. 7 of this Act; and

(4) publish its findings and projections regarding the necessary expenditure of money from the mental health trust income account under AS 37.14.036, as added by sec. 11, ch. 66, SLA 1991, and amended by sec. 7 of this Act.

* **Sec. 20.** ADDITIONAL COMPENSATION TO MENTAL HEALTH TRUST. (a) To the extent the state has any additional monetary liability to the mental health trust for original mental health land not returned to trust status under sec. 16(a)(1) of this Act after taking into

mental health land not returned to trust status under sec. 16(a)(1) of this Act after taking into account the fair market value of the other state land under sec. 16(a)(2) of this Act and the set-off for state mental health expenditures under sec. 18 of this Act, the commissioner of revenue shall allocate sufficient unrestricted state general funds to the mental health trust income and proceeds account (AS 37.14.013), established by sec. 5 of this Act, to satisfy that liability. The money so allocated is additional compensation to the mental health trust for the original mental health land not returned to trust status under sec. 16(a)(1) of this Act. An allocation under this subsection may not exceed $100,000,000 during any one state fiscal year.

(b) After appropriations from the mental health trust income and proceeds account have been made to pay for the state's mental health program, the legislature may

(1) transfer to the general fund an amount equal to the remaining unrestricted state general funds allocated by the commissioner of revenue to the mental health trust income and proceeds account under (a) of this section; and

(2) appropriate any part or all of the amount transferred under (1) of this subsection for other public purposes.

*** Sec. 21.** If the conditions of sec. 58, ch. 66, SLA 1991, as amended by sec. 13 of this Act, are not met on or before December 15, 1994, then ch. 66, SLA 1991, is repealed and secs. 3, 4, 7, 9 - 12, and 19 of this Act do not take effect.

*** Sec. 22.** If the conditions of sec. 58, ch. 66, SLA 1991, as amended by sec. 13 of this Act, are met on or before December 15, 1994, then AS 37.14.013, added by sec. 5 of this Act, AS 37.14.023, added by sec. 6 of this Act, and sec. 20 of this Act are repealed.

*** Sec. 23.** Subject to sec. 21 of this Act, secs. 3, 4, 7, 9 - 12, and 19 of this Act take effect December 16, 1994.

*** Sec. 24.** Sections 21 and 22 of this Act take effect December 16, 1994.

*** Sec. 25.** Sections 1, 2, 5, 6, 8, 13 - 18, and 20 of this Act take effect immediately under AS 01.10.070(c).

8-LS0728\V
Chenoweth
4/27/94

CS FOR HOUSE BILL NO. 201(FIN)

IN THE LEGISLATURE OF THE STATE OF ALASKA

EIGHTEENTH LEGISLATURE - SECOND SESSION

BY THE HOUSE FINANCE COMMITTEE

Offered:
Referred:

Sponsor(s): HOUSE RESOURCES COMMITTEE

A BILL

FOR AN ACT ENTITLED

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

* **Section 1.** FINDINGS AND PURPOSE. (a) The legislature finds

(1) the United States Congress passed the Alaska Mental Health Enabling Act, P.L. 84-830, 70 Stat. 709 (1956), "[t]o confer upon Alaska autonomy in the field of mental health, transfer from the Federal Government to the Territory the fiscal and functional responsibility for the hospitalization of committed mental health patients, and for other purposes;"

(2) in sec. 202 of the Alaska Mental Health Enabling Act, the Congress granted the territory the right to select up to 1,000,000 acres of federal land to serve as a source of funds to support the territory's mental health program;

(3) in subsection 202(e) of the Alaska Mental Health Enabling Act, the

Congress provided that the land so granted, along with the income from the land and proceeds from dispositions of the land, were to be administered "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," that "[s]uch lands, income, and proceeds shall be managed and utilized in such manner as the Legislature of Alaska may provide," that the land "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," and that the Alaska legislature must exercise this broad authority "in a manner compatible with the conditions and requirements imposed by this Act";

(4) the Alaska Mental Health Enabling Act grant was "confirmed and transferred to the State of Alaska upon its admission" to the Union under sec. 6(k) of the Alaska Statehood Act, P.L. 85-508, 72 Stat. 339 (1958);

(5) in State v. University of Alaska, 624 P.2d 807 (Alaska 1981), the Alaska Supreme Court held that the Alaska State Legislature has plenary authority over all state land under art. VIII, sec. 2, of the Alaska Constitution, and that the legislature may remove from trust status any land obtained by the state in trust if the trust is compensated for the fair market value of that land;

(6) chapters 181 and 182, SLA 1978, removed from trust status all original mental health land obtained by the state under the Alaska Mental Health Enabling Act and redesignated it as general grant land, but the trust was not directly compensated for that land;

(7) in State v. Weiss, 706 P.2d 681 (Alaska 1985), the Alaska Supreme Court held that the 1978 legislation removing mental health land from trust status and redesignating it as general grant land was a breach of the federally created trust because the trust was never directly compensated for that land, that it was not reasonable to infer that the legislature intended to compensate the mental health trust for all of the original mental health land, that the 1978 redesignation legislation therefore was invalid, and that the appropriate remedy was to return the original mental health land still in state ownership to trust status but, "[t]o the extent former mental health lands have been sold" between 1978 and the date of the court's decision, "the trust must be compensated for the fair market value of the land at the time of sale" with the state entitled to a set-off against that monetary liability for state mental health expenditures during the same period;

(8) since statehood, approximately 500,000 acres of original mental health land have been purchased by, conveyed to, or leased by third parties, have been the object of significant development expenditures by third parties, have been conveyed or tentatively approved for conveyance to municipalities, have been placed in legislatively designated areas such as parks, wildlife refuges, and state forests, and have been used by state agencies;

(9) the plaintiffs in the Weiss litigation have questioned the validity of those dispositions and uses of original mental health land and in 1990 filed lis pendens on all original mental health land;

(10) not validating those dispositions and uses of original mental health land and, as a result, not removing the legal basis for the lis pendens filed by the Weiss plaintiffs would be contrary to the requirement of art. VIII, sec. 2, of the Alaska Constitution that the legislature "provide for the utilization, development, and conservation of all natural resources belonging to the State, including land and waters, for the maximum benefit of its people;"

(11) the questions the Weiss plaintiffs have raised regarding the validity of those dispositions and uses and the lis pendens that they have filed have resulted in substantial criticism of and hostility directed against the mental health trust and the trust's beneficiaries;

(12) the original 1,000,000 acre mental health land grant has not generated in the past, and is not likely to generate in the future, sufficient income and proceeds to fully fund the state's mental health program, and the beneficiaries of the mental health trust have been, and will continue to be, dependent on unrestricted state revenue to fund much of the state's mental health program;

(13) because of the criticism and hostility directed against the mental health trust and the trust's beneficiaries, failure to resolve the Weiss litigation and validate the dispositions and uses of original mental health land and remove the legal basis for the lis pendens filed by the Weiss plaintiffs will make it increasingly difficult for the beneficiaries of the mental health trust and those concerned about the beneficiaries to obtain appropriations of unrestricted state revenue to fund the state's mental health program;

(14) it therefore is in the public interest and in the best interests of the mental health trust and the trust's beneficiaries to exercise the legislature's power under the Alaska Mental Health Enabling Act and art. VIII, sec. 2, of the Alaska Constitution to confirm and ratify the validity of the dispositions and uses of original mental health land and, by answering

the questions regarding the validity of those dispositions and uses of original mental health land, remove the legal basis for the lis pendens filed by the Weiss plaintiffs;

(15) it is in the best interests of both the public and the bene[illegible] of the mental health trust to resolve the Weiss litigation on terms that are fair to [illegible] public and the beneficiaries of the mental health trust;

(16) such a resolution can be accomplished by exercising the legislature's power under the Alaska Mental Health Enabling Act and art. VIII, sec. 2, of the Alaska Constitution, through amending ch. 66, SLA 1991,

(A) to return certain original mental health land to trust status;

(B) to ratify and confirm the removal from trust status of certain original mental health land and the validity of dispositions and uses of that land, including but not necessarily limited to certain original mental health land

(i) that has been purchased by, conveyed to, or leased by third parties;

(ii) on which third parties have made significant development expenditures;

(iii) that has been conveyed to or tentatively approved for conveyance to municipalities;

(iv) that has been placed in legislatively designated areas like parks, wildlife refuges, and state forests; or

(v) that is used by state agencies;

(C) to make clear that the legislature intends to compensate the mental health trust for the original mental health land removed from trust status by this Act through a combination of replacement land and state money;

(D) to designate certain other state land as mental health land as partial compensation and in exchange for original mental health land not returned to trust status;

(E) to identify state mental health expenditures since 1978 to be set-off against state monetary liability to the trust for original mental health land not returned to trust status; and

(F) to satisfy additional state monetary liability to the trust for original

mental health land not returned to trust status with state general funds and to provide that those funds will first be appropriated to fund the state's mental health program;

(17) since 1978, state mental health expenditures have totaled more than $1,300,000,000;

(18) the sum of the value of the other state land designated as mental health trust land under this Act and the total of state mental health expenditures since 1978 exceeds the value of the original mental health land not returned to trust status under this Act;

(19) the management of land designated under this Act as mental health trust land will have significant administrative costs that will reduce the trust's net income and proceeds;

(20) the Department of Natural Resources has considerable expertise in managing state land, and it already has in place the facilities, personnel, and other necessary infrastructure for efficient, cost-effective land management of land designated as mental health trust land under this Act;

(21) it therefore is in the best interest of the public and of the trust and its beneficiaries that the Department of Natural Resources manage the land designated as mental health trust land under this Act; and

(22) if, by December 15, 1994, a final determination has been made by the superior court that the state has satisfied its obligation to reconstitute the mental health trust under State v. Weiss, 706 P.2d 681 (Alaska 1985), the superior court has entered a final order dismissing Weiss v. State, 4FA-82-2208 Civil, and the time for appeals of that determination and that order has expired with no appeals having been taken, even though it is not legally required by the Alaska Mental Health Enabling Act or the Alaska Constitution, it is in the best interest of both the public and the beneficiaries of the mental health trust

(A) to have the provisions of ch. 66, SLA 1991, that establish the Alaska Mental Health Trust Authority become law;

(B) to amend the provisions of ch. 66, SLA 1991, that establish the mental health trust fund, to provide for preserving the corpus of the mental health trust, including an initial appropriation of $200,000,000 to that fund, in perpetuity and to have the provisions, as amended, become law;

(C) to provide for the Alaska Mental Health Trust Authority to use the

income from the mental health trust fund to assist it in fulfilling its purpose of ensuring an integrated comprehensive mental health program for the state; and

(D) to have the provisions of ch. 66, SLA 1991, that improve the state's mental health program become law.

(b) The purposes of this Act are

(1) to reconstitute the mental health trust with some original mental health land and some other state land;

(2) to ratify and confirm the removal from trust status of some original mental health land;

(3) to ratify and confirm the validity of the dispositions and uses of the original mental health land removed from trust status;

(4) to define state mental health expenditures since 1978 and provide for them to be considered as additional compensation for original mental health land removed from trust status;

(5) to satisfy any additional state monetary liability to the trust for original mental health land not returned to trust status with state general funds, to provide that those funds will first be appropriated to fund the state's mental health program, and to provide for the transfer of any unappropriated balance to the unrestricted general fund for appropriation for other public purposes as permitted by the Alaska Mental Health Enabling Act; and

(6) if, by December 15, 1994, a final determination has been made by the superior court that the state has satisfied its obligation to reconstitute the mental health trust under State v. Weiss, 706 P.2d 681 (Alaska 1985), the superior court has entered a final order dismissing Weiss v. State, 4FA-82-2208 Civil, and the time for appeals of that determination and that order has expired with no appeals having been taken,

(A) to have the provisions of ch. 66, SLA 1991, that establish the Alaska Mental Health Trust Authority become law;

(B) to amend the provisions of ch. 66, SLA 1991, that establish the mental health trust fund to provide for preserving the corpus of the mental health trust, including an initial appropriation of $200,000,000, in perpetuity and to have the provisions, as amended, become law;

(C) to provide for the Alaska Mental Health Trust Authority to use the

income from the mental health trust fund to assist it in fulfilling its purpose of ensuring an integrated comprehensive mental health program for the state; and

(D) to have the provisions of ch. 66, SLA 1991, that improve the state's mental health program become law.

* Sec. 2. AS 29.65.060 is amended by adding a new subsection to read:

(h) To obtain replacement land for mental health land that was conveyed by the state to the municipality under former AS 29.18.190 - 29.18.200, former AS 29.18.201 - 29.18.202, or under this chapter, a municipality may reconvey to the state mental health land that had been conveyed by the state to the municipality. When a municipality reconveys land to the state under this subsection, the municipality has the right to select an equal number of acres of replacement land. The municipality may exercise its right to select replacement land under this subsection only within two years of the date of the reconveyance of land to the state.

* Sec. 3. AS 37.13.300, added by sec. 9, ch. 66, SLA 1991, is amended to read:

Sec. 37.13.300. CORPORATION TO MANAGE CERTAIN ASSETS OF THE MENTAL HEALTH TRUST. (a) **The** [SUBJECT TO AGREEMENT WITH THE ALASKA MENTAL HEALTH TRUST AUTHORITY (AS 47.30.011) ENTERED INTO UNDER AS 37.14.009(a)(5), THE] corporation shall manage the **mental health trust fund** [CASH ASSETS OF THE CORPUS OF THE TRUST ESTABLISHED UNDER THE ALASKA MENTAL HEALTH ENABLING ACT OF 1956, P.L. 84-830, 70 STAT. 709].

(b) The corporation shall

(1) hold and invest the **mental health trust fund** [CASH ASSETS OF THE CORPUS OF THE TRUST THAT ARE TRANSFERRED TO ITS CUSTODY] subject to AS 37.13.120;

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

(3) annually prepare, publish, and distribute to the Board of Trustees of the Alaska Mental Health Trust Authority financial statements prepared in

accordance with generally accepted accounting principles consistently applied, and an audit report prepared by a certified public accountant; [AND]

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

(5) transfer to the mental health trust income account the net income available for distribution attributable to the mental health trust fund at the end of each fiscal year.

(c) Net income from the **mental health trust fund** [CASH ASSETS OF THE CORPUS OF THE TRUST MANAGED UNDER THIS SECTION] may not be included in the computation of net income available for distribution under AS 37.13.140.

*** Sec. 4.** AS 37.14.003(a), added by sec. 10, ch. 66, SLA 1991, is amended to read:

(a) [IN REVIEWING APPROPRIATIONS FROM THE MENTAL HEALTH TRUST INCOME ACCOUNT PROPOSED BY THE AUTHORITY, THE GOVERNOR SHALL CONSIDER THE NEEDS OF THE BENEFICIARIES OF THE TRUST WITHOUT REGARD TO OTHER POTENTIAL OBJECTS OF STATE EXPENDITURE.] The governor shall, **at the time the governor submits the proposed comprehensive operating and capital improvements program and financial plan under AS 37.07.060(b)** [BY DECEMBER 15 OF EACH YEAR], submit to the legislature a separate appropriation bill limited to appropriations **for the state's integrated comprehensive** [FROM THE] mental health **program** [TRUST INCOME ACCOUNT].

*** Sec. 5.** AS 37.14.003(b), added by sec. 10, ch. 66, SLA 1991, is amended to read:

(b) If the appropriations in the bill submitted by the governor under (a) of this section differ from those proposed by the authority, the bill must **be accompanied by a report** [CONTAIN FINDINGS] explaining the reasons for the differences **between the proposed appropriations in the governor's bill and the authority's recommendations for expenditures from the general fund for the state's integrated comprehensive mental health program** [AND PROVIDING THE BASIS FOR

DETERMINING THAT THE PROPOSED APPROPRIATIONS MEET THE NEEDS OF THE BENEFICIARIES OF THE TRUST. IF THE GOVERNOR PROPOSES TO INCREASE THE AMOUNT OF MONEY TO BE TRANSFERRED FROM THE MENTAL HEALTH TRUST INCOME ACCOUNT TO THE UNRESTRICTED GENERAL FUND OVER THE AUTHORITY'S RECOMMENDATION MADE UNDER AS 47.30.046(a)(3), THE BILL MUST CONTAIN FINDINGS SUPPORTING THE DETERMINATION THAT THE ADDITIONAL MONEY IS NOT REASONABLY NECESSARY TO MEET THE PROJECTED OPERATING AND CAPITAL EXPENSES OF THE INTEGRATED COMPREHENSIVE MENTAL HEALTH PROGRAM TO BE FINANCED FROM THE TRUST].

* **Sec. 6.** AS 37.14.003(c), added by sec. 10, ch. 66, SLA 1991, is repealed and reenacted to read:

(c) If the governor vetoes all or a part of an appropriation for the integrated comprehensive mental health program, the governor's veto message must explain the vetoes in light of the authority's recommendations for expenditures from the general fund for the state's integrated comprehensive mental health program.

* **Sec. 7.** AS 37.14.005, added by sec. 10, ch. 66, SLA 1991, is amended to read:

Sec. 37.14.005. RESPONSIBILITIES OF THE LEGISLATURE. (a) The legislature shall annually pass and transmit to the governor a bill making appropriations of money **for the state's integrated comprehensive** [FROM THE] mental health **program** [TRUST INCOME ACCOUNT NO LATER THAN THE 75TH DAY OF THE REGULAR SESSION].

(b) [BEFORE TAKING ACTION ON APPROPRIATIONS FROM THE MENTAL HEALTH TRUST INCOME ACCOUNT PROPOSED BY THE GOVERNOR, THE LEGISLATURE SHALL CONSIDER THE NEEDS OF THE BENEFICIARIES OF THE TRUST WITHOUT REGARD TO OTHER POTENTIAL OBJECTS OF STATE EXPENDITURE.] The legislature shall make appropriations **for the state's integrated comprehensive** [FROM THE] mental health **program** [TRUST INCOME ACCOUNT] in a separate appropriation bill limited to appropriations **for the state's integrated comprehensive** [FROM THE] mental health **program** [TRUST INCOME ACCOUNT].

(c) If the appropriations in the bill passed by the legislature differ from those proposed by the authority, the bill must **be accompanied by a report** [CONTAIN FINDINGS] explaining the reasons for the differences **between the appropriations in the bill and the authority's recommendations for expenditures from the general fund for the state's integrated comprehensive mental health program** [AND PROVIDING THE BASIS FOR DETERMINING THAT THE A.. .ROPRIATIONS MEET THE NEEDS OF THE BENEFICIARIES OF THE TRUST. IF THE LEGISLATURE INCREASES THE AMOUNT OF MONEY TO BE TRANSFERRED FROM THE TRUST TO THE GENERAL FUND OVER THE AUTHORITY'S RECOMMENDATION MADE UNDER AS 47.30.046(a)(3), THE BILL MUST CONTAIN FINDINGS SUPPORTING THE DETERMI! ATION THAT THE ADDITIONAL MONEY IS NOT REASONABLY NECESSARY TO MEET THE PROJECTED OPERATING AND CAPITAL EXPENSES OF THE INTEGRATED COMPREHENSIVE MENTAL HEALTH PROGRAM TO BE FINANCED FROM THE TRUST].

* **Sec. 8.** AS 37.14.007(b), added by sec. 10, ch. 66, SLA 1991, is amended to read:

(b) In exercising the powers, duties, and responsibilities as trustee the authority is under a duty to the public and the trust beneficiaries to

(1) administer the trust **consistent with AS 37.14.009** [SOLELY] in the interest of the beneficiaries;

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

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

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

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

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

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

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

(9) separately account for trust property;

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

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

(12) deal impartially with the different trust beneficiaries as provided in AS 47.30.056.

* **Sec. 9.** AS 37.14.009(a), added by sec. 10, ch. 66, SLA 1991, is amended to read:

(a) The Alaska Mental Health Trust Authority

(1) **has a fiduciary obligation to ensure that the assets of the trust are managed consistent with the requirements of the Alaska Mental Health Enabling Act, P.L. 84-830, 70 Stat. 709 (1956);**

(2) shall [MANAGE THE ASSETS OF THE TRUST IN A FIDUCIARY MANNER TO FULFILL THE PURPOSES OF THE TRUST;

(2) MAY, CONSISTENT WITH (1) OF THIS SUBSECTION AND AS 47.30.036(1), SELL, LEASE, EXCHANGE, OR OTHERWISE DISPOSE OF LAND IN THE TRUST;

(3) MAY, CONSISTENT WITH (1) OF THIS SUBSECTION, USE LAND THAT IS AN ASSET OF THE TRUST DIRECTLY FOR THE INTEGRATED COMPREHENSIVE MENTAL HEALTH PROGRAM;

(4) MAY] contract with the Department of Natural Resources to manage the land assets of the trust; **the contract must provide for the recording of at least one conveyance to the authority by quitclaim deed of mental health trust land in each recording district in the state in which mental health trust land is located; a conveyance to the authority is exempt from the platting and surveying requirements of AS 38.04.045(b) and municipal ordinances adopted under AS 29.40; when the Department of Natural Resources manages land assets of the trust under a contract entered into under this paragraph, the department shall**

(A) manage in conformity with AS 38.05.801;

(B) consult with the authority before adopting regulations

under AS 38.05.801(c);

(C) provide notice to, and consult with, the authority regarding all proposed actions subject to public notice under AS 38.05.945 before giving that public notice;

(D) annually provide the authority with a report including

(i) a description of all land management activities undertaken under this section during the prior year;

(ii) an accounting of all income and proceeds generated from mental health trust land; and

(iii) an explanation of the manner in which the income and proceeds were allocated between the mental health trust land proceeds fund and the mental health trust income account; and

(3) [(5) SHALL] contract with the Alaska Permanent Fund Corporation for management of the mental health trust fund [TRUST'S CASH ASSETS, UNLESS THE AUTHORITY FINDS THAT THE BEST INTERESTS OF TRUST BENEFICIARIES WOULD BE SERVED BY CONTRACTING WITH ANOTHER ENTITY].

* **Sec. 10.** AS 37.14 is amended by adding a new section to read:

Sec. 37.14.013. MENTAL HEALTH TRUST INCOME AND PROCEEDS ACCOUNT. (a) The mental health trust income and proceeds account is established as a separate account in the general fund.

(b) The mental health trust income and proceeds account consists of

(1) the net income and net proceeds received by the state from the use, sale, or other disposal of the state land designated as mental health trust land; and

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

* **Sec. 11.** AS 37.14 is amended by adding a new section to read:

Sec. 37.14.023. UTILIZATION OF THE MENTAL HEALTH TRUST INCOME AND PROCEEDS ACCOUNT. (a) Money in the mental health trust income and proceeds account established in AS 37.14.013(a) shall first be appropriated by the legislature to pay the necessary expenses of the mental health program of the

state. In making annual appropriations from the mental health trust income and proceeds account, the legislature shall consider the recommendations of the Alaska Mental Health Board established under AS 47.30.661.

(b) After appropriations have been made to pay the necessary expenses of the mental health program of the state, the legislature may authorize the transfer of the unobligated and unappropriated fiscal year-end balance in the mental health trust income and proceeds account as of June 30 to the unrestricted portion of the general fund for use for other public purposes.

* **Sec. 12.** AS 37.14.031, added by sec. 11, ch. 66, SLA 1991, is amended to read:

Sec. 37.14.031. TRUST FUND ESTABLISHED. (a) The mental health trust fund is established as a separate fund **of the Alaska Mental Health Trust Authority** [WITHIN THE STATE TREASURY].

(b) The fund consists of the cash assets of the principal of the trust, **and includes**

(1) money appropriated to the fund;

(2) the proceeds of sale or other disposals of mental health trust land, and the fees, charges, income earned, royalty proceeds, and other money received from the management of mental health trust land attributable to principal; and

(3) gifts, bequests, and contributions from other sources.

* **Sec. 13.** AS 37.14.031, added by sec. 11, ch. 66, SLA 1991, is amended by adding new subsections to read:

(c) The net income of the fund shall be determined by the Alaska Permanent Fund Corporation in the same manner the corporation determines the net income of the Alaska permanent fund under AS 37.13.140.

(d) The provisions of AS 13.38 apply to determine amounts attributable to the principal under (b)(2) of this section.

* **Sec. 14.** AS 37.14 is amended by adding new sections to read:

Sec. 37.14.033. MANAGEMENT OF TRUST FUND. The mental health trust fund shall be managed by the Alaska Permanent Fund Corporation under AS 37.13.300.

Sec. 37.14.035. TRUST FUND UTILIZATION. (a) The cash principal of the mental health trust fund shall be retained perpetually in the fund for investment by the Alaska Permanent Fund Corporation, as specified in AS 37.13.300.

(b) The net income of the fund shall be transferred by the corporation to the mental health trust income account at the end of each fiscal year.

(c) The net income of the fund may only be utilized by the Alaska Mental Health Trust Authority for the purposes listed in AS 37.14.041.

* **Sec. 15.** AS 37.14.036(a), added by sec. 11, ch. 66, SLA 1991, is amended to read:

(a) The mental health trust income account is established as a separate account **of the Alaska Mental Health Trust Authority** [WITHIN THE GENERAL FUND OF THE STATE]. The mental health trust income account consists of

(1) fees, charges, income earned on assets, and other money received by the trust that is not attributable to the principal of the trust **under AS 37.14.031(d); and**

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

(3) THE AMOUNTS ALLOCATED TO IT UNDER (c) OF THIS SECTION].

* **Sec. 16.** AS 37.14 is amended by adding new sections to read:

Sec. 37.14.039. TRUST INCOME ACCOUNT ADMINISTRATION. (a) The mental health trust income account shall be administered by the Alaska Mental Health Trust Authority.

(b) If the authority determines that there is a surplus of money in the account above the amount sufficient to meet current and projected cash expenditure needs of the authority, the surplus shall be invested by the authority as provided in AS 37.10.071 for the making of investments by the fiduciary of a state fund. Income earned on investments made under this subsection may be retained by the authority and expended under AS 37.14.041.

Sec. 37.14.041. USE OF TRUST INCOME ACCOUNT. (a) Money in the mental health trust income account may only be used for the following purposes:

(1) the awarding of grants and contracts in fulfillment of the authority's

purpose to ensure an integrated comprehensive mental health program for the state;

(2) obtaining private and federal grants for a purpose described in (1) of this subsection;

(3) soliciting gifts, bequests, and contributions for a purpose described in (1) of this subsection;

(4) reimbursement to

(A) the Alaska Permanent Fund Corporation for the costs of managing the principal of the mental health trust fund; and

(B) the Department of Natural Resources for the cost of managing mental health trust land;

(5) offsetting the effect of inflation on the value of the principal of the mental health trust fund; and

(6) meeting the administrative expenses of the authority.

(b) If money in the mental health trust income account is not needed to meet the necessary expenses of the state's integrated comprehensive mental health program, the authority shall transfer the money to the unrestricted general fund for expenditure through legislative appropriation for other public purposes.

Sec. 37.14.045. LIMITATION ON GRANTS AND CONTRACTS PAID FOR FROM MENTAL HEALTH TRUST INCOME ACCOUNT. (a) The authority may award grants and contracts that are paid for from money in the mental health trust income account only in furtherance of its purpose to ensure an integrated comprehensive mental health program.

(b) In awarding grants and contracts that are paid for from money in the mental health trust income account, the authority shall consider proposals only from applicants submitting a detailed proposal in the form prescribed by the authority.

(c) The authority may not award a grant or contract that is to be paid for from money in the mental health trust income account unless the authority makes written findings explaining that

(1) the grant or contract awarded will further the authority's purpose to ensure an integrated comprehensive mental health program;

(2) the applicant has submitted an adequate plan for project

implementation, including both financial feasibility and project effectiveness;

(3) the applicant has demonstrated that sufficient expertise is available to accomplish the objectives of the proposed program or project; and

(4) the applicant has identified operating, maintenance, and other costs associated with the project, including those ancillary to the project, and future obligations associated with the project.

(d) The authority may establish other requirements for the award of grants and contracts under this section to ensure an integrated comprehensive mental health program.

(e) The authority shall award grants and contracts that are paid for from money in the mental health trust income account in amounts that

(1) are appropriate to the conditions of the applicant and the proposed program or project; and

(2) will make the most effective use of the funds in the mental health trust income account that are available for expenditure.

* **Sec. 17.** AS 38.05 is amended by adding a new section to read:

Sec. 38.05.801. MANAGEMENT OF MENTAL HEALTH TRUST LAND. (a) Mental health trust land shall be managed consistent with the trust principles imposed on the state by the Alaska Mental Health Enabling Act, P.L. 84-830, 70 Stat. 709 (1956).

(b) Subject to (a) of this section, the department

(1) shall manage mental health trust land under those provisions of law applicable to other state land;

(2) may, with the approval of the Alaska Mental Health Trust Authority, exchange other state land for mental health trust land under the procedures set out in AS 38.50; and

(3) may correct errors or omissions in the legal descriptions of mental health trust land.

(c) The commissioner shall adopt regulations under AS 44.62 (Administrative Procedure Act) to implement this section. The regulations adopted under this subsection must, at a minimum, address

(1) maintenance of the trust land base;

(2) management for the benefit of the trust;

(3) management for long-term sustained yield of products from the land; and

(4) management for multiple use of trust land.

* **Sec. 18.** AS 39.25.120(c) is amended by adding a new paragraph to read:

(23) employees of the unit established under AS 44.37.050.

* **Sec. 19.** AS 44.37 is amended by adding a new section to read:

Sec. 44.37.050. DUTIES OF DEPARTMENT WITH RESPECT TO MANAGEMENT OF MENTAL HEALTH TRUST LAND. To carry out its duties under AS 38.05.801, the Department of Natural Resources shall establish a separate unit with responsibility for management of the mental health trust land.

* **Sec. 20.** AS 47.30.011(c), added by sec. 26, ch. 66, SLA 1991, is amended to read:

(c) The authority

(1) shall**, as provided in AS 37.13.009,** administer the trust established under the Alaska Mental Health Enabling Act of 1956;

(2) may sue and be sued;

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

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

(5) shall exercise the powers granted to it under AS 37.14.041, subject to the limitations imposed by AS 37.14.045.

* **Sec. 21.** AS 47.30.016(b), added by sec. 26, ch. 66, SLA 1991, is amended to read:

(b) The board consists of seven members appointed by the governor. The

members appointed under this subsection shall be appointed

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

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

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

(B) one person selected by the Governor's Council **on Disabilities and Special Education** [FOR THE HANDICAPPED AND GIFTED (AS 47.80.030)];

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

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

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

(F) one person selected by the authority.

* **Sec. 22.** AS 47.30.016(c), added by sec. 26, ch. 66, SLA 1991, is amended to read:

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

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

(2) within the preceding two years or during the member's term of office have an interest in, served on the governing board of, or been employed by an organization that has received, during that same period, money from the mental health trust income account under a **grant or** contract for services.

* **Sec. 23.** AS 47.30.036(1), added by sec. 26, ch. 66, SLA 1991, is amended to read:

(1) preserve and protect the trust corpus **under AS 37.13.009**;

* **Sec. 24.** AS 47.30.046(a), added by sec. 26, ch. 66, SLA 1991, is amended to read:

(a) The board shall annually, not later than September 15, submit to the governor and the Legislative Budget and Audit Committee a budget for the next fiscal year and a proposed plan of implementation based on the integrated comprehensive

mental health program plan prepared under AS 47.30.660(a)(1). The budget must include the authority's determination of the amount

(1) [RECOMMENDED FOR EXPENDITURE FROM THE MENTAL HEALTH TRUST INCOME ACCOUNT DURING THE NEXT FISCAL YEAR TO

(A) MEET THE ADMINISTRATIVE EXPENSES OF THE AUTHORITY;

(B) OFFSET THE EFFECT OF INFLATION ON THE VALUE OF THE TRUST CORPUS; AND

(C) MEET THE NECESSARY OPERATING AND CAPITAL EXPENSES OF THE INTEGRATED COMPREHENSIVE MENTAL HEALTH PROGRAM;

(2)] recommended for expenditure from the general fund [, IF ANY,] during the next fiscal year to meet the [NECESSARY] operating and capital expenses of the integrated comprehensive mental health program;

(2) [AND (3)] in the mental health trust income account, if any, that is not reasonably necessary to meet the projected operating and capital expenses of the integrated comprehensive mental health program that may be transferred into the general fund; **and**

(3) of the expenditures the authority intends to make under AS 37.14.041 and 37.14.045, including the specific purposes and amounts of any grants or contracts as part of the state's integrated comprehensive mental health program.

* **Sec. 25.** AS 47.30.056(a), added by sec. 26, ch. 66, SLA 1991, is amended to read:

(a) **The** [IF APPROPRIATED BY LAW, THE] money in the mental health trust income account established in AS 37.14.036 shall be used **as provided in AS 37.14.041, including** to

(1) provide an integrated comprehensive mental health program as required by this section;

(2) meet the authority's annual administrative expenses; and

(3) offset the effect of inflation on the **mental health trust fund** [CORPUS OF THE TRUST].

* **Sec. 26.** AS 47.30.470(9), added by sec. 27, ch. 66, SLA 1991, is amended to read:

(9) use money **awarded to the board by grant or contract** [APPROPRIATED] from the mental health trust income account established under AS 37.14.036 **and appropriated from the general fund** to provide the necessary services identified in (8) of this section and in accordance with AS 47.30.056.

* **Sec. 27.** AS 47.30.660(a)(3), added by sec. 36, ch. 66, SLA 1991, is amended to read:

(3) implement an integrated comprehensive system of care that**, within the limits of money appropriated for that purpose and using grants and contracts that are to be paid for from the mental health trust income account,** meets the service needs of the beneficiaries of the trust established under the Alaska Mental Health Enabling Act of 1956, as determined by the plan.

* **Sec. 28.** AS 47.30.910(d), as amended by sec. 41, ch. 66, SLA 1991, is further amended to read:

(d) All money paid by the patient or on the patient's behalf to the department under this section shall be deposited in the **general fund** [MENTAL HEALTH TRUST INCOME ACCOUNT ESTABLISHED IN AS 37.14.036].

* **Sec. 29.** Section 58, ch. 66, SLA 1991, is repealed and reenacted to read:

Sec. 58. (a) This Act takes effect only if, not later than December 15, 1994,

(1) the superior court of the State of Alaska has made a final determination that the state has satisfied its obligation to reconstitute the mental health trust under State v. Weiss, 706 P.2d 681 (Alaska 1985);

(2) the superior court has entered a final order dismissing Weiss v. State, 4FA-82-2208 Civil; and

(3) the time for appeals of that determination and that order has expired with no appeals having been taken.

(b) The attorney general shall advise the lieutenant governor and the revisor of statutes whether the determination required by (a)(1) of this section has been made, whether the final order required by (a)(2) of this section has been entered, and whether, as required by (a)(3) of this section, the time for appeals of that determination and that order has expired with no appeals having been taken as of that date.

* **Sec. 30.** Chapter 66, SLA 1991, is amended by adding a new section to read:

Sec. 59. If, under sec. 58 of this Act, this Act takes effect, it takes effect December 16, 1994.

* **Sec. 31.** AS 37.14.003(c), 37.14.009(b), 37.14.011, 37.14.021, 37.14.0[illegible](c); AS 38.05.800; AS 47.30.031(b)(2); secs. 1, 2, 4, and 5, ch. 132, SLA 1986; secs. 7 - 10, ch. 48, SLA 1987; and secs. 49, 50, and 54 - 57, ch. 66, SLA 1991, are repealed.

* **Sec. 32.** MENTAL HEALTH TRUST RECONSTITUTED. (a) For the purpose of reconstituting the mental health trust established under the Alaska Mental Health Enabling Act, P.L. 84-830, 70 Stat. 709 (1956), as required by the Alaska Supreme Court's decisio. in Weiss v. State, 706 P.2d 681 (Alaska 1985), the following land is designated as mental health trust land:

(1) the original mental health land listed in "Original Mental Health Land To Be Designated as Mental Health Trust Land, April 28, 1994," located in the office of the director of the division of lands, Department of Natural Resources, in Anchorage, Alaska; and

(2) the state land listed in "Other State Land To Be Designated as Mental Health Trust Land, April 28, 1994," located in the office of the director of the division of lands, Department of Natural Resources, in Anchorage, Alaska.

(b) All land designated as mental health trust land under this section remains subject to all encumbrances or interests of record, noted on records maintained by the Department of Natural Resources, or otherwise existing on the effective date of this section.

(c) To the extent the state's liability to the mental health trust for the fair market value of the land described in sec. 33 of this Act is not satisfied by the set-off for state mental health expenditures authorized by the Alaska Supreme Court in State v. Weiss, 706 P.2d 681 (Alaska 1985), the state land described in (a)(2) of this section, the other compensation made by this Act, and appropriations from the general fund for the state's integrated comprehensive mental health program compensates the trust

(1) first, for land conveyed or made subject to a contract for conveyance by the Department of Natural Resources to third parties that are not state agencies or political subdivisions of the state;

(2) second, for land conveyed by the Department of Natural Resources to municipalities; and

(3) third, for the other land described in sec. 33 of this Act.

* **Sec. 33.** CONFIRMATION AND RATIFICATION OF CONVERSION OF CERTAIN ORIGINAL MENTAL HEALTH LAND TO GENERAL GRANT LAND, CONTINGENT CONVERSION OF CERTAIN ORIGINAL MENTAL HEALTH LAND TO GENERAL GRANT LAND, AND CONFIRMATION AND RATIFICATION OF ACTIONS TAKEN WITH RESPECT TO CONVERTED LAND. (a) Except for the land described in sec. 32 of this Act,

(1) the conversion to general grant land by sec. 3(a), ch. 181, SLA 1978, and sec. 1(a), ch. 182, SLA 1978, of all land obtained by the state under the Alaska Mental Health Enabling Act, P.L. 84-830, 70 Stat. 709 (1956), and not listed in "Original Mental Health Land To Be Designated as Mental Health Trust Land, April 28, 1994," located in the office of the director of the division of lands, Department of Natural Resources, in Anchorage, Alaska, is confirmed and ratified; and

(2) land patented to or approved for patent to the state under the Alaska Mental Health Enabling Act after July 1, 1978, and not listed in "Original Mental Health Land To Be Designated as Mental Health Trust Land, April 28, 1994," located in the office of the director of the division of lands, Department of Natural Resources, in Anchorage, Alaska, is redesignated as general grant land if it was not converted to general grant land by sec. 3(a), ch. 181, SLA 1978, and sec. 1(a), ch. 182, SLA 1978.

(b) The land affected by this section includes the land listed in "Original Mental Health Land Not To Be Returned to Mental Health Trust Status, April 28, 1994," located in the office of the director of the division of lands, Department of Natural Resources, in Anchorage, Alaska.

(c) All dispositions and uses of the land identified under (a) of this section, including without limitation the creation by the state or the transfer by the state of an interest in the land or the designation of the land as part of a state park, state forest, state game refuge, state wildlife refuge, state game sanctuary, state recreational area, state recreational river, state wilderness park, state marine park, state special management area, state public use area, critical habitat area, bald eagle preserve, bison range, or moose range are confirmed and ratified.

* **Sec. 34.** STATE MENTAL HEALTH EXPENDITURES TO BE SET-OFF AGAINST STATE MONETARY LIABILITY FOR ORIGINAL MENTAL HEALTH LAND NOT

RETURNED TO TRUST STATUS. To the extent the state is liable to the mental health trust for the fair market value of any original mental health land not returned to trust status under sec. 32(a)(1) of this Act, after taking into account the fair market value of the state land designated as mental health trust land under sec. 32(a)(2) of this Act, the set-off against that liability for state mental health expenditures since 1978 to which the state is entitled under State v. Weiss, 706 P.2d 681 (Alaska 1985), totals $1,300,000,000.

*** Sec. 35.** TRANSITIONAL PROVISIONS; DEVELOPMENT OF MENTAL HEALTH TRUST INCOME ACCOUNT MECHANISM. Not later than January 1, 1996, the Board of Trustees of the Alaska Mental Health Trust Authority, after consulting with organizations and persons affected by this Act, shall

(1) consistent with AS 47.30.056(h), added by sec. 26, ch. 66, SLA 1991, adopt regulations regarding persons who are to receive services funded by money in the mental health trust income account under AS 37.14.036, as added by sec. 11, ch. 66, SLA 1991, and amended by secs. 15 and 31 of this Act;

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

(3) consistent with AS 47.30.056(j), added by sec. 26, ch. 66, SLA 1991, adopt regulations regarding the services and facilities upon which expenditures are to be made from money in the mental health trust income account under AS 37.14.036, added by sec. 11, ch. 66, SLA 1991, and amended by secs. 15 and 31 of this Act; and

(4) publish its findings and projections regarding the necessary expenditure of money from the mental health trust income account under AS 37.14.036, as added by sec. 11, ch. 66, SLA 1991, and amended by secs. 15 and 31 of this Act.

*** Sec. 36.** ADDITIONAL COMPENSATION TO MENTAL HEALTH TRUST. (a) To the extent the state has any additional monetary liability to the mental health trust for original mental health land not returned to trust status under sec. 32(a)(1) of this Act after taking into account the fair market value of the other state land under sec. 32(a)(2) of this Act and the set-off for state mental health expenditures under sec. 34 of this Act, the commissioner of revenue shall allocate sufficient unrestricted state general funds to the mental health trust income and proceeds account (AS 37.14.013), established by sec. 10 of this Act, to satisfy that liability. The money so allocated is additional compensation to the mental health trust for the

original mental health land not returned to trust status under sec. 32(a)(1) of this Act. An allocation under this subsection may not exceed $100,000,000 during any one state fiscal year.

(b) After appropriations from the mental health trust income and proceeds account have been made to pay for the state's mental health program, the legislature may

(1) transfer to the general fund an amount equal to the remaining unrestricted state general funds allocated by the commissioner of revenue to the mental health trust income and proceeds account under (a) of this section; and

(2) appropriate any part or all of the amount transferred under (1) of this subsection for other public purposes.

* **Sec. 37.** REPLACEMENT LAND OF MUNICIPALITIES. A municipality may obtain replacement land under AS 29.65.060(h), added by sec. 2 of this Act, for land that had been conveyed by the state to the municipality only if the land is on the list of "Original Mental Health Land To Be Designated as Mental Health Trust Land, April 28, 1994," or on the list of "Other State Land To Be Designated as Mental Health Trust Land, April 28, 1994," both of which are located in the office of the director of the division of lands, Department of Natural Resources, in Anchorage, Alaska.

* **Sec. 38.** If the conditions of sec. 58, ch. 66, SLA 1991, as amended by sec. 29 of this Act, are not met on or before December 15, 1994, then ch. 66, SLA 1991, is repealed and secs. 3 - 9, 12 - 16, 20 - 28, and 35 of this Act do not take effect.

* **Sec. 39.** If the conditions of sec. 58, ch. 66, SLA 1991, as amended by sec. 29 of this Act, are met on or before December 15, 1994, then AS 37.14.013, added by sec. 10 of this Act, AS 37.14.023, added by sec. 11 of this Act, and sec. 36 of this Act are repealed.

* **Sec. 40.** Subject to sec. 38 of this Act, secs. 3 - 9, 12 - 16, 20 - 28, and 35 of this Act take effect December 16, 1994.

* **Sec. 41.** Sections 38 and 39 of this Act take effect December 16, 1994.

* **Sec. 42.** Sections 1, 2, 10, 11, 17 - 19, 29 - 34, 36, and 37 of this Act take effect immediately under AS 01.10.070(c).

Attachment #1

Alaska State Legislature

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House of Representatives

Committee on Finance
State Capitol, Juneau, Alaska 99801-1182

MEMORANDUM

TO: To All Members of the Alaska State Legislature

FROM: Representative Ron Larson, Co-Chair
House Finance Committee

DATE: April 28, 1994

RE: **Mental Health Trust Lands Settlement**

Attached for your information, will find the most recent workdraft of a proposed CS for House Bill ~~310~~ 321 (FIN). Also attached is a two page summary of the major features of this proposed Committee Substitute. This legislation has been a joint effort of the Departments of Law and Natural Resources, working closely with the Mental Health Alliances, Development Interests, Environmental Groups and Municipalities.

This is the proposed CS that will be put before the House Finance Committee at a meeting planned for Friday.

CSSB 201 (FIN)

* The bill has three components: (1) it reconstitutes the mental health trust as required by the Alaska Supreme Court in a way that protects private third parties' and municipalities' title to mental health land conveyed to them, mental health land leased for resource development, mental health land in state parks and wildlife refuges, and mental health land used by state agencies, and (2) as an incentive to the mental health community for early dismissal of the litigation, it provides that the beneficiaries of the mental health trust will receive a number of benefits if the case is dismissed and the time for appeal expires by December 15, 1994

Koester.

The reconstitution component

* The bill includes several findings as to the history of the Weiss litigation, the state's obligations and management options under the 1956 federal Alaska Mental Health Enabling Act, the legislature's power under the Alaska Constitution to remove land from trust status if the trust is compensated for the fair market value of the land, and how this bill serves the interests of both the beneficiaries of the mental health trust and the public

* It reconstitutes the mental health trust, as required by the Alaska Supreme Court, with some original mental health land

* For original mental health land not returned to the trust, it compensates the trust in three ways

  - Some other state land is designated as trust land

  - Past state mental health expenditures of $1.3 billion are claimed as a set-off against state monetary liability for the fair market value of the land not returned, as authorized by the Alaska Supreme Court

  - Future state mental health expenditures are claimed as an additional set-off against state monetary liability

* Reconstituted mental health trust land will be managed by the Department of Natural Resources consistent with the state's trust obligation under the Enabling Act and, to the extent consistent with the Enabling Act, other state laws governing state land management -- i.e., the land must be managed as the Enabling Act requires but other public interests may be taken into account and accommodated to the extent the Enabling Act permits

* Municipalities returning land to the state for transfer to the trust will have two years to select other municipal entitlement land

CSSB 201 (FIN)

* The bill has three components: (1) it reconstitutes the mental health trust as required by the Alaska Supreme Court in a way that protects private third parties' and municipalities' title to mental health land conveyed to them, mental health land leased for resource development, mental health land in state parks and wildlife refuges, and mental health land used by state agencies, and (2) as an incentive to the mental health community for early dismissal of the litigation, it provides that the beneficiaries of the mental health trust will receive a number of benefits if the case is dismissed and the time for appeal expires by December 15, 1994

Koester

The reconstitution component

* The bill includes several findings as to the history of the Weiss litigation, the state's obligations and management options under the 1956 federal Alaska Mental Health Enabling Act, the legislature's power under the Alaska Constitution to remove land from trust status if the trust is compensated for the fair market value of the land, and how this bill serves the interests of both the beneficiaries of the mental health trust and the public

* It reconstitutes the mental health trust, as required by the Alaska Supreme Court, with some original mental health land

* For original mental health land not returned to the trust, it compensates the trust in three ways

  - Some other state land is designated as trust land

  - Past state mental health expenditures of $1.2 billion are claimed as a set-off against state monetary liability for the fair market value of the land not returned, as authorized by the Alaska Supreme Court

  - Future state mental health expenditures are claimed as an additional set-off against state monetary liability

* Reconstituted mental health trust land will be managed by the Department of Natural Resources consistent with the state's trust obligation under the Enabling Act and, to the extent consistent with the Enabling Act, other state laws governing state land management -- i.e., the land must be managed as the Enabling Act requires but other public interests may be taken into account and accommodated to the extent the Enabling Act permits

* Municipalities returning land to the state for transfer to the trust will have two years to select other municipal entitlement land

* The current allocation of six percent of the unrestricted general fund to the mental health trust income account is repealed

The incentive component:

* If the litigation is dismissed and the time for appeals expires with no appeals filed before December 15, 1994, the mental health community receives several benefits

* The mental health trust authority is established largely as provided in chapter 66, SLA 1991, to oversee, coordinate, and make important decisions regarding the funding of the state's mental health program

* The authority makes recommendations regarding amounts of state general funds needed for the state's mental health program; after considering the recommendations, the governor prepares and the legislature passes a separate appropriation bill for the program; any differences between the bill and the authority's recommendations must be explained in an accompanying report

* The mental health trust fund from chapter 66 is established, to consist of a $200 million up-front appropriation and trust land revenues attributable to the principal of the trust; the fund will be preserved in perpetuity and managed by the Alaska Permanent Fund Corporation to generate income

* The mental health trust income account from chapter 66 is established, to consist of the income from the mental health trust fund and the revenues from trust land not attributable to the principal of the trust (leases, etc.); the authority will use the money in the income account for grants and contracts to implement the state's mental health program

* The chapter 66 provisions that improve the state's mental health program become effective

4/29/94 #4

Failed

ADMINISTRATION AMENDMENT #2 adopted / rescind / as amended

TO 4/27/94 "V" WORK DRAFT FOR CSSB 201 (FIN)

Page 17, line 19, after "needed;":

Insert "following such a determination by the board, the contract for professional services with the independent counsel is subject to approval by the attorney general in accordance with AS 36.30.015(d)"

ADMINISTRATION AMENDMENT #3

TO 4/27/94 "V" WORK DRAFT FOR CSSB 201 (FIN)

adopted
NO OBJ

Page 23, line 6:

Change "$1,300,000,000" to "$1,320,000,000"

4/29/94 #3

- 2029

(1) adopted NO OBJ

UNOPPOSED AMENDMENTS

TO 4/27/94 "V" WORK DRAFT FOR CSSB 201 (FIN)

Page 7, line 9

Delete "mental health"

Page 12, line 9:

Delete "**and**"

Page 12, line 12:

Delete "**land proceeds**"

After "**account;**" add:

and

(E) obtain the approval of the authority before exchanging mental health trust land under AS 38.05.801(b)(2);

Page 16, lines 24-25, after "may":

Delete ", with the approval of the Alaska Mental Health Trust Authority,"

Page 17, line 15:

Change "**AS 37.13.009**" to "**AS 37.14.009**"

Page 21, line 3:

Delete "AS 37.14.003(c)"

Page 21, line 25, after "program":

Change "compensates" to "compensate"

Page 24, line 22, after the second "Act,":

Insert "AS 47.30.546,"

8-LS0728\O.3
Chenoweth
4/20/93

AMENDMENT

OFFERED IN THE HOUSE

TO: CSHB 201(RES)

Page 1, line 3, after "trust":

Insert ", and the provisions of that Act and the Executive Budget Act that relate to the preparation of a program budget and the making of appropriations to implement the integrated comprehensive mental health program; amending the description of the duties of the board of directors of the Alaska Mental Health Trust Authority as they relate to preparation of an annual program budget; amending ch. 66, SLA 1991, to clarify the obligations of the state to trust beneficiaries;"

Page 1, following line 11:

Insert new bill sections to read:

"* Sec. 2. AS 37.07.020(a) is amended to read:

(a) The governor shall prepare and submit to the legislature before the fourth legislative day a budget for the succeeding fiscal year which must cover all estimated receipts, including all grants, loans, and money received from the federal government, and all proposed expenditures of the state government. Except as provided in (e) of this section, the [THE] budget submitted by the governor shall be organized so that the proposed expenditures for each agency are presented separately. The budget must be accompanied by a general appropriation bill to authorize the proposed expenditures, and a bill or bills covering recommendations in the budget for new or additional revenue. The proposed general appropriation bill shall become public information on December 15 of each year at which time the governor shall submit copies to the legislature and make copies available to the public.

* Sec. 3. AS 37.07.020 is amended by adding a new subsection to read:

(e) The governor shall prepare and submit the proposed budget based on the integrated comprehensive mental health program plan prepared under

AS 47.30.660(a)(1) as a program budget. The program budget prepared under this subsection shall propose expenditures to groups of activities designed to accomplish the mental health program plan goals regardless of which agency, division, or recipient administers the programs or activities.

* Sec. 4. AS 37.07.060(b) is amended to read:

(b) The governor shall present the proposed comprehensive operating and capital improvements programs and financial plans in a message to a joint session of the legislature before the fourth legislative day following the convening of the legislature in regular session. The message must be accompanied by an explanatory report that summarizes recommended goals, plans, and appropriations. The report must contain

(1) the coordinated program goals and objectives that [WHICH] the governor recommends to guide the decisions on the proposed program plans and budget appropriations;

(2) the governor's operating program and budget recommendations for the succeeding fiscal year

(A) organized by agency when [AS] required by AS 37.07.020(a); and

(B) organized as a program budget when required by AS 37.07.020(e);

(3) the governor's capital improvements program and budget recommendations for the succeeding fiscal year and capital improvements program for the succeeding six fiscal years that [WHICH] must include

(A) a description of each project, its estimated cost for the year construction is to start and the estimated cost of the project adjusted for inflation over the estimated period of construction, and the source of financing for the project; the project description for a new building or a new facility or for a major addition to a building or facility should include a site plan, preliminary drawings, and architect's or engineer's total cost estimate for the project;

(B) a summary of projects previously authorized and not yet completed;

(C) a summary, listed by agency, of all previously proposed projects that have been deferred beyond the six years covered by the plan and the year in which construction has been rescheduled to begin;

(D) a forecast of the debt structure of the state and the various debt ratios over the life of the state's bonds outstanding, bonds authorized and to be issued, and bond authorizations recommended in the plan;

(E) a description of additional revenue measures needed to finance the plan in lieu of debt;

(F) bond election bills to authorize the bonds required to fund the projects scheduled for the first three years of the plan;

(G) projections of population of the state and its regions and communities;

(H) economic data and projections necessary for the evaluation of the plan;

(4) a summary of state receipts in the last fiscal year, a revised estimate for the current fiscal year, and an estimate for the succeeding fiscal year;

(5) a summary of expenditures during the last fiscal year, those authorized for the current fiscal year, and an estimate for the succeeding fiscal year;

(6) any additional information that will facilitate understanding of the governor's proposed programs and financial plans by the legislature and the public.

* Sec. 5. AS 37.14.003, as added by sec. 10, ch. 66, SLA 1991, is amended to read:

Sec. 37.14.003. RESPONSIBILITIES OF THE GOVERNOR. (a) In reviewing appropriations from the mental health trust income account proposed by the authority **in the authority's proposed program budget submitted under AS 47.30.046(a)**, the governor shall consider the needs of the beneficiaries of the trust [WITHOUT REGARD TO OTHER POTENTIAL OBJECTS OF STATE EXPENDITURE]. The governor shall, by December 15 of each year, submit to the legislature **an** [A SEPARATE] appropriation bill **containing proposed** [LIMITED TO] appropriations from the mental health trust income account.

(b) If

(1) the appropriations in the bill submitted by the governor under (a) of this section differ from those proposed by the authority, the bill must contain

findings explaining the reasons for the differences and providing the basis for determining that the proposed appropriations meet the needs of the beneficiaries of the trust;

(2) [. IF] the governor proposes to increase the amount of money to be transferred from the mental health trust income account to the unrestricted general fund over the authority's recommendation made under AS 47.30.046(a)(3), the bill must contain findings supporting the determination [THAT THE ADDITIONAL MONEY IS NOT REASONABLY NECESSARY TO MEET THE PROJECTED OPERATING AND CAPITAL EXPENSES OF THE INTEGRATED COMPREHENSIVE MENTAL HEALTH PROGRAM TO BE FINANCED FROM THE TRUST].

(c) In reviewing the appropriations of money from the mental health trust income account for possible veto, the governor shall consider only the needs of the beneficiaries of the trust [WITHOUT REGARD TO OTHER POTENTIAL OBJECTS OF STATE EXPENDITURES]. If the governor vetoes all or a part of an appropriation of money from the mental health trust income account, the governor's veto message must include the reasons the governor believes the remaining appropriations meet the needs of the beneficiaries of the trust.

* Sec. 6. AS 37.14.005, as added by sec. 10, ch. 66, SLA 1991, is amended to read:

Sec. 37.14.005. RESPONSIBILITIES OF THE LEGISLATURE. (a) The legislature shall annually pass and transmit to the governor a bill making appropriations of money from the mental health trust income account [NO LATER THAN THE 75TH DAY OF THE REGULAR SESSION].

(b) Before taking action on appropriations from the mental health trust income account proposed by the governor, the legislature shall first consider the needs of the beneficiaries of the trust [WITHOUT REGARD TO OTHER POTENTIAL OBJECTS OF STATE EXPENDITURE. THE LEGISLATURE SHALL MAKE APPROPRIATIONS FROM THE MENTAL HEALTH TRUST INCOME ACCOUNT IN A SEPARATE APPROPRIATION BILL LIMITED TO APPROPRIATIONS FROM THE MENTAL HEALTH TRUST INCOME ACCOUNT].

(c) If

(1) the appropriations in the bill passed by the legislature differ from

those proposed by the authority **in the authority's proposed program budget submitted under AS 47.30.046(a)**, the bill must contain findings explaining the reasons for the differences and providing the basis for determining that the appropriations meet the needs of the beneficiaries of the trust;

(2) [. IF] the legislature increases the amount of money to be transferred from the trust to the general fund over the authority's recommendation made under AS 47.30.046(a)(3), the bill must contain findings supporting the determination [THAT THE ADDITIONAL MONEY IS NOT REASONABLY NECESSARY TO MEET THE PROJECTED OPERATING AND CAPITAL EXPENSES OF THE INTEGRATED COMPREHENSIVE MENTAL HEALTH PROGRAM TO BE FINANCED FROM THE TRUST]."

Renumber the following bill sections accordingly.

Page 2, line 24, after "Corporation":

Insert "**or with the division of treasury, Department of Revenue.**"

Page 2, lines 25 - 26:

Delete "unless the authority finds that the best interests of trust beneficiaries would be served by contracting with another entity"

Insert "[UNLESS THE AUTHORITY FINDS THAT THE BEST INTERESTS OF TRUST BENEFICIARIES WOULD BE SERVED BY CONTRACTING WITH ANOTHER ENTITY]"

Page 3, following line 22:

Insert a new bill section to read:

"* **Sec. 10.** AS 37.14.031, added by sec. 11, ch. 66, SLA 1991, is amended to read:

Sec. 37.14.031. TRUST FUND ESTABLISHED. The mental health trust fund is established as a separate fund [WITHIN THE STATE TREASURY]. The fund consists of the cash assets of the principal of the trust. **The mental health trust fund is established, as the board of directors of the Alaska Mental Health Trust Authority may determine,**

(1) within the state treasury; or

(2) within the Alaska Permanent Fund Corporation."

Renumber the following bill sections accordingly.

Page 9, line 12:

Delete "AS 47.30.046(a)"

Insert "AS 47.30.046"

Page 9, line 13, before "(a)":

Insert "Sec. 47.30.046. BUDGET RECOMMENDATIONS; REPORTS."

Page 9, line 16, after "budget":

Insert "prepared and submitted under this subsection shall be presented as a complete and comprehensive program budget sufficient to meet the requirements of AS 37.07.020(e), and"

Page 10, following line 3:

Insert a new subsection to read:

"(b) When the authority submits its proposed program budget under (a) of this section, the authority shall also provide a report to the Legislative Budget and Audit Committee, the governor, the Office of Management and Budget, the commissioner of health and social services, and all entities providing services with money in the mental health trust income account, and shall make it available to the public. The report must describe at least the following:

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

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

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

(4) the authority's budget recommendations submitted under (a) of this

section, and its reasons for making those recommendations;

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

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

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

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

Page 10, following line 13:

Insert a new bill section to read:

"* Sec. 18. Section 1, ch. 66, SLA 1991, is amended by adding a new subsection to read:

(c) Nothing in this Act is intended to change any obligation the state may have to provide for the health and welfare of the beneficiaries of the trust from the state's general fund."

Renumber the following bill sections accordingly.

Page 11, line 4:

Delete "sec. 8"

Insert "sec. 14"

8-LS0728\O.4
Chenoweth
4/20/93

AMENDMENT

OFFERED IN THE HOUSE

TO: CSHB 201(RES)

Page 11, following line 4:

Insert a new bill section to read:

"* Sec. 17. ALASKA MENTAL HEALTH TRUST AUTHORITY'S FIRST RECOMMENDATIONS FOR EXPENDITURES FROM THE MENTAL HEALTH TRUST INCOME ACCOUNT. (a) In making its first recommendations for expenditures from the mental health trust income account under AS 47.30.046(a)(1), the Alaska Mental Health Trust Authority shall consider the appropriations from the mental health trust income account that are in effect on the effective date of ch. 66, SLA 1991.

(b) If the initial recommendations made by the Alaska Mental Health Trust Authority differ from the appropriations from the mental health trust income account that are in effect on the effective date of ch. 66, SLA 1991, the Authority shall include findings in the recommendations explaining the reasons for the differences."

Renumber the following bill sections accordingly.

AMENDMENT 3

BY: Rep. Brown

If, on or before November 30, 1994, the Governor determines that it is in the best interest of the beneficiaries of the mental health trust and the state that the December 15, 1994 deadline be extended, the Governor at that time may extend the December 15, 1994 deadline for not more than forty-five days.

8-LS0728\B.1
Chenoweth
4/29/91

AMENDMENT 4

OFFERED IN THE HOUSE

TO: CSHB 201(FIN)

Page 1, line 2, after "Civil":

Insert ", **and amending and repealing other laws relating to mental health institutions, programs, and services that are affected by ch. 66, SLA 1991**"

Page 17, following line 8:

Insert new bill sections to read:

"* **Sec. 19.** AS 44.21.230(a), as amended by sec. 15, ch. 66, SLA 1991, is amended to read:

(a) The commission shall

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

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

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

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

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

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

(7) administer, with the approval of the commissioner of

administration, federal programs as provided under 42 U.S.C. 3001 - 3045i (Older Americans Act), as amended;

(8) administer, with the approval of the commissioner of administration, state programs as provided under AS 47.65;

(9) give assistance, on request, to the senior housing office in the Alaska Housing Finance Corporation in administration of the senior housing loan program under AS 18.56.710 - 18.56.799 and in the performance of the office's other duties under AS 18.56.700; and

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

*** Sec. 20** AS 44.21.230 is amended by adding a new subsection to read:

(d) When the commission formulates a comprehensive statewide plan under (a) of this section, it shall include within the plan specific reference to the concerns and needs of older Alaskans who have a disorder described in AS 47.30.056(b)(4).

*** Sec. 21.** AS 44.29.140(c), as added by sec. 25, ch. 66, SLA 1991, is amended to read:

(c) The board shall prepare and maintain a comprehensive plan of services

(1) for the prevention and treatment of alcohol, drug, and other substance abuse; **and**

(2) for persons described in AS 47.30.056(b)(3)."

Renumber the following bill sections accordingly.

Page 20, lines 7 - 12:

Delete all material and insert:

"*** Sec. 30.** AS 47.30.520, as amended by sec. 28, ch. 66, SLA 1991, is amended to read:

Sec. 47.30.520. LEGISLATIVE PURPOSE. It is the purpose of the Community Mental Health Services Act to

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

(2) assist communities in planning, organizing, and financing community mental health services through locally developed, administered, and controlled community mental health programs;

(3) better develop and use resources at both state and local levels;

(4) develop and implement plans for comprehensive mental health services based on demonstrated need on a regional basis;

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

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

(7) ensure that consumers, families, and representatives of communities within mental health planning regions can participate in **planning for,** determining the need for, and **allocating** [THE ALLOCATION OF] mental health resources;

(8) provide a means of allocating money available for state mental health services according to community needs;

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

(10) prevent unnecessary duplication and fragmentation of services and expenditures.

* **Sec. 31.** AS 47.30.530(a) is amended to read:

(a) The department shall administer the provisions of AS 47.30.520 - 47.30.620 and shall

(1) define and develop standards for various levels and qualities of mental health care;

(2) provide fiscal and professional technical assistance in planning, organizing, developing, implementing, and administering local mental health services;

(3) develop budgets and receive and distribute state appropriations and funds in accordance with the provisions of AS 47.30.520 - 47.30.620;

(4) establish standards of education and experience for professional, technical, and administrative personnel employed in community mental health services;

(5) assist the community in establishing the organization and operation of community mental health services;

(6) develop a standardized system for measuring and reporting to the department the types, quantities, and quality of services; and develop a cost accounting system that will demonstrate the cost of various levels and qualities of care;

(7) provide each local community planning and services delivery entity with statistics, reports, and other data relevant to development of indices indicating the need for mental health services, or relevant to evaluating the effectiveness of existing services;

(8) review each local community plan and require each plan to include

(A) an affirmative showing that the most effective and economic use will be made of all available public and private resources in the community including careful consideration of the most effective and economic alternative forms and patterns of services;

(B) a five-year projection of needs, services, and resources; and

(C) adequate provisions for review and evaluation of services provided in the local community;

(9) adopt regulations and establish priorities, after consultation with local communities affected and in conjunction with **the Alaska Mental Health Board** [A STATE MENTAL HEALTH ADVISORY COUNCIL], that are necessary to carry out the purposes of AS 47.30.520 - 47.30.620.

* **Sec. 32.** AS 47.30.550 is amended by adding a new subsection to read:

(e) In (a) and (b) of this section, "poverty area" means a census district in which at least 15 percent of the population, based upon the most recent census date, falls under 125 percent of the United States Department of Health and Human Services' Poverty Income Guidelines for Alaska, as reported in the Federal Register.

* **Sec. 33.** AS 47.30.660, as amended by sec. 36, ch. 66, SLA 1991, and by sec. 2, ch. 109, SLA 1992, is amended to read:

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

(1) prepare, and periodically revise and amend, a plan for an integrated comprehensive mental health program**, as that term is defined by AS 47.30.056(i)**; the preparation of the plan and any revision or amendment of it shall

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

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

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

(3) implement an integrated comprehensive system of care that, **within the limits of money appropriated for that purpose and using grants and contracts that are to be paid for from the mental health trust income account,** meets the service needs of the beneficiaries of the trust established under the Alaska Mental Health Enabling Act of 1956, as determined by the plan.

(b) The department, in fulfilling its duties under this section and through its division of mental health and developmental disabilities, shall

(1) administer a comprehensive program of services for persons with mental disorders, for the prevention of mental illness, and for the care and treatment of persons with mental disorders, including inpatient and outpatient care and treatment and the procurement of services of specialists or other persons on a contractual or other basis;

(2) take the actions and undertake the obligations that are necessary to participate in federal grants-in-aid programs and accept federal or other financial aid from whatever sources for the study, prevention, examination, care, and treatment of persons with mental disorders;

(3) administer AS 47.30.660 - 47.30.915;

(4) designate, operate, and maintain treatment facilities equipped and qualified to provide inpatient and outpatient care and treatment for persons with mental disorders;

(5) provide for the placement of patients with mental disorders in designated treatment facilities;

(6) enter into arrangements with governmental agencies for the care or treatment of persons with mental disorders in facilities of the governmental agencies in the state or in another state;

(7) enter into contracts with treatment facilities for the custody and care or treatment of persons with mental disorders; contracts under this paragraph are governed by AS 36.30 (State Procurement Code);

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

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

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

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

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

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

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

(15) provide technical assistance and training to providers of mental health services; and

(16) set standards under which each designated treatment facility shall provide programs to meet patients' medical, psychological, social, vocational, educational, and recreational needs.

*** Sec. 34.** AS 47.30.662(a), as repealed and reenacted by sec. 37, ch. 66, SLA 1991, is amended to read:

(a) The board consists of not fewer than **12** [18] nor more than **16** [24] members appointed by the governor, with due regard for the demographics of the state and balanced geographic representation of the state. The membership and committees of the board shall fulfill the requirements of P.L. 99-660, as amended.

* Sec. 35. AS 47.30.666, as repealed and reenacted by sec. 39, ch. 66, SLA 1991, is amended to read:

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

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

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

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

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

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

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

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

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

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

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

Renumber the following bill sections accordingly.

Page 21, line 6, after "50":

Insert "53,"

Page 21, line 22:

Delete "sec. 33"

Insert "sec. 41"

Page 22, line 1:

Delete "sec. 33"

Insert "sec. 41"

Page 22, line 6:

Delete "sec. 32"

Insert "sec. 40"

Page 23, line 4:

Delete "sec. 32(a)(1)"

Insert "sec. 40(a)(1)"

Page 23, line 5:

Delete "sec. 30(a)(2)"

Insert "sec. 40(a)(2)"

Page 23, line 15:

Delete "and 31"

Insert "and 39"

Page 23, line 21:

Delete "and 31"

Insert "and 39"

Page 23, line 24:

Delete "and 31"

Insert "and 39"

Page 23, line 27:

Delete "sec. 32(a)(1)"

Insert "sec. 40(a)(1)"

Page 23, line 28:

Delete "sec. 32(a)(2)"

Insert "sec. 40(a)(2)"

Page 23, line 29:

Delete "sec. 34"

Insert "sec. 42"

Page 24, line 2:

Delete "sec. 32(a)(1)"

Insert "sec. 40(a)(1)"

Page 24, lines 18 - 29:

Delete all material and insert:

"* **Sec. 46.** TRANSITIONAL PROVISIONS: MEMBERS OF THE ALASKA MENTAL HEALTH BOARD. Notwithstanding AS 47.30.662, as amended by sec. 37, ch. 66, SLA 1991, and sec. 34 of this Act, the members of the Alaska Mental Health Board who are serving on the effective date of this section continue to serve their unexpired terms. Vacancies on the board occurring after the effective date of this section, and new positions created by this section, shall be filled by the governor under the provisions of AS 47.30.662, as amended by sec. 37, ch. 66, SLA 1991, and sec. 34 of this Act. When making appointments to new positions on the board, the governor shall ensure that the initial terms

of new members maintain the staggered term requirement of AS 47.30.663.

* **Sec. 47.** If the conditions of sec. 58, ch. 66, SLA 1991, as amended by sec. 37 of this Act, are not met on or before December 15, 1994, then ch. 66, SLA 1991, is repealed and secs. 3 - 9, 12 - 16, 19 - 21, 23 - 30, 33 - 36, 43, and 46 of this Act do not take effect.

* **Sec. 48.** If the conditions of sec. 58, ch. 66, SLA 1991, as amended by sec. 37 of this Act, are met on or before December 15, 1994, then AS 37.14.013, added by sec. 10 of this Act, AS 37.14.023, added by sec. 11 of this Act, AS 47.30.546, and sec. 44 of this Act are repealed.

* **Sec. 49.** Subject to sec. 47 of this Act, secs. 3 - 9, 12 - 16, 19 - 21, 23 - 30, 33 - 36, 43, and 46 of this Act take effect December 16, 1994.

* **Sec. 50.** Sections 47 and 48 of this Act take effect December 16, 1994.

* **Sec. 51.** Sections 1, 2, 10, 11, 17, 18, 22, 31, 32, 37 - 42, 44, and 45 of this Act take effect immediately under AS 01.10.070(c)."

5 ADOPTED

On page 20, line 26, after "taken" insert:

"or any appeals taken have been finally resolved and the order dismissing Weiss v. State, 4FA-82-2208 Civil, having been affirmed on appeal"

On page 20, line ~~26~~ 31, after "taken" insert:

[same amendment]

LETTER OF INTENT

for

Finance Committee Substitute for HB 201

It is the intent of the Legislature to finally resolve the mental health land trust litigation, Weiss v. State, 4FA-82-2208 Civil, by reconstituting a mental health trust under the Alaska Mental Health Enabling Act, P.L. 84-830, 70 Stat. 709 (1956), as required by the Alaska Supreme Court in State v. Weiss, 706 P.2d 681 (Alaska 1985). At the same time, it is the intent of the Legislature to do that (1) without prejudicing individual Alaskans, Native corporations, and municipalities to whom the state has conveyed land obtained under the Enabling Act, and (2) without removing land obtained under the Enabling Act from legislatively designated areas like parks and wildlife refuges and the control of state agencies to which it has been transferred or assigned.

To accomplish these varied and seemingly incompatible goals, the Legislature is exercising a number of the powers given to it by the Enabling Act and the Alaska Constitution. The purpose of this letter of intent is to identify some, but not necessarily all, of those powers, and to explain how the identified powers are being exercised to reconstitute the trust, to remove land from trust status and validate the actions taken with respect to that land, and to compensate the trust for the land removed from trust status.

Section 202(e) of the Enabling Act authorizes the Legislature to provide for management and use of the land. It also provides for the land to be "sold, leased, mortgaged, exchanged, or otherwise disposed of ... in order to obtain funds or other property to be invested, expended, or used" by the state for the purposes of the Act.

Article VIII, sec. 2 of the Alaska Constitution requires the Legislature "to provide for the utilization, development, and conservation of all natural resources belonging to the state, including land, for the maximum benefit of the people." The Alaska Supreme Court in State v. University, 624 P.2d 807 (Alaska 1981), held that art. VIII, sec. 2 authorizes the Legislature to remove land from trust status if the trust is fairly compensated for the land removed.

The Legislature intended to exercise that power in ch. 181 and 182, SLA 1978, but the Alaska Supreme Court held the 1978 legislation invalid in the Weiss decision. In Fairbanks North Star Borough v. State, 753 P.2d 1158 (Alaska 1988), however, the Alaska Supreme Court held that the Legislature may cure an earlier invalid act and validate actions taken under it, and noted that "[c]ourts have uniformly upheld the validity of curative legislation if (1) the Legislature originally had the power to authorize the acts

done, and (2) there is no constitutional impairment of vested rights as a result of the act's passage."

Under art. VIII, sec. 2 of the Alaska Constitution, there is no question that the Legislature has the power to remove land from the mental health trust, and under the Enabling Act there is no question that the compensation to the trust can be either money (under the authorization to sell) or land (under the authorization to exchange). The current legislation thus ratifies and confirms the 1978 removal from trust status of certain land obtained by the state under the Enabling Act, and compensates the trust with land that will be managed as the Enabling Act requires and money that will first be used for mental health programs as the Enabling Act requires.

In returning some land to trust status and providing for its management by the Department of Natural Resources consistently with the requirements of the Enabling Act and, to the extent they are consistent with the Enabling Act, the statutes governing management of other state land, the Legislature is (1) exercising its power under the Enabling Act to provide for the management and utilization of mental health trust land, (2) discharging its obligation under the Enabling Act to provide that the land is administered as "a public trust," and (3) exercising its power under art. VIII, sec. 2 of the Alaska Constitution to provide for the utilization, development, and conservation of state land for the maximum benefit of all Alaskans. The intent of the Legislature in doing so is to ensure that the land is administered as required by the Enabling Act and, to the extent permitted by the Enabling Act, that other public interests in the land are taken into consideration and accommodated.

In ratifying and confirming the 1978 removal from trust status of some land obtained by the state under the Enabling Act and validating the actions taken with respect to that land, the Legislature is exercising its powers (1) under the Enabling Act to sell, lease, mortgage, exchange, or otherwise dispose of the land, (2) under art. VIII, sec. 2 of the Alaska Constitution as interpreted by the Alaska Supreme Court in the University case to remove land from trust status, and (3) to enact curative legislation as described by the Alaska Supreme Court in the Fairbanks North Star Borough case.

To the extent it was not accomplished by the 1978 legislation and the ratification and confirmation of that legislation, in removing from trust status land obtained by the state under the Enabling Act since 1978, the Legislature is exercising its powers (1) under the Enabling Act to sell, lease, mortgage, exchange, or otherwise dispose of the land, and (2) under art. VIII, sec. 2 of the Alaska Constitution as interpreted by the Alaska Supreme Court in the University case to remove land from trust status.

In validating all actions with respect to the land removed from trust status, the Legislature is (1) exercising its power and discharging its responsibility under art. VIII, sec. 2 of the Alaska Constitution to provide for the utilization, development, and conservation of state land for the maximum benefit of all Alaskans, (2) exercising its power under the Enabling Act to provide for the sale, lease, exchange, or other disposal of the land, and (3) discharging its responsibility under the Enabling Act to act in a way that benefits the beneficiaries of the trust by bringing this controversy to an end and making it less likely that continuing the litigation will result in a backlash against the mental health community and make it increasingly difficult for its supporters, including those in the Legislature, to obtain appropriations of unrestricted state revenue to fund the state's mental health program.

The Legislature is aware that there has been a significant difference of opinion about the value of the original one million acre mental health land grant. In the Legislature's view, the values used in determining the amount of compensation the trust should receive for land removed from trust status -- values that in large part reflect the mental health plaintiffs' views -- are substantially higher than fair market value (i.e., the price a willing buyer would pay a willing seller), particularly with respect to the subsurface mineral estate.[1]

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[1] The Legislature is aware that the proposed settlement under chapter 48, SLA 1987, was not implemented primarily because of a dispute over the value of the mineral estate. The majority of the interim mental health trust commission, representing the Weiss plaintiffs, approved procedures that valued the mineral estate in 1987 at $1.51 billion. The Department of Natural Resources valued the mineral estate at $73.4 million. While not trying to determine which value is correct, the Legislature notes the following facts: (1) the $1.51 billion figure presumes that the dollar value of current annual mineral production from the one million acres of mental health land is $4.43 billion, but the total dollar value of all mineral production in Alaska in 1987 was $202 million and there was no significant mineral production from mental health land; (2) of six known major mineral deposits in Alaska (Greens Creek, Red Dog, Quartz Hill, Fort Knox, Arctic Camp, and Pebble Copper), only one is currently in production and it is running at a loss; (3) the income from the subsurface estate of trust land in fifteen other states where substantially greater infrastructure already exists and where much more detailed information about subsurface resources is known (including Texas where the Texas Railroad Commission administers a substantial amount of oil-rich land for the University of Texas' benefit) was $4.57 per acre per year in 1987, while the $1.51 billion value would require annual per acre earnings of $120.80; (4) until 1985, most mental health land was available for claim-staking -- the mineral rights were available

The state since 1978 has spent far more on the state's mental health program than the true fair market value of the land removed from trust status. Nonetheless, to eliminate any question about the fairness of the compensation provided, the Legislature has considered the very high values that the plaintiffs give to the land not returned to the trust. The plaintiffs' value for original mental health trust land not returned to the trust is between $900 million and $1.4 billion, roughly twice the value placed on that land by the Department of Natural Resources ("DNR"). The DNR value for the land is $656 million, of which $473 million is the value of the surface estate, $173 million is the value of the mineral estate not including oil and gas,[2] and $10 million is the plaintiffs' oil

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for free -- but very little mental health land was staked; (5) the procedures employed by the commission majority were heavily and persuasively criticized by numerous experts in the field -- including Dr. DeVerle P. Harris of the University of Arizona upon whose scholarly works those procedures were purportedly based, the University of Alaska's Institute for Social and Economic Research (ISER), the Department of Natural Resources' natural resource economist, and the department's geologists who developed the geological data to which the procedures were applied; (6) the 2.2 million acres of Bering Straits Native corporation land, much of which was selected for its mineral potential in the vicinity of the Seward Peninsula, historically the most productive mineral province in the state, were valued in 1988 at $343 million; and (7) the department's $73.4 million value was based on actual sales of comparable mineralized land, perhaps the most reliable measure of the fair market value of the mineral estate of the original one million acre grant.

[2] The plaintiffs, who were initially responsible for valuing the mineral estate of land under the chapter 66 settlement process, only recently provided DNR with their valuation data. DNR's current estimates reflect adjustments it believes necessary based on its initial review of plaintiffs' valuation data and methodology. DNR anticipates that further analysis will reduce the value attributable to the mineral estate even more. The most fundamental flaws in the plaintiffs' valuation approach include the presumption that the land not returned to the trust has both the world's largest ore deposits (among the top ten percent in the world) and the world's highest grade deposits (again, among the top ten percent in the world). It is overly optimistic to presume that undiscovered deposits on the land not returned to trust status have either the world's largest deposits or the world's highest grades. It is extremely unrealistic to presume that they have both the world's largest deposits and the world's highest grades as the world's largest deposits tend to have lower grades and vice-versa. The cumulative effect of presuming both the largest deposits and the highest grades is a very substantial overstatement of the value of the mineral endowment. Another fundamental flaw in plaintiffs'

and gas value.

The value of the state land designated as mental health trust land to replace land not returned to the trust is, by both the plaintiffs' and the state's calculations, more than $200 million. As a result, even using the plaintiffs' values, the state's maximum monetary liability to the trust for land not returned to trust status cannot exceed $1.2 billion ($1.4 billion, the plaintiffs' highest value for the land not returned, minus the $200 million for the replacement land), which is $100 million less than the $1.3 billion set-off for past mental health expenditures authorized by the Alaska Supreme Court. And, even if the $1.3 billion set-off is not taken into account, the state's monetary liability to the trust for the land not returned to trust status will be satisfied by virtue of the $100 million per year allocation of funds to the trust to be expended on mental health programs as required by the Enabling Act. By any measure, in other words, the trust is being more than fairly compensated for the land not returned to it.

Finally, under the Enabling Act, the Legislature has the responsibility to determine both the programmatic aspects of the mental health program of Alaska and the level of funding to pay for it. Under art. VII, secs. 4 and 5 of the Alaska Constitution, the Legislature has the responsibility to "provide for the promotion and protection of public health" and to "provide for public welfare," again calling for decisions regarding both the program and its funding.

Since statehood, the Legislature has discharged both its Enabling Act and constitutional responsibilities by establishing and maintaining a mental health program and funding it at levels that, as both the Enabling Act and the Alaska Constitution permit, substantially exceeded both the revenues from mental health land, as the Alaska Supreme Court noted in the Weiss decision, and the absolute legal minimum required by the Alaska Constitution. In the words of the Enabling Act, however, all of these expenditures comprise the "necessary expenses of the mental health program of Alaska." Based on a review of actual amounts expended, moreover, the Legislature has determined that state expenditures for the state's mental health program have totalled more than $1.3 billion

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approach is that they overstate the net present value of the income stream by assuming royalty payments under a four percent net smelter return ("NSR") rate would equal four percent of the higher value of the metal contained in the ore reserve rather than the correct NSR rate which equals four percent of the much lower value of the amount paid by the smelter for the recovered metals.

from fiscal year 1979 through fiscal year 1994.[3]

In making this determination, the Legislature is mindful that Congress in the Enabling Act vested responsibility for both the substantive provisions of Alaska's mental health program and the decisions as to amounts to be spent in the Alaska Legislature. As stated in Sen. Rep. No. 2053, 84th Cong., 2d Sess. (May 25, 1956), reprinted in 1956 U.S. Code Cong. & Admin. News 3637 ("Senate Report"), the Senate struck all of the detailed program provisions in the bill that passed the House of Representatives, "leaving it up to the people of Alaska to enact their own mental-health program." The people's power to enact such a program -- i.e., to legislate on the subject -- is vested in the Legislature under art. II, sec. 1 of the Alaska Constitution.

The Enabling Act, moreover, divested the federal government of both fiscal and functional responsibility for the mental health program in Alaska, and provided in the words of the Senate Report for Alaska to "assume full responsibility for enactment of commitment, hospitalization, and care procedures, and gradually assume responsibility for all costs" of the program. Under art. IX, sec. 13 of the Alaska Constitution, no money may be withdrawn from the state treasury except in accordance with legislative appropriations.

In terms of revenues from the land grant, the Senate Report noted that "[a]mounts not needed for the mental health program can be used for other public purposes as the Legislature may determine." And the managers in the House of Representatives accepted a Senate amendment "which broadens the use of the revenues for use of the Alaska mental-health program rather than [only] for the hospitalization and care of the mentally ill in Alaska." Conference Report No. 2735, 84th Cong., 2d Sess. (July 17, 1956), reprinted in 1956 U.S. Code Cong. & Admin. News 3659.

In light of Congress' intent that the Alaska Legislature take the lead role in determining the mental health program of Alaska, and the Alaska Constitution's vesting of spending authority in the Legislature, it is only appropriate that the Legislature determine the amount spent in the past on the state's mental health program. As noted, from fiscal year 1979 through fiscal year 1994, that amount totals more than $1.3 billion.

The Legislature respectfully requests that any court reviewing the Legislature's actions with respect to resolving the mental health land trust litigation, Weiss v. State, 4FA-82-2208 Civil, give appropriate consideration to these principles underlying the Legislature's actions.

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[3] $1.32 billion is the amount actually spent. Adjusting that amount to 1994 dollars increases it to $1.574 billion.

FISCAL NOTE

STATE OF ALASKA
1994 LEGISLATIVE SESSION

BILL NO. CS HB201 ( )

Revision Date: April 20, 1994
Title: An act amending provisions of Chap. 66 SLA 1991...and providing for an effective date
Sponsor: Senate Resources Committee
Requestor: House Finance

Dept. Affected: Health and Social Services
BRU: ALCOHOLISM & DRUG ABUSE SVCS
Component: ADMINISTRATION
COMPONENT SERIAL NO. 302

Expenditures/Revenues: (Thousands of Dollars)

OPERATING	FY95	FY96	FY97	FY98	FY99	FY00
PERSONAL SERVICES	167.2	172.2	177.4	182.7	188.2	193.8
TRAVEL	89.0	91.7	94.4	97.3	100.2	103.2
CONTRACTUAL	45.5	46.9	48.3	49.7	51.2	52.7
SUPPLIES	6.3	6.5	6.7	6.9	7.1	7.3
EQUIPMENT	23.7	0.0	0.0	0.0	0.0	0.0
LAND & STRUCTURES	0.0	0.0	0.0	0.0	0.0	0.0
GRANTS, CLAIMS	0.0	0.0	0.0	0.0	0.0	0.0
MISCELLANEOUS	0.0	0.0	0.0	0.0	0.0	0.0
TOTAL OPERATING	331.7	317.2	326.7	336.5	346.6	357.0
CAPITAL EXPENDITURES	0.0	0.0	0.0	0.0	0.0	0.0
CHANGES IN REVENUES	0	0	0	0		0

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts	0.0	0.0	0.0	0.0	0.0	0.0
1003 GF Match	0.0	0.0	0.0	0.0	0.0	0.0
1004 GF	0.0	0.0	0.0	0.0	0.0	0.0
1005 GF/Program Receipts	0.0	0.0	0.0	0.0	0.0	0.0
1006 GF/MHTIA	331.7	317.2	326.7	336.5	346.6	357.0
Other	0.0	0.0	0.0	0.0	0.0	0.0
TOTAL	331.7	317.2	326.7	336.5	346.6	357.0

POSITIONS:

FULL-TIME	3	3	3	3	3	3
PART-TIME	0	0	0	0	0	0
TEMPORARY	0	0	0	0	0	0

Estimate of current year (FY94) cost $ 0.0

ANALYSIS: (Attach a separate page if necessary)

See Attached

Prepared by: Suzanne Perry
Division: Alcoholism & Drug Abuse
Phone: 465-2071
Date: 04/20/94

Approved by Commissioner: Margaret R. Lowe, M.Ed., Ed.S.
Agency: Department of Health & Social Services
Date: 4/21/94

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(Rev 10/93)94fisno.xls/DBR

ANALYSIS:

Chapter 66, SLA 1991, Section 19, amended AS 44.29 regarding the composition, qualifications, responsibilities and staff of the Advisory Board on Alcoholism and Drug Abuse.
Implementation of Chapter 66 would require the implementation of staff and financial support for the board which was originally approved, but withdrawn when Chapter 66 was not implemented.

1. Membership of the Advisory Board increases from 12 to 15 members. The board is made responsible for developing a comprehensive plan for treatment and prevention services, and provides recommendations to the Alaska Mental Health Trust Advisory Authority for planning and funding regarding the target population of chronic alcoholics with psychosis.

2. Chapter 66 specifically specifies the Board to hire an Executive Director (Partially Exempt Service) and allows the Executive Director to hire additional staff in the classified service.

    A. This fiscal note is based upon one Executive Director, Range 21, one Research Analyst III, Range 18, and one Secretary I, Range 10.

    B. A detailed explanation of the line items for FY 95 is attached.

    C. A 3% inflation factor was used for all subsequent years.

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

Budget reflects costs of three positions
Anticipates Board Structure similar to AK Mental Health Board
Costs allow for assumption of planning duties by Board
Assumes expansion of Board from 12 to 15 members

Personal Services	
Executive Director, Range 21	$71.4
Secretary I, Range 10	$36.9
Research Analyst III, Range 18	$58.9
Total	$167.2
Travel	
Statewide Travel, Professional Staff	$49.0
Travel, 3 Additional Board Members	$10.0
Per Diem	$30.0
Total	$89.0
Contractual	
Communication	$9.0
Advertising, Printing,Binding	$15.0
Minor repair, Maintenance	$2.0
Space Rental	$12.0
Rental Copier/Fax	$7.5
Total	$45.5
Commodities	
Office Supplies	$6.3
Equipment (one-time only)	
Workstations & Chairs	$10.0
File Cab/4 drawer legal (3)	$1.4
Computers/Software	$12.3
Total	$23.7
Grand Total	$331.7

FISCAL NOTE

STATE OF ALASKA
1994 LEGISLATIVE SESSION

BILL NO. CSHB 201 (RES)

Revision Date: April 8, 1994
Title: "...amending provisions of ch. 66, SLA 1991... mental health trust..."
Sponsor: House Resources Committee
Requestor: Governor's Office/OMB

Department Affected: Department of Law
BRU: Legal Services
Component: Mental Health Lands

COMPONENT SERIAL NO. 1421

EXPENDITURES/REVENUES:

OPERATING	FY 95	FY 96	FY 97	FY 98	FY 99	FY 00
PERSONAL		<263.9>				
TRAVEL		<9.0>				
CONTRACTUAL		<305.6>				
SUPPLIES		<12.3>				
EQUIPMENT						
LAND &						
GRANTS, CLAIMS	200.0	-0-	-0-	-0-	-0-	-0-
MISCELLANEOUS						
TOTAL OPERATING	200.0	<590.8>	-0-	-0-	-0-	-0-
CAPITAL						
REVENUE						
FUNDING:						
1002 Federal						
1003 GF Match						
1004 GF		<590.8>	-0-	-0-	-0-	-0-
1005 GF/Program						
1006 GF/MHTIA	200.0	-0-	-0-	-0-	-0-	-0-
OTHER						
TOTAL	200.0	<590.8>				
POSITIONS:						
FULL-TIME	-0-	<4.0>	-0-	-0-	-0-	-0-
PART-TIME						
TEMPORARY						

Estimate of current year (FY94) impact: -0-

ANALYSIS: (Attach a separate page if necessary.)
Please see the attached analysis.

Richard L. Pegues

Prepared by: Richard I. Pegues, Director
Phone: 465-3672
Division: Administrative Services Division
Date: April 8, 1994

Richard L. Pegues /FOR/

Approved by Commissioner: Bruce M. Botelho, Attorney General
Agency: Department of Law
Date: Apr.. 8, 1994

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FISCAL NOTE

STATE OF ALASKA
1994 LEGISLATIVE SESSION

BILL NO. CSHB201(FIN)

Revision Date: 29-Apr-94 REVISED
Dept Affected: Natural Resources
Title: "An Act amending provisions of ch.66 sla 1991, that relate to reconstitution of the corpus of the mental health trust..."
BRU: Resource Development
Component: Mental Health Trust (NEW)
Sponsor: House Resources
Requestor: House Resources
Component Serial No. NEW

Expenditures/Revenues (Thousands of Dollars)

OPERATING EXPENDITURES	FY95	FY96	FY97	FY98	FY99	FY00
PERSONAL SERVICES	239.9	239.9	239.9	239.9	239.9	239.9
TRAVEL	10.0	10.0	10.0	10.0	10.0	10.0
CONTRACTUAL	475.0	25.0	25.0	25.0	25.0	25.0
SUPPLIES	4.0	4.0	4.0	4.0	4.0	4.0
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	728.9	278.9	278.9	278.9	278.9	278
CAPITAL EXPENDITURES	0.0	0.0	0.0	0.0	0.0	0.0
CHANGE IN REVENUES (1004)	0.0	0.0	0.0	0.0	0.0	0.0

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	~~450.0~~					
1005 GF/Program Receipts						
1006 GF/MHTIA	450.	278.9	278.9	278.9	278.9	278.9
1061 CIP Receipts	278.9					
TOTAL	728.9	278.9	278.9	278.9	278.9	278.9

Estimate of any current year (FY94) cost: $ None

POSITIONS

FULL-TIME	3	3	3	3	3	3
PART-TIME	1	1	1	1	1	1
TEMPORARY	0	0	0	0	0	0

ANALYSIS:

SEE ATTACHED.

The Department of Natural Resources work activities will focus on the conveyance of original trust land and replacement land, the final recordation of the current encumbrances of conveyable original trust land and replacement state land, and the recordation of the aforementioned conveyable lands to the state's status graphics record.

Prepared by: Ron Swanson, Director
Phone : 762-2692
Division: Land
Date : 29-Apr-94
Approved by Commissioner:
Harry A. Noah
Date: 29-Apr-94
Agency: Natural Resources

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FISCAL NOTE

STATE OF ALASKA
1994 LEGISLATIVE SESSION

BILL NO. CSHB 201 (RES)

Revision Date: April 8, 1994
Title: "...amending provisions of ch. 66, SLA 1991... mental health trust..."
Sponsor: House Resources Committee
Requestor: Governor's Office/OMB

Department Affected: Department of Law
BRU: Legal Services
Component: Mental Health Lands
COMPONENT SERIAL NO. 1421

EXPENDITURES/REVENUES:

OPERATING	FY 95	FY 96	FY 97	FY 98	FY 99	FY 00
PERSONAL		<263.9>				
TRAVEL		<9.0>				
CONTRACTUAL		<305.6>				
SUPPLIES		<12.3>				
EQUIPMENT						
LAND &						
GRANTS, CLAIMS	200.0	-0-	-0-	-0-	-0-	-0-
MISCELLANEOUS						
TOTAL OPERATING	200.0	<590.8>	-0-	-0-	-0-	-0-
CAPITAL						
REVENUE						
FUNDING:						
1002 Federal						
1003 GF Match						
1004 GF		<590.8>	-0-	-0-	-0-	-0-
1005 GF/Program						
1006 GF/MHTIA	200.0	-0-	-0-	-0-	-0-	-0-
OTHER						
TOTAL	200.0	<590.8>				
POSITIONS:						
FULL-TIME	-0-	<4.0>	-0-	-0-	-0-	-0-
PART-TIME						
TEMPORARY						

Estimate of current year (FY94) impact: -0-

ANALYSIS: (Attach a separate page if necessary.)
Please see the attached analysis.

Richard L. Pegues

Prepared by: Richard I. Pegues, Director
Phone: 465-3672
Division: Administrative Services Division
Date: April 8, 1994

Richard L. Pegues /FOR/

Approved by Commissioner: Bruce M. Botelho, Attorney General
Agency: Department of Law
Date: April 8, 1994

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FISCAL NOTE

STATE OF ALASKA
1994 LEGISLATIVE SESSION

BILL NO. CSHB 201 (RES)

ANALYSIS CONTINUATION:

This bill amends provisions of ch. 66, SLA 1991, mental health trust settlement, that the superior court rejected and amends other provisions that the parties have found to be unworkable or undenforceable. The bill seeks to resolve the Weiss lawsuit by reconstituting the trust legislatively, establishing a Mental Health Trust Authority, and providing for annual cash payments to the Trust for fifteen years.

Between July 1, 1994 and December 31, 1994, the plaintiffs will be required to expend some effort to obtain dismissal of the litigation if this legislation is enacted as a compromise settlement. Because Weiss is a class action, the court will approve a settlement by following several steps. The court must first preliminarily approve the settlement after finding that it is within a range that is fair, reasonable, and adequate to the beneficiaries, considering the risks and uncertainties of continued litigation. After the court grants preliminary approval, notice of the proposed settlement will be given to the class, written comments will be received (which should take at least 90 days), and the court will hold a "fairness" hearing at which time the court will hear from all interested parties that desire to comment on the proposed settlement. Following that hearing, the court will determine whether to grant final approval of the proposed settlement and dismiss the Weiss case. We estimate that $200,000 will be necessary for plaintiffs to participate in this mandatory process.

FISCAL NOTE

STATE OF ALASKA — BILL NO. CSHB201(FIN)

1994 LEGISLATIVE SESSION

Revision Date: 29-Apr-94 REVISED — Dept Affected: Natural Resources

Title: "An Act amending provisions of ch.66 sla 1991, that relate to reconstitution of the corpus of the mental health trust..." — BRU: Resource Development — Component: Mental Health Trust (NEW)

Sponsor: House Resources

Requestor: House Resources — Component Serial No. NEW

Expenditures/Revenues (Thousands of Dollars)

OPERATING EXPENDITURES	FY95	FY96	FY97	FY98	FY99	FY00
PERSONAL SERVICES	239.9	239.9	239.9	239.9	239.9	239.9
TRAVEL	10.0	10.0	10.0	10.0	10.0	10.0
CONTRACTUAL	475.0	25.0	25.0	25.0	25.0	25.0
SUPPLIES	4.0	4.0	4.0	4.0	4.0	4.0
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	728.9	278.9	278.9	278.9	278.9	278.9
CAPITAL EXPENDITURES	0.0	0.0	0.0	0.0	0.0	0.0
CHANGE IN REVENUES (1004)	0.0	0.0	0.0	0.0	0.0	0.0

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	~~450.0~~					
1005 GF/Program Receipts						
1006 GF/MHTIA	450.	278.9	278.9	278.9	278.9	278.9
1061 CIP Receipts	278.9					
TOTAL	728.9	278.9	278.9	278.9	278.9	278.9

Estimate of any current year (FY94) cost: $ None

POSITIONS

FULL-TIME	3	3	3	3	3	3
PART-TIME	1	1	1	1	1	1
TEMPORARY	0	0	0	0	0	0

ANALYSIS:

SEE ATTACHED.

The Department of Natural Resources work activities will focus on the conveyance of original trust land and replacement land, the final recordation of the current encumbrances of conveyable original trust land and replacement state land, and the recordation of the aforementioned conveyable lands to the state's status graphics record.

Prepared by: Ron Swanson, Director — Phone: 762-2692

Division: Land — Date: 29-Apr-94

Approved by Commissioner: Harry A. Noah — Date: 29-Apr-94

Agency: Natural Resources

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REVISED

FISCAL NOTE

STATE OF ALASKA
1994 LEGISLATIVE SESSION

BILL NO. CSHB 201 (FIN)

Revision Date: _____
Department Affected: Administration
Title: An Act relating to the Mental Health La. d Trust
BRU: Senior Services
Component: Senior Services, Administration
Sponsor: House Resources Committee
Requestor: House Finance Committee
COMPONENT SERIAL NO. 1981

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 95	FY 96	FY 97	FY 98	FY 99	FY 00
PERSONAL	31.4 62.8	64.8	66.7	69.0	71.0	73.4
TRAVEL	8.3 20.1	20.1	20.1	20.1	20.1	20.1
CONTRACTUAL	1.7 3.5	3.5	3.5	3.5	3.5	3.5
SUPPLIES	1.0 2.0	2.0	2.0	2.0	2.0	2.0
EQUIPMENT	3.5 3.5	0.0	0.0	0.0	0.0	0.0
LAND &	0.0	0.0	0.0	0.0	0.0	0.0
GRANTS, CLAIMS	0.0	0.0	0.0	0.0	0.0	0.0
MISCELLANEOUS	0.0	0.0	0.0	0.0	0.0	0.0
TOTAL OPERATING	45.9 91.9	90.4	92.3	94.6	96.6	99.0
CAPITAL EXPENDITURES	0.0	0.0	0.0	0.0	0.0	0.0
CHANGE IN REVENUES	0.0	0.0	0.0	0.0	0.0	0.0

FUNDING SOURCE: (Thousands of Dollars)

1002 Federal	0.0	0.0	0.0	0.0	0.0	0.0
1003 GF Match	0.0	0.0	0.0	0.0	0.0	0.0
1004 GF	0.0	0.0	0.0	0.0	0.0	0.0
1005 GF/Program	0.0	0.0	0.0	0.0	0.0	0.0
1006 GF/MHTIA	45.9 ~~91.9~~	90.4	92.3	94.6	96.6	99.0
OTHER	0.0	0.0	0.0	0.0	0.0	0.0
TOTAL	45.9 ~~91.9~~	90.4	92.3	94.6	96.6	99.0

Estimate of any current year (FY 94) cost: $ 0.0

POSITIONS:

FULL-TIME	1.0	1.0	1.0	1.0	1.0	1.0
PART-TIME	0.0	0.0	0.0	0.0	0.0	0.0
TEMPORARY	0.0	0.0	0.0	0.0	0.0	0.0

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

Prepared by: Connie J. Sipe, Director
Phone: 465-3250
Division: Senior Services
Date: 4-27-94

Approved by Commissioner: Nancy Bear Usera
Agency: Department of Administration
Date: 4/29/94

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FISCAL NOTE

STATE OF ALASKA
1994 LEGISLATIVE SESSION

BILL NO. CSHB 201 (FIN)

ANALYSIS (continued)

	Months	Total
Personal Services		
1 Health Program Management Spec.II	~~12~~ 6	~~62.8~~
Travel (for staff and OAC members)		~~20.1~~
Contractual		~~3.5~~
Supplies		~~2.0~~
Equipment (start-up)		~~3.5~~
	TOTAL:	~~91.9~~

FISCAL NOTE

STATE OF ALASKA
1994 LEGISLATIVE SESSION

BILL NO. CSHB201

Revision Date:
Dept. Affected: DHSS
Title: "An Act amending provisions of ch. 66 SLA 1991, that relate to reconstitution of ..."
BRU: Admin. Services
Component: AMHB
Sponsor: House Resources Committee
Requestor:
COMPONENT SERIAL NO. #951

Expenditures/Revenues (Thousands of Dollars)

OPERATING EXPENDITURES	FY 95	FY 96	FY 97	FY 98	FY 99	FY 00
PERSONAL SERVICES						
TRAVEL	~~38.5~~ 5.2	39.5	40.5	41.5	42.5	43.6
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	~~38.5~~ 5.2	39.5	40.5	41.5	42.5	43.6
CAPITAL EXPENDITURES						
CHANGE IN REVENUES ( )						

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1006 GF/MHTIA	~~38.5~~ 5.2	39.5	40.5	41.5	42.5	43.6
Other						
TOTAL	~~38.5~~ 5.2	39.5	40.5	41.5	42.5	43.6

Estimate of any current year (FY94) cost: $ -0-

POSITIONS

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

Average travel costs per board member 3500/yr. Fiscal note is calculated on Ch. 66 as passed which would add up to 11 new board members. Inflation after FY 95 is calculated at 2.5%. If amendments, as proposed by the AMHB, pass FY 95 additional cost would be reduced to 10.5, (FY 96=10.8, FY97=11.1, FY98=11.4, FY99=11.7, FY00=12.0).

Prepared by: Deborah Smith, Ex. Director
Phone: 465-3071
Division: Alaska Mental Health Board
Date: 4/22/94

Approved by Commissioner:
Date:
Agency:

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REVISE

FISCAL NOTE

STATE OF ALASKA
1994 LEGISLATIVE SESSION

BILL NO. CS HB201 ( )

Revision Date: April 20, 1994
Title: An act amending provisions of Chap. 66 SLA 1991...and providing for an effective date
Sponsor: Senate Resources Committee
Requestor: House Finance

Dept. Affected: Health and Social Services
BRU: ALCOHOLISM & DRUG ABUSE SVCS
Component: ADMINISTRATION
COMPONENT SERIAL NO. 302

Expenditures/Revenues: (Thousands of Dollars)

OPERATING	FY95	FY96	FY97	FY98	FY99	FY00
PERSONAL SERVICES	73.1 ~~167.2~~	172.2	177.4	182.7	188.2	193.8
TRAVEL	27.0 ~~89.0~~	91.7	94.4	97.3	100.2	103.2
CONTRACTUAL	22.1 ~~45.5~~	46.9	48.3	49.7	51.2	52.7
SUPPLIES	3.0 ~~6.3~~	6.5	6.7	6.9	7.1	7.3
EQUIPMENT	23.7 ~~23.7~~	0.0	0.0	0.0	0.0	0.0
LAND & STRUCTURES	0.0	0.0	0.0	0.0	0.0	0.0
GRANTS, CLAIMS	0.0	0.0	0.0	0.0	0.0	0.0
MISCELLANEOUS	0.0	0.0	0.0	0.0	0.0	0.0
TOTAL OPERATING	150.0 ~~331.7~~	317.2	326.7	336.5	346.6	357.0
CAPITAL EXPENDITURES	0.0	0.0	0.0	0.0	0.0	0.0
CHANGES IN REVENUES	0	0	0	0	0	0

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts	0.0	0.0	0.0	0.0	0.0	0.0
1003 GF Match	0.0	0.0	0.0	0.0	0.0	0.0
1004 F	0.0	0.0	0.0	0.0	0.0	0.0
1005 GF/Program Receipts	0.0	0.0	0.0	0.0	0.0	0.0
1006 GF/MHTIA	150.0 ~~331.7~~	317.2	326.7	336.5	346.6	357.0
Other	0.0	0.0	0.0	0.0	0.0	0.0
TOTAL	150.0 ~~331.7~~	317.2	326.7	336.5	346.6	357.0

POSITIONS:

FULL-TIME	~~3~~	3	3	3	3	3
PART-TIME	0	0	0	0	0	0
TEMPORARY	0	0	0	0	0	0

Estimate of current year (FY94) cost $ 0.0

ANALYSIS: (Attach a separate page if necessary)

See Attached

Prepared by: Suzanne Perry
Division: Alcoholism & Drug Abuse
Phone: 465-2071
Date: 04/20/94

Approved by Commissioner: Margaret R. Lowe, M.Ed., Ed.S.
Agency: Department of Health & Social Services
Date: 4/21/94

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ANALYSIS:

Chapter 66, SLA 1991, Section 19, amended AS 44.29 regarding the composition, qualifications, responsibilities and staff of the Advisory Board on Alcoholism and Drug Abuse.
Implementation of Chapter 66 would require the implementation of staff and financial support for the board which was originally approved, but withdrawn when Chapter 66 was not implemented.

1. Membership of the Advisory Board increases from 12 to 15 members. The board is made responsible for developing a comprehensive plan for treatment and prevention services, and provides recommendations to the Alaska Mental Health Trust Advisory Authority for planning and funding regarding the target population of chronic alcoholics with psychosis.

2. Chapter 66 specifically specifies the Board to hire an Executive Director (Partially Exempt Service) and allows the Executive Director to hire additional staff in the classified service.

    A. This fiscal note is based upon one Executive Director, Range 21, one Research Analyst III, Range 18, and one Secretary I, Range 10.

    B. A detailed explanation of the line items for FY 95 is attached.

    C. A 3% inflation factor was used for all subsequent years.

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

Budget reflects costs of three positions
Anticipates Board Structure similar to AK Mental Health Board
Costs allow for assumption of planning duties by Board
Assumes expansion of Board from 12 to 15 members

Personal Services	
Executive Director, Range 21	$71.4
Secretary I, Range 10	$36.9
Research Analyst III, Range 18	$58.9
Total	$167.2
Travel	
Statewide Travel, Professional Staff	$49.0
Travel, 3 Additional Board Members	$10.0
Per Diem	$30.0
Total	$89.0
Contractual	
Communication	$9.0
Advertising, Printing,Binding	$15.0
Minor repair, Maintenance	$2.0
Space Rental	$12.0
Rental Copier/Fax	$7.5
Total	$45.5
Commodities	
Office Supplies	$6.3
Equipment (one-time only)	
Workstations & Chairs	$10.0
File Cab/4 drawer legal (3)	$1.4
Computers/Software	$12.3
Total	$23.7
Grand Total	$331.7

STATE OF ALASKA
1994 LEGISLATIVE SESSION

BILL: CSHB201(FIN)

F I S C A L N O T E

REQUEST:
Revision Date:
Title: An Act amending provisions of Chap. 66 SLA 1991....and providing for an effective date.
Sponsor: House Resource Committee
Requestor: House Finance Committee

Dept: Health and Social Services
BRU: Alcoholism & Drug Abuse svcs
Components: Administration
No: 302

EXPENDITURES/REVENUES: (THOUSANDS OF DOLLARS)

OPERATING	FY 95	FY 96	FY 97	FY 98	FY 99	FY 00
Personal Services	73.6	172.2	177.4	182.7	188.2	193.8
Travel	27.0	91.7	94.4	97.3	100.2	103.2
Contractual	22.7	46.9	48.3	49.7	51.2	52.7
Supplies	3.0	6.5	6.7	6.9	7.1	7.3
Equipment	23.7	0.0	0.0	0.0	0.0	0.0
Land & Structures	0.0	0.0	0.0	0.0	0.0	0.0
Grants, Claims	0.0	0.0	0.0	0.0	0.0	0.0
Miscellaneous	0.0	0.0	0.0	0.0	0.0	0.0
TOTAL OPERATING	150.0	317.3	326.8	336.6	346.7	357.0
CAPITAL EXPENDITURES						
CHANGE IN REVENUES						

FUNDING: (THOUSANDS OF DOLLARS)

1002 Federal Receipts	0.0	0.0	0.0	0.0	0.0	0.0
1003 GF Match	0.0	0.0	0.0	0.0	0.0	0.0
1004 GF	0.0	0.0	0.0	0.0	0.0	0.0
1005 GF/Program Receipts	0.0	0.0	0.0	0.0	0.0	0.0
1006 GF/MHTIA	150.0	317.3	326.8	336.6	346.7	357.0
Other	0.0	0.0	0.0	0.0	0.0	0.0
TOTAL	150.0	317.3	326.8	336.6	346.7	357.0

ESTIMATE OF ANY CURRENT YEAR (FY 94) COST $ 0.0

POSITIONS:

Full-Time	3	3	3	3	3	3
Part-Time	0	0	0	0	0	0
Temporary	0	0	0	0	0	0

ANALYSIS: (Attach a separate page if necessary)

Eileen P. MacLean

Rep. Ron Larson, Co-Chair 465-3878
Prepared By: Rep. Eileen MacLean, Co-Chair Phone: 465-4833
Division: House Finanace Committee Date: 4/30/94
Approved By:
Agency: Date:

Back-up

Summary of Values and Compensation Package for the Mental Health Trust

1. Original Trust

   Lands to be returned to the Trust

   466,000 acres of surface and subsurface lands

   22,400 acres of subsurface lands (mineral estate)

   76,000 acres of subsurface land (hydro carbon only)

   total 564,400 acres

2. Value of original trust lands not returnable to Trust:

surface lands		$480 million
subsurface lands		$156 million
	total	$636 million

3. Compensation for lands not returnable to Trust:

   Land

   Proposed replacement lands

356,000 acres of surface & subsurface lands	$264 million
200,000 acres of subsurface lands	$116 million
total 556,000 acres	$380 million

   Cash

Administration proposal	$225 million

4. Value of lands not returnable to Trust
   $636 million

   Value of proposed compensation package
   $605* million

5. Additional compensation for lands not returnable to the trust. (could be used, however, if there is a question of valuation)

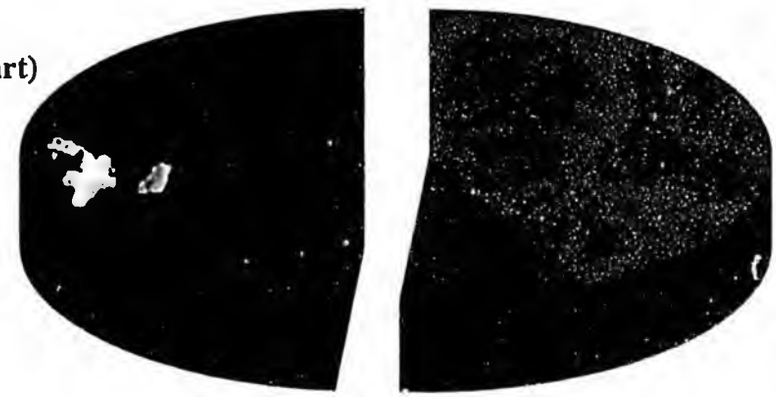
   - Deduction for past mental health expenditures 1.3 billion
   - Future allocations into the trust account up to 100 million per year to be spent for mental health

* As currently proposed in HB 201/SB 67

Attachment 1
4/18/94

ORIGINAL TRUST LAND

530,863 Acres
Non-Returnable
Surface + Subsurface (Part)



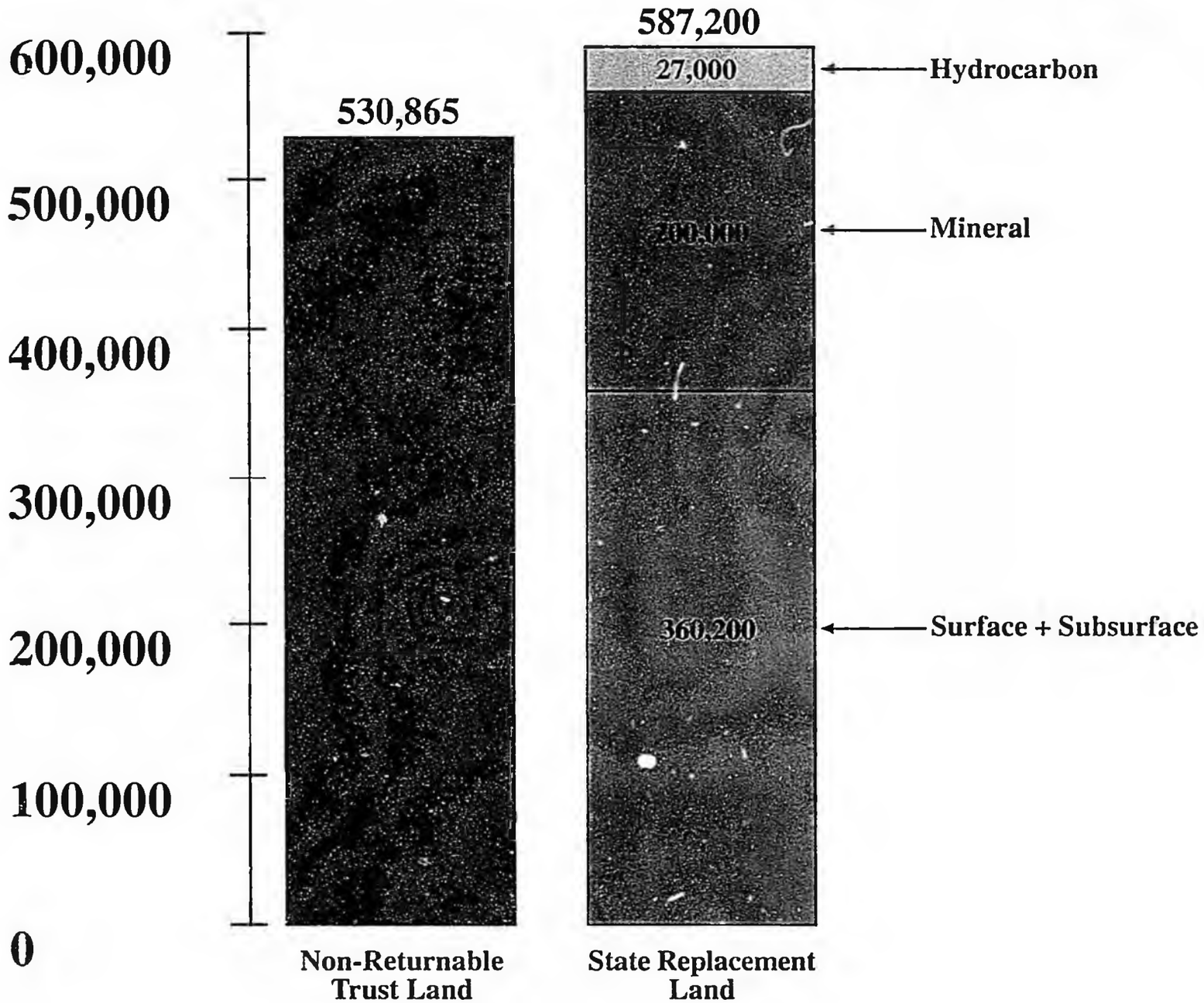
466,200
Returnable Surface
and Subsurface

98,400
Returnable Subsurface (only)

Non-Returnable Surface and Subsurface (Part)

45,845	Mom and Pop Parcels
43,331	Municipalities
3,565	State Agencies
232,017	Legislatively Designated Areas
131,953	State Forests: Haines + Tanana Valley
74.152	Other
530,863	**Total**

ACRES


600,000
500,000
400,000
300,000
200,000
100,000
0
530,865
587,200
27,000
Hydrocarbon
200,000
Mineral
360,200
Surface + Subsurface
Non-Returnable Trust Land
State Replacement Land

Senate Report No. 2053, May 25, 1956 (To accompany H.R. 6376)

THE GRANTS-IN-AID PROVISION

Under the Senate amendment, the grants-in-aid are identical, in substance, to those approved by the House. That is, three different grants for different purposes are provided:

(1) **$6 1/2 million is authorized to be appropriated for construction of mental health facilities in Alaska.** At present, there are none of any kind. Persons "convicted" by the mandatory jury trial are held in jail until arrangements can be made for transporting them away from Alaska to the private institution in Oregon.

(2) **$6 million is authorized to be appropriated over a 10-year period to assist the Territory in developing a rounded mental health program for its people until it can itself assume full financial responsibility.** This amount would be available, subject to approval of appropriations bills for the purpose, as follows:

Fiscal year ---		Fiscal year -- Continued	
1958	$1,000,000	1963	$600,000
1959	1,000,000	1964	400,000
1960	800,000	1965	400,000
1961	800,000	1966	200,000
1962	600,000	1967	200,000

(3) **One million acres of the "vacant, unappropriated, and unreserved" public lands of Alaska, to be selected by the Territory** within a 10-year period. **The income and proceeds from disposition of these lands must be administered as a public trust, with the expenses of the mental health program having first call on such funds. Amounts not needed for the mental health program can be used for other public purposes as the legislature may determine.**

. . .

Public land grants for public purposes in the Territory of the United States are, of course, older than the Constitution itself, dating from at least the Northwest Ordinance of the Continental Congress in 1787. (See 1 Stat. 50, 51.) **In all of the public land States of the West the Federal Government has made grants of the public lands in order to provide funds for schools or other public purposes.** In five States, namely, Idaho, Oklahoma, South Dakota, Utah, and Wyoming, grants of public lands have been made specifically to provide means for the care of the insane.

. . .

The purpose of the grant is to afford revenues to the Territory for support of its mental-health program. If such revenues are in excess of needs for the program, they may be used, as a public trust, for other public purposes.

During Congressional markup of the 1956 Alaska mental health enabling legislation Alaska Delegate E.L. "Bob" Bartlett said in opposition to proposed "earmarking" of land proceeds exclusively for mental health purposes:

> MR. BARTLETT. When previous legislation on this matter was being considered words substantially the same as those proposed by the gentleman were offered. My understanding is that they were not incorporated in this bill for this reason: **No one knows what the land is going to be worth** - 500,000 acres. It might have very slight value, it might be of average value; or again, we hope it might be enormously rich land containing oil. **You might arrive at a situation where, if it did have oil, you would have revenues piled up there far in excess of the needs of any mental institution. The thought was that in any case the Territory of Alaska will have an obligation to appropriate money required for the care of the mentally ill**, and it was thought it would not be desirable to hobble us possibly in that manner.
>
> MR. DAWSON. Then I am to understand that the gift of this land is not for the purpose of the mentally ill alone, but you are to use it for any purpose you want in Alaska? Is that right?
>
> MR. BARTLETT. **It might very well be, Mr. Dawson, that the land would never provide more than a fraction of the funds required for the mentally ill.**

Hearing before the Subcommittee of the Interior and Insular Affairs Committee of the House of Representatives April - July 1955 on bills providing for the care of Alaskan mentally ill.

ALASKA MENTAL HEALTH ENABLING ACT

Senate Report No. 2053, May 25, 1956 (To accompany H.R.6376)

LETTERS TO THE SENATE COMMITTEE

United States Department of the Interior,
Office of the Secretary,
Washington 25, D.C., January 9, 1956

Hon. James E. Murray,
Chairman, Committee on Interior and Insular Affairs,
United States Senate, Washington 25, D.C.

MY DEAR SENATOR MURRAY: This will refer further to your request for the views of the Department on S.2518, a bill to provide for the hospitalization and care of the mentally ill of Alaska, and for other purposes.

. . .

Finally, section 202 (e) was amended by the House committee to provide for the earmarking of funds derived from the land grants to the sole purpose of the hospitalization and care of the mentally ill. While it is, of course, anticipated that the land revenues will be used for this purpose, we are inclined to believe that it would be wiser not to restrict them in this manner. It is impossible at this time to predict accurately the cost to the Territory of the program envisaged by S. 2518. It is equally difficult to predict the amount of revenue that will accrue to the Territory under the land grant. It is possible that revenue resulting from the land grant will substantially exceed the costs of the program, in which case the Territory ought to be free to use such revenues for other purposes. It is also possible, however, that the land grant may be insufficient to sustain the Territory's financial responsibility under the program, and if that is so, the Territory should not be deterred from using funds from other sources to sustain it. We believe that it might be deterred if the earmarking requirement remains in the bill.

. . .

Wesley A. D'Ewart,
Assistant Secretary of the Interior

STATE v. WEISS, 706 P.2d 681, 684 (Alaska 1985)

Those general grant lands which were once mental health lands will return to their former trust status. In the event exchanges have been made, those properties which can be traced to an exchange involving mental health lands will also be included in the trust. To the extent that former mental health lands have been sold since the date of the conveyance the trust must be reimbursed for the fair market value at the time of sale. In calculating the total amount owed, the trial court should grant a set-off for mental health expenditures made by the state during the same period. In the event that expenditures exceeded the value of lands sold, the state need not furnish cash as part of the reconstitution. The goal is to restore the trust to its position just prior to the conveyance effected by the redesignation legislation.

Attachment 2
4/18/94P

Dissenting Plaintiffs contend that a primary concern of class members is adequate funding for mental health programs. However, the adequacy of funding and services is a separate issue outside the scope of this case.90/ The issue in Weiss is the state's breach of the federally-established mental health land trust, not breach of whatever responsibility the state may have to provide a particular level of care for Alaska residents in need of mental health services. The Alaska Mental Health Enabling Act of 1956 (AMHEA) specified only that income from the land trust was to be spent on mental health services first before excess funds, if any, were allocated to other uses. The AMHEA did not guarantee any particular level of services or full funding for Alaska's mental health needs.92/

The remedy guidelines in the 1985 Weiss decision also did not discuss any guaranteed income stream for the trust. The Supreme Court stated that the state was entitled to subtract mental health expenditures for the corresponding time period from whatever monetary compensation it owed the trust for original trust land that had been sold. The Supreme Court also noted that the state had spent far more on mental health programs than it had received in revenue from trust lands. While some trust lands may have been sold or leased below market value or trust revenues inaccurately recorded, it appears unlikely that the value of trust land sold to private parties would exceed the amount for mental health expenditures. Unless the plaintiffs succeeded in severely limiting the land categorized as "sold," a trial could result in reconstitution of the trust with less land than under the proposed settlement and without any monetary compensation.

Based on the 1985 Weiss decision, a trial would require reconstitution of the land trust with only as much land as had not been sold and a set-off for the state that could equal or exceed the value of the land sold. The trust would then have less than the original one million acres of land with little or no monetary compensation for unreturned lands.

90/ [The court described a case in which the plaintiffs' objections were characterized as a "wish list...not even within the scope of the lawsuit."]

92/ ... The legislative record shows no evidence that Congress intended to provide funding for Alaska mental health programs in perpetuity.

STATE OF ALASKA

STEVE COWPER, GOVERNOR

OFFICE OF THE GOVERNOR

OFFICE OF MANAGEMENT AND BUDGET
DIVISION OF BUDGET REVIEW

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

May 2, 1990

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

Dear Senator Binkley and Representative Larson:

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

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

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

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

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

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

Sincerely,

Alison M. Elgee

Alison M. Elgee
Director

Attachments

FISCAL YEAR 1990 BUDGET SUMMARY BY FUNDING SOURCE

FUNDING SOURCE	OPERATING BUDGET	LOANS BUDGET	NEW LEGISLATION BUDGET	CAPITAL BUDGET	TOTAL BUDGET
FEDERAL RECEIPTS	334,992,600		6,200		334,998,800
GENERAL FUND MATCH	119,016,600				119,016,600
GENERAL FUND	1,771,226,100		~~31,389,300~~	2,989,100 &	1,776,515,400
GENERAL FUND/PROGRAM RECEIPTS	51,520,300		~~70,800~~	92,400 &	51,616,700
GENERAL FUND/MENTAL HEALTH TRUST	41,675,100				41,675,100
INTER-AGENCY RECEIPTS	102,769,200		1,988,200		104,757,400
U/A INTEREST INCOME	2,449,500				2,449,500
DONATED COMMODITY/HANDLING FEE ACCT	207,700				207,700
U/A DORMITORY/FOOD/AUXILARY SERVICE	15,034,200				15,034,200
GRAIN RESERVE LOAN FUND	48,600				48,600
AGRICULTURAL LOAN FUND	1,365,900				1,365,900
STATE CORPORATION RECEIPTS	25,404,900		~~600,000~~	350,000 &	26,004,900
FICA ADMINISTRATION FUND ACCOUNT	64,900				64,900
FISH AND GAME FUND	9,118,700				9,118,700
HIGHWAY WORKING CAPITAL FUND	19,754,300				19,754,300
INTERNATIONAL AIRPORT REVENUE FUND	32,032,100				32,032,100
PUBLIC EMPLOYEES RETIREMENT FUND	7,224,900		237,600		7,462,500
SCHOOL FUND (CIGARETTE TAX)	2,700,000				2,700,000
SECOND INJURY FUND RESERVE ACCOUNT	3,264,800				3,264,800
DISABLED FISHERMANS RESERVE ACCOUNT	1,226,900				1,226,900
SURPLUS PROPERTY REVOLVING FUND	133,000				133,000
TEACHERS RETIREMENT SYSTEM FUND	4,822,400		158,500		4,980,900
VETERANS REVOLVING LOAN FUND	434,000				434,000
COMMERCIAL FISHING LOAN FUND	1,107,600				1,107,600
U/A STUDENT TUITION/FEES/SERVICES	20,614,400				20,614,400
U/A INDIRECT COST RECOVERY	6,413,000				6,413,000
SURETY FUND	145,400				145,400
JUDICIAL RETIREMENT SYSTEM	34,300				34,300
PUBLIC LAW 81-874	20,638,500				20,638,500
NATIONAL GUARD RETIREMENT SYSTEM	28,300				28,300
TITLE XX	5,926,100				5,926,100
UNIVERSITY RESTRICTED RECEIPTS	29,763,100				29,763,100
TRAINING AND BUILDING FUND	564,100				564,100
PERMANENT FUND DIVIDEND FUND	16,800,900				16,800,900
OIL/HAZARDOUS RESPONSE FUND(AS46.08.010)			4,371,800		4,371,800
SMALL BUSINESS LOAN FUND	52,100				52,100
TOURISM REVOLVING LOAN FUND	40,200				40,200
CORRECTIONAL INDUSTRIES FUND	2,737,300				2,737,300
CAPITAL IMPROVEMENT PROJECT RECEIPTS	69,967,800				69,967,800
POWER PROJECT LOAN FUND	76,000				76,000
NATIONAL PETROLEUM RESERVE FUND	937,000				937,000
HOUSING ASSISTANCE LOAN FUND	2,946,400		~~1,000~~	∅ &	2,946,400
RURAL ELECTRIFICATION LOAN FUND	44,000				44,000
PUBLIC SCHOOL FUND	7,189,200				7,189,200
MINING REVOLVING LOAN FUND	231,300				231,300
CHILD CARE REVOLVING LOAN FUND	54,500				54,500
HISTORICAL DISTRICT REVOLVING LOAN FUND	9,300				9,300
FISHERIES ENHANCEMENT REVOLVING LOAN FND	288,800				288,800

ALTERNATIVE ENERGY REVOLVING LOAN FUND	357,100				357,100
RESIDENTIAL ENERGY CONSERVATION LOAN FND	278,500				278,500
BULK FUEL REVOLVING LOAN FUND	74,400				74,400
MULTIPLE FUND SOURCES			~~132,800~~	∅ &	132,800
***** TOTALS *****	82,733,806,300		~~912,899,800~~	10,164,100 &	~~2,745,970,100~~ 2,743,970,400 &

FISCAL YEAR 1991 BUDGET SUMMARY BY FUNDING SOURCE

FUNDING SOURCE	OPERATING BUDGET	LOANS BUDGET	NEW LEGISLATION BUDGET	CAPITAL BUDGET	TOTAL BUDGET
FEDERAL RECEIPTS	406,303,700		2,441,600		408,745,300
GENERAL FUND MATCH	143,668,600		110,200		143,778,800
GENERAL FUND	1,873,545,000		17,650,000		1,891,195,000
GENERAL FUND/PROGRAM RECEIPTS	52,269,400		906,800		53,176,200
GENERAL FUND/MENTAL HEALTH TRUST	97,268,500				97,268,500
INTER-AGENCY RECEIPTS	116,259,600		110,000		116,369,600
U/A INTEREST INCOME	2,449,500				2,449,500
DONATED COMMODITY/HANDLING FEE ACCT	232,700				232,700
U/A DORMITORY/FOOD/AUXILARY SERVICE	15,929,900				15,929,900
AGRICULTURAL LOAN FUND	1,073,600				1,073,600
STATE CORPORATION RECEIPTS	31,637,200		426,200		32,063,400
FISH AND GAME FUND	9,005,900		6,500		9,012,400
SCIENCE & TECHNOLOGY ENDOWMENT INCOME	3,060,000				3,060,000
HIGHWAY WORKING CAPITAL FUND	20,774,200				20,774,200
INTERNATIONAL AIRPORT REVENUE FUND	34,156,600				34,156,600
PUBLIC EMPLOYEES RETIREMENT FUND	11,282,800		51,500		11,334,300
SCHOOL FUND (CIGARETTE TAX)	2,600,000				2,600,000
SECOND INJURY FUND RESERVE ACCOUNT	3,264,800				3,264,800
DISABLED FISHERMANS RESERVE ACCOUNT	1,226,900				1,226,900
SURPLUS PROPERTY REVOLVING FUND	133,000				133,000
TEACHERS RETIREMENT SYSTEM FUND	7,451,400		333,500		7,784,900
VETERANS REVOLVING LOAN FUND	434,000				434,000
COMMERCIAL FISHING LOAN FUND	1,149,200				1,149,200
U/A STUDENT TUITION/FEES/SERVICES	23,680,600				23,680,600
U/A INDIRECT COST RECOVERY	10,217,700				10,217,700
SURETY FUND	145,400				145,400
JUDICIAL RETIREMENT SYSTEM	94,000				94,000
PUBLIC LAW 81-874	20,695,500				20,695,500
NATIONAL GUARD RETIREMENT SYSTEM	43,600				43,600
TITLE XX	6,101,000				6,101,000
UNIVERSITY RESTRICTED RECEIPTS	32,465,600				32,465,600
TRAINING AND BUILDING FUND	744,100				744,100
PERMANENT FUND DIVIDEND FUND	17,500,900		39,300		17,540,200
OIL/HAZARDOUS RESPONSE FUND(AS46.08.010)	4,889,800		4,426,000		9,315,800
SMALL BUSINESS LOAN FUND	52,100				52,100
TOURISM REVOLVING LOAN FUND	40,200				40,200
CORRECTIONAL INDUSTRIES FUND	2,253,600				2,253,600
CAPITAL IMPROVEMENT PROJECT RECEIPTS	67,942,000				67,942,000
POWER PROJECT LOAN FUND	76,000				76,000
NATIONAL PETROLEUM RESERVE FUND	937,000				937,000
HOUSING ASSISTANCE LOAN FUND	2,987,700				2,987,700
RURAL ELECTRIFICATION LOAN FUND	9,500				9,500
PUBLIC SCHOOL FUND	7,278,000				7,278,000
MINING REVOLVING LOAN FUND	231,300				231,300
CHILD CARE REVOLVING LOAN FUND	54,500				54,500
HISTORICAL DISTRICT REVOLVING LOAN FUND	9,300				9,300
FISHERIES ENHANCEMENT REVOLVING LOAN FND	288,800				288,800
ALTERNATIVE ENERGY REVOLVING LOAN FUND	357,100				357,100
RESIDENTIAL ENERGY CONSERVATION LOAN FND	278,500				278,500
POWER DEVELOPMENT REVOLVING LOAN FUND	654,900				654,900
BULK FUEL REVOLVING LOAN FUND	74,400				74,400
ALASKA CLEAN WATER LOAN FUND	88,400				88,400
MULTIPLE FUND SOURCES			117,000		117,000
**** TOTALS ****	$3,035,368,000		$26,618,600		$3,061,986,600

FISCAL YEAR 1992 BUDGET SUMMARY BY FUNDING SOURCE

FUNDING SOURCE	OPERATING BUDGET	LOANS BUDGET	NEW LEGISLATION BUDGET	CAPITAL BUDGET	TOTAL BUDGET
FEDERAL RECEIPTS	432,728,400		6,503,500		439,231,900
GENERAL FUND MATCH	157,869,400		115,500		157,984,900
GENERAL FUND	1,332,741,000		7,111,300		1,339,852,300
GENERAL FUND/PROGRAM RECEIPTS	56,798,300		2,406,500		59,204,800
GENERAL FUND/MENTAL HEALTH TRUST	122,376,800		1,319,900		123,696,700
INTER-AGENCY RECEIPTS	123,355,100		2,080,200		125,435,300
U/A INTEREST INCOME	2,449,500		261,200		2,710,700
DONATED COMMODITY/HANDLING FEE ACCOUNT	582,700				582,700
U/A DORMITORY/FOOD/AUXILARY SERVICE	18,193,200				18,193,200
FEDERAL INCENTIVE PAYMENTS	981,900				981,900
AGRICULTURAL LOAN FUND	515,700				515,700
STATE CORPORATION RECEIPTS	37,376,500		42,000		37,418,500
FISH AND GAME FUND	10,004,900				10,004,900
SCIENCE & TECHNOLOGY ENDOWMENT INCOME	4,276,200				4,276,200
HIGHWAY WORKING CAPITAL FUND	21,573,300				21,573,300
INTERNATIONAL AIRPORT REVENUE FUND	35,938,900				35,938,900
PUBLIC EMPLOYEES RETIREMENT FUND	14,637,400		89,300		14,726,700
SECOND INJURY FUND RESERVE ACCOUNT	2,253,100				2,253,100
DISABLED FISHERMANS RESERVE ACCOUNT	1,247,500				1,247,500
SURPLUS PROPERTY REVOLVING FUND	164,800				164,800
TEACHERS RETIREMENT SYSTEM FUND	9,273,100		64,500		9,337,600
VETERANS REVOLVING LOAN FUND	428,700				428,700
COMMERCIAL FISHING LOAN FUND	1,179,500				1,179,500
U/A STUDENT TUITION/FEES/SERVICES	35,108,400				35,108,400
U/A INDIRECT COST RECOVERY	10,302,900				10,302,900
REAL ESTATE SURETY FUND	148,900				148,900
JUDICIAL RETIREMENT SYSTEM	117,500		500		118,000
PUBLIC LAW 81-874	73,100				73,100
NATIONAL GUARD RETIREMENT SYSTEM	46,600		100		46,700
TITLE XX	6,101,000				6,101,000
UNIVERSITY RESTRICTED RECEIPTS	39,091,100				39,091,100
TRAINING AND BUILDING FUND	986,500				986,500
PERMANENT FUND DIVIDEND FUND	20,885,900				20,885,900
OIL/HAZARDOUS RESPONSE FUND			532,000		532,000
SMALL BUSINESS LOAN FUND	39,200				39,200
TOURISM REVOLVING LOAN FUND	42,300				42,300
CORRECTIONAL INDUSTRIES FUND	2,253,600				2,253,600
CAPITAL IMPROVEMENT PROJECT RECEIPTS	68,850,100				68,850,100
POWER PROJECT LOAN FUND	26,000				26,000
NATIONAL PETROLEUM RESERVE FUND	600,000				600,000
HOUSING ASSISTANCE LOAN FUND	3,084,400				3,084,400
RURAL ELECTRIFICATION REVOLVING LOAN FUN	3,200				3,200
PUBLIC SCHOOL FUND	292,500				292,500
MINING REVOLVING LOAN FUND	234,700				234,700
CHILD CARE REVOLVING LOAN FUND	57,400				57,400
HISTORICAL DISTRICT REVOLVING LOAN FUND	9,800				9,800
FISHERIES ENHANCEMENT REVOLVING LOAN FUN	304,200				304,200

FISCAL YEAR 1992 BUDGET SUMMARY BY FUNDING SOURCE (CONT.)

FUNDING SOURCE	OPERATING BUDGET	LOANS BUDGET	NEW LEGISLATION BUDGET	CAPITAL BUDGET	TOTAL BUDGET
ALTERNATIVE ENERGY REVOLVING LOAN FUND	363,500				363,500
RESIDENTIAL ENERGY CONSERVATION LOAN FUN	284,800				284,800
POWER DEVELOPMENT REVOLVING LOAN FUND	583,600				583,600
BULK FUEL REVOLVING LOAN FUND	75,600				75,600
ALASKA CLEAN WATER LOAN FUND	90,500				90,500
MARINE HIGHWAY SYSTEM FUND	70,575,800				70,575,800
UNIV/FOUNDTN/CORP GIFTS/GRANTS/BEQUESTS	336,200				336,200
STORAGE TANK ASSISTANCE FUND	6,767,800				6,767,800
INTERNAL SERVICE FUND	22,029,600				22,029,600
MULTIPLE FUND SOURCES			6,700		6,700
**** TOTALS ****	$2,676,712,600		$20,533,200		$2,697,245,800

Report to the Legislature on Mental Health Funding for Fiscal Year 1992

Report 01-76

January 1991
Division of Audit and Management Services

OMB

STAFF PAPERS AND REPORTS

STATE OF ALASKA

OFFICE OF MANAGEMENT AND BUDGET

REPORT ORGANIZATION

The report is organized on the basis of budget components. For each component there are two parts: (1) a budget page that shows funding history and also our conclusions about individual FY 92 MHTIA allocations; and (2) narrative material about the component. The budget page is included to add perspective to FY 92 funding requests. The narrative section gives more detail about the budget components and additionally presents information about MHTIA allocation methodologies that should be used in FY 92 and beyond.

The narrative material for every component consists of a:

- Description of the component
- Description of the component's client population
- Description of the component's programs and services
- Citation of the criteria we used to determine whether it is appropriate to fund this particular component's activities - in whole or in part - from the GF/MHTIA funding source
- Our conclusion about the applicability of the evaluation criteria to client populations and the services provided
- Our conclusion on GF/MHTIA funding for FY 92.

HOW THE REPORT WAS PREPARED

Starting from the statement of legislative intent, we studied agency FY 92 budget submissions. Going beyond cases where MHTIA funding had been requested, we also identified budget components where elements of the state's comprehensive mental health program exist but where no funding had been requested. The scope of the review included both the operating and capital budgets. Capital budget requests were not finalized by the issue date of this report. We will issue a supplemental report when that information becomes available for analysis.

We identified criteria that could be used to make judgments about the eligibility of programs for MHTIA funding. We accumulated programmatic information by studying budget narratives, documentation describing agency programs, and interviews of agency staff. When we had sufficient information about programs we applied the evaluation criteria and drew conclusions about budget component funding.

EVALUATION CRITERIA

An objective basis was needed for making decisions about the programs that should be eligible for MHTIA funding. We researched the history to the mental health trust issue for evaluation criteria that could be applied. Three areas provided the criteria we used: (1) the Greene court decision, (2) the "Policy Report" prepared by the Alaska Mental Health Board, and (3) the components of the state's comprehensive mental health program.

GREENE DECISION GUIDANCE

The 1988 Greene court decision on who should be beneficiaries of the Mental Health Lands Trust provided some guidance on the types of mental disorders to be addressed by programs funded by the trust. The decision included the following comments:

> "...it is the conclusion of the court that (U.S.) Congress intended that the mental health lands public trust benefit the recipients of the services of the (state's) comprehensive mental health program, which group must include, at a minimum, the mentally ill who may require hospitalization and the mentally defective and retarded. .... The court does not exclude from this operative definition either chronic alcoholics suffering from psychoses or senile people who as a result of their senility suffer major mental illness."
>
> "The court concludes that it is within the discretion of the state to include other groups as recipients of services by the mental health program..."
>
> "In the administration of this trust, the state must treat all the beneficiaries impartially."
>
> "The state...must provide for necessary services as 'the necessary expenses' of the (state's) mental health program from the trust before it may allocate any money for a purpose other than the (state's) mental health program."

ALASKA MENTAL HEALTH BOARD POLICY

The Greene decision left hanging the question of what is the state's "comprehensive mental health program." The "Policy Report" prepared by the Alaska Mental Health Board in response to the Greene court decision offers comments on the definition of a comprehensive mental health program. They are as follows:

> "...a comprehensive Mental Health Program must include services for the promotion of good mental health and the prevention of occurrence or worsening of mental conditions....Services for education, prevention, early intervention and outpatient care for persons not severely mentally disabled must be a part of a comprehensive mental health program."
>
> "The AMHB (Alaska Mental Health Board) concludes that the class of persons to be provided the benefits of services funded, in part, from the proceeds and income of the mental health trust, is broader than the severely disabled groups listed in Judge Greene's decision....Through the adoption of a comprehensive program including preventative care, all Alaskans are to be included among the beneficiaries to receive trust funded benefit services. Preventative services are within the necessary services to be provided by the program."
>
> "it is important to concentrate effort...upon the impartial delivery of necessary services for all beneficiaries. The state may not discriminate among

beneficiaries simply because some need more trust benefit services and some require less."

"The comprehensive program should provide for services that prevent mental and emotional disorders, promote mental health and rehabilitate those suffering from disorders as well as prosthetic services needed to maintain mentally and emotionally disabled persons as productive members of society."

THE STATE'S MENTAL HEALTH PROGRAM

The efforts of the Alaska Mental Health Board mentioned above in defining a comprehensive program are convincing. The state's comprehensive mental health program should offer the widest possible range of mental health services to the Alaskan population ranging from prevention to treatment to daily support and maintenance. The state's plans of programs and services, comprehensive in nature, for the mentally handicapped are the various multi-year plans directed at Alaskans with actual or potential mental disorders and disabilities. The pertinent plans are:

- "State of Alaska Alcoholism and Drug Abuse Plan, 1990-1992"
- "A Comprehensive Mental Health Plan for the State of Alaska, Fiscal Years 1988-1992"
- "Three Year State Plan, 1987-1989, Services for People with Developmental Disabilities and Other Substantial Handicaps"
- "State Plan for Services to Older Americans, 1989-1991"

These plans were important for our evaluation. To the extent these documents describe mental health services provided by state programs, these documents, when considered together, represent the state's comprehensive mental health program as it currently exists. Our view is that programs or services described in these multi-year plans can legitimately be funded by the Mental Health Trust.

In support of our view that the above plans represent Alaska's comprehensive mental health program, the Alaska Mental Health Board, in the "Policy Report" on the Greene court decision, commented on the state's comprehensive mental health program as follows:

"In order to arrive at a description of the full array of services that must be provided by a comprehensive mental health program, the AMHB recommends....the current comprehensive plan ("A comprehensive Mental Health Plan for the State of Alaska, 1988-1992") as well as relevant portions of other plans such as the plan for alcohol services ("State of Alaska Alcoholism and Drug Abuse Plan, 1990-1992") and services for the developmentally disabled ("Three Year State Plan, 1987-1989, Services for People with Developmental Disabilities and Other Substantial Handicaps") should be examined and integrated."

OTHER MENTAL HEALTH COSTS

During our research we identified two areas that deserve comment but for which we are unable to suggest specific FY 92 funding: (1) special appropriations the legislature will make, and (2) the cost of some administrative support services provided by departments and central agencies to budget components that directly carry out mental health programs. Both of these areas are parts of the state's investment in its comprehensive mental health program.

SPECIAL APPROPRIATIONS

It is likely that during the next legislative session, appropriations in the form of grants to municipalities may also contribute to the state's comprehensive mental health program. Since we have no information on these potential awards we are unable to express a conclusion regarding their potential funding from available mental health resources.

Looking at such past appropriations showed instances of substantial capital investments in the states comprehensive mental health program. A few are cited here to demonstrate the point.

1983: Ketchikan Alcohol Treatment Center	$400,000
1983: Anchorage Community Mental Health Center	$750,000
1984: Homer Community Mental Health Building	$306,500
1985: Bethel Alcohol Treatment Center/Expansion	$1,349,000
1986: Barrow Alcohol/Drug Treatment	$2,155,000

Certainly a MHTIA funding source could be considered for FY 1992 and future legislative appropriations.

DEPARTMENTAL AND CENTRAL ADMINISTRATIVE COSTS

The cost of certain administrative costs are often not considered when thinking about total mental health program costs. In general, they are not budgeted from mental health funding resources.

The federal government authorizes a mechanism that allows states to charge federal grants for administrative costs when they support direct federal program delivery. Allowable administrative costs that support programs fall in three categories: (1) *divisional* administrative services for the operating divisions that administer mental health programs, (2) *departmental* administrative services provided to mental health programs by the department that manages the federal program, and (3) *central* administrative services which are provided to the administering department by central service agencies. Some examples of departmental administrative services are budgeting and personnel management. Some examples of central services are budgeting, computer services, state payroll processing, space management, personnel management, archives, audits, and treasury services.

Charging federal grants for administrative services is mentioned here because the concept of charging state administrative services could also apply to all components of the state's comprehensive mental health programs. State mental health programs are benefitted to the

extent that they are supported by administrative services, either at the divisional, departmental, or central levels. The benefit flowing from these administrative costs clearly contributes to accomplishing the state's mental health objectives.

As shown in the body of our report, some divisional administrative costs have been identified as to be funded from MHTIA. The budget for these divisional administrative services is relatively easy to determine. The link between service and recipient is direct.

The link between central, departmental, and other divisional administrative services and state mental health programs is not so direct. Since central, departmental and divisional services are provided to multiple recipients, including many non-mental health programs, the portion of expected MHTIA costs can only be determined by an allocation process. Although a negotiated allocation rate is achieved for federal programs, no similar indirect cost rate exists for state programs. In the absence of such an allocation methodology, the share of administrative costs that could properly be funded from mental health resources cannot be readily determined.

There are substantial indirect costs that the state will incur in FY 1992 to support the various elements of its comprehensive mental health program. For example, even though there is no state indirect costing mechanism in place, we estimate that mental health programs in the Department of Health and Social Services will receive central and departmental administrative services costing approximately $3 million in FY 1992. This estimate is based on the various assumptions including the assumption that the department's negotiated federal indirect cost rate is a fair measure of administrative support for state programs also.

Our purpose for mentioning administrative costs in this report is that there needs to be an awareness that administrative costs are a significant cost element of the state's comprehensive mental health program.

DRAFT

A SPECIAL REPORT ON THE STATE OF ALASKA'S MENTAL HEALTH PROGRAM EXPENDITURES FOR THE INTERIM MENTAL HEALTH TRUST COMMISSION

July 1, 1978 - September 30, 1985

Audit Control Number

06-1276-86-R

The Interim Mental Health Trust Commission

Chairman - Plaintiffs	George Rogers
Member - Governor's Mental Health Advisory Council	Sharron Lobaugh
Member - Intervenor	Dr. Lidia Selkregg
Commissioner, Department of Natural Resources	Esther C. Wunnicke
Commissioner, Department of Health and Social Services	John R. Pugh

STATE OF ALASKA
MENTAL HEALTH LANDS TRUST REVIEW
Explanation of the Summary Schedule and Analysis of
Potential State Mental Health
Expenditures and Program Receipts
July 1, 1978 - September 30, 1985

The Summary Schedule and Analysis of Potential State Mental Health Expenditure and Program Receipts was prepared for the Interim Mental Health Trust Commission. The schedule was designed to assist the Commission in their review and identification of State expenditures. The Commission is required by law to submit recommendations regarding what State expenditures relate to the State's Mental Health Program to the 1987 Legislature.

We have attempted to provide sufficient information to allow the Commission to analyze services provided by various state agencies. In order to provide the Commission with the most extensive range of options, and mindful of the intent of the House Finance Committee (see Purpose of the Report) we have presented expenditures based on differing views and definitions of mental health services.

The schedule identifies aspects of various programs identified in the Alaska State Comprehensive Statewide Mental Health Plan, FY 77 (FY77 PLAN), analyzes programs in terms of Alaska Statute definitions and the professional diagnostic publication Diagnostic and Statistical Manual of Mental Disorders, Third Edition (DSM-III), and analyzes programs in terms of the working definition of mental health programs provided by the Commissioner of Health and Social Services (see Appendix A).

For the purposes of developing a "menu of costs" for the Commission's review, professionals from the Division of Mental Health and Developmental Disabilities (MHDD) assisted us in interpreting and applying DSM-III and Alaska statutory definitions of mental illness. Although cost estimates that were developed using this technical assistance are labeled "Allocation Per Mental Health Analysis," it is not meant to imply that MHDD necessarily endorses or accepts the analyzed agency's services as being mental health related.

The following is a discussion of the information presented in each column of the Summary Schedule and Analysis of Potential Mental Health Expenditures:

Column One - Program Title and 1977 Mental Health Plan Aspects

Column One presents state programs identified as potentially being part of the State's Mental Health Program. The column also contains our analysis of how the identified State programs relate to the FY77 PLAN which has been adopted by the Commission as a basis for the State's Mental Health Program.

Column Two - Program Receipts

Column Two presents revenues collected by the various State agencies identified in Column One. Program revenues are primarily Federal receipts. Amounts presented represent revenues collected from July 1, 1978 to September 30, 1985, as recorded in the State's accounting records or audited information reported by school districts. Revenues are presented at the request of the Commission in order that net State General Fund expenditures could better be estimated.

Column Three - Program Expenditures

Column Three presents the total expenditures from July 1, 1978 to September 30, 1985, as recorded in the State's accounting records for programs presented in Column One. Expenditures presented for MHDD and the State Office on Alcoholism and Drug Abuse have been audited. Other expenditure totals are presented as recorded in the State's accounting records as unaudited. However, these departments and programs have been audited for most, though not every, fiscal year for the period presented.

Column Four - Allocation Per Mental Health Analysis

Column Four presents an allocation of mental health-related program costs. The Commission requested that expenditures be allocated based on how various programs served individuals that could be classified as mentally ill either under DSM-III diagnoses and/or Alaska Statutes. (For further discussion of the statutory definition of mental illness, see the Mental Health Lands Suit - History and Issues section of this report.)

Based upon the analysis provided by an MHDD mental health professional, we allocated program expenditures in order to quantify mental health service aspects of the programs presented. Procedures used at arriving at estimates are discussed in Column Seven.

A major issue that was identified when applying both the DSM-III and the statutory criteria for mental illness was the unclear status of substance abusers and the developmentally disabled. Both of these populations of individuals are specifically excluded from the statutory definition of mental illness, but both are included under the diagnostic criteria of DSM-III. According to the MHDD analyst, how the Commission classifies services provided to these groups is a major underlying policy decision that will affect which of the programs will be identified as mental health related.

Column Five - Allocation Per Program Management Analysis

Column Five presents an allocation of mental health-related program costs. Based upon the analysis provided by program managers, expenditures were allocated, in order to quantify, in dollars, mental health service aspects of the programs presented. Procedures used at arriving at estimates are discussed in Column Seven.

Essentially, the analysis was based on how managers interpreted the "working" definition of mental health programs developed by the Commissioner of Health and Social Services, and/or the manager's own perceptions. As stated in the introduction, this different view was used in developing cost estimates in order to provide a more extensive "menu of costs" for consideration of the Commission.

All program services provided to individuals who could be classified as mentally ill, were included in the estimates and allocation of costs, even though the services were not treatment oriented in nature. We felt this was consistent with how services at Alaska Psychiatric Institute would be viewed. That is, costs associated with personnel, meals, administration, laundry, etc., would be considered mental health related as well as the more direct psychiatric treatment and nursing costs.

Column Six - Program Description and Analyses of Mental Health Professionals and Program Managers.

Column Six presents program descriptions that were developed from discussions with management and review of State budget documents. As discussed previously, the MHDD professional essentially analyzed the program descriptions and services provided using criteria set out in DSM-III and statutes.

Due to time constraints, we used the representations, estimates, and evaluations of program managers when applying the mental health analytical criteria. In order to apply the MHDD criteria more accurately would require a case-by-case review of various agency's client files.

As discussed in the Mental Health Lands Suit - History and Issues section of this report, there is not a clear definition of mental illness nor mental health. There is disagreement even among mental health professionals. The differences in the analyses of management and MHDD, where it occurs, reflects the uncertainty and debate involving mental health services. These differences also frequently came about because program management used the broader "working" definition of mental health services developed by the DHSS Commissioner, rather than the more restrictive DSM-III and/or statutory criteria applied by MHDD as requested by the Commission.

In addition, program managers also were more likely to consider programs that dealt with antisocial behavior as being mental health related. MHDD points out that DSM-III classifies much of antisocial behavior as "V" codes, and as such does not consider them a diagnosable mental disorder.

Column Seven - Nature and Extent of Audit Review, Allocation Procedures, and Other Comments.

The Commission requested that Legislative Audit document in the report our allocation and audit procedures applied in developing the mental health expenditures. This Column provides a narrative of the rationale, information, assumptions, and procedures used in the expenditure allocations presented in Columns Four and Five.

KENAI PENINSULA BOROUGH
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BUSINESS (907) 262-4441 FAX (907)262-1692

DON GILMAN
MAYOR

MEMORANDUM

TO: Representative Ron Larson, Chairman
House Finance Committee

FROM: Don Gilman, Mayor, Kenai Peninsula Borough

DATE: April 18, 1994

SUBJ: **House Bill 201**

We submit the following comments for your committee's consideration on House Bill 201, and ask that they be included as part of the record. The Kenai Peninsula Borough has concerns regarding impact to the mental health lands settlement on municipal selections. Issuance of patent has long been delayed for a number of reasons, and many selections are not yet approved. Under the settlement we are advised that many selected but unapproved lands or unpatented lands may be considered for reconstitution of the trust. In some cases we have been asked to consent to lands being used to reconstitute the trust with the result that municipal land selection entitlements are given up. The boroughs want to assist

in the resolution of this complex and long-standing problem for the state, but need some provision to allow reselection for any land selections given up by a municipality in order to allow the trust to be reconstituted.

Please distribute to committee members

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JUNEAU, ALASKA 99801

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DAVID T. WALKER
GERALD K. DAVIS, JR.

TELECOPIER:
(907) 586-1350

April 16, 1994

HAND DELIVERED

Representative Eileen MacLean
Co-Chair, House Finance Committee
State Capitol Building, Room 507
Juneau, Alaska 99811

Re: House Bill 201/Settlement of the
Mental Health Trust Land Litigation

Dear Representative MacLean:

House Bill 201 has been identified as the vehicle for legislation resolving the Mental Health Trust Lands Litigation, Weiss v. State, 4FA-82-2208 Civil. The language of the bill has been provided in its entirety by the administration. In presentations to the legislature Attorney General Botelho and Commissioner Noah have discussed the renewed settlement negotiations and the administration's legislative proposal in very positive terms.

As you know, I represent Vern T. Weiss, et al., original Plaintiff and class representative in this class action litigation. I would like to confirm that the parties are actively negotiating for a settlement. We are hopeful that our negotiations will come to fruition and we are all cognizant of the fact that any settlement will require legislation as well as court approval.

I share your concern that the legislature is running out of time to debate and consider any settlement legislation. I know that it will not be helpful for the legislature to learn at the last minute that a measure under active consideration is unacceptable. It is for that reason that I write this letter.

The administration's proposal presented in Chenoweth's work draft CS for House Bill 201 (_____), March 18, 1994, is not a settlement. It purports to buy out the Trust by funding the Mental Health program. It unfairly characterizes the beneficiaries and is in fact unacceptable to all the parties who represent beneficiaries. It is unrealistic to think that the measure would be accepted by the Plaintiffs or approved by the court. Any negotiated settlement will be very different from the proposition outlined in HB 201.

I do not wish to cast a pall up ·n the settlement efforts. I am cautiously optimistic that we will be able to negotiate a settlement and present it to the legislature for consideration this session, but we have a long way to go and little time to do it in. I ask that you share my optimism for settlement while recognizing that the work draft CS HB 201 presently under consideration by the Committee fails utterly to achieve our goal.

Very truly yours,

David T. Walker

DTW:ndp

cc: Committee Members

ALASKA MINERS ASSOCIATION, INC.
501 West Northern Lights Boulevard, Suite 203, Anchorage, Alaska 99503 fax: (907) 278-79[illegible] telephone: (907) 276-0347

April 14, 1994

Honorable Ron Larson
Honorable Eileen MacLean
Co-Chairmen
House Finance Committee
State Capitol
Juneau, AK 99801

RE: CSHB-201, Mental Health Trust Lands

Dear Representatives Larson and MacLean,

The Alaska Miners Association wishes to go on record in support of CSHB-201 regarding Mental Health Trust lands. It is time that this issue be settled and we urge that this bill be passed this session.

One essential point included in this bill is that management of the Mental Health Trust lands will be by the Department of Natural Resources. This applies to both the original Trust lands and the substitute lands. We understand this to mean that Title 38.04 and 38.05 will apply to these lands and that the permitting requirements, access provisions, easement provisions, claim rentals, production royalties, etc. required for state lands will apply to the original and substitute lands. This is extremely important for long term stability for all users of the lands and especially the mining industry.

If we had the choice we would change several items in the bill to clarify the above points. However, we recognize that this bill must be passed this session and we therefore ask that the bill be passed as it now reads.

Thank you for your consideration and for all the work that has gone into settling this important issue. If you have any questions please contact me.

Sincerely,

Steven C. Borell, P.E.
Executive Director

cc: Commissioner Noah

ALASKA MUNICIPAL LEAGUE

217 Second Street, Suite 200 ▪ Juneau, Alaska 99801 ▪ Tel (907) 586-1325, Fax (907) 463-5480

April 21, 1994

Representative Ron Larson
Co-Chair, House Finance Committee
Alaska State Legislature
Juneau, Alaska 99811

Dear Representatives Larson:

As you know, the Alaska Municipal League, on behalf of Alaska's municipalities, has long been supportive of an expeditious and equitable settlement to the Mental Health Lands Trust dispute. In November 1993, AML members adopted the enclosed resolution (#94-7), urging all parties in the dispute to make every effort to work out their disagreements.

The League's Board of Directors, meeting today in Juneau, adopted a position in support of the concepts incorporated in the proposed draft CS for HB 201 that has been proposed by the Administration and has been discussed in your committee by the Attorney General and the Commissioner of the Department of Natural Resources. It is the Board's opinion that at the present time this proposed solution offers the best opportunity now in front of us to reach settlement. Thus, the Alaska Municipal League Board of Directors supports the concepts of HB 201. We ask that the League be kept informed about the specific details of the bill and amendments made to the work draft so that municipal attorneys can review them with the goal of protecting Alaska's municipal interests. Obviously each municipality will also have concerns about the specific pieces of land to be included within the lands selected to to compensate the Trust.

Municipalities want to see the trust dispute settled to allow them complete access to use and develop their municipal land entitlements. They remain concerned, however, that municipal rights to lands be recognized and that provisions be made for reselection by municipalities for lands already selected that may not yet have been approved and may be reclaimed by the state to help compensate the Trust for lands that have already been sold.

Thanks for your attention to this matter. I want to assure you that municipalities strongly support any effort that will lead to a speedy conclusion to this long-standing dispute.

Sincerely,

John Torgerson
President

cc: Governor Walter J. Hickel
Attorney General Bruce Botelho
Commissioner Harry Noah, Department of Natural Resources

Resolution of the Alaska Municipal League

Resolution No. 94-7

A RESOLUTION URGING ALL PARTIES TO THE MENTAL HEALTH LAND TRUST DISPUTE TO COME TO AN AGREEMENT

WHEREAS, in 1956 Congress granted the Territory of Alaska one million acres of land to be managed as an income-producing public trust to fund a mental health program in Alaska; and

WHEREAS, in 1978, the Alaska State Legislature passed legislation redesignating the mental health lands as general state lands subject to disposal and, subject to appropriation, setting aside state revenues from oil in lieu of the potential income from the land to meet the intent of Congress; and

WHEREAS, over 200,000 acres of the original trust was sold or otherwise disposed of; and

WHEREAS, according to Superior Court Judge Meg Greene, over 83,000 acres, in 888 conveyances, were conveyed to municipalities; and

WHEREAS, in 1985 (*State v. Weiss*) the Alaska Supreme Court held that the State of Alaska had breached its legal obligations as trustee of the Mental Health Trust established by Congress and ordered that the trust be restored, as nearly as possible, to its original holdings; and

WHEREAS, various pieces of legislation have been passed to try to solve the problem, including Chapter 66, SLA 1991, but each of these has resulted in more litigation brought by the mental health community; and

WHEREAS, the ongoing litigation has prevented those that hold former mental health trust lands, including municipalities, from developing the lands, reconveying them, or otherwise making use of them; and

WHEREAS, under the provisions of Chapter 66, SLA 1991, which is still being challenged in court, the Mental Health Trust would be reconstituted, but lands already conveyed, including those to municipalities, would be released; and

WHEREAS, under the provisions of Chapter 66, the legislation and arrangements made under it must be presented to the court for approval; and

WHEREAS, some of the plaintiffs in the *Weiss* suit, who represent the beneficiaries of mental health programs in Alaska, continue to challenge the solution presented in Chapter 66, but others have agreed to its provisions; and

WHEREAS, each week of delay in coming to an agreement on the issue prolongs the time when municipalities can make use of the lands they received from the state with the express purpose of providing income and resources for economic and community development:

NOW, THEREFORE, BE IT RESOLVED that the Alaska Municipal League urges the parties in the Mental Health Trust dispute to make every effort to work out their disagreements so that those who hold lands tied up in the dispute, specifically municipalities, can obtain clear title to their lands and proceed with development activities.

BE IT FURTHER RESOLVED that the Alaska Municipal League will make every effort to work with the parties to the dispute to expedite an agreement.

Adopted this 12th day of November 1993 in Soldotna, Alaska.

Rosalee T. Walker

Rosalee T. Walker, President

ATTEST:

Kent E. Swisher

Kent E. Swisher, Executive Director

VALUE OF MENTAL HEALTH TRUST LAND NOT RETURNED TO TRUST STATUS AND REPLACEMENT TRUST LAND

The Department of Natural Resources ("DNR") and plaintiffs pursuant to the chapter 66 settlement process have valued both original mental health trust land that would not be returned to the trust and proposed substitute land that would go to the trust in exchange. Both the plaintiffs and DNR value the surface land and mineral estate of state land that will be designated as mental health trust land to replace land not returned to the trust at more than $200 million. The parties, however, substantially disagree about the value of original trust land not returned to the trust. DNR values this land at no more than $660 million, of which $473 million is surface value, $177 million is mineral estate value,[1] and $10 million is the plaintiffs' value of oil and gas interests. The plaintiffs value these lands at roughly twice DNR's value, between $900 million and $1.4 billion. Most of the difference is in the value of the mineral estate.

Both DNR and plaintiffs' values overstate the fair market value (i.e., what a willing buyer would pay a willing seller) of original trust land that would not be returned to the trust.[2]

---

[1] The plaintiffs, who were initially responsible for valuing the mineral estate of trust land under the chapter 66 settlement process, provided DNR with their valuation data on April 5, 1994. DNR's values reflect adjustments it believes necessary based upon its initial review of plaintiffs' valuation data. DNR anticipates that additional analysis will further reduce the value it attributes to the mineral estate.

[2] The goal of that chapter 66 valuation process was to obtain (continued...)

Under the chapter 66 valuation process, DNR and plaintiffs agreed to use the surface land values determined by the Interim Mental Health Trust Commission pursuant to chapter 48, SLA 1987. These surface land values reflect fair market value of individual parcels, but not of the aggregate as they ignore the market absorption factor (i.e. the market cannot absorb all of these parcels). These surface land value estimates could only be realized if mental health land were gradually developed and offered for disposal over many decades so that land prices would not be depressed by a flooded market. The demand for land in Alaska is not sufficient to absorb any significant portion of the one million acre land grant. To calculate the present fair market value of the original trust land that will not be returned to the trust, the parties' values would have to be reduced to reflect the considerable delay the trust would encounter attempting to develop or dispose of this land if it were returned to trust status.

DNR and plaintiffs' values also overstate the fair market value because they fail to consider the probable difficulty the trust would have developing a significant portion of the original trust lands that will not be returned to trust status. The trial court in Weiss v. State found that the trust would probably have difficulty developing the approximately 350,000 acres located

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[2](...continued)
comparable value estimates so that equal value exchanges of original trust and proposed substitute lands could be made. While the value the parties calculated might not reflect a true "fair market value," fair exchanges could be made as long as the values attributed to parcels were calculated using identical methods.

within legislatively designated areas, to which plaintiffs attribute a value in excess of $650 million (surface land and mineral estate):

> In addition, if the State was unsuccessful in including legislatively designated lands within the "sold" category, a trial potentially could result in a reconstituted trust composed partly of original trust lands within parks, refuges, and other legislatively designated areas. (n.95) The trust resulting from trial could contain a large number of these environmentally sensitive lands, such as the original trust lands within the Chilkat Bald Eagle Preserve, which would be difficult and **expensive to develop commercially due to public opposition and the risk of related litigation. The** proposed settlement [i.e. chapter 66] minimizes such an obvious disadvantage for the trust by substituting less sensitive state land for approximately 250,000 acres of the original trust land within legislatively designated areas. (Citation omitted, emphasis added).
>
> n.95 Over 300,000 acres of original trust land are located within legislatively designated areas. (Citation omitted).

Memorandum Decision and Order Re: Preliminary Approval of Proposed Settlement Agreement (December 30, 1993) at 116-117. The values should be reduced to reflect the "obvious disadvantage for the trust" if original trust land within legislatively designated areas were returned to trust status.

In contrast to the general agreement on surface land values to be used for chapter 66 exchanges,[3] significant disputes

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[3] One disputed surface land issue relates to encumbrances on original trust parcels to be returned to the trust (e.g. rights of way). Plaintiffs estimate that such encumbrances diminish the value of those parcels by $10 - $15 million. DNR believes that in aggregate, the encumbrances may or may not diminish value because many encumbrances increase value (e.g. by providing access or (continued...)

continue regarding the values for the mineral estate of original trust lands. Plaintiffs were initially responsible for developing models to estimate mineral values, subject to DNR's review. Plaintiffs developed a series of geologic models to value the mineral endowment. The goal of these models was to estimate the amount and quality of minerals and coal located on parcels, and then estimate the present value of income likely to be generated from that resource endowment.

DNR developed its mineral values by making adjustments to plaintiffs' assumptions so that the valuation models would come closer to reflecting reality. DNR evaluated six economic parameters for each geologic model: 1) deposit size, 2) mine life, 3) annual production rate, 4) commodity prices, 5) calculation of net smelter return, and 6) calculation of net present value. DNR undertook only a cursory review of which geologic models were selected for each parcel and the probability of the deposit occurring on the parcel. A more careful examination of these topics would probably result in an overall further reduction in parcel values.[4]

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[3](...continued)
utilities to the parcel). DNR has not reduced values because of encumbrances.

[4] For example, plaintiffs used multiple models for most parcels -- i.e. assumed that multiple mineral deposits would be produced. This assumption is probably not realistic for at least a portion of the parcels. Moreover, plaintiffs made assumptions on the likelihood of deposits occurring on any specific parcel without explaining any technical justification for their conclusions. This conclusion has a tremendous impact on the value attributed to the
(continued...)

Based upon DNR's review of plaintiffs' valuation to date, DNR estimates the mineral endowment excluding oil and gas to be worth at most $173 million. The adjustments DNR made to plaintiffs valuation include:

1) Deposit size reduced: The plaintiffs' presumed deposit tonnages for bedded barite, Creede type gold, climax type molybdenum, tin greisen and uranium sandstone deposits were unrealistically large. Moreover, mines could not be developed at the presumed tonnages because the production could not be absorbed by the world commodity market (e.g., Red Dog mine is operating at a loss because zinc prices are depressed as the world commodity market can not absorb the current level of zinc production).

2) Mine life extended: The plaintiffs used a mine life of 10 or 20 years for all types of deposits, resulting in very high production rates for certain ore deposits. DNR extended the mine lives for exhalative lead-zinc deposits, bedded barite deposits, and molybdenum deposits, to 60 years, 50 years, and 50 years respectively to reflect realistic production rates, and to reduce the amount of the commodity entering the world market so that the presumed production would not depress prices.

3) Annual production rates: When the deposit size and mine life are adjusted, the annual production rate is correspondingly adjusted. When the production rate is reduced, the present value of the deposit is correspondingly reduced.

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[4](...continued)
mineral endowment. Further scrutiny of plaintiffs' conclusions is warranted.

4) Commodity prices: Plaintiffs' 1988 commodity prices were adjusted to current prices. Copper, zinc, lead and molybdenum have increased. Gold, silver, tin and uranium all decreased in price. Commodity prices have not kept up with inflation which has a negative impact on long-term profitability of any mining venture.

5) Calculation of net smelter return ("NSR"): Plaintiffs' valuation incorrectly assumed that royalties paid would equal four percent (4%) of gross metal values of ore reserves if 4% NSR rate is used. Under industry standards, however, the NSR is applied to the actual metal quantities recovered at the smelter. The per ton metal value recovered at the smelter can be significantly less than the per ton gross metal value of ore depending on the commodity (e.g. only 28% of gross metal value for certain ore types). Mining and milling recoveries and mine dilution all reduce the ore reserve values to the actual metal quantities recovered at the mill and ultimately at the smelter. Moreover, the standard industry contract for the purchase by smelters of ore concentrates from mine operators typically have terms that greatly favor the smelter, especially during periods of excess supply. There are percentage deductions based on the concentrate tonnage and then additional deductions from the total metal produced. There are penalties for deleterious elements and for low concentrate grades. Smelting charges are applied to the concentrate tonnage and are adjusted upward if metal prices increase. Significant deductions are made in precious metal payments when they are sold in base metal concentrates.

Transportation from the mill to the smelter is a deduction in most NSR royalty agreements and has been included in generic smelter schedules. When all recoveries and charges are applied, the result can be dramatic. For example, the Norilsk model (an ore deposit model based upon a Russian mine that contains platinum group minerals in addition to nickel and copper) calculates payment for the nickel concentrate at about 28% of the gross metal value contained in the ore reserve. In contrast, placer gold is not significantly affected by typical NSR deductions as this commodity is normally sold directly to a refiner or is provided to the royalty holder "in-kind." In calculating the NSR, operating and financial costs such as mining, milling and capital are not normally deducted. DNR made adjustments to how NSR would be calculated for different ore types to reflect industry standards.

6) Calculation of net present value: DNR used the same mathematical formula plaintiffs' used to calculate net present value of the annual revenue stream. The adjustments DNR made to plaintiffs' valuation, and in particular to the calculation of the net smelter return, (see 5 above) had a dramatic impact on the calculated present value. The modified values calculated by DNR provide much more realistic amounts compared to plaintiffs' valuation, but DNR's values still overstate probable values. It is likely that net present value will be reduced even further as more detailed analysis is performed on the geologic models, probabilities of discovery and smelter contracts.

DNR's valuation provides a much more realistic and

reasonable value than Plaintiffs' for the mineral endowment on original trust land that will not be returned to the trust. Plaintiffs' selected model types assume that the trust lands contain the worlds' largest deposits (top ten percentile) with the worlds' highest grades (top ten percentile). While it is overly optimistic to presume that undiscovered deposits on trust lands have either the worlds largest deposits or the worlds highest grades, it is extremely unrealistic to presume both as the worlds largest deposits tend to have lower grades, and vice-versa. By assuming trust lands have both, plaintiffs presume that trust lands are uniquely in the very highest percentile of mine size and grade of deposit. The cumulative effect of assuming both the largest deposits and highest grades results in an unrealistic and very substantial overstatement of value of the mineral endowment by plaintiffs.

DNR's valuation understates the value of original trust land to be returned to trust status subject to state mining claims. Because DNR did not have adequate time to evaluate the impact of state royalty rates, DNR's mineral valuation assumes that the acreage subject to state mining claims has lost 100% of its mineral value, even though the land will be returned to trust status subject to the mining claim. Plaintiffs' valuation of land to be returned to trust status assumes that the existence of a state mining claim reduces the value of the mineral estate returned to the trust by 75% because a 3% net profit income ("NPI") rate would apply rather than plaintiffs' 4% NSR rate.

Although DNR's valuation assumes a 100% loss of mineral value for acreage subject to a mining claim and plaintiffs assume a 75% reduction, plaintiffs methodology, in the aggregate, results in a greater undervaluation of land to be returned to trust status than DNR's. This is because DNR attributes the lost value to only that acreage actually subject to a mining claim whereas plaintiffs apparently applied the 75% reduction to entire parcels, even if only a portion is subject to a mining claim. A mining claim can affect at most 40 acres of land. It appears that plaintiffs calculated the impact of state mining claims as if mining claims covered larger parcels (usually an entire 640 +/- acre section). DNR evaluated the actual amount of the larger parcel that was subject to a state mining claim, attributed a pro-rata portion of the value of the larger parcel to the area subject to the state mining claim, and thereby substantially reduced the total "lost" mineral value of original trust land to be returned to trust status subject to state mining claims.

DNR excluded mineral values for small parcels with low mineral values because it is unrealistic to presume that they would ever be developed. Most of the smaller parcels of original trust lands not returned to the trust are those which were conveyed to mom and pop purchasers or municipalities, were never classified as mineral land, typically are in developed areas, and often times the parcels are isolated from other trust land parcels, all of which make it very unlikely that a successful mining operation could ever be developed. Moreover, the surface land value of these parcels

exceeds the assumed mineral value -- actual recovery of the assumed mineral value would usually require the trust to sacrifice the higher surface land value (a course that defies prudent economics). For these reasons, a small parcel with low mineral endowment, for all practical purposes, has no mineral value. DNR has not attributed a mineral value to such smaller parcels. Plaintiffs, in contrast, attribute a mineral value to every smaller original trust land parcel, but do not attribute mineral values to any smaller replacement land parcels, even though under the chapter 66 process they agreed to develop comparable values for both types of mineral lands.

The Department of Natural Resources' evaluation that original trust land that will not be returned to trust status is worth no more than $660 million is a much more realistic value than that prepared by plaintiffs, and yet is fair and generous to the mental health trust because it also overstates the true fair market value of this land.

CONCLUSION

The proposed settlement encompassed in CSSB 67 (2d Fin) offers a fair resolution of the mental health trust dispute. The plaintiffs and state both value the state land that will be designated as mental health trust land to replace land not returned to the trust at more than $200 million. DNR, using an evaluation that is fair and generous to the mental health trust, values the mental health trust land that will not be returned to the trust at no more than $660. Plaintiffs value this same land at between $900

million and $1.4 billion.

The state's maximum monetary liability to the trust for land not returned to trust status can not exceed $1.2 billion ($1.4 billion, the plaintiffs highest value for the land not returned, minus the $200 million, the minimum at which both plaintiffs and the state value the replacement land), which is $100 million less than the $1.3 billion set-off for past mental health expenditures authorized by the Alaska Supreme Court. Even if some or all of the $1.3 billion set-off is not taken into account, the state's monetary liability will be satisfied by virtue of the $100 million per year allocation of funds to the trust to be expended on mental health programs as required by the Enabling Act. By any measure, the trust is being more than fairly compensated for the land not returned to trust status.

WALTER J. HICKEL, GOVERNOR

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

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April 29, 1994

The Honorable Kay Brown
Alaska House of Representatives
Eighteenth Alaska Legislature -- Second Session
Room 517, State Capitol
Juneau, AK 99801-1182

Dear Representative Brown:

You asked for a section-by-section analysis of the 4/27/94 "V" work draft for CSHB 201 (FIN), and an identification of which sections take effect immediately, which take effect only if the case is dismissed by December 15, 1994, and which that take effect immediately are repealed if the case is dismissed by December 15, 1994.

Section 1 contains legislative findings and purposes that strengthen the state's legal position. It takes effect immediately and does not get repealed even if the case is dismissed by December 15, 1994.

Sections 2 and 37 extend the time for municipal selections for two years for those municipalities that have agreed to convey land to the state for designation as trust land (Anchorage, Mat-Su Borough, and Ketchikan Gateway Borough). They take effect immediately and do not get repealed even if the case is dismissed by December 15, 1994.

Section 3 is an "incentive" that amends chapter 66 provisions amending the permanent fund statutes to provided for the Alaska Permanent Fund Corporation to manage the monetary corpus of the trust. It takes effect only if the case is dismissed by December 15, 1994.

Sections 4, 5, and 6 are "incentives" that amend chapter 66 provisions regarding the governor's responsibilities as to considering the recommendations of the trust authority as to state general funds to pay for the state's mental health program. They take effect only if the case is dismissed by December 15, 1994.

Section 7 is an "incentive" that amends chapter 66 provisions regarding the legislature's responsibilities as to considering the recommendations of the trust authority as to state general funds to pay for the state's mental health program. They take effect only if the case is dismissed by December 15, 1994.

Sections 8 and 9 are "incentives" that amend chapter 66 provisions relating to the trust authority's powers, duties, and responsibilities to provide that (1) it is the trustee of the mental health trust, (2) it has a fiduciary obligation to ensure that the assets are managed consistent with the state's obligations under the federal Enabling Act, (3) it must contract with the Alaska Permanent Fund Corporation for management of the monetary corpus of the trust and with the Department of Natural Resources for management of mental health trust land, and (4) the contract with DNR must include certain provisions to protect the interests of the beneficiaries. They take effect only if the case is dismissed by December 15, 1994.

Sections 10 and 11 establish a new mental health trust income and proceeds account and provide for its utilization. The idea is that money will go into the account from both sales and leases of mental health land and, as required by the federal Enabling Act, first be spent for mental health programs (in a manner identical to the current treatment of the six percent allocation under chapter 66). They take effect immediately, but get repealed and effectively replaced by the mental health trust fund and the mental health trust income account (see next paragraph) if the case is dismissed by December 15, 1994, and the "incentive" provisions take effect.

Sections 12, 13, 14, 15, and 16 are "incentives" that amend provisions of chapter 66 that establish the mental health trust fund and the mental health trust income account. The trust fund is the cash principal of the trust, consisting of the $200 million up-front appropriation and monetary land proceeds that, under Title 13 trust statutes, are considered part of the corpus of the trust (e.g., land sale proceeds; a portion of coal receipts; etc.) to be preserved in perpetuity. The income account consists of earnings on the trust fund and monetary land proceeds not considered part of the corpus that will be used annually by the trust authority to fund part of the state's mental health program. They take effect only if the case is dismissed by December 15, 1994.

Section 17 provides for Department of Natural Resources management of mental health trust land. It takes effect immediately and does not get repealed even if the case is dismissed by December 15, 1994.

Sections 18 and 19 provide that the Department of Natural Resources must establish a separate unit to manage mental health trust land, the employees of which will be in the partially-exempt service. They take effect immediately and do not get repealed even if the case is dismissed by December 15, 1994.

Sections 20, 21, 22, 23, 24, 25, 26, and 27 are "incentives" that amend provisions of chapter 66 relating to the trust authority's and other agencies' powers and duties with respect to the use of money from the income account. They take effect only if the case is dismissed by December 15, 1994.

Section 28 is not truly an "incentive," but is necessary to amend a provision of chapter 66 that otherwise would redirect to the trust funds that should reimburse the general fund for general funds spent on the state's mental health program under this new approach. Because it is only needed if chapter 66 goes into effect, it takes effect only if the case is dismissed by December 15, 1994.

Section 29 amends the effective date provision of chapter 66 to provide that it only takes effect upon dismissal of the lawsuit with no appeal having been taken by December 15, 1994. It takes effect immediately.

Section 30 provides that, if chapter 66 takes effect, it takes effect on December 16, 1994.

Section 31 repeals certain statutes that must be repealed whether the case is dismissed by December 15, 1994, or not. It takes effect immediately.

Section 32 provides for the return of some original mental health land to the trust and the redesignation of some other state land as mental health trust land, and also provides that -- unless taken care of by the set-off -- the compensation to the trust under the bill first compensates the trust for land conveyed to third parties, second for land conveyed to municipalities, and third for land in parks and wildlife refuges and used by state agencies. It takes effect immediately and does not get repealed even if the case is dismissed by December 15, 1994.

Section 33 confirms and ratifies the 1978 legislative removal from trust status of all original mental health land that will not be returned to the trust under the bill, removes from the trust any additional land received by the state under the Enabling Act not already removed from trust status under the 1978 legislation, and ratifies and confirms all actions the state has taken with respect the land removed from trust status. It takes effect immediately and does not get repealed even if the case is dismissed by December 15, 1994.

Section 34 establishes that state mental health expenditures to be set-off against state monetary liability to the trust for land not returned to trust status, as authorized by the Alaska Supreme Court in the Weiss decision, is $1.32 billion. It

takes effect immediately and does not get repealed even if the case is dismissed by December 15, 1994.

Section 35 is an "incentive" that provides for an orderly transition to trust authority coordination of the state's mental health program. It is drawn from a similar provision in chapter 66. It takes effect only if the case is dismissed by December 15, 1994.

Section 36 provides that up to $100 million per year is allocated to the income and proceeds account (section 10) for as long as it takes to satisfy any additional state monetary liability to the trust after the land and the set-off are taken into account. Any money allocated to the account under this provision would be treated just as the six percent allocated to the mental health trust income account under current law is treated -- i.e., appropriated by the legislature first for mental health programs as required by the federal Enabling Act with any surplus used for other public purposes. It takes effect immediately, but gets repealed (because it would be unnecessary) if the case is dismissed by December 15, 1994.

Section 38 provides that, if the case is not dismissed by December 15, 1994, chapter 66 is repealed and the "incentive" provisions do not take effect.

Section 39 provides that, if the case is dismissed by December 15, 1994, sections 10, 11, and 36 of the bill are repealed (along with a statute that currently provides priorities for mental health services that will be superseded by the priorities in the chapter 66 "incentives" that will go into effect).

Section 40 provides that the "incentives" go into effect on December 16, 1994, if the condition for their going into effect -- the case is dismissed by December 15, 1994 -- is satisfied.

Section 41 provides that sections 38 and 39 providing for the two possible contingencies -- (1) that the case is not dismissed by December 15, 1994, in which case the "incentives" are repealed, or (2) that the case is dismissed by then, in which case they go into effect -- take effect on December 16, 1994.

Section 42 provides that sections 1, 2, 10, 11, 17 -- 19, 29 -- 34, 36, and 37 take effect immediately.

We appreciate that this is all somewhat confusing, especially the contingent effective dates with some things taking effect now and remaining in effect, some taking effect now but subject to subsequent repeal if the case is dismissed, and some taking effect only if the case is truly over by December 15, 1994. We believe this approach is absolutely essential, however, to

ensure that all of the affected parties -- the third party purchasers, municipalities, development interests, environmental community, and the state -- can be assured of early dismissal in return for the "incentive" package offered. If the bill becomes law, it then remains only for the mental health community to accept the "incentive" package by agreeing to early dismissal of the case.

We hope you find this helpful. Please call if we can answer any additional questions.

Sincerely,

Bruce M. Botelho
Attorney General

BMB:TK:pml

cc: Commissioner Harry Noah
David Walker
Jim Gottstein
Philip Volland
Jeff Jessee
Eric Jorgensen
Tom Waldo
Rick Johannsen
Peter Maassen
Mark Davis
Julian Mason
Brian Bjorkquist
Wendy Feuer
Nick Atwood
Tom Koester

Handouts To Accompany Comments Made By

Attorney General Bruce Botelho

and

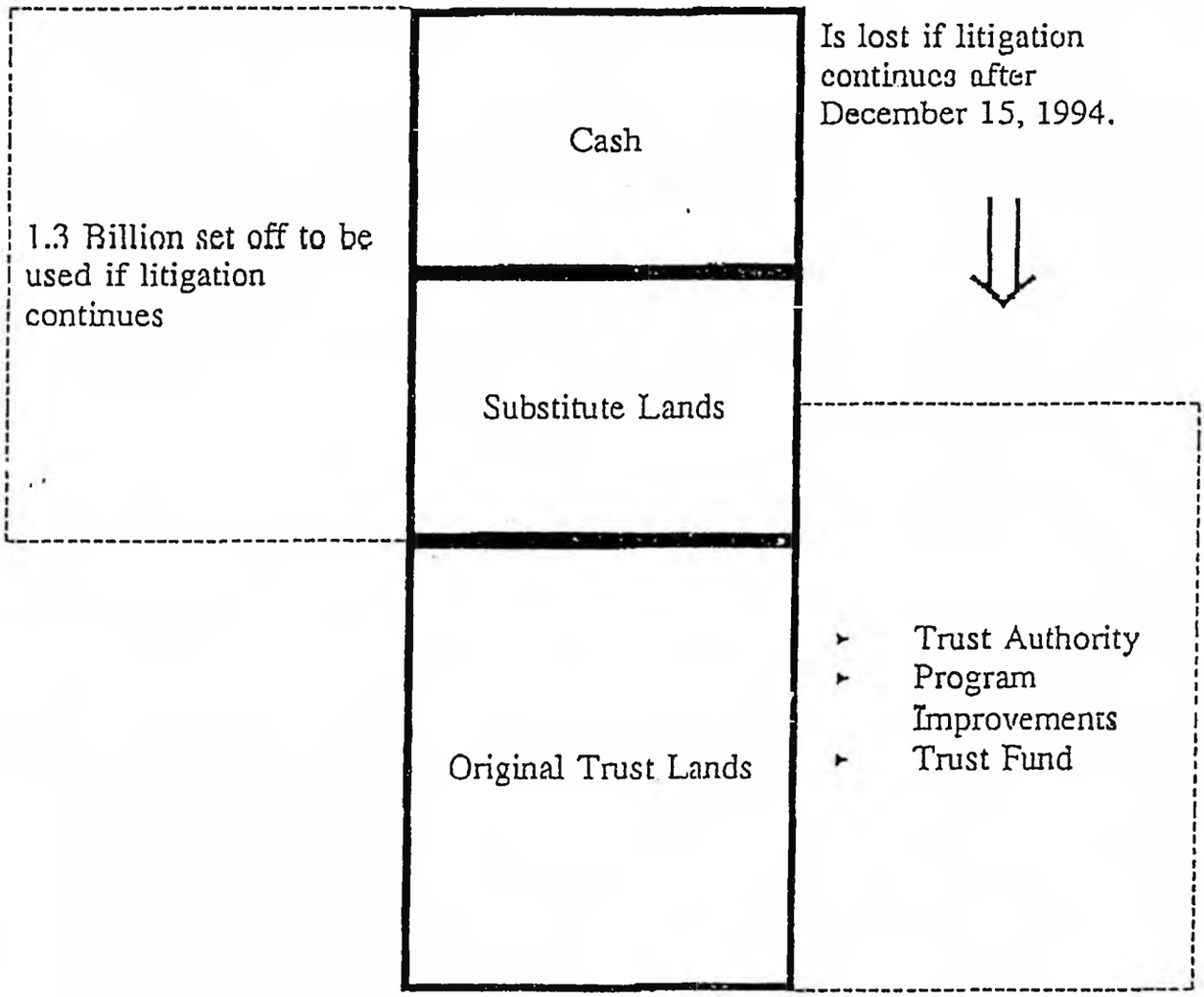
Dept. of Natural Resources Commissioner Harry A. Noah

On The CS For HB 201

Befcre House Finance Committee

April 11, 1994

Reconstructed Trust



MENTAL HEALTH SCHEDULE of EVENTS

Judge denied preliminary approval.
Dec. 30, 1993

State begins the process of organizing a response to the judge's concerns.
1st. week, Jan., 1994

Each party to the case requested to return to the discussions.
2nd. week, Jan., 1994

Notice is given identifying potential substitute lands.
Feb. 10, 1994

State submits formal proposal to each party in the case.
Feb. 10, 1994

Settlement discussions are on-going.

RESOLUTION

Legislative resolution package is prepared and submitted to House and Senate.
March 24, 1994

House/Senate debate legislative resolution package - modifications are made as appropriate.

No action by legislature means that gridlock continues - Land title is closed and resource development is limited.

C.S. 201 (3/18/94) Legislation Passes.

Believe we will have complied with Supreme Court's order to reconstitute the Trust.

SETTLEMENT

Plaintiffs submit initial conceptual counter-proposal.
State - Parties review the details.
March 14, 1994

If agreement can be reached by all parties, then collectively recommendations are made to modify legislative resolution package.

Settlement Legislation

ALL IS RESOLVED - the case is over.

ASSUMPTIONS USED IN RECONSTRUCTION OF THE MENTAL HEALTH LANDS TRUST

1. That as much of the original Mental Health Trust Lands available should go back into the trust.

2. That protecting the lands not returnable to the trust is important to a wide range of people and groups throughout the state. (these lands are owned by private individuals, municipalities, and lands set aside for parks, state forests and wildlife refuges).

3. This bill builds on the approach laid out in Chapter 66, to substitute other state lands to act as a portion of the compensation package for the original trust broken up in 1978.

4. The compensation to the trust for subsurface values lost from the original trust has been one of the major sticking points in the long term battle over this issue. This land package addresses that issue by attempting to either return original trust land subsurface estate to the trust or to substitute similar geologic lands to the trust.

5. The administration has not used the 1.3 billion dollar offset *as part of reconstructing the trust.

   *(the offset was defined by the Supreme Court in 1985 as the money the state has spent on mental health programs since 1978. that amount is approximately 1.3 billion dollars).

SUMMARY OF ACREAGE AND PARCELS
RECONSTRUCTION OF MENTAL HEALTH TRUST

- Original Entitlement, Mental Health Trust Lnds: 1,000,000 acres

- Land not to be returned to the Mental Health Trust: 530,865 acres

Land Categories	Acres
Third Party Purchasers	45,845
Municipal Conveyances	43,331
University Settlement	3,708
CIRI Land Exchange	28,449
State Agencies	3,565
Native Allotments	3,817
LDAs	232,017
State Forests (Haines, TVSF)	131,955
Chena Condemnation	5,335
Other	32,843
Total	530,865

- Land available to be returned to the Mental Health Trust from original Entitlement:*

total estate	466,180

- Land proposed to be designated as Mental Health Trust Land: (substitute Lands)

Substitute Land (total estate)	356,884
Subsurface only	127,037
	483,921

* In addition there are 98,398 acres of subsurface only lands available to be returned to the Trust.

- Total of all lands to be returned or designated as Mental Health Trust Land:

	Acres		Acres
Total estate		Split estate	
Original Lands	446,180	Original Lands	98,398
State Replacement Land	360,184	State Replacement Land	127,037
Total	826,364	Total	225,435

Alaska State Legislature

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Representative Ronald L. Larson
District 27

April 22, 1993

David T. Walker
417 Harris Street
Juneau, Alaska 99801

Re: Proposed Mental Health Trust Lands Legislation SB 67/HB 201

Dear Mr. Walker:

Responding briefly to your letter of yesterday, suggesting that "short, uncomplicated legislation could be enacted which would be very productive" in resolving the Chapter 66, Mental Health Land Trust issue. Your suggestions and my comments follow:

Amend SB 67/HB 201 to enact the April 6, 1992 settlement agreement. It rarely occurs to the Legislature to enact regulations or agreements especially when the Attorney General has given notice of intention to withdraw the State from an agreement. But, if it were done, it would only follow full discussion, review and recommended approval by either Judiciary Committee of the Legislature. No such recommendation exists and to my knowledge, your suggestion was never raised during the two months SB 67 was in Senate Judiciary Committee.

Replace the hypothecated land with 550,000 acres of substitute Trust lands selected by the plaintiffs and designate as collateral, lands in Cook Inlet oil and gas fields..If the Finance Committee were to consider the appropriation of specific lands of the State to any given public purpose it would only do so at the recommendation of the Resource Committee. Again, no such, committee recommendation exists.

Direct the escrow of receipts from the above substitute lands so they might ultimately be conveyed to the Trust. For better or for worse Chapter 66 SLA 1991 has a floating effective date - when the Weiss case is dismissed, the law takes effect. Until such time the State continues to set aside each year six percent of the General Fund in the Mental Health Trust Income Account. And, appropriations will continue to be made from that account to adequately fund mental health programs.

MADE in ALASKA

With this session of the Legislature days from adjournment, the "uncomplicated legislation" you suggest is not uncomplicated and therefore, as of this date no further Finance Committee action has been scheduled.

Sincerely,

Ronald L. Larson
State Representative

Enclosure

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April 21, 1993

HAND DELIVERED

Representative Ronald L. Larson
Co-Chairman
House Finance Committee
Capitol Building, Room 502
Juneau, Alaska 99811

Representative Eileen MacLean
Co-Chairman
House Finance Committee
Capitol Building, Room 507
Juneau, Alaska 99811

Re: Proposed Mental Health
Trust Lands Legislation
SB 67/HB 201

Dear Representatives Larson and MacLean:

As brief introduction, I represent Vern Weiss, the original named plaintiff in Weiss v. State, 4FA-82-2208 Civil. This letter is also written on behalf of Jim Gottstein who represents the Alaska Mental Health Association, et al, in Weiss. The litigation was begun by the Alaska Mental Health Association through Mr. Weiss and later the Association became a formal named plaintiff on behalf of trust beneficiaries. Mr. Weiss and the Alaska Mental Health Association then are the parties that originally commenced the Mental Health Trust Lands litigation and have had primary responsibility for prosecuting it for its ten year course. We are writing you with respect to SB 67, which has companion legislation in the House known as HB 201.

In 1991, Chapter 66 SLA 1991 was negotiated by the Administration and us[1] and passed as a proposed settlement of the class action lawsuit. Any such settlement must necessarily be a "proposed" one because under the rules applying in class actions any settlement has to be approved by the court as fair and equitable to the class (including that it is legal). The approval process is well under way for Chapter 66 with the court's initial rulings expected

1/ Along with Jeff Jessee, representing mentally retarded and mentally defective beneficiaries who intervened later in the litigation.

within the next 60 days or so.[2] The basic structure of the Chapter 66 reconstitution of the Trust[3] is to return as much original Trust Land to the Trust as possible and replace the balance with state land as comparable as practicable and equal in value. All reconstituted Trust Land will then be managed for Trust purposes, i.e., generation of revenue for the mental health program.

As expected, Chapter 66 has been vigorously challenged in court by environmental and other organizations represented by the Sierra Club Legal Defense Fund. Recently, Unocal and Marathon Oil Companies entered the lawsuit to claim that the State has no right to transfer their oil and gas leases to the Trust. Some beneficiaries also object to Chapter 66 because it does not guarantee adequate funding for the mental health program. It is fair to say that the delay in settlement approval is related to these parties' challenges in court. In addition to the parties formally challenging the settlement in court, industry interests are unhappy with the delay in resolving this situation (as are we).

SB 67/HB 201 have been proposed by these interests as a way to resolve all their problems with Chapter 66 and immediately resolve the litigation. To do this it is proposed that SB 67/HB 201 substitute a percentage of unrestricted general fund revenues (6% in SB 67 and 3% in HB 201) for original Trust land not returned to the Trust. Unfortunately, passage of SB 67/HB 201 in their current form cannot resolve the litigation quickly and, in our view, cannot be approved as a settlement.

As mentioned, under judicial rules the court must approve any class action after notice and an opportunity to object is given to all class members. First, a proposed settlement is presented to the court for "preliminary approval." Preliminary approval is granted if the proposed settlement is "within the range of possible approval and has no obvious defects" (such as being illegal). If preliminary approval is granted, notice is given to the class[4], the court receives comments, holds one or more hearings and determines if the settlement should be granted final approval. The court can suggest changes, but may not force the parties to reach a different settlement. Of course, any trial court determinations are subject to appeal.

2/ While in one sense the rulings are "initial," the issues have been so extensively briefed by the parties that the court's impending rulings should give a clear view of how the trial court will ultimately treat the proposed settlement. However, everyone expects the non-prevailing party(ies) to pursue all available appeals.

3/ Chapter 66 also provides detailed rules regarding how trust funds will be applied in support of the mental health program.

4/ A 90 day comment period may very well be a minimum.

As indicated previously, we believe the parties will soon receive the trial court's determinations regarding initial fairness and legality of the Chapter 66 settlement. If SB 67 or HB 201 were to pass, this process would have to start over and it has taken over a year to reach this stage with respect to Chapter 66, without including the time required for the settling parties to draft a basic settlement document to present to the court for consideration.

Substantively, there are two very serious legal questions associated with SB 67/HB 201. The first is whether a settlement in which the Trust gives up title to the bulk of its assets for an unenforceable under-secured promise to pay money can be approved as fair. While the proponents of SB 67/HB 201 have striven mightily to come up with techniques to minimize the chances of the State breaching (consistent with the proponents' unwillingness to put their interests on the line), the separation of powers doctrine and specifically Article IX, Section 13 of the Alaska Constitution prohibits the courts from enforcing any debt owed by the State. In our view, this attribute of SB 67/HB 201 means that such legislation will not be approved as a settlement.[5]

The second major problem with the proposed legislation is that it raises the question of whether the requirement that the State pay a fixed percentage of the general fund into the mental health trust income account amounts to a dedicated fund prohibited by Article IX, Section 7 of the Alaska Constitution. The only way this question can be answered is by the courts. The proponents of SB 67/HB 201 want the beneficiaries to ignore the potential dedicated fund problem and hope that nobody else will raise it. This would be imprudent because it would expose the beneficiaries to the unacceptable risk that they will have released all their claims to Trust property only to have the settlement challenged later by any citizen and declared illegal. There is virtually no chance that the dedicated fund issue will not be raised.

Thus, while we share everyone's frustration with the time being taken for resolution of the Chapter 66 settlement, there is absolutely no way that SB 67/HB 201 can resolve the litigation quickly. More importantly from our perspective, SB 67/HB 201 takes us significantly backward and, will most probably result in the original litigation being revived (including the claim to lands conveyed to third parties and lands placed in legislative

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5/ In fact, the 1978 legislation redesignating Mental Health Trust land as general grant land which was invalidated by the Alaska Supreme Court in Weiss v. State, 706 P.2d 681 (1985) included a promise to pay a percentage of funds earned from state lands to the Trust (albeit a smaller amount than currently proposed).

designations),[6] because, it suffers from substantially greater infirmities than Chapter 66. To aid in your understanding of this complex issue, we have enclosed a chart which analyzes the interest groups' goals vis a vis Chapter 66, litigation and SB 67/HB 201, as well as a brief description of these approaches. We believe that any unbiased review will confirm that at this point SB 67/HB 201 are extremely counter-productive.

All of this is not to say that the legislature can not be constructive in the current situation. In fact there is short, uncomplicated legislation that could be enacted which would be very productive.

The first element of the legislation would confirm, approve and ratify the April 6, 1992 settlement agreement filed in Weiss. In essence the legislation would enact the settlement agreement. By doing this all of the legal challenges to the current settlement are eliminated except those based upon the claim that the legislature does not have the constitutional authority to enter into the settlement.

A second element of the legislation would replace the approximately seven million acres of land currently hypothecated to the Trust with the approximately 550,000 acres of onshore land nominated by the Plaintiffs as Proposed Substitute Land plus the approximately 1.5 million acres of the existing collateral of last resort (offshore Cook Inlet oil and gas fields). The remaining currently hypothecated lands would be released. We have discussed this with our clients and they have agreed to this (although it would take court approval). The reason for this amendment to Chapter 66 is that a good deal of the opposition to Chapter 66 is related to the 7 million acres of land currently hypothecated to the Trust.

The third element of the legislation would direct the State to escrow receipts from new development on Proposed Substitute Land so that if such land is ultimately conveyed to the Trust, the funds received will be deposited into the Trust Fund.[7] After land is

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6/ The State has repeatedly attempted to have these claims dismissed to no avail. A legal memorandum issued in January 1990 describing these claims and their legal bases was widely distributed in 1990 and is available upon request. The State's disregarding of the legal principles described in that memorandum resulted in the imposition of the preliminary injunction against the State doing anything on Mental Health Trust Land without court approval and the placing of a cloud on all third party interests in Mental Health Trust Lands.

7/ The Department of Law has indicated there is no authority to place such funds in escrow under current law.

nominated as Proposed Substitute Land, in order to protect the Trust's future interest, the Plaintiffs must approve any transactions. If funds received from such new activity can never be deposited into the Trust fund, there are many fewer transactions that it makes sense for the Plaintiffs to approve.

We recognize that there has been intense pressure to pass SB 67/HB 201 as a way to immediately resolve the Mental Health Trust Lands litigation. Unfortunately, that route leads to calamity. We hope that in the rush to adjournment, you will find time to appraise the Weiss litigation and avoid limited - perspective fixes to Chapter 66 that will only exacerbate the situation. We also hope that you will accept our suggestions to enhance the acceptability of the Chapter 66 settlement to the court as a way to help all of us through this morass sooner than any other course of action presently under consideration by the legislature.

Very truly yours,

David T. Walker

David T. Walker

Enclosure

cc: James B. Gottstein
Jeffrey L. Jessee
Philip R. Volland
Charles E. Cole
Charles P. Boddy
Robert B. Stiles
Walt Baldwin
Peter J. Maassen
G. Thomas Koester
Wendy S. Feuer
Brian D. Bjorkquist
Kent V. Dawson
Richard S. Thwaites, Jr.
Vern T. Weiss

Rep. Larson

STATE OF ALASKA

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

WALTER J. HICKEL, GOVERNOR

P.O. BOX 110300 - STATE CAPITOL
JUNEAU, ALASKA 99811-0300
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May 4, 1993

Hon. Ramona Barnes, Speaker
Alaska House of Representatives
Eighteenth Alaska Legislature, First Session
State Capitol, Room 208
Juneau, Alaska 99801-1182

Dear Speaker Barnes:

After meeting with the settling plaintiffs in Weiss, we agree that two minor amendments should be made in the proposed language that was distributed to you earlier today to resolve Judge Greene's concerns in the mental health trust lands litigation. The amendments are reflected in the proposed language attached to this letter.

We are available to explain these proposed amendments. We urge your favorable consideration on this matter.

Very truly yours,

Charles E. Cole
Attorney General

CEC:cl

cc w/ enc.: Rep. Gail Phillips
Rep. Ron Larson
Rep. Eileen MacLean

Pat Ryan, Chief of Staff
Kris Lethin, Legislative Liaison
Office of the Governor

Hon. Glenn A. Olds, Commissioner
Dept. of Natural Resources

past two years in settling the mental health lands mess will become a dead letter.

We urge your favorable consideration of the proposed amendments.

Very truly yours,

Charles E. Cole
Attorney General

CEC:cl

cc w/ enc.: Rep. Gail Phillips
Rep. Ron Larson
Rep. Eileen MacLean

Pat Ryan, Chief of Staff
Kris Lethin, Legislative Liaison
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Peter J. Maassen
G. Thomas Koester

Brian D. Bjorkquist, Assistant Attorney General
Wendy S. Feuer, Assistant Attorney General

93138

5/4/93

REVISED

Proposed Amendments to CSHB 201(RES) and CSSB 67(JUD)

Page 1, line 2:

Following "mental health trust":

Delete all material

Insert "; and providing for an effective date.""

Page 1, lines 3 - 7:

Delete all material

Page 1, line 9 - page 11, line 9:

Delete all material

Insert the following:

"* **Section 1.** Section 55(g), ch. 66, SLA 1991, is amended to read:

(g) **Except for public notice as provided under AS 38.05.945(b) and (c), the** [THE] provisions of **AS 38.04, AS 38.05, and** AS 38.50 do not apply to exchanges under this section.

* **Sec. 2.** Section 55(h), ch. 66, SLA 1991, is amended to read:

(h) If agreement cannot be reached between the plaintiffs in Weiss v. State of Alaska, 4FA-82-2208 Civil, and the commissioner of natural resources under (f) of this section as to appropriate lands to be conveyed to the trust as compensation or as to the

value of the original lands taken or of replacement lands, the Alaska Supreme Court shall resolve the disagreements using the criteria set out in this section, **but may not give deference to the commissioner's finding under (j) of this section.** The Alaska Supreme Court may order the commissioner of natural resources to convey appropriate state land to the trust without further legislative authorization.

*** Sec. 3.** Section 55, ch. 66, SLA 1991 is amended by adding new subsections to read:

(i) The commissioner of natural resources shall give public notice as provided under AS 38.05.945(b) and (c) of proposed exchanges negotiated under (f) of this section, or exchanges proposed by either the plaintiffs in Weiss v. State of Alaska (4FA-82-2208 Civil) or the commissioner of natural resources under (h) of this section. In the notice, the commissioner shall provide for a written comment period of at least 30 days. The commissioner shall hold a public hearing in the area of the land proposed to be conveyed to the trust under the proposed exchange.

(j) Following public notice of a proposed exchange under this section and the public hearing, the commissioner shall make, and give notice of, a written finding as to whether the proposed exchange meets the criteria of (b) - (e) of this section.

(k) In order to obtain judicial review of the commissioner's finding under (j) of this section and of the exchange, a person must

(1) have submitted written or oral comment in response

to a notice published under (i) of this section;

(2) demonstrate that the person has an interest that will be adversely affected by the exchange if the exchange becomes final; and

(3) within 30 days after the commissioner gives notice of the commissioner's finding, file a notice of appeal with the court with jurisdiction under sec. 57 of this Act.

* **Sec. 4.** Section 56(a), ch. 66, SLA 1991, is repealed and reenacted to read:

(a) To secure the reconstitution of the trust as provided in secs. 54 and 55 of this Act, the following land is hypothecated to the trust established by the Alaska Mental Health Enabling Act of 1956, P.L. 84-830, 70 Stat. 709:

(1) original mental health land that will be returned to the trust under sec. 54 of this Act; and

(2) up to 1,500,000 acres of other state land as negotiated by the commissioner of natural resources and the plaintiffs in Weiss v. State of Alaska, 4FA-82-2208 Civil, using the criteria set out in secs. 55(d) and (e) of this Act, for the exchange of land to the trust in return for original mental health land not returned to the trust; the total amount of land hypothecated to the trust under this paragraph, in conjunction with land hypothecated to the trust under (1) of this subsection, shall be sufficient to reconstitute the trust.

* **Sec. 5.** Section 58, ch. 66, SLA 1991, is amended to read:

Sec. 58. **(a) Sections 56(a) and (b) of this Act take effect**

on the effective date of an Act passed by the Eighteenth Legislature amending provisions of ch. 66, SLA 1991 that relate to reconstitution of the corpus of the mental health trust.

(b) Sections 1 - 55, 56(c) and (d), and 57 of this [THIS] Act take [TAKES] effect upon entry of a final order dismissing Weiss v. State of Alaska, 4FA-82-2208 Civil, and the expiration of any time for appeal. The superior court shall advise the lieutenant governor and the revisor of statutes when the final settlement and order of Weiss v. State of Alaska has been approved.

* **Sec. 6.** If ch. 66, SLA 1991, is finally disapproved as a settlement of Weiss v. State, 4FA-82-2208 Civil, this Act is repealed.

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

Rep Barnes

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May 4, 1993

Hon. Ramona Barnes, Speaker
Alaska House of Representatives
Eighteenth Alaska Legislature, First Session
State Capitol, Room 208
Juneau, Alaska 99801-1182

Dear Speaker Barnes:

On April 26, 1993, Superior Court Judge Mary E. Greene ruled that the legislation settling the mental health trust lands litigation (Chapter 66, SLA 1991) was constitutional in all respects except one. In her view, the pledging of the land on the "Hypothecated Lands List" to the trust as security for the state's performance of its obligations under ch. 66 was not valid because it did not contain adequate standards to guide the commissioner of natural resources in negotiating the list with the plaintiffs.

Judge Greene went out of her way to point out, however, that the legislature could easily cure the problem:

> Obviously, it would be very easy for the legislature to remedy this problem. If the legislature amended section 56(a) to adopt a specific, known list or <u>delegated the task of preparing a new list with adequate standards</u>, the difficulty would be eliminated.

Memorandum Decision and Order Re: Intervenors' Complaint (April 26, 1993) at 82, n. 42 (emphasis added).

The attached proposed amendments to CSHB 201(RES) would implement Judge Greene's suggestion for curing ch. 66 by delegating to the commissioner of natural resources the task of preparing a new Hypothecated Lands List, to consist of (1) original mental health land that will be returned to the trust under sec. 54, ch. 66, and (2) up to 1.5 million acres of other state land, selected under the criteria set out in secs. 55(d) and (e), ch. 66, for identifying land to be exchanged to the trust in return for original mental health land not returned to the trust. (This will reduce the amount of state land hypothecated to the trust from the 6.7 million acres on the original Hypothecated Land List to no more than 1.5 million acres and, because the same standards will be used for hypothecation as for exchanges, make it likely that the same land that is hypothecated will ultimately be exchanged to the trust.)

The proposed amendments also make a technical amendment to ch. 66 by exempting the process for reconstituting the trust from the planning and classification requirements of AS 38.04 and AS 38.05, and substituting procedures by which the public may participate in the reconstitution of the mental health trust. Judge Greene found that the planning and classification requirements of AS 38.04 and AS 38.05 would apply to the reconstitution process under ch. 66 as currently written. The proposed amendments to CSHB 201(JUD) will result in substantial savings of both time and money in completing the reconstitution process and bringing this issue to final closure.

In effect, Judge Greene has determined that ch. 66, SLA 1991 is a constitutionally permissible means to settle this divisive and costly lawsuit that has adversely impacted many people in the state. Passage of the amended version of CSHB 201(JUD) that we are proposing will (1) significantly advance the final settlement of the case, and (2) free most of the land on the original Hypothecated Lands List for development.

If this legislation is not enacted before the legislature adjourns, the chances are strong that the settlement agreement reached with the Weiss plaintiffs under ch. 66 will be terminated and the headway we have made over the

PERKINS COIE

A LAW PARTNERSHIP INCLUDING PROFESSIONAL CORPORATIONS
1029 WEST THIRD AVENUE, SUITE 300 • ANCHORAGE, ALASKA 99501 • (907) 279-8561

April 26, 1993

James B. Gottstein
406 G Street, Suite 206
Anchorage, Alaska 99501

Re: CSSB 67(JUD) and CSHB 201(RES)

Dear Jim:

Thank you for your letter of April 22, 1993 commenting on CSSB 67, CSHB 201, and the additional amendments our coalition proposed on April 15, 1993.

As you know, my two clients, Usibelli Coal Mine, Inc. and the Diamond Chuitna coal project, have worked very hard in both the 1992 and 1993 legislative sessions to try to structure a compromise that all of the interested parties could accept. Charlie Boddy and Bob Stiles have both invested a significant amount of time and money in this effort, as have all of the members of our settlement coalition. I am sorry that we have been unable to satisfy your concerns.

Because your letter states clearly that you are not interested in working with us on these bills, I will not respond to the specific questions and objections you have raised. I do, however, want to respond to a few of the statements made in your letter.

On page 3 you discuss the dedicated fund issue and summarize a conversation you and I had about this issue. What I intended to suggest in our conversation was that if you had any doubt about the merits of this issue, it would be best to address the issue after you had first taken a look at the specific language we were going to propose in the additional amendments. My thought process was that if you were willing to work with us on the bills, we could then determine by further research whether there really is a dedicated fund issue, or that we could fix any problem with additional drafting. This constitutional issue is a complicated subject which I felt deserved some serious thought and analysis before

[14166-0010/AA931130.008]

being thrown up as yet another roadblock to a compromise designed to end the Chapter 66 litigation. As we have discussed, if there is a dedicated fund problem under CSSB 67 and CSHB 201, then the exact same legal problem exists with respect to the "step-down" funding provision in Chapter 66. Frankly, if you are so sure that this issue would have to be addressed by the court if CSSB 67 or CSHB 201 were to pass, then I do not understand why you have not brought it to the court's attention in the litigation over Chapter 66.

On page 4 of your letter you mention that a constitutional amendment could solve both the "unenforceability" and dedicated fund problems but that you understand the proponents of CSSB 67 and CSHB 201 "are unwilling to consider such an approach." I want to clarify for you that our "willingness" is not the issue. Our settlement coalition simply feels it is unrealistic from a political standpoint to pursue this approach. Not only do we think the required vote could not be obtained, but we fear that there would be organized political opposition to any such constitutional amendment and that this would only result in animosity on the part of the general public towards the beneficiaries of mental health services.

As I have testified in front of the legislature, we do not believe that Chapter 66 will survive all of the court challenges and appeals. Based upon this belief, you are correct that my clients prefer a litigated reconstitution of the trust in accordance with the supreme court's 1985 decision over the protracted litigation concerning the legality and fairness of Chapter 66. If no final settlement can be reached promptly, we would simply rather spend our time, energy and money resolving the issues raised by the supreme court.

Can I assure you or anyone that amending Chapter 66 with CSSB 67 and CSHB 201 will end the litigation? Of course not. But we have a very broad-based coalition (two of the named plaintiff beneficiary groups, the public interest intervenors, the oil company intervenors, and the resources development community) supporting these bills. If you were willing to work with us and if you were willing to make reasonable accommodations, we do believe that any litigation over an amended Chapter 66 could be minimized.

We hope there may be other opportunities to work constructively together and to settle the case, but we think Chapter 66 in its current form is not the answer. Once again, I want to thank you for taking the time to respond to the legislative proposals supported by our coalition. If you should change your mind and desire to work with us, I hope you will give me a call.

Very truly yours,

Richard M. Johannsen

pw

cc: Joe Usibelli, Jr.
Charles P. Boddy
Robert B. Stiles
Kent V. Dawson
Charles E. Cole
Wendy S. Feuer
Sen. Drue Pearce
Sen. Steve Frank
Rep. Ron Larson
David T. Walker
Thomas S. Waldo
Jeffrey L. Jessee
Philip R. Volland
Peter J. Maassen
G. Thomas Koester
Brian D. Bjorkquist
Rep. Eileen Maclean

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130 Seward Street, Suite 409
Juneau, Alaska 99801-2105

MEMORANDUM April 21, 1993

SUBJECT: Mental Health Trust; Amendment 8-LS0728\O.2 to HB 201

TO: Representative Ron Larson
Co-chair, House Finance Committee
Attn: Jay Hogan

FROM: Pam Finley PF
Assistant Revisor

Please be advised that the enforcement provisions in AS 37.14.046 (in both secs. 9 and 10) and sec. 17 may violate the state constitution by delegating legislative and executive power to the Authority and the courts, and by failing to keep legislative, executive, and judicial power sufficiently separate.

PF:lmb
93-131.lmb

8-LS0728\O.2
Chenoweth
4/21/93

AMENDMENT

OFFERED IN THE HOUSE

TO: CSHB 201(RES)

Page 1, line 7, after "trust;":

Insert "amending Rules 60 and 65 of the Alaska Rules of Civil Procedure;"

Page 1, after line 8:

Insert new bill sections to read:

"* Section 1. PURPOSE. The provisions of ch. 66, SLA 1991, as amended by this Act, are intended to constitute settlement of Weiss v. State of Alaska, No. 4FA-82-2208 Civil. The obligations imposed upon the state by ch. 66, SLA 1991, as amended by this Act, are to remedy past breaches by the state of the trust established by the Alaska Mental Health Enabling Act of 1956, P.L. 84-830, 70 Stat. 709, and to place the trust as nearly as possible in the position it would be in today and in the future had the trust not been breached.

* Sec. 2. SCOPE OF STATE'S OBLIGATION WITH RESPECT TO ALLOCATION OF MONEY TO THE MENTAL HEALTH TRUST INCOME ACCOUNT. The obligation of the state under AS 37.14.036(c), added by sec. 7 of this Act, to allocate money to the mental health trust income account anticipates future changes in the unrestricted general fund revenue of the state, increased demands on the revenue of the state from other sources, and future changes in the mental health program of the state."

Page 1 line 9:

Delete "Section 1"

Insert "Sec. 3"

Renumber the following bill sections accordingly.

Page 1, line 11:

After "dispute", insert "or cause of action"

Delete "AS 37.14.036(c) - (e)"

Insert "AS 37.14.036(c) and, when required, to issue a mandatory permanent injunction under AS 37.14.046"

Page 4, line 1, after "section":

Insert ", and shall inform the authority in writing by August 31 of each year of the amount allocated under this subsection from the general fund to the mental health trust income account during the preceding fiscal year"

Page 4, lines 6 - 26:

Delete all material and insert:

"* Sec. 8. AS 37.14 is amended by adding a new section to read:

Sec. 37.14.041. SECURITY FOR ESTABLISHMENT OF TRUST INCOME ACCOUNT. (a) To secure the allocation of amounts required under AS 37.14.036(c), the following land and minerals that were granted to the state under the enabling Act are pledged as security to the mental health trust:

(1) land and minerals that are, on the effective date of ch. 66, SLA 1991, designated by law as a state park, state forest, state game refuge, state wildlife refuge, state migratory waterfowl refuge, state game sanctuary, state recreation area, state recreation river, state wilderness park, state marine park, state special management area, state public use area, critical habitat area, bald eagle preserve, bison range, or moose range;

(2) minerals in other land conveyed to the state that, before the effective date of ch. 66, SLA 1991, have been reserved by the state or that on and after the effective date of ch. 66, SLA 1991, must be reserved by the state; however, for purposes of this paragraph, minerals owned or to be owned by the University of Alaska are not considered reserved or to be reserved by the state.

(b) Title to land and minerals described in (a)(1) of this section and to reserved minerals described in (a)(2) of this section remains in the state and

(1) notwithstanding the grant of the land and minerals to the state under the enabling Act or the pledge of the land and minerals as security,

(A) the state may continue to conduct all activities on the land and minerals that are authorized by law;

(B) an interest in land or mineral interest issued by or acquired from the state is valid; and

(2) so long as a default in the obligation to make the allocation required by AS 37.14.036(c) does not exist, income from that land and minerals, except as a deposit may be otherwise directed by the state constitution or by law, shall be

(A) deposited in the state general fund; and

(B) considered unrestricted general funds of the state.

(c) Upon default, the foreclosure of the land and minerals pledged as security under (a) and (b) of this section, including the parcels to be foreclosed and the manner of foreclosure, shall be determined by the superior court, subject to AS 37.14.046(b)(2).

* Sec. 9. AS 37.14 is amended by adding a new section to read:

Sec. 37.14.046. ENFORCEMENT OF MENTAL HEALTH TRUST INCOME ACCOUNT PAYMENT OBLIGATION. (a) If the allocation required under AS 37.14.036(c) is not made in a timely manner, the chief executive officer of the authority shall notify each of the following in writing of the state's failure to make the allocation:

(1) the governor;

(2) the commissioner of revenue;

(3) the president of the senate; and

(4) the speaker of the house of representatives.

(b) If the allocation is not made within 15 days after the giving of the notice under (a) of this section, the authority may exercise either or both of its rights under this subsection:

(1) the authority may bring an action in the nature of mandamus in the superior court to require the commissioner of revenue to make the allocation required by AS 37.14.036(c); in that action,

(A) the superior court shall immediately issue a mandatory permanent injunction; notwithstanding AS 09.40.230, the court shall issue the

injunction without regard to

(i) the adequacy of any legal remedy or the remedy of foreclosure under this section;

(ii) any balancing of the equities, hardships, or practicalities; and

(iii) any difficulty of enforcement;

(B) if there is a dispute over the dollar amount of the allocation required under AS 37.14.036(c), the court shall direct the commissioner of revenue to immediately allocate an amount equivalent to the greater of

(i) the dollar amount allocated by the commissioner of revenue under AS 37.10.036(c) during the prior fiscal year; or

(ii) the required allocation amount last reported by the commissioner to the authority under AS 37.14.036(c); and

(C) a dispute over the amount of the allocation required by AS 37.14.036(c) shall be resolved de novo after the order under (B) of this paragraph is issued;

(2) the authority may foreclose on some or all of the land and minerals pledged as security under AS 37.14.041; the foreclosure procedures available to the trust are those that are customarily available to the beneficiary of a deed of trust under normal commercial practice and state law; a foreclosure under this paragraph does not affect the obligation of the state to continue making the full annual allocation required under AS 37.14.036(c).

(c) An interested person may also bring an action under (b)(1) of this section. If an interested person brings an action under this subsection, the interested person shall move to join the authority as a defendant under applicable court rule unless the authority also files an action under (b)(1) of this section.

(d) Notwithstanding any other provision of law, a mandatory permanent injunction issued under (b)(1) of this section is not subject to modification or dissolution due to changed circumstances in the state's financial condition.

* **Sec. 10.** AS 37.14 is amended by adding a new section to read:

Sec. 37.14.046. ENFORCEMENT OF MENTAL HEALTH TRUST INCOME ACCOUNT PAYMENT OBLIGATION. (a) If the allocation required under

AS 37.14.036(c) is not made in a timely manner, the chief executive officer of the authority shall notify each of the following in writing of the state's failure to make the allocation:

(1) the governor;

(2) the commissioner of revenue;

(3) the president of the senate; and

(4) the speaker of the house of representatives.

(b) If the allocation is not made within 15 days after the giving of the notice under (a) of this section, the authority may exercise either or both of its rights under this subsection:

(1) the authority may bring an action in the nature of mandamus in the superior court to require the commissioner of revenue to make the allocation required by AS 37.14.036(c); in that action,

(A) the superior court may issue a permanent injunction;

(B) if there is a dispute over the dollar amount of the allocation required under AS 37.14.036(c), the court shall direct the commissioner of revenue to immediately allocate an amount equivalent to the greater of

(i) the dollar amount allocated by the commissioner of revenue under AS 37.10.036(c) during the prior fiscal year; or

(ii) the required allocation amount last reported by the commissioner to the authority under AS 37.14.036(c); and

(C) a dispute over the amount of the allocation required by AS 37.14.036(c) shall be resolved de novo after an order under (B) of this paragraph is issued;

(2) the authority may foreclose on some or all of the land and minerals pledged as security under AS 37.14.041; the foreclosure procedures available to the trust are those that are customarily available to the beneficiary of a deed of trust under normal commercial practice and state law; a foreclosure under this paragraph does not affect the obligation of the state to continue making the full annual allocation required under AS 37.14.036(c).

(c) An interested person may also bring an action under (b)(1) of this section. If an interested person brings an action under this subsection, the interested person

shall move to join the authority as a defendant under applicable court rule unless the authority also files an action under (b)(1) of this section."

Renumber the following bill sections accordingly.

Page 6, line 29, after "game refuge":

Insert "state migratory waterfowl refuge,"

Page 6, line 30:

Delete "recreational area, state recreational river"

Insert "recreation area, state recreation river"

Page 10, following line 16:

Insert a new bill section to read:

"* Sec. 17. Section 57, ch. 66, SLA 1991, is repealed and reenacted to read:

Sec. 57. CONCLUSION OF PENDING LITIGATION. This Act, and any amendments to it, may serve as the basis of a settlement by the parties of the unresolved issues in Weiss v. State of Alaska, 4FA-82-2208 Civil. If this Act and any amendments to it are to serve as the basis of a settlement of Weiss v. State of Alaska,

(1) the court before which the settlement is agreed to and filed may prepare an order or decree setting out the basis of the settlement;

(2) the court may incorporate the provisions of this Act, as amended, by reference into its order or decree;

(3) the order or decree entered by the court under (2) of this section is an independent basis for the obligations imposed by this Act, as amended;

(4) the obligations imposed by this Act, as amended, that are incorporated into the court's order or decree may not be modified without approval of the superior court; and

(5) changed circumstances in the financial condition of the state are not grounds for modification of the court's order or decree."

Renumber the following bill sections accordingly.

Page 10, line 17:

Delete all material and insert:

"* Sec. 18. Sections 54, 55, and 56, ch. 66, SLA 1991, are repealed."

Page 10, line 19:

Delete "sec. 1"

Insert "sec. 3"

Page 10, line 26:

Delete "sec. 8"

Insert "sec. 12"

Page 11, line 4:

Delete "sec. 8"

Insert "sec. 12"

Page 11, following line 4:

Insert new bill sections to read:

"* Sec. 22. COURT RULE CHANGES. AS 37.14.046(d) . ded by sec. 9 of this Act, has the effect of amending Rule 60 of the Alaska Rules of Civil Procedure by excluding the factor identified in that subsection from consideration as a basis for modification of a final judgment or order. AS 37.14.046(b)(1)(A), added by sec. 9 of this Act, has the effect of amending Rule 65 of the Alaska Rules of Civil Procedure by requiring the superior court to issue mandatory permanent injunctions without regard to a showing by the party seeking injunctive relief that the standards applicable to temporary restraining orders, preliminary injunctions, and permanent injunctions are met.

* Sec. 23. Section 9 of this Act takes effect only if sec. 22 of this Act receives the two-thirds majority vote of each house required by art. IV, sec. 15, Constitution of the State of Alaska.

* Sec. 24. If sec. 9 of this Act takes effect under sec. 23 of this Act, sec. 10 of this Act does not take effect.

* Sec. 25. If sec. 9 of this Act does not take effect under sec. 23 of this Act, sec. 10 of

this Act takes effect under secs. 27 and 28 of this Act."

Renumber the following bill sections accordingly.

Law offices of
JAMES B. GOTTSTEIN
406 G STREET, SUITE 206
ANCHORAGE, ALASKA 99501
(907) 274-7686
TELECOPIER (907) 274-9493

James B. Gottstein
Jill C. Wittenbrader

April 22, 1993

Richard M. Johannsen
Perkins Coie
1029 West Third Avenue, Suite 300
Anchorage, Alaska 99501

Re: SB67/HB201

Dear Rick:

You and Jeff Jessee have asked us to address the language of SB67/HB201 for some time, most recently in connection with your April 15, 1993 proposed amendments. As you know, we have felt that SB67/HB201 have at least two serious legal problems which would likely lead to their rejection by the court. One of these problems is unenforceability. You have attempted to address enforceability in your recent proposed amendments. The other serious problem, whether the bills create a prohibited dedicated fund, is not perceived as a subject the legislature can address.[1] Because of these fundamental problems we are anxious to avoid the appearance that we are negotiating the terms of these bills.

In light of the effort your group has put into drafting this legislation we agree it is only fair to give you our thoughts. In doing so, we are not negotiating the terms of SB67/HB201, we are not endorsing SB67/HB201, even if our suggestions were accepted, and we have not changed our fundamental analysis that the SB67/HB201 approach is likely to fail as a settlement of the Weiss litigation for the reasons noted.[2]

Our comments will be directed to CSSB67(Jud) and CSHB201(Res) as if they were amended by your April 15 1993 transmittal.

Sec. 2.

We are opposed to requiring DNR to manage the lands. DNR is not equipped to manage the lands appropriately. The fiscal note

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[1]We frankly feel that the unenforceability issue is similarly incapable of legislative correction.

[2]We do understand that Usibelli prefers going back to the original litigation over consummating the Chapter 66 settlement. We think passage of SB67/HB201 will accomplish that goal of Usibelli.

prepared by DNR confirms this because no particular personnel are assigned to manage Trust land but rather a portion of DNR personnel expense is allocated to the Trust. This will lead to continued lack of attention to Trust lands, and, as will be discussed below, use of the Trust to fund general DNR functions.

We note that at line 15 of page 2, the addition of the words "and dispose of" appears to require disposal of the land and minerals. Simply using the word "manage" ought to be sufficient.

Sec. 3.

The imposition of AS 38.05.285 on the management of Trust land is inappropriate. Multiple use and other State constitutional provisions relating to management of general grant land do not apply to the management of Trust land. Providing that in case of conflicts, trust management principles apply does not solve this problem, because (1) it sets up an inappropriate management criteria in the first place, and (2) provides too much opportunity for legal challenges to actions on Trust land.

Sec. 4.

See, comments below regarding "802" lands.

New Sec. 5.

New Section 5 proposed in your April 15th transmittal amends AS 37.14.031, added by Section 11 of Chapter 66 to provide that the Trust fund will be a separate fund within the Permanent Fund or the Treasury. Which is it? Who decides? If it is the Permanent Fund, is that part of the Treasury? If not how can funds be removed from the treasury and deposited into the Permanent Fund without an appropriation without running afoul of Article 9, Section 13 of the Constitution.

Sec. 5 (Old).

This section which contains the compensation scheme, is the one with the fundamental problems. First, it is fundamentally unenforceable (we will address the remedy section where it comes up). Second, it raises the question of whether a binding commitment to pay or allocate a percentage of unrestricted general fund revenues is a constitutionally prohibited dedicated fund.

With respect to the former, Article 9, Section 13 of the Alaska Constitution provides that

> No money shall be withdrawn from the treasury except in accordance with appropriations made by law.

Similarly AS 09.50.270 provides in part, "No attachment or execution shall issue against the State." Article 9, Section 13 of the Constitution, makes any promise to pay or stated alternatively any debt based compensation to the trust (which is the essence of SB67/HB201) inherently unenforceable. We do not believe the court would approve a settlement wherein the beneficiaries release all of their rights to unreturned Trust land in exchange for an unenforceable promise to pay. Indeed, the 1978 legislation purporting to redesignate Mental Health Trust Land as general grant land that was invalidated in *State v. Weiss*, 706 P.2d 681 (Alaska 1985) contained a promise to pay a percentage of funds received from all State lands. It is very hard to see how SB67/HB201 are different in this material aspect from the legislation invalidated in *Weiss*.[3]

With respect to the dedicated fund issue, Article 9, Section 7 of the Alaska constitution prohibits dedicated funds except for (1) the permanent fund, (2) when required by the federal government for state participation in federal programs, and (3) dedications existing upon the date of ratification of the Constitution. The first and third exceptions clearly do not apply.[4] It is conceivable that the second exception applies which would make the dedication permissible. However, prudence requires that the issue be decided by the courts because the beneficiaries can not bear the risk that the dedication of a percentage of general fund revenues to the Trust is unconstitutional. You have suggested in conversation that this issue not be brought up by us and maybe no one else will. This would not be prudent because the issue could be raised after the beneficiaries had released their claim to Trust land, leaving them with nothing.

Frankly, we could live with the time involved to resolve this issue as long as the Chapter 66 option was preserved as a

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[3]The issue of enforceability does not impugn the intentions of the legislature. It simply reflects the undeniable fact that future legislatures may be faced with situations where, in their view, the public interest requires a breach, particularly if there are no penalties involved. In order to avoid any enforceability questions, it would be a simple matter to transfer sufficient income producing State assets to equal the anticipated payment requirement. For example, the recently identified Sunfish oil field in Cook Inlet is expected to generate royalties in the $130 million per year range. This is completely new revenue, not previously expected by the State. Of course, this would require resolution of the 6(i) issue. At least the trial court's ruling on this issue is imminent.

[4]The constitution was ratified in April of 1956 while the Alaska Mental Health Enabling Act was not passed until July of 1956.

backup[5], but believe the parties urging adoption of SB67/HB201 are unwilling to take the time involved. Similarly, a constitutional amendment could solve both the unenforceability and dedicated fund problems but we understand the proponents of SB67/HB201 are unwilling to consider such an approach.

The definition of unrestricted general fund revenues, while an improvement over no definition, is insufficient. The definition should list all current sources of revenues that are considered restricted (or not unrestricted). Otherwise, it will be quite easy to get into later disagreement over what was or was not restricted on the effective date. To say that "all categories of accounting for money accruing to the general fund that were not restricted" is too open-ended. First, I don't know what a "category of accounting" is. Second, new categories could be created. Also, since there will be some time before the effective date, new restrictions could be made to apply between now and the effective date.

Sec 6 (Old - as amended).

We recognize the effort that you and your group have put in to address the enforceability issue with your new proposed amendments to Section 6. We understand that the mandatory injunction approach (in the event the allocation is not made) was arrived at because you could not identify any other approach that would withstand constitutional scrutiny. In our view, the critical issue in evaluating the problem is to focus on "who's money is it?" In other words, are funds that have been "allocated" to the Mental Health Trust Income Account "owned" by the Trust. If so, it appears that a mandatory injunction transferring ownership of the funds from the State to the Trust would be unconstitutional under Article 9, Section 13 of the Alaska Constitution. If the Trust does not truly "own" the funds, then the hard won right of the beneficiaries to enforce the State's fiduciary obligations respecting expenditure of Trust funds would be nullified by Article 9, Section 13. This seems explicitly recognized in your amendment where it provides the mandatory injunction will issue "without regard to any difficulty of enforcement." The result seems to be that the payment obligation would still end up being unenforceable. Now, to the extent that you desired this to be tested in court, it would not

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[5]In this regard, my client, the Alaska Mental Health Association is probably much more willing to consider an enforceable percentage of general fund revenues than Mr. Weiss, who I understand to be convinced the State will never live up to a payment obligation, regardless of the enforceability provisions. Because of my belief that sufficient enforceability provisions are not likely to be achievable, Mr. Weiss's position and the Association's are probably not, as a practical matter, any different.

be objectionable to me as long as Chapter 66 is retained as an option.

With respect to inadequacy of security issues, clarifying that foreclosed LDA land is to be received by the Trust free and clear of any legislative restrictions has not been addressed. While proponents of SB67/HB201 can hypothesize that it may be better to leave that question open as a way to prevent a gung-ho development administration from breaching the payment obligation in order to open the LDAs to development, it simply is insufficient as a reason to deny the Trust an appropriate remedy.

In addition, the collateral is clearly insufficient (even with the addition of the subsurface of conveyed land) to secure the debt because only a small part of the original Trust land not to be returned is serving as collateral for all of the land not to be returned. Obvious additions to the collateral would be subjecting the "802" interest protections and any municipal land that has not been conveyed out of municipal ownership as of the date of enactment to foreclosure. Usibelli has indicated that it is sure the State won't breach the compensation obligation. If so, then it should not object to making its "802" interest protections subject to foreclosure in the event of default. The same is true with respect to the LDA management issue upon foreclosure. This brings up the concept of protection of the security. Under the proposed legislation, the State may do anything it wants on the pledged land, including reducing or eliminating its value as collateral. This substantially reduces its value as security.

Finally, the foreclosure procedures should specify more clearly, the rights upon foreclosure. Who conducts the sale? We assume non-judicial foreclosure rights are intended, but without elimination of the allocation obligation. It would appear that summary foreclosure of all parcels was intended. If so, it should be stated specifically. Since it would not appear that actual sales of the parcels to be foreclosed to third parties is contemplated, it seems a more direct approach could be taken. This is the rental or lease approach that we have previously indicated would be preferred to a security interest approach. Under this approach, title to the "pledged" land would remain in the Trust, with the State "leasing" or "renting" the right to use the land. If the allocation were not made the "lease" could be terminated and all rights returned to the Trust without going through a foreclosure proceeding. The notice periods required to exercise such rights need not change from your proposed amendments.

Sec. 7 (Old).

We have been advised by our consultants that the lack of a survey will substantially reduce if not completely eliminate the ability to manage Trust lands effectively. Without a survey it will not be possible to locate accurately which lands are Trust lands which are 802 lands and which are general grant lands. In addition, eliminating the requirement for survey for conveyances is completely contrary to property law as it has been consistently applied for centuries. Tentative Approval under the Statehood Act and Interim Conveyances under ANCSA were adopted solely as interim measures, with patents to follow after survey. Abandoning the requirement that property has to be sufficiently described to locate it on the ground in order to validly convey it for the sole purpose of saving survey costs is short-sighted and ill-advised.[6]

Sec. 8 (Old).

Trust land that has been disapproved for conveyance to municipalities (Subsection (C)) should not be exempt from conveyance to the Trust.

No Trust Land was purchased so that Subsection (D) is inapplicable.[7]

Just because land has been selected by a Native corporation (Subsection (E)) does not mean the corporation would receive the land even absent the Trust's selection. There is no reason for the Trust to give up land because of Native corporation selections where the Native corporations would not receive the land in any event.

The same is true of Native allotment applications (Subsection F).

Land identified for exchange but not yet conveyed (Subsection (G)) should, by definition be identifiable right now. DNR should do so and the lands be evaluated, rather than wait for later and end up in dispute.

Many ILMAs have been granted where the receiving agency does not use the land for direct public services and/or uses the land

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[6]DNR's calculation of the cost of surveys was based upon a full township and sections survey where much cheaper platted metes and bounds surveys would suffice. We estimate that the cost of the latter type of survey would reduce the cost to about 20% of that estimated by DNR.

[7]It is possible that existing Trust land was encumbered with restrictions because of conditions imposed by accepting grants relating to the improvement of those parcels.

to earn revenue. ILMAs and the like are susceptible to identification and, in fact, the various departments have been stonewalling on the "smallest practicable tract" determination that is being undertaken under the Settlement Agreement. Justification for continuation of each ILMA, including the necessary area should be required. If the departments have not complied with this process the land should be returned to the Trust.

Sec. 9 (Old).

The whole "802" process is clearly inappropriate as trust management. To the extent that the percentage is meant to compensate for this inappropriate management, the "802" provisions should be subject to continuing performance by the State of its obligations under the settlement. See above discussion regarding Section 6 (Old) as amended.

In any event the "802" lands should only include contracts as of the date of enactment, not the effective date.

We are not sure of the intent of subsection (f). If the idea is to validate all existing mining claims and leases on Trust land, it should say that. Continuation of management of these interests the same as general grant land should also depend upon the State's performance.

Sec 10 (Old).

Using Trust funds to pay for DNR's management is a raid on the Trust fund and undoubtedly will be used to fund non-Trust functions. This is particularly true because of the way DNR proposes to allocate a portion of individuals to the Trust. The cost of managing 802 interests should not be borne by the Trust.

Sec 11 (Old).

See comments on Section 10, above.

Sec. 13 (Old).

SB67/HB201 should not repeal Sections 54-57 of Chapter 66, except conditionally upon final approval, including exhaustion of appeals. In this way, if SB67/HB201 were to fail, Chapter 66 would be resurrected. In fact, it seems to us that the Chapter 66 and SB67/HB201 approaches could proceed contemporaneously in order to have some solution by the time of the effective date of approval.

Sec. 15 (Old).

The Trust's security interest in Trust Land should be recognized.

Sec. 16 (Old).

As discussed above, the land should be surveyed.

Secs. 17-19 (Old).

These effective date provisions are a whizzer-go-round. Literal reading of these sections requires approval of the current settlement (including rejection of legal challenges) before SB67/HB201 become effective. It does not appear that this is what is intended although your client's stated intention that it prefers the litigated approach to Chapter 66 makes us wonder if these effective date provisions are intended to make SB67/HB201 effective only if Chapter 66 would otherwise be approved. If the intent is that it becomes effective when Chapter 66 as amended by SB7/HB201 is approved by the courts as a final settlement including exhaustion of all appeals, that is what it should say.

Sec. 21 (New).

The grounds for modification of the consent decree should track those negotiated in the Settlement Agreement. It is also not clear what the intent is in saying that changes to unrestricted revenues are anticipated. Is the statement that the obligations are to place the Trust in the same position as if the State had not breached the Trust, an attempt to buttress the legislation against a citizen/taxpayer attack on the settlement as a giveaway?

As we indicated at the beginning, our addressing the proposed legislation should not be taken or expressed as an indication that we are negotiating on these bills. We think our comments make clear that SB67/HB201 as presently proposed are not viable vehicles for the settlement of the *Weiss* litigation. You know we also believe that whether it is us or someone else, legal challenges are almost certain to be raised and therefore the settlement consideration process under these bills will tend to be as long as the process under Chapter 66. With respect to the land returned to the Trust under the proposed legislation, and its management regime, it is our opinion that the Trust would be better off without it. That is why the enforceability/security provisions are so critical.

I know that you have worked very hard on this legislation including attempting to address our concerns. Unfortunately, in our view, the approach insisted upon by your group can not form the basis of a settlement of the Mental Health Trust Lands litigation.

Yours truly,

James B. Gottstein

cc: facsimile
Alaska Mental Health Association
Sen. Drue Pearce
Rep. Ron Larson
Thomas S. Waldo
Charles E. Cole
Jeffrey L. Jessee
Philip R. Volland
Charles P. Boddy
Robert B. Stiles
David T. Walker
Vern T. Weiss
Sen. Steve Frank
Rep. Eileen Maclean
Peter J. Maasen
G. Thomas Koester
Wendy S. Feuer
Brian D. Bjorkquist
Kent V. Dawson

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Attachment #2
4/29/94 am

Working for Alaska's Mental Health

Mental Health Association in Alaska

4050 Lake Otis Parkway, Suite 202 • Anchorage, Alaska 99508-5221 • (907) 563-0880 • Fax (907) 563-0881

Resolution #002-94

WHEREAS, The Alaska Mental Health Association has served as a lead plaintiff in the Mental Health Lands Trust litigation; and,

WHEREAS, The Alaska Mental Health Association and its volunteer governing Board of Directors has responsibly focused upon the legal evolution of the reconstitution of the Mental Health Lands Trust as directed by the Alaska Supreme Court without losing sight of the best interests of the beneficiaries of the Trust; and,

WHEREAS, the Board of Directors of the Alaska Mental Health Association believes that the best interests of the beneficiaries will be best served by the inclusion of the provisions of CHAPTER 66 which establishes a bona fide Trust authority under rules and principles of trust management, defines a comprehensive mental health program, and contains improvements to the mental health program obtained by years of litigation and negotiation; and,

WHEREAS, the Board of Directors of the Alaska Mental Health Association believes that the interests of the beneficiaries will be enhanced by the $200 million trust fund offered in negotiations this year;

NOW THEREFORE BE IT RESOLVED, that the Board of Directors of the Alaska Mental Health Association supports and recommends for approval by the court a settlement which incorporates the terms presented to the beneficiaries on April 26, 1994, including the list of lands agreed to by the parties on April 15, 1994, provided that private trust law principles apply to the management of the Trust assets under the effective direction of the Trust Authority.

Resolution #002-94

CERTIFICATION

The undersigned hereby certifies that the foregoing resolution was unanimously approved by the Board of Directors of the Alaska Mental Health Association at a meeting held April 28, 1994, duly called, at which a quorum existed and acted throughout.

Dated: April 28, 1994

By: _____
Al Finneseth, Ph.D.
President

By: _____
Aniela B. Pellissier, RN
1st Vice President

By: _____
Dr. James C. Parsons
2nd Vice President

By: _____
Marilyn J. Talmage, M.Ed.
Secretary/Treasurer

By: _____
Jack King
Member-At-Large

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

FOURTH JUDICIAL DISTRICT

VERN T. WEISS, father and next friend of CARL WEISS, a minor child, and EARL HILLIKER, on behalf of themselves and all others similarly situated; the ALASKA MENTAL HEALTH ASSOCIATION, MARY C. NANUWAK and JOHN MARTIN, on behalf of themselves and all others similarly situated; ANITA BOSEL, FRANCES DOULIN, SHARON GOODWIN, and GABRIEL MAYOC; and H.L., M.K., and ALASKA ADDICTION REHABILITATION SERVICES,

Plaintiffs,

and

ALASKA CENTER FOR THE ENVIRONMENT, ALASKA SPORTFISHING ASSOCIATION, LYNN CANAL CONSERVATION, NORTHERN ALASKA SIERRA CLUB, SOUTHEAST ALASKA CONSERVATION COUNCIL, SUSITNA VALLEY ASSOCIATION and TROUT UNLIMITED,

Intervenor-Plaintiffs,

vs.

STATE OF ALASKA,

Defendant.

Case No. 4FA-82-2208 Civil

MEMORANDUM DECISION AND ORDER
RE: INTERVENORS' COMPLAINT

Walker
Goldstein
Jessee
Valland (RV+G)
AGO-Anch.
Johannsen (Perkins Coie)
Clayford (ZH+R)

Rubini (BHB+C)
Hachenburg
Jorgenson
Rehbock (A+R)
Haaven (BP+K)

INDEX

INTRODUCTION

Three dispositive motions regarding the intervenors' complaint are before the court. The State has sought summary judgment as to all counts in the intervenors' complaint. Vern T. Weiss and Earl Hilliker, the Alaska Mental Health Association, Mary C. Nanuwak, and John Martin,[1] ["Settling Plaintiffs"] have sought dismissal under Civil Rule 12(b)(6) or, in the alternative, summary judgment, and have joined in the State's motion.[2] The Alaska Center for the Environment, Alaska Sportfishing Association, Lynn Canal Conservation, Northern Alaska Environmental Center, Sierra Club, Southeast Alaska Conservation Council, Susitna Valley Association, and Trout Unlimited, [the "Intervenors,"] have sought summary judgment and declaratory judgment.

The Intervenors have brought a broad-based constitutional attack on the proposed settlement reached in this case between the State and the Settling Plaintiffs. The legislative vehicle for that settlement, Chapter 66, SLA 1991 ["Chapter 66"], is the subject of the attack. The Intervenors have made the following claims: (1) Chapter 66 violates Article VIII, Section 10 of the Alaska Constitution by its failure to include adequate safeguards

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[1] At the time the motion was filed a third group of plaintiffs had joined the settlement. They have since withdrawn.

[2] Alaska Civil Rule 12(b)(6) permits the dismissal of a complaint for failure to state a claim upon which relief can be granted. The court may consider only material contained in the pleadings in ruling on a motion to dismiss for failure to state a claim. See, e.g., Kollodge v. State, 757 P.2d 1024, 1026 (Alaska 1988). Where matters outside the pleadings are considered, the motion must be treated as a motion for summary judgment. Alas. R. Civ. P. 12(b). The court is relying on many materials outside the pleadings in these motions. Thus, all motions are treated as motions for summary judgment.

of the public interest in connection with the disposal of state lands and interests therein; (2) Chapter 66 violates Article IX, Section 15 of the Alaska Constitution by failing to provide for payments to the Permanent Fund; (3) Chapter 66 violates Article II, Section 13 of the Alaska Constitution by mixing appropriations with other matters in a single bill; (4) Chapter 66 may not become law because it did not pass three readings in each house of the legislature, as required by Article II, Section 14 of the Alaska Constitution; (5) Section 56 of Chapter 66 excessively delegates legislative powers to the Department of Natural Resources and the settling plaintiffs in violation of the separation of powers implicit in the Alaska Constitution; (6) the Alaska state legislature breached its fiduciary duty with respect to the public trust in lands and natural resources when it purported to enact Section 56 of Chapter 66; (7) Chapter 66 violates Section 6(i) of the Alaska Statehood Act, Pub. L. No. 85-508, 72 Stat. 339 (1958), and Article VIII, Section 9 of the Alaska Constitution by its failure to require reservation of the state's right to mineral deposits; (8) Alaska Statutes 38.04 and 38.05 preclude the commissioner of natural resources from conveying any land to the Alaska Mental Health Trust Authority ["AMHTA"] pursuant to Section 55 of Chapter 66 unless the conveyance is consistent with classifications and land use plans adopted pursuant to those statutes; and (9) the AMHTA will be required to manage the trust lands included within the Haines State Forest Management Area and

the Tanana Valley State Forest consistent with Alaska Statutes 41.15.300-.330 and 41.17.200-.230 and .400 and management plans adopted under those statutes. Before turning to each of the claims made, it is useful to place these motions in the context of the broader framework of this litigation.

The mental health lands trust was created by Congress in 1956. It was one of the major features of the Alaska Mental Health Enabling Act ["Enabling Act"], Public Law No. 84-830, 70 Stat. 709 (1956). Section 202 of the Enabling Act contained a one million acre land grant from the federal government to the Territory of Alaska. Section 202(e) created the trust:

> 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 a 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.

The State of Alaska, as successor to the Territory, managed the lands in the mental health lands trust without maintaining separate accounting. In the 1970's there was growing

pressure on the legislature to convey lands owned by the state to both municipalities and to private individuals. Additionally, there was pressure to set aside some state lands for public purposes such as parks, recreation, and wildlife habitat The lands which had been selected as mental health lands were among the most attractive state lands for both private ownership and public purposes. Much of the land surrounded municipalities. Much of the land was in areas prime for development. Additionally, much of the land was in areas well-suited for retention for public purposes. The mental health lands were among the first that had been selected by the state, since selection began prior to statehood.

In 1978, the legislature enacted chapters 182 and 181, SLA 1978. Those acts redesignated the mental health lands as general grant lands to be managed as all other state lands. The act contained a proviso for the payment to the mental health trust for the loss of the lands "subject to legislative appropriation of sufficient funds." No money was ever appropriated.

Following the 1978 redesignation, the State proceeded to convey and reclassify many of the most desirable lands which had been selected as mental health trust lands. Up to 50,000 acres were conveyed to third parties. Over 40,000 acres were conveyed to municipalities. Over 350,000 acres were placed in legislatively

designated areas[3] such as state forests, parks, and wildlife refuges. Today only about 35% of the original one million acres is unencumbered.

Vern Weiss and Earl Hilliker filed this lawsuit as a proposed class action in 1982. They claimed that the legislative redesignation in 1978 was a breach of trust and they sought relief from the court on behalf of all beneficiaries. They maintained that the state breached the public trust by failing to account for revenues realized, using revenues for purposes other than mental health care, and redesignating the mental health lands as general grand land. The superior court ruled that the state breached its duties as trustee by removing the mental health trust lands from the trust and redesignating them as general grant lands, but ruled that invalidation of the redesignation legislation was not an available remedy. As a remedy, the superior court ordered that the trust was to recover from the state an amount equal to the fair market value of lands conveyed from the trust as of the date of conveyance plus pre-judgment interest from the date of each conveyance. Additionally, the superior court ordered a set-off for all money spent by the state on mental health care. Both sides appealed from that decision.

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[3] Legislatively designated areas are lands designated by law as a state park, state forest, state game refuge, state wildlife refuge, state game sanctuary, state recreational area, state recreational river, state wilderness park, state marine park, state special management area, state public use area, critical habitat area, bald eagle preserve, bison range, or moose range. See Chapter 66, Section 54(6).

The Alaska Supreme Court held that the state breached the public trust created by Congress when it redesignated property in the trust as general grant land. State v. Weiss, 706 P.2d 681 (Alaska 1985). The court invalidated the redesignation statute. However, the Alaska Supreme Court disagreed with the remedy proposed by the superior court. Instead, the court held, "that the trust must be reconstituted to match as nearly as possible the holdings which comprised the trust when the 1978 law became effective." Weiss, 706 P.2d at 684.

The Alaska Supreme Court provided the following guidance to the trial court on remand:

> Those general grant lands which were once mental health lands will return to their former trust status. In the event exchanges have been made, those properties which can be traced to an exchange involving mental health lands will also be included in the trust. To the extent that former mental health lands have been sold since the date of the conveyance the trust must be reimbursed for the fair market value at the time of the sale. In calculating the total amount owed, the trial court should grant a set-off for mental health expenditures made by the state during the same period. In the event that the expenditures exceeded the value of land sold, the state need not furnish cash as part of the reconstitution. The goal is to restore the trust to its position just prior to the conveyance effected by the redesignation legislation.

Weiss, 706 P.2d at 684 (footnote omitted). The court specifically declined to rule on questions raised by the amicus regarding the title held by the conveyancees and bona fide purchasers of mental health trust lands. See Weiss, 706 P.2d at 684 n.4.

The Supreme Court's "guidance" created almost as many

issues as it resolved. Because the set-off is only applicable to lands "sold," it is in the beneficiaries' interest to have as few lands as possible be classified as "sold." Thus, serious questions regarding the title held by third parties to whom lands had been conveyed as well as the effect of knowledge of the trust violation on possible bona fide purchaser status have presented major difficulties. Additionally, serious questions are created by what expenditures by the state should be included within any set-off made. Important questions arose regarding the future of lands placed in legislatively designated areas such as state forests, parks, and wildlife refuges. These and other unresolved issues have led the parties to attempt settlement on several occasions.

The most recent attempt to settle this lawsuit received legislative approval in 1991. Near the close of the 1991 legislative session, most of the attorneys for the parties reached accord on a framework for resolution of the case. This framework was adopted by the legislature in Chapter 66, SLA 1991. The parties continued negotiating a settlement agreement. On April 6, 1992, the proposed settlement agreement was signed by three of the four attorneys representing plaintiffs and Attorney General Cole; it was approved by Governor Hickel and Department of Natural Resources Commissioner Harold Heinze. It was then presented to the court for approval. Litigation over the proposed settlement is on-going.

Chapter 66 involves two principle components in

settlement of the litigation. First, it provides a land-based solution for the reconstitution of the trust. It also creates a new mechanism for managing the trust and developing the comprehensive mental health program for Alaska. To do so the Alaska Mental Health Trust Authority ["AMHTA"] was created. It is primarily the first component of the settlement mechanism, the reconstitution of the trust, that is at issue in the Intervenors' complaint.

The reconstituted trust is designed to include both original mental health trust lands and substitute lands. Section 54 of Chapter 66 provides which of the original mental health trust lands are to be reconveyed to the trust. Essentially, original mental health trust lands that have not been conveyed or encumbered by the state and are not in legislatively designated areas are to be returned to the trust. Additionally, original mental health trust lands "subject only to oil and gas leases, coal leases, or timber contracts" are to be returned to the trust. Original mental health trust lands in the Haines and Tanana Valley State Forests are to be returned to the trust. Other original mental health trust lands, acceptable to the plaintiffs, that are not in legislatively designated areas and have not been conveyed out of state ownership may be reconveyed. Since it is clear that the trust cannot be reconstituted solely with original trust lands under these rules, Chapter 66, Section 55 provides for a mechanism for the selection of substitute lands to be conveyed to the trust

as compensation for those lost. The substitute land is designed to be of equal fair market value and as comparable as practicable with the lands that have not been returned. Additionally, Chapter 66, Section 56 provides security to the beneficiaries should the state default on the reconstitution. Specifically, Section 56 created a pool of lands "hypothecated to the mental health trust." Subsection (d) provides:

> Upon default, or if the trust is not reconstituted by December 1, 1994, the foreclosure of the hypothecated lands, including the parcels to be foreclosed and the manner of foreclosure, shall be determined by the [Alaska Supreme Court].

Chapter 66 is not immediately effective. Pursuant to Section 58 of Chapter 66, the act only becomes effective "upon entry of a final order dismissing [this litigation] and the expiration of any time for appeal."

More detailed background and analysis of the various provisions of law is included where necessary in the discussion of the specific arguments made in these motions.

I. DOES CHAPTER 66, SLA 1991 VIOLATE ARTICLE VIII, SECTION 10 OF THE ALASKA CONSTITUTION?

The Intervenors claim that Article VIII, Section 10 of the Alaska Constitution has been violated through the enactment of Chapter 66, SLA 1991. The Intervenors maintain that Article VIII, Section 10, mandates that the legislature enact "other safeguards of the public interest" for any disposal of state lands. They argue that Chapter 66 contains no such safeguards for the disposal of lands by the AMHTA.

The Settling Plaintiffs and the State argue that public notice is the only requirement of Article VIII, Section 10 of the Alaska Constitution and that Chapter 66 meets that requirement. Alteratively, they maintain that Chapter 66 provides adequate safeguards of the public interest to satisfy constitutional requirements. The State also argues that Chapter 66 can and should be construed as authorizing the Alaska Mental Health Trust Authority to act consistently with whatever safeguards are constitutionally required by Article VIII, Section 10, thus avoiding the danger of unconstitutionality.

A. Does Article VIII, Section 10 Require the Enactment of "Other Safeguards of the Public Interest" in Addition to Public Notice?

Article VIII, Section 10 of the Alaska Constitution provides:

> No disposals or leases of state lands, or interests therein, shall be made without prior public notice and other safeguards of the public interest as may be prescribed by law.

Constitutional provisions should be given a reasonable and practical interpretation in accordance with common sense. ARCO Alaska, Inc. v. State, 824 P.2d 708, 710 (Alaska 1992); Kochutin v. State, 739 P.2d 170, 171 (Alaska 1987). When interpreting a constitutional provision, the court should examine (a) the plain meaning of the language, (b) the purpose of the provision, and (c) the intent of the framers. ARCO Alaska, 824 P.2d at 710; Kochutin, 739 P.2d at 171. Because a constitutional provision must be ratified by the voters, the court must also examine the provision in light of the meaning that the voters would have placed on its provisions. State v. Lewis, 559 P.2d 630, 637 (Alaska 1977).

The Settling Plaintiffs and the State argue that Article VIII, Section 10, requires only public notice when the state disposes of land and allows the legislature to provide for such "other safeguards" as are deemed appropriate. They argue that this is the plain meaning of the constitutional provision and that the use of the word "may" requires that the court find that this confers discretion on the legislature and does not impose a mandatory duty.

The Intervenors assert that Article VIII, Section 10 is ambiguous but the best interpretation requires both public notice and other safeguards of the public interest; the legislature is given the discretion to choose what safeguards are appropriate in addition to public notice. The Intervenors argue that the use of the word "may" is not necessarily permissive, but depending on the

usage, may denote a mandatory obligation.

The court concludes that Article VIII, Section 10 is ambiguous. It is not unreasonable to read this provision in either way suggested by the parties. It is consistent with the structure of the provision to hold that only public notice is required, but that the legislature may adopt other safeguards of the public interest. It is also consistent with the structure to hold that the phrase "as may be prescribed by the legislature" modifies both "public notice" and "other safeguards," and that the duty to provide public notice and other safeguards is mandatory on the legislature in providing for the disposal of state lands.

The constitutional history suggests that the Intervenors are correct in their interpretation of Section 10 as imposing a mandatory requirement for "other safeguards of the public interest."

Issues related to the proposed state's handling of its natural resource wealth and lands were among the most important discussed at the constitutional convention. The importance of such issues was highlighted by the Constitutional Studies prepared by the Public Administration Service before the convention began. One portion of the studies begins:

> Of the many problems and issues facing the Delegates at College, none has so great a long-range importance as that involving Alaska's lands and resources. The lands and resources problem may be stated thus: What should be the nature, scope, and possible verbiage of constitutional provisions, if any, that may be necessary to assure that the lands and natural resources of the new State of

Alaska will be developed (1) to their highest potential and (2) for the benefit of all people of Alaska? The two aims of development are not incompatible and are both of equal importance.

Public Administration Service, 1 Constitutional Studies, Chapter 3, at 1 (1955) (emphasis in original). The report concluded:

> In the first flush of statehood, the average Alaskan will react, and very justifiably so, against the unnecessary restrictions which have bound him for so many years. He will not take kindly to the substitution of state red tape for federal red tape, nor should he. But the Alaskan will, as he thinks over his situation, be aware that any state control over resources which his judgment tells him is necessary is his control, ordained by him through the political process and subject to control and change through the same media.
>
> Psychologically, the emphasis in the first days of statehood, so far as land and resources policy is concerned, will be in the direction of disposing of the patrimony as rapidly as possible, to get it into private hands so that immediate, and long-delayed, development may commence at once. Yet precipitate action could easily result in a situation which the people would have cause to regret in a few years.
>
> This will be the critical point in Alaskan development, not alone for resources policy but for the entire future for the State of Alaska. The stakes are huge, and they will attract persons and corporations interested in them. Some of the ventures will be legitimate, some speculative, and some insidious. If the drive is for slam-bang disposal, without discrimination and the choice of terms of sale or lease, the interests of all the people of Alaska will suffer. If disposition of the land and its resources is made at ridiculously low prices, the parable of Jacob, Esau, and the bowl of pottage will be repeated; Alaska's patrimony will have been dissipated for the small-benefit of exploitation, or the non-benefit of fraud.
>
> . . .
>
> No constitutional provisions can be devised

> which will present a perfect and complete barrier to the determined commission of lands and resources fraud or to "giving away" of the resources of the people to interests for purpose of exploitation rather than orderly development. But provisions can be devised which will make it easier for the public officials of the state to carry their burdens.

Id. at 54-56 (emphasis in original).

The keynote speaker at the opening session of the constitutional convention, E.L. Bartlett, Alaska's delegate in Congress, focused his speech principally on an issue which he felt to be among the most serious facing the delegates, "the decision taken upon the vital issue of resources policy." 6 Alaska Constitutional Convention Proceedings, ["Proceedings"] Appendix II, at 3. Bartlett stressed the challenge ahead for the State of Alaska blessed with a vast land grant and with great resources. He discussed the mistakes of the past, "the story of Alaska natural resources has too often been one of exploitation with very little of the great wealth extracted going to pay for necessary governmental services and for the permanent development of a sound economy for the people." Id. at 4. He went on to state:

> There will be a perfectly normal and healthy desire, upon the assumption of statehood, to get resources development going rapidly at any and all costs. Reaction against the years of red tape imposed by the federal bureaucracy which stifled development is quite natural and understandable. But in their eagerness to get resources development, the people of Alaska should not lose sight of the absolute necessity for long range policy in the resources field. A degree of caution and judgment exercised at the early stages of Alaska statehood, which includes most basically the deliberations of this Convention, will be repaid many-fold in true future development -- not exploitation or non-use.

> If the public domain of Alaska is frittered away without adequate safeguards, the State of Alaska will wend a precarious way along the road that leads eventually to financial insolvency.

Id. at 5-6. Bartlett warned of the dangers of fraud, exploitation and corruption. He noted:

> Alaskans will not want, and above all else do not need, a resources policy which will prevent orderly development of the great treasures which will be theirs. But they will want, and demand, effective safeguards against the exploitation of the heritage by persons and corporations whose only aim is to skim the gravy and get out, leaving nothing that is permanent to the new state except, perhaps, a few scars in the earth which can never be healed.

Id. at 7. Bartlett cautioned:

> A failure to write into fundamental law basic barriers to minimize fraud, corruption, non-development, and exploitation may well be viewed fifty years from now as this Convention's greatest omission. No perfect system of safeguards can be devised. The ingeniousness of man in interpreting constitutions and statutes to his own ends can never be completely limited.

Id.

The best evidence of the framers' intent can be found by tracking the progress of the provision which became Article VIII, Section 10 through the convention proceedings. Section 10 of the Committee on Resource's first proposal to the constitutional convention required both public notice and other safeguards:

> Disposals or leases of state lands or interests therein shall be preceded by such public notice and other appropriate safeguards of the public interest as the legislature shall determine. Each such transaction shall be subject to review or audit, as prescribed by law.

6 Proceedings, Appendix V, at 79. The Committee's commentary to

this proposal clarified its intent:

> Certain safeguards of the public interest are essential in public land transactions. Such transactions may vary in importance from routine matters to those of substantial value. If general constitutional provisions impose too rigid requirements, the land administration could become hopelessly ensnarled in red tape. As a result this section of the constitution provides for the legislature to establish public notice, review or audit and other safeguards to protect the public interest. As requirements change and many transactions become routine, appropriate modifications can be made in procedures if rigid requirements are not specified in the constitution itself.

6 Proceedings at 85. Delegate Riley, the secretary of the Committee on Resources, used similar language in introducing this section to the general body:

> The tenth section is very brief. I think that has merit as compared with most state constitutions I have checked on this point, and it simply sets up safeguards for observing the public interests in the disposal of all the public domain. Such matters as advertising, sales, competitive auctions, competitive bidding, where the sales will be held and under what conditions, we believe can all be spelled out amply by the legislature without its enlarging this article in the constitution.

2 Proceedings at 1107.

The next draft was submitted in January 1956. The provision, now renumbered Section 12, provided:

> Disposals or leases of state lands or interests therein shall be preceded by such public notice and other appropriate safeguards of the public interest as the legislature shall prescribe.

6 Proceedings, Appendix V, at 95. The only change made in the commentary to the provision quoted earlier was the deletion of the

words "review or audit." See 6 Proceedings at 100. Mr. Riley described this provision to the delegates:

> Section 12, by contrast with many state constitutions, gives very brief mention of the fact that the legislature shall establish appropriate safeguards of the public interest in measures it takes for the disposition of natural resources.

4 Proceedings at 2452.

The discussion on the floor of the convention illustrates that the delegates contemplated something beyond public notice as a mandatory requirement:

> Metcalf: Mr. Riley, on Section 12, I take it it's the meaning and intention of the Committee that before the state can lease or sell any land or interest they'll be publicly advertised so the highest bidder may have the chance to get it, and not be handled the way it is now?
>
> Riley: That's the underlying thought. Some state constitutions spell all this administrative procedure out in detail. "The sale shall be at 10:00 a.m. on the courthouse steps after 30 days advertising . . ." and that sort of thing and we felt that to be a legislative concern, and we need only suggest it.

4 Proceedings at 2469-70.

The next and final change in what became Article VIII, Section 10 was made by the Committee on Style and Drafting.[4] The proposal revised Article VIII, Section 10 to its present form. Mr. Sundborg, chairman of the Committee on Style and Drafting, reported that, "no substantive changes have been made in this report." 5

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[4] This committee was precluded by convention rules from making substantive alterations to the proposals. Permanent Rules, Constitutional Convention of Alaska, Rule 16(c) (1955); V. Fischer, Alaska's Constitutional Convention at 61 (1975).

Proccedings at 3630. Committee member Hurley advised, "There are considerable changes in phrasing but no changes in substance." Id. at 3632.

This constitutional history demonstrates that the framers were not interested only in public notice. Rather, it is clear that they intended a mandatory obligation on the legislature to establish other appropriate safeguards in addition to public notice to protect the public interest in state lands. The framers contemplated discretion in the legislature to provide other safeguards of the public interest, but they clearly expected and required something beyond public notice.

The power of a constitution stems directly from the people who ratify it. Thus, unlike statutes, it is necessary to look beyond the intent of the members who enacted the provision. With constitutions, it is also "necessary to look to the meaning that the voters would have placed on its provisions." State v. Lewis, 559 P.2d 630, 637-38 (Alaska 1977).

The widely distributed document, A Report to the People of Alaska from the Alaska Constitutional Convention, is one of the best sources for discerning the intent of the people in ratifying a provision of the constitution. See State v. Lewis, 559 P.2d at 638. The Report stated,

> All leases or disposals of state lands or interests are made subject to procedures to protect the public interest and the rights of all citizens in the public domain or in property rights previously acquired.

State's Exhibit 15, at 4.

The purpose of a particular constitutional provision may be found in the goals and concerns expressed by the framers. The purpose of Article VIII in general stems from the framers' recognition of the need for careful and wise management of state land. The framers regarded Alaska's land and natural resources as its most valuable assets. Moore v. State, 553 P.2d 8, 30 (Alaska 1976). The delegates at the constitutional convention were concerned with avoiding the exploitation and squandering of natural resources and with preventing the disposal of state land at extremely low prices. See V. Fischer, Alaska's Constitutional Convention, at 132-33 (1975). Clearly, the framers intended to safeguard the public interest. See 6 Proceedings, Appendix V, at 100.

The Alaska Supreme Court has stated that the Article VIII provisions are a constitutional mandate to the legislature to enact procedural safeguards, such as those found in AS 38.05, to ensure wise use of state public lands. Moore v. State, 553 P.2d at 25, 30-31. Earlier, the Alaska Supreme Court stated that Article VIII reflects the framers' recognition of the necessity of legal safeguards in the disposal of state lands to avoid exploitation of natural resources. Alyeska Ski Corp. v. Holdsworth, 426 P.2d 1006, 1011, 1015 (Alaska 1967).

It is similarly apparent that the framers intended that the legislature use its wise discretion in determining which

safeguards of the public interest should be applied in various circumstances. The framers expressed the goal of natural resource management in Article VIII, Section 1:

> It is the policy of the State to encourage the settlement of its land and the development of its resources by making them available for maximum use consistent with the public interest.

Section 2 goes on to provide the general authority for the legislature in resource management:

> The legislature shall provide for the utilization, development, and conservation of all natural resources belonging to the State, including land and waters, for the maximum benefit of its people.

The framers reflected not only a commitment to development of the state's natural resources but also for the preservation of special areas designed for other uses. Article VIII, Section 7 provides:

> The legislature may provide for the acquisition of sites, objects, and areas of natural beauty or of historic, cultural, recreational, or scientific value. It may reserve them from the public domain and provide for their administration and preservation for the use, enjoyment, and welfare of the people.

As Delegate Fischer later described:

> However, having set forth [the goals of Sections 1 and 2 of Article VIII] the committee's task thereafter was not necessarily an easier one. It realized that policies which promoted maximum use and development could be inconsistent with maximum benefit to the people or with the general public interest, as defined by Bartlett and others concerned about exploitation and destruction of resources and the environment.
>
> Specifying resource management policies, for example, proved difficult. Thus, considerable discussion was given to the proposal that the

> replenishable resources -- fish, forest, wildlife, and others -- should be managed for sustained yield. . . . Similarly, in establishing and identifying the state public domain, the committee agreed to include a provision for state acquisition and holding of areas of natural beauty and recreation and other values. Resolution of potential inconsistencies between these and maximum use policies could not take place in the convention. It was a problem passed on to the legislature of the future state.

V. Fischer, Alaska's Constitutional Convention, at 133 (1975).

Article VIII, Section 10 reflects that general philosophy. It mandates that the legislature adopt public notice and other safeguards of the public interest before disposing of state land, but it left to the legislature the task of balancing the various interests involved in deciding what safeguards to provide.

The court concludes, based on this examination of the language of the provision, the framers' intent, the voters' intent, and the purpose of the provision, that Article VIII, Section 10 requires both public notice and other safeguards of the public interest established by the legislature before the State may dispose of state lands or interests therein.

B. Does Chapter 66 Provide Constitutionally Adequate "Safeguards of the Public Interest" for the Disposal of Lands by the AMHTA?

The State and Settling Plaintiffs assert that Chapter 66 meets the constitutionality requirement for "other safeguards of the public interest." They assert that the provisions of Chapter 66 which require that the AMHTA manage the trust in accordance with

trust principles[5] impose the type of safeguards of the public interest envisioned by the framers. Moreover, they argue, "noncommercial" environmental values are protected by Chapter 66 in at least three ways: (1) the settlement assures that original mental health trust lands placed in legislatively designated areas, such as parks and refuges, will not be returned to the trust for development; (2) noncommercial environmental values must be considered by the Commissioner of Natural Resources in deciding which lands proposed for substitution should be conveyed to the AMHTA[6]; and (3) the trust lands will be subject to state and local police powers. Finally, the State asserts that the AMHTA can adopt whatever procedural safeguards are constitutionally required through the regulatory process.[7]

The Intervenors assert that Chapter 66 does not meet the requirements of Article VIII, Section 10. They assert that trust duties do not protect the broad public interest. Moreover, they argue, the AMHTA cannot be exempt from obligations to safeguard the broad public interest. They argue that none of the "so-called safeguards" asserted by the State is adequate. Finally, they assert that the regulatory process is inadequate because the responsibility under the constitution belongs to the legislature.

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[5] Chap. 66, § 10, to be codified as AS 37.17.007(b) and AS 37.14.009(a)(1).

[6] Chap. 66, § 55(e)(1)(3)(4)&(6).

[7] Chap. 66, § 26, to be codified as AS 47.30.031, requires the AMHTA to adopt regulations.

The Intervenors argue that any attempt to interpret Chapter 66 as delegating the responsibility for providing safeguards of the public interest through the rulemaking authority would be a re-write of the statute. See State v. Fairbanks North Star Borough, 736 P.2d 1140, 1142 (Alaska 1987).

The court concludes that the only provisions of Chapter 66 which potentially fall within "other safeguards of the public interest" are the trust duties outlined in Chapter 66, Section 10, to be codified as AS 37.14.007(b) and AS 37.14.009(a). Under the provisions of the new AS 37.14.007:

> (a) The Alaska Mental Health Trust Authority, established by AS 47.30.011, is the trustee of the trust established under the Alaska Mental Health Enabling Act of 1956, P.L. 84-830, 70 Stat. 709.
> (b) In exercising the powers, duties, and responsibilities as trustee, the authority is under a duty to the public and the trust beneficiaries to
> (1) administer the trust solely in the interest of the beneficiaries;
> (2) keep and render clear and accurate accounts with respect to the administration of the trust;
> (3) make public and available complete and accurate information as to the nature and amount of the trust property;
> (4) exercise a high degree of care in administering the trust;
> (5) take reasonable steps to take and keep control of the trust property;
> (6) use care and skill to preserve the trust property;
> (7) take reasonable steps to realize on claims that are held in trust;
> (8) defend against actions that may result in a loss to the trust estate, unless under all the circumstances, considering the other duties owed to the trust, it is reasonable not to make the defense;
> (9) separately account for trust property;
> (10) ensure that trust property is designated as property of the trust;

> (11) use care and skill to make the trust property productive; however, nothing in this paragraph shall prevent the state from using trust property directly or indirectly, by contractual stipulation or otherwise, as a component of the state's mental health trust program; and
>
> (12) deal impartially with the different trust beneficiaries as provided in AS 47.30.056.

AS 37.14.009(a)(2) allows the AMHTA to "sell, lease, exchange, or otherwise dispose of land in the trust" where consistent with the primary obligation of the AMHTA to "manage the assets of the trust in a fiduciary manner to fulfill the purposes of the trust," under AS 37.14.009(a)(1).

The other provisions which the State advocates fulfill the purpose of Article VIII, Section 10 clearly do not do so. First, the State argued that Chapter 66 protects non-commercial environmental interests by (1) protecting existing legislatively designated areas from returning land to the trust; (2) requiring consideration of non-commercial environmental values before the Commissioner conveys substitute land to the trust; and (3) not exempting trust lands from the police powers. It is true that each of these factors protect non-commercial interests. However, neither the first nor the last have anything to do with the disposal of state lands by the Trust Authority. The second concerns a different disposal, the disposal which occurs when the Commissioner conveys general grant land to the trust as substitute land, not the disposal when the AMHTA conveys land within the trust to others.

The State argues that if anything other than public

notice is required by Article VIII, Section 10, the court should construe Chapter 66 to mandate the AMHTA to adopt such safeguards by use of its rulemaking authority. The court disagrees. First, the obligation to provide for "other safeguards of the public interest" falls directly on the legislature's shoulders. The Trust Authority has different obligations; it must be loyal first and foremost to the beneficiaries of the trust. While not all safeguards are antithetical to the interests of the trust, the focus of the Trust Authority must first be to its fiduciary obligations. Where restrictions would adversely affect the purpose of the trust, to provide income for the mental health program of the state, the Trust Authority could not adopt such regulations, even if those regulations were necessary to safeguard the public interest. Finally, the court concludes that such an interpretation would not be construing the legislation to avoid unconstitutionality, but rather would be rewriting the legislation. See State v. Fairbanks North Star Borough, 736 P.2d 1140, 1142 (Alaska 1987); Gottschalk v. State, 575 P.2d 289, 296 (Alaska 1978).

The constitutional history discussed in the previous section reveals that the framers had many concerns regarding the disposal of state lands. They talked about preventing fraud and corruption. They talked about providing procedural safeguards such as public notice and other similar mechanisms. They talked about making certain the state got fair value for the land. They also

talked about wise decision making and preventing exploitation. They talked about wise development, not development at all costs. Nonetheless, it is essential to consider not only what they talked about but to focus on what they did. What the framers did was mandate that the legislature provide "public notice and other safeguards of the public interest." The framers left it to the legislature to decide how to balance the competing interests and to determine precisely what safeguards would be provided.

The parties both point to the actions of the first state legislature as an aid in determining what the framers intended in Article VIII, Section 10.[8] The Intervenors point out that the fundamental requirements of AS 38.04 and AS 38.05[9] for "public auction procedures, lease procedures, best interest findings, study and review requirements, and notice appraisal obligations" were enacted by the first Alaska state legislature to fulfill its constitutional obligation. The State points out that the same first state legislature exempted the university trust lands from the coverage of most of those provisions. See article XIII, section 3(a), chapter 169, SLA 1959. The legislature left university trust lands subject to management by the Board of

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[8] Thirteen of the fifty-five delegates to the constitutional convention were numbers of the first legislature. Compare V. Fischer, Alaska Const. Convention, App. E (1975) with SLA 1959, at V-VI. Thomas Stewart, the secretary of the convention, was also a member of the first legislature.

[9] Chapter 66 exempts the AMHTA from all requirements of AS 38.04 and AS 38.05 except public notice. See Chap. 66, Sec. 10, to be codified as AS 37.14.009(b).

Regents[10] under the general trust principles set out in §§ 37-10-6, 37-10-11, 37-10-13 and 37-10-20 ACLA 1949. See also AS 14.40.170(4),(7)&(8); AS 14.40.350; AS 14.40.360; and AS 14.40.250 for current requirements. These provisions are very similar to those provided in Chapter 66 for the management and disposal of mental health trust lands: public notice for disposals and overall management under trust principles.

These two actions by the first legislature highlight an important principle: the requirement for "other safeguards of the public interest" may require the adoption of different provisions depending on the situation. When the legislature considers general grant lands, the entire panoply of the framers' concerns over the wise management of the state's resource wealth come into play. When the legislature considers a much much smaller land grant made under trust principles, it is possible to consider a narrower scope of interests and concerns. The framers wisely left the balancing and the choice of procedural details to the legislature under broad constitutional goals and ideals. Of course, this is not to say that the legislature has unfettered discretion. Those broad constitutional principles set limits and guidelines within which the legislature's choices must fall.

The reconstitution of the mental health lands trust is

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[10] Article VII, section 2 of the Alaska Constitution provides that the University holds title to all its real property and that "[i]ts property shall be administered and disposed of according to law."

a unique event. The legislature was confronted with a situation which is much closer to that involving the university trust lands than that involving general grant lands. It is apparent that the mental health trust lands should not be managed under the same principles applicable to all state lands. Indeed that was the fallacy that led to the State's breach of trust in 1978. It is also apparent that the lands must be managed under trust principles. The court concludes that the legislature could determine, consistent with the provisions of Article VIII, Section 10, that the only safeguard of the public interest necessary for the disposal of trust lands by the AMHTA was the inclusion of trust duties. Many of the framers' concerns regarding price are encompassed by trust principles -- the trustee could not dispose of land at an unfairly low price without breaching the obligation to manage the trust solely in the interests of the beneficiaries. The trustee cannot use disposals to exploit trust lands without violating the obligation to "use care and skill to preserve trust property." Clearly the trustee must manage the trust corpus to eliminate fraud and collusion that would injure the beneficiaries. The court concludes that the legislature's choice between competing interests, in light of the restrictions placed on the lands by virtue of the trust, did not violate the requirements of Article VIII, Section 10.

II. DOES CHAPTER 66 VIOLATE ARTICLE IX, SECTION 15 OF THE ALASKA CONSTITUTION?

Article IX, Section 15 of the Alaska Constitution provides:

> At least twenty-five per cent of all mineral lease rentals, royalties, royalty sale proceeds, federal mineral revenue sharing payments and bonuses received by the State shall be placed in a permanent fund, the principal of which shall be used only for those income-producing investments specifically designated by law as eligible for permanent fund investments. All income from the permanent fund shall be deposited in the general fund unless otherwise provided by law.

The Permanent Fund amendment was effective February 21, 1977.

The Intervenors argue that Chapter 66 violates Article IX, Section 15 of the Alaska Constitution. They acknowledge that the supremacy clause of the United States Constitution[11] precludes application of Article IX, Section 15 to original mental health lands whose income is used for mental health purposes. However, they argue, section 202(e) of the Alaska Mental Health Enabling Act would not preempt application of Art. IX Section 15 to substitute lands nor to excess revenues not necessary for the mental health program of the state. The Intervenors next assert that the comprehensive budgeting process enacted in Chapter 66 would preclude payment of the required percentage of mineral revenues from trust lands to the Permanent Fund.

The Settling Plaintiffs argue that Article IX, Section 15 does not apply to the trust lands. First they argue that

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[11] Art. VI, cl. 2, U.S. Const.

Article IX, Section 15 by its terms applies only to mineral revenue "received by the State"; the Settling Plaintiffs argue that the trust is not "the State" for purposes of this provision. Second they argue that the substitute lands are merely lands exchanged under the provisions of section 202(e) of the Enabling Act and, as such, are subject to the same protection as original trust lands.

The State argues that the supremacy clause and section 202(e) of the Enabling Act supersede Article IX, Section 15 so that the revenue from trust lands must first be used to meet the necessary expenses of the State's mental health program. The State argues that substitute lands must be treated the same as original trust lands because they are "exchanged" as allowed by section 202(e). The State argues that to the extent that it is not preempted by section 202(e), Article IX, Section 15 will apply fully to the lands held by the trust. The State argues that because the Permanent Fund amendment is self-executing, it does not matter that Chapter 66 never mentions payment of a percentage of mineral revenue to the Permanent Fund.

The first question is whether Article IX, Section 15 by its terms applies to mineral revenues received by the trust under the provisions of Chapter 66. Article IX, Section 15 applies to mineral revenues "received by the State." The court concludes that this includes money received by the Trust. Common sense dictates this result in light of the total absence of constitutional history or intent which would lead to a different result.

The second question presented relates to the nature of the substitute lands, i.e., lands exchanged under section 55 of Chapter 66 for those original lands which are not reconveyed to the mental health lands trust. The Intervenors argue that they do not lose their character as general grant lands. The State and the Settling Plaintiffs assert that they become trust lands and should be treated the same as original trust lands. The court agrees with the State and Settling Plaintiffs.

Section 202(e) of the Alaska Mental Health Enabling Act envisioned that lands could be exchanged and the exchanged lands would be part of the mental health lands trust. Section 202(e) provides:

> 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. (emphasis added)

The Congress clearly expressed its intent that lands could be exchanged as provided by the legislature and that the exchanged

lands would be a part of the trust. Exchanged land is a "proceed" from a disposition of land. The restrictions on the legislature's authority stem only from a trustee's responsibility to act consistently with the intent of the trust, i.e., to provide funding for the comprehensive mental health program for Alaska.

This result is consistent with the Alaska Supreme Court's decision in Weiss v. State, 706 P.2d 681 (Alaska 1985). There, in its "guidance to the trial court" for reconstituting the trust, the Supreme Court stated:

> In the event exchanges have been made, those properties which can be traced to an exchange involving mental health lands will also be included in the trust.

706 P.2d at 684. The court recognized that in order to effectuate a meaningful remedy for the breach of trust in reconstituting the trust, the lands which came back to the trust must be of the same character as those which were in the trust before the redesignation. This necessarily means that exchanged lands become trust lands like the original trust lands.

No one, not the State, the Permanent Fund, nor the Trust, suffers from this interpretation. When the legislature reclassified the mental health trust lands a substantial amount of trust property was treated as general grant lands. This exchange merely replaces those lands lost to the trust with lands of comparable value. There is nothing on the face of this statute which would lead one to conclude that this exchange is a raid on the Permanent Fund. In fact, in light of the criteria set out in

section 55(d) to judge whether exchanged land is "as nearly as practicable, land of comparable character,"[12] it appears that the most likely exchange is mineral revenue-producing land for mineral revenue-producing land. Assuming an adequate supply of substitute lands, the exchange process should yield a reconstituted trust very like the original trust.

The next question is whether section 202(e) of the Enabling Act preempts application of the Permanent Fund amendment to the substitute lands. The court concludes that it does. The supremacy clause of the United States Constitution mandates that the laws of the United States are supreme and that they override anything in the constitution or laws of any state to the contrary. The Alaska Supreme Court, reasoning from the United States Supreme Court's decision in Ray v. Atlantic Richfield Co., 435 U.S. 151, 157-58, 55 L.Ed.2d 179, 188-89 (1978), has described the analysis to be used in questions of federal preemption:

> [T]he appropriate analysis is bipartite: first, looking to the "policy, intent and context" of the federal statute, whether the state regulation is expressly or implicitly declared preempted; second, even if no declaration is found, whether the statutes conflict to the extent that (1) it is impossible to comply simultaneously with the dual regulation or (2) the state regulation obstructs the execution of the purpose of the federal regulation.

Webster v. Bechtel, Inc., 621 P.2d 890, 897 (Alaska 1980).

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[12] These factors are (1) terrain; (2) use; (3) location; (4) development potential; (5) income potential; (6) accessibility; and (7) other physical characteristics. Chap. 66, § 55(d).

Section 202(e) requires that money received from the use or sale of mental health trust lands "shall first be applied to meet the necessary expenses of the mental health program of Alaska." This is an obvious conflict with the Permanent Fund amendment which requires the deposit of at least 25% of mineral revenues into the Permanent Fund. So long as the income and proceeds from trust land are used for mental health purposes, section 202(e) is inconsistent with Article IX, Section 15. Section 202(e) must prevail.[13]

The final question relates to money in the trust derived from mineral revenues but which is not used for mental health purposes. Chapter 66 provides that such money may be appropriated from the mental health trust income account to the general fund. Chapter 66, Section 10. No provision is made in Chapter 66 for payment of any of those funds to the Permanent Fund. The court concludes there is no conflict with section 202(e), since so long as the necessary expenses of the mental health program of Alaska

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[13] The Intervenors do not question this logic; they question whether, for substitute lands, it is impossible to comply with both section 202(e) and Article IX, Section 15. To establish a system that complies with both, the Intervenors posit a system where the State retains an interest in substitute lands which is not conveyed to the trust. The problem with the suggestion is that such a system conflicts with section 202(e) which treats exchanged land as trust land.

Even if Article IX, Section 15 was applied to the substitute lands, the court concludes that the self-effecting nature of the provision results in no violation. As the State argues, the 25% of mineral revenues would automatically be conveyed to the Permanent Fund before any funds were deposited in the mental health trust income account.

are met first, the income may be used for other state purposes.[14] The question then turns on whether Chapter 66 violates Article IX, Section 15 with respect to these funds.

It is important to remember in this analysis that the minimum requirement of Article IX, Section 15 (payment of 25% of mineral revenues) is self-executing. See Davis v. Burke, 179 U.S. 399, 403, 45 L.Ed. 249, 251 (1900) ("A constitutional provision may be self-executing if it supplies a sufficient rule by means of which the . . . duty may be enforced."); Alaska Const., art. XII, sec. 9 (constitutional provisions to be construed to be self-executing whenever possible). Thus, the fact that Chapter 66 fails to mention any payment to the Permanent Fund is not necessarily a constitutional death knell for the statute. The question is whether the constitution, AS 37.13.010(a) and Chapter 66 can reasonably be read together to avoid unconstitutionality.

The process governing appropriations of excess funds from the mental health trust income account to the general fund is found in sections 26 and 10 of Chapter 66. The process begins with the budget submitted to the governor by the AMHTA. Chapter 66, Section 26, to be codified as AS 47.30.046(a)(3). Nothing would preclude

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[14] The State argues that these funds are not subject to Article IX, Section 15 because they become "mental health trust revenues" due to the commingling of mineral and non-mineral revenues in the income account. The court disagrees. It is certainly possible to account for all such funds; Chapter 66, section 11, to be codified as AS 37.14.036(b) would allow the AMHTA to establish subaccounts in the income account to simplify the accounting procedures necessary to prevent commingling.

the AMHTA from designating 25% of the total sum not necessary for the comprehensive mental health program as money for deposit in the Permanent Fund and reporting the remaining 75% as money available for return to the general fund. The governor's responsibilities are found in Section 10, to be codified as AS 37.14.003(b), and the legislature's obligations in Section 10, to be codified as AS 37.14.005(c). Both of these provisions require findings to be made if either branch of government deviates from the AMHTA's budget. Nothing would prevent either from recognizing the constitutional mandate to deposit 25% of whatever the excess was determined in the permanent fund. Thus, the court concludes that the provisions are not irreconcilable.

Based on the foregoing, the court concludes that Chapter 66 does not violate Article IX, Section 15 of the Alaska Constitution.

III. DOES CHAPTER 66 VIOLATE SECTION 6(i) OF THE ALASKA STATEHOOD ACT?

The Intervenors assert that Chapter 66 violates Section 6(i) of the Alaska Statehood Act, Pub.L.No. 85-508, 72 Stat. 339 (1958). Section 6(i) provides:

> All grants made or confirmed under this Act shall include mineral deposits. The grants of mineral lands to the State of Alaska under subsections (a) and (b) of this section are made upon the express conditions that all sales, grants, deeds, or patents for any of the mineral lands so granted shall be subject to and contain a reservation to the State of all of the minerals in the lands so sold, granted, deeded, or patented, together with the right to prospect for, mine, and remove the same. Mineral deposits in such lands shall be subject to lease by the State as the State legislature may direct: Provided, That any lands or minerals hereafter disposed of contrary to the provisions of this section shall be forfeited to the United States by appropriate proceedings instituted by the Attorney General for that purpose in the United States District Court for the District of Alaska.

The lands referenced in Section 6(i), the grants made under Section 6(a) and (b), are what are frequently referred to as the general grant lands, i.e., the two 400,000 acre selections from the national forests and vacant public lands adjacent to established communities [Section 6(a)], and the 102,550,000 acre selections from the vacant federal public lands [Section 6(b)].

The land granted to the Territory in the Alaska Mental Health Enabling Act, the original mental health trust land, was not subject to the restriction on disposal of mineral rights found in Section 6(i) of the Statehood Act. That grant was confirmed and transferred to the State of Alaska upon admission under Section

6(k) of the Statehood Act. No claim is made here that the original trust lands which are being returned to the reconstituted trust are subject to the restriction found in Section 6(i).

Chapter 66 provides for the conveyance of some general grant lands to the AMHTA to replace the original trust lands which have been conveyed outside state ownership or are otherwise not being returned to the trust (chiefly lands in legislatively designated areas such as parks and refuges). Chapter 66, Section 55. The Proposed Settlement Agreement notes that the transfers under Sections 54 and 55 of Chapter 66 are to be granted to the "Alaska Mental Health Trust Authority, trustee" by patent, in a form agreed upon. PSA, art. III, § 15(a), at 25. The Proposed Settlement Agreement clarifies that it is in the intent of the State and the Settling Plaintiffs that the mineral estate be conveyed to the Trust. PSA, art. III, § 23, at 30.

The State argues that the conveyances contemplated by Chapter 66 and the Proposed Settlement Agreement do not violate Section 6(i) of the Statehood Act. First, the State argues that the Section 6(i) restriction applies only to conveyances to private parties not to conveyances to state agencies. The State asserts that the AMHTA is a state agency for purposes of the Section 6(i) restriction, using the functional test outlined in Alaska Commercial Fishing and Agricultural Bank v. O/S Alaska Coast, 715 P.2d 707, 708-09 (Alaska 1986). Second, the State argues that Section 22(f) of the Alaska Native Claims Settlement Act ["ANCSA"]

as amended, 43 U.S.C. § 1621(f), allows the state to make this exchange with the trust free of the restriction found in Section 6(i). Finally, the State argues that all conveyances to the AMHTA that are subject to the restrictions of Section 6(i) will remain subject to the restrictions of Section 6(i) under the Proposed Settlement Agreement.

The Settling Plaintiffs endorse the State's argument and offer a similar rationale.

The Intervenors argue that the conveyances to the AMHTA violate Section 6(i) of the Statehood Act. They argue that whether the AMHTA is "the State of Alaska" for purposes of Section 6(i) is a question of federal law controlled by congressional intent in the adoption of Section 6(i). They assert that the plain language of the provision, considered in context, and the legislative history lead to the conclusion that the AMHTA is a governmental subdivision to which the State may not convey the mineral estate without violating Section 6(i). The Intervenors argue that the use of a patent to convey lands to the AMHTA triggers Section 6(i) and the restriction language in conveyances from the AMHTA cannot save the violation. The Intervenors argue that Section 22 of ANCSA is not applicable to this situation.

The court must rely on federal law in deciding this issue related to a violation of a federal statute. That is, it is a question of federal law whether the transfer of the mineral estate

to the AMHTA is a violation of the Statehood Act.[15] See, e.g., National Labor Relations Board v. Natural Gas Utility District of Hawkins County, 402 U.S. 600, 603, 29 L.Ed.2d 206, 209 (1971) ("In the absence of a plain indication to the contrary, it is to be assumed when Congress enacts a statute that it does not intend to make its application dependent on state law.") To answer the question, the court must examine the congressional intent in placing the section 6(i) restriction in the Statehood Act.

The court first looks at the language used in the provision in an effort to ascertain the plain meaning of the statute.[16] The question is whether the AMHTA is the "State of Alaska" so that the proposed conveyances do not violate the restriction. It is important to note that other parts of the Statehood Act use different terminology to refer to a broader group of entities. Section 4 contains the compact disclaiming "all right and title to any lands or other property not granted or confirmed to the State or its political subdivisions . . . ." Section 5 confirms the Territorial property to the State using this language: "The State of Alaska and its political subdivisions, respectively

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[15] The court, therefore, agrees with the Intervenors that whether the AMHTA is a "state agency" under the test adopted in Alaska Commercial Fishing & Agriculture Bank v. O/S Alaska Coast, 715 P.2d 707 (Alaska 1986) is irrelevant.

[16] State law uses a more flexible approach to statutory construction than does federal law. Compare State v. Alex, 646 P.2d 203, 208 n.4 (Alaska 1982) with Public Citizen v. United States Department of Justice, 491 U.S. 440, 452-57, 105 L.Ed.2d 377, 390-13 (1989). Federal law is applicable to this analysis.

shall have and retain title to all property, real and personal, title to which is in the Territory of Alaska or any of the subdivisions." Section 6(j) states "The schools and colleges provided for in this Act shall forever remain under the exclusive control of the State, or its governmental subdivisions, ..." Since Congress used differing terms in these sections of the Statehood Act, it is unlikely that Congress intended them to mean the same thing. See Russello v. United States, 464 U.S. 16,23, 78 L.Ed.2d 17, 24 (1983). Thus, the court concludes that Congress did not intend that mineral rights in lands governed by Section 6(i) could be transferred to the State's "political subdivisions" or "governmental subdivisions."[17] However, since none of the terms were defined by Congress, it remains essential to discern congressional intent in other ways. The most useful of those ways is to examine the legislative history of the restriction in Section 6(i).

The Alaska Supreme Court extensively reviewed the legislative history of Section 6(i) in Trustees for Alaska v. State, 736 P.2d 324 (Alaska 1987). In that case, the court held that the State's method of leasing hardrock mineral land without payment of rent or royalty violated Section 6(i). The court noted that the restrictive language of Section 6(i) was derived from the

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[17] The Alaska Supreme Court has indicated in dicta that mineral rights could not be conveyed to boroughs without violating Section 6(i). See North Slope Borough v. LeResche, 581 P.2d 1112, 1113 n.2 (Alaska 1978).

1927 School Lands Act, 736 P.2d at 333. According to the court:

> The primary purpose of the statehood land grants contained in section 6(a) and (b) of the Statehood Act was to ensure the economic and social well-being of the new state. One of the principal objections to Alaska's admittance into the Union was the fear that the territory was economically immature and would be unable to support a state government. . . .
>
> The congressmen who favored statehood conceded that it would impose an additional financial burden on the territory, but they maintained that the Statehood Act sufficiently provided for Alaska's financial well-being. The land grant of 103,350,000 acres was perceived by these congressmen as an endowment which would yield the income that Alaska needed to meet the costs of statehood. Representative Dawson said that:
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> > All grants include the mineral rights, but these rights must be retained by the State if the lands pass into private ownership. In other words, the mineral rights will always belong to the people of Alaska, and never to private individuals. . . .
> >
> > These provisions are the foundation upon which Alaska can and will build to the enormous benefit of the national economy shared by her sister States. We cannot make Alaska a "full and equal" State in name and then deny her the wherewithal to realize that status in fact.
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> 104 Cong.Rec. 9361 (1958). . . .
>
> That Congress recognized the financial burden awaiting the new state is clear from its debates. It is equally clear that the large statehood land grant and the grant of the underlying mineral estate were seen as important means by which the new state could meet that burden. Congress, then, granted Alaska the mineral estate with the intention that the revenue generated therefrom would help fund the new state's government.
>
> The leasing restriction in section 6(i) was intended to further the goal of state revenue

> production. As we have discussed, the restriction was taken from the 1927 School Lands Act. That language was copied advisedly so that Alaska would be on an equal but not a favored footing with other public land states with respect to the disposition of mineral lands. The School Lands Act leasing requirement was expressly intended to be productive of proceeds, rents, and royalties, and congressional history indicates that the same result was intended in Alaska.

736 P.2d at 335-38 (citations and footnotes omitted).

Other legislative history confirms that the restrictions placed in Section 6(i) were designed to provide long-term revenue for the State and to prevent the State from squandering its resources. The Report of the Senate Committee on Interior and Insular Affairs, S.Rep. No. 1028, 83rd Cong., 2d Sess., at 30, 32 (1954) on a predecessor bill to the Statehood Act described the restriction:

> Of this vast acreage, 100 million acres is an open grant, that is, the revenues from its use and disposition can be used for the running expenses and the development of the new State, as its people, through their elected representatives, may direct.
>
> . . .
>
> Subsection (k) [later change to (i)] provides that all grants made or confirmed under the act shall include mineral deposits. Thus, the fact that the lands desired by the State are known or believed to be valuable for minerals will not preclude the State from exercising its right of selection with respect to them under the several grants. However, in order to give an added measure of protection to the new State government, which inevitably will be inexperienced and untried, the committee amendment provides for certain restrictions upon the disposition by the State of mineral lands which it may select under the 100-million acre grant provided in subsection (b) or the 2,550,000 acre grant made in subsection (c). The restrictions are that the

> State must retain title to all the mineral in these lands, whenever any of them are sold or granted. The State may dispose of the minerals in these lands only by lease in such manner as the State legislature may direct.

Several key points of congressional intent can be derived from this legislative history. First, Congress intended that the Section 6(a) and (b) lands be used to produce revenue to support the State. Second, Congress wanted to protect the mineral rights in known mineral lands from short-sighted disposition,[18] especially sale to private parties. Third, Congress intended that the mineral rights in such lands be subject to leasing only under rules adopted by the legislature. Fourth, the restriction was intended to ensure long-term revenue for the State. The court must read the restriction in Section 6(i) in light of this congressional intent. See Lassen v. Arizona, 385 U.S. 458, 463-69, 17 L.Ed.2d 515, 519-23 (1967).

The question is this: would transfer to the AMHTA of the mineral estate in lands subject to Section 6(i) be inconsistent with any of those congressional purposes. The court concludes it would not. For purposes of this statute, the AMHTA is "the State of Alaska," not one of its "political" or "governmental subdivisions." First, the mineral estate will not be subject to

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[18] Congress clearly believed that most of the revenue for the State would come from such lands, not the "worthless tundra" of the rest of the State. See House Report No. 624, 85th Cong., 1st Sess., reprinted in 1958 U.S. Cong. & Admin. News 2938.

disposal to third parties.[19] Second, the mineral estate will be used to produce revenue to support the statewide comprehensive mental health program, a valid state purpose. Third, the legislature has established rules for the use of these lands that are consistent with the congressional intent. The lands are to be leased by the AMHTA to provide revenue for the mental health program[20] of the state; the AMHTA must act as a fiduciary to maximize the revenues for the benefit of the beneficiaries. Additionally, the transfer is to remedy the loss of land from a federally-granted public trust which was used to benefit the state's general land pool. Fourth, the transfer of the mineral estate to the AMHTA does not diminish the land's ability to ensure long-term revenue for the state. If anything, the revenue potential is enhanced. Fifth, while the AMHTA will exercise considerable independence, the rules under which it will operate, established by the legislature, are designed to further the congressional purposes of guaranteeing a long-term, adequate revenue stream to fund this state program. Sixth, the focus of the AMHTA is on statewide benefit; neither its membership nor its responsibilities are limited geographically. Finally, the ultimate

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[19] Chapter 66 is silent on this subject. The Proposed Settlement Agreement ensures that the AMHTA will be subject to Section 6(i) restrictions. Without the restrictions from the Proposed Settlement Agreement, a different question would be presented. There would be a much stronger case for a violation of Section 6(i).

[20] If excess revenue is produced, it is to be used by the legislature as a part of the general fund.

decisions regarding spending the income generated by the mineral estate of Section 6(i) lands will be made by the legislature and the governor.[21]

The Intervenors argue that the use of a patent to convey lands to the AMHTA triggers the application of Section 6(i). They point out that the usual method to transfer control of state lands between state agencies is an interagency land management assignment. The court agrees that the use of a patent is troublesome: a literal reading of Section 6(i) would require the reservation language to be placed in any patent issued by the State. However, the United States Supreme Court's decision in Lassen v. Arizona, 385 U.S. 458, 17 L.Ed.2d 515 (1967) suggests that restrictions in a federal land grant need not be read so strictly where the underlying congressional purpose can be served and a different procedure followed.

Lassen involved a disagreement between the Arizona Highway Department and the Arizona land commissioner regarding the acquisition of and payment for highway rights of way and material sites from school trust lands. The school lands grant was very specific in its requirements for sale or leasing of trust lands and

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[21] The Intervenors correctly point out that if the legislature and/or governor disagrees with certain recommendations made by the AMHTA, they must make findings. See Chap. 66, Sec. 10, to be codified as AS 37.14.003(b)&(c) (governor's responsibilities) and AS 37.14.005(c) (legislature's responsibilities). However, those findings are designed to ensure compliance with the trust responsibilities assumed by acceptance of the federal grant for the mental health program.

required public bidding at auction for disposal. The grant also required that land be sold for no less than its appraised price. The Arizona Land Commissioner established rules for the acquisition of rights of way and material sites in trust lands; the rules did not require competitive bidding at public auction, but did require full payment of appraised price. The United States Supreme Court determined that competitive bidding at public auction was not required, but that payment of appraised value was. 385 U.S. 463-70; 17 L.Ed.2d at 519-23. The Court based its decision on the underlying purpose of trust grant: to provide a fund for the support of schools in the state. The Court reviewed the reasons in the legislative history for inclusion of the public auction requirement and determined:

> The restrictions were thus intended to guarantee, by preventing particular abuses through the prohibition of specific practices, that the trust received appropriate compensation for trust lands. We see no need to read the Act to impose these restrictions on transfers in which the abuses they were intended to prevent are not likely to occur, and in which the trust may in another and more effective fashion be assured full compensation.

385 U.S. at 464, 17 L.Ed.2d at 520. The Court held:

> We conclude that it is consonant with the Act's essential purposes to exclude from the restrictions in question and transactions at issue here. The trust will be protected, and its purposes entirely satisfied, if the State is required to provide full compensation for the land it uses. We hold, therefore, that Arizona need not offer public notice or conduct a public sale when it seeks trust lands for its highway program. The State may instead employ the procedures established by the Commissioner's rules, or any other procedures reasonably calculated to assure the integrity of the

> trust and to prevent misapplication of its lands and funds.

385 U.S. at 465, 17 L.Ed.2d ac 520.

The issue related to the use of a patent in this case is very similar to the requirement of competitive auction in Lassen. In each case a literal reading of the restriction in the federal land grant would preclude the action of the state. In Lassen, the state would have had to use competitive auction for the rights of way and material sites to be used by its highway department. Here, the state would have to use a different conveyancing document, such as an interagency land management assignment. In each case, the act required by the restriction is not necessary to fulfill the essential purposes of the act granting the land to the state.[22] The court concludes that the same rationale applies here: Section 6(i) need not be read to preclude a transfer of the mineral rights by a patent to the AMHTA so long as the underlying purposes of the restriction in Section 6(i) are met. So long as the AMHTA is obligated to use the land consistent with trust principles (protecting the corpus of the trust, producing revenue for the mental health program of Alaska, and ensuring that the long-term interest of the beneficiaries is protected) and is precluded from conveying the mineral rights of land subject to the Section 6(i)

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[22] The court assumes that the purpose of the patent is to prevent a breach of trust by the State similar to that which occurred in 1978 in the redesignation of the trust lands. To that extent, the patent serves the congressional intent in the Alaska Mental Health Enabling Act.

restriction, there is no violation of Section 6(i) if a patent is used to transfer the lands to the AMHTA.

The court thus concludes that Chapter 66, as supplemented by the Proposed Settlement Agreement, does not violate Section 6(i) of the Statehood Act.

Although not essential to this decision, it is important to address the State's alternative basis for concluding there is no violation of the restrictions of Section 6(i), viz. that Section 22(f) of ANCSA permits the exchange without the restrictions of Section 6(i). The court disagrees and will briefly discuss the reasons for that disagreement.

Section 22(f) of ANCSA, as amended, provides:

> The Secretary, the Secretary of Defense, the Secretary of Agriculture, and the State of Alaska are authorized to exchange lands or interests therein, including Native selection rights, with the corporations organized by Native groups, Village Corporations, Regional Corporations, and the corporations organized by Natives residing in Juneau, Sitka, Kodiak, and Kenai, all as defined in this Act, and other municipalities and corporations or individuals, the State (acting free of the restrictions of section 6(i) of the Alaska Statehood Act), or any Federal agency for the purpose of effecting land consolidations or to facilitate the management or development of the land, or for other public purposes. Exchanges shall be on the basis of equal value, and either party to the exchange may pay or accept cash in order to equalize the value of the property exchanged: Provided, That when the parties agree to an exchange and the appropriate Secretary determines it is in the public interest, such exchanges may be made for other than equal value.

43 U.S.C. § 1621(f). The State urges that this literal reading allows an exchange between the State and the State (AMHTA) free of

the restrictions of Section 6(i):

> . . . [T]he State of Alaska [is] authorized to exchange lands or interests therein . . . with . . . the State (acting free of the restrictions of section 6(i) of the Alaska Statehood Act) . . . for the purpose of effecting land consolidations or to facilitate the management or development of the land, or for other public purposes.

The State is correct that a literal reading would allow this transfer free of the restrictions of Section 6(i). However, this cannot end the inquiry.

The State's reading of Section 22(f) of ANCSA would allow it to create a public corporation to which all general grant lands could be conveyed free of the restriction of Section 6(i), so long as the transfer was for a public purpose. This is indeed an odd result based on the literal reading of the statute. As a matter of federal law, where the "plain meaning" of a statute read literally leads to an odd result, the court must go beyond the plain words to look for other evidence of congressional intent. Public Citizen v. United States Department of Justice, 491 U.S. 440, 454, 105 L.Ed.2d 377, 392 (1989). "'The circumstances of the enactment of particular legislation,' for example, 'may persuade a court that Congress did not intend words of common meaning to have their literal effect.'" Id. quoting Watt v. Alaska, 451 U.S. 259, 266, 68 L.Ed.2d 80 (1981).

The amendment of Section 22(f) of ANCSA was designed for a particular purpose: to permit land exchanges such as that between the Cook Inlet Regional Corporation, the federal

government, and the State of Alaska.[23] See H.R. Rep. No. 729, 94 Cong., 1st Sess. 34-35 (1975), reprinted in 1975 U.S. Code Cong. & Admin. News 2376, 2401. The State's interpretation was clearly not intended by Congress.

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[23] See State v. Lewis, 559 P.2d 630, 633 (Alaska 1977) for a discussion of the land exchange.

IV. DOES CHAPTER 66 VIOLATE ARTICLE II, SECTION 13 OF THE ALASKA CONSTITUTION BY COMBINING AN APPROPRIATION WITH SUBSTANTIVE MATTERS IN THE SAME BILL?

Article II, Section 13 of the Alaska Constitution provides, in part:

> Bills for appropriations shall be confined to appropriations.

The sole issue presented in this count of the Intervenors' complaint depends on whether the term "appropriations" as used in this section of the constitution is restricted solely to money or if it includes lands.[24]

The Intervenors argue that "appropriations" should be construed consistently throughout the constitution. Since the Alaska Supreme Court decided in Thomas v. Bailey, 595 P.2d 1 (Alaska 1979) and McAlpine v. University of Alaska, 762 P.2d 31 (Alaska 1988) that the term "appropriations" in Article XI, Section 7[25] included the appropriation of land, the Intervenors argue that the term should have the same meaning for purposes of Article II, Section 13. Further, the Intervenors argue that the purposes of Article II, Section 13 would be served by an interpretation which included appropriation of either land and money.

The State argues that "appropriation" as used in

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[24] There is no dispute that if Chapter 66 includes an "appropriation," it violates Article II, § 13. Similarly, there is no dispute that Chapter 66 designates land for a particular use, the conveyance to the AMHTA.

[25] Article XI, Section 7 of the Alaska Constitution prohibits appropriations by initiative.

Article II, Section 13 includes only money. The State relies on the decision in Thomas v. Rosen, 569 P.2d 793 (Alaska 1977) which involved Article II, Section 15. The State argues that common usage and constitutional intent support its position.

The Alaska Supreme Court has not yet decided what the term "appropriations" means in Article II, Section 13 of the Alaska Constitution. The court has decided the meaning of the term as used in Article II, Section 15, relating to the governor's line item veto power as applied to a bonding proposition. See Thomas v. Rosen, 569 P.2d 793, 797 (Alaska 1977). The court has decided the meaning of the term "appropriations" as used in Article IX, Section 7 as it applies to making such through initiative.[26] See McAlpine v. University of Alaska, 762 P.2d 81, 88-89 (Alaska 1988); Thomas v. Bailey, 595 P.2d 1, 9 (Alaska 1979). These cases are instructive, though not determinative of the issue before the court.

Thomas v. Rosen, 569 P.2d 793 (Alaska 1977), involved a constitutional challenge to the governor's use of the power to reduce an appropriation (Article II, § 15) where the governor reduced a bond authorization from $7.1 million to $4.2 million. The question was, simply, whether the bond authorization bill was an "appropriation bill" within the meaning of Article II, Section

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[26] The court has implied that this definition may not apply to repealing appropriations by initiative. See City of Fairbanks v. Fairbanks Convention and Visitors Bureau, 818 P.2d 1153, 1156-57 (Alaska 1991).

15. 569 P.2d at 795. In answering this question, the Alaska Supreme Court looked first at the framers' intent as gleaned from the proceedings of the Constitutional Convention. The court as well relied on this definition given by the Wisconsin Supreme Court in State ex rel. Finnegan v. Dammann, 264 N.W. 622, 624 (1936):

> An appropriation is the setting aside from the public revenue of a certain sum of money for a specified object, in such manner that the executive officers of the government are authorized to use that money, and no more, for that object, and no other.

569 P.2d at 796.[27] The court relied primarily on the purposes which underlie the state debt provisions of Article IX, Section 8 and the separation of powers and checks and balances inherent in the constitutional framework. 569 P.2d 796-97.

Thomas v. Bailey, 595 P.2d 1 (Alaska 1979), involved a constitutional challenge to the Beirne Initiative which purported to enact the Alaska Homestead Act. The question presented was whether the term "appropriations" in Article XI, Section 7 included land as well as money. If appropriations of either land or money was included in the constitutional restriction on the use of the initiative, the Act was unconstitutional. Again the court was primarily guided by the purpose of the constitutional provision. 595 P.2d at 4. Despite constitutional history which could have

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[27] In Thomas v. Bailey, 595 P.2d at 5-6 n.21, the Supreme Court noted that Thomas v. Rosen "defined appropriations according to the [term] and purpose of the specific provision[ ]" it was interpreting and did not purport "to offer a general definition of appropriation."

been interpreted as supporting a "money-only" construction of "appropriations," the court concluded that the term included land as well. The court reasoned that the purpose of the restriction on the initiative power was to prevent "give-away programs, which have an inherent popular appeal, that would endanger the state treasury." 569 P.2d at 7. Alaska's primary asset is its land. The court concluded:

> We see no rational set of policy concerns that would prohibit an initiative from giving away $9,000,000,000 but would permit it to give away 30 million acres, valued at that sum.

595 P.2d at 8 (footnote omitted). Thus, the court determined:

> [T]he Alaska Homestead Act would substantially deplete the state government of valuable assets just as surely as an initiative allotting to residents of specified years large sums of money. In the same manner it constitutes an appropriation and hence may not be enacted by initiative.

595 P.2d at 9.

McAlpine v. University of Alaska, 762 P.2d 81 (Alaska 1988), involved a similar constitutional challenge to an initiative which would have required the University of Alaska to transfer property to a separate community college system created by the initiative. The question was whether the holding of Bailey should be extended to situations not involving give-away programs. Again, the court focused on the purpose of the constitutional restriction:

> Parallel reasoning applies in the present case. Outside the context of give-away programs, the more typical appropriation involves committing certain public assets to a particular purpose. The reason for prohibiting appropriations by initiative is to ensure that the legislature, and only the

> legislature, retains control over the allocation of state assets among competing needs. This rationale applies as much or nearly as much to allocations of physical property as to allocations of money. To whatever extent it is desirable for the legislature to have sole responsibility for allocating the use of state money, it is also desirable for the legislature to have the same responsibility for allocating property other than money. Otherwise, the prohibition against appropriations by initiative could be circumvented by initiatives changing the function of assets the State already owns. We conclude that the constitutional prohibition against appropriations by initiative applies to appropriations of state assets, regardless of whether the initiative would enact a give-away program or simply designate the use of the assets.

762 P.2d at 88-89 (footnote omitted).

This review reveals several important factors. First, the Alaska Supreme Court is primarily guided by the purpose of the constitutional provision in interpreting it. Second, the Court does not apply a rule requiring consistent meaning for terms used throughout the constitution. It is essential, then, to focus on the purpose of the restriction on appropriation bills in Article II, Section 13.

The purpose of requiring that an appropriations bill include only appropriations was to ensure that the legislature would be able to consider various appropriations simultaneously in light of the total revenues and expenditures. 3 Proceedings at 1740. The state budget would include many appropriations, and prioritizing demands for funding as well as balancing the budget would be difficult if appropriations were made "in the hodgepodge fashion" of the Territorial legislature. Id. A good description

of the general purpose of such a rule can be found in a Florida case:

> The enactment of laws providing for general appropriations involves different considerations and indeed different procedures than does the enactment of laws on other subjects. Our state constitution demands that each bill dealing with substantive matters be scrutinized separately through a comprehensive process which will ensure that all considerations prompting legislative action are fully aired. Provisions on substantive topics should not be ensconced in an appropriations bill in order to logroll or to circumvent the legislative process normally applicable to such action. Similarly, general appropriations bills should not be cluttered with extraneous matters which might cloud the legislative mind when it should be focused solely upon appropriations matters.

Brown v. Firestone, 382 So.2d 654, 664 (Fla. 1980).[28]

There is little in the purpose of the appropriations restriction which supports the Intervenors' position. The only rational way to apply the monetary budget appropriation process to state land is to require the governor and legislature to study the entire inventory of state land before every conveyance or

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[28] The "single-subject" rule in Article II, Section 13 is related to the appropriation bill restriction. The purpose of a "single-subject rule," as found in Article II, Section 13, is to prevent the inclusion of hidden "sleepers" and to assure that separate matters receive separate consideration and decision. 2 Constitutional Studies, Chap. V, at 27; see also Gellert v. State, 522 P.2d 1120, 1122 (Alaska 1974); Suber v. Alaska State Bond Commission, 414 P.2d 546, 557 (Alaska 1966). If designation of land to a particular use can be included within a monetary appropriations bill, adequate consideration of whether the land is suitable for the particular use and the many other factors in land decisions might not occur. Land and money are completely different in character. Each parcel of land is unique, while each dollar of money expended or received is the same. The specific relative value of land parcels is never completely certain, while at any given time, one dollar has the same value as another.

designation of a parcel for a particular use. The land equivalent to considering competing needs and setting spending priorities for appropriations is the resource inventory and land use planning process performed by the Department of Natural Resources, the agency which has the technical expertise for this endeavor.

Legislation designating state land for a particular use has frequently combined legal descriptions of specific parcels with substantive provisions governing at least part of the management of the designated area.[29] This makes sense, because the specific land parcels and the management of those parcels are related concerns that often should be considered together.[30]

Because voters ratified the Alaska Constitution, the court must also look to the meaning that voters would have placed on a particular word or phrase. Division of Elections v. Johnstone, 669 P.2d 537, 539 (Alaska 1983). In Bailey, the Alaska Supreme Court observed that although sometimes "appropriation" in the context of land had been used, "the usual context of appropriations [was] setting aside an amount of money and designating it for a particular use." Bailey, 595 P.2d at 5

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[29] See, e.g., AS 41.15.300-.330 (Ch. 95, Sec. 2, SLA 1982) (Haines State Forest Resource Management Area); AS 41.20.507, .515 (Ch. 95, SLA 1982) (Alaska Chilkat Bald Eagle Preserve).

[30] Once a program has been established, it is a relatively simple matter to allocate a certain amount of money for its implementation. However, even if a land program was established in substantive legislation prior to an "appropriation" of land, the particular land designated for the use might necessitate changes in the substantive legislation.

(emphasis added). In the absence of constitutional history to the contrary, it is reasonable to conclude that the voters placed the most common interpretation on the word "appropriations," that is the setting aside and designation of an amount of money, not land.

From the purpose of the provision as discussed by the framers and the likely meaning ascribed by the voters, the court concludes that as used in Article II, Section 13 "appropriations" includes money, not land. Thus, the court concludes that Chapter 66 does not violate Article II, Section 13.

V. DOES SECTION 56 OF CHAPTER 66 REGARDING THE HYPOTHECATED LANDS LIST VIOLATE THE ALASKA CONSTITUTION?

A. Background.

Chapter 66, Section 56 establishes security for the plaintiffs to ensure that the State complies with the reconstitution of the trust. To do so certain state lands are "hypothecated" to the mental health trust. "Hypothecate" means:

> To pledge property as security or collateral for a debt. Generally there is no physical transfer of the pledged property to the lender, nor is the lender given title to the property; though he has the right to sell the pledged property upon default.

Black's Law Dictionary, 742 (6th ed. 1990). Section 56(a) provides:

> To secure the reconstitution of the trust as provided in secs. 54 and 55 of this Act, the land listed in "Lands Hypothecated to the Mental Health Trust, May 1991" located in the office of the director of the division of lands, Department of Natural Resources, in Anchorage, Alaska, is hypothecated to the mental health trust.

Title to the land remains in the State unless the State defaults on its obligations to return original mental health trust lands to the trust under Section 54, to convey substitute lands to the trust under Section 55, or to allocate funds to the Trust Income Account. Section 56(b). Income from the hypothecated lands remains the unrestricted income of the State. Id. The hypothecated land is to be released "on a pro rata basis" as reconstitution proceeds, but the pool must always be sufficient to provide security for the remaining exchanges. Section 56(c). If the State defaults or if the trust is not reconstituted by December 1, 1994, the

hypothecated lands can be foreclosed in a manner to be determined by the Alaska Supreme Court. Section 56(d).

This portion of the bill which became Chapter 66, Senate Bill 65 ["SB 65"], like most of the land transfer provisions, was added in the closing days of the 1991 legislative session. There had been bills pending to resolve this litigation, but the State and the plaintiffs had not reached agreement. The parties did not agree to use a land-based settlement until approximately May 14, 1991. The amendments to SB 65 necessitated by the proposed land-based settlement were first presented to the legislature on May 17, 1991. 1991 Senate Journal 1403. The bill was passed by both houses on May 20, 1991. 1991 House Journal 1701-02; 1991 Senate Journal 1527. When SB 65 was passed by the legislature, no one in the legislature had seen the Hypothecated Lands List in any form; those who wanted to see it were denied access. The parties to this lawsuit were holding the list confidential and were the only ones who knew its contents.

The first draft of the Hypothecated Lands List was prepared by the Department of Natural Resources and provided to the Settling Plaintiffs on May 17, 1991. A new version was prepared on May 20, 1991. A different version existed on June 18, 1991; it included a new category of land, designated the "Collateral of Last Resort," 2.4 million acres of land in Cook Inlet subject to oil and gas leases. The List was in this form when Governor Hickel signed the bill on June 19, 1991. The List was kept confidential

until the bill was signed by the Governor.

A different list was submitted with the proposed settlement agreement. It bears the date of April 3, 1992. It is not entirely clear to the court that these later versions of the list in existence on June 19 describe the same lands.[31] It appears that some lands in addition to the Cook Inlet lease lands were added between May 20 and June 19.[32]

The first hearing on the package of amendments to SB 65 proposed jointly by the administration and the settling plaintiffs was held on May 17, 1991, jointly before the Senate Finance Committee and Senate Judiciary Committee. St. Ex. 13. DNR Commissioner Heinze was asked questions about the hypothecated lands. The official minutes of the meeting state:

> Commissioner Heinze explained that the department is in the process of identifying those lands. The term "hypothecated" indicates that the state would retain title and income from the land, but the land would be pledged as security against replacement of lands not returned to the trust. The purpose of the collateral is to provide assurance to plaintiffs that the state will perform. To "help the collateral be self-liquidating," the department feels it would be best to choose lands that resemble unreturned lands as closely as possible. The department is attempting to find a mix of collateral lands that look like the kind of replacement lands the trust might want. They should be comparable to

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[31] The State seemingly acknowledges some questions itself in its reply brief, where the State noted "DNR is conducting an audit to determine whether any lands were added erroneously to the Hypothecated Lands List after June 19, 1991." Reply Br. at 94. The State's position is that the List which existed on June 19, when the governor signed the bill, controls.

[32] See St. Reply Br. at 94-95.

> the lands the state is unable to return -- predominantly tracts around existing municipalities and lands designated as parks, refuges, and habitats.
>
> Commissioner Heinze directed attention to a handout (Attachment B) which he explained outlines "some of the kinds of lands we're looking at." Tomorrow, the department expects to sit down with plaintiffs for a more detailed review.

State's Exh. 13-A, at 14. The attachment provided to the committees by Commissioner Heinze provides:

> REPLACEMENT LAND POOL
>
> The Department of Natural Resources is working with representatives of the plaintiffs to assemble a pool of general grant state land to fulfill the requirements of Sec. 55 of HB 79 and SB 65. Entitled "Lands Hypothecated to the Mental Health Trust: May, 1991," this pool will include, to the extent possible, state land similar in terrain, use, location, development potential and accessibility to the original mental health-trust to be replaced. The pool is expected to include the following land types.
>
> - surveyed subdivision lots; including lots available over-the-counter and future land disposal offerings scheduled for FY 92-97. Includes land in Southeast, Southcentral, and Northern regions.
> - commercial and industrial lease tracts in the railbelt; such as the MAPCO refinery at North Pole
> - large tracts of contiguous state land near existing mental health land; including Beluga coal and timber lands, the Willow Capitol site, Kenai timber tracts
> - blocks of commercial timber land, including Fredrick Point near Petersburg, Thorne Bay, Mat-Su tracts
> - agricultural tracts in Mat-Su, Delta, Nenana, etc.

> These areas were identified primarily through examination of the department's adopted area plans, focusing on lands designated for settlement, forestry and minerals. Therefore, most of these lands have already received at least one round of public notice and review. It is intended that there be more land in the pool than will be ultimately needed to reconstitute the trust in accord with the legislation.

Id. at 46. Senator Halford noted that the "replacement land pool" was "essentially land next scheduled for development in Alaska," and expressed concern that what was "security for the trust" was also "the development future of Alaska for the next couple of years." Id. at 15. Commissioner Heinze responded:

> Commissioner Heinze stressed that the settlement speaks to collateral. The state would continue to own the land, manage it, and enjoy the income from it. While it is pledged as collateral, it cannot be sold. The Commissioner voiced his hope that the Authority would select the proposed land since much of the land that will not be returned to the trust is land which the state conveyed through subdivisions to private homeowners. The settlement will provide those homeowners with title to their property. In light of that freedom, the state must replace those tracts with comparable land. The department has proceeded through one, and in some cases several, public processes to identify "these lands as lands that the state would dispose of." The Commissioner concurred that the proposal would use "a large hunk of our lands available for disposal right now in the state . . . [in] creating this pool." He stressed that it is not so much the value of the lands as the fact that they more nearly represent the types of land that will not be returned that is important.
>
> Addressing concerns that the lands would not be utilized, Commissioner Heinze reiterated that the settlement reflects a land-based trust. The purpose is to generate income for the mental health program. Seven appointed, public trustee members will be responsible for management decisions and utilization

of the land.

Id. at 15-16. The Finance Committee attached a Letter of Intent regarding yearly reports to the legislature. Id. at 47.[33]

The next day, May 18, the Senate passed SB 65 and referred it to the House. 1991 Senate Journal 1439-42. The Senate adopted the Finance Committee's letter of intent. Id. at 1440-41.

SB 65 was read in the House for the first time on May 18 and was referred to the House Finance Committee. 1991 House Journal 1606. The House Finance Committee considered SB 65 on May 18 and reported out with a "Do Pass" recommendation to their amended version. Intervenor's Exh. 9, at 1-2. The minutes reflect the following discussion regarding the Hypothecated Lands List:

> Vice-Chair Boyer asked how hypothecated lands were identified. Mr. Koester stated that these were identified in a document that will be "housed" in the Director of the Division of Lands office, Department of Natural Resources, Anchorage. He referenced Section 56.
>
> Representative Brown asked how many acres were contained on the list. Mr. Koester did not know. DAVID WALKER, PLAINTIFFS' ATTORNEY, also did not remember how many acres were on the list. The plaintiffs had their land expert and the Department of Natural Resources get together to make the list. The plaintiffs and the commissioner were satisfied that there must be sufficient collateral to cover the outstanding land transfer, Mr. Walker stated.
>
> Representative Brown asked if the understanding was

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[33] It should be noted that the 12 members of the two committees were present at the joint meeting, as was Senator Sturgelewski. Thus, 13 of the 20 members of the Senate were provided this information.

> that the department will not take action with regard to additional encumbrances. Mr. Walker said the plaintiffs understood that those lands identified on the collateral list should be treated as collateral. The department and the state would do nothing to diminish their value as security; however, it was not the plaintiffs' intention to block all actions on those lands during the time they remained on the list.

Id. at 19.

The full House considered SB 65 (as amended by the House Finance Committee) on May 20, 1991. 1991 House Journal 1700-03. Representative Finkelstein raised a question regarding the legislature's inability to see the Hypothecated Lands List:

> . . . I do have grave concerns, and I know other members do, on section 56. I have been trying to talk to the administration, sponsors and others. Section 56 is on page 39. We are apparently being asked here to approve legislation that includes a list of lands, that are lands that will be used as the back-up for security in this settlement, which is well and fine. I don't have any problem with that concept. But we are unable to find out what those lands are, and we are being told that it is not public information; which amazes me that we could have something referenced to a law that we are supposed to vote on, and it's not public information. I just can't imagine how we can carry out our duties to best represent the public without knowing the choice we're making here. And I won't offer an amendment at this time, because I don't have one that will not cause serious damage to the settlement, but I will be working between now and any later consideration, in trying to find that.

State's Exh. 13-E, at 1-2. Representative Moyer responded:

> Hopefully this gives some comfort to the member asking the question. I think it is the intent of some members to perhaps craft a letter of intent that would clarify, for the record, that the hypothecated lands, at some date tied to the effective date of this act, would in fact, become a public document. The difficulty here is that the

> hypothecation is literally occurring as we speak. I mean it is coming together as a pool of lands, and the whole issue is still very much the subject of litigation. And it's being continued to be negotiated, and as such, it is not a public process. So it is difficult for us to find a lot of comfort there, I know, but later this morning I think we will have a letter of intent that will clarify that, as it comes together, and as it is finally settled, and as the court kind of lays its hands on this settlement, that the hypothecated acreage will, in fact, become public.

Id. at 2-3. The House adopted the bill as amended with a vote of 36-3, with 1 absent. The Senate Finance Committee's letter of intent was also adopted. 1991 House Journal 1702-03.

The bill went back to the Senate. The Senate concurred in the House amendments to SB 65 on May 20, 1991, sometime prior to 5:01 p.m. 1991 Senate Journal 1527-29, 1558.

Later that same day, sometime after 7:58 p.m., the House adopted the letter of intent earlier referenced by Rep. Moyer. 1991 House Journal 1734, 1752. The letter of intent, as adopted by the House and transmitted to the Senate, provided:

> It is the intent of the Legislature that upon the conclusion of negotiations between the Administration and the plaintiffs in Weiss v. State of Alaska which result in the designation of "Lands Hypothecated to the Mental Health Trust, May 1991," as provided in Sec. 56 of this Act, that document shall be made public."

Id. at 1752. The Senate did not adopt this letter of intent and could not have seen it when the Senate last acted on SB 65.

On April 6, 1992, the Department of Natural Resources adopted Dept. Order No. 135 which deals with DNR's management of

the hypothecated lands.[34] The general statement of management standards is found at page 8:

> In general, the Department shall manage Hypothecated Land according to the principle that lands are pledged as security to the Mental Health Trust. This means that any Departmental transaction with respect to Hypothecated Land is first subject to a finding that the transaction is consistent with hypothecation of the parcel (pledged as security to the Mental Health Trust), which includes the finding that no substantial devaluation of the parcel for purposes of Mental Health Trust ownership will result. The following examples are illustrative and not exhaustive and the State and Plaintiffs may agree to different treatment for specific Departmental transactions. Permits for a year or less, revocable at will, where there is no significant chance of harm (such as damage from hazardous substances) are allowed. Material sale applications will be determined on a case by case basis based on factors such as price of the material; whether the material source will be substantially depleted; whether opening the pit would benefit future Mental Health Trust ownership; and the chance of harm to the land. Rights-of-way are generally permitted, however, the alignment shall take into consideration the impact on future development of the parcel. Fair market value leases are allowed, but less than fair market value leases that cannot be increased to fair market value leases upon conveyance to the Mental Health Trust are not appropriate. Sales of Hypothecated Land are generally not to be allowed. Hypothecated Land will normally be available for short term timber sales.
>
> The Department must also review all applications for consistency with all appropriate state statutes and regulations just as any other application must comply with the law.

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[34] This order is exhibit I to the Proposed Settlement Agreement.

B. Was Chapter 66 Passed in Violation of the "Three-Readings" Requirement of Article II, Section 14 of the Alaska Constitution?

Article II, Section 14 of the Alaska Constitution provides, in pertinent part:

> The legislature shall establish the procedure for enactment of bills into law. No bill may become law unless it has passed three readings in each house on three separate days, except that any bill may be advanced from second to third reading on the same day by concurrence of three-fourths of the house considering it.

The Intervenors assert that Chapter 66 was passed in violation of the "three-readings" requirement of Article II, Section 14. They acknowledge that the title of the bill was read three times in each house of the legislature and that there was no violation of the separate day provisions. Rather, the Intervenors maintain that the passage of Chapter 66 violated the "three-readings" requirement because the Hypothecated Lands List was kept secret from the legislature. The purposes of the three-readings requirement, to ensure that the legislature knows what it is passing and to permit public input, were violated.

The State asserts that there is no requirement in Article II, Section 14 other than that the bill be read. Further the State argues that the issue is nonjusticiable.

The first issue which the court must address is whether this question is justiciable. "There are certain questions involving coordinate branches of the government . . . that the judiciary will decline to adjudicate." Abood v. Gorsuch, 703 P.2d

1153, 1160 (Alaska 1985). These questions are deemed nonjusticiable. "It is not possible to draw the exact boundary separating justiciable and nonjusticiable questions." Abood v. League of Women Voters of Alaska, 743 P.2d 333, 336 (Alaska 1987). There are two classes of questions which fairly clearly fall on one side or the other of this line, however. The first class involves questions regarding the internal, nonconstitutional rules of the legislature. These questions are normally determined to be nonjusticiable. See League of Women Voters, 743 P.2d at 337-38 (question of whether the legislature's Uniform Rule 22 and the Open Meetings Act were violated by non-public sessions on the FY 87 budget held nonjusticiable); Gorsuch, 703 P.2d at 1163-64 (claim that absence of House Speaker from joint session violated Uniform Legislative Rule 51 was nonjusticiable); Malone v. Meekins, 650 P.2d 351, 356 (Alaska 1982) (whether legislature violated AS 24.10.020, which prohibited anyone other than Speaker from convening a session of the House was nonjusticiable). The second class involves questions of the constitutionality of the legislature's action in adopting legislation. These questions are normally determined to be justiciable. See Gorsuch, 703 P.2d at 1161-62 (question of what quorum is necessary for confirmation votes is a question of constitutional law and therefore justiciable). See also State v. A.L.I.V.E. Voluntary, 606 P.2d 769 (Alaska 1980) (holding legislative annulment statute unconstitutional because it did not require the constitutional

formalities of legislation); Plumley v. Hale, 594 P.2d 497 (Alaska 1979) (examining constitutionality of statute in light of constitutional requirement for individual votes by yeas and nays on final passage (art. II, § 14)).

The question presented here is a question of constitutional law: does the "three-readings" requirement of Article II, Section 14 preclude the legislature from passing a bill incorporating a document which the legislature has not been permitted to view? This question of constitutional law is justiciable.[35]

The "three-readings" requirement of Article II, Section 14 of the Alaska Constitution serves a threefold purpose: (1) it ensures that the legislature knows what it is passing; (2) it ensures an opportunity for the expression of public opinion; and (3) it ensures an opportunity for due deliberation on the bill. See 3 Proceedings 1751-55.

There is no question that these three-fold purposes are not served if the legislature passes a bill incorporating a document which has been kept confidential. The legislature cannot

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[35] In a related argument, the State maintains that the "enrolled bill" doctrine precludes judicial examination of this question. The court concludes that the "enrolled bill" doctrine is not applicable in Alaska. It is an outmoded doctrine, rejected by most modern courts, and is inconsistent with decisions of the Alaska Supreme Court such as Plumley v. Hale, 594 P.2d 497 (Alaska 1979). See, e.g., Yarger v. Board of Regents, 456 N.E.2d 39, 41-42 (Ill. 1983); Consumer Party of Penn. v. Commonwealth, 507 A.2d 323, 332-34 (Pa. 1986); Ass'n of Texas Professional Educators v. Kirby, 788 S.W.2d 827, 829-30 (Tex. 1990).

know what it is passing -- it can only know that it is incorporating a secret document. The public is denied an opportunity to comment on the contents of the document and those directly affected by the contents of the document are denied an opportunity to attempt to influence their representatives. The legislature is not given an opportunity to consider the substance of what they are enacting into law.

The purposes of the "three-readings" requirement were not served here. The legislature knew it was hypothecating lands named in a list which it had not seen and could not see, but it could not know which lands had been pledged. The public could comment on the legislature's action in incorporating a secret document, but no one affected by the hypothecation could specifically comment on the inclusion or exclusion of any parcel of land. The legislature could duly deliberate on their incorporation of a secret list of land, but they could not deliberate on which lands were hypothecated.

The purposes of the "three-readings" requirement were not met by this procedure; the question remains, however, whether the court should interpret Article II, Section 14 to preclude this procedure. A constitutional provision should be given a practical interpretation in accordance with common sense, paying attention to the plain meaning of the language, the purpose of the provision and the intent of the framers. See ARCO Alaska, Inc. v. State, 824 P.2d 708, 710 (Alaska 1992); Kochutin v. State, 739 P.2d 170, 171

(Alaska 1987). The provision must also be examined in light of the meaning the voters would have given it. State v. Lewis, 559 P.2d 630, 637 (Alaska 1977). While adopting the interpretation advocated by the Intervenors would fulfill the purpose of the "three-readings" requirement, such an interpretation cannot be squared with the other canons of constitutional construction. There is nothing in the legislative history to indicate that the framers intended to require anything other than that the bill be read three times on three days in each house. There is nothing in the language which would suggest any requirement other than the required readings. The Alaska Supreme Court has concurred in this statement:

> The governing principle of constitutional construction is to give effect to the intent and purpose of the framers of the constitutional provision and of the people who adopted it. Unless the context suggests otherwise, words are to be given their natural, obvious and ordinary meaning.

Hammond v. Hoffbeck 27 P.2d 1052, 1056 n.7 (Alaska 1981), quoting County of Apache v. Southwest Lumber Mills, Inc., 376 P.2d 854, 856 (Ariz. 1962). Although the purpose of the three-readings requirement was not served by the procedure used, the "natural, obvious and ordinary meaning" of the words used in Article II, Section 14 cannot be stretched to cover this situation. Accordingly, the court concludes that Article II, Section 14 was not violated.

C. Does Section 56 Involve an Unconstitutional Delegation of the Legislature's Authority?

The State asserts that the legislature delegated to DNR its legislative powers to negotiate and prepare a Hypothecated Lands List acceptable to the plaintiffs.[36] The State asserts that this delegation was lawful and constitutional because there were sufficient standards and procedural safeguards in the delegation. The State is inconsistent in its position regarding what the standards in the delegation are. In its initial brief, filed August 31, 1992, the State asserted that detailed guidelines were "unnecessary" because the list was almost complete when the legislature passed the bill and the "intelligible principles" were laid out by Commissioner Heinze in his comments before the Joint Senate Committees on May 17, 1991.[37] St. Br. at 128-30. That is that the Hypothecated Lands List should "resemble unreturned lands as closely as possible." In its reply brief, filed December 7, 1992, the State asserted that the standards are defined to effectuate the purpose of the list: so that if foreclosure occurs "the trust can be reconstituted pursuant to the specific guidelines set forth in §§ 54 and 55 of Chapter 56." St. Reply Br. at 137-38. The State asserts that judicial control of the foreclosure

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[36] Presumably the State also takes the position that the authority to revise the list substantively extended only until the Governor signed SB 65. However, that point is not explicitly made. See footnote 31.

[37] Commissioner Heinze's statements are discussed at pages 62-65 of this Memorandum Decision and Order.

proceedings and the pro rata release of hypothecated lands are sufficient procedural safeguards.

The Settling Plaintiffs assert that there was a valid delegation of legislative authority to the Attorney General in connection with his statutory control over the litigation in which the State is involved. See AS 09.50.300; Public Defender Agency v. Superior Court, 534 P.2d 947, 950 (Alaska 1975).

The Intervenors assert that there are two possible interpretations of Section 56(a) which require different analysis. First, the court could interpret Section 56(a) as incorporating a secret list, prepared by plaintiffs and DNR, extant on the date SB 65 was passed, May 20, 1991. Second, the court could interpret Section 56(a) as a delegation to plaintiffs and DNR to prepare a list. The Intervenors assert that the first interpretation is better, but that under either interpretation, an unlawful and unconstitutional delegation has occurred. The Intervenors assert that a delegation to a private party, such as plaintiffs, is unlawful. The Intervenors assert that there are no standards and inadequate procedural safeguards to make the delegation constitutional.

The Alaska Constitution vests legislative powers in the legislature. Article II, Section 1. The separation of powers that is implicit in the constitution requires that legislative power which is delegated be subject to a sufficient combination of standards and procedural safeguards to ensure that the body to whom

power is delegated does not have unguided and uncontrolled discretionary power. See Municipality of Anchorage v. Anchorage Police Department Employees Association, 839 P.2d 1080, 1086 (Alaska 1992); Boehl v. Sabre Jet Room, Inc., 349 P.2d 585, 588 (Alaska 1960). Before addressing the ultimate question, whether Chapter 66 has sufficient standards and safeguards, it is necessary to interpret the provisions of Section 56(a).

Section 56(a) states:

> To secure the reconstitution of the trust as provided in secs. 54 and 55 of this Act, the land listed in "Lands Hypothecated to the Mental Health Trust, May 1991" located in the office of the director of the division of lands, Department of Natural Resources, in Anchorage, Alaska, is hypothecated to the mental health trust.

The plain meaning of the words used is that certain lands are hypothecated to the mental health trust. Those lands are identified on a list in existence at the time of passage bearing the title "Lands Hypothecated to the Mental Health Trust, May 1991" which list is in fact located in the office of the director of the division of lands in Anchorage. On their face, the words are not at all ambiguous. However, in Alaska that does not end the inquiry into the meaning of the statute.

The Alaska Supreme Court expressly rejected the plain meaning rule in North Slope Borough v. Sohio Petroleum Corp., 585 P.2d 534, 540 n.7 (Alaska 1978). The court reaffirmed that decision in State v. Alex, 646 P.2d 203, 208-09 n.4 (Alaska 1982). Alaska has adopted a "sliding scale approach" to statutory

interpretation: the plainer the language, the more convincing contrary legislative history must be. Id.

The court set out the entire recoverable legislative history related to the meaning of Section 56(a) in the "Background" section, supra. From that history it is quite clear that the House knew the Hypothecated Lands List was not final on May 20 when the House passed SB 65. Representative Moyer told the entire House that the list was being negotiated as they spoke. State's Exh. 13-E, at 2-3. The House letter of intent clearly envisions making the List public at a future date, after "the conclusion of negotiations between the Administration and the [Weiss] plaintiffs." 1991 House Journal at 1752.

The legislative history in the Senate is not as clear. The Senate could not have seen the House letter of intent when it concurred in the House amendments; the letter was not adopted or transmitted until after the Senate adjourned. The only discussion of the Hypothecated Lands List occurred on May 17 before the Joint Meeting of the Senate Finance and Judiciary Committees. At that time, Commissioner Heinze told the committees that "the department" was in the process of identifying the lands for inclusion on the list. The handout which the Commissioner brought stated "[t]he Department of Natural Resources is working with representatives of the plaintiffs to assemble a pool of general grant state land" to be the Hypothecated Lands List. He told the committees that the department "expects to sit down with plaintiffs for a more detailed

review" the next day, May 18. No Senator ever expressed an intent that the plaintiffs and DNR negotiate a list. Commissioner Heinze's comments are somewhat ambiguous: he never clearly says that the list will not be complete by the time the Senate is expected to act.

The language in the statute is clear; there is nothing from which a reasonable person could infer an intent to delegate the preparation of the Hypothecated Lands List to anyone. The legislative history in the House is clear: they intended a delegation. The legislative history in the Senate is not as clear: thirteen members of the Senate were told that the plaintiffs and DNR were preparing a list which was not completed but it was not absolutely clear whether the list would be completed by DNR before the Senate acted. Although it is a close question, using the "sliding scale approach," the court concludes that the legislative history is sufficiently convincing to overcome the statute's plain meaning. See Peninsula Marketing Ass'n v. State, 817 P.2d 917, 922 (Alaska 1991). Thus, the court concludes that the legislature delegated the task of preparing the Hypothecated Lands List to DNR.

Having concluded that DNR was delegated the responsibility to prepare a Hypothecated Lands List acceptable to plaintiffs, the question is: was this an unconstitutional delegation. The court concludes that it was. There is no one standard discernible from this legislation; the procedural safeguards are almost non-existent.

The State's inability consistently to name the standard applicable is telling. If there was a standard, the State would not have chosen two different ones.[38] The problem stems from the fact that not only must the delegation be implied, but the standards must also be implied.[39] Taking into account the purpose of the statute and the policy, there are a number of different standards that could be chosen. The basic purpose of the nondelegation doctrine is that administrators should not have unguided and uncontrolled discretionary power to govern as they see fit. Municipality of Anchorage, 839 P.2d at 1086. Where the legislation has several different standards that could be implied, the administrator is as unguided as she is in the situation where there are no standards.

The Alaska Supreme Court said in Fairbanks North Star Borough, 736 P.2d 1140, 1143 (Alaska 1987), that the fundamental question in delegation issues is whether the administrator is given guidance sufficiently specific to set the perimeters around the

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[38] The standards named by the State are not the same. Under the "resemble" standard discussed by Commissioner Heinze and promoted first by the State, the delegation would set parameters around like lands, largely using the standards expressed in section 55(d). The "§§ 54 and 55" standard promoted by the State in its reply brief, would eliminate lands in legislatively-designated areas, include original mental health lands expected to be returned to the trust, and apply all of the factors in Section 55(e), such as diversity of lands in the trust and the broader public interest.

[39] It is permissible in certain instances to imply the standard from the general policy and purposes underlying the legislative enactment. See Kenai Peninsula Fisherman's Cooperative Ass'n, Inc. v. State, 628 P.2d 897, 907 (Alaska 1981).

area within which the administrator is to act as directed by the legislature. Here, the commissioner of DNR could not set those perimeters, because he could not possibly tell which ones to set. It is certainly arguable, as the State first asserted, that the commissioner should select lands so that the list would resemble original trust lands not being returned to the trust. That is consistent with the policy of the statute to settle the litigation and provide for security for the state's obligations to reconstitute the trust. It is equally reasonable to argue, as the State later asserted, that the commissioner should use as guidelines the substance of all of Sections 54 and 55 in establishing the list. That too is consistent with the policy of the statute to settle the litigation and provide security. It would also be reasonable to argue that the commissioner should include any state lands acceptable to the plaintiffs in the Hypothecated Lands List regardless of the state or public's interest in retaining those lands. This too is consistent with settlement of the case and securing the state's obligation to reconstitute the trust.[40]

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[40] The Intervenors raise an interesting question regarding what standard the Commissioner did apply. It is impossible to know since there is no decisional document or record accompanying this administrative action. However, it seems clear that he did not use the standard latest advocated by the state, an application of the requirements of Sections 54 and 55. Had he done so, it is almost certain that original mental health lands expected to be returned to the trust under Section 54 would have been included. However, it does not appear that any substantial amount of original mental health lands appear on the Hypothecated Lands List. In fact DNR made a conscious decision to remove any original mental trust lands

general grant lands of the state. Accordingly, the State and Settling Plaintiffs are granted partial summary judgment on count XI of the Public Interest Intervenors' complaint, consistent with this decision.

IT IS SO ORDERED. If any party desires a final judgment with respect to the allegations of the Public Interest Intervenors' complaint, they must file a motion in compliance with Alaska Civil Rule 54(b).

DATED at Fairbanks, Alaska this 26 day of April, 1993.

Mary E. Greene

MARY E. GREENE
Superior Court Judge

Plaintiffs are granted partial summary judgment on Counts VI, VIII, and IX of the Public Interest Intervenors' complaint, consistent with this decision. The Public Interest Intervenors are granted partial summary judgment on Count VII (alternative portion) of their complaint, consistent with this decision.

Part VI. The court has concluded that the conveyance of substitute land selected under Section 55 of Chapter 66 to the Alaska Mental Health Trust Authority is subject to the planning and classification provisions of AS 38.04 and AS 38.05. Accordingly, the Public Interest Intervenors are granted partial summary judgment on Count X of their complaint, consistent with this decision.

Part VII. The court has concluded that even if the planning and classification provisions of AS 38.04 and AS 38.05 were not applied to the reconstitution of substitute lands, the reconstitution would not violate Article VIII, Section 10 of the Alaska Constitution. Accordingly, the State and Settling Plaintiffs are granted partial summary judgment on Count IV of the Public Interest Intervenors' complaint, consistent with this decision.

Part VIII. The court has concluded that the original mental health lands in the Haines and Tanana Valley State Forests will not be subject to the provisions of AS 41 applicable only to the

Plaintiffs are granted partial summary judgment with resp[illegible] Count III of the Public Interest Intervenors' complaint, consistent with this decision.

Part IV. The court has concluded that Chapter 66 does not violate Article II, Section 13 of the Alaska Constitution. The court has concluded that "appropriations" in that section refers only to money, not land. Accordingly, the State and Settling Plaintiffs are granted partial summary judgment with respect to Count V of the Public Interest Intervenors' complaint, consistent with this decision.

Part V. The court has concluded that the hypothecation provision did not result in a violation of the "three-readings" requirement of Article II, Section 14 of the Alaska Constitution. The court has concluded that the legislature intended to delegate the task of preparing the Hypothecated Lands List to the Department of Natural Resources. The court has concluded that the delegation is unconstitutional because Chapter 66 does not contain constitutionally required standards and/or procedural safeguards applicable to the delegation. The court has concluded that the hypothecation of state lands to the mental health trust was not subject to Article VIII, Section 10 of the Alaska Constitution. The court has concluded that the public trust doctrine is not applicable to the public lands. Accordingly the State and Settling

CONCLUSION AND ORDER

Part I. The court has concluded that Article VIII, Section 10 of the Alaska Constitution requires the legislature to provide "other safeguards of the public interest" in addition to public notice. The court has concluded that the legislature provided constitutionally adequate safeguards for the disposal of lands by the Alaska Mental Health Trust Authority. Accordingly, the State and Settling Plaintiffs are granted partial summary judgment with respect to Count I of the Public Interest Intervenors' complaint, consistent with this decision.

Part II. The court has concluded that section 202(e) of the Mental Health Enabling Act preempts application of the Permanent Fund Amendment, Article IX, Section 15, to mineral revenues received from use of original or substitute lands in the mental health lands trust to the extent the revenues are used for the mental health program of Alaska. Article IX, Section 15 will apply to excess revenues designated for other uses. Accordingly, the State and Settling Plaintiffs are granted partial summary judgment with respect to Count II of the Public Interest Intervenors' complaint, consistent with this decision.

Part III. The court has concluded that Chapter 66, as supplemented by the Proposed Settlement Agreement, does not violate section 6(i) of the Alaska Statehood Act. Accordingly, the State and Settling

> inside the trust . . . . So, on balance, I think, even though I have some specific concerns about it, it probably, in the long run, does more for protecting some of these areas that many of us are interested in, and concerned about, and the environmental community is interested in and concerned about, than doing nothing will accomplish.

St. Exh. 13-D, at 5-6. Clearly, Senator Duncan and others would have had no concern without returning the lands from the Haines and Tanana Valley State Forests to the trust if they expected that the lands would be subject to the same provisions as a part of the trust that they were when treated like general grant lands.

Based on the express purposes of Chapter 66 and this legislative history, the court concludes that the legislature intended that the original trust lands returned under Section 54(5) not be subject to those parts of AS 41 which are applicable only to general grant state lands.

land not subject to the plan.[67]

Although the legislative history is rather sparse on this issue, there is some support for this interpretation. The specific topic of forest management provisions arose only once, during the testimony of Sherrie Goll, a resident of Haines, on May 17 before the Joint Meeting of the Senate Finance and Judiciary Committees. Ms. Goll pointed out that there was an area management plan in the Haines State Forest which was carefully developed "to take in all the concerns and multiple use needs of the community." St. Exh. 13-C, at 13. She gave her opinion that if this land was returned to the trust, the restrictions such as buffer strips "would no longer be applicable." Id. at 14. Although Senator Uehling asked Ms. Goll some questions, the Committees never addressed Ms. Goll's concerns. Id. Additionally, although not specific on the issue of forest management plans, the comments of Senator Duncan on the floor of the Senate clearly indicate that a conscious decision was being made to return the Haines and Tanana Valley State Forest lands, with attendant sacrifice, in order to protect a greater amount of land in the other legislatively designated areas. He said:

> So as I looked at it, I'm concerned about transferring in the two forests, the 113,000 acres. But as you put in on balance, as you put it on balance, I think that that is better than having the total amount of legislatively designated lands

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[67] No substitute land would be conveyed to make up for this difference. Chapter 66 assumes the comparability value of original lands returned to the trust.

lands by statute.[64] Additionally, there is a possibility that an application of these forest management provisions which are applicable to general grant lands to original trust lands returned to the trust would defeat the purpose of "fair compensation." Generally original trust lands are returned to the trust without any compensation for a diminution of value.[65] See Ch. 66, §§ 54-55. It is clearly possible for a forest manager, constrained to manage lands for multiple use, to significantly impair the economic value of the land.[66] Clearly that would constitute a breach of trust. See State v. University of Alaska, 624 P.2d 807, 813 (Alaska 1981) (breach of trust found by classification which restricted the use of the land to any significant degree where the intent of the grant was to maximize the economic return from the land for the benefit of the beneficiary). Further, the trust would not be fairly compensated if the fair market value of the land subject to the plan was not as great as the fair market value of

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[64] However, the University has voluntarily complied with the plans, as could the AMHTA.

[65] The Proposed Settlement Agreement provides compensation for some encumbrances on original mental health trust lands returned to the trust. PSA, art. III, § 7(b), at 13-15. This portion would not apply to the type of diminution discussed here.

[66] The court is not applying the "irreconcilable conflict" approach used in the statutory construction in the previous section because the court concludes that there is no reasonable construction which would allow for the operation of both statutes would not be contrary to legislative intent.

exemption from AS 41 for the original mental health lands earlier made part of the Haines and Tanana Valley State Forests. Nevertheless, the court concludes that such an exemption must be implied.

Section 1 of Chapter 66 states that the purpose of the act was "to implement the state's obligation as the trustee" of the mental health lands trust "by providing an integrated comprehensive mental health program" and "by resolving the serious and significant legal questions attending the status of that trust (1) in accordance with State v. Weiss, 706 P.2d 681 (Alaska 1985); [and] (2) in a manner that . . . provides fair compensation to the trust . . . ." Weiss directed that the trust be reconstituted and provided that "[t]hose general grant lands which were once mental health lands will return to their former trust status." 706 P.2d at 684. It was the legislature's express intent to resolve legal questions regarding the status of the trust in accordance with Weiss; thus, the court concludes that it was the legislature's intent to treat original mental health trust lands returned to the trust differently from general grant lands.[63] The forest management plans are only applicable to the general grant lands of the state; they are not applied to the University of Alaska trust

[63] This necessarily follows from the fact that the breach of trust was the reclassification which allowed the state to treat mental health trust lands the same as general grant lands. See Weiss, 706 P.2d at 683.

strongly that the failure to mention AS 41.17 was merely an [oversight]." SP Reply Br. at 46. The Settling Plaintiffs also argue that the Attorney General has the authority to bind the State to this interpretation in the Proposed Settlement Agreement.

The first question to be answered is whether this issue presents an actual case or controversy such that the court should issue a decision. The Alaska Supreme Court adopted Justice Hughes' standard for the "controversy" requirement in AS 22.10.020(g) in Jefferson v. Asplund, 458 P.2d 995, 998-99 (Alaska 1969):

> A "controversy" in this sense must be one that is appropriate for judicial determination . . . A justiciable controversy is thus distinguished from a difference or dispute of a hypothetical or abstract character; from one that is academic or moot . . . . The controversy must be definite and concrete, touching the legal relations of parties having adverse legal interests.

The concept has been interpreted broadly in Alaska; "the 'basic idea' remains that the conduct of one party adversely affects the interest of another." Keen v. Ruddy, 784 P.2d 653, 656 (Alaska 1989). Accord Bowers Office Products v. University of Alaska, 755 P.2d 1095, 1097 (Alaska 1988). The court concludes that there is an actual controversy with adversity in this instance. If one only compared positions taken by the State and the Intervenors, it would be arguable that no controversy exists. However, it is clear that the positions taken by the Settling Plaintiffs and the Intervenors are clearly adverse and a real dispute is presented. It is, then, appropriate to turn to the merits of the issue presented.

As noted, Chapter 66 does not provide a specific

trust lands" (id. at 166).

The State originally asserted that the AMHTA would not be bound by those provisions of AS 41 that would significantly impair the Trust Authority's ability to maximize economic return from the original trust lands in the Haines and Tanana Valley State Forests that will be returned to the trust. The State argued that it would be inconsistent with the purposes of Chapter 66 to discharge the State's trust obligations in accordance with Weiss and provide fair compensation to the trust if the value of the returned lands was diminished by significant restrictions on the use of the lands. See Ch. 66, sec. 1(a). The State asserted that the legislative history supports this interpretation.

In its reply brief, the State asserts that the court should decline to rule on this issue because there is no case or controversy presented. See AS 22.10.020(g).[61]

The Settling Plaintiffs assert that the AMHTA is permitted to manage trust lands free of the provisions of AS 41.15 and 41.17 that apply to state land but not private land.[62] They maintain that a fair reading of the "overall purpose and intent of Chapter 66, including the direction to manage the Trust 'in a fiduciary manner to fulfill the purposes of the trust' suggests

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[61] AS 22.10.020(g) grants the superior court jurisdiction over declaratory relief actions "[i]n case of an actual controversy." See Jefferson v. Asplund, 458 P.2d 995, 999 (Alaska 1969).

[62] The State and Settling Plaintiffs have also so agreed in art. IV, § 5 of the PSA.

VIII. WILL THE ORIGINAL TRUST LANDS IN THE HAINES AND TANANA VALLEY STATE FORESTS RETURNED TO THE TRUST BE SUBJECT TO FOREST MANAGEMENT PLANS?

The Intervenors assert that the lands in the Tanana Valley and Haines State Forests that are being returned to trust status pursuant to Section 54(5) remain subject to the forest management plans adopted under AS 41.15 or AS 41.17. They point out that nothing in Chapter 66 exempts the AMHTA from compliance with AS 41 and that nothing in the forest statutes exempts mental health lands. See AS 41.15.305(a)(2) & (b); AS 41.17.400.[60] The Intervenors assert that the plain language of Chapter 66 controls and that by saying nothing to exempt the returned lands from the provisions of AS 41, the provisions of AS 41 are applicable. They assert that there is nothing in the legislative history on which to base a legislative intent to imply an exception to the forest management statutes. Finally, they assert that AS 41 and Chapter 66 are not irreconcilable because (1) it is "possible to maximize revenue on forested trust lands within the framework of a multiple use, sustained yield plan adopted under AS 41.15 and 41.17;" (P.I. Int. Br. at 165) and (2) the commissioner's discretion in adopting plans with a wide variety of uses on different lands "is easily broad enough to permit appropriate trust uses on mental health

[60] AS 41.17.400 establishes the Tanana Valley State Forest; it specifically excludes University land. AS 41.15.305 establishes the Haines State Forest Resource Management Area; section 305(a)(2) specifically includes mental health land and section 305(b) specifically excludes private land, University land and borough selections.

trust. The legislature has chosen a mechanism for compensating the trust for that land not returned. At the same time, the legislature is requiring an exchange of land that is designed to be fair to both sides. The commissioner must consider the public interest in retaining the specific land in state ownership and the public benefit from the exchange. The process is not a public one; nonetheless it is guided by standards that provide the kind of safeguards which meet the framers' concerns.

merely returning to the trust those lands wrongly taken from it, no further safeguards are necessary.

The selection process for the substitute lands has a number of safeguards of the public interest. First, generally no land in a legislatively designated area may be transferred to the trust. Sec. 55(b). Second. the exchanges are to be based on "equal fair market value." Sec. 55(c). The land exchanged is to be comparable to the original mental health trust land being retained by the State. Sec. 55(d). Additionally, and perhaps most importantly, Section 55(e) requires the commissioner to consider these factors in determining whether the land should be conveyed to the trust:

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

The framers' concern for wise management of state land is met by these safeguards. State land should be viewed as a whole in this instance and the context of the transfer must be considered. The State is retaining lands wrongfully taken from the

VII. DOES CHAPTER 66 PROVIDE ADEQUATE SAFEGUARDS OF THE PUBLIC INTEREST FOR THE DISPOSAL OF STATE LANDS TO ALASKA MENTAL HEALTH TRUST AUTHORITY?

The Intervenors argue that should the court find that the transfer of lands to the AMHTA is not subject to the requirements of AS 38.04 and AS 38.05, that Chapter 66 is unconstitutional because it fails to provide adequate safeguards of the public interest as required by Article VIII, Section 10 of the Alaska Constitution. In light of the court's determination, this issue need not be reached. However, for the sake of completeness and in light of the likelihood of appeal, the court has decided to address the issue.

The State asserts that Article VIII, Section 10 does not apply to these transfers to the AMHTA because it is a state agency. The State asserts that even if safeguards beyond public notice are required, constitutionally sufficient safeguards of the public interest were adopted by the legislature.

Assuming that Article VIII, Section 10 applies to these transfers to the AMHTA,[59] the court concludes that there are sufficient safeguards of the public interest in the reconstitution process to satisfy the constitution.

The legislature has provided for the public interest in the return of original mental health trust lands by providing that lands in legislatively designated areas will not be returned to the trust. Ch. 66, § 54(b). Considering that this "disposal" is

[59] The court expressly does not decide this question.

consistent with the legislative intent, avoids conflict or inconsistency and gives effect to the reconstitution of the trust with substitute land and the land use planning provisions generally applicable, the court adopts that construction. See Lake Construction Machinery, Inc., 787 P.2d at 1030. The court concludes that the selection of substitute land for reconstitution purposes is subject to the planning and classification provisions of AS 38.04 and AS 38.05.[58]

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[58] Two additional arguments raised by the parties deserve some discussion. The Settling Plaintiffs argue that only AS 38.50 is applicable to a land exchange. However, that argument ignores DNR's regulations. According to 11 AAC 55.280(7), a "disposal" includes an "exchange of land . . . to another person, entity, or government agency." Under other regulations, disposals are subject to the planning and classification provisions. See 11 AAC 55.020 and .040(i).

The State argues that the contemporaneous administrative construction of Chapter 66 should be given great weight. The court has considered DNR's interpretation that AS 38.04 and AS 38.05 do not apply, but the court does not view the interpretation as binding or particularly weighty in light of other considerations discussed.

procedures are fairly complex,[57] though not as involved as those under AS 38.50.

This examination of the procedures applicable to a land exchange under AS 38.50 and those necessary for reconstitution in compliance with the land use planning provisions of AS 38.04 and AS 38.05 reveals that the legislature could rationally have determined that the process under AS 38.50 was too complex, time-involved and expensive while still deciding to apply the land use planning provisions of AS 38.04 and AS 38.05.

The question remains whether the process for the selection of substitute lands for the reconstitution is inconsistent with the application of land use planning provisions. The State argues an inconsistency exists in that AS 38.04 and AS 38.05 generally require determinations based solely on the "public interest" while Section 55(e) requires determinations based on a balancing of the "public interest" and the best interest of the trust. However, the court concludes that it is not inconsistent, so long as the commissioner's public interest determinations in the land use planning process include the public interest recognized by the legislature in settling this lawsuit and fairly reconstituting the trust.

Since both statutes can be construed in a way which is

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[57] Under 11 AAC 55.030(f) an amendment or special exemption is subject to the planning requirements of AS 38.04.065 which requires "meaningful participation" by the affected governments, agencies and public (AS 38.04.065(b)(8); 11 AAC 55.020(b)).

38.50.130(a). The report is revised after the comment period. AS 38.50.130(b). The lands to be exchanged (both those given and received) must be appraised within one year of the exchange. AS 38.50.020. In summary, a land exchange under AS 38.50 is both time consuming and very costly.

An application of the land use planning provisions of AS 38.04 and AS 38.05 to the reconstitution would not be as expensive or time consuming. First, for any lands currently classified as "settlement" lands, the lands could be conveyed to the AMHTA without further land use planning review.[55] See 11 AAC 55.202. Second, any unclassified land could be transferred to the AMHTA under an interagency land management assignment.[56] See 11 AAC 55.040(i)(7). Third, where reclassification was necessary to accomplish reconstitution of the trust, the procedures are less complex than those under AS 38.50. Reclassification requires public comment by one of these methods: public hearing by the department in person or by teleconference or by solicitation and consideration of written comments. 11 AAC 55.250. However, if reconstitution required amendment of the land use plan, the

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[55] According to the DNR 1991 Report to the Legislature, there are 3.4 million acres of land classified for "settlement" which are eligible for disposal. See P.I. Int. Exh. 19, at 7, 12.

[56] The court recognizes that the Proposed Settlement Agreement calls for deeds, not interagency assignment, but the court is examining legislative intent. There were 8.7 million acres of unclassified state land at the end of 1991. P.I. Int. Exh. 19, at 7,12.

emerge: (1) exempting the exchanges from even the complex procedures in AS 38.50 was troubling to some legislators, (2) no one mentioned excluding the exchange process from the planning and classification provisions of AS 38.04 and AS 38.05, (3) the settling parties wanted a process which involved as few steps as possible with low cost and no way to stop the process, and (4) no one in the legislature commented on the settling parties' goals, although clearly the purpose of Chapter 66 was to settle this litigation and provide a workable way to reconstitute the trust.

It is useful to examine and compare the processes under AS 38.50 and the land use planning provisions of AS 38.04 and 38.05. The exchange process under AS 38.50 is a very complex one. For example, when there is an exchange with value in excess of five million dollars (which this one would likely be), there is mandatory legislative review of the final agreement to exchange. AS 38.50.020(a). There are extensive public notice and hearing requirements, including "at least three public hearings in one or more municipalities close to the state land proposed for exchange" when the value is more than five million dollars. AS 38.50.120(a) & .110. There is a minimum comment period of two weeks after a hearing is held to allow supplemental or additional statements. AS 38.50.120(b). The director of the division of lands must also prepare an extensive report which is disseminated with the notice and involves land characteristics, appraised values, social, economic and environmental impacts and alternatives. AS

under AS 38.50 is between six and nine months." Id. at 7. The process for 6000 such exchanges would become "undoable." Id. at 8. Commissioner Heinze noted that there was nothing wrong with the concept of public notice, "what we are trying to avoid was any other prescriptions, if you will, hoops that we had to jump through." Id. at 9. Later in the same hearing, Senator Duncan again returned to the issue of public notice. Id. at 14-16.

On May 18, Senator Duncan, the original sponsor of SB 65, addressed a number of concerns on the floor of the Senate. He specifically addressed the "proper hearing process" for land exchanges:

> Secondly, there is concern from the environmental community that there won't be a proper hearing process when land exchanges are made to replace that 460,000 acres that has to be exchanged for. And I think that is a legitimate concern. However, the legislation doesn't provide for that. But what it does provide for is that public notice must be given, and according to AS 38.05.945 that notice must be given; it must be published at least 30 days in advance of any action being taken. And I know that is not satisfactory, but I do have a copy of a letter from the environmental community, if I can find it, which stated that they would like to have this exchange process clearly under the normal process of AS 38.50. But as an alternative proposal, they would like us to provide, at a bare minimum, that notice shall be provided to the public in the manner of AS 38.05.945, which is in the bill. That notice is provided for and the public shall have 60 days within which to comment. Well, the legislation provides the 30 days, so we didn't get quite to 60 days, but we are to the 30 day threshold.

St. Exh. 13-D, at 6-7.

From this legislative history several considerations

Attorney General Koester repeatedly stressed the need for a simplified process. In response to an inquiry from Senator Rodey as to why having "no public review of land exchanges" was "good public policy," Commissioner Heinze stressed that the exchange process was one of negotiation [see Ch. 66, § 55(f)] and that the exemption was necessary to ensure that the deal could be concluded. St. Exh. 13-B, at 1-2. He went on to stress that the public interest would be considered under the provisions of Section 55(e) which would protect the state from losing land not in the public interest. Id. at 2. Mr. Koester added:

> One of the careful balances here, that we tried to strike, was the understandable and laudable interest in the public in looking at the lands that are going to be conveyed to the trust, because it does involve a change in management philosophy for those lands. And at the same time, at the goal, the need, the desire to accomplish this realistically and at as low a cost as possible. And the balance that we struck was to, at least in terms of the administrative process, insure [that] public notice is given.

Id. at 3. Senator Rodey responded that even if the provisions of AS 38.50 were not used, it would be wise to provide for at least an "abbreviated public review," at least a comment period. Id. at 5. Later in the same hearing, Senator Duncan raised the question of "exempting these land exchanges from the public review process." Commissioner Heinze again responded that it was necessary to limit the "steps" in the process to ensure that the process could be completed timely. St. Exh. 13-C at 6. Mr. Koester added that experience showed that the "optimum time for a single exchange

> unambiguous statute is enforced as written without judicial construction or modification; however, this rule is not controlling when a seemingly unambiguous statute must be considered in conjunction with another act. In that case, we will examine the legislative history and adopt a reasonable construction which realizes legislative intent, avoids conflict or inconsistency, and gives effect to every provision of both acts.

Lake Construction Machinery, Inc., 787 P.2d 1027, 1030 (Alaska 1990) (citations omitted).

There is nothing in the legislative history of Chapter 66 specific to the issue of the applicability of the planning and classification provisions of AS 38.04 and AS 38.05. There was discussion of the public notice and hearing process of AS 38.50 in the Senate during the Joint Meeting of the Committees of Finance and Judiciary on May 17, 1991,[53] and on the floor of the Senate by Senator Duncan, the original sponsor of SB 65.[54] The only discussion in the House of anything related to planning and classification again concerned public notice; the minutes of the House Finance Committee reflect that there was some limited discussion of public notice. See P.I. Int. Exh. 9 at 21, 22.

In the discussion in the Senate, the focus was on making the transfers of land "doable" in a reasonable amount of time with as few "hoops" as possible. Commissioner Heinze and Assistant

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[53] A transcript of portions of the proceedings can be found in State's Exhibit 13-B. The official minutes can be found in State's Exhibit 13-A.

[54] A transcript of Senator Duncan's comments can be found in State's Exh. 13-D.

(c)."

Looking then at the words used, at least two things are apparent: (1) the legislature was aware of the provisions of AS 38.04 and AS 38.05 and considered whether they should be applicable to disposal and use by the AMHTA; (2) the legislature considered excluding the reconstitution process from general land laws and did exclude it from the land exchange provisions of AS 38.50. These factors point to an intentional decision on the part of the legislature to apply the relevant portions of AS 38.04 and AS 38.05 to the reconstitution process. See Croft v. Pan Alaska Trucking, Inc., 820 P.2d 1064, 1066 (Alaska 1991) (where certain things are specifically designated in a statute, any omissions should be considered as exclusions); Hafling v. Inlandboatmen's Union of the Pacific, 585 P.2d 870, 875 (Alaska 1978) ("The general rule is that exceptions to the operation of a statute are not to be implied, particularly where there is an express exception clause.")

As discussed before, the interpretation of a statute by Alaska courts does not end with the words used, even if they are seemingly unambiguous. The court must examine the legislative history to see if the legislature's intent is different from what the words seem to imply. See, e.g., State v. Alex, 646 P.2d 203, 208 n.4 (Alaska 1982). Additionally, when a statute must be considered in conjunction with another act, this procedure is applicable:

> The interpretation of a statute begins with an examination of the language used. Ordinarily, an

of Title 38 that would naturally apply to this exchange of lands. They assert that since compliance with AS 38.50 is specifically exempted, compliance with other provisions should not be implied. They assert that the legislature neglected to mention AS 38.04 and 38.05 because they obviously assumed that the provisions did not apply.

The court should begin any inquiry into the meaning of a statute with the words used in the statute. Chapter 66 is silent with respect to the general applicability of the planning and classification provisions of AS 38.04 and AS 38.05 to the transfer of land to the AMHTA. There is a specific exclusion of AS 38.50 to the substitution process: Section 55(g) provides that: "[t]he provisions of AS 38.50 do not apply to exchanges under this section." There is also an explicit exclusion of the applicability of AS 38.04 and AS 38.05 to the disposal or use of lands by the AMHTA; Section 10, to be codified as AS 37.14.009(b) provides:

> In exercising its powers under (a)(2) [disposal] or (3) [direct use for the mental health program] of this section, the authority shall give public notice in the manner provided under AS 38.05.945(b) and (c), but is not otherwise bound by the provisions of AS 38.04 or AS 38.05.

Section 54 requires the Commissioner of DNR to convey lands to the AMHTA "after public notice as provided under AS 38.05.945(b) and

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(footnote continued)

reconstituted as envisioned in Chapter 66 under the current classification primarily because the disposal categories are too limited, he did not opine that the trust could not be reconstituted with reclassification or amendment of plans.

reasons.

The State asserts that the language used in Chapter 66 limits the factors to be considered in reconstituting the trust to those specifically set out in Chapter 66. The State asserts that the reconstitution provisions and the planning and classification provisions of AS 38.04 and AS 38.05 address different state interests and impose different, frequently inconsistent, requirements. The State asserts that the legislative history of Chapter 66 reveals a legislative intent to minimize procedural obstacles to the reconstitution of the trust and that that intent would be frustrated by subjecting the reconstitution to land use planning requirements. The State asserts that the contemporaneous administrative construction by both DNR and the Attorney General are particularly important.

The Settling Plaintiffs add an additional argument not adopted by the State.[52] They assert that AS 38.50 is the only part

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[52] In the reply portion of oral argument on these motions, Mr. Gottstein argued for the first time that testimony given by Thomas Hawkins in the evidentiary hearing on the motions for preliminary approval of the proposed settlement agreement be considered as unrebutted evidence that reconstitution could not be accomplished "if you had to comply with the classification." Transcript Hearings January 22, 1993, at 311. The court disregards this argument. First, the matters before the court were summary judgment motions; Civil Rule 56 requires the filing of affidavits. Secondly, no one was aware that the Settling Plaintiffs intended to rely on the expert testimony for this point. Thus, the Intervenors were denied the opportunity to rebut the testimony.

Moreover, even if the court considered Mr. Hawkins' testimony it does not dispose of the issue. The relevant portions of the testimony occur at pgs. 120-23 of the Transcript Hearings 1/21/93. Although Mr. Hawkins opined that the trust could not be

VI. IS THE RECONSTITUTION PROCESS OF THE SUBSTITUTE LANDS SUBJECT TO THE PLANNING AND CLASSIFICATION REQUIREMENTS OF AS 38.04 AND AS 38.05?

The Intervenors assert that the reconstitution process as it relates to substitute lands under Section 55 of Chapter 66 is subject to the planning and classification requirements of AS 38.04 and AS 38.05. The Intervenors argue that since the planning and classification requirements of AS 38.04 and AS 38.05 generally apply to the disposal of state lands, including the exchange of state lands with a government agency,[50] the legislature's failure to exempt the transfer of substitute lands means that the planning and classification requirements of AS 38.04 and AS 38.05 apply. The Intervenors assert that this interpretation is the "plain meaning" of the statute and that there is insufficient legislative history to overcome that plain meaning. The Intervenors conclude that Section 55 does not conflict with the land use planning laws.[51] They also assert that DNR's contemporaneous administrative construction cannot override the plain language of Chapter 66.

The State and Settling Plaintiffs assert that the reconstitution process is not subject to the planning and classification requirements of AS 38.04 and AS 38.05. See PSA, art. III, § 20, at 28. They reach this result for differing

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[50] See 11 AAC 55.280(7).

[51] The Intervenors agree that the land use planning statutes conflict with reconveyance of original mental health trust lands and, thus, the reconveyance of original trust lands is not subject to these provisions.

lands. Article VIII, Section 2 clearly imposes on the state the duty to manage the public lands "for the maximum benefit of its people." That is not the same, however, as the public trust doctrine.

The court thus concludes that the public trust doctrine is not implicated by the legislature's hypothecation of lands.

applicable to the public lands. In Owsichek, 763 P.2d at 494-95, the Alaska Supreme Court determined that the common use clause of Article VIII, Section 3[49] constitutionalized the historic common law principles of the public trust doctrine regarding the management of fish, wildlife and water resources. This imposes upon the State "a trust duty to manage the fish, wildlife and water resources of the state for the benefit of all the people." Id. at 495. The court also noted that:

> To give meaning and effect to the common use clause, it must provide protection of the public's use of natural resources distinct from that provided by other constitutional provisions.

Id. at 496. Those "other constitutional provisions" referred to by the court include Article VIII, Section 2, which provides:

> The legislature shall provide for the utilization, development, and conservation of all natural resources belonging to the State, including land and waters, for the maximum benefit of its people.

Clearly, if Article VIII, Section 2, imposed public trust doctrine duties on the state, the common use clause would have been superfluous. The court must construe the constitution whenever reasonably possible to give every provision of the constitution meaning and effect. Owsichek, 763 P.2d at 496.

This does not say that the State owes no duty to the citizens of Alaska with respect to the management of the public

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[49] Article VIII, section 3 provides: "Wherever occurring in their natural state, fish, wildlife, and waters are reserved to the people for common use."

fiduciary. Finally, they assert that the legislature's "blind hypothecation" of lands violated that duty of care.

The State asserts the public trust doctrine[47] has never been and should not be applied to public lands. The State asserts that even if the public trust doctrine is applied, it is inappropriate to apply private trust principles. But even if private trust principles are applied, the State asserts, the legislature did not violate those duties.

The public trust doctrine has been applied to the fish, wildlife and waters of the state as a matter of constitutional law in Owsichek v. State, 763 P.2d 488 (Alaska 1988) and to the submerged and tidal lands as a matter of common law in CWC Fisheries, Inc. v. Bunker, 755 P.2d 1115 (Alaska 1988). Although the Alaska Supreme Court has repeatedly recognized the importance of the public lands and the constitutional protections applicable to the public lands in Article VIII of the Alaska Constitution,[48] the court has never applied the public trust doctrine to the public lands.

The court concludes that the public trust doctrine is not

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[47] The public trust doctrine is a common law doctrine which finds it roots in the obligation of the government to hold wildlife for the benefit of the public which benefit is to be exercised by citizens individually. See Geer v. Connecticut, 161 U.S. 519, 522-29, 40 L.Ed. 793, 794-97 (1886).

[48] See, e.g., North Slope Borough v. LeResche, 581 P.2d 1112, 1114 (Alaska 1978); Moore v. State, 553 P.2d 8, 30-32 (Alaska 1976) (sep. opinion, Rabinowitz, J.); Alyeska Ski Corp. v. Holdsworth, 426 P.2d 1006, 1011 (Alaska 1967).

under the Proposed Settlement Agreement. The Settling Plaintiffs are given the right to exercise all rights and remedies pertaining to the reconstitution of the trust until the trust is reconstituted; this necessarily includes the right to seek foreclosure under Section 56(d). See PSA, art. VI, § 6, at 49; art. III, §§ 28, 29, at 32-33. However, those are the rights to enforce the agreement; that does not mean that the plaintiffs are the secured parties. If foreclosure occurs, obviously the lands will be conveyed to the AMHTA, or the trust if there is no AMHTA, not the plaintiffs.

In sum, the court concludes that Article VIII, Section 10 is not violated by the hypothecation.

E. Does the Hypothecation of Land in Section 56 Violate the State's Duty as Trustee of the Public Lands?

The Intervenors assert that the legislature violated its duty as trustee of the public lands by hypothecating an unknown list of land to the mental health trust in Section 56(a). First, the Intervenors assert that the Alaska Constitution requires that state lands be managed as a public trust for all the people of the state. They assert that this obligation includes fiduciary duties similar to those applicable to private trusts.[46] They assert that the trustee must exercise the duty of care one would expect of a

[46] In their first brief, the Intervenors argued that private trust principles apply to public trusts. P. Int. Br. at 137. The Intervenors receded from this position in their reply brief and now assert that private trust principles provide a useful analogy. P. Int. Reply Br. at 86.

is created which runs to a state agency, many of the concerns of which led to the inclusion of Article VIII, Section 10 are not applicable. The state is not at risk of losing the land; if the worst happens and the land is foreclosed, it will become part of the trust and it will still be used for state purposes.

The court disagrees with the Intervenors' conclusion that the lands are hypothecated to the Settling Plaintiffs under the Proposed Settlement Agreement. The Intervenors are correct that the Settling Plaintiffs have substantial enforcement authority

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(footnote continued)

not be a state agency. The AMHTA has a broad degree of autonomy. The primary limitation results from its trust obligations to implement the Alaska Mental Health Enabling Act of 1956 and manage the trust for the benefit of the beneficiaries. The AMHTA board of trustees must elect a presiding officer (CEO), who in turn may hire other personnel as necessary. Ch. 66, § 26 (to be codified as AS 47.30.026). The AMHTA has authority to set the CEO's salary, provided it is not below the minimum specified in Chapter 66. Id. Under the Proposed Settlement Agreement, the AMHTA will hold real property in its own name. It may sue and be sued. Ch. 66, § 26 (to be codified as AS 47.30.011(c)(2)). It may retain independent counsel when needed and may contract with an investment management entity other than the Alaska Permanent Fund Corporation when deemed in the best interests of the trust beneficiaries. Ch. 66, § 10 (to be codified as AS 37.14.009(a)(5)) and § 26 (to be codified as AS 47.30.011(c)(3)). An annual audit of the AMHTA itself is not mandatory, although an extensive budget report is required. See Ch. 66, § 26 (to be codified as AS 47.30.046). The Alaska Permanent Fund Corporation, however, must submit to the AMHTA an audit report prepared by a certified public accountant. Ch. 66, § 9 (to be codified as AS 37.13.300(b)(3).

On balance the court concludes that for the purposes of the hypothecation of lands to it, the AMHTA is a state agency. Its autonomy stems from the historical breach of trust and the sometimes inconsistent duties that the legislature and governor have with respect to the people as a whole and the beneficiaries. Functionally however, the AMHTA is the state's arm for managing the trust's lands and corpus.

(footnote continued)

of a comprehensive mental health program for the state. The AMHTA is expressly located within the Department of Revenue. Ch. 66, § 26 (to be codified as AS 47.30.011). The governor appoints all seven members of the board. Ch. 66, § 26 (to be codified as AS 47.30.016). The governor may remove a board member only for cause, but this includes poor attendance and lack of contribution to the board's work. Id. at AS 47.30.021(c). The Commissioners of the Departments of Health and Social Services, Natural Resources, and Revenue are designated as advisors to the board. Id. at AS 47.30.041. Duties of the board include "coordinat[ing] with other state agencies," receiving and considering the program and budget recommendations of other state boards and commissions dealing with mental health issues, and making "an annual written report of its activities to the legislature, governor, and the public." Id. at AS 47.30.036. The AMHTA must submit an annual budget report and program evaluation to the legislative budget and audit committee, the governor, the office of management and budget, the commissioner of health and social services, and all entities providing services with money from the trust income, and the report must be available to the public. Id. at AS 47.30.046. The mental health trust fund is established "within the state treasury." Ch. 66, § 11. The trust income account is established "within the general fund of the state." Id. During the first ten years of existence, the trust income account will receive all or a large proportion of its budget from the state general fund. Id. Chapter 66 specifies an honorarium of $200 per day plus the standard per diem and travel expenses for board members attending meetings. Ch. 66, § 26 (to be codified as AS 47.30.016(e)). The AMHTA will contract with the Alaska Permanent Fund Corporation to manage the cash assets of the trust corpus. Ch. 66, § 9 (to be codified as AS 37.13.300) and § 10 (to be codified as AS 37.14.009(a)(5)). The AMHTA may request funding from the general fund when trust income is insufficient. Ch. 66, § 26 (to be codified as AS 47.30.046(a)). The AMHTA can only propose appropriations from the trust income account. The governor and legislature have the ultimate authority to make appropriations from the account, although deviations from the AMHTA's proposal must be explained and justified. Ch. 66, § 10 (to be codified as AS 37.14.003-.005). The trust lands are expressly treated the same as state lands to the extent that they are exempt from general taxation and claims of adverse possession, and they receive state fire protection. Ch. 66, §§ 2, 3, 14. The Administrative Procedures Act is expressly applicable. Ch. 66, § 26 (to be codified as AS 47.30.031). See ASHA v. Dixon, 496 P.2d 649, 651 (Alaska 1972).

There are also factors indicating that the AMHTA might

lands, to protect state lands from exploitation and fraud and to ensure that state lands are not squandered or disposed of at extremely low prices. These purposes would not be served by applying Article VIII, Section 10 to the hypothecation of these lands, primarily because even if the lands are foreclosed, the lands will remain in state ownership, serving the purposes of the people of the State of Alaska.[44] Even if one assumes that the creation of a security interest which runs in favor of a private party would be subject to Article VIII, Section 10, the same need not be said of this hypothecation.

The hypothecation of these lands to the mental health trust is not a disposal of an interest in state lands for purposes of Article VIII, Section 10. Although the AMHTA exercises a substantial degree of authority, the court concludes that for these purposes it is a state agency.[45] Where a security interest in land

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[44] The court acknowledges that the AMHTA has the authority to sell trust lands. However, that is an issue separate from hypothecation.

[45] Whether an entity is a state agency is determined by the purpose involved. See Alyeska Commercial Fishing & Agricultural Bank v. O/S Alaska Coast, 715 P.2d 707, 708-09 (Alaska 1986) ["CFAB"]. Deciding whether an entity is a state agency requires balancing the entity's autonomy against the state's retained control. Id. at 711. The mere retention of some oversight by the state does not transform an entity into a state agency. Id. CFAB discusses a large number of factors that have been used by the court to analyze the relationship between the entity and the State.

Several factors indicating state agency status apply to the AMHTA. The AMHTA was expressly created by the legislature to perform the governmental function of fulfilling the State's trust duties. Chap. 66, §§ 1, 10. It also performs the traditional state government function of coordinating the planning and funding

includes the power to request foreclosure of lands on the Hypothecated Lands List pursuant to Section 56(d). PSA, art. III, §§ 28-29, at 32-33. Additionally, the Settling Plaintiffs have the power to release lands from the List. PSA, art. III, § 21, at 29. Finally, under Department Order No. 135, the Settling Plaintiffs exercise "substantial control" over DNR management of lands on the Hypothecated Lands List according to the Intervenors.

The Intervenors argue further that hypothecation conveys a security interest in land which is an "interest" within the meaning of Article VIII, Section 10. The Intervenors argue that the hypothecation was created without any notice to the public and with inadequate safeguards of the public interest.

The State asserts that the hypothecation is to the trust, not the Settling Plaintiffs. Because the AMHTA is a state agency, the State concludes that the hypothecation is not a "disposal" for purposes of Article VIII, Section 10.

The State asserts that although the hypothecation creates a security interest, that it does not create an interest in state land for purposes of Article VIII, Section 10. The State asserts that whether a security interest is an interest in land depends on the context and purpose. See Brand v. First Federal Savings & Loan Ass'n of Fairbanks, 478 P.2d 829, 832 (Alaska 1970).

The purposes and constitutional history of Article VIII, Section 10 were explored in Part I of this decision. Essentially, the provision was designed to ensure the wise management of state

Hypothecated Lands List resulted from an unconstitutional delegation of authority from the legislature. The hypothecation is unconstitutional as currently written.[42]

D. Does the Hypothecation of State Lands Violate Article VIII, Section 10 of the Alaska Constitution?

Article VIII, Section 10 of the Alaska Constitution prohibits the disposal of an interest in state land without prior public notice and other safeguards of the public interest as established by the legislature. The Intervenors argue that the hypothecation of state lands in Section 56(a) violates that provision.[43]

The Intervenors argue that the hypothecation in Chapter 66 as effectuated through the Proposed Settlement Agreement conveys an interest in land directly to the plaintiffs. Although Section 56(a) hypothecates the land to the mental health trust, the Proposed Settlement Agreement gives the Settling Plaintiffs the right to exercise the rights and remedies pertaining to reconstitution of the trust. PSA, art. VI, § 6(a), at 49. This

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[42] Obviously, it would be very easy for the legislature to remedy this problem. If the legislature amended section 56(a) to adopt a specific, known list or delegated the task of preparing a new list with adequate standards, the difficulty would be eliminated.

[43] Although Chapter 66 was enacted in 1991, the hypothecation will not occur until Chapter 66 is effective, that is until this litigation is dismissed and time for appeal has run. See Chapter 66, Section 58. However, DNR management of lands on the Hypothecated Lands List has changed under Dept. Order No. 135.

This is not a situation where a vague standard can be saved by the procedural safeguards of the statute or the agency. See, e.g., Boehl v. Sabre Jet Room, Inc., 349 P.2d 585, 590 (Alaska 1960). First, agency safeguards, such as public hearings or application of the Administrative Procedures Act, are inapplicable to the process of creating the Hypothecated Lands List. Further, there is no judicial review of the actions involved in choosing lands for inclusion on the Hypothecated Lands List.[41]

For these reasons, the court concludes that the

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that had been included in any version of the list. See St. Exh. 16 ¶ 8. This leads the court to conclude that the Commissioner probably used the standard he talked about, "resembling" unreturned lands.. There is nothing in the legislative history to support the legislature's adoption of that standard; it does not appear that such a standard was ever even proposed to the House.

[41] The State argues that judicial review provides adequate procedural safeguards. But the judicial review to which the State refers comes long after the selection of lands for inclusion on the Hypothecated Lands List. There are two stages of judicial review related to the hypothecation. First, under the Act the Alaska Supreme Court could hear any dispute arising from the pro rata release of hypothecated land under Section 56(c) "as reconstitution of the trust . . . is accomplished." Chap. 66, sec. 57(a). However, Chapter 66 is not effective until this litigation is dismissed and the time for appeal has expired. Chap. 66, sec. 58. Thus, even though the lands were treated differently after April 6, 1992, when the Proposed Settlement Agreement was signed, and DNR Order No. 135 promulgated, the first possible review may be years from that date. Moreover, the review is not of the commissioner's action in including the lands on the Hypothecated Land List in the first instance. Second, should the state default on its obligations to reconstitute the trust, or if reconstitution is not complete by December 1, 1994, foreclosure of lands on the Hypothecated Lands List, "including the parcels to be foreclosed and the manner of foreclosure" are to be determined by the Supreme Court. Chap. 66, §§ 56(d), 57(a). This judicial involvement is also related to different decision making, specifically how the foreclosure is to proceed, not what lands are included on the Hypothecated Lands List, and, thus, available for foreclosure.