

**SB**

**67**

**SFIN**

**FILE**

RETURNED TO FINANCE FROM RULES COMMITTEE

DATE: 3/18/94

FURTHER:

DATE TURNED INTO OFFICE: 4-21-94

The Finance Committee considered SENATE BILL NO. 67

"An Act amending provisions of ch. 66, SLA 1991, that relate to reconstitution of the corpus of the mental health trust, the management of trust assets, and to the manner of enforcement of the obligation to compensate the trust; and providing for an effective date."

and recommends:

☒ replace with \_\_\_\_\_ CS SB 67 2d (FINANCE)  
 or ☐ adopt previous \_\_\_\_\_ CS \_\_\_\_\_  
☐ attaches amendment(s)

☐ same title  
☒ new title  
☐ technical title change (HB only)

☐ adopts \_\_\_\_\_ Letter of Intent

☐ further referral to the \_\_\_\_\_

☐ do pass

☐ do not pass

☐ no recommendation

☒ individual recommendations

## NEW FISCAL NOTES

| Department | Date     | Zero | Fiscal |
|------------|----------|------|--------|
| DELEG      | 12/17/93 | 0    |        |
| Courts     | 2/2/94   | 0    |        |
| DOLAW      | 4/21/94  |      | 200.0  |
| DNR        | 4/13/94  |      | 278.9  |
| DH&SS      | 4/21/94  |      | 331.7  |

## PREVIOUS FISCAL NOTES

| Department | Date | Zero | Fiscal |
|------------|------|------|--------|
|            |      |      |        |
|            |      |      |        |
|            |      |      |        |
|            |      |      |        |
|            |      |      |        |
|            |      |      |        |

☐ Appropriation No Fiscal Note

DO PASS.

## OTHER RECOMMENDATIONS:

Best. Nung  
Revised  
 1. Do Pass  
 Co-Chair: Signature/Recommendation

More than No Recommendation  
Not a No  
 2. True No Rec  
 Co-Chair: Signature/Recommendation

4/21/94  
 Fiscal Notes to Follow

4-25-94

# FISCAL NOTE

STATE OF ALASKA  
1994 LEGISLATIVE SESSION

BILL NO. CSSB 67(FIN)

Revision Date: 12/17/93  
Title: Mental Health Trust Amendments  
Sponsor: Senate Resources  
Requestor: Senate Finance

Dept. Affected: Fish and Game  
BRU: Habitat and Restoration  
Component: Habitat and Restoration  
COMPONENT SERIAL NO. 0486

**Expenditures/Revenues**

(Thousands of Dollars)

|                        | FY 95 | FY 96 | FY 97 | FY 98 | FY 99 | FY 00 |
|------------------------|-------|-------|-------|-------|-------|-------|
| OPERATING EXPENDITURES |       |       |       |       |       |       |
| PERSONAL SERVICES      |       |       |       |       |       |       |
| TRAVEL                 |       |       |       |       |       |       |
| CONTRACTUAL            |       |       |       |       |       |       |
| SUPPLIES               |       |       |       |       |       |       |
| EQUIPMENT              |       |       |       |       |       |       |
| LAND & STRUCTURES      |       |       |       |       |       |       |
| GRANTS, CLAIMS         |       |       |       |       |       |       |
| MISCELLANEOUS          |       |       |       |       |       |       |
| TOTAL OPERATING        | 0     | 0     | 0     | 0     | 0     | 0     |
| CAPITAL EXPENDITURES   | 0     | 0     | 0     | 0     | 0     | 0     |
| CHANGE IN REVENUES ( ) | 0     | 0     | 0     | 0     | 0     | 0     |

**FUND SOURCE**

(Thousands of Dollars)

|                          |   |   |   |   |   |   |
|--------------------------|---|---|---|---|---|---|
| 1002 Federal Receipts    |   |   |   |   |   |   |
| 1003 GF Match            |   |   |   |   |   |   |
| 1004 GF                  |   |   |   |   |   |   |
| 1005 GF/Program Receipts |   |   |   |   |   |   |
| 1006 GF/MHTLA            |   |   |   |   |   |   |
| Other                    |   |   |   |   |   |   |
| TOTAL                    | 0 | 0 | 0 | 0 | 0 | 0 |

Estimate of any current year (FY 94) cost: \$ None

**POSITIONS**

|           |   |   |   |   |   |   |
|-----------|---|---|---|---|---|---|
| FULL-TIME | 0 | 0 | 0 | 0 | 0 | 0 |
| PART-TIME | 0 | 0 | 0 | 0 | 0 | 0 |
| TEMPORARY | 0 | 0 | 0 | 0 | 0 | 0 |

ANALYSIS: (Attach a separate page if necessary) None

Prepared By: Frank Rue  
Division: Habitat and Restoration  
Approved by Commissioner: [Signature]  
Agency: Alaska Department of Fish and Game

Phone: 465-4105  
Date: 12/17/93  
Date: 12/17/93

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## FISCAL NOTE

STATE OF ALASKA  
1994 LEGISLATIVE SESSION

BILL NO. CS SB 67 (FIN)

Revision Date: 02/02/94  
Title: Mental Health Trust Amendments

Dept. Affected: Alaska Court System

BRU: Trial Courts

Components:

Sponsor: Resources  
Requestor: Senate Rules

COMPONENT SERIAL NO. 768

## EXPENDITURES/REVENUES (Thousands of Dollars)

| OPERATING EXPENDITURES | FY 95 | FY 96 | FY 97 | FY 98 | FY 99 | FY 00 |
|------------------------|-------|-------|-------|-------|-------|-------|
| PERSONAL SERVICES      |       |       |       |       |       |       |
| TRAVEL                 |       |       |       |       |       |       |
| CONTRACTUAL            |       |       |       |       |       |       |
| SUPPLIES               |       |       |       |       |       |       |
| EQUIPMENT              |       |       |       |       |       |       |
| LAND & STRUCTURES      |       |       |       |       |       |       |
| GRANTS & CLAIMS        |       |       |       |       |       |       |
| TOTAL OPERATING        | 0.0   | 0.0   | 0.0   | 0.0   | 0.0   | 0.0   |

|                      |  |  |  |  |  |  |
|----------------------|--|--|--|--|--|--|
| CAPITAL EXPENDITURES |  |  |  |  |  |  |
|----------------------|--|--|--|--|--|--|

|                        |  |  |  |  |  |  |
|------------------------|--|--|--|--|--|--|
| CHANGE IN REVENUES ( ) |  |  |  |  |  |  |
|------------------------|--|--|--|--|--|--|

## FUND SOURCE (Thousands of Dollars)

|                          |     |     |     |     |     |     |
|--------------------------|-----|-----|-----|-----|-----|-----|
| 1002 Federal Receipts    |     |     |     |     |     |     |
| 1003 GF Match            |     |     |     |     |     |     |
| 1004 GF                  | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 |
| 1005 GF/Program Receipts |     |     |     |     |     |     |
| 1006 GF/MHTIA            |     |     |     |     |     |     |
| Other                    |     |     |     |     |     |     |
| TOTAL                    | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 |

## POSITIONS

|           |  |  |  |  |  |  |
|-----------|--|--|--|--|--|--|
| FULL-TIME |  |  |  |  |  |  |
| PART-TIME |  |  |  |  |  |  |
| TEMPORARY |  |  |  |  |  |  |

Estimate of current year (FY 94) cost: \$

None

ANALYSIS: (Attach a separate page if necessary)

No fiscal impact. Any additional costs associated with this case will be charged to the parties.

Prepared by: C. S. Christensen III, Staff Counsel  
Agency: Alaska Court System

Phone: 264-8228  
Date: 02/02/94

Approved by: Arthur H. Snowden, II, Administrative Director  
Agency: Alaska Court System

Date: 02/02/94

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Rev 8/93

Page 1 of 1

TOTAL P.05

## FISCAL NOTE

WORK DRAFT

STATE OF ALASKA  
1994 LEGISLATIVE SESSION

BILL NO. CSSB 67 (2d FIN)

3/22/94

Revision Date: April 12, 1994Title: "...relating to the mental health land trust and the mental health land trust litigation..."Sponsor: Senate Resources CommitteeRequestor: Governor's Office/OMBDepartment Affected: Department of LawBRU: Legal ServicesComponent: Mental Health LandsCOMPONENT 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.

Prepared by: Richard I. Peques, DirectorPhone: 465-3672Division: Administrative Services DivisionDate: April 12, 1994Approved by Commissioner: Bruce M. Botelho, Attorney GeneralAgency: Department of LawDate: April 12, 1994

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FISCAL NOTE

STATE OF ALASKA  
1994 LEGISLATIVE SESSION

WORK DRAFT  
BILL NO. CSSB 67 (2d FIN)  
3/22/94

ANALYSIS CONTINUATION:

The 3/22/94 Work Draft for SB 67 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 unenforceable. 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.

Please note that the adoption of SB 67 Weiss settlement will result in a general fund savings of \$590,800 in FY 96, which is now being spent annually to represent the state in the Weiss litigation.

# FISCAL NOTE

STATE OF ALASKA

BILL NO. CSSB67(FIN)

1994 LEGISLATIVE SESSION

Revision Date: 18-Apr-94

Dept Affected: Natural Resources

Title: "An Act amending provisions of ch.66 sla 1991,

BRU: Resource Development

that relate to reconstitution of the corpus of the mental health trust..."

Component: Mental Health Trust (NEW)

Sponsor: Senate Resources

Requestor: Senate Finance

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            | 25.0         | 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          |              |              |              |              |              |              |
| <b>TOTAL OPERATING</b> | <b>278.9</b> | <b>278.9</b> | <b>278.9</b> | <b>278.9</b> | <b>278.9</b> | <b>278.9</b> |

|                             |            |            |            |            |            |            |
|-----------------------------|------------|------------|------------|------------|------------|------------|
| <b>CAPITAL EXPENDITURES</b> | <b>0.0</b> | <b>0.0</b> | <b>0.0</b> | <b>0.0</b> | <b>0.0</b> | <b>0.0</b> |
|-----------------------------|------------|------------|------------|------------|------------|------------|

|                                    |                   |                   |                   |                   |                   |                   |
|------------------------------------|-------------------|-------------------|-------------------|-------------------|-------------------|-------------------|
| <b>CHANGE IN REVENUES (1004) *</b> | <b>(15,000.0)</b> | <b>(15,000.0)</b> | <b>(15,000.0)</b> | <b>(15,000.0)</b> | <b>(15,000.0)</b> | <b>(15,000.0)</b> |
|------------------------------------|-------------------|-------------------|-------------------|-------------------|-------------------|-------------------|

\*\* See additional comment below.

**FUND SOURCE**

(Thousands of Dollars)

|                          |              |              |              |              |              |              |
|--------------------------|--------------|--------------|--------------|--------------|--------------|--------------|
| 1002 Federal Receipts    |              |              |              |              |              |              |
| 1003 GF Match            |              |              |              |              |              |              |
| 1004 GF                  |              |              |              |              |              |              |
| 1005 GF/Program Receipts |              |              |              |              |              |              |
| 1006 GF/MHTIA            |              | 278.9        | 278.9        | 278.9        | 278.9        | 278.9        |
| 1061 CIP Receipts        | 278.9        |              |              |              |              |              |
| <b>TOTAL</b>             | <b>278.9</b> | <b>278.9</b> | <b>278.9</b> | <b>278.9</b> | <b>278.9</b> | <b>278.9</b> |

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 FY95 request is for the set up of the Mental Health Trust, out of current CIP SLA 1993, CH 79..

\* The change in revenues is \$15,000.0 annually from Oil & Gas leases which normally go to the general fund and now will go to the Mental Health Trust.

\*\* Additional revenues will be generated by the Mental Health Trust from Sections 4 & 5, however the amount is uncertain at this time.

Prepared by: 13 Ron Swanson, Director

Phone: 762-2692

Division: Land

Date: 18-Apr-94

Approved by Commissioner:

Harry A. Noah

Date: 18-Apr-94

Agency:

Natural Resources

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### **MENTAL HEALTH TRUST MANAGEMENT OFFICE**

**Mission:**

Within the Department of Natural Resources, Division of Land, the Mental Health Trust Management Office's (MHTMO) primary function is to administer Alaska's valuable Trust land in order to produce the highest revenue yield for its beneficiaries. However, existing local, state and federal environmental standards will need to be followed by any development which occurs on these lands. Careful management of Trust land not only guarantees revenue, but also ensures the protection and preservation of the Trust for years to come.

**Funds:**

Funds derived from land transactions will be accounted for separately. Revenues come from the sale of land or royalties from natural products of the land, leases, permits, and interest from sales contracts; these activities will be contracted with DNR operations and paid for out of future revenue streams.

**Assumptions:**

- ◆ This fiscal note does not include funding for the final reconstitution. That will be funded out of the balance of the Mental Health FY94 CIP project SLA 1993, CH 79.
- ◆ Existing computer services will be available, as well as computers.
- ◆ Existing information concerning original Mental Health Trust lands and land designated as Mental Health Trust Land will be made available to the office for use.
- ◆ The office will be pro-active in initiating programs and managing the land and resources, as well as in responding to those with proposals for use of Mental Health Trust Land.
- ◆ Funding for Mental Health programs will be appropriated out of the Mental Health Trust Income Account.

# FISCAL NOTE

STATE OF ALASKA  
1994 LEGISLATIVE SESSION

BILL NO. CS SB67 ( )

Revision Date: April 20, 1994 Dept. Affected: Health and Social Services  
Title: An act amending provisions of Chapter 66, SLA 1991 and providing for an effective date BRU: ALCOHOLISM & DRUG ABUSE SVCS  
Sponsor: House Resources Committee Component: Administration  
Requestor: Senate Finance Committee 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          |
| <b>TOTAL OPERATING</b> | <b>331.7</b> | <b>317.2</b> | <b>326.7</b> | <b>336.5</b> | <b>346.6</b> | <b>357.0</b> |

|                             |            |            |            |            |            |            |
|-----------------------------|------------|------------|------------|------------|------------|------------|
| <b>CAPITAL EXPENDITURES</b> | <b>0.0</b> | <b>0.0</b> | <b>0.0</b> | <b>0.0</b> | <b>0.0</b> | <b>0.0</b> |
|-----------------------------|------------|------------|------------|------------|------------|------------|

|                            |          |          |          |          |          |          |
|----------------------------|----------|----------|----------|----------|----------|----------|
| <b>CHANGES IN REVENUES</b> | <b>0</b> | <b>0</b> | <b>0</b> | <b>0</b> | <b>0</b> | <b>0</b> |
|----------------------------|----------|----------|----------|----------|----------|----------|

**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          |
| <b>TOTAL</b>             | <b>331.7</b> | <b>317.2</b> | <b>326.7</b> | <b>336.5</b> | <b>346.6</b> | <b>357.0</b> |

**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  
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                          | <u>\$167.2</u> |

Travel

|                                      |               |
|--------------------------------------|---------------|
| Statewide Travel, Professional Staff | \$49.0        |
| Travel, 3 Additional Board Members   | \$10.0        |
| Per Diem                             | \$30.0        |
| Total                                | <u>\$89.0</u> |

Contractual

|                                |               |
|--------------------------------|---------------|
| Communication                  | \$9.0         |
| Advertising, Printing, Binding | \$15.0        |
| Minor repair, Maintenance      | \$2.0         |
| Space Rental                   | \$12.0        |
| Rental Copier/Fax              | \$7.5         |
| Total                          | <u>\$45.5</u> |

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                       | <u>\$23.7</u> |

|             |         |
|-------------|---------|
| Grand Total | \$331.7 |
|-------------|---------|

Back-up

# SENATE FINANCE COMMITTEE REPORT

DATE: 4/2/93

FURTHER:

DATE TURNED INTO OFFICE: 5-6-93

The Finance Committee considered SENATE BILL NO. 67

"An Act amending provisions of ch. 66, SLA 1991, that relate to reconstitution of the corpus of the mental health trust, the management of trust assets, and to the manner of enforcement of the obligation to compensate the trust; and providing for an effective date."

and recommends:

☒ replace with \_\_\_\_\_ CS SB 67 (FINANCE)  
or ☐ adopt previous \_\_\_\_\_ CS \_\_\_\_\_  
☐ attaches amendment(s)

☐ same title  
☒ new title  
☐ technical title change (HB only)

☐ adopts \_\_\_\_\_ Letter of Intent

☐ further referral to the \_\_\_\_\_

☐ do pass

☐ do not pass

☐ no recommendation

☒ individual recommendations

5-6-93  
New & DNR  
fiscal note  
coming to  
replace # 3.

## NEW FISCAL NOTES

| Department | Date   | Zero | Fiscal |
|------------|--------|------|--------|
| D&H        | 5-6-93 | 0    |        |
| Courts     | 4-1-93 |      | 53.7   |
| DF&G       | 4-5-93 | 0    |        |
| INR        | 5-7-93 | 0    |        |
|            |        |      |        |
|            |        |      |        |

New Analysis

## PREVIOUS FISCAL NOTES

| Department | Date | Zero | Fiscal |
|------------|------|------|--------|
|            |      |      |        |
|            |      |      |        |
|            |      |      |        |
|            |      |      |        |
|            |      |      |        |
|            |      |      |        |

☐ Appropriation No Fiscal Note

DO PASS

## OTHER RECOMMENDATIONS:

More Time No Rec  
Kottel No Rec  
The Kelly - No Rec  
Cruz - No Rec  
Baker - No Rec  
True - No Rec

1. Do Pass  
Co-Chair Signature/Recommendation

2. True  
Co-Chair Signature/Recommendation

## FISCAL NOTE

Work Draft

STATE OF ALASKA  
1993 LEGISLATIVE SESSION

BILL NO. CSSB 67 ( )

5/05/93

Revision Date: May 6, 1993Department Affected: Department of LawTitle: "...amending...Ch. 66, SLA 1991, that relate to  
the mental health trust..."BRU: Legal ServicesComponent: Mental Health LandsSponsor: Senate Resources CommitteeRequestor: Governor's Office/OMBCOMPONENT SERI' 1

## EXPENDITURES/REVENUES:

| OPERATING         | FY 94 | FY 95 | FY 96 | FY 97 | FY 98 | FY 99 |
|-------------------|-------|-------|-------|-------|-------|-------|
| PERSONAL SERVICES |       |       |       |       |       |       |
| TRAVEL            |       |       |       |       |       |       |
| CONTRACTUAL       |       |       |       |       |       |       |
| SUPPLIES          |       |       |       |       |       |       |
| EQUIPMENT         |       |       |       |       |       |       |
| LAND & STRUCTURES |       |       |       |       |       |       |
| GRANTS, CLAIMS    |       |       |       |       |       |       |
| MISCELLANEOUS     |       |       |       |       |       |       |
| TOTAL OPERATING   | -0-   | -0-   | -0-   | -0-   | -0-   | -0-   |

|         |  |  |  |  |  |  |
|---------|--|--|--|--|--|--|
| CAPITAL |  |  |  |  |  |  |
|---------|--|--|--|--|--|--|

|                         |  |  |  |  |  |  |
|-------------------------|--|--|--|--|--|--|
| REVENUE<br>FUND SOURCE: |  |  |  |  |  |  |
|-------------------------|--|--|--|--|--|--|

## FUNDING:

|                          |     |     |     |     |     |     |
|--------------------------|-----|-----|-----|-----|-----|-----|
| 1002 Federal Receipts    |     |     |     |     |     |     |
| 1003 GF Match            |     |     |     |     |     |     |
| 1004 GF                  |     |     |     |     |     |     |
| 1005 GF/Program Receipts |     |     |     |     |     |     |
| 1006 GF/MH FIA           | -0- | -0- | -0- | -0- | -0- | -0- |
| OTHER                    |     |     |     |     |     |     |
| TOTAL                    | -0- | -0- | -0- | -0- | -0- | -0- |

|           |     |     |     |     |     |     |
|-----------|-----|-----|-----|-----|-----|-----|
| FULL-TIME | -0- | -0- | -0- | -0- | -0- | -0- |
| PART-TIME |     |     |     |     |     |     |
| TEMPORARY |     |     |     |     |     |     |

Estimate of current year (FY93) impact: \_\_\_\_\_

ANALYSIS: (Attach a separate page if necessary.)

Please see the attached analysis.

Prepared by: Richard I. Peques, Director  
Division: Administrative Services DivisionPhone: 465-3672Date: May 6, 1993Approved by Commissioner: Charles E. Cole, Attorney GeneralAgency: Department of LawDate: May 6, 1993PREPARER TO PROVIDE ALL DISTRIBUTION COPIES TO GOVERNOR'S LEGISLATIVE OFFICE  
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FISCAL NOTE

STATE OF ALASKA  
1993 LEGISLATIVE SESSION

Work Draft  
BILL NO. CSSB 67 ( )  
5/05/93

ANALYSIS CONTINUATION:

Enactment of the proposed amendments contained in the May 5, 1993 work draft CS for Senate Bill No. 67 would substantially advance resolution of the mental health trust litigation as it would cure the two infirmities in Ch. 66, SLA 1991, found by Judge Greene in her order dated April 26, 1993, and would eliminate the possible need for anyone to appeal those portions of the order. Significantly, the trial court's April 26 order upheld most of Ch. 66 from the numerous challenges raised by the Alaska Center for the Environment, et. al., indicating that the Ch. 66 settlement can resolve the divisive, decade old, mental health trust litigation. Enactment of the proposed amendments will reduce the litigation effort necessary to obtain approval of the settlement at both the trial and appellate court levels, and will enable the Department of Law to direct more of its efforts toward reconstituting the trust rather than to litigating over challenges to Ch. 66.

The first infirmity found by Judge Greene is that the hypothecation of land as security for the reconstitution of the trust is invalid because Ch. 66 lacked adequate standards to guide the commissioner of natural resources in creating the hypothecated lands list. Judge Greene, however, went out of her way to give instruction as to how to cure this defect:

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. (Emphasis added).

Section 5 of the May 5, 1993 work draft CS for Senate Bill No. 67 would "eliminate" the "difficulty" related to hypothecation by establishing adequate standards to guide the commissioner of natural resources in creating the hypothecated lands list. First, original trust lands to be returned to trust status under section 54(1)-(6) of Ch. 66 would be hypothecated. Second, up to 1.5 million acres of additional acres of land that meet the criteria in section 55(d) and (e) -- (in general, land with comparable character to original trust land for which exchanges are necessary, with consideration given to the public interests related to possible transfer to trust status).

The second "infirmity" found by Judge Greene with Ch. 66 is that the planning and classification provisions in AS 38.04 and AS 38.05 apply to the transfers of land to the trust authority. The application of AS 38.04 and AS 38.05 is an "infirmity" only because those statutes may make the reconstitution of the trust more time consuming and costly to complete if DNR were required to classify or reclassify lands before reconstituting those lands into the trust.

Judge Greene found that AS 38.04 and AS 38.05 apply to the reconstitution because Ch. 66 does not explicitly exempt those provisions, and the legislative history did not clearly evince the legislature's intent to exempt such application. Significantly, Judge Greene also found that the Alaska Constitution does not require that AS 38.04 and AS 38.05 apply to the reconstitution, therefore, a statutory exemption as contained in the proposed

FISCAL NOTE

STATE OF ALASKA  
1993 LEGISLATIVE SESSION

Work Draft  
BILL NO. CSSB 67 ( )  
5/05/93

ANALYSIS CONTINUATION:

amendment would be valid.

Sections 1 - 3 would exempt the reconstitution process from AS 38.04 and AS 38.05, and would replace a process by which the public may participate in the reconstitution of the trust.

**CONSEQUENCES FROM TAKING NO ACTION**

The possible consequences if the legislature takes no action to cure the infirmities in Ch. 66 found by Judge Greene include:

1. Plaintiffs may terminate the settlement and return the parties to litigating a strict reconstitution of the trust under the mandate of the Alaska Supreme Court. The validity of the hypothecation of lands and the exemption of AS 38.04 and AS 38.05 from the reconstitution were important elements of the settlement from the plaintiffs' standpoint. If either issue is not resolved to settling plaintiffs' satisfaction, settling plaintiffs have the right to terminate the settlement agreement. If they terminate the settlement, the State has no alternative other than to begin implementing the Alaska Supreme Court's mandate to reconstitute the trust. Implementing that mandate would undoubtedly require land title litigation involving thousands of individual parcels, and would likely ensnarl lands in litigation for years, including lands: (1) conveyed by the State to individual purchasers ("moms and pops"); (2) conveyed to Alaska Native corporations in litigation settlements and exchanges; (3) conveyed to municipalities; (4) conveyed to the University of Alaska; and (5) placed in legislatively designated areas.

2. The so called "land freeze" as to 6.7 million acres of hypothecated lands could continue. The trial court's invalidation of the hypothecated lands under Ch. 66 does not free those parcels from the land management limitations applicable to hypothecated lands, which limitations critics of Ch. 66 have characterized as creating a "land freeze." If Judge Greene's decision on hypothecation is appealed (almost certainly to come from settling plaintiffs), the full 6.7 million acres of hypothecated lands would remain embroiled in the litigation. Either Judge Greene or the Alaska Supreme Court could stay effect of the invalidation pending appeal. Even if no stay were entered, however, a reversal of the invalidation would return the 6.7 million acres to hypothecated status. The only way to reduce the amount of land subject to hypothecation and eliminate what critics of Ch. 66 call a "land freeze" is to enact the recommended amendments.

3. Resolution of the divisive mental health trust litigation will be delayed. Judge Greene has upheld most provisions of the Ch. 66 settlement from the numerous challenges raised by the environmental intervenors, and has provided guidance as to how to cure the two infirmities to Ch. 66 that the court found. Curing those two infirmities by enactment of the proposed amendment will expedite the process by which the trial court will approve the settlement, and will expedite possible appeals by eliminating appeals related to these two infirmities.

## FISCAL NOTE

STATE OF ALASKA  
1993 LEGISLATIVE SESSION

Work Draft  
BILL NO. CSSB 67 ( )  
5/05/93

### ANALYSIS CONTINUATION:

#### CONCLUSION

Enactment of the amendments to Ch. 66, contained in this bill, will permit implementation of the Ch. 66 settlement to proceed with a minimum of legal challenges and without the associated costs and interruptions caused by such challenges. The current annual amount budgeted for implementation, \$589,500 in general funds and \$1,500,000 in mental health lands trust funds, will be sufficient to carry out the implementation tasks without increasing these costs. Conversely, if the settlement is terminated failing enactment of the bill, the cost for the department could be very high. It is probable that we would become embroiled in land title litigation involving thousands of parcels. The cost would be substantially greater than the cost of the Ch. 66 settlement, and it would continue for many years.

## FISCAL NOTE

STATE OF ALASKA  
1993 LEGISLATIVE SESSIONBill No. SB 67

Revision Date: \_\_\_\_\_ Department Affected: Alaska Court System  
 Title: An Act amending provisions of BPU: Trial Courts  
Mental Health Trust Components: \_\_\_\_\_  
 Sponsor: Senate Resources \_\_\_\_\_  
 Requestor: \_\_\_\_\_ COMPONENT SERIAL NO. 768

## EXPENDITURES/REVENUES: (Thousands of Dollars)

| OPERATING         | FY 94 | FY 95 | FY 96 | FY 97 | FY 98 | FY 99 |
|-------------------|-------|-------|-------|-------|-------|-------|
| PERSONAL SERVICES | 51.0  | 51.0  |       |       |       |       |
| TRAVEL            |       |       |       |       |       |       |
| CONTRACTUAL       |       |       |       |       |       |       |
| SUPPLIES          |       |       |       |       |       |       |
| EQUIPMENT         | 2.7   |       |       |       |       |       |
| LAND & STRUCTURES |       |       |       |       |       |       |
| GRANTS & CLAIMS   |       |       |       |       |       |       |
| TOTAL OPERATING   | 53.7  | 51.0  | 0.0   | 0.0   | 0.0   | 0.0   |

|         |  |  |  |  |  |  |
|---------|--|--|--|--|--|--|
| CAPITAL |  |  |  |  |  |  |
|---------|--|--|--|--|--|--|

|              |  |  |  |  |  |  |
|--------------|--|--|--|--|--|--|
| REVENUE      |  |  |  |  |  |  |
| FUND SOURCE: |  |  |  |  |  |  |

## FUNDING: (Thousands of Dollars)

|                          |      |      |     |     |     |     |
|--------------------------|------|------|-----|-----|-----|-----|
| 1002 FEDERAL RECEIPTS    |      |      |     |     |     |     |
| 1003 GF MATCH            |      |      |     |     |     |     |
| 1004 GF                  | 53.7 | 51.0 | 0.0 | 0.0 | 0.0 | 0.0 |
| 1005 GF/PROGRAM RECEIPTS |      |      |     |     |     |     |
| 1006 GF/MHTIA            |      |      |     |     |     |     |
| OTHER                    |      |      |     |     |     |     |
| TOTAL                    | 53.7 | 51.0 | 0.0 | 0.0 | 0.0 | 0.0 |

## POSITIONS:

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

Estimate of current year (FY 93) impact: \_\_\_\_\_

ANALYSIS: (Attach a separate page if necessary)

See attached.

Prepared by: C. S. Christensen III, Staff Counsel  
 Division: Alaska Court System

Phone: 284-8228  
 Date: 04/01/93

Approved by: Arthur H. Snowden, II, Administrative Director  
 Agency: Alaska Court System

Date: 04/01/93

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

Alaska Court SystemFiscal AnalysisSB 67

The Fairbanks Trial Courts are requesting a Law Clerk I to assist with the extraordinary workload associated with the Mental Health Trust case. This position was originally requested in the court system's FY 94 operating budget request. The position requested in this fiscal note replaces the budget request. In 1956, the federal government created the Mental Health Trust to provide funding for mental health care in Alaska. One million acres of land were placed in the trust. The state did not establish a formal trust administration. In 1978, the state dissolved the trust and allowed disposal of some of the lands. Mental health patients eventually won a class action law suit, which stopped the disposal of lands. The Supreme Court ordered the original trust reinstated as nearly as possible, either through return of the lands or through payment for lands that cannot be returned. The settlement is under review in the Fairbanks Trial Courts. Filings with the court already exceed 45 volumes with each volume containing nearly 4 inches of paperwork.

The law clerk will research case law, court decisions and opinions, and will compile legal references for judicial review. The position will review all motions, draft memoranda on points of law, and will organize all case materials.

Personal Services

|                                                       | <u>Salary</u> | <u>Benefits</u> | <u>Total</u> |
|-------------------------------------------------------|---------------|-----------------|--------------|
| Law Clerk I, range 13D, Fairbanks, PFT, for two years | \$36,684      | \$14,346        | \$51,030     |

Contractual Services

Additional legal services will be provided by special masters appointed by the court. The cost of the special masters will be charged to the parties in the case.

Equipment

|                                                        |                 |
|--------------------------------------------------------|-----------------|
| Desk, chair, reference materials and computer terminal | <u>2,700</u>    |
| Total Cost                                             | <u>\$53,730</u> |

## FISCAL NOTE

STATE OF ALASKA  
1993 LEGISLATIVE SESSION

BILL NO. CSS867Revision Date: March 20, 1993Department Affected: Fish and GameTitle: Amendments to assets and enforcement of trust compensation, BRU: Habitat and Restorationch. 66 SLA 1991 relating to reconstitution of the Mental Health Trust... Component: HabitatSponsor: Senate ResourcesRequestor: Senate FinanceCOMPONENT SERIAL NO. 0486

## EXPENDITURES/REVENUES:

(Thousands of Dollars)

| OPERATING         | FY 94 | FY 95 | FY 96 | FY 97 | FY 98 | FY 99 |
|-------------------|-------|-------|-------|-------|-------|-------|
| PERSONAL SERVICES | 0     | 0     | 0     | 0     | 0     | 0     |
| TRAVEL            | 0     | 0     | 0     | 0     | 0     | 0     |
| CONTRACTUAL       | 0     | 0     | 0     | 0     | 0     | 0     |
| SUPPLIES          | 0     | 0     | 0     | 0     | 0     | 0     |
| EQUIPMENT         | 0     | 0     | 0     | 0     | 0     | 0     |
| LAND & STRUCTURES | 0     | 0     | 0     | 0     | 0     | 0     |
| GRANTS, CLAIMS    | 0     | 0     | 0     | 0     | 0     | 0     |
| MISCELLANEOUS     | 0     | 0     | 0     | 0     | 0     | 0     |
| TOTAL OPERATING   | 0     | 0     | 0     | 0     | 0     | 0     |

|         |   |   |   |   |   |   |
|---------|---|---|---|---|---|---|
| CAPITAL | 0 | 0 | 0 | 0 | 0 | 0 |
|---------|---|---|---|---|---|---|

|                      |   |   |   |   |   |   |
|----------------------|---|---|---|---|---|---|
| REVENUE FUND SOURCE: | 0 | 0 | 0 | 0 | 0 | 0 |
|----------------------|---|---|---|---|---|---|

## FUNDING:

(Thousands of Dollars)

|                          |   |   |   |   |   |   |
|--------------------------|---|---|---|---|---|---|
| 1002 Federal Receipts    | 0 | 0 | 0 | 0 | 0 | 0 |
| 1003 GF Match            | 0 | 0 | 0 | 0 | 0 | 0 |
| 1004 GF                  | 0 | 0 | 0 | 0 | 0 | 0 |
| 1005 GF/Program Receipts | 0 | 0 | 0 | 0 | 0 | 0 |
| 1006 GF/MHTIA            | 0 | 0 | 0 | 0 | 0 | 0 |
| Other                    | 0 | 0 | 0 | 0 | 0 | 0 |
| TOTAL                    | 0 | 0 | 0 | 0 | 0 | 0 |

## POSITIONS:

|           |   |   |   |   |   |   |
|-----------|---|---|---|---|---|---|
| FULL-TIME | 0 | 0 | 0 | 0 | 0 | 0 |
| PART-TIME | 0 | 0 | 0 | 0 | 0 | 0 |
| TEMPORARY | 0 | 0 | 0 | 0 | 0 | 0 |

Estimate of current year (FY93) impact: \$ 0

ANALYSIS: (Attach a separate page if necessary.)

Prepared By: Frank RuePhone: 465-4105Division: Habitat and RestorationDate: 4/4/93Approved by Commissioner: [Signature]Agency: Department of Fish and GameDate: 4/5/93

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# FISCAL NOTE

## STATE OF ALASKA 1993 LEGISLATIVE SESSION

Revision Date: 05/05/93

Title: Mental Health Amendments

Sponsor: Senate Resource Committee

Requestor: Senate Finance Committee

BILL NO. SB 67 (Fin)

Dept. Affected: Natural Resources

BRU: Resource Development

Component: Land Development

COMPONENT SERIAL NO. 431

### Expenditures/Revenues:

(Thousands of Dollars)

| OPERATING              | FY 94      | FY 95      | FY 96      | FY-97      | FY 98      | FY 99      |
|------------------------|------------|------------|------------|------------|------------|------------|
| PERSONAL SERVICES      | 0.0        | 0.0        | 0.0        | 0.0        | 0.0        | 0.0        |
| TRAVEL                 | 0.0        | 0.0        | 0.0        | 0.0        | 0.0        | 0.0        |
| CONTRACTUAL            | 0.0        | 0.0        | 0.0        | 0.0        | 0.0        | 0.0        |
| SUPPLIES               | 0.0        | 0.0        | 0.0        | 0.0        | 0.0        | 0.0        |
| EQUIPMENT              | 0.0        | 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        |
| <b>TOTAL OPERATING</b> | <b>0.0</b> | <b>0.0</b> | <b>0.0</b> | <b>0.0</b> | <b>0.0</b> | <b>0.0</b> |

|                |            |            |            |            |            |            |
|----------------|------------|------------|------------|------------|------------|------------|
| <b>CAPITAL</b> | <b>0.0</b> | <b>0.0</b> | <b>0.0</b> | <b>0.0</b> | <b>0.0</b> | <b>0.0</b> |
|----------------|------------|------------|------------|------------|------------|------------|

|                             |            |            |            |            |            |            |
|-----------------------------|------------|------------|------------|------------|------------|------------|
| <b>REVENUE FUND SOURCE:</b> | <b>0.0</b> | <b>0.0</b> | <b>0.0</b> | <b>0.0</b> | <b>0.0</b> | <b>0.0</b> |
|-----------------------------|------------|------------|------------|------------|------------|------------|

### 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/PROG RECEIPTS | 0.0        | 0.0        | 0.0        | 0.0        | 0.0        | 0.0        |
| 1006 GF/MHTIA         | 0.0        | 0.0        | 0.0        | 0.0        | 0.0        | 0.0        |
| OTHER                 | 0.0        | 0.0        | 0.0        | 0.0        | 0.0        | 0.0        |
| <b>TOTAL</b>          | <b>0.0</b> | <b>0.0</b> | <b>0.0</b> | <b>0.0</b> | <b>0.0</b> | <b>0.0</b> |

### POSITIONS:

|           |   |   |   |   |   |   |
|-----------|---|---|---|---|---|---|
| FULL-TIME | 0 | 0 | 0 | 0 | 0 | 0 |
| PART-TIME | 0 | 0 | 0 | 0 | 0 | 0 |
| TEMPORARY | 0 | 0 | 0 | 0 | 0 | 0 |

Estimate of current year (FY 93) impact \$ \_\_\_\_\_

**ANALYSIS:** (Attach a separate page if necessary.)

If the amendments are not passed we estimate there will be an additional fiscal impact of \$350.0. This additional funding will be needed to amend existing area plans and/or adopt new ones in light of a recent court ruling. This is a requirement of AS 38.04 and AS 38.05 which the court has ruled as applicable to the Chapter 66 settlement. The present CIP budget did not contemplate the department having to follow these statutes. Complete amendment of all plans would be required in order to convey the land to the Mental Health Trust Authority.

Prepared By: Ron Swanson

Division: Land

Phone: 762-2692

Date: 05/05/93

Approved by Commissioner: Glenn A. Olds

Agency: Department of Natural Resources

Date: May 7, 1993

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A M E N D M E N T

OFFERED IN THE SENATE

TO: Draft CSSB 67(2d FIN)

Page 12, following line 21:

Insert a new subsection to read:

"(c) To the extent the state's liability to the mental health trust for the fair market value of the land described in sec. 17 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 and the other compensation made by this Act 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. 17 of this Act."

AMENDMENT

OFFERED IN THE SENATE

TO: CSSB 67(2d FIN)

Page 12, line 20, after "encumbrances":

Insert "or interests"

SENATE FINANCE  
COMMITTEE  
Amendment Number: #1  
Bill Number: SB67  
Sponsor: \_\_\_\_\_ Date: 20 APR  
Logged In By: [Signature]

*4-19-94  
Already incorp. within "5" version.*

A M E N D M E N T

OFFERED IN THE SENATE  
TO: CSSB 67(2d FIN)

SENATE FINANCE  
COMMITTEE  
Amendment Number: #2  
Bill Number: SB 107  
Sponsor: \_\_\_\_\_ Date: 20 APR 94  
Logged In By: SJS

Page 12, lines 22 - 28:

Delete all material and insert:

**\*\* Sec. 17. 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 to sec. 16 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, May 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, May 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, May 1994," located in the office of the director of the division of lands, Department of Natural Resources, in Anchorage, Alaska. **DELETED**

4-19-94  
Already incorp.  
within "5" version.

Page 12, line 29:

Delete "(b)"

Insert "(c)"



# ALASKA MINERS ASSOCIATION, INC.

501 W. Northern Lights Blvd., Suite 203, Anchorage, Alaska 99503 FAX: (907) 275-7997 Telephone: (907) 275-0347

April 14, 1994

Honorable Steve Frank  
Honorable Dru Pearce  
Senate Finance Committee  
Juneau, AK 99801

RE: CSSB-67, Mental Health Trust Lands

Dear Senators Frank and Pearce,

The Alaska Miners Association wishes to go on record in support of CSSB-67 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



Becy 2367 file  
**Cordova District Fishermen United**

P.O. Box 939  
Cordova, Alaska 99574  
(907) 424-3447 FAX (907) 424-3430

March 17, 1994

Ron Swanson, Director  
Division of Land  
Department of Natural Resources (DNR)  
3601 C Street, P.O. Box 107005  
Anchorage, AK 99510-7005

MAR 20 1994

Dear Mr. Swanson:

We appreciate the opportunity to comment on the Mental Health Trust land selections. This matter is of great concern to the community of Cordova and the commercial fishermen of Area E. Before explaining our opposition to specific tracts of land in the proposed selections, we need to point out three major areas of concern.

- First, CDFU is strongly opposed to the selection of any lands adjacent to or inclusive of anadromous salmon streams and vital watersheds.
- Second, CDFU is very disturbed by the lack of public notice concerning the comment period for the Mental Health Trust land selection. One set of incomprehensible, incomplete maps mailed to an interim city manager is not sufficient public notice for a land selection of this magnitude.
- Third, how is the public expected to make informed comments on the proposed selections when neither DNR nor the Mental Health Trust plaintiffs are forthcoming with the intended usage of these lands?

Following, in the order of priority, are detailed comments regarding specific Mental Health Trust selections that are of concern to CDFU:

- **C70247 and C20744**  
Our discussions with the local government leaders indicates that these tracts have already been selected by the University of Alaska and are no longer available for selection by the Mental Health Trust. CDFU supports the City of Cordova's position that these parcels should remain in the ownership of the University of Alaska.
- **C20241.002**  
CDFU opposes the selection of this parcel on the grounds that it encompasses an important municipal watershed. It includes Meals Reservoir, a water pipeline which carries water from Heney Creek to the reservoir, and part of the watershed for Murcheson Creek. It is of obvious importance that the city remain in control of its own watershed.
- **C70224**  
This is municipal watershed land that contains Orca Creek which is a very important source of water for the city. For this reason, CDFU opposes the selection of this land.
- **C70241**  
This land is adjacent to Crater Lake and contains several drainages which are also part of the local water supply. CDFU opposes this parcel selection also because it is a high use recreation area for residents of Cordova. It contains the Mt. Eyak Ski Hill which the city operates under lease to the state. This area has also been proposed as a state park.

• C20002, C20039 and C70003 (McCarthy Road selections)

The first two selections are located upslope from the Lakina River, where sockeye and coho salmon pass to enter Long Lake to spawn. This is a major spawning area for Copper River sockeye and coho salmon. Long Lake is a vital rearing habitat for the fry of these two salmon species. This lake also supports populations of steelhead, kokanee, burbot, dolly varden, grayling and other species. Long Lake produces up to 100,000 returning adult sockeye salmon, 60% of which are harvested by commercial, sport, subsistence and personal use fishermen in the Copper River drainage. The development of these parcels will seriously impact the health of these stocks by increasing siltation and contamination, and other types of pollution. Access to the lake shore—a popular public fishing area—will be severely hampered if parcel C70003 is selected. Selection of these parcels is not in the best interests of the state.

• Crosswind Lake

This is a key remote release site for sockeye salmon fry reared at the Gulkana hatchery. According to the ADF&G and Prince William Sound Aquaculture Corporation, approximately 8.4 million fry are released into this lake and contribute an estimated 125,000 adult sockeye salmon to all user groups in the Copper River drainage. Commercial development of the lake shore will adversely affect the water quality in the area and, in turn, risk the health of these stocks. In addition, Crosswind Lake is a high use recreation area.

Many Alaskans and visitors enjoy hiking and camping in the area during the summer, and snow-machining in the winter.

• C20240

This area includes Fleming Spit, a highly used recreation area that is a remote release site for coho and king salmon. This area benefits local sport fishermen and is expected to become a magnet for tourists.

• C70221 and C70235

These parcels represent important subsistence hunting grounds for the residents of Cordova. Sitka Black Tail Deer are an important staple for Cordovans, especially in a time of economic hardship. Cordova is struggling to diversify its economy and is looking at tourism as one means to do so. If these parcels are selected by the Mental Health Trustees for prospective timber harvesting, there will be adverse aesthetic effects. In our experience, tourists do not like clearcuts.

In conclusion, CDFU believes that deletion of the above mentioned parcels from the Mental Health Trust selection is in the best interest of the public, Cordovans, and all users of the fisheries resources along the Copper River. If you have any questions or need additional information, please do not hesitate to contact us any time. Thank you for your consideration.

Sincerely,

CORDOVA DISTRICT FISHERMEN UNITED



Dorne Hawxhurst for the Board of Directors

cc: Commissioner Rosier, ADF&G  
Director Frank Rue, Habitat & Restoration, ADF&G  
City of Cordova  
Wayne Donaldson, ADF&G  
State Senators  
State Representatives

LAW OFFICES  
DAVID T. WALKER  
417 HARRIS STREET  
JUNEAU, ALASKA 99801  
(907) 586-3537

DAVID T. WALKER  
GERALD K. DAVIS, JR.

TELECOPIER:  
(907) 586-1050

April 21, 1994

**HAND DELIVERED**

Senator Drue Pearce  
Co-Chair, Senate Finance Committee  
State Capitol Building, Room 508  
Juneau, Alaska 99811

Re: Senate Bill 67/Settlement of the  
Mental Health Trust Land Litigation

Dear Senator Pearce:

Senate Bill 67 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 CSSB 67 (2d FIN) 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 know that it will not be helpful for the legislature to learn at the last minute that a measure it has under active consideration is unacceptable to a party to the negotiations. It is for that reason that I write this letter.

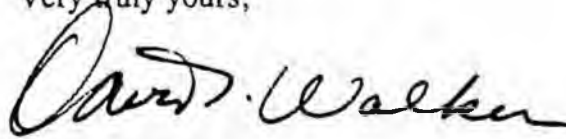
The administration's proposal presented in Chenoweth's work draft CS for Senate Bill No. 67 (2d FIN), is not a settlement. It purports to buy out the Trust by funding the Mental Health program. It unfairly characterizes the beneficiaries and is in fact unacceptable to all the parties who represent beneficiaries. 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 SB 67.

I do not wish to cast a pall upon 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

Senator Drue Pearce  
April 21, 1994  
Page 2

while recognizing that the work draft CSSB 67 (2d FIN) presently under consideration by the Committee fails utterly to achieve our goal.

Very truly yours,



David T. Walker

DTW:ndp

cc: Committee Members

LAW OFFICES  
**DAVID T. WALKER**  
417 HARRIS STREET  
JUNEAU, ALASKA 99801  
(907) 586-3537

DAVID T. WALKER  
GERALD K. DAVIS, JR.

TELECOPIER:  
(907) 586-1350

April 21, 1994

**HAND DELIVERED**

Senator Steve Frank  
Co-Chair, Senate Finance Committee  
State Capitol Building, Room 518  
Juneau, Alaska 99811

Re: Senate Bill 67/Settlement of the  
Mental Health Trust Land Litigation

Dear Senator Frank:

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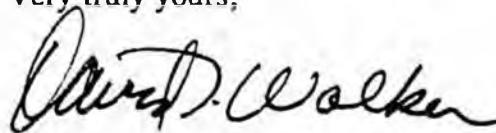
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Senator Steve Frank  
April 21, 1994  
Page 2

while recognizing that the work draft CSSB 67 (2d FIN) presently under consideration by the Committee fails utterly to achieve our goal.

Very truly yours,

A handwritten signature in cursive script, appearing to read "David T. Walker".

David T. Walker

DTW:ndp

cc: Committee Members

# STATE OF ALASKA

## DEPARTMENT OF NATURAL RESOURCES

OFFICE OF THE COMMISSIONER

WALTER J. HICKEL, GOVERNOR

400 WILLOUGHBY AVENUE  
JUNEAU, ALASKA 99801-1796  
PHONE: (907) 465-2400  
FAX: (907) 465-3886

APR 21 1994

April 20, 1994

The Honorable Drue Pearce  
The Honorable Steve Frank  
Co-Chairs Senate Finance Committee  
Alaska State Legislature  
State Capitol (MS 3100)  
Juneau, Alaska 99801-1182

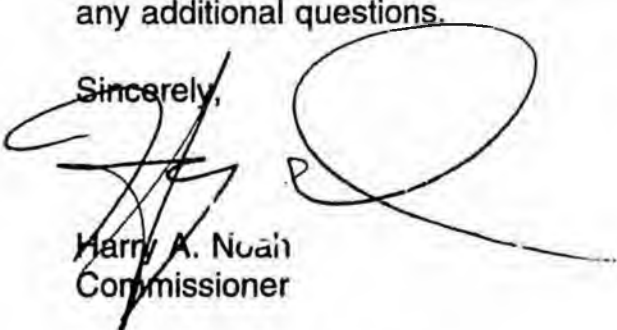
Dear Senator's Pearce and Frank:

At the hearing on the Mental Health Bill (SB 67) held on April 16, a question was asked about how much original mental health land is located within Legislatively Designated Areas.

The attached chart provides this information.

Please feel free to contact me or Ron Swanson, Director, Division of Land if you have any additional questions.

Sincerely,



Harry A. Noon  
Commissioner

cc: Ron Swanson

**Mental Health Land Located Within Legislatively Designated Areas**

| <b>Game Refuges</b>                           | <b>Acres</b> | <b>OTL</b> |
|-----------------------------------------------|--------------|------------|
| Anchorage Coastal Wildlife Refuge             | 32,500       | 780        |
| Creamer's Field Migratory Waterfowl<br>Refuge | 1,664        | 2.5        |
| Goose Bay State Game Refuge                   | 10,880       | 453        |
| Mendenhall Wetlands State Game<br>Refuge      | 3,800        | 247        |
| Susitna Flats State Game Refuge               | 300,800      | 38,577     |
| Trading Bay State Game Refuge                 | 160,960      | 3,840      |

**Critical Habitat Areas**

|                                    |       |       |
|------------------------------------|-------|-------|
| Chikot River Critical Habitat Area | 4,800 | 3,647 |
| Dude Creek Critical Habitat Area   | 4,083 | 3,400 |

**Forestry Designations (AS 41.15-17)**

|                                                 |           |         |
|-------------------------------------------------|-----------|---------|
| Haines State Forest Resource<br>Management Area | 247,000   | 100,000 |
| Tanana Valley State Forest                      | 1,786,000 | 31,955  |

**Park Units (AS 41.21-23)**

|                                     |         |        |
|-------------------------------------|---------|--------|
| Alaska Chilkat Bald Eagle Preserve  | 49,000  | 27,421 |
| Chena River State Recreation Area   | 254,080 | 91,512 |
| Chilkat State Park                  | 6,045   | 3,270  |
| Chugach State Park                  | 495,000 | 14,197 |
| Kachemak Bay State Park             | 165,370 | 7,520  |
| Kenai River Special Management Area | 2,693   | 872    |
| Nancy Lake State Recreation Area    | 22,685  | 1,709  |

**Other Designations**

|                              |         |        |
|------------------------------|---------|--------|
| Matanuska Valley Moose Range | 132,500 | 37,529 |
|------------------------------|---------|--------|

|               |                  |
|---------------|------------------|
| State Forests | 131,955          |
| Other LDA's   | <u>234,976.5</u> |
|               | 366,931.5        |

4-15-94  
SFC  
Noah

Handouts To Accompany Comments Made By

Attorney General Bruce Botelho

and

Dept. of Natural Resources Commissioner Harry A. Noah

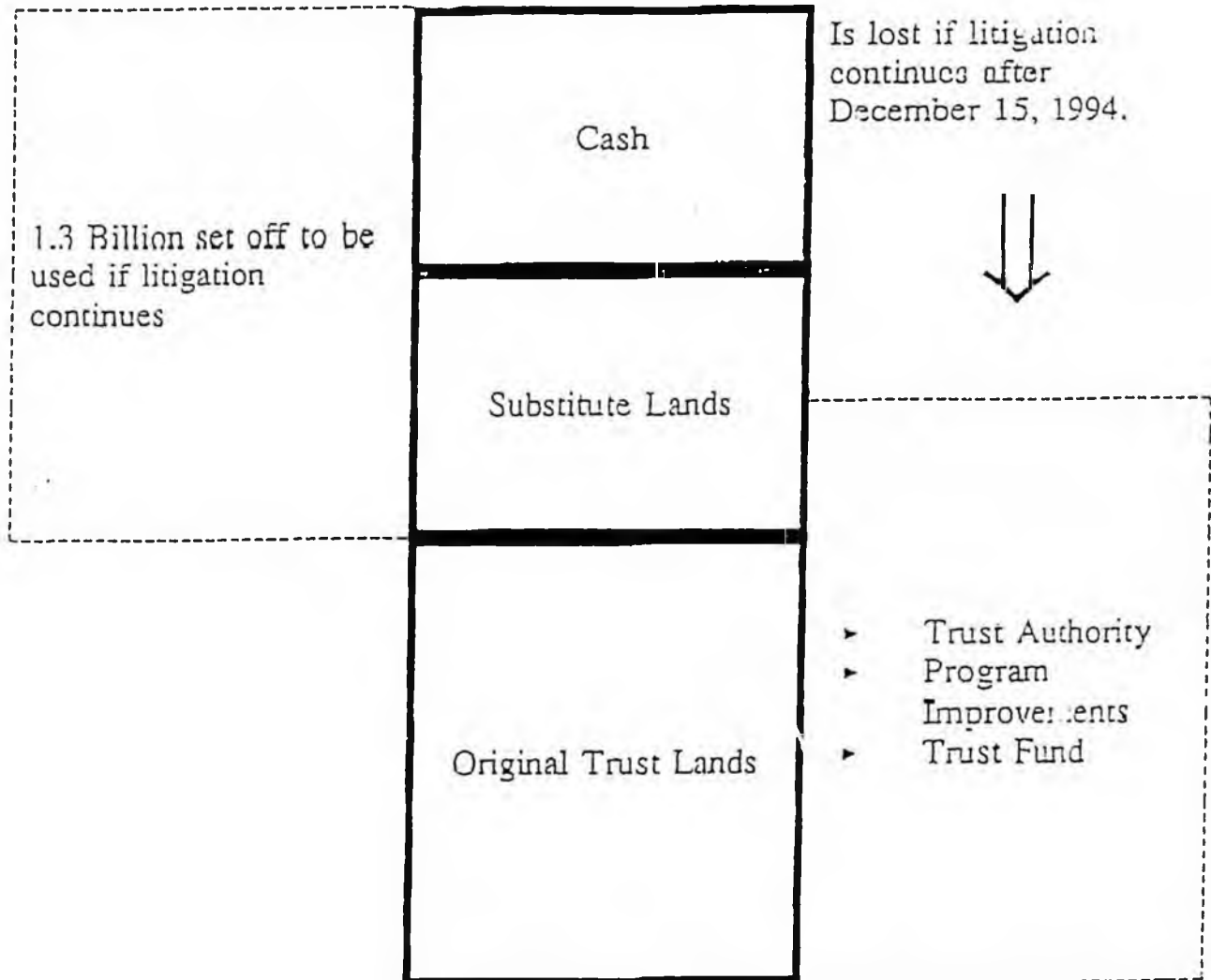
On SB 67

Before Senate Finance Committee

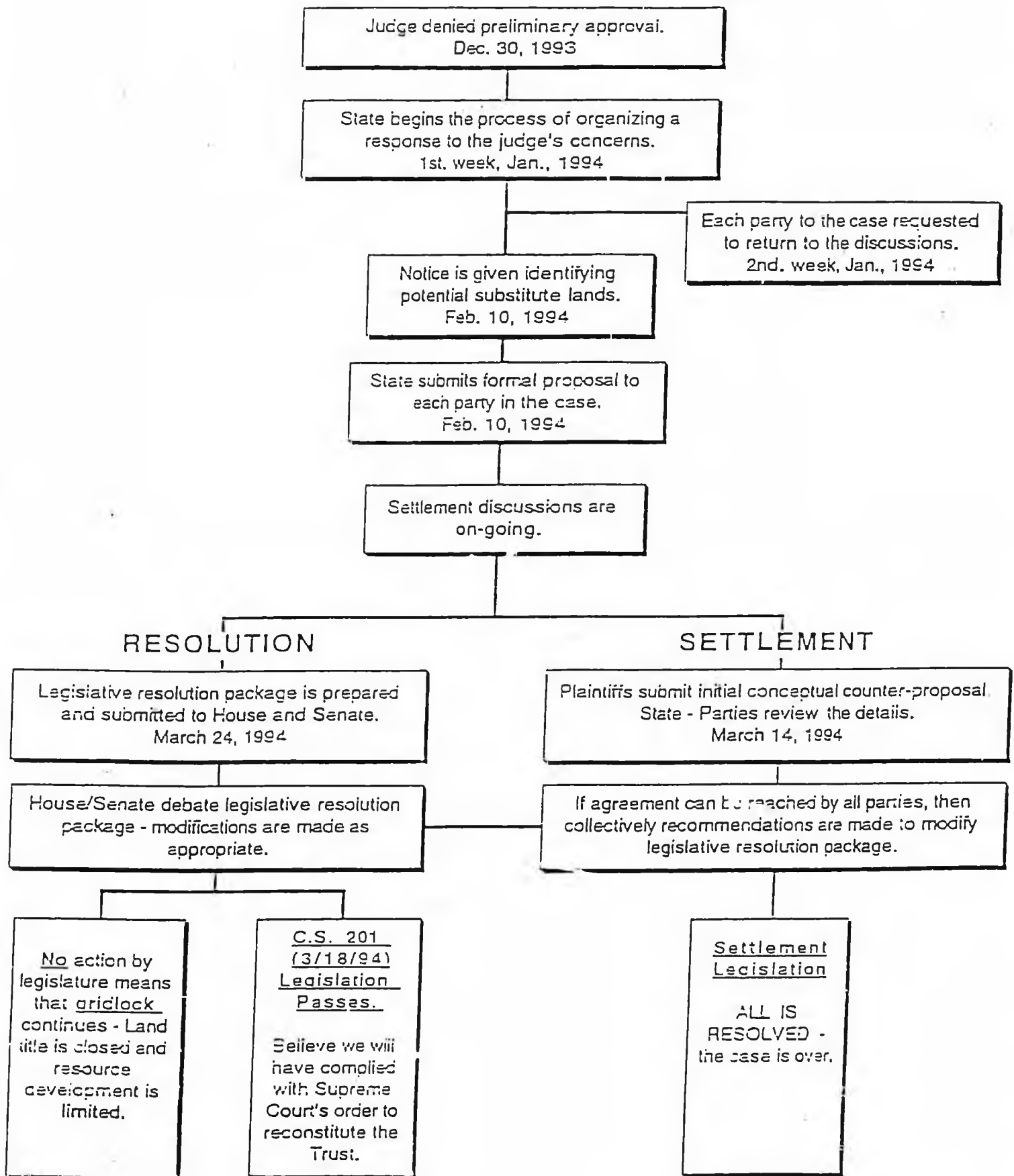
April 12, 1994

## Reconstructed Trust

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## MENTAL HEALTH SCHEDULE of EVENTS



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

| <u>Land Categories</u>       | <u>Acres</u>  |
|------------------------------|---------------|
| 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                        | <u>32,843</u> |
| Total                        | 530,865       |

- Land available to be returned to Mental Health Trust from original Entitlement:\*
- |              |         |
|--------------|---------|
| total estate | 466,180 |
|--------------|---------|

- Land proposed to be designated as Mental Health Trust Land: (substitute Lands)

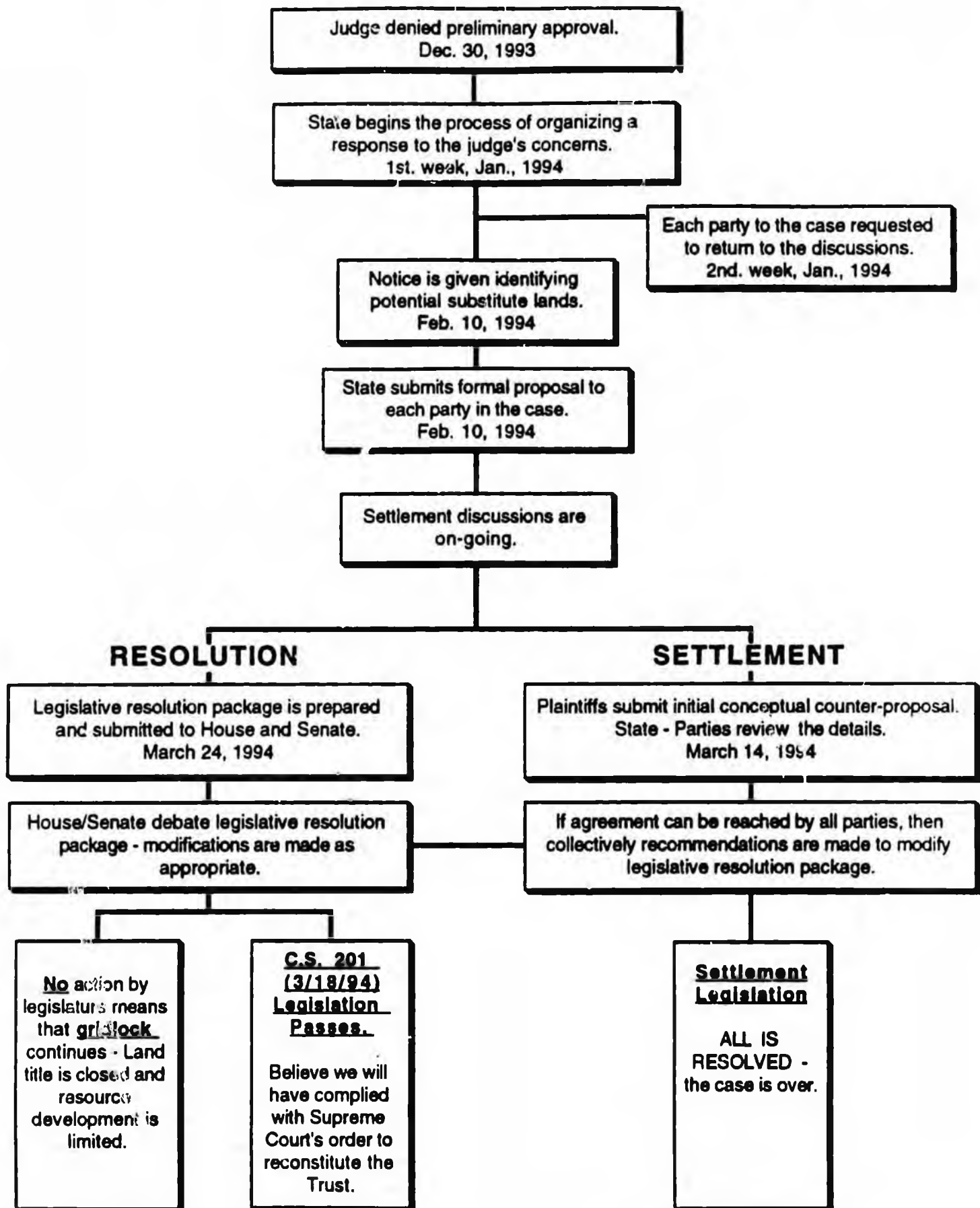
|                                   |                |
|-----------------------------------|----------------|
| Substitute Land<br>(total estate) | 356,884        |
| Subsurface only                   | <u>127,037</u> |
|                                   | 483,921        |

- \* 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:

|                        | <u>Acres</u>   |                        | <u>Acres</u>   |
|------------------------|----------------|------------------------|----------------|
| Total estate           |                | Split estate           |                |
| Original Lands         | 446,180        | Original Lands         | 98,398         |
| State Replacement Land | <u>360,184</u> | State Replacement Land | <u>127,037</u> |
| Total                  | 826,364        | Total                  | 225,435        |

## MENTAL HEALTH SCHEDULE of EVENTS



## MENTAL HEALTH GIVENS

MARCH 24, 1994

1. The Court and Plaintiffs' lawyers have agreed that the Land Trust would not have been able to fully fund the mental health programs, nor will it in the future.
2. The Legislature will continue to fund mental health programs at appropriate levels given the state's resources.
3. The effort we are focused on is to cure the breach of trust taken in 1978 - NOT to debate the level of funding for the mental health programs.
4. It is in all the parties best interest to bring an end to the Mental Health dispute and, therefore, a fair agreement should be reached.
5. That *settlement* of the case is the best solution and the state is open to discuss settlement options that will fully resolve the case.
6. Because this is a class action lawsuit, any action taken to resolve the issue will have to be reviewed by the courts.

# CONCERNS OF EACH GROUP

March 24, 1994

| Mental Health Lawyers #1                                                                                                                                                         | Mental Health Lawyers #2                                                                                                                                                                               | Environmental Groups                                                                                                                                                            | Resource Development Groups                                                                                 | Municipalities                                                                                                                                                                                                                                                          | Third Party Land Owners |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------|
| <p>*want to reconstruct the trust as close as possible to original</p> <p>*want trust authority to manage lands</p> <p>*want trust authority to determine how money is spent</p> | <p>*wants more assurance that trust will have some cash flow</p> <p>*wants trust authority to determine how money is spent</p> <p>*are worried by the administrative costs of managing trust lands</p> | <p>*do not want additional land to go into the trust</p> <p>*wants some original mental health trust land out of trust</p> <p>*wants DNR management of lands under Title 38</p> | <p>*do not want additional lands to go into the trust</p> <p>*wants lands managed by DNR under Title 38</p> | <p>*to maintain the lands they have received from the state that were mental health lands</p> <p>*to complete their municipal land entitlement selection process</p> <p>*to limit the amount of lands currently selected by the municipalities going into the trust</p> | <p>Free</p>             |

**HOW CS ADDRESSES EACH GROUP'S CONCERNS**  
**March 24, 1994**

| <b>Mental Health<br/>Lawyers #1</b>                                                                                                                                                              | <b>Mental Health<br/>Lawyers #2</b>                                                                                                                   | <b>Environmental<br/>Groups</b>                                                                                        | <b>Resource<br/>Development<br/>Groups</b>                                                                                                                                        | <b>Municipalities</b>                                                                                                                                        | <b>Third Party<br/>Land Owners</b>                                     |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------|
| <p>*Reconstruct the trust</p> <p>*including substituted lands proposed by this group</p> <p>*maintain those provisions in Chapter 66 which set up trust--allow for say in how money is spent</p> | <p>*State offer cash as part of the settlement</p> <p>*trust authority stays in place</p> <p>*DNR management to address administrative cost issue</p> | <p>*DNR management with current regulatory scheme used to the extent possible under the Mental Health Enabling Act</p> | <p>*eliminates most large projects currently permitted</p> <p>*DNR management with current regulatory scheme used to the extent possible under the Mental Health Enabling Act</p> | <p>*Extension of 2 years to select other lands if land is designated for mental health</p> <p>*clear title will allow current selections to be finalized</p> | <p>*reconstructi on of the trust can lead to the clearing of title</p> |

4-15-94  
SFC  
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SIGNIFICANT MENTAL HEALTH REPLACEMENT LANDS  
BY LEGISLATIVE DISTRICT

District 1-A  
Sen. Taylor  
Rep. Williams

PROPOSED STATE SUBSTITUTE LAND

| Significant Parcels                   | Resource Description                              | Status                                                                       |
|---------------------------------------|---------------------------------------------------|------------------------------------------------------------------------------|
| <u>Ketchikan</u><br>C-20921-Swan Lake | Hydropower facility.                              | Deleted.                                                                     |
| C-70932-Leask Lakes                   | Commercial timber, recreation, sensitive habitat. | Deleted.                                                                     |
| C-71084-Black Sands Beach             | Community recreation area.                        | Deleted beach area and islands; remainder of parcel to be included in Trust. |
| C-70854-Traitor Cove                  | Remote residential development.                   | Included in Trust; public access retained.                                   |

ORIGINAL MENTAL HEALTH TRUST LAND

| Significant Parcels                      | Resource Description | Status             |
|------------------------------------------|----------------------|--------------------|
| <u>Ketchikan</u><br>C-3158-Deer Mountain | Timber, recreation.  | Included in Trust. |

District 1-B  
Sen. Taylor  
Rep. Grussendorf

PROPOSED STATE SUBSTITUTE LAND

| Significant Parcels                     | Resource Description                   | Status                                                            |
|-----------------------------------------|----------------------------------------|-------------------------------------------------------------------|
| <u>Wrangell</u><br>C-20774-Tyee Lake    | Hydropower facility.                   | Delete.                                                           |
| C-20773-Bradfield Canal                 | Future highway & community, port site. | Included in Trust; public access provided.                        |
| C20767-Earl West Cove                   | Remote residential.                    | Included in Trust.                                                |
| <u>Petersburg</u><br>C-20604-Thomas Bay | Remote settlement.                     | Included in Trust.                                                |
| C-20605-Kupreanof-North                 | Remote settlement, habitat.            | Deleted.                                                          |
| C-20709-Wrangell Narrows                | Community development, recreation.     | Included in Trust.                                                |
| C-20720-Crystal Lake                    | Hydropower facility, hatchery.         | Deleted.                                                          |
| C-20722-Woodpecker Cove                 | Recreation, settlement, timber.        | Deleted.                                                          |
| C-70641-Frederick Point                 | Timber, recreation.                    | Deleted northern part of parcel; southern part included in Trust. |

SIGNIFICANT MENTAL HEALTH REPLACEMENT LANDS  
BY LEGISLATIVE DISTRICT

District 1-B (cont.)  
Sen. Taylor  
Rep. Grussendorf

ORIGINAL MENTAL HEALTH TRUST LAND

| Significant Parcels                                                       | Resource Description   | Status             |
|---------------------------------------------------------------------------|------------------------|--------------------|
| <u>Petersburg</u><br>CRM-2099 and others; east side,<br>Wrangell Narrows  | Community development. | Included in Trust. |
| <u>Kupreanof</u><br>CRM-1999 and others; west side of<br>Wrangell Narrows | Community development. | Included in Trust. |
| <u>Wrangell</u><br>CRM-2406 and others                                    | Community development. | Included in Trust. |

District 3-B & 4-B  
Sen. Duncan  
Rep. Ulmer  
Rep. Hudson

PROPOSED STATE SUBSTITUTE LAND

| Significant Parcels                                        | Resource Description                                     | Status                                               |
|------------------------------------------------------------|----------------------------------------------------------|------------------------------------------------------|
| C-20468, 20469, 20471, 20472-<br>Kensington Mine tidelands | Mineral development access, habitat.                     | Deleted.                                             |
| C-20491-North Douglas Island                               | Community expansion.                                     | Deleted boat launch; remainder<br>included in Trust. |
| C-20493-Juneau Yacht Club<br>parking area                  | Future expansion of boat harbor and<br>support facility. | Deleted.                                             |
| C-20497-Marine Hwy Bld                                     | State facility.                                          | Deleted.                                             |
| C-20499-Juneau Subport                                     | State shops, storage, waterfront<br>development.         | Included in Trust.                                   |
| C-20500-Telephone Hill                                     | Community development.                                   | Deleted.                                             |
| C-20526-Lake Dorothy                                       | Potential hydropower site.                               | Included in Trust.                                   |
| C-20527-Snettisham                                         | Hydropower site, hatchery.                               | Deleted.                                             |
| C-70508-Gastineau Channel                                  | Recreation, tidelands and submerged<br>lands.            | Deleted.                                             |

SIGNIFICANT MENTAL HEALTH REPLACEMENT LANDS  
BY LEGISLATIVE DISTRICT

District 5-C  
Sen. Zharoff  
Rep. Mackie

PROPOSED STATE SUBSTITUTE LAND

| Significant Parcels                                                                                | Resource Description                                | Status                                                                                            |
|----------------------------------------------------------------------------------------------------|-----------------------------------------------------|---------------------------------------------------------------------------------------------------|
| <u>Prince of Wales Island</u><br>Numerous small parcels at Edna Bay, Hollis, Naukati, Coffman Cove | Community development, recreation.                  | Deleted parcels with existing or planned community facilities.                                    |
| C-20721-No Name Bay                                                                                | Remote settlement.                                  | Deleted.                                                                                          |
| C-70871-Thorne Bay Timber-POW Island                                                               | Commercial timber.                                  | Included in Trust.                                                                                |
| <u>Gustavus</u><br>C-20481-School and other public facilities                                      | Public facilities, NPS facilities.                  | Deleted.                                                                                          |
| C-21102                                                                                            | Gustavus airport.                                   | Deleted.                                                                                          |
| C-70474                                                                                            | Recreation area, material source.                   | Included in Trust.                                                                                |
| <u>Elfin Cove</u><br>C-20513-Elfin Cove                                                            | Community development.                              | Deleted parcels for planned community development; port development tract included in Trust.      |
| <u>Yakutat/Yakataga</u><br>C-20439-City of Yakutat                                                 | Community development.                              | Deleted parcel needed for community development; residential subdivision tract included in Trust. |
| C-70303, C-70307-Coastal strip-Tsiu, Duktoth River                                                 | Commercial, subsistence and sport fishing, habitat. | Deleted.                                                                                          |
| C-70296 and others-Cape Yakataga timber                                                            | Timber, minerals, habitat.                          | Deleted.                                                                                          |
| <u>Skagway</u><br>C-20454 and others-river area and upland                                         | Community development, watershed, gravel source.    | Deleted.                                                                                          |
| C-20440-20445, C-20455-20459, and others-Dyea historic areas                                       | Historic area.                                      | Deleted.                                                                                          |
| C-20446, C-20447, C-20456.002-area west of Skagway                                                 | Residential development.                            | Included in Trust.                                                                                |

SIGNIFICANT MENTAL HEALTH REPLACEMENT LANDS  
BY LEGISLATIVE DISTRICT

District 6-C  
Sen. Zharoff  
Rep. Davidson

PROPOSED STATE SUBSTITUTE LAND

| Significant Parcels   | Resource Description | Status   |
|-----------------------|----------------------|----------|
| S-70586 Shuyak Island | Recreation, timber.  | Deleted. |

District 7-D  
Sen. Little  
Rep. Phillips

PROPOSED STATE SUBSTITUTE LAND

| Significant Parcels            | Resource Description              | Status   |
|--------------------------------|-----------------------------------|----------|
| S-70212, S-20211.001-Bear Cove | Recreation, settlement, forestry. | Deleted. |

ORIGINAL MENTAL HEALTH TRUST LAND

| Significant Parcels                                      | Resource Description | Status             |
|----------------------------------------------------------|----------------------|--------------------|
| <u>Homer area</u><br>CRM-414 and others-Little Tutka Bay | Recreational lots.   | Included in Trust. |
| CRM-422D-J kolof Bay                                     | Recreation, timber.  | Included in Trust. |

District 8-D  
Sen. Little  
Rep. Davis

PROPOSED STATE SUBSTITUTE LAND

| Significant Parcels                  | Resource Description              | Status                                                                                                                                                                                                             |
|--------------------------------------|-----------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| S-20100, 70078 and others-Moose Pass | Recreation, settlement, forestry. | Specific parcels near Moose Pass settlement and along the shoreline of Lower and Upper Trail Lakes deleted. Setbacks along Trail River and Trail Lakes established. Parcels south of Moose Pass included in Trust. |
| S-20015-20017, 20023-20027           | Recreation, habitat.              | Specific parcels deleted; public access retained.                                                                                                                                                                  |
| S-20175, S-20176-Kenai Lake (west)   | Recreation, settlement.           | Deleted.                                                                                                                                                                                                           |
| S-20110, S-20111-Kenai Lake (east)   | Recreation.                       | Deleted.                                                                                                                                                                                                           |

SIGNIFICANT MENTAL HEALTH REPLACEMENT LANDS  
BY LEGISLATIVE DISTRICT

District 9-E  
Sen. Salo  
Rep. Navarre

PROPOSED STATE SUBSTITUTE LAND

| Significant Parcels                    | Resource Description    | Status   |
|----------------------------------------|-------------------------|----------|
| S-70369 Girdwood Glacier-Winner Creeks | Commercial, recreation. | Deleted. |

District 9E & 36R  
Sen. Salo  
Rep. Navarre  
Sen. Lincoln  
Rep. Nicholia

PROPOSED STATE SUBSTITUTE LAND

| Significant Parcels   | Resource Description | Status             |
|-----------------------|----------------------|--------------------|
| S-70437 Granite Point | Potential port site. | Included in Trust. |

District 11-F  
Sen. Pearce  
Rep. Nordlund

PROPOSED STATE SUBSTITUTE LAND

| Significant Parcels                                    | Resource Description      | Status   |
|--------------------------------------------------------|---------------------------|----------|
| S-20633 Anchorage-Sand Lake-Raspberry Road school site | Community development.    | Deleted. |
| S-20451 & 20452 Kincaid Park/International Airport     | Park, airport facilities. | Deleted. |

District 19-J, 22-K  
Sen. Donley  
Rep. Sanders  
Sen. Kelly  
Rep. Barnes

PROPOSED STATE SUBSTITUTE LAND

| Significant Parcels                        | Resource Description                                                      | Status   |
|--------------------------------------------|---------------------------------------------------------------------------|----------|
| S-70482, 20484, 20486 Anchorage-Tudor Road | Settlement, public facilities: National Guard and other state facilities. | Deleted. |

SIGNIFICANT MENTAL HEALTH REPLACEMENT LANDS  
BY LEGISLATIVE DISTRICT

District 27-N  
Sen. Kertulla  
Rep. Larson

PROPOSED STATE SUBSTITUTE LAND

| Significant Parcels                | Resource Description                                     | Status                              |
|------------------------------------|----------------------------------------------------------|-------------------------------------|
| S-20568-20569 Wishbone Hill access | Settlement, recreation; access to Wishbone Hill project. | Include in Trust; access protected. |

District 28-N  
Sen. Kertulla  
Rep. Menard

PROPOSED STATE SUBSTITUTE LAND

| Significant Parcels                                  | Resource Description                  | Status   |
|------------------------------------------------------|---------------------------------------|----------|
| <u>Talkeetna</u><br>S-70621, 20620 Talkeetna Airport | Airport and borough facilities.       | Deleted. |
| <u>Willow</u><br>S20573, 20574 Willow airport        | Airport.                              | Deleted. |
| S20576-S20578 Willow                                 | DOT/PF maintenance facility, airport. | Deleted. |

District 29-0  
Sen. Frank  
Rep. Davies

| Significant Parcels | Resource Description | Status                                                               |
|---------------------|----------------------|----------------------------------------------------------------------|
| F-70015             | Mineralized area.    | Ft. Knox project area deleted; remainder of tract included in Trust. |

SIGNIFICANT MENTAL HEALTH REPLACEMENT LANDS  
BY LEGISLATIVE DISTRICT

District 33-Q  
Sen. Miller  
Rep. Therriault

PROPOSED STATE SUBSTITUTE LAND

| Significant Parcels                  | Resource Description             | Status                                                                    |
|--------------------------------------|----------------------------------|---------------------------------------------------------------------------|
| F-20413 Lower Chatanika River        | Recreation, habitat, campground. | Lower Chatanika campground deleted.                                       |
| F-20494-Harding Lake                 | Public recreation-campground.    | Deleted.                                                                  |
| F-20601, 20602, 20603-Quartz Lake    | Public recreation-campground.    | Deleted.                                                                  |
| F20503-20506-Salcha River:           | Private & public recreation.     | Included in Trust; setback on Salcha River.                               |
| F-70472-Upper Chatanika River        | Public recreation-campground.    | Included in Trust except for campground. 300' setback on Chatanika River. |
| F-20492-Salcha River recreation site | Recreation-campground.           | Deleted.                                                                  |

District 34-Q  
Sen. Miller  
Rep. Jones

PROPOSED STATE SUBSTITUTE LAND

| Significant Parcels      | Resource Description               | Status             |
|--------------------------|------------------------------------|--------------------|
| F020359-20363 North Pole | Public facilities, MAPCO Refinery. | Deleted.           |
| Denali Borough-numerous  | Community development.             | Included in Trust. |

ORIGINAL MENTAL HEALTH TRUST LAND

| Significant Parcels         | Resource Description   | Status             |
|-----------------------------|------------------------|--------------------|
| FM-1266 and numerous others | Community development. | Included in Trust. |

SIGNIFICANT MENTAL HEALTH REPLACEMENT LANDS  
BY LEGISLATIVE DISTRICT

District 35-k  
Sen. Lincoln  
Rep. Olberg

PROPOSED STATE SUBSTITUTE LAND

| Significant Parcels                                                  | Resource Description                | Status                                                   |
|----------------------------------------------------------------------|-------------------------------------|----------------------------------------------------------|
| <u>Cordova area</u><br>C-70249-Cordova airport                       | Airport, public facility.           | Deleted.                                                 |
| C-70224-Orca Creek                                                   | Watershed; municipal water supply.  | Deleted.                                                 |
| C-70241.002-Mt. Shiels                                               | Watershed; municipal water supply.  | Deleted.                                                 |
| C-70241-Mt. Eyak                                                     | Recreation.                         | Deleted.                                                 |
| C70220, 70221, 20234, 20235-<br>Hawkins Island                       | Timber, recreation.                 | Deleted.                                                 |
| <u>Valdez area</u><br>C-70216, 20218, 20219-Jack Bay                 | Remote settlement, habitat.         | Included in Trust.                                       |
| C-70199 Anderson Bay                                                 | TAGS Terminal.                      | Deleted.                                                 |
| C70195 Solomon Gulch                                                 | Hydro plant, hatchery.              | Deleted.                                                 |
| C-20134-20137-DOT/PF &<br>Harborview                                 | Public facilities: local and state. | Deleted.                                                 |
| C-70142 Robe Lake (parts)                                            | Seaplane base, settlement, habitat. | Deleted seaplane base, wetland<br>areas near Robe River. |
| C-21103-Valdez airport                                               | State airport.                      | Deleted.                                                 |
| <u>Crosswind &amp; Lake Louise</u><br>C-20034, 70028 and many others | Settlement, recreation.             | Included in Trust.                                       |
| <u>Kayak Island</u><br>C20433                                        | Historic site.                      | Deleted.                                                 |
| <u>Delta Junction</u><br>numerous parcels with public<br>facilities  | Public facilities: local and state. | Deleted.                                                 |

SIGNIFICANT MENTAL HEALTH REPLACEMENT LANDS  
BY LEGISLATIVE DISTRICT

District 36-R  
Sen. Lincoln  
Rep. Nicholia

PROPOSED STATE SUBSTITUTE LAND

| Significant Parcels                                        | Resource Description                | Status                                                           |
|------------------------------------------------------------|-------------------------------------|------------------------------------------------------------------|
| <u>Tok area</u><br>Numerous parcels with public facilities | Public facilities: local and state. | Deleted.                                                         |
| C-20002, 20039, 70003, 70015, 70016, McCarthy-Long Lake    | Settlement, recreation.             | Deleted specific tracts adjacent to Long Lake and near McCarthy. |
| F-20807 Bettles Field                                      | Settlement, airport.                | Deleted.                                                         |
| F-20694-20696 Yukon Crossing                               | Settlement, transportation.         | Deleted parcel F-20696-transportation facility.                  |
| F-20634 Tanana Airport                                     | State airport.                      | Deleted.                                                         |
| K-70075, 70098, 70132 Nulato area                          | Mineralized area.                   | Deleted.                                                         |

District 36-R, 40-T  
Sen. Lincoln  
Rep. Nicholia  
Sen. Jacko  
Rep. Moses

PROPOSED STATE SUBSTITUTE LAND

| Significant Parcels                  | Resource Description | Status                                               |
|--------------------------------------|----------------------|------------------------------------------------------|
| S-70126 Talarik Creek, Pebble Copper | Access and minerals. | Included in Trust; caribou migration area protected. |

District 37-S  
Sen. Adams  
Rep. MacLean

PROPOSED STATE SUBSTITUTE LAND

| Significant Parcels               | Resource Description | Status             |
|-----------------------------------|----------------------|--------------------|
| K-70207, 70220, 70226 Wulik River | Minerals.            | Included in Trust. |
| U20002-Barrow Airport             | State airport.       | Deleted.           |

SIGNIFICANT MENTAL HEALTH REPLACEMENT LANDS  
BY LEGISLATIVE DISTRICT

District 38-S  
Sen. Adams  
Rep. Foster

PROPOSED STATE SUBSTITUTE LAND

| Significant Parcels              | Resource Description                | Status                                  |
|----------------------------------|-------------------------------------|-----------------------------------------|
| K-20037, K-20047, K-20060 - Nome | Public facilities: local and state. | Deleted parcels with public facilities. |

5-5-93  
JFC 93

STATEMENT OF THE ATTORNEY GENERAL  
May 5, 1993

Following receipt of my letter yesterday recommending that the legislature enact amendments suggested to cure the infirmities in Chapter 66, SLA 1991, found by Judge Greene, a number of legislators have asked me the consequences of the legislature taking no action on these proposed amendments at this time. To avoid any misunderstanding of my views, I set them forth in writing.

If no action is taken by the legislature, I would initially urge the plaintiffs in the Weiss litigation to seriously consider the benefits of Chapter 66 even without the amendments. However, both hypothecation and exemption from AS 38.04 and 38.05 were important elements of the settlement from the plaintiffs' standpoint when we entered into it, and everything I have heard suggests that these provisions remain essential ingredients of settlement. As a consequence, if the recommended amendments are not enacted, in my view, a substantial likelihood exists that the plaintiffs will terminate the settlement agreement within the next 70 days.

If they terminate the agreement, the State has no alternative other than to begin implementing the Alaska Supreme Court's mandate to reconstitute the trust and it will promptly take steps to that end. The Court in 1985 instructed the State to reconstitute the trust by means of the following:

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.

State v. Weiss, 706 P.2d 681, 684 (Alaska 1985).

Not everyone agrees as to what the Court's mandate requires. Everyone does agree, however, that implementing the Court's instructions will unquestionably require land title litigation on an unprecedented scale, litigation involving several thousand individual parcels.

If we continue to proceed under Chapter 66, four categories of original mental health land would be released from involvement in this controversy. If Chapter 66 fails and the trust lands are reconstituted as required by the Supreme Court's mandate, these lands would be ensnarled in litigation for years. They are lands: (1) conveyed by the State to individual purchasers ("moms and pops"); (2) conveyed to Alaska Native corporations in litigation settlements and exchanges; (3) conveyed to municipalities; and (4) placed in legislatively designated areas.

All lands in each of these categories would have to be addressed by the court, would require that scores of Alaskans

intervene to protect their individual interests in the subject parcels, and would require huge expenditures of time and money (including significant expenditures of state money). As the Superior Court Judge said in her order denying immediate release from the injunction of the lands sold to the "moms and pops,"

The reconstitution of the trust, as mandated by the Supreme Court, is a herculean task. It will involve litigation in every judicial district in this state. It will necessitate adjudicating private third party rights to up to 3162 parcels of land, involving almost 50,000 acres of land which have been conveyed by the State. It will involve litigation regarding over 83,000+ acres of land conveyed to municipalities in 888 conveyances. The time, money, and effort spent at reaching a negotiated settlement is not unreasonable. It is a fraction of what it would take to litigate this case.

A second consequence of inaction by the legislature on the proposed amendments is that the preliminary injunction currently making it difficult for the State to take actions on original mental health lands would remain in place substantially longer than will be the case if Chapter 66 goes forward.

A third consequence of inaction by the legislature on the proposed amendments is that the 6.7 million acres originally hypothecated will remain embroiled in this case. The settling plaintiffs are virtually certain to appeal Judge Greene's invalidation of the original hypothecation, and Judge Greene or the Supreme Court would likely stay the effect of that invalidation pending appeal. Even if a stay is not entered, a Supreme Court reversal of Judge Greene's determination that hypothecation of the

6.7 million acres was invalid would return the lands to hypothecated status. The only way to reduce the amount of land subject to hypothecation in one way or another is to pass the recommended amendments.

As noted in Dennis Fradley's editorial in today's Anchorage Daily News,

Chapter 66 enjoys an advantage that none of the alternatives do. It has already passed the Legislature once and withstood the review of the Superior Court. Any of the other plans require going back to square one and starting the same process all over again.

This case has gone on too long already. The only way to ensure that we will move forward and not backward is to enact the recommended amendments. I urge that you do just that.

## BURR, PEASE &amp; KURTZ

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VIA FACSIMILE TO NO. 465-2864

May 5, 1993

Senator Drue Pearce  
Senator Steve Frank  
Co-Chairs, Senate Finance Committee  
State Capitol Building  
Juneau, Alaska 99811

Re: Mental Health Lands Legislation  
Our File No. 2686-1

Dear Senators Pearce and Frank:

I represent Marathon Oil Company and Union Oil Company of California in Weiss v. State, 4FA-82-2208 Civil. Marathon and Unocal intervened in that lawsuit last fall in order to challenge various aspects of the land exchange process currently under way by the State and the settling plaintiffs pursuant to the terms of Chapter 66, SLA 1991, and their settlement agreement. As you are well aware, Judge Greene has recently ruled that certain aspects of Chapter 66 are unlawful. The State and the settling plaintiffs have proposed last-minute amendments to SB 67 and HB 201 which they contend will fix the legal problems. Unfortunately, they will not.

One aspect of the proposed amendments is a reduction of the hypothecated list from 6.7 million acres to 1.5 million acres, to be selected by the Department of Natural Resources "using the criteria set out in secs. 55(d) and (e) of this Act" (Chapter 66). See Sec. 4(a)(2). Although the proposed amendments do not say so, the settling plaintiffs have made it plain that they intend the hypothecated list to be comprised of Cook Inlet oil and gas leases. In a letter to Representatives Larson and MacLean dated April 21, 1993, in which the idea of the current amendments was first raised, settling plaintiffs'

Senator Drue Pearce  
Senator Steve Frank  
May 5, 1993  
Page 2

counsel David Walker explained (at p. 4) that the proposed amendments "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)."

Besides the legal challenges that Marathon and Unocal have already mounted against hypothecation of the Cook Inlet oil and gas leases, you should be aware that the proposed amendments will create further conflict between the State and the settling plaintiffs and give Marathon and Unocal a wholly new ground for judicial challenge. Ever since the settling plaintiffs nominated the Cook Inlet leases as Proposed Substitute Land in July 1992, the State has maintained that the leases are not in fact comparable under sections 55(d) and (e) of Chapter 66. Director Ron Swanson of the Division of Lands wrote to the settling plaintiffs on August 20, 1992: "The state does not believe that the oil and gas lease tracts are appropriate for nomination as Proposed Substitute Land at this point in the reconstitution process because the oil and gas lease tracts are not comparable to non-reconstituted trust land." On February 25, 1993, the Department of Law reconfirmed the State's position that the leases were "non-comparable land" in a letter from Assistant Attorney General Brian Bjorkquist to Mr. Walker: "While some non-comparable land may eventually be necessary to reconstitute the trust, there are several reasons why the Cook Inlet tracts should be among the last of those non-comparable lands considered for reconstitution into the trust."

In short, while the settling plaintiffs are apparently assuming that the Cook Inlet leases will be on the reduced Hypothecated List, the State cannot allow those leases to be hypothecated under the "comparability" criteria of Chapter 66 without making a direct and drastic turn-about in its previously consistent position. Thus, these amendments merely give the State and the settling plaintiffs one more thing to fight about. Not only that, but if the State does reverse itself and hypothecate the leases, it will give Marathon and Unocal additional grounds for judicial challenge -- that, as the State itself has maintained, the hypothecated list does not comply with the comparability provisions of Chapter 66.

Senator Drue Pearce  
Senator Steve Frank  
May 5, 1993  
Page 3

On behalf of Marathon and Unocal, I urge you to  
reject these last-minute amendments.

Very truly yours,

BURR, PEASE & KURTZ



Peter J. Maassen

PJM/3



# Alaska State Legislature

Please enter into the record my testimony to the Senate Finance Committee  
committee name  
committee on SB 67 , dated May 5, 1993  
bill/subject

I urge the Senate Finance Committee to vote against the administration's amendments to chapter 66.

My main problem w/ the amendments are that they exempt <sup>the process of</sup> reconstitution of the trust from Alaska's land planning and classification laws. As we've witnessed earlier this year with the wolf management issue, dishonoring the public process will not wash in Alaska. I can't believe that the administration wants to leave the public out of important processes such as reconstituting the trust.

A better solution to the mental health dilemma is to return the 500,000 acres of original unencumbered trust land and a percentage of general fund revenues for the land that can't be returned.

Signed: Marie Beaver

Testifier

Representing (Optional)

218 Riverway, Fairbanks AK 99701

Address

452-5021

Phone No.

# MEMORANDUM

Department of Natural Resources

State of Alaska

Division of Land

TO: Ron Swanson, Director

DATE: March 30, 1993

TELEPHONE NO.: 762-2239

FROM: Bruce Phelps, Project Manager  
Mental Health Settlement Unit

SUBJECT: Explanation of FY 94 Budget:  
CS FOR SB 67 (JUD)

This memorandum describes the activities associated with the funding provided in the Attachment. The level of effort reflects the trust reconstitution process and land management responsibilities specified under the CS for SB 67 (JUD).

## DIVISION OF LAND

### 7100 Personnel Services

The Division of land will perform extensive title, appraisal, mapping, and land management functions to carry out the requirements of this legislation. Under title activities, it will be necessary to segregate Original Mental Health Trust land (OMHTL) into the conveyable and non-conveyable categories established by the legislation. OMHTL parcels that are identified as non-conveyable must be mapped and included within the Mental Health Sub-system of the Land Administrative System.<sup>1</sup> Conveyable OMHTL must be identified, the terms and conditions of conveyance must be described, and these terms and conditions included within either patent or interim conveyance documents. The results of title research will then be re-written to correspond to the actual language used in Departmental conveyance documents. The results of this effort must be uploaded to the Land Administration System in order to annotate the textual and graphic record. In addition, it will be necessary to undertake limited survey work, and to identify the presence of hazardous substances on conveyable OMHTL. Although the CS for SB 67 eliminates the vast amount of survey work previously required under SB 67, some limited surveying will probably be necessary to establish a datum point. The Department will also actively manage OMHTL, and a new Department Order must be prepared. The requirement to manage conveyable OMHTL will continue in future years, although the need to manage non-conveyable should cease once the latter has been properly identified.

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<sup>1</sup> Although many aspects of the work involved in the Trust reconstitution process conducted under Chapter 66, SLA 1991, can be used, it will still be necessary to re-evaluate the results of this effort against the requirements of any new legislation that may be adopted.

### 7300 Contractual Services

Contractual services will be required for two activities: the inventory of hazardous substances and some limited cadastral survey of certain conveyable OMHTL. The former will identify the presence of such substances, for inclusion in the title conveyance documents.

## LAND RECORD INFORMATION SECTION

### 7100 Personnel Services

The Land Records Information Section (LRIS) will provide computer support extracting and reporting on information contained in the state's Land Administration System, and modifying existing computer systems to properly account for revenues. LRIS will provide geographic mapping at various scales and complexity as required by the project. LRIS will also be responsible for noting the final disposition of all affected lands to the graphic record, and will annotate the textual record on LAS for Legislatively Designated Areas held by the state as collateral.

PROJECT COSTS: MENTAL HEALTH TRUST RECONSTITUTION  
SB 67<sup>1</sup>

DIVISION OF LAND

| 7100 Personnel Services            | FY 94       | FY 95        |
|------------------------------------|-------------|--------------|
| Mental Health Project Team         |             |              |
| (1) Project Manager                | 86.3        | 86.3         |
| (1) Land Manager                   | 59.3        | 59.3         |
| (2) NRO II                         | 130.0       | 130.0        |
| (2) NRO I                          | 109.4       | 109.4        |
| (1) CT III                         | 39.9        | 39.9         |
| (1) DPC II                         | 41.5        | 41.5         |
| (1) College Intern                 | <u>13.5</u> | <u>13.5</u>  |
|                                    | 479.9       | 479.9        |
| Land & Resource Management         |             |              |
| (1) Cadastral Surveyor III (3 mo.) | 29.5        | 29.5         |
| (1) Cartographer II (3 mo.)        | 12.0        |              |
| Subtotal                           | 521.4       | 509.4        |
| 7200 Travel                        |             |              |
| Mental Health Project Team         | <u>1.5</u>  | <u>1.5</u>   |
| Subtotal                           | 1.5         | 1.5          |
| 7300 Contractual Services          |             |              |
| Mental Health Project Team         |             |              |
| Hazardous Substance Inventory      | 125.0       | 75.0         |
| Land & Resources                   |             |              |
| Cadastral Survey                   | <u>50.0</u> | <u>250.0</u> |
| Subtotal                           | 175.0       | 325.0        |
| 7400 Supplies                      |             |              |

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<sup>1</sup> Based on CS for SB67 (JUD) and HB 201 Resources.

|                            |            |            |
|----------------------------|------------|------------|
| Mental Health Project Team | 5.0        | 5.0        |
| Land & Resources           | <u>1.5</u> | <u>1.5</u> |
| Subtotal                   | 6.5        | 6.5        |
| TOTAL                      | 704.4      | 842.4      |

|                     |           |           |
|---------------------|-----------|-----------|
|                     | <u>94</u> | <u>95</u> |
| Personnel-Full time | 8         | 8         |
| Part time           | 2         | 1         |
| Temporary           | 1         | 1         |

SB 67

LAND RECORD INFORMATION SECTION

|                                 |             |             |
|---------------------------------|-------------|-------------|
| Personnel Services              | FY 94       | FY 95       |
| (1) Analyst/Programmer IV       | 77.0        | 0           |
| (1) Analyst Programmer III      | 68.0        | 0           |
| (1) Natural Resource Officer II | 65.0        | 0           |
| (1) Natural Resource Officer I  | 50.0        | 53.0        |
| (1)(Data Processing Clerk I     | <u>35.0</u> | <u>37.0</u> |
| Subtotal                        | 295.0       | 90.0        |
| <br>Contractural Services       |             |             |
| DOA Data Processing Chargeback  | <u>15.0</u> | <u>0</u>    |
| Subtotal                        | 15.0        | 0           |
| <br>Supplies                    |             |             |
| Plotter, Micrographic           |             |             |
| & Office Supplies               | <u>10.0</u> | <u>4.0</u>  |
| Subtotal                        | 10.0        | 4.0         |
| <br>TOTAL                       | 320.0       | 94.0        |

|                     |           |           |
|---------------------|-----------|-----------|
|                     | <u>94</u> | <u>95</u> |
| Personnel-Full time | 5         | 2         |

# TOTAL PROJECT COSTS

|                       | FY 94        | FY 95       |
|-----------------------|--------------|-------------|
| Personnel Services    |              |             |
| Division of Land      | 521.4        | 509.4       |
| LRIS                  | <u>295.0</u> | <u>90.0</u> |
| Subtotal              | 816.4        | 599.4       |
| Travel                |              |             |
| Division of Land      | 1.5          | 1.5         |
| LRIS                  | <u>0</u>     | <u>0</u>    |
| Subtotal              | 1.5          | 1.5         |
| Contractural Services |              |             |
| Division of Land      | 175.0        | 325.0       |
| LRIS                  | <u>15.0</u>  | <u>0</u>    |
| Subtotal              | 190.0        | 325.0       |
| Supplies              |              |             |
| Division of Land      | 6.5          | 6.5         |
| LRIS                  | <u>10.0</u>  | <u>4.0</u>  |
| Subtotal              | 16.5         | 10.5        |
| TOTAL                 | 1024.4       | 936.4       |

|           | <u>FY 94</u> |      |       | <u>FY 95</u> |      |       |
|-----------|--------------|------|-------|--------------|------|-------|
|           | Land         | LRIS | Total | Land         | LRIS | Total |
| Positions |              |      |       |              |      |       |
| Full time | 8            | 5    | 13    | 8            | 2    | 10    |
| Part time | 2            |      | 2     | 1            |      | 1     |
| Temp.     | 1            |      | 1     | 1            |      | 1     |

# OUT-YEAR COSTS

|                                        | <u>FY 96</u>       | <u>FY 97</u>       | <u>FY 98</u>       | <u>FY 99</u>       |
|----------------------------------------|--------------------|--------------------|--------------------|--------------------|
| Personnel Services                     |                    |                    |                    |                    |
| Division of Land                       |                    |                    |                    |                    |
| Land Manager (2)                       | 133.3 <sup>1</sup> | 133.3 <sup>1</sup> | 133.3 <sup>1</sup> | 133.3 <sup>1</sup> |
| CT III (6 mo.)                         | 20.0 <sup>1</sup>  | 20.0 <sup>1</sup>  | 20.0 <sup>1</sup>  | 20.0 <sup>1</sup>  |
| <br>LRIS                               |                    |                    |                    |                    |
| NRO I                                  | 50.0               |                    |                    |                    |
| DPC I                                  | <u>35.0</u>        | <u>      </u>      | <u>      </u>      | <u>      </u>      |
| Subtotal                               | 238.3              | 153.3              | 153.3              | 153.3              |
| <br>Travel <sup>1</sup>                |                    |                    |                    |                    |
| Division of Land                       | 0.5                | 0.5                | 0.5                | 0.5                |
| <br>Contractural Services <sup>1</sup> |                    |                    |                    |                    |
| Division of Land                       | 0.5                | 0.5                | 0.5                | 0.5                |
| <br>Supplies <sup>1</sup>              |                    |                    |                    |                    |
| Division of Land                       | <u>0.1</u>         | <u>0.1</u>         | <u>0.1</u>         | <u>0.1</u>         |
| TOTAL                                  | 239.4              | 154.4              | 154.4              | 154.4              |



## Alaska Environmental Lobby, Inc.

P.O. Box 22151 Juneau, Alaska 99802

Phone: 907-463-3366

Fax: 907-463-3312

### DO NOT PASS ADMINISTRATION AMENDMENTS TO SB 67/HB 201

-Judge Greene on April 26 handed down a decision on the public interest intervenors' claims. The public interest intervenors prevailed on two out of eleven claims. They will appeal on several of the other claims.

-The judge held that: 1) the hypothecated lands list was illegally compiled, and 2) as a matter of statutory interpretation of Chapter 66, Alaska's land planning and classification laws (38.04/38.05) do apply to the reconstitution of the Trust.

-The administration is asking the legislature to adopt two amendments to "fix" problems identified by the court in Chapter 66: Re-hypothecating 1.5 million acres using acceptable standards, and exempting land exchanges in Ch. 66 from 38.04/38.05 and instead establishing procedural guidelines in lieu of 38.04/38.05.

-These amendments are two separate items. **They do not need to pass in tandem.**

-These "fixes" won't solve the problem. They will instead intensify the substantial opposition to Ch. 66, and they will do nothing to prevent continued litigation. **Massive land exchanges are the problem with Ch. 66.** In the 1990's, there are too many differing interests in public lands to make these massive land exchanges feasible.

-**The public and the legislature still won't know which public lands will be pledged** as security (i.e. hypothecated) for the performance of the state's obligations under Ch. 66. The legislature and the public should be able to participate fully in this decision.

The massive land trust would not adequately meet the needs of the mental health programs. The legislature would still need to appropriate funds for mental health programs.

-**Let's avoid a quick fix approach.** The oil company's claims will be considered by the judge in the next few months. The public intervenors will appeal their claims. Other legal challenges are sure to follow. The legislature should not rush through quick fix amendments after each court ruling.

-**Let's learn from experience and not rush through last minute amendments without adequate public and legislative consideration.**

-**The solution instead is found in SB 67/ HB201 in their current version: the return of 500,000 acres of original unencumbered trust land, and a percentage of general fund revenues for the land that can't be returned.**

5/5/93

## **THE PUBLIC PROCESS IN THE PROPOSED AMENDMENTS IS A FARCE**

- The proposed amendments provide for **no public process** until **after** the plaintiffs and DNR have negotiated their deal. This belated, abbreviated public participation comes too late to influence the land selections.
- **Thousands** of Alaskans have devoted **years** of effort to the land use planning and classification process. The existing plans are the result of **consensus** that has emerged from diverse interests participating in this open, public process.
- Alaska Statute 38.04.065 requires "**meaningful participation**" by the public in decisions affecting state lands. The proposed amendments would **repeal** this fundamental public policy.
- The proposed amendments would **arbitrarily restrict judicial review** to those who submitted comments during the period provided after the deals are made, even if a person is adversely affected and is otherwise entitled to judicial review under settled law.
- Who supports the existing planning process?
  - **Resource developers**
  - **Small businesses in the tourism industry**
  - **Sport fishing organizations**
  - **Home-grown Alaska environmental groups**
  - **Alaskans who care about the public lands**
- Who opposes the proposed amendments to Chapter 66?
  - **ALL OF THE ABOVE.**
- Why?
  - **Alaskans of all stripes have benefitted from a consensus-building public process and built their expectations around the decisions made in these plans.**

**Don't throw years of effort out the window.**

**PLEASE VOTE AGAINST THE ADMINISTRATION AMENDMENTS TO CHAPTER 66.**

## EXPLANATION OF CS FOR SENATE BILL NO. 67 (JUD)

April 12, 1993

### BACKGROUND

CS for Senate Bill No. 67(JUD) amends Chapter 66, SLA 1991. Chapter 66 was intended to constitute a "settlement" of the mental health trust lands dispute but is now hopelessly embroiled in legal challenges being asserted in the Weiss litigation. A broad coalition of interests supports CSSB 67. The coalition includes two of the four named plaintiffs (beneficiary groups) in the Weiss litigation, the public interest intervenors and the oil company intervenors that are challenging Chapter 66 in the Weiss litigation, and representatives of the development community (the Alaska Coal Association, the Alaska Miners Association, and the Resource Development Council). The coalition is attempting to build a consensus for the amendments to Chapter 66 among the state and the two named plaintiffs who still support an unamended Chapter 66.

### THE BASIC STRUCTURE OF CHAPTER 66, SLA 1991

Chapter 66 establishes the Mental Health Trust Authority and contains significant "program" provisions that benefit the recipients of mental health services. Chapter 66 generally reconstitutes the land trust with original mental health trust lands (OMHTLs) which have not been conveyed by the state or placed by the legislature in legislatively designated areas (LDAs) such as parks and refuges. To compensate the trust for the conveyed and legislatively designated OMHTLs not being returned to the trust, Chapter 66 calls for a negotiated land exchange involving "substitute land" to be proposed by the plaintiffs' attorneys. Over 650,000 acres of "substitute land" have already been proposed. In addition, under Chapter 66 approximately 6.7 million acres of state land have become "hypothecated land" to be foreclosed upon if the land exchange is not completed by December 1, 1994.

The "substitute lands" are what has caused Chapter 66 to become hopelessly embroiled in litigation. The public interest intervenors (PIIs) have challenged Chapter 66 primarily because of issues involving the substitute lands. The oil company intervenors (Unocal and Marathon) have challenged Chapter 66 in court because they have leases on proposed substitute lands (PSLs). The attorneys for the state and the mental health beneficiaries have disagreements over the appropriateness of the plaintiffs' PSLs and the nature and

quantity of substitute land required to compensate the trust. Developmental interests are adversely affected by a land "freeze" that has been imposed on PSLs (in addition to the land "freeze" continuing to affect OMHTLs and "hypothecated lands").

Chapter 66 contains a "step down" funding provision requiring that a percentage of the "unrestricted revenue of the state" be allocated to the mental health trust income account in each fiscal year beginning with FYE 1992 and ending in FYE 2003.

#### **THE BASIC STRUCTURE OF CSSB 67 (JUD)**

CSSB 67 retains the Mental Health Trust Authority and the significant "program" provisions that benefit the recipients of mental health services. In addition, CSSB 67 retains the concept of reconstituting the land trust with OMHTLs which have not been conveyed or are not within LDAs.

However, CSSB 67 amends Chapter 66 to remove the complicated land exchange provision from the settlement, thereby doing away with all of the legal problems and disputes that involve substitute lands and hypothecated lands. Instead, under CSSB 67 the trust receives monetary compensation for the OMHTL that is not being returned to the trust. Under CSSB 67 that compensation is an allocation to the mental health trust income account of 6% of the "unrestricted general fund revenue of the state" during each fiscal year. See AS 37.14.036(c) on pages 3-4 of CSSB 67. The money is intended to compensate the trust for the OMHTL that cannot be returned and for the land and mineral interests that have been carved out of OMHTL that is being returned. There is no cut-off date for this annual percentage allocation and the "step down" funding provision in Chapter 66 is eliminated.

Legislatively designated OMHTLs are pledged as collateral for the state's obligation to allocate the required percentage amount to the mental health trust income account each year. See AS 37.14.036(d) and (e) on page 4 of CSSB 67.

The reconstituted land trust will consist basically of the same OMHTLs that would have been returned to the trust under Chapter 66. Two differences are: (1) OMHTLs subject to mining claims will be returned to the trust (under Chapter 66, the plaintiffs had the option to accept or reject these lands); and (2) OMHTL contained in the Haines State Forest Resource Management Area and the Tanana Valley State Forest will not be returned to the trust.

OTHER REFINEMENTS TO CHAPTER 66 MADE BY CSSB 67

1. **Protection of Existing Third Party Interests or Appropriated Uses and Management of Such Interests and Uses by the Alaska Department of Natural Resources (DNR) Under AS 38.05.802**

CSSB 67 amends Chapter 66 to specifically provide that the trust authority's title to the land being returned to the reconstituted trust remains subject to all existing third party interests (such as leases, contracts, permits, and mining claims) and appropriated uses (such as rights-of-way). See AS 38.05.802(a) and (b) on page 7 of CSSB 67.

Unlike third party interests such as leases, there is no legal document to reflect the terms of mining claims or leasehold locations and DNR normally makes no "validity" determination. The holders of mining claims and leasehold locations would therefore be subject to the status quo -- they would face whatever challenges they might face from the trust that they could face from DNR. The trust simply takes subject to the claimant's rights, if any. Unlike Chapter 66, CSSB 67 clarifies that for purposes of mining claims and mining leasehold locations, OMHTL is considered to have been open to mineral entry unless closed to mineral entry by a court or DNR order. See AS 38.05.802(f) on page 8 of CSSB 67. All OMHTL has been closed to mineral entry by court and DNR orders since November 5, 1985 and the provision is not intended to alter the effect of these closing orders.

In addition, CSSB 67 imposes a mandatory requirement that DNR manage all existing third party interests and appropriated uses under DNR's land management rules and standards for general grant land (as opposed to those rules and standards that will be applicable to mental health trust land). See AS 38.05.802(c) on page 7 of CSSB 67. For example, rental and royalty decisions for existing mineral leases on OMHTL would be made by DNR pursuant to DNR's normal regulations and without regard to the fact that the land is OMHTL. All income and proceeds from the management of these existing interests and uses must be deposited by DNR into the mental health trust income account. See AS 38.05.802(c) on page 7 of CSSB 67.

The bill further provides that a person who holds a protected interest may enter into an agreement with DNR and the trust authority to waive DNR's mandatory land management under general grant land standards. See AS 38.05.804 on page 8 of CSSB 67. This allows a third party interest holder to "opt in" to the trust authority land management system once the trust authority has established a stable land management program and a successful track record.

**2. Management of Reconstituted Trust Land Under AS 37.14.009**

Except for existing third party interests and appropriated uses (which must be managed by DNR under AS 38.05.802, as discussed above), the reconstituted land trust must be managed, as required by Chapter 66, under AS 37.14.009 in a fiduciary manner to fulfill the purposes of the trust. However, CSSB 67 amends Chapter 66 to require the trust authority to adopt regulations relating to land management and disposal. See AS 37.14.009(a)(4) on page 2 of CSSB 67. In addition, except for existing third party interests and appropriated uses (which must be managed by DNR under AS 38.05.802), CSSB 67 amends Chapter 66 to require the trust authority to contract with DNR to manage and dispose of reconstituted trust lands in accordance with the trust authority's regulations unless the trust authority determines that the best interests of the trust beneficiaries would be served by other arrangements (for example, by having the trust authority manage the land itself or through another contractor). See AS 37.14.009(a)(4) on page 2 of CSSB 67.

The potential for a conflict exists on any parcel of reconstituted trust land between DNR's management of a protected third party interest or appropriated use under AS 38.05.802 and management of the remainder of the land by the trust authority (or DNR as its contractor) under AS 37.14.009. Therefore, CSSB 67 contains a provision to require that any such conflicts are to be resolved in accordance with the many laws (including court decisions) that apply to conflicts between concurrent users of land. See AS 37.14.009(c) on page 3 of CSSB 67. This makes it clear that the trust authority's management is subject to these developed legal principles and that these principles are not to be distinguished or disregarded just because the trust is the landowner and the trust authority has an obligation to manage its assets in a fiduciary manner to fulfill the purposes of the trust. Of course, because the trust takes its land subject to existing third party interests, any contractual rights addressing whether other concurrent land uses are allowed must also be honored by the trust authority in its management of the remainder of any particular parcel of land under AS 37.14.009.

**3. Public Interest Safeguards Applicable to Reconstituted Trust Land Managed Under AS 37.14.009**

As under Chapter 66, under AS 37.14.009 reconstituted trust land is to be managed by the trust authority (or by DNR as the trust authority's contractor) without compliance with AS 38.04 or AS 38.05. But CSSB 67 amends Chapter 66 to

include a requirement designed to require that disposal and use of trust land under AS 37.14.009 comply with the state constitution and the principle of multiple purpose use consistent with the public interest. See AS 37.14.009(b)(1) on pages 2-3 of CSSB 67. However, the amendment also recognizes that the trust principles established in AS 37.14.007 and AS 37.14.009 must take priority if they conflict with multiple purpose use. In addition, CSSB 67 amends Chapter 66 to require public notice of any disposals of trust land under AS 37.14.009, a 30-day comment period, and a final public notice of any trust land disposals under AS 37.14.009. See AS 37.14.009(b)(2) on page 3 of CSSB 67. This ensures that trust beneficiaries, trust land developers, people who use trust lands for other purposes, and other members of the public have an opportunity to have their views considered by the trust authority. Existing third party interests or appropriated uses continue to be managed like general grant land under AS 38.05.802 and therefore remain subject to AS 38.04 and AS 38.05 unless the interest holder elects to "opt in" to the trust authority land management system governed by AS 37.14.009.

#### **4. Definition of Unrestricted General Fund Revenue**

CSSB 67 contains a definition of "unrestricted general fund revenue of the state" to be used for calculating the annual percentage allocation to be made by the state to the mental health trust income account. See AS 37.14.036(c) on pages 3-4 of CSSB 67. The definition ties the meaning of this phrase to the manner in which money is categorized under the statewide accounting system as of the effective date of Chapter 66. The purpose of this provision is to remove the possibility that future restrictions imposed by the legislature on general fund revenues will have a negative impact on the dollar amount used for calculating the percentage allocated to the trust. No limitation is placed on the legislature's ability to impose future restrictions, but for purposes of calculating the amount to be allocated to the trust, any such future restrictions would be disregarded.

#### **5. Clarification of Land Reconstitution Ambiguities Contained in Chapter 66**

CSSB 67 contains several provisions which are designed to clarify ambiguities in Chapter 66, such as what land is actually being returned to the reconstituted trust. Under Chapter 66 this is ambiguous and has been left open to negotiation between the state and the plaintiffs' attorneys. CSSB 67 amends Chapter 66 to clearly provide that all OMHTLs are to be returned to the reconstituted trust unless they have been "conveyed" or "reserved by law from the public domain."

See AS 38.05.800 on pages 5-6 of CSSB 67. The terms "conveyed" and "reserved by law from the public domain" are then specifically defined. See AS 38.05.800(a)(1) and (2) on pages 6-7 of CSSB 67. CSSB 67 also clarifies that if either the surface or the mineral estate of OMHTL has been "conveyed" or "reserved by law from the public domain," then neither estate is being returned to the reconstituted trust. See AS 38.05.800(b) on page 7 of CSSB 67.

CSSB 67 clarifies that those lands not being returned to the trust are permanently released from any claim of the trust. See Section 15 on page 10 of CSSB 67.

As under Chapter 66, CSSB 67 requires an actual conveyance of reconstituted trust land from DNR to the trust authority. But CSSB 67 clarifies Chapter 66 by providing that reconstituted trust land is to be conveyed to the trust authority by patent without a survey, resolving another matter that has been the subject of negotiations under Chapter 66. See Section 16 on pages 10-11 of CSSB 67. CSSB 67 amends the existing Alaska statute which arguably requires a survey before reconstituted trust lands could be conveyed to the trust authority. See AS 38.04.045(b) on pages 4-5 of CSSB 67.

#### **6. Funding of DNR Land Management Responsibilities**

Under Chapter 66, as amended by CSSB 67, DNR is required to manage all existing third party interests and appropriated uses. In addition, the trust authority is required to contract with DNR to manage reconstituted trust land unless the trust authority determines that the best interests of the trust beneficiaries would be served by other arrangements (direct trust authority management or a contractual arrangement with a private land manager). CSSB 67 amends Chapter 66 to allow the legislature to make appropriations from the mental health trust income account to fund DNR's land management duties. See AS 47.30.046(a) on page 9 of CSSB 67 and AS 47.30.056(a) on page 10 of CSSB 67. Of course, any revenue generated from DNR's management of the reconstituted trust must be deposited by DNR into the same mental health trust income account from which DNR can be funded.

#### **7. Resolution of Disputes Over Annual Percentage Allocation, Collateral, and Foreclosure of Collateral**

Under Chapter 66 the Alaska Supreme Court was given original and exclusive jurisdiction over any disputes arising out of reconstitution of the trust, the land exchange negotiations, and the collateral for reconstitution of the land trust. CSSB 67 amends Chapter 66 to return jurisdiction

over any such disputes to the superior court and to specifically provide that the superior court also has jurisdiction over any dispute pertaining to the annual percentage allocation required to be made to the mental health trust income account, the collateral for that allocation (the OMHTL LDAs), and any foreclosure of that collateral. See AS 22.10.020(j) on page 1 of CSSL 67. In addition, CSSB 67 specifically gives the superior court the power to refer any such disputes to a special master. See Section 14 on page 10 of CSSB 67.

★ ★ ★ ★ ★

CSSB 67 is exactly the same as a companion bill in the House (CSHB 201) with the exception of the amount of the annual percentage allocation which is 3% in the House bill.

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APR 22 1993

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.<sup>1</sup> 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.<sup>2</sup>

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

<sup>1</sup>We frankly feel that the unenforceability issue is similarly incapable of legislative correction.

<sup>2</sup>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.

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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

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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*.<sup>3</sup>

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.<sup>4</sup> 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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<sup>3</sup>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.

<sup>4</sup>The constitution was ratified in April of 1956 while the Alaska Mental Health Enabling Act was not passed until July of 1956.

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backup<sup>5</sup>, 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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<sup>5</sup>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.

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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.

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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.<sup>6</sup>

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.<sup>7</sup>

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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<sup>6</sup>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.

<sup>7</sup>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.

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to earn revenue. ILMA's 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.

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April 22, 93 Page 8

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.

Richard M. Johannsen  
Comments on SB67/HB201  
April 22, 93 Page 8

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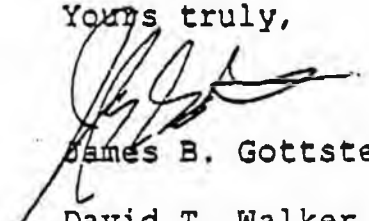
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Richard M. Johannsen  
Comments on SB67/HB201  
April 22, 93 Page 9

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

jg\amha\leg93\zjsb67.ltr

# 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  
PHONE: (907) 465-3600  
FAX: (907) 463-5295

8367

May 4, 1993

Hon. Rick Halford, President  
Alaska State Senate  
Eighteenth Alaska Legislature, First Session  
State Capitol, Room 111  
Juneau, Alaska 99801-1182

Dear President Halford:

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 delegated the task of preparing a new list with adequate standards, the difficulty would be eliminated.

Memorandum Decision and Order Re: Intervenor's Complaint  
(April 26, 1993) at 82, n. 42 (emphasis added).

The attached proposed amendments to CSSB 67(JUD) 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 CSSB 67(FIN) 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 CSSB 67(FIN) 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.

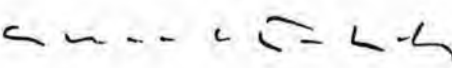
If this legislation is not enacted before the legislature adjourns, the chances are strong that the settlement agreement reached with the Weiss plaintiffs under ch. 66 will be terminated and the headway we have made over the past two years in settling the mental health lands mess will become a dead letter.

Hon. Rick Halford, President  
Alaska State Senate

May 4, 1993  
Page 3

We urge your favorable consideration of the proposed  
amendments.

Very truly yours,

  
Charles E. Cole  
Attorney General

CEC:cl

cc w/ enc.:     Sen. Robin Taylor  
                  Sen. Steve Frank  
                  Sen. Drue Pearce

Pat Ryan, Chief of Staff  
Kris Lethin, Legislative Liaison  
Office of the Governor

Hon. Glenn A. Olds, Commissioner  
Dept. of Natural Resources

David T. Walker  
James B. Gottstein  
Jeffrey L. Jessee  
Philip R. Volland  
Richard M. Johannsen  
Peter J. Maassen  
G. Thomas Koester

Brian D. Bjorkquist, Assistant Attorney General  
Wendy S. Feuer, Assistant Attorney General

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 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, 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. 3.** 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 returned to the trust under (1) of this subsection, shall be sufficient to reconstitute the trust.

\* **Sec. 4.** 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. 5.** If ch. 66, SLA 1991, is finally disapproved as a settlement of Weiss v. State, 4FA-82-2208 Civil, this Act is repealed.

\* **Sec. 6.** This Act takes effect immediately under AS 01.10.070(c).

# STATE OF ALASKA

## DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

*Sen. Pearce*  
WALTER J. HICKEL, GOVERNOR

P.O. BOX K—STATE CAPITOL  
JUNEAU, ALASKA 99811-0300  
PHONE: (907) 465-3600  
FAX: (907) 463-5295

*SB67*

May 4, 1993

Hon. Rick Halford, President  
Alaska State Senate  
Eighteenth Alaska Legislature, First Session  
State Capitol, Room 111  
Juneau, Alaska 99801-1182

Dear President Halford:

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*

Charles E. Cole  
Attorney General

CEC:cl

cc w/ enc.: Sen. Robin Taylor  
Sen. Steve Frank  
Sen. Drue Pearce

Pat Ryan, Chief of Staff  
Kris Lethin, Legislative Liaison  
Office of the Governor

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Hon. Rick Halford, President  
Alaska State Senate

May 4, 1993  
Page 2

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G. Thomas Koester

Brian D. Bjorkquist, Assistant Attorney General  
Wendy S. Feuer, Assistant Attorney General

5/4/93

**REVISED**

**Proposed Amendments to CSHB 201 (RES) and CSSB 67 (JUD)**

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Following "mental health trust":

Delete all material

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**\* Soc. 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;

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(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.

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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).

APR 21 1993

LAW OFFICES  
DAVID T. WALKER  
417 HARRIS STREET  
JUNEAU, ALASKA 99801

(907) 586-3537

DAVID T. WALKER  
GERALD K. DAVIS, JR.

TELECOPIER:  
(907) 586-1350

April 21, 1993

HAND DELIVERED

Senator Steve Frank, Co-Chairman  
Senate Finance Committee  
Capitol Building, Room 518  
Juneau, Alaska 99811

Senator Drue Pearce, Co-Chairman  
Senate Finance Committee  
Capitol Building, Room 508  
Juneau, Alaska 99811

Re: Proposed Mental Health  
Trust Lands Legislation  
SB 67/HB 201

Dear Senators Frank and Pearce:

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<sup>1</sup> 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

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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.<sup>2</sup> The basic structure of the Chapter 66 reconstitution of the Trust<sup>3</sup> 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<sup>4</sup>, 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.

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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 as 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.<sup>5</sup>

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

---

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),<sup>6</sup> 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.<sup>7</sup> 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.

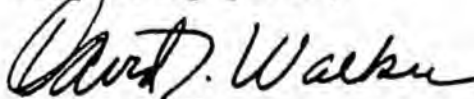
7/ The Department of Law has indicated there is no authority to place such funds in escrow under current law.

Senators Frank and Pearce  
April 21, 1993  
Page 5

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

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

### Comparison of Mental Health Trust Resolution Approaches

| PARTY/INTEREST GROUP           | GOALS                                                                                                                                                                                                                             | CURRENT SETTLEMENT (Chapter 66) <sup>1</sup>                                                                                                                                                                                                                                                                              | LITIGATED RESULT                                                                                                                                                                                                                                                                                                      | SB67/HB201 <sup>2</sup>                                                                                                                                                                                                                                                                                                                 |
|--------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Beneficiaries                  | <ul style="list-style-type: none"> <li>Adequate funding for mental health program.</li> <li>Fair enforceable settlement.</li> <li>Appropriate Trust management, including expenditures.</li> </ul>                                | <ul style="list-style-type: none"> <li>No guaranty of adequate funding.</li> <li>Receive land comparable in earning capacity to the most land that could be obtained in litigation.</li> <li>Appropriate Trust administration; <b>exceeding what could be obtained in litigation</b> agreed to by all parties.</li> </ul> | <ul style="list-style-type: none"> <li>No guaranty of adequate funding.</li> <li>Receive what Trust is entitled to under Alaska Mental Health Enabling Act (whatever land can be recovered).<sup>3</sup> Trust will have what land earns.</li> <li>Whatever trust management can be forced upon the state.</li> </ul> | <ul style="list-style-type: none"> <li>No guaranty of adequate funding.</li> <li>Small amount of high quality land encumbered with restrictions, inappropriate management, and excessive costs; better not to have it at all.</li> <li>Receipt of a debt that the Trust has no right to enforce and is inadequately secured.</li> </ul> |
| Administration                 | <ul style="list-style-type: none"> <li>Release Trust's claims to third party interests.</li> <li>Minimize financial obligations</li> <li>Promote development (place land in the trust that will increase development).</li> </ul> | <ul style="list-style-type: none"> <li>Trust's claims to third party interests are released.</li> <li>State's financial liability to Trust is minimized.</li> <li>Development is promoted for reconstituted Trust Land.</li> </ul>                                                                                        | <ul style="list-style-type: none"> <li>Trust is likely to prevail on many claims. Trust's claims released only after appeals are exhausted.</li> <li>Financial liability to Trust minimized, unless <u>Weiss</u> overturned.</li> <li>Development will eventually be promoted, but not very effectively.</li> </ul>   | <ul style="list-style-type: none"> <li>Trust's claims eventually released.</li> <li>Financial obligation maximized (except that State can ignore it).</li> <li>Development is minimized.</li> </ul>                                                                                                                                     |
| Legislature                    | <ul style="list-style-type: none"> <li>Resolve problem quickly</li> <li>Release Trust's claims.</li> </ul>                                                                                                                        | <ul style="list-style-type: none"> <li>All third party interests preserved.</li> <li>Resolved as soon as possible.<sup>4</sup></li> </ul>                                                                                                                                                                                 | <ul style="list-style-type: none"> <li>Maximum time to resolve.</li> <li>Trust's claims litigated.</li> </ul>                                                                                                                                                                                                         | <ul style="list-style-type: none"> <li>Private third party titles under a cloud for long time while approval litigated.</li> </ul>                                                                                                                                                                                                      |
| Industry                       | <ul style="list-style-type: none"> <li>Business as usual (pay less than fair value, non-Trust management).<sup>56</sup></li> <li>Resolve problem quickly.</li> <li>Preserve rights.</li> </ul>                                    | <ul style="list-style-type: none"> <li>All rights preserved.</li> <li>Discretionary functions determined under trust management principles.</li> <li>Resolved as soon as possible.</li> </ul>                                                                                                                             | <ul style="list-style-type: none"> <li>Current arrangements upset.</li> <li>Immediate interference with business likely.</li> <li>Long time to resolve.</li> </ul>                                                                                                                                                    | <ul style="list-style-type: none"> <li>All rights preserved.</li> <li>Long time to resolve.</li> <li>Managed by DNR under current rules (except unencumbered land).</li> </ul>                                                                                                                                                          |
| Environmental Intervenor       | <ul style="list-style-type: none"> <li>Prevent/restrict development (minimize Trust land; maximize restrictions).</li> <li>Preserve 370,000 acres of land put into parks, etc. (legislative designations)</li> </ul>              | <ul style="list-style-type: none"> <li>Development promoted on reconstituted Trust Land.</li> <li>Legislative designations preserved.<sup>7</sup></li> </ul>                                                                                                                                                              | <ul style="list-style-type: none"> <li>Development maximized on land returned to Trust.</li> <li>Legislative designations may or may not be ordered back into the trust to earn as much \$ as possible.<sup>8</sup></li> </ul>                                                                                        | <ul style="list-style-type: none"> <li>Development minimized.</li> <li>Legislative designations preserved, but at risk upon default.</li> </ul>                                                                                                                                                                                         |
| Private Third Party Purchasers | <ul style="list-style-type: none"> <li>Clear title ASAP.</li> </ul>                                                                                                                                                               | <ul style="list-style-type: none"> <li>Private third party purchaser interests are protected.</li> </ul>                                                                                                                                                                                                                  | <ul style="list-style-type: none"> <li>Land may be taken from third parties and returned to the Trust<sup>9</sup></li> </ul>                                                                                                                                                                                          | <ul style="list-style-type: none"> <li>Third party purchasers protected.</li> <li>Longer than current settlement.</li> </ul>                                                                                                                                                                                                            |
| Municipalities                 | <ul style="list-style-type: none"> <li>Retain Trust Land given to them.</li> </ul>                                                                                                                                                | <ul style="list-style-type: none"> <li>Municipalities' interests in Trust land is preserved.</li> </ul>                                                                                                                                                                                                                   | <ul style="list-style-type: none"> <li>Municipalities' interests in Trust land almost certainly lost.</li> </ul>                                                                                                                                                                                                      | <ul style="list-style-type: none"> <li>Third party purchasers protected. Will take a long time.</li> </ul>                                                                                                                                                                                                                              |

<sup>1</sup>It is possible that the current settlement may be disapproved or declared illegal. The court's initial rulings are expected within the next 60 days. If the settlement is disapproved or ruled illegal, it may very well be possible to fix identified problems. Perhaps the only potential problem that could not be fixed (except by Congressional action) is whether the transfer of the mineral estate to the Trust Authority violates Section 6(i) of the Statehood Act.

<sup>2</sup>Our view is that the proposed legislation cannot be approved by the court because of its unenforceability/lack of security, and illegality as a dedicated fund. It appears that it would take a constitutional amendment to fix both of these problems. The SB67/HB201 approach ends up being the litigated result because it is believed the court will not approve this legislation as a settlement. A new settlement is always possible, but the approval process will have to be started over. Keep in mind that people have been trying to fashion a settlement for over six years and it is hard to imagine that any fundamentally new proposal will be offered. A constitutional amendment would solve a lot of the problems with SB67/HB201 but their proponents are unwilling to wait the time such an approach requires. Similarly, the State could transfer sufficient assets to the Trust to guaranty payment, but that would require the court's confirmation of the State's right to place subsurface rights in the Trust.

<sup>3</sup>The setoff allowed by the Supreme Court for the State to deduct what it has spent on the Mental Health Program from the amount it owes is likely to eliminate any financial obligation for land lost from the trust. This issue will be vigorously re-argued by the plaintiffs if the litigation is resumed, and the United States Supreme Court will be the ultimate authority (although it does not have to hear the case).

<sup>4</sup>This is disputed by the opponents of the current settlement.

<sup>5</sup>By definition "fair value" is a price at which the landowner receives fair compensation and the land user does not pay more than will allow it to earn a reasonable profit.

<sup>6</sup>While industry will say they are concerned with funding for mental health programs, this is clearly driven by a desire to free up the land. Certainly individual industry representatives may have a sincere interest in adequate mental health program funding, but it is not what is driving industry's interests here.

<sup>7</sup>The current settlement returns to the Trust approximately 120,000 acres of land in the Tanana and Haines State Forests. These forest lands were already open to logging and mining, but with more restrictions than is anticipated under Trust management.

<sup>8</sup>The Trust should prevail on this issue. If not, however, the land may be lost and the State not owe any money because of the setoff.

<sup>9</sup>The Trust has excellent arguments on this issue, but public opinion may cause the courts to look for another result.

*Handwritten signature*

## MENTAL HEALTH LANDS TRUST BRIEFING PAPER



March 1, 1993

**PACRET  
FROM  
USIBELLI  
COAL**

This information is provided by the Alaska Coal Association, the Alaska Center for the Environment and Advocacy Services of Alaska

### **1956 - THE FEDERAL GRANT**

During territorial days, the federal government imposed a barbaric mental health system on Alaskans. People who experienced mental disabilities such as Alzheimer's disease, mental retardation and mental illnesses were tried and convicted of the crime of being an "insane person at large". After conviction, they were sent to Morningside Hospital in Oregon where the federal government paid the bill.

Over time, Alaskans became more and more outraged over this treatment. In addition, impending Statehood meant that Alaska would need to assume responsibility for administering and funding its own mental health program. Finally, in 1956, Congress passed the Alaska Mental Health Enabling Act, granting authority to the Territory of Alaska to administer its own mental health program. To provide funds to operate the program, Alaska was granted the right to select *one million acres of land* to be administered as a *public Trust*.

Recognizing that the purpose of the Trust was to earn income, the Territory, and then the State of Alaska selected land that was believed to be the most valuable property in the State. These included urban and suburban lands in Anchorage, Fairbanks, Juneau, Sitka, Ketchikan, Petersburg, Wrangell, Haines, Homer, Kodiak and Skagway. Also selected were lands on the Kenai peninsula, in the Matanuska and Susitna Valleys and in Kachemak Bay. High value resource lands were also selected, such as 60% of what is now known as the Haines State Forest, forest lands at Cape Yakataga, a significant percentage of the known coal resources, oil and gas prospects, and prime mineral districts of the State. These lands were selected because they were best suited to the production of income in perpetuity.

Although the land was selected for the Trust, and was supposed to earn money in support of the mental health

program, the State Division of Lands received no direction on managing the Trust lands as a Trustee. As a result, no Trust administration was established, and no trust fund was created. In this vacuum some of the land was improperly disposed of and no proper accounting of Trust funds was made.

### **1978 - THE GREAT LAND THEFT**

Due to the valuable nature of the land, there was tremendous pressure by municipalities and individuals to make Mental Health Trust Lands available for other purposes. In response to this pressure, in 1978 the Alaska Legislature attempted to abolish the Trust by "redesignating" Mental Health Trust Lands as general grant lands. In exchange, the legislature was supposed to compensate the Trust with 1.5% of revenues from *all* State lands. However, not a single payment to the Trust account was ever made.

### **1982 - THE ORIGINAL LAWSUIT**

An attempt was made to get the legislature to correct this blatant violation of federal law and the State's obligation as a Trustee. After being told "we don't care if it is illegal - sue us", the Alaska Mental Health Association sponsored the beginning of the litigation in 1982. Vern Weiss, on behalf of his son Carl, and Earl Hilliker, on behalf of themselves and the class of people entitled to benefits under the Trust (beneficiaries of the Trust) were named as plaintiffs in the lawsuit. Since that time, the Alaska Mental Health Association, representatives of the mentally retarded and mentally defective (developmentally disabled), and representatives of chronic alcoholics with psychosis have formally intervened to participate with the original plaintiffs in the lawsuit. Elderly people with dementias, such as Alzheimer's disease, are also beneficiaries of the Trust.

## **1985 - THE ALASKA SUPREME COURT DECISION**

In 1985, in what is known as the Weiss Decision, the Alaska Supreme Court rejected the State's arguments that there really was no Trust. The Court ordered that the "trust must be reconstituted to match as nearly as possible the holdings which comprised the trust when the 1978 law became effective"

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

|                      |                                          |
|----------------------|------------------------------------------|
| 370,000 acres        | Designated as state parks, refuges, etc. |
| 83,000 acres         | To Municipalities                        |
| 36,000 acres         | To Native corporations                   |
| 50,000 acres         | To individuals ("Moms & Pops")           |
| 3,000 acres          | To the University of Alaska, and         |
| <u>150,000 acres</u> | Encumbered land                          |
| 692,000 acres        | Total                                    |

Obviously, determining which of these lands could be returned to the Trust would involve years of litigation. Returning these lands would create incredible hardship for thousands of innocent third parties and disrupt decades of land use planning efforts. This began what has become years of unsuccessful efforts to reach a settlement as a way to avoid this court ordered mandate to return the original land to the Trust.

## **1987 - SETTLEMENT ATTEMPT #1 CHAPTER 48**

Chapter 48 would have determined the fair market value of the original one million acres under procedures approved by the Interim Mental Health Trust Commission set up by the State. The State would then "rent" the Trust lands in perpetuity for 8% of their value. As security, the Trust would have been made whole with legislatively designated lands of equal value to those Trust lands illegally disposed of by the State. The Alaska Mental Health Board was created to determine the needs of the mental health program and make recommendations regarding necessary funding for the mental health programs to the Governor and Legislature.

## **1990 - THE OBSTRUCTION TO IMPLEMENTATION OF CHAPTER 48**

The Interim Mental Health Trust Commission worked from the passage of Chapter 48 until January of 1990 to determine and approve the appropriate valuation procedures to implement Chapter 48. On November 7, 1989, the Commission adopted by a two to one vote (the State's

representative dissenting) its final approved procedures for determining the value of the original Mental Health Trust Lands. Utilizing these approved procedures the value of the Mental Health Trust Lands, as of September 7, 1987, is \$2.243 billion. However, on January 23, 1990, the State Department of Natural Resources announced a creative interpretation of Chapter 48 that the Commission could not approve any valuation procedures that the Commissioner of Natural Resources did not accept. On February 1, 1990, the Department of Natural Resources issued its Minority Recommendations, indicating it believed the value of the Trust Lands was only \$565 million. The Commissioner of Natural Resources then declared an "impasse".

## **1990 - SETTLEMENT ATTEMPT #2 SENATE BILL 493**

During the 1990 legislative session, a bill was introduced which would have adopted the \$2.243 billion value for the Trust lands and implemented Chapter 48. However, in the closing hours of the session, a Finance Committee substitute was passed which changed the compensation from 8% of the value of the Trust lands to a permanent 6% of unrestricted general fund revenue.

The Beneficiaries commissioned an economic analysis of changing the form of compensation from the value of the land to a percentage of declining state revenues. Not surprisingly, the Beneficiaries believed that this change seriously under compensated the Trust.

This, together with the lack of security for the promise to pay and the lack of an adequate Trustee, led the beneficiaries to reject this unilateral attempt to settle the litigation.

## **1990 - THE LAND FREEZE AND ITS CONSEQUENCES**

Faced with yet another example of the State breaking its promises and breaching its responsibilities as a Trustee, the Beneficiaries went back to court for an injunction that would prohibit the State from transferring or issuing any permits or leases on Mental Health Trust lands. The Court granted the injunction which held that the Beneficiaries were entitled to challenge the status of previous dispositions of Mental Health Trust lands.

The Beneficiaries' attorneys believe that a third party does not receive good title to Mental Health Trust Lands unless that party *paid value* for the land and *had no reason to know of the breach of trust*. They believe that all persons will be found to have "constructive knowledge" of the breach of trust because it was a matter of public record.

The difficulties that third parties are now experiencing are the difficulties the State, the Beneficiaries and others have tried to avoid by continuing to look for a settlement to this issue.

### **THE INNOCENT THIRD PARTIES CAUGHT IN THE CROSSFIRE**

There are over 6,000 questionable actions that have occurred on Mental Health Trust Lands that are open for reversal. Prospective activities on Mental Health Trust Lands have been suspended, or are in limbo. For example, the Wishbone Hill Coal Mining Project has been put on hold pending determination of certain legal questions. Usibelli Coal Mine operates substantially on Mental Health Trust Lands and its future operations are planned to be substantially on Mental Health Trust Lands. The Diamond Chitna Coal Project in the Beluga Coal Field is also on hold. People who have received patents to Mental Health Trust Lands, like the Moms and Pops, may lose their land<sup>1</sup>. Lessees of Trust lands may have their leases declared invalid. Municipalities which received Trust lands face the possibility of losing the land despite the fact that they've already spent time and money in planning for its use.

### **1991 - SETTLEMENT ATTEMPT #3 CHAPTER 66**

During the 1991 session, legislation was once again introduced in an effort to reach a settlement. Lengthy negotiations with the Legislature resulted in the agreement to create a Mental Health Trust Authority to serve as a Trustee. However, the Administration refused to consider a cash based settlement. With less than two weeks left in the session, the Administration and three of the four plaintiff groups began negotiating what would become Chapter 66. Chapter 66, if approved, would:

- 1) Create the Mental Health Trust Authority as Trustee,
- 2) Return as much of the original Trust land as possible to the Trust,
- 3) Exchange other comparable state land for original Trust land that cannot be returned,
- 4) Begin the exchange process before Chapter 66 is approved by the courts pursuant to a Settlement Agreement negotiated by the parties after the session,
- 5) Hypothecate (pledge as security) 6.7 million acres of State land to be foreclosed upon in the event the land exchange is not completed before December of 1994.
- 6) Become effective only after the settlement is finally approved by the courts, the Weiss case is dismissed, and the time for any appeals has expired.

<sup>1</sup> On the other hand, the Beneficiaries have tried to eliminate unnecessary hardship, and when no harm to the trust is apparent, the Beneficiaries have uniformly agreed to modify the injunction to allow things to proceed

### **1991 - LAWSUITS OVER CHAPTER 66**

In October of 1991, a group representing tourism, sport fishing, environmental and other public interests sued to intervene in the lawsuit. They believe that Chapter 66 violates State law, the State Constitution, and the Statehood Act. They object to transferring to the Trust hundreds of thousands of acres of multiple use public lands that were never in the original Trust. They also object to nullifying numerous state land use planning processes in which thousands of Alaskans participated in good faith. The intervention was expected and initially welcomed by the settling parties as they believed that favorable decisions on these issues would "bulletproof" the settlement against challenges after approval. Unfortunately, the settling parties failed to understand how long these issues would take to resolve and the consequences in the meantime.

After over a year and a half, these challenges are still pending in the Superior Court. A decision is not expected until the spring or summer of 1993. The losing party will then, no doubt, appeal to the Alaska Supreme Court. After that appeal, the losing party can then ask the U.S. Supreme Court to review the Statehood Act issue relating to the ability of the State to transfer the mineral estate to the Trust as a part of the exchange. Only after all of this litigation is concluded can the courts finally approve or disapprove Chapter 66. While nobody can predict how long this will all take, it is safe to assume that it will be measured in years not months.

To make matters worse, during the exchange process, the plaintiffs discovered that the *State did not have lands comparable to those which would be lost*. Therefore, they were forced to look to income producing lands which the State had not anticipated would become involved in the exchange process. The Cook Inlet oil and gas fields, Glacier/Winner Creek in Girdwood, Leask Lakes in Ketchikan, hydroelectric sites throughout Southeast Alaska, airport lands and the proposed site for the new Capital building in Juneau are just a few of the lands which may have to be placed into the Trust.

Most recently, in response to these actions, the Cook Inlet oil and gas producers, Marathon and Unocal entered the litigation to protect their interests. They do not believe that the State has the right to transfer their leases to the Trust and that the Settlement Agreement is illegal. Despite the objections of the State, the court has allowed the oil companies to intervene and the litigation over their claims is just beginning. Other affected parties such as Municipal governments and coal producers have also considered intervention.

In the meantime, the *injunction and lis pendens*<sup>2</sup> on the original one million acres of Trust land remains. In addition, title to the 6.7 million acres of hypothecated

<sup>2</sup> A lis pendens is a notice filed in the record of title that a claim has been made against the land

lands is clouded by the prospect that foreclosure may occur anytime after 1994. Further, under the terms of the Settlement Agreement the *plaintiffs have already selected 550,000 acres of other State land* for possible exchange. This land must be segregated and closed to mineral entry or disposal. Finally, since these *additional selections can continue to be made from any State land, virtually the entire inventory of State land outside of Legislatively Designated Areas is subject to being brought into the litigation* at any time.

### **EFFECTS ON DEVELOPMENT**

This cloud on millions of acres of State land will remain for years to come while lawsuits over Chapter 66 continue. This has created an international perception that Alaskan land and natural resources are off limits to development. This perception is widely held in both the natural resource investment community and international markets for Alaskan resources and is fostered by Alaska's competitors.

This perception of a land "freeze" is not limited to specific projects, resources, or problems like Wishbone Hill, expansion of the Girdwood ski resort or the consequences of higher utility rates in Southeast Alaska. The length of and uncertain results from the lawsuits, together with the potential for more land to be selected and therefore tied up at any time, combine to create a global stigma about development in Alaska at a time when we can least afford it.

Both the State and the Settling Plaintiffs justifiably claim that they are willing to work with affected parties on specific problems. However, the belief in this freeze will continue because of the possibility, even probability, that any valuable mineral deposit, transportation or pipeline corridor, or strategic surface estate will be tied up in this dispute.

### **FAILED ATTEMPT TO RELEASE THE "MOMS & POPS"**

When the State realized how long the litigation over Chapter 66 would take and the hardship that would be suffered by innocent third parties, it realized the need to ask the Superior Court for "relief" for the over 3,000 so-called Moms and Pops. The State's plan, agreed to by the Settling Plaintiffs, would have modified the injunction and removed the cloud in the record of title. The Settling Plaintiffs could agree to this only with the condition that if Chapter 66 was not approved, *the Trust would be able to reassert its claims to the land*. The court rejected this "relief" last month stating that it could be considered nothing more than a "cruel hoax visited on the third parties" because at this point in time "the likelihood of final approval [of Chapter 66] is speculative, at best".

### **THE "UNHOLY ALLIANCE"**

By early 1992, a number of diverse interest groups normally at odds found that they were united in their opposition to pursuing the land exchange portion of the proposed settlement. The Resource Development Council, Alaska Center for the Environment, Alaska Miner Association, Susitna Valley Association, Sierra Club Legal Defense Fund, Alaska Coal Association, Non-settling plaintiffs and now Marathon and Ungacal realized that an amendment to Chapter 66 is needed. These groups all agree that the settlement must be within the State's ability to pay and offer fair compensation to the Trust.

### **1993 - AMENDMENTS TO CHAPTER 66 SENATE BILL 67**

Last session, the members of this unusual coalition united behind an amendment to Chapter 66 which could finally settle the Mental Health Lands Trust litigation. Reintroduced in session by the Senate Resources Committee, Senate Bill 67 would:

- 1) Retain the portion of Chapter 66 that creates the Mental Health Trust Authority as the Trustee while maintaining the Legislature's ability to appropriate Trust funds,
- 2) Retain the portion of Chapter 66 which returns as much of the original Trust land as possible to the Trust,
- 3) Eliminate the land exchange which has led to the litigation over Chapter 66,
- 4) Instead of the land exchange, continue the current allocation of 6% of the State's unrestricted General Fund Revenue to the Trust income account in place since 1990,
- 5) Hypothecate (pledge as security) only those original Trust lands that are now in Legislatively Designated Areas (370,000 acres) to insure that the 6% allocation is made. This would free up the 6.7 million acres currently pledged as security.

### **WHERE DO WE GO FROM HERE?**

There is unprecedented and widespread support for amending Chapter 66. Development and environmental interests, local governments, the majority of the Beneficiaries, the thousands of third party hostages, Chambers of Commerce, and many legislators realize the necessity of amending Chapter 66 now.

Unfortunately, the current administration has refused to consider any amendments to Chapter 66. Unless Alaskans become informed and communicate directly with the Governor and their legislators, we face years of litigation while development is discouraged on millions of acres of land. Alaska cannot afford such a divisive, expensive, and lengthy attempt at a settlement.

## MENTAL HEALTH LANDS TRUST THE OFFSET

*Attorney General Cole has stated* that in Chapter 66 "the state gave up a \$1.3 billion offset which the Alaska Supreme Court held that the state is entitled to". (Letter to Senator Mike Miller dated February 3, 1993).

However, the *Supreme Court actually said* that "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 the expenditures exceeded the value of lands sold, the state need not furnish cash as part of the reconstitution." (*State v. Weiss*, 706 P. 2nd 681 at 684.) (emphasis added).

### SO. WHAT IS THE OFFSET?

The value of the offset would depend on the outcome of lengthy litigation over how much the State has actually spent on mental health and whether any of the land was legally "sold".



The Interim Mental Health Trust Commission estimated the offset at only \$200 million.

The State has inflated the offset to \$1.3 billion by including expenditures of the Dept. of Law, D.N.R., Dept. of Administration, etc. *in addition to* program costs. (At the same time the State claims the entire 1,000,000 acres of land is worth only \$565 million.)

## "SOLD"?

Returnable Land  
315,000 acres

Must be returned to  
the trust.

Encumbered  
150,000 acres

Can be returned subject to  
encumbrances.

Legislatively Designated  
Areas (LDAs)  
370,000 acres

Set aside by legislature  
for parks, wilderness,  
forests, etc.

Municipalities  
83,000 acres

Paid nothing. Had actual  
notice of breach of trust.

Settlement  
40,000 acres

Traceable land to be  
returned to trust.

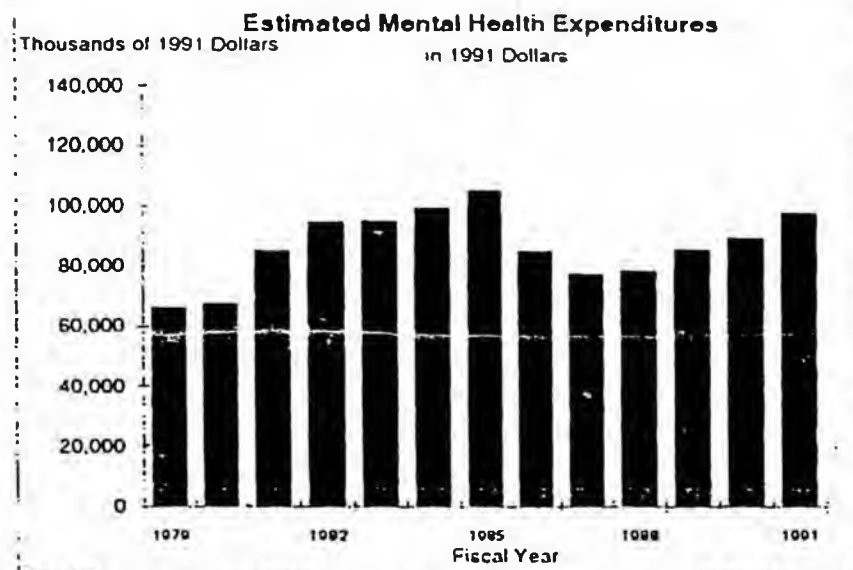
Moms & Pops  
50,000 acres

Paid value. Notice of trust  
status in record of title.

## Estimated Mental Health Expenditures from Unrestricted General Fund Revenue

(in Thousands of Dollars)  
Fiscal Year

|                                                                                       | 1979          | 1980           | 1981           | 1982           | 1983           | 1984           | 1985           | 1986           | 1987           | 1988           | 1989           | 1990             | 1991             |
|---------------------------------------------------------------------------------------|---------------|----------------|----------------|----------------|----------------|----------------|----------------|----------------|----------------|----------------|----------------|------------------|------------------|
| <b>Agency/Budget Request Unit</b>                                                     |               |                |                |                |                |                |                |                |                |                |                |                  |                  |
| Department of Administration                                                          | 530           | 586            | 754            | 1,119          | 1,154          | 1,184          | 1,217          | 1,683          | 1,680          | 1,682          | 1,847          | 1,953            | 1,588            |
| Department of Law                                                                     | 13            | 30             | 44             | 48             | 43             | 40             | 38             | 73             | 42             | 54             | 52             | 59               | 67               |
| Department of Education                                                               | 3,147         | 3,550          | 4,155          | 4,803          | 5,493          | 6,017          | 6,715          | 1,844          | 1,684          | 1,676          | 1,751          | 1,859            | 2,226            |
| Dept. of Health and Social Services                                                   | 29,881        | 33,246         | 46,619         | 53,391         | 55,193         | 59,019         | 64,822         | 62,501         | 59,528         | 63,452         | 72,779         | 80,009           | 92,800           |
| Department of Public Safety                                                           | 1,095         | 2,418          | 3,595          | 3,972          | 3,511          | 3,278          | 3,152          | 826            | 483            | 619            | 587            | 673              | 0                |
| Department of Corrections                                                             | 2,042         | 2,222          | 2,479          | 3,320          | 3,981          | 5,955          | 7,043          | 966            | 952            | 1,039          | 1,178          | 1,195            | 1,222            |
| <b>Total Estimated Expenditure</b>                                                    | <b>36,708</b> | <b>42,062</b>  | <b>57,646</b>  | <b>66,655</b>  | <b>69,374</b>  | <b>75,494</b>  | <b>82,987</b>  | <b>67,892</b>  | <b>64,380</b>  | <b>68,521</b>  | <b>79,105</b>  | <b>85,749</b>    | <b>98,092</b>    |
| <b>Cumulative Estimated Expenditure</b>                                               | <b>36,708</b> | <b>78,770</b>  | <b>136,416</b> | <b>203,071</b> | <b>272,445</b> | <b>347,939</b> | <b>430,926</b> | <b>498,819</b> | <b>563,198</b> | <b>631,720</b> | <b>709,914</b> | <b>795,663</b>   | <b>893,755</b>   |
| <b>FY 79 - FY 85</b>                                                                  | <b>15,708</b> | <b>78,770</b>  | <b>136,416</b> | <b>203,071</b> | <b>272,445</b> | <b>347,939</b> | <b>430,926</b> |                |                |                |                |                  |                  |
| <b>FY 86 - FY 91</b>                                                                  |               |                |                |                |                |                |                | <b>67,892</b>  | <b>132,272</b> | <b>200,793</b> | <b>278,988</b> | <b>364,737</b>   | <b>462,829</b>   |
| <b>Total Estimated Expenditure in 1991 Dollars</b>                                    | <b>66,340</b> | <b>67,632</b>  | <b>85,083</b>  | <b>94,714</b>  | <b>94,972</b>  | <b>99,419</b>  | <b>105,317</b> | <b>85,197</b>  | <b>77,377</b>  | <b>78,869</b>  | <b>85,881</b>  | <b>89,607</b>    | <b>98,092</b>    |
| <b>Cumulative Estimated Expenditure in 1991 Dollars</b>                               | <b>66,340</b> | <b>133,972</b> | <b>219,055</b> | <b>313,769</b> | <b>408,740</b> | <b>508,160</b> | <b>613,476</b> | <b>698,673</b> | <b>775,050</b> | <b>854,919</b> | <b>940,799</b> | <b>1,030,407</b> | <b>1,128,499</b> |
| <b>Mental Health Expenditures As Percentage of General Fund Unrestricted Revenues</b> | <b>3.24%</b>  | <b>1.68%</b>   | <b>1.55%</b>   | <b>1.62%</b>   | <b>1.91%</b>   | <b>2.23%</b>   | <b>2.55%</b>   | <b>2.21%</b>   | <b>3.58%</b>   | <b>2.97%</b>   | <b>3.58%</b>   | <b>3.42%</b>     | <b>3.47%</b>     |



Prepared by the Legislative Research Agency (91.242)

Source: Mental Health Lands Trust Review, Summary Schedule and Analysis - Potential State Mental Health Expenditures

State of Alaska, Office of Management and Budget - Division of Budget Review, Operating Budget Funding summary, All Funds, By Agency, BRU & Component, January 28, 1991

Note: Program Receipts have been removed from totals given.

Sunday March 21 / 1993 D.N. Miner

# State fails in Mental Health Trust controversy

The million-acre chess board on which Mental Health Trust controversy is played out has 3,162 special "pawns" on the state's side.

As we all know, pawns are coldly sacrificed to create positional advantage for the more powerful and important pieces behind them.

The pawns on the white side are the unfortunate beneficiaries of the trust. The black pawns are the people who bought trust land from the state and now have title to their land frozen because of the state's illegal action in seizing the trust's assets 15 years ago.

The state of Alaska, the "black king" in this game, is weeping a bucket of crocodile tears on behalf of its pawns. In January, state attorneys tried to get Fairbanks Superior Court Judge Mary Greene to lift a three-year-old injunction barring sale of these lands, which total almost 50,000 acres.

The state failed. Before the third-party landholders blame Judge Greene or the Mental Health Trust beneficiaries, they should look at why the state failed.



Fred Pratt

The Legislature and former Gov. Jay Hammond dissolved the Mental Health Trust in 1978 and took the land. They later leased, gave, sold or exchanged about one-third of it to outside parties.

In 1985 the Alaska Supreme Court ruled this action illegal. The court clearly made the point that trustees managing a trust, which is what the Legislature is, cannot just appropriate the assets of the trust for their own use.

The management of the Mental Health Trust was an obligation willingly taken on by the state of Alaska in the Alaska Statehood Act. If any other trustee outside government had done such a thing, he would go to jail.

The people who acquired Mental Health Trust land from the state unwittingly fenced stolen property. If they lose their land back to the trust, they have a great case for a lawsuit against the state for selling them such land in the first place.

After the 1985 decision the state and the trust beneficiaries tried to settle the case without having to take back all this land and expose the state to thousands of expensive lawsuits. The state, however, blocked earlier settlements and now seeks to turn the ire of the third-party landholders on the court or the plaintiffs in the lawsuits, rather than own up to its own sins.

The motion to have Judge Greene lift the injunction on the third-party landholder "pawns" was an empty gesture, as Judge Greene's order clearly shows.

She notes that she can modify or cancel a standing injunction only for certain reasons. She can do it if it can be shown to be no longer necessary, if it creates an undue

hardship, if the plaintiffs have been delaying a reasonable resolution, or if the state has a substantial likelihood of winning its case.

Judge Greene clearly disposed of each of these matters in a nine-page decision.

She pointed out that plaintiffs agreed to the first settlement only two years after the 1985 ruling, but it was the state that torpedoed that settlement process in 1990, not the beneficiaries. Second and third settlement bills passed the Legislature in 1990 and 1991, but these "solutions" are mired deeply in new problems.

Judge Greene also raised the question of whether she could clear land title to these parcels by simply lifting the injunction.

That could just shift legal questions to another court. Judge Greene pointed out that if this happened, lifting the injunction would be "nothing more than a cruel hoax visited on the third parties."

"They get no relief; they would receive a worthless piece of paper and unmarketable title," she noted. "If they transferred their in-

terest in the land, they would be selling a lawsuit and both they and the purchasers would ultimately have to litigate."

State attorneys suggested the trust could be compensated by exchange of other state land of comparable value for the land granted the third party buyers. Judge Greene notes correctly that the state's inability to work within past agreements on determining value of land killed the first settlement.

She also notes that the state's likelihood in prevailing is weak at a time when two of the four plaintiffs' groups refuse to accept its current settlement, and when it's strongly opposed by environmental groups, hunting clubs, fishing organizations and outdoor recreation interests, as well as coal developers and major oil companies.

State attorneys appealed Judge Greene's decision to the Alaska Supreme Court. Two weeks ago the Alaska Supreme Court rejected that appeal, without comment.

Free-lance journalist Fred Pratt has been covering Alaska business and politics for the past 18 years.

# Voice of The Times

## The Anchorage Times

Publisher: BILL J. ALLEN

*"Believing in Alaskans, putting Alaska first"*

Editors: DENNIS FRADLEY, PAUL JENKINS, WILLIAM J. TOBIN

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## Tossing in the towel

**T**HE APPARENT failure of the mental health trust settlement agreement probably is being greeted with some cheers across the state. Most people who have followed the issue are frustrated by all the legal tangles and delays that have come with efforts to rebuild the original land trust set up by the federal government almost 40 years ago. The rebuilding is necessary because of a 1985 court order which said the state had no business dissolving the trust in 1978, an action which followed years of neglect and non-management of the mental health lands.

Putting the trust back together, however, has become as complicated as unscrambling eggs. Two years ago, it appeared Attorney General Charlie Cole and then Resource Commissioner Harold Heinze had come up with a solution. They reached agreement in 1991 with attorneys for the mental health groups and won approval by the Legislature to replace land originally held in trust with state lands of equal value and comparable in character.

It was an involved plan, one that permitted mental health lawyers and trustees to identify state public lands on a tentative basis pending final approval by the court of the whole agreement. And identify lands they did: oil leases in Cook Inlet, coal fields, ski resorts, gold mines and anything else of potential value. Each piece of land selected, however, meant planned development activities there were put in limbo, making developers more and more disenchanted with the plan. That wasn't the only problem.

**AS PART OF** the 1991 settlement agreement, the state was to be free to issue patents on previously purchased small tracts of mental health lands. Alaskans who own these so-called "mom and pop" lands are now prohibited from selling, exchanging or otherwise developing the land until the legal cloud is lifted.

The agreement was supposed to make that possible. It didn't.

A Superior Court judge rejected releasing any of the original trust lands until the whole agreement is finalized. Last week, the Supreme Court backed the decision. That prompted Gov. Walter Hickel to give notice that the state would back out of the agreement — unless lawyers can figure out another way to free up the so-called mom and pop lands. That's not likely to happen. More likely, the issue will now go back to the Legislature for resolution.

Bills are moving in both houses which abandon the idea of replacing trust with state lands to generate revenue. Instead, the new legislative proposals would commit annual funding from the state treasury to cover mental health needs. A Senate bill would earmark 6 percent of general revenue each year for the mental health trust, while a House bill would commit 3 percent.

This alternative is bad policy and would set a bad precedent. But given that the best alternative just fell apart, it may be the only politically possible resolution.

# NEWS RELEASE

STATE OF ALASKA

OFFICE OF THE GOVERNOR  
Post Office Box 110001  
Juneau, Alaska 99811-0001

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Governor

JOSEF P. HOLBERT  
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FOR RELEASE: March 15, 1993  
No. 93-061

## MENTAL HEALTH SETTLEMENT GIVEN 60 DAYS

JUNEAU--Governor Walter J. Hickel today gave lawyers on both sides of the mental health trust controversy 60 days to reach an agreement to release third parties from the case or the state will exercise its option to terminate the settlement agreement entered into in April 1992.

"We have no desire to roll this issue back to square one," Hickel said, "but that's what's at risk if we can't find an acceptable solution for those innocent third parties who bought land that was once part of the mental health trust and now can't get title to it."

The Governor's action was sparked by the most recent rejection by the courts of a joint request by the state and the settling plaintiffs to have a preliminary injunction modified to allow the state to issue patents to individuals who have paid off their land. The patents would extricate those landowners from the issue and allow them to sell, exchange or otherwise develop their land.

Fairbanks Superior Court Judge Mary E. Greene denied the joint motion on January 14. The Alaska Supreme Court denied the state's petition to review her decision on March 8.

The Mental Health Lands Trust was created by Congress in 1956 and dissolved in 1978 by the state legislature, which promised that in its place 1.5 percent of income from resource development on state lands would be allocated to mental health programs. In 1982, after no such amount was ever appropriated, mental health advocates sued the state and won. In 1985, the Supreme Court ordered that the trust be reconstituted and that fair market value should be paid for those lands that had been sold, subject to a set-off for state mental health expenditures.

####

## **PRESS ADVISORY**

March 24, 1993

FOR IMMEDIATE RELEASE

FOR MORE INFORMATION CONTACT: Walt Baldwin, 276-4849

### **STATE REFUSES TO LIVE UP TO LATEST PROPOSED SETTLEMENT OF MENTAL HEALTH LANDS TRUST**

With little fanfare, a press release issued by Governor Walter J. Hickel on March 15, 1993 signaled the State's intention to withdraw from the latest attempt to settle the Mental Health Lands Trust litigation.

While giving the impression that this action is based on the State's failure to gain the release of the third party land owners known as "Moms & Pops", in fact, the State had already refused to comply with the terms of the Settlement Agreement (see attachments 1 and 2).

"Of course I knew it was in trouble when the State wrote a letter on February 25, 1993, refusing to allow the Settling Plaintiffs' Attorneys to pick the land needed, as agreed to in the Settlement Agreement, to replace land that the State stole from the original Trust", said Walt Baldwin.

In light of these developments a number of groups representing Trust beneficiaries agreed upon a resolution calling attention to the real reason the State has threatened to withdraw from the settlement (see attached Resolution).

STATE of Alaska,  
Appellant/Cross-Appellee,

v.

Vern T. WEISS, et al.,  
Appellee/Cross-Appellant.

Nos. S-653, S-678.

Supreme Court of Alaska.

Oct. 4, 1985.

Class action was brought against State for breach of public trust in enacting legislation redesignating federal mental health grant lands as general grant lands. The Superior Court, Fourth Judicial District, Fairbanks, Warren W. Taylor, J., ruled the legislation could not be invalidated, but that the State breached its duties as trustee by removing federal grant lands from the trust. The state appealed, and plaintiffs cross-appealed. The Supreme Court, Compton, J., held that: (1) the State breached its duties as trustee in redesignating the land, and (2) the redesignation legislation was invalid.

Affirmed in part, reversed in part and remanded.

#### 1. Public Lands ¶62

In passing the Alaska Mental Health Enabling Act, the United States Congress intended to create a trust, to be based on a corpus of one million acres of federal land, to help effectuate the creation and operation of mental health care facilities in the state, and the state, as trustee, had no power to alter the status of the property grant, thereby effectively terminating the trust. Alaska Mental Health Enabling Act, § 101 et seq., 70 Stat. 709; Laws 1978, c. 181, § 3(a).

#### 2. Public Lands ¶62

In passing act [Laws 1978, c. 181, § 3(a)] redesignating trust lands given state by United States Congress under Alaska Mental Health Enabling Act as general grant land, the State went beyond the power which had been granted it with re-

spect to the land by Congress and the redesignation act was therefore invalid. Alaska Mental Health Enabling Act, § 101 et seq., 70 Stat. 709.

G. Thomas Koester, Asst. Atty. Gen.,  
Norman C. Gorsuch, Atty. Gen., Juneau,  
for appellant/cross-appellee.

Stephen C. Cowper, Fairbanks, for appellee/cross-appellant.

Russ Winner, McGrath & Associates, Anchorage, for amicus curiae Cook Inlet Region, Inc.

Before RABINOWITZ, C.J., and  
BURKE, MATTHEWS and COMPTON, JJ.

### OPINION

COMPTON, Justice.

The State of Alaska ("state") appeals from a judgment of the superior court holding that the state breached its duty as trustee of federal mental health grant lands when the legislature redesignated the property as "general grant land." For the reasons set forth below, we affirm the holding to this extent, but reverse the superior court's conclusion that the redesignation legislation was valid.

#### I. FACTUAL AND PROCEDURAL BACKGROUND

In 1956 the United States Congress passed the Alaska Mental Health Enabling Act (AMHEA) which, insofar as it concerns this case, granted the Territory of Alaska one million acres of federal land to be held in public trust to help effectuate the creation and operation of mental health care facilities in Alaska. Pub.L. No. 84-880, 70 Stat. 709 (1956). Section 202(e) of the Act specifically 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 state managed these lands without maintaining a separate account until 1978. The Alaska State Legislature made its practice law in 1978 when it passed the following statutory provision:

#### REDESIGNATION AND DISPOSAL OF MENTAL HEALTH LAND

(a) Land granted to the state under the Mental Health Enabling Act of 1956, 70 Stat. 709, and patented to or approved for patent to the state on July 1, 1978 and land designated as mental health land which was received by the state in exchange for land granted under that federal land grant is redesignated as general grant land and shall be managed and disposed of by the Department of Natural Resources under applicable provisions of law.

Ch. 181, § 3(a), SLA (1978).

Alaska has provided continuous mental health care since statehood. The record indicates that between 1959 and 1982 the state spent over \$222,000,000 on mental health care. Generally speaking, there has been a constant increase from 1959 to the present in mental health expenditures: slightly less than \$1,200,000 was expended in 1959, and slightly more than \$29,000,000 was expended in 1982. The record does not

indicate how much of the trust land at issue has been disposed of, nor the total value of such disposed land. In the state's answer to the complaint, it alleges that "state expenditures for mental health purposes exceeded revenues from mental health grant lands in all years for which revenues from those lands were tabulated separately." The record does indicate that as of 1973, total revenues from these mental health trust lands amounted to \$19,555,582. The state's total expenditures to that point amounted to \$66,726,176.

Weiss *et al.* filed a class action in 1982 alleging that the state breached the public trust by 1) failing to account for revenues realized, 2) using revenues for purposes other than mental health care and 3) passing legislation redesignating the property "general grant land." Plaintiffs sought declaratory relief invalidating the redesignation legislation; injunctive relief compelling the state to administer the trust according to the law; general relief establishing a trust account "for the receipt of funds generated from all lands selected by the State of Alaska under the aforesaid mental health land grant...."

The superior court ruled that invalidation of the redesignation legislation was not an available remedy, based on *State v. University of Alaska*, 624 P.2d 807, 815 (Alaska 1981). However, the court did hold that the state breached its duties as trustee by removing the federal grant lands from the trust. As a remedy, the court ordered that [t]he public trust established by P.L. 84-830, 70 Stat. 709, shall recover from the defendant State of Alaska an amount equal to the fair market value of all lands conveyed from the trust as of the date of conveyance, plus prejudgment interest from the date of each conveyance. For the purposes of this judgment, all lands remaining in the trust as of July 19, 1978, shall be considered as having been removed from trust status by the State of Alaska on that date....

The court also ordered a set-off for all monies spent by the state on mental health care.

The state appeals from the judgment, except the holding that the redesignation legislation was valid. Weiss *et al.* cross-appealed the trial court's failure to rule the legislation invalid.

## II. DID THE STATE BREACH THE PUBLIC TRUST CREATED BY CONGRESS WHEN IT REDESIGNATED PROPERTY IN THE TRUST AS "GENERAL GRANT LAND?"

### A. Nature of the Trust.

The state argues, essentially, that the redesignation is of no legal consequence because the state has always provided public mental health programs in the past and, implicitly, will provide them in the future. The state maintains that providing such programs fulfills its obligations according to AMHEA, freeing the grant lands for other public purposes. Textual support for this position comes from the portion of Section 202(e) which states that "proceeds and income shall first be applied to meet the necessary expenses of the mental health program of Alaska." It is suggested that this language means Congress intended that the land grant serve as a revenue base guarantee. Great emphasis is placed on the legislative history of AMHEA which establishes that Congress did

1. The debates in the House and Senate are too lengthy to reproduce in their entirety here, but certain remarks are representative of the discussions. Senator Jackson commented that "[t]he income from sales or leases will be used to support the mental health program in Alaska. The income will be held in trust for that purpose. Any money received over and above the need for the mental health program may be used for other public purposes." He further noted that the language change was not of a fundamental nature, and thus said that, "[t]he purpose of granting 1 million acres is the same as in all other similar grants, such as the public school land-grant program." 102 Cong.Rec. 9761 (June 7, 1956).

We note that the language in the federal grant was changed from designating the proceeds of the land grant to be used as a public trust for Alaska's mental health program, to saying that the proceeds "shall first be applied to meet the necessary expenses of the mental health program" only because of worry among members of Congress that the land may actually have a

not wish to limit the use of grant lands *exclusively* to mental health programs.<sup>1</sup>

[1] Despite these observations, we think it irrefutable that Congress intended to create a trust, to be based on a corpus of one million acres of federal land. It is a commonplace of the law that without trust property there can be no trust. Restatement (Second) of Trusts § 74 (1959).<sup>2</sup> When the state, through the legislature, altered the status of the property grant the trust was thereby effectively terminated. The state, as trustee, had no power to do this and consequently breached its duty to preserve the corpus.<sup>3</sup> The fact that the state has provided mental health care in the past and will most likely do so in the future is no justification for termination of the trust. Whether a beneficiary can rely on the *bona fides* of a trustee to continue voluntarily to uphold the terms of a defunct trust is quite beside the point. We decline the opportunity to encourage the state, or any trustee for that matter, to determine unilaterally when to terminate a trust without specific authority to do so.

### B. Remedy.

[2] Having concluded that the state breached the trust, we find it necessary on the facts of this case to invalidate the redesignation statute, Ch. 181, § 3(a), SLA (1978). *State v. University of Alaska*, 624

value far in excess of the necessary health care expenses. The record in this case shows that income from the land grant was actually less than state expenditures for mental health programs.

2. Section 74 provides: "A trust cannot be created unless there is trust property."

3. Our reliance upon basic trust law principles finds ample support in the precedents of this court and the United States Supreme Court. See *Lassen v. Arizona*, 385 U.S. 458, 87 S.Ct. 584, 17 L.Ed.2d 515 (1967); *State v. University of Alaska*, 624 P.2d 807 (Alaska 1981). Both *Lassen* and *University of Alaska* involved federal grants to be used by states for school purposes. Those cases stand for the proposition "that the same private trust law principles are to apply to federal land granted to the states for school purposes." *University of Alaska*, 624 P.2d at 813. There is no reason to treat federal lands granted for mental health purposes differently.

P.2d 807, 815 (Alaska 1981) does not compel a different result. In that case, the federal government had granted 100,000 acres to the state "for the exclusive use and benefit" of the University. *Id.* at 811. Years after the grant, the state included 5,040 acres of the trust land in a state park. This action was not in itself a breach of the trust so long as the University was paid fair market value for the land. We inferred that the legislature intended to pay the University for this disposition, stating:

It is also logical to assume that the legislature intended to compensate the University for the loss of its land. This view gives the statute creating [the park] a reading that is in accord with the well recognized canon of statutory construction that, when possible, legislation should be construed in a way that upholds its validity.

524 P.2d at 816.

Unlike the situation in *University of Alaska*, the present case does not involve a disposition of a portion of trust lands for a specific use. Instead, the entire corpus of the trust is intermingled with the general grant lands of the state. No particular use of the trust lands is specified and it may be years before much of the land is used. While it was reasonable to infer a legislative intent to pay for 5,040 acres for which there was a present park land use in *University of Alaska*, it is not reasonable to infer that the legislature meant to pay for a quantity of trust land approaching one million acres for which in large part there is no present use. Thus, the payment remedy imposed in *University of Alaska* is not appropriate here. Because the state in passing the redesignation act went beyond the power which had been granted it with respect to the trust lands by Congress, the redesignation act must be declared invalid.

It follows from our conclusion that the redesignation legislation is invalid that the trust must be reconstituted to match as nearly as possible the holdings which com-

prised the trust when the 1978 law became effective. The case is remanded so that requisite findings can be made. We take this opportunity to provide some guidance to the trial court to simplify its task.

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.<sup>4</sup>

**AFFIRMED** in part, **REVERSED** in part and **REMANDED** for further proceedings consistent with this opinion.

MOORE, J., not participating.



In the Matter of the Application of: John L. McKAY, Jr., An Applicant for admission to the Practice of Law in Alaska and Membership in the Alaska Bar Association.

No. S-667.

Supreme Court of Alaska.

Sept. 27, 1985.

Applicant for Bar filed an appeal with Board of Governors of the Alaska Bar As-

4. Amicus raises questions regarding the title held by conveyancees and bona fide purchasers of mental health lands. In view of our disposi-

tion of this case, we deem it unnecessary to address those issues at the present time.

PROPOSED REVISIONS TO SB 67/HB 201

Page 1, line 9:

Delete "(a)".

Page 1, line 10:

Change entire line to read:

"(a) Except as provided in AS 38.05.800, the  
Alaska Mental Health Trust Authority"

Page 2, after line 8:

Insert:

"(b) In exercising its power under (a)(1), (2)  
or (3) of this section, the authority or its  
contractor under (a)(4) of this section is not bound  
by the provisions of AS 38.04 or AS 38.05, except  
that it shall

(1) comply with AS 38.05.285 subject to its  
obligations under AS 37.17.007;

(2) 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] of  
a preliminary decision to dispose of trust land and  
consider any written comments submitted within 30  
days of such notice prior to making a final  
decision; and

(3) give public notice in the manner provided  
under AS 38.05.945(b) and (c) of any final decision  
to dispose of trust land."

Page 2, line 21:

After "section" insert:

"In this section, "unrestricted general fund revenue  
of the state" means all the categories of accounting  
for money accruing to the state general fund that,

under the statewide accounting system as established on the effective date of this Act, were identified as revenue that was not restricted by law to a specific use."

Page 3, lines 8-24:

Make this subsection (b) of AS 38.05.800

Page 3, line 8:

Insert a new subsection (a) to read:

"(a) For purposes of this section:

(1) "conveyed or encumbered" means  
(A) covered by a land sale contract issued by the state or a municipality; (B) covered by a patent executed in favor of any person, entity, native corporation, municipality, or the University of Alaska; (C) selected by a native corporation under 43 U.S.C. § 1611; (D) covered by a claim of a native for an allotment under 43 U.S.C. § 1634 or by a certificate of allotment issued under applicable federal law; and (E) identified for conveyance pursuant to a land exchange agreement between the state and a native corporation, but not yet covered by a patent;

(2) "department" means the Department of Natural Resources;

(3) "land" includes both the surface estate and the mineral estate;

(4) "lease" means any oil and gas lease, coal lease, mining lease, land lease, and any other mineral or surface lease; and

(5) "right-of-way" means any right-of-way permit or easement, or any road, utilities, or

other improvements constructed pursuant to an approved land use application or permit or letter of entry issued by the department and for which no right-of-way permit has yet been issued."

Page 3, line 14:

Change entire line to read: "(A) a lease;"

Page 3, line 24:

Insert new subsections to read:

"(c) any land included in the corpus of the mental health trust shall be subject to the terms, conditions, and provisions of any lease, timber contract, material sale contract, land use permit, right-of-way, prospecting permit, exploration permit, or water right issued by the United States or the state on or before the effective date of this Act;

(d) any land included in the corpus of the mental health trust shall be subject to any mining claim or mining leasehold location that was acquired and continued in compliance with applicable laws and regulations on or before the effective date of this Act and that is continued in compliance with applicable laws and regulations thereafter;

(e) the department shall manage all land that is subject to any interest identified in (c) and (d) of this section for as long as such interest remains in effect;

(f) all land that is subject to any interest identified in (c) and (d) of this section shall be governed only by and managed by the department only pursuant to the laws and regulations applicable to

general grant land and not pursuant to any laws or regulations applicable to the other land of the trust except that the proceeds from the management of such land shall be included in the mental health trust income account in accordance with

AS 37.14.036;

(g) with respect to any particular lease, timber contract, mineral sale contract, land use permit, right-of-way, prospecting permit, exploration permit, water right, mining claim, or mining leasehold location, the owner of such interest, the department, and the mental health trust authority established under AS 47.30.011 may agree to waive the provisions of (e) and (f) of this section in which case the land involved will then be governed only by the laws and regulations applicable to the other land of the trust and will be managed like the other land of the trust;

(h) all land granted to the state under the Alaska Mental Health Enabling Act of 1956, P.L. 84-830, 70 Stat. 709, that is not included in the corpus of the mental health trust under (b) of this section is released and removed from the trust and shall no longer be subject to any of the provisions of the Alaska Mental Health Enabling Act of 1956, P.L. 84-830, 70 Stat. 709, or any claim of the trust;

(i) after giving public notice in the manner provided under AS 38.05.945(b) and (c), all land included in the corpus of the mental health trust under (b) of this section shall be conveyed by patent by the commissioner of the department to the mental health trust authority established under AS 47.30.011 and the trust authority takes its title

subject to any interest described in (c) and (d) of  
this section and subject to all of the provisions of  
this section."

## EXPLANATION OF PROPOSED REVISIONS TO SB 67/HB 201

1. The amendment to AS 37.14.009(a) is a cross-reference to the overriding provisions of AS 38.05.800 which divest the trust authority of land management authority over trust lands that are currently subject to third party interests (discussed more fully in paragraph 6 below).

2. To the extent that the trust authority is not divested of land management authority over trust lands by virtue of AS 38.05.800, the amendments to AS 37.14.009(b) add two safeguards of the public interest applicable to management of trust lands in lieu of AS 38.04 and AS 38.05. These amendments are intended to establish a public process for trust land management decisions and to insulate the bill from legal challenges under Article VIII, Section 10 of the Alaska Constitution.

2.1 Subsection (b)(1) requires land management decisions to comply with the state constitution and the principles of multiple purpose use consistent with the public interest. However, this subsection also recognizes that the trust principles established in AS 37.14.007, added by Chapter 66, SLA 1991, must take priority if they conflict with multiple purpose use.

2.2 Subsection (b)(2) provides a 30-day public comment period to precede final land disposal decisions. This period is intended to ensure that trust beneficiaries, trust land developers, people who use trust lands for other purposes, and other members of the public have an opportunity to have their views considered by the trust authority.

2.3 Subsection (b)(3) requires public notice of final decisions to dispose of trust lands.

3. The proposed revision to AS 37.14.036(c) adds a definition of "unrestricted general fund revenue of the state" to the bill.

4. A new subsection (a) containing key definitions is added to AS 38.05.800.

4.1 In order to clarify that the land in the trust corpus will include both surface and mineral estates, "land" is so defined.

4.2 In order to make the entire section read more easily, and to specifically cover as many types of leasehold estates as possible, "lease" is now a defined term.

4.3 The Department of Law has expressed concern over the ambiguity inherent in stating that "conveyed or encumbered" land is not being returned to the trust. To satisfy this concern, "conveyed or encumbered" is now defined. Conveyances to native corporations, municipalities, and the University of Alaska are now specifically included as "conveyed or encumbered" land. In addition, ANCSA selections are now defined as being "conveyed or encumbered." Finally, the Department of Law had concluded that under SB 67/HB 201 land with native allotment claims would go back to the trust and that the trust would be compelled to challenge these claims. To avoid this problem, lands covered by native allotment claims are now also defined as "conveyed or encumbered."

4.4 A definition of "right-of-way" is included to reflect the fact that roads and other improvements are constructed pursuant to land use permits and letters of entry. In some cases these valid rights have never been reflected in a right-of-way permit because the issuance of such permits has been barred by the superior court's preliminary injunction since July 9, 1990.

5. The existing language in AS 38.05.800 would become new subsection (b) of the section.

6. New subsections (c) through (i) would be added to AS 38.05.800.

6.1 New subsection (c) clarifies that any land remaining in the corpus of the trust remains subject to the terms, conditions, and provisions of all third party rights. This new subsection validates such third party interests, thus satisfying another concern of the Department of Law. (Chapter 66 currently contains no such provision, although the settling plaintiffs did agree in the Chapter 66 settlement agreement that the trust would take all of its land subject to third party interests.) Subsection (c) is not intended to validate or question the validity of RS 2477 rights-of-way which may or may not exist.

6.2 New subsection (d) clarifies that trust land will also remain subject to any mining claims or leasehold locations that were acquired and continued in compliance with current applicable law. Unlike the third party interests covered by subsection (c), there is no legal document to reflect the terms of mining claims or leasehold locations

(unless they are subsequently converted to a mining lease, which is covered by subsection (c)) and DNR normally makes no "validity" determination. The holders of mining claims and leasehold locations would therefore be subject to the status quo under SB 67/HB 201 -- they would face the same challenges from the trust that they could face from the state -- the trust simply takes subject to the claimant's rights, if any. If the claimant can satisfy the legal requirements of a valid claim, the claim will be valid. Original mental health trust land has been closed to mineral entry since November 5, 1985 pursuant to court and DNR orders so the only mining claims or leasehold locations of concern will be those that were validly located prior to that date.

6.3 Neither subsection (c) nor (d) use the common legal term "valid existing rights," because the Weiss plaintiffs have asserted that there are no valid third party rights in mental health trust land. Therefore, the revisions provide that the trust takes subject to any of the mentioned interests, whether or not they are valid from the point of view of the Weiss plaintiffs. As previously mentioned, the one exception is that the trust would stand in the state's shoes in being able to challenge any mining claim or leasehold location that has not been acquired and continued in accordance with existing applicable law.

6.4 New subsection (e) is a mandatory provision requiring DNR to manage all land that is subject to any third party interest enumerated in subsections (c) and (d) for as long as the enumerated interest remains in effect. This provision eliminates the possibility of litigation by third parties against the trust and the state on the ground that third parties have a contractual right to have DNR as their land manager.

6.5 New subsection (f) further provides that DNR will manage all land covered by third party interests pursuant to the laws and regulations applicable to general grant land, except that all proceeds from such lands shall be placed in the mental health trust income account. Again, this provision is necessary to prevent litigation by third parties against the trust and the state for breach of their contract rights.

6.6 By defining "land" in subsection (a) as both the surface and mineral estates, the proposed revisions clarify that if any interest has been carved out of either estate, then DNR must manage the entire estate like general grant land for as long as the third party interest remains in effect. This provision is necessary to avoid "split estate" problems that are likely to cause litigation. For example, in the case of an oil and gas lease, if DNR manages the

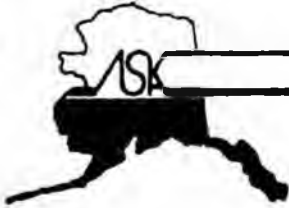
subsurface estate but the trust authority manages the surface estate, the trust authority might attempt to take action to impair the contract rights of the oil and gas lessee (such as by charging a surface use fee for the lessee's drilling rigs and equipment).

6.7 New subsection (g) allows a third party contract holder, the trust authority, and DNR to waive DNR's management of the land in question. This gives any affected third party the option to seek a three-way agreement with DNR and the trust to have the land subject to the third party's interest managed by the trust authority pursuant to whatever land management regulations and standards the trust authority eventually adopts for normal (unencumbered) trust lands.

6.8 New subsection (h) specifically states that all original mental health trust land not included in the corpus of the trust pursuant to AS 38.05.800 is released and removed from the trust and is no longer subject to any of the provisions of the original 1950 act. (Again, this is a provision which is implied, but is not explicitly stated, in Chapter 66.)

6.9 New subsection (i) specifically provides that DNR will actually convey the land that is being returned to the trust to the trust authority and that the trust authority takes its title subject to all protected third party interests and the restrictions of AS 38.05.800. The same public notice process (a 30-day public comment period) contemplated for conveyances of land under Chapter 66 from DNR to the trust authority will apply to reconstitution of the trust under SB 67/HB 201.

7. These revisions remove the concerns set forth in Sections V, VI, VIII, X.3, and X.4 of Charlie Cole's February 3, 1993 letter to Senator Mike Miller. The proposed revisions to SB 67/HB 201 are, like Chapter 66 itself, a "settlement" of the dispute different from that mandated by the Alaska Supreme Court in 1985. Although there is nothing in that 1985 decision indicating that the state has a "fiduciary duty" to manage trust lands solely to maximize revenue to the trust, even if this were true, this would be in direct conflict with third party contract rights. The proposed revisions protect these third party rights as long as the particular land interest remains in effect. When the third party land interest expires, terminates, or is surrendered, the subject land reverts to the trust for management pursuant to whatever standards have been adopted by the trust authority.



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### **ATTORNEY GENERAL SAYS CHAPTER 66 AMENDMENTS MAY NOT BE NECESSARY**

In a brief filed Wednesday, May 5, in superior court, the Attorney General said that legislation to amend Chapter 66 may not be necessary:

**"Even if the legislature does not pass the settling parties' proposed legislation, however, there are other options that the parties can explore."**

See pages 2-3 of the State's opposition brief (attached).

For more information, contact Jeff Jessee, 344-1002.

## IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

## FOURTH JUDICIAL DISTRICT AT FAIRBANKS

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;  
 ANYTA BOSEL, FRANCES DOULIN,  
 SHARON GOODWIN, AND GABRIEL MAYOC;  
 and E.L., M.K., and ALASKA  
 ADDICTION REHABILITATION SERVICES,

Plaintiffs,

v.

STATE OF ALASKA,

Defendant.

Case No. 4FA-82-2208 Civil

OPPOSITION TO MOTION TO  
 STAY PROCEEDINGS

Defendant State of Alaska ("state") opposes Marathon  
 Oil Company and Union Oil Company of California's ("oil company  
 intervenor-lessees") Motion to Stay Proceedings. Contrary to oil  
 company intervenor-lessees' allegations, the termination of the  
 settlement agreement on May 11, 1993 is not a certainty. It  
 would prejudice the other parties to this litigation, as well as  
 the public, to stay proceedings on issues this court has found  
 "crucial to the issues before the court." See Order re:  
 Intervention of Marathon and Union Oil Companies (January 22,  
 1993).

STATE'S OPPOSITION TO MOTION TO STAY PROCEEDINGS

PAGE 1

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Oil company intervenor-lessees give the impression that the settlement agreement will automatically terminate on May 11, 1993, the 60th day following the state's letter invoking Article III, section 31(c) of the Settlement Agreement. This is not true. Section 31(c) gives the parties at least sixty days to try to reach another agreement for relief to third-parties, however, nothing in that section prohibits the parties from jointly agreeing to extend the time within which to reach another agreement.

Prior to the court's April 26, 1993 Memorandum Decision and Order Re: Intervenor's Complaint ("Memorandum Decision") the state and settling plaintiffs had been exploring a variety of ways to provide relief to the affected third-parties. The Memorandum Decision, however, suggested a straightforward legislative resolution of the settlement's legal problems that would make it more likely that the court would ultimately approve the settlement and, as a result, provide relief to those third-parties. Since April 26, as oil company intervenor-lessees' noted, the parties have devoted their energies toward a legislative solution. See oil company intervenor-lessees' Memorandum in Support of Motion to Stay Proceedings at 3 n.1 ("oil company intervenor-lessees' memorandum"); see also B. Arke, "Hickel puts priority on mental health lands bill," Anchorage Daily News, at E-2 (May 4, 1993) (copy attached).

Even if the legislature does not pass the settling parties' proposed legislation, however, there are other options

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1 that the parties can explore. With all indications pointing  
2 toward chapter 66 being a legal and constitutional vehicle to  
3 settle this litigation and, thereby, providing the relief to  
4 affected third-parties, it is less likely the state would  
5 terminate the settlement agreement because of concerns about  
6 providing relief to third-parties. Indeed, approval of chapter  
7 66 as settlement may provide the most expeditious relief to  
8 affected third-parties.

9 The court has stayed the proceedings on preliminary  
10 approval for seventy days to give the state and settling parties  
11 time to try to reach agreement concerning the hypothecated land  
12 list and the application of AS 38.04 and 38.05 to the  
13 reconstitution. A prompt decision by the court with respect to  
14 the oil company intervenor-lessees' complaint would assist the  
15 parties in their negotiations. If the court granted summary  
16 judgment in favor of the state and settling plaintiffs, the  
17 parties would be even more inclined to reach agreement to "save"  
18 the settlement. If the court granted summary judgment in favor  
19 of the oil companies, either in whole or in part, the parties  
20 would then have the opportunity to respond to that decision at  
21 the same time they are negotiating over the two other problems.  
22 It would prejudice the state, settling plaintiffs, and the  
23 public, for the parties to spend substantial amounts of time and  
24 money to attempt to resolve two problems with the settlement, if  
25 several months later the settlement were to fail because the  
26 court were to find that oil and gas leases may not be transferred

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to the trust authority.

Moreover, it should be pointed out that the possibility of the termination of the settlement agreement is nothing new and has not been a compelling reason in the past for any of the court's decisions. The possibility of termination was obvious on January 14, 1993 when the court denied the state and settling plaintiffs' joint motion for relief for third-parties. The court issued that decision a week before granting the oil companies intervention, conditioned upon expedited discovery and briefing, so that their issues could be promptly addressed. See Order Re: Intervention of Marathon and Union Oil Companies at 2 (January 22, 1993). This court, in denying the re-filed joint motion on April 19, 1993, again recognized the obvious possibility that either party might terminate the settlement agreement,<sup>1</sup> yet such possibility did not result in this court piecemealing its recent Memorandum Decision addressing environmental intervenors' challenges to chapter 66.

Staying the proceedings on oil company intervenor-lessees' complaint will only serve to further the strategy of opponents to chapter 66 who have brought challenges to chapter 66 serially so as to perpetually extend the preliminary approval process. The issues related to the oil company intervenor-lessees' complaint have been fully briefed and will be ripe for decision as soon as oral argument is concluded. It will further

<sup>1</sup> See Order at 2 (April 19, 1993) (The state's notice of termination "is merely the exercise of a right which the court knew the State had and could use").

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the interests of judicial economy to conduct the oral argument and render the decision now while the issues are still fresh in both the court's and the parties' attorneys' minds.

That the court should render a prompt decision on oil company intervenor-lessees' claims holds true even if the settlement embodied in chapter 66 and the settlement agreement is "terminated." This is because the issues raised by oil company intervenor-lessees' complaint in intervention will not necessarily become mooted by termination of the settlement agreement. These issues are: "(1) lease assignability, (2) applicability of the Administrative Procedure Act ("APA") to DNR order 135 and the broad land-use provisions of the Settlement Agreement, and (3) the legality of the Agreement's provision regarding sharing of confidential materials." Oil company intervenor-lessees' memorandum at 2.

With respect to the first issue, the parties to this litigation will be faced with the issue of whether oil and gas leases may be transferred from DNR to "trust status" even if there is no settlement and the state and plaintiffs are back in litigation. There are at least three active oil and gas leases on original trust land.<sup>2</sup> Pursuant to the Alaska Supreme Court's

<sup>2</sup> In the affidavit of Carol Wilkinson attached as exhibit 1 to the state's Reply to Opposition of Marathon and Unocal to Summary Judgment Motions of State and Settling Plaintiffs (April 17, 1993), the state identified leases ADL numbers 21129 and 359150 as active oil and gas leases containing original mineral rights trust land still owned by the state. In preparing this opposition the state re-reviewed file 359150 and determined that that lease had been terminated in December 1990.

(continued...)

1 direction in Weiss v. State, all original trust lands that have  
2 not been sold must be returned to trust status. In any  
3 reconstitution of the trust, the court will almost certainly need  
4 to resolve the issue of whether oil and gas leases on original  
5 trust land may be returned to trust status, either by conveyance  
6 to the Trust Authority under chapter 66 or otherwise.

7 Although there would be no "trust authority" in a  
8 litigated reconstitution, it is undisputed that the reconstituted  
9 trust lands will be administered as trust lands rather than as  
10 general grant lands. This means that the objections oil company  
11 intervenor-lessees' raise with respect to the proposed Trust  
12 Authority managing oil and gas leases would apply with equal  
13 force to the state managing oil and gas leases returned to  
14 reconstituted trust status. See e.g. oil company intervenor-

15  
16  
17 <sup>2</sup> (...continued)

18 The settling plaintiffs have identified oil and gas leases  
19 ADL numbers 21129 (lessee: Shell), 60553 (lessee: Chugach  
20 Electric), 319688 (lessee: Chugach Electric), 359157 (lessee:  
21 Micallef), 319159 (lessee: Danco) as active leases containing  
22 original trust land still owned by the state (compare tables I  
23 and II of the affidavit of David L. Thomas attached as exhibit B  
24 to Memorandum in Support of Motion of Settling Plaintiffs for  
25 Summary Judgment Dismissing Complaint in Intervention of Oil  
26 Companies (March 22, 1993). The state terminated leases 359157  
and 359159; however, that termination is being appealed. C.f.  
James W. White's Motion to Amend Preliminary Injunction filed in  
this case on July 30, 1992; State's Opposition to James W.  
White's Motion to Amend Preliminary Injunction dated August 17,  
1992; Orders Denying James W. White's Motion to Amend Preliminary  
Injunction, Denying J. White's request for Hearing, and Denying  
Intervention of J. White all dated September 1, 1992.

It appears then, that there are at least three active oil  
and gas leases containing original trust land still owned by the  
state - - ADL numbers 21129, 60553 and 319688.

STATE'S OPPOSITION TO MOTION TO STAY PROCEEDINGS

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1 lessees' Memorandum in Support of Motion for Summary Judgment,  
 2 16-32 (March 22, 1993); Reply of Marathon and Unocal to State and  
 3 Settling Plaintiffs' Oppositions to Motion for Summary Judgment,  
 4 16-12, 27 (April 19, 1993).

5 While none of the three remaining original trust land  
 6 leases are Marathon or Union leases, the arguments raised by oil  
 7 company intervenor-lessees against the transfer of their leases  
 8 also apply to oil and gas leases held by other persons and  
 9 companies. Indeed, oil company intervenor-lessees, in all their  
 10 briefing, have not once drawn a distinction between an oil and  
 11 gas leases issued on original trust land and an oil and gas  
 12 leases issued on general grant land.<sup>3</sup> The state used the same  
 13 standard lease forms for leasing original mental health trust  
 14 lands and general grant lands. See State's Nonopposition to  
 15 Settling Plaintiffs' Summary Judgment Motion and Opposition to  
 16 Marathon and Unocal's Summary Judgment Motion at 13 and Exhibit  
 17 2 thereto (April 8, 1993); State's Memorandum in Support of  
 18 Motion for Summary Judgment with Respect to Issues Raised in  
 19 Marathon and Unocal's Complaint, Exhibit 14 at 24-38 (March 22,  
 20 1993) ("state's memorandum"); and Memorandum in Support of Motion  
 21 of Settling Plaintiffs for Summary Judgment Dismissing Complaint  
 22 in Intervention of Oil Companies, Affidavit of David Thomas,  
 23 Exhibit E at 5-7 (March 22, 1993) ("settling plaintiffs'

24  
 25  
 26 <sup>3</sup> Table II of David Thomas' affidavit referenced in footnote 2  
 identifies ten oil and gas leases containing both original trust  
 land and general grant land where either Union or Marathon was,  
 or is, the lessee.

memorandum"). Just because "[a] 'strict reconstitution' of the trust pursuant to Veiss is not of direct concern to Marathon and Unocal" that does not mean that a strict reconstitution is of no concern to the state or the public. Either the oil and gas leases can be transferred to trust status or they cannot be transferred. Having had the issue of the transferability of the leases raised, and having fully briefed it, the state is not willing to drop this issue and risk later litigation by other oil and gas lessees challenging the return of their leases to trust status.

With respect to the second and third issues, the applicability of the APA to the negotiating and drafting of a settlement agreement and department order, and the sharing of confidential information between the state and settling plaintiffs, these issues are almost certain to arise in any future proposed settlement of this litigation. The settling plaintiffs have been adamant that any settlement of this case must be accompanied by a settlement agreement. Both the state and settling plaintiffs have articulated their strong beliefs that a settlement agreement cannot be and should not be promulgated as a regulation. See e.g. state's memorandum at 45-49; settling plaintiffs' memorandum at 68-74. The state and settling plaintiffs have also explained why a department order such as Department Order #115 is not a regulation and need not be promulgated like one. State's memorandum at 49-54; settling

<sup>6</sup> Oil company intervenor-lessees' memorandum at 5.

1 plaintiffs' memorandum at 53-68. Similarly, the state and  
 2 settling plaintiffs negotiated a procedure in the settlement  
 3 agreement for the sharing of confidential information between  
 4 them that the parties strongly believe is legal and  
 5 constitutional. They would likely use the same procedure again  
 6 in any future settlement agreement that includes a land exchange  
 7 as part of the compensation provided.

8 Thus, even if the parties terminate the current  
 9 settlement agreement, should they enter into any future  
 10 settlement agreement, the APA and confidentiality issues will  
 11 likely rise again. Therefore, it is important to the settling  
 12 parties for the court rule on the cross motions for summary  
 13 judgment. Even if the APA and confidentiality issues become  
 14 technically moot in the event the parties decide to terminate the  
 15 proposed settlement agreement (of course, these issues are not  
 16 now moot as the settlement agreement is very much alive), a court  
 17 may still resolve disputes that are "moot" under the public  
 18 interest exception to the mootness doctrine. Alaska Fish  
 19 Spotters Assoc. v. State, 838 P.2d 798, 800 n.1 (Alaska 1992)  
 20 (regulation that was the subject of appeal was withdrawn after  
 21 briefs submitted to court, court decided case under public  
 22 interest exception to the mootness doctrine). The public  
 23 interest exception involves consideration of three main factors:

24 (1) whether the disputed issues are capable  
 25 of repetition, (2) whether the mootness  
 26 doctrine, if applied, may repeatedly  
 circumvent review of the issues, and (3)  
 whether the issues presented are so  
 important to the public interest as to

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justify overriding the mootness doctrine.  
Peninsula Marketing Ass'n v. State, 817 P.2d 917, 920 (Alaska  
1991). The public interest exception to the mootness doctrine  
applies to the trial courts as well. See Kitluksietti v. Arco  
Alaska Inc., 802 F. Supp. 832, 838 (D. Alaska 1994) appeal  
dismissed and vacated 782 F. 2d 800.

The issues raised by oil company intervenor-lessees  
fall squarely within the public interest exception. As explained  
above, the APA and confidentiality provision are likely to arise  
again if there is a future settlement agreement. Applying the  
mootness doctrine, and staying the proceedings, would mean that  
the parties would face substantial uncertainty if they attempted  
to negotiate any future settlement. If the parties knew in  
advance that they must approach the negotiation of a settlement  
agreement as though the state were promulgating a regulation,  
then the parties would try to figure out a way to do so. If,  
however, the parties are not advised that this is the law until  
after they agree to another settlement agreement, then, they  
would be forced to start all over again resulting in a tremendous  
waste of time and effort - all at public expense. In addition  
to this being a costly path to follow, it would also frustrate  
the public interest in a prompt resolution of this litigation.  
The more guidance the court can provide to the parties, the more  
likely it is that the parties may someday reach a mutually  
agreeable and lawful settlement.

In sum, the issues raised by oil company intervenor-

1 lessees are far from moot. A prompt decision on their complaint  
2 can only help to expedite the resolution of this litigation. The  
3 state urges the court to deny oil company intervenor-lessees'  
4 motion to stay the proceedings.

5 Respectfully submitted this 5 day of May, 1993.

6 CHARLES E. COLE  
7 ATTORNEY GENERAL

8 By:

*Wendy Feuer*  
9 Wendy S. Feuer  
10 Assistant Attorney General

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5-5-93  
JFC-93  
# 79

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 ENVIRON- )  
MENT, 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

FILED in the Trial Courts  
State of Alaska, Fourth District

APR 26 1993

Clerk, Trial Courts

By \_\_\_\_\_ Deputy

MEMORANDUM DECISION AND ORDER  
RE: INTERVENORS' COMPLAINT

I certify that on 4.26.93  
copies of this form were sent to  
CLERK, lisa

Walker  
Hartstein  
Jesse  
Valland (R+G)  
AGO - Anch.  
Johannsen (Perkins Cow)  
Meyer (TH+R)

Rubini (BHB+C)  
Machentz  
Jorgensen  
Rahbeck (A+R)  
Hasson (BP+K)

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## 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,<sup>1</sup> ["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.<sup>2</sup> 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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<sup>1</sup> At the time the motion was filed a third group of plaintiffs had joined the settlement. They have since withdrawn.

<sup>2</sup> 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<sup>3</sup> 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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<sup>3</sup> 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 ongoing.

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 Intervenor's 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 Intervenorrs claim that Article VIII, Section 10 of the Alaska Constitution has been violated through the enactment of Chapter 66, SLA 1991. The Intervenorrs 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 Intervenor asserts 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 Intervenor argues 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 Intervenor 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 ensnared 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.<sup>4</sup> 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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<sup>4</sup> 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).

Proceedings 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<sup>5</sup> 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<sup>6</sup>; 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.<sup>7</sup>

The Intervenor asserts 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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<sup>5</sup> Chap. 66, § 10, to be codified as AS 37.17.007(b) and AS 37.14.009(a)(1).

<sup>6</sup> Chap. 66, § 55(e)(1)(3)(4)&(6).

<sup>7</sup> Chap. 66, § 26, to be codified as AS 47.30.031, requires the AMHTA to adopt regulations.

The Intervenor argues 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.<sup>8</sup> The Intervenor points out that the fundamental requirements of AS 38.04 and AS 38.05<sup>9</sup> 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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<sup>8</sup> Thirteen of the fifty-five delegates to the constitutional convention were members 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.

<sup>9</sup> 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<sup>10</sup> 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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<sup>10</sup> 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 Intervenor argues that Chapter 66 violates Article IX, Section 15 of the Alaska Constitution. They acknowledge that the supremacy clause of the United States Constitution<sup>11</sup> 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 Intervenor next asserts 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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<sup>11</sup> 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 Intervenor's 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,"<sup>12</sup> 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 Rav 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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<sup>12</sup> 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.<sup>13</sup>

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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<sup>13</sup> The Intervenor's 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 Intervenor's 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.<sup>14</sup> 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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<sup>14</sup> 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 Intervenor asserts 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 Intervenor 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 Intervenor 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 Intervenor 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.<sup>15</sup> See, e.g., National Labor Relations Board v. Natural Gas Utility District of Hawkins County, 402 U.S. 602, 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.<sup>16</sup> 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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<sup>15</sup> The court, therefore, agrees with the Intervenor 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.

<sup>16</sup> 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."<sup>17</sup> 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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<sup>17</sup> 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:

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.

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,<sup>18</sup> 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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<sup>18</sup> 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.<sup>19</sup> 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<sup>20</sup> 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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<sup>19</sup> 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).

<sup>20</sup> 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.<sup>21</sup>

The Intervenor's 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 5(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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<sup>21</sup> The Intervenor's 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 at 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.<sup>22</sup> 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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<sup>22</sup> 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.<sup>23</sup> 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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<sup>23</sup> 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 Intervenor's 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.<sup>24</sup>

The Intervenor's 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 81 (Alaska 1988) that the term "appropriations" in Article XI, Section 7<sup>25</sup> included the appropriation of land, the Intervenor's argue that the term should have the same meaning for purposes of Article II, Section 13. Further, the Intervenor's 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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<sup>24</sup> 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.

<sup>25</sup> 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.<sup>26</sup> 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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<sup>26</sup> 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.<sup>27</sup> 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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<sup>27</sup> 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).<sup>28</sup>

There is little in the purpose of the appropriations restriction which supports the Intervenor's 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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<sup>28</sup> 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.<sup>29</sup> This makes sense, because the specific land parcels and the management of those parcels are related concerns that often should be considered together.<sup>30</sup>

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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<sup>29</sup> 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).

<sup>30</sup> 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.<sup>31</sup> It appears that some lands in addition to the Cook Inlet lease lands were added between May 20 and June 19.<sup>32</sup>

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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<sup>31</sup> 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.

<sup>32</sup> 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 a land.

at 15- . The Finance Committee attached a Letter of Intent regarding yearly reports to the legislature. Id. at 47.<sup>33</sup>

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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<sup>33</sup> 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.

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Id. at 19.

The full House considered SB 65 (as ame  
Finance Committee) on May 20, 1991. 1991 House Journal  
Representative Finkelstein raised a question regarding  
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.<sup>34</sup> The general statement of management standards is found at page 3:

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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<sup>34</sup> 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." Aboud v. Gorsuch, 703 P.2d

1158, 1160 (Alaska 1985). These questions are deemed nonjusticiable. "It is not possible to draw the exact boundary separating justiciable and nonjusticiable questions." Aboud 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.<sup>35</sup>

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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<sup>35</sup> 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 Intervenor 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, 627 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.<sup>36</sup> 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.<sup>37</sup> 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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<sup>36</sup> 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.

<sup>37</sup> 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 Intervenor 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 Intervenor assert that the first interpretation is better, but that under either interpretation, an unlawful and unconstitutional delegation has occurred. The Intervenor assert that a delegation to a private party, such as plaintiffs, is unlawful. The Intervenor 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.<sup>38</sup> The problem stems from the fact that not only must the delegation be implied, but the standards must also be implied.<sup>39</sup> 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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<sup>38</sup> 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.

<sup>39</sup> 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.<sup>40</sup>

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<sup>40</sup> The Intervenor's 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

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. Sabro 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.<sup>41</sup>

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.

<sup>41</sup> 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.

Hypothecated Lands List resulted from an unconstitutional delegation of authority from the legislature. The hypothecation is unconstitutional as currently written.<sup>42</sup>

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 Intervenor argues that the hypothecation of state lands in Section 56(a) violates that provision.<sup>43</sup>

The Intervenor argues 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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<sup>42</sup> 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.

<sup>43</sup> 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.

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 Intervenor.

The Intervenor argues further that hypothecation conveys a security interest in land which is an "interest" within the meaning of Article VIII, Section 10. The Intervenor argues 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

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.<sup>44</sup> 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.<sup>45</sup> Where a security interest in land

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<sup>44</sup> The court acknowledges that the AMHTA has the authority to sell trust lands. However, that is an issue separate from hypothecation.

<sup>45</sup> Whether an entity is a state agency is determined by the purpose involved. See Alveska 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

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(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

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 Intervenor's conclusion that the lands are hypothecated to the Settling Plaintiffs under the Proposed Settlement Agreement. The Intervenor is 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.

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 Intervenor asserts 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 Intervenor asserts 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.<sup>46</sup> They assert that the trustee must exercise the duty of care one would expect of a

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<sup>46</sup> In their first brief, the Intervenor argued that private trust principles apply to public trusts. P. Int. Br. at 137. The Intervenor 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.

fiduciary. Finally, they assert that the legislature's "blind hypothecation" of lands violated that duty of care.

The State asserts the public trust doctrine<sup>47</sup> 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 Owsichuk 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,<sup>48</sup> 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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<sup>47</sup> The public trust doctrine is a common law doctrine which finds its 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).

<sup>48</sup> 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.); Alveska Ski Corp. v. Holdsworth, 426 P.2d 1006, 1011 (Alaska 1967).

applicable to the public lands. In Owsichuk, 763 P.2d at 494-95, the Alaska Supreme Court determined that the common use clause of Article VIII, Section 3<sup>49</sup> 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. Owsichuk, 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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<sup>49</sup> Article VIII, section 3 provides: "Wherever occurring in their natural state, fish, wildlife, and waters are reserved to the people for common use."

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.

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,<sup>50</sup> 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.<sup>51</sup> 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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<sup>50</sup> See 11 AAC 55.280(7).

<sup>51</sup> 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.

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.<sup>52</sup> They assert that AS 38.50 is the only part

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<sup>52</sup> 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 un rebutted 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 Intervenor was 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

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.

(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

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,<sup>53</sup> and on the floor of the Senate by Senator Duncan, the original sponsor of SB 65.<sup>54</sup> 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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<sup>53</sup> 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.

<sup>54</sup> A transcript of Senator Duncan's comments can be found in State's Exh. 13-D.

Attorney General Koester repeated, 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

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

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

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.<sup>55</sup> See 11 AAC 55.202. Second, any unclassified land could be transferred to the AMHTA under an interagency land management assignment.<sup>56</sup> 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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<sup>55</sup> 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.

<sup>56</sup> 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.

procedures are fairly complex,<sup>57</sup> 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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<sup>57</sup> 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)).

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.<sup>58</sup>

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<sup>58</sup> 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.

VII. DOES CHAPTER 66 PROVIDE ADEQUATE SAFEGUARDS OF THE PUBLIC INTEREST FOR THE DISPOSAL OF STATE LANDS TO ALASKA MENTAL HEALTH TRUST AUTHORITY?

The Intervenor's 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,<sup>59</sup> 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

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<sup>59</sup> The court expressly does not decide this question.

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

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.

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 Intervenor's 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.<sup>60</sup> The Intervenor's 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

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<sup>60</sup> 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 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).<sup>61</sup>

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.<sup>62</sup> 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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<sup>61</sup> 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).

<sup>62</sup> The State and Settling Plaintiffs have also so agreed in art. IV, § 5 of the PSA.

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 Intervenor, it would be arguable that no controversy exists. However, it is clear that the positions taken by the Settling Plaintiffs and the Intervenor 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

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.<sup>63</sup> 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

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<sup>63</sup> 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.

lands by statute.<sup>64</sup> 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.<sup>65</sup> 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.<sup>66</sup> 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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<sup>64</sup> However, the University has voluntarily complied with the plans, as could the AMHTA.

<sup>65</sup> 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.

<sup>66</sup> 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.

land not subject to the plan.<sup>67</sup>

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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<sup>67</sup> 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.

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.

### 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 Intervenor's 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 Intervenor's 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

Plaintiffs are granted partial summary judgment with respect to Count III of the Public Interest Intervenor's 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 Intervenor's 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

Plaintiffs are granted partial summary judgment on Counts VI, VIII, and IX of the Public Interest Intervenor's complaint, consistent with this decision. The Public Interest Intervenor is 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 Intervenor is granted partial summary judgment on Count X of their complaint, consistent with this decision.

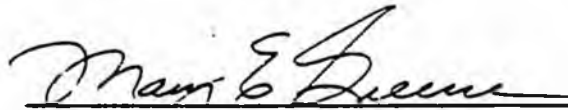
Part VII. The court has concluded that even if the planning and classification provisions of AS 38.04 and AS 38.05 were not applied to the reconstitution of substitute lands, the reconstitution would not violate Article VIII, Section 10 of the Alaska Constitution. Accordingly, the State and Settling Plaintiffs are granted partial summary judgment on Count IV of the Public Interest Intervenor's 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

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  
Superior Court Judge

## M E M O R A N D U M

TO: All Counsel for main parties in Weiss v. State

FROM: Judge Greene *MEG*

RE: Weiss v. State  
4PA-82-2208 Civil

DATE: April 26, 1993

The decision on the Public Interest Intervenor's motion is final today. I have asked my secretary to fax each of you the "Conclusions and Order" portion. Since the decision is more than 100 pages long, we will not fax the entire decision. Copies have been mailed to you today. Copies are available in my chambers if you want someone to pick one up for you and send it more expeditiously.

My secretary, Barb Woods, will be calling all counsel except counsel for the Public Intervenor in two days to ascertain whether you want me to continue with the decisions on the oil companies' intervention action and the preliminary approval.

I understand that failure of hypothecation is a potential "deal-breaker" under the Proposed Settlement Agreement, art. III, sec. 27. I have held that the preparation of the Hypothecated Land List was the result of an unconstitutional delegation. Therefore, I propose to stay action on the decision re: preliminary approval for 72 days to allow time for the parties to decide what to do. Objections are welcome. If anyone objects, I will proceed with the decision. At that point, anyone wanting a stay should move for a stay.

I propose continuing with the oil companies' intervention action. If anyone objects, they should file an expedited motion for stay.

MEG:baw

cc: File

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 Intervenor's complaint, consistent with this decision.

Part II. The court has concluded that section 202(a) 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 Intervenor's 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(1) of the Alaska Statehood Act. Accordingly, the State and Settling

Weiss v. State  
4FA-82-2208 Civil  
MD&O

Plaintiffs are granted partial summary judgment with respect to Count III of the Public Interest Interveners' 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 Interveners' 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

Plaintiffs are granted partial summary judgment on Counts VI, VIII, and IX of the Public Interest Intervenor's complaint, consistent with this decision. The Public Interest Intervenor is 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 Intervenor is granted partial summary judgment on Count I of their complaint, consistent with this decision.

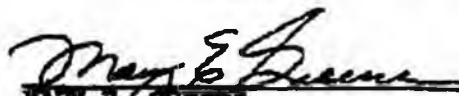
Part VII. The court has concluded that even if the planning and classification provisions of AS 38.04 and AS 38.05 were not applied to the reconstitution of substitute lands, the reconstitution would not violate Article VIII, Section 10 of the Alaska Constitution. Accordingly, the State and Settling Plaintiffs are granted partial summary judgment on Count IV of the Public Interest Intervenor's 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

general grant lands of the state. Accordingly, the state and Settling Plaintiffs are granted partial summary judgment on count XI of the Public Interest Intervenor's 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 Intervenor's 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  
Superior Court Judge

# FISCAL NOTE

4/2/93

F910

## STATE OF ALASKA 1993 LEGISLATIVE SESSION

Revision Date 31-Mar-93  
Title: "Mental Health Trust Alternative Settlement Project"  
Sponsor: Senate Finance Committee  
Requestor: Senate Judiciary Committee

BILL NO. CSSB67(JUD)  
Department Affected: Natural Resources  
BRU: Resource Development  
Components: Land Development  
Component Serial No. 431

### EXPENDITURES/REVENUES:

(Thousands of Dollars)

| OPERATING              | FY 94          | FY 95        | FY 96        | FY 97        | FY 98        | FY 99        |
|------------------------|----------------|--------------|--------------|--------------|--------------|--------------|
| PERSONAL SERVICES      | 816.4          | 599.4        | 238.3        | 153.3        | 153.3        | 153.3        |
| TRAVEL                 | 1.5            | 1.5          | 0.5          | 0.5          | 0.5          | 0.5          |
| CONTRACTUAL            | 190.0          | 325.0        | 0.5          | 0.5          | 0.5          | 0.5          |
| SUPPLIES               | 16.5           | 10.5         | 0.1          | 0.1          | 0.1          | 0.1          |
| EQUIPMENT              |                |              |              |              |              |              |
| LAND&STRUCTURES        |                |              |              |              |              |              |
| GRANTS,CLAIMS          |                |              |              |              |              |              |
| MISCELLANEOUS          |                |              |              |              |              |              |
| <b>TOTAL OPERATING</b> | <b>1,024.4</b> | <b>936.4</b> | <b>239.4</b> | <b>154.4</b> | <b>154.4</b> | <b>154.4</b> |

|                |            |            |            |            |            |            |
|----------------|------------|------------|------------|------------|------------|------------|
| <b>CAPITAL</b> | <b>0.0</b> | <b>0.0</b> | <b>0.0</b> | <b>0.0</b> | <b>0.0</b> | <b>0.0</b> |
|----------------|------------|------------|------------|------------|------------|------------|

|                             |            |            |            |            |            |            |
|-----------------------------|------------|------------|------------|------------|------------|------------|
| <b>REVENUE fund source:</b> | <b>0.0</b> | <b>0.0</b> | <b>0.0</b> | <b>0.0</b> | <b>0.0</b> | <b>0.0</b> |
|-----------------------------|------------|------------|------------|------------|------------|------------|

### FUNDING:

(Thousands of Dollars)

|                          |                |              |              |              |              |              |
|--------------------------|----------------|--------------|--------------|--------------|--------------|--------------|
| 1002 Federal Receipts    |                |              |              |              |              |              |
| 1003 GF Match            |                |              |              |              |              |              |
| 1004 GF                  |                |              |              |              |              |              |
| 1005 GF/Program Receipts |                |              |              |              |              |              |
| 1006 GF/MHTIA            | 1,024.4        | 936.4        | 239.4        | 154.4        | 154.4        | 154.4        |
| Other                    |                |              |              |              |              |              |
| <b>TOTAL</b>             | <b>1,024.4</b> | <b>936.4</b> | <b>239.4</b> | <b>154.4</b> | <b>154.4</b> | <b>154.4</b> |

### POSITIONS:

|           |    |    |   |   |   |   |
|-----------|----|----|---|---|---|---|
| FULL-TIME | 13 | 10 | 4 | 2 | 2 | 2 |
| PART-TIME | 2  | 1  | 1 | 1 | 1 | 1 |
| TEMPORARY | 1  | 1  | 0 | 0 | 0 | 0 |

Estimate of current year (FY93) Impact: \$

### ANALYSIS:

(Attach a separate page if necessary)

This funding analysis is based upon the duties imposed upon the Department for Mental Health Trust reconstitution and Trust Land Management specified in the CS for SB67(JUD).

Prepared by: Ron Swanson, Director

Division: Land Development

Approved by Commissioner: Glenn A. Olds

Agency: Department of Natural Resources

Phone: 762-2692

Date: 31-Mar-93

Date: 31-Mar-93

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# MEMORANDUM

Department of Natural Resources

State of Alaska

Division of Land

TO: Ron Swanson, Director

DATE: March 30, 1993

TELEPHONE NO.: 762-2239

FROM: Bruce Phelps, Project Manager  
Mental Health Settlement Unit

SUBJECT: Explanation of FY 94 Budget:  
CS FOR SB 67 (JUD)

This memorandum describes the activities associated with the funding provided in the Attachment. The level of effort reflects the trust reconstitution process and land management responsibilities specified under the CS for SB 67 (JUD).

## DIVISION OF LAND

### 7100 Personnel Services

The Division of land will perform extensive title, appraisal, mapping, and land management functions to carry out the requirements of this legislation. Under title activities, it will be necessary to segregate Original Mental Health Trust land (OMHTL) into the conveyable and non-conveyable categories established by the legislation. OMHTL parcels that are identified as non-conveyable must be mapped and included within the Mental Health Sub-system of the Land Administrative System.<sup>1</sup> Conveyable OMHTL must be identified, the terms and conditions of conveyance must be described, and these terms and conditions included within either patent or interim conveyance documents. The results of title research will then be re-written to correspond to the actual language used in Departmental conveyance documents. The results of this effort must be uploaded to the Land Administration System in order to annotate the textual and graphic record. In addition, it will be necessary to undertake limited survey work, and to identify the presence of hazardous substances on conveyable OMHTL. Although the CS for SB 67 eliminates the vast amount of survey work previously required under SB 67, some limited surveying will probably be necessary to establish a datum point. The Department will also actively manage OMHTL, and a new Department Order must be prepared. The requirement to manage conveyable OMHTL will continue in future years, although the need to manage non-conveyable should cease once the latter has been properly identified.

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<sup>1</sup> Although many aspects of the work involved in the Trust reconstitution process conducted under Chapter 66, SLA 1991, can be used, it will still be necessary to re-evaluate the results of this effort against the requirements of any new legislation that may be adopted.

### 7300 Contractual Services

Contractual services will be required for two activities: the inventory of hazardous substances and some limited cadastral survey of certain conveyable OMHTL. The former will identify the presence of such substances, for inclusion in the title conveyance documents.

## LAND RECORD INFORMATION SECTION

### 7100 Personnel Services

The Land Records Information Section (LRIS) will provide computer support extracting and reporting on information contained in the state's Land Administration System, and modifying existing computer systems to properly account for revenues. LRIS will provide geographic mapping at various scales and complexity as required by the project. LRIS will also be responsible for noting the final disposition of all affected lands to the graphic record, and will annotate the textual record on LAS for Legislatively Designated Areas held by the state as collateral.

PROJECT COSTS: MENTAL HEALTH TRUST RECONSTITUTION  
SB 67<sup>1</sup>

DIVISION OF LAND

| 7100 Personnel Services            | FY 94       | FY 95        |
|------------------------------------|-------------|--------------|
| Mental Health Project Team         |             |              |
| (1) Project Manager                | 86.3        | 86.3         |
| (1) Land Manager                   | 59.3        | 59.3         |
| (2) NRO II                         | 130.0       | 130.0        |
| (2) NRO I                          | 109.4       | 109.4        |
| (1) CT III                         | 39.9        | 39.9         |
| (1) DPC II                         | 41.5        | 41.5         |
| (1) College Intern                 | <u>13.5</u> | <u>13.5</u>  |
|                                    | 479.9       | 479.9        |
| Land & Resource Management         |             |              |
| (1) Cadastral Surveyor III (3 mo.) | 29.5        | 29.5         |
| (1) Cartographer II (3 mo.)        | 12.0        |              |
| Subtotal                           | 521.4       | 509.4        |
| 7200 Travel                        |             |              |
| Mental Health Project Team         | <u>1.5</u>  | <u>1.5</u>   |
| Subtotal                           | 1.5         | 1.5          |
| 7300 Contractual Services          |             |              |
| Mental Health Project Team         |             |              |
| Hazardous Substance Inventory      | 125.0       | 75.0         |
| Land & Resources                   |             |              |
| Cadastral Survey                   | <u>50.0</u> | <u>250.0</u> |
| Subtotal                           | 175.0       | 325.0        |
| 7400 Supplies                      |             |              |

---

<sup>1</sup> Based on CS for SB67 (JUD) and HB 201 Resources.

|                            |            |            |
|----------------------------|------------|------------|
| Mental Health Project Team | 5.0        | 5.0        |
| Land & Resources           | <u>1.5</u> | <u>1.5</u> |
| Subtotal                   | 6.5        | 6.5        |
| TOTAL                      | 704.4      | 842.4      |

|                     |           |           |
|---------------------|-----------|-----------|
|                     | <u>94</u> | <u>95</u> |
| Personnel-Full time | 8         | 8         |
| Part time           | 2         | 1         |
| Temporary           | 1         | 1         |

SB 67

LAND RECORD INFORMATION SECTION

|                                            |             |             |
|--------------------------------------------|-------------|-------------|
| Personnel Services                         | FY 94       | FY 95       |
| (1) Analyst/Programmer IV                  | 77.0        | 0           |
| (1) Analyst Programmer III                 | 68.0        | 0           |
| (1) Natural Resource Officer II            | 65.0        | 0           |
| (1) Natural Resource Officer I             | 50.0        | 53.0        |
| (1)(Data Processing Clerk I                | <u>35.0</u> | <u>37.0</u> |
| Subtotal                                   | 295.0       | 90.0        |
| Contractural Services                      |             |             |
| DOA Data Processing Chargeback             | <u>15.0</u> | <u>0</u>    |
| Subtotal                                   | 15.0        | 0           |
| Supplies                                   |             |             |
| Plotter, Micrographic<br>& Office Supplies | <u>10.0</u> | <u>4.0</u>  |
| Subtotal                                   | 10.0        | 4.0         |
| TOTAL                                      | 320.0       | 94.0        |

|                     |           |           |
|---------------------|-----------|-----------|
|                     | <u>94</u> | <u>95</u> |
| Personnel-Full time | 5         | 2         |

# TOTAL PROJECT COSTS

|                       | FY 94        | FY 95       |
|-----------------------|--------------|-------------|
| Personnel Services    |              |             |
| Division of Land      | 521.4        | 509.4       |
| LRIS                  | <u>295.0</u> | <u>90.0</u> |
| Subtotal              | 816.4        | 599.4       |
| Travel                |              |             |
| Division of Land      | 1.5          | 1.5         |
| LRIS                  | <u>0</u>     | <u>0</u>    |
| Subtotal              | 1.5          | 1.5         |
| Contractural Services |              |             |
| Division of Land      | 175.0        | 325.0       |
| LRIS                  | <u>15.0</u>  | <u>0</u>    |
| Subtotal              | 190.0        | 325.0       |
| Supplies              |              |             |
| Division of Land      | 6.5          | 6.5         |
| LRIS                  | <u>10.0</u>  | <u>4.0</u>  |
| Subtotal              | 16.5         | 10.5        |
| TOTAL                 | 1024.4       | 936.4       |

|           | <u>FY 94</u> |      |       | <u>FY 95</u> |      |       |
|-----------|--------------|------|-------|--------------|------|-------|
|           | Land         | LRIS | Total | Land         | LRIS | Total |
| Positions |              |      |       |              |      |       |
| Full time | 8            | 5    | 13    | 8            | 2    | 10    |
| Part time | 2            |      | 2     | 1            |      | 1     |
| Temp.     | 1            |      | 1     | 1            |      | 1     |

# OUT-YEAR COSTS

|                                    | <u>FY 96</u>       | <u>FY 97</u>       | <u>FY 98</u>       | <u>FY 99</u>       |
|------------------------------------|--------------------|--------------------|--------------------|--------------------|
| Personnel Services                 |                    |                    |                    |                    |
| Division of Land                   |                    |                    |                    |                    |
| Land Manager (2)                   | 133.3 <sup>1</sup> | 133.3 <sup>1</sup> | 133.3 <sup>1</sup> | 133.3 <sup>1</sup> |
| CT III (6 mo.)                     | 20.0 <sup>1</sup>  | 20.0 <sup>1</sup>  | 20.0 <sup>1</sup>  | 20.0 <sup>1</sup>  |
| LRIS                               |                    |                    |                    |                    |
| NRO I                              | 50.0               |                    |                    |                    |
| DPC I                              | <u>35.0</u>        | <u>      </u>      | <u>      </u>      | <u>      </u>      |
| Subtotal                           | 238.3              | 153.3              | 153.3              | 153.3              |
| Travel <sup>1</sup>                |                    |                    |                    |                    |
| Division of Land                   | 0.5                | 0.5                | 0.5                | 0.5                |
| Contractural Services <sup>1</sup> |                    |                    |                    |                    |
| Division of Land                   | 0.5                | 0.5                | 0.5                | 0.5                |
| Supplies <sup>1</sup>              |                    |                    |                    |                    |
| Division of Land                   | <u>0.1</u>         | <u>0.1</u>         | <u>0.1</u>         | <u>0.1</u>         |
| TOTAL                              | 239.4              | 154.4              | 154.4              | 154.4              |

## FISCAL NOTE

No. 1STATE OF ALASKA  
1993 LEGISLATIVE SESSIONVersion: SB 67(S) Publish Date: 2-8-93

BILL NO.

Revision Date: \_\_\_\_\_

Department Affected: Natural ResourcesTitle: Mental Health Trust:BRU: Resource ManagementAlternative Settlement ProposalComponents: Land ManagementSponsor: Senate Resources Committee

Requestor: \_\_\_\_\_

Component Serial No. 431

## EXPENDITURES/REVENUES:

(Thousands of Dollars)

| OPERATING         | FY 94   | FY 95   | FY 96   | FY 97   | FY 98   | FY 99   |
|-------------------|---------|---------|---------|---------|---------|---------|
| PERSONAL SERVICES | 1,022.2 | 817.2   | 186.1   | 197.3   | 209.2   | 221.8   |
| TRAVEL            | 7.5     | 6.0     |         |         |         |         |
| CONTRACTUAL       | 890.0   | 1,625.0 | 2,000.0 | 2,000.0 | 2,000.0 | 2,000.0 |
| SUPPLIES          | 22.0    | 14.5    |         |         |         |         |
| EQUIPMENT         |         |         |         |         |         |         |
| LAND&STRUCTURES   |         |         |         |         |         |         |
| GRANTS, CLAIMS    |         |         |         |         |         |         |
| MISCELLANEOUS     |         |         |         |         |         |         |
| TOTAL OPERATING   | 1,941.7 | 2,462.7 | 2,186.1 | 2,197.3 | 2,209.2 | 2,221.8 |

|         |  |  |  |  |  |  |
|---------|--|--|--|--|--|--|
| CAPITAL |  |  |  |  |  |  |
|---------|--|--|--|--|--|--|

|                      |  |  |  |  |  |  |
|----------------------|--|--|--|--|--|--|
| REVENUE fund source: |  |  |  |  |  |  |
|----------------------|--|--|--|--|--|--|

## FUNDING:

(Thousands of Dollars)

|                          |         |         |         |         |         |         |
|--------------------------|---------|---------|---------|---------|---------|---------|
| 1002 Federal Receipts    |         |         |         |         |         |         |
| 1003 GF Match            |         |         |         |         |         |         |
| 1004 GF                  |         |         |         |         |         |         |
| 1005 GF/Program Receipts |         |         |         |         |         |         |
| 1006 GF/MHTIA            | 1,941.7 | 2,462.7 | 2,186.1 | 2,197.3 | 2,209.2 | 2,221.8 |
| Other                    |         |         |         |         |         |         |
| TOTAL                    | 1,941.7 | 2,462.7 | 2,186.1 | 2,197.3 | 2,209.2 | 2,221.8 |

## POSITIONS:

|           |    |    |   |   |   |   |
|-----------|----|----|---|---|---|---|
| FULL-TIME | 16 | 11 | 2 | 2 | 2 | 2 |
| PART-TIME | 1  | 3  |   |   |   |   |
| TEMPORARY | 2  | 2  |   |   |   |   |

Estimate of current year (FY93) impact: \$ 1941.7

## ANALYSIS:

The program impacts of this legislation are somewhat difficult to determine because of ambiguity in the wording of the legislation. It is unclear if the legislation contemplates the conveyance of unencumbered Original Trust Land to the Trust Authority or its "redesignation" as Original Trust Land on DNR status plats. We have based our analysis on the premise that the aforementioned land is to be conveyed to the Trust Authority. This interpretation seems appropriate since Sec. 2 AS 37.14.009(a)(2) allows the Trust Authority to sell, lease, exchange, or otherwise dispose of land in the trust.

Prepared by: Ron SwansonPhone: 762-2692Division: LandDate: 29-Jan-93Approved by Commissioner: Glenn A. OldsDate: 2/2/93Agency: Department of Natural Resources

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# FISCAL NOTE

24-93  
S(Ros)Jud  
Tim

## STATE OF ALASKA 1993 LEGISLATIVE SESSION

BILL NO.

SB 67

Revision Date:

Department Affected:

Natural Resources

Title:

Mental Health Trust:

BRU:

Resource Management

Alternative Settlement Proposal

Components: Land Management

Sponsor:

Senate Resources Committee

Requestor:

Component Serial No.

431

### EXPENDITURES/REVENUES:

(Thousands of Dollars)

| OPERATING              | FY 94          | FY 95          | FY 96          | FY 97          | FY 98          | FY 99          |
|------------------------|----------------|----------------|----------------|----------------|----------------|----------------|
| PERSONAL SERVICES      | 1,022.2        | 817.2          | 186.1          | 197.3          | 209.2          | 221.8          |
| TRAVEL                 | 7.5            | 6.0            |                |                |                |                |
| CONTRACTUAL            | 890.0          | 1,625.0        | 2,000.0        | 2,000.0        | 2,000.0        | 2,000.0        |
| SUPPLIES               | 22.0           | 14.5           |                |                |                |                |
| EQUIPMENT              |                |                |                |                |                |                |
| LAND&STRUCTURES        |                |                |                |                |                |                |
| GRANTS, CLAIMS         |                |                |                |                |                |                |
| MISCELLANEOUS          |                |                |                |                |                |                |
| <b>TOTAL OPERATING</b> | <b>1,941.7</b> | <b>2,462.7</b> | <b>2,186.1</b> | <b>2,197.3</b> | <b>2,209.2</b> | <b>2,221.8</b> |

|                |  |  |  |  |  |  |
|----------------|--|--|--|--|--|--|
| <b>CAPITAL</b> |  |  |  |  |  |  |
|----------------|--|--|--|--|--|--|

|                             |  |  |  |  |  |  |
|-----------------------------|--|--|--|--|--|--|
| <b>REVENUE fund source:</b> |  |  |  |  |  |  |
|-----------------------------|--|--|--|--|--|--|

### FUNDING:

(Thousands of Dollars)

|                          |                |                |                |                |                |                |
|--------------------------|----------------|----------------|----------------|----------------|----------------|----------------|
| 1002 Federal Receipts    |                |                |                |                |                |                |
| 1003 GF Match            |                |                |                |                |                |                |
| 1004 GF                  |                |                |                |                |                |                |
| 1005 GF/Program Receipts |                |                |                |                |                |                |
| 1006 GF/MHTIA            | 1,941.7        | 2,462.7        | 2,186.1        | 2,197.3        | 2,209.2        | 2,221.8        |
| Other                    |                |                |                |                |                |                |
| <b>TOTAL</b>             | <b>1,941.7</b> | <b>2,462.7</b> | <b>2,186.1</b> | <b>2,197.3</b> | <b>2,209.2</b> | <b>2,221.8</b> |

### POSITIONS:

|           |    |    |   |   |   |   |
|-----------|----|----|---|---|---|---|
| FULL-TIME | 16 | 11 | 2 | 2 | 2 | 2 |
| PART-TIME | 1  | 3  |   |   |   |   |
| TEMPORARY | 2  | 2  |   |   |   |   |

Estimate of current year (FY93) impact: \$

1941.7

### ANALYSIS:

The program impacts of this legislation are somewhat difficult to determine because of ambiguity in the wording of the legislation. It is unclear if the legislation contemplates the conveyance of unencumbered Original Trust Land to the Trust Authority or its "redesignation" as Original Trust Land on DNR status plats. We have based our analysis on the premise that the aforementioned land is to be conveyed to the Trust Authority. This interpretation seems appropriate since Sec. 2 AS 37.14.009(a)(2) allows the Trust Authority to sell, lease, exchange, or otherwise dispose of land in the trust.

Prepared by: Ron Swanson

Phone :

762-2692

Division:

Land

Date :

29-Jan-93

Approved by Commissioner: Glenn A. Olds

Date:

2/1/93

Agency: Department of Natural Resources

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SB.67<sup>1</sup>

## DIVISION OF LAND

*Original in  
mail, to  
arrive 2/8/93*

| 7100 Personnel Services       | FY 94        | FY 95          |
|-------------------------------|--------------|----------------|
| Mental Health Project Team    |              |                |
| (1) Project Manager           | 80.7         | 85.5           |
| (1) Lands Manager             | 55.5         | 58.8           |
| (2) NRO II                    | 122.6        | 129.9          |
| (2) NRO I                     | 103.2        | 130.4          |
| (1) CT III                    | 37.3         | 39.5           |
| (1) DPC II                    | 39.2         | 41.3           |
| (2) College Interns           | <u>27.5</u>  | <u>29.1</u>    |
|                               | 466.0        | 514.5          |
| Land & Resource Management    |              |                |
| (1) Cadastral Surveyor III    | 110.2        | 116.8          |
| Regional Offices              |              |                |
| Northern Regional Office      |              |                |
| (1) NRO II                    | 60.4         | 32.0           |
| Southcentral Regional Office  |              |                |
| (1) NRO II                    | 60.4         | 32.0           |
| Southeast Regional Office     |              |                |
| (1) NRO II (6 mo.)            | <u>30.2</u>  | <u>32.0</u>    |
| Subtotal                      | 727.2        | 727.3          |
| 7200 Travel                   |              |                |
| Mental Health Project Team    | 3.0          | 3.0            |
| Land & Resources              | —            | —              |
| Regional Offices              |              |                |
| NRO                           | 1.5          | 1.0            |
| SCRO                          | 1.5          | 1.0            |
| SERO                          | <u>1.5</u>   | <u>1.0</u>     |
| Subtotal                      | 7.5          | 6.0            |
| 7300 Contractual Services     |              |                |
| Mental Health Project Team    |              |                |
| Hazardous Substance Inventory | 125.0        | 125.0          |
| Land & Resources              |              |                |
| Cadastral Survey              | <u>750.0</u> | <u>1,500.0</u> |
| Subtotal                      | 875.0        | 1,625.0        |

<sup>1</sup> Assumes conveyance of unencumbered OTL to MHTA.

## 7400 Supplies

|                            |             |             |
|----------------------------|-------------|-------------|
| Mental Health Project Team | 6.0         | 6.0         |
| Land & Resources           | 1.5         | 1.5         |
| Regional Offices           |             |             |
| NRO                        | 1.5         | 1.0         |
| SCRO                       | 1.5         | 1.0         |
| SERO                       | 1.5         | 1.0         |
|                            | <u>12.0</u> | <u>10.5</u> |
| Subtotal                   |             |             |
|                            | 12.0        | 10.5        |
| TOTAL                      | 1,621.7     | 2,368.8     |

|                     |           |           |
|---------------------|-----------|-----------|
|                     | <u>94</u> | <u>95</u> |
| Personnel-Full time | 11        | 9         |
| Part time           | 1         | 3         |
| Temporary           | 2         | 2         |

## SB 67

## LAND RECORD INFORMATION SECTION

|                                         | FY 94       | FY 95       |
|-----------------------------------------|-------------|-------------|
| Personnel Services                      |             |             |
| (1) Analyst/Programmer IV               | 77.0        | 0           |
| (1) Analyst Programmer III              | 68.0        | 0           |
| (1) Natural Resource Officer II         | 65.0        | 0           |
| (1) Natural Resource Officer I          | 50.0        | 53.0        |
| (1) Data Processing Clerk I             | <u>35.0</u> | <u>37.0</u> |
| Subtotal                                | 295.0       | 90.0        |
| Contractual Services                    |             |             |
| DOA Data Processing Chargeback          | <u>15.0</u> | <u>0</u>    |
| Subtotal                                | 15.0        | 0           |
| Supplies                                |             |             |
| Plotter, Micrographic & Office Supplies | <u>10.0</u> | <u>4.0</u>  |
| Subtotal                                | 10.0        | 4.0         |
| TOTAL                                   | 320.0       | 94.0        |

## TOTAL PROJECT COST

|                      | FY 94        | FY 95       |
|----------------------|--------------|-------------|
| Personnel Services   |              |             |
| Division of Land     | 727.2        | 727.3       |
| LRIS                 | <u>295.0</u> | <u>90.0</u> |
| Subtotal             | 1,022.2      | 817.3       |
| Travel               |              |             |
| Division of Land     | 7.5          | 6.0         |
| LRIS                 | <u>0</u>     | <u>0</u>    |
| Subtotal             | 7.5          | 6.0         |
| Contractual Services |              |             |
| Division of Land     | 875.0        | 1,625.0     |
| LRIS                 | <u>10.0</u>  | <u>0</u>    |
| Subtotal             | 890.0        | 1,625.0     |
| Supplies             |              |             |
| Division of Land     | 12.0         | 10.5        |
| LRIS                 | <u>10.0</u>  | <u>4.0</u>  |
| Subtotal             | 22.0         | 14.5        |
| TOTAL                | 1,941.7      | 2,462.8     |

|           | FY 94 |      |       | FY 95 |      |       |
|-----------|-------|------|-------|-------|------|-------|
| Positions | Land  | LRIS | Total | Land  | LRIS | Total |
| Full time | 11    | 5    | 16    | 9     | 2    | 11    |
| Part time | 1     |      | 1     | 3     |      | 3     |
| Temp.     | 2     |      | 2     | 2     |      | 2     |

## OUT-YEAR COSTS

## Personnel Services

|                  | FY 96        | FY 97        | FY 98        | FY 99        |
|------------------|--------------|--------------|--------------|--------------|
| Land Manager     | 62.3         | 66.1         | 70.1         | 74.3         |
| Cadastral Survey | <u>123.8</u> | <u>131.2</u> | <u>139.1</u> | <u>147.5</u> |
| Subtotal         | 186.1        | 197.3        | 209.2        | 221.8        |

Contractural  
Survey

|         |         |         |         |
|---------|---------|---------|---------|
| 2,000.0 | 2,000.0 | 2,000.0 | 2,000.0 |
|---------|---------|---------|---------|

|       |         |         |         |         |
|-------|---------|---------|---------|---------|
| TOTAL | 2,186.1 | 2,197.3 | 2,209.2 | 2,221.8 |
|-------|---------|---------|---------|---------|

## FISCAL NOTE

WORK DRAFT

STATE OF ALASKA  
1994 LEGISLATIVE SESSION

BILL NO. CSSB 67 ( )

5/05/93

Revision Date: December 14, 1993  
Title: "...amending...Ch. 66, SLA 1991, that relate to the mental health trust..."

Department Affected: Department of LawBRU: Legal ServicesSponsor: Senate Resources CommitteeComponent: Mental Health LandsRequestor: Governor's OfficeCOMPONENT SERIAL NO. 1421

## EXPENDITURES/REVENUES:

| OPERATING       | FY 94 | FY 95 | FY 96 | FY 97 | FY 98 | FY 99 |
|-----------------|-------|-------|-------|-------|-------|-------|
| PERSONAL        |       |       |       |       |       |       |
| TRAVEL          |       |       |       |       |       |       |
| CONTRACTUAL     |       |       |       |       |       |       |
| SUPPLIES        |       |       |       |       |       |       |
| EQUIPMENT       |       |       |       |       |       |       |
| LAND &          |       |       |       |       |       |       |
| GRANTS, CLAIMS  |       |       |       |       |       |       |
| MISCELLANEOUS   |       |       |       |       |       |       |
| TOTAL OPERATING | -0-   | -0-   | -0-   | -0-   | -0-   | -0-   |

|         |  |  |  |  |  |  |
|---------|--|--|--|--|--|--|
| CAPITAL |  |  |  |  |  |  |
|---------|--|--|--|--|--|--|

|         |  |  |  |  |  |  |
|---------|--|--|--|--|--|--|
| REVENUE |  |  |  |  |  |  |
|---------|--|--|--|--|--|--|

## FUNDING:

|                 |     |     |     |     |     |     |
|-----------------|-----|-----|-----|-----|-----|-----|
| 1002 Federal    |     |     |     |     |     |     |
| 1003 GF Match   |     |     |     |     |     |     |
| 1004 GF         |     |     |     |     |     |     |
| 1005 GF/Program |     |     |     |     |     |     |
| 1006 GF/MHTIA   | -0- | -0- | -0- | -0- | -0- | -0- |
| OTHER           |     |     |     |     |     |     |
| TOTAL           | -0- | -0- | -0- | -0- | -0- | -0- |

## POSITIONS:

|           |     |     |     |     |     |     |
|-----------|-----|-----|-----|-----|-----|-----|
| FULL-TIME | -0- | -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.

Prepared by: Richard I. Pegues, DirectorPhone: 465-3672Division: Administrative Services DivisionDate: December 14, 1993Approved by Commissioner: Charles E. Ode, Attorney GeneralAgency: Department of LawDate: December 14, 1993

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ANALYSIS CONTINUATION:

Enactment of the proposed amendments contained in the May 5, 1993 work draft CS for Senate Bill No. 67 would substantially advance resolution of the mental health trust litigation as it would cure the two infirmities in Ch. 66, SL 1991, found by Judge Greene in her order dated April 26, 1993, and would eliminate the possible need for anyone to appeal those portions of the order. Significantly, the trial court's April 26 order upheld most of Ch. 66 from the numerous challenges raised by the Alaska Center for the Environment, et. al., indicating that the Ch. 66 settlement can resolve the divisive, decade old, mental health trust litigation. Enactment of the proposed amendments will reduce the litigation effort necessary to obtain approval of the settlement at both the trial and appellate court levels, and will enable the Department of Law to direct more of its efforts toward reconstituting the trust rather than to litigating over challenges to Ch. 66.

The first infirmity found by Judge Greene is that the hypothecation of land as security for the reconstitution of the trust is invalid because Ch. 66 lacked adequate standards to guide the commissioner of natural resources in creating the hypothecated lands list. Judge Greene, however, went out of her way to give instruction as to how to cure this defect.

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. (Emphasis added).

Section 5 of the May 5, 1993 work draft CS for Senate Bill No. 67 would "eliminate" the "difficulty" related to hypothecation by establishing adequate standards to guide the commissioner of natural resources in creating the hypothecated lands list. First, original trust lands to be returned to trust status under section 54(1)-(6) of Ch. 66 would be hypothecated. Second, up to 1.5 million acres of additional acres of land that meet the criteria in section 55(d) and (e) -- (in general, land with comparable character to original trust land for which exchanges are necessary, with consideration given to the public interests related to possible transfer to trust status).

The second "infirmity" found by Judge Greene with Ch. 66 is that the planning and classification provisions in AS 38.04 and AS 38.05 apply to the transfers of land to the trust authority. The application of AS 38.04 and AS 38.05 is an "infirmity" only because those statutes may make the reconstitution of the trust more time consuming and costly to complete if DNR were required to classify or reclassify lands before reconstituting those lands into the trust.

Judge Greene found that AS 38.04 and AS 38.05 apply to the reconstitution because Ch. 66 does not explicitly exempt those provisions, and the legislative history did not clearly evince the legislature's intent to exempt such application. Significantly, Judge Greene also found that the Alaska Constitution does not require that AS 38.04 and AS 38.05 apply to the reconstitution, therefore, a statutory exemption as contained in the proposed amendment would be valid.

Sections 1 - 3 would exempt the reconstitution process from AS 38.04 and AS 38.05, and would replace a process by which the public may participate in the reconstitution of the trust.

**CONSEQUENCES FROM TAKING NO ACTION**

The possible consequences if the legislature takes no action to cure the infirmities in Ch. 66 found by Judge Greene include:

1. Plaintiffs may terminate the settlement and return the parties to litigating a strict reconstitution of the trust under the mandate of the Alaska Supreme Court. The validity of the hypothecation of lands and the exemption of AS 38.04 and AS 38.05 from the reconstitution were important elements of the settlement from the plaintiffs' standpoint. If either issue is not resolved to settling plaintiffs' satisfaction, settling plaintiffs have the right to terminate the settlement agreement. If they terminate the settlement, the State has no alternative other than to begin implementing the Alaska Supreme Court's mandate to reconstitute the trust. Implementing that mandate would undoubtedly require land title litigation involving thousands of individual parcels, and would likely ensnarl lands in litigation for years, including lands: (1) conveyed by the State to individual purchasers ("moms and pops"); (2) conveyed to Alaska Native corporations in

FISCAL NOTE

STATE OF ALASKA  
1994 LEGISLATIVE SESSION

BILL NO. CSSB 67 ( )  
5/05/93

ANALYSIS CONTINUATION:

litigation settlements and exchanges; (3) conveyed to municipalities; (4) conveyed to the University of Alaska; and (5) placed in legislatively designated areas.

2. The so called "land freeze" as to 6.7 million acres of hypothecated lands could continue. The trial court's invalidation of the hypothecated lands under Ch. 66 does not free those parcels from the land management limitations applicable to hypothecated lands, which limitations critics of Ch. 66 have characterized as creating a "land freeze." If Judge Greene's decision on hypothecation is appealed (almost certainly to come from settling plaintiffs), the full 6.7 million acres of hypothecated lands would remain embroiled in the litigation. Either Judge Greene or the Alaska Supreme Court could stay effect of the invalidation pending appeal. Even if no stay were entered, however, a reversal of the invalidation would return the 6.7 million acres to hypothecated status. The only way to reduce the amount of land subject to hypothecation and eliminate what critics of Ch. 66 call a "land freeze" is to enact the recommended amendments.

3. Resolution of the divisive mental health trust litigation will be delayed. Judge Greene has upheld most provisions of the Ch. 66 settlement from the numerous challenges raised by the environmental intervenors, and has provided guidance as to how to cure the two infirmities to Ch. 66 that the court found. Curing those two infirmities by enactment of the proposed amendment will expedite the process by which the trial court will approve the settlement, and will expedite possible appeals by eliminating appeals related to these two infirmities.

**CONCLUSION**

Enactment of the amendments to Ch. 66, contained in this bill, will permit implementation of the Ch. 66 settlement to proceed with a minimum of legal challenges and without the associated costs and interruptions caused by such challenges. The current annual amount budgeted for implementation, \$589,500 in general funds and \$1,500,000 in mental health lands trust funds, will be sufficient to carry out the implementation tasks without increasing these costs. Conversely, if the settlement is terminated failing enactment of the bill, the cost for the department could be very high. It is probable that we would become embroiled in land title litigation involving thousands of parcels. The cost would be substantially greater than the cost of the Ch. 66 settlement, and it would continue for many years.

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BILL NO. CSSB 67 ( )

5/05/93

STATE OF ALASKA

1994 LEGISLATIVE SESSION

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## EXPENDITURES/REVENUES:

| OPERATING       | FY 94 | FY 95 | FY 96 | FY 97 | FY 98 | FY 99 |
|-----------------|-------|-------|-------|-------|-------|-------|
| PERSONAL        |       |       |       |       |       |       |
| TRAVEL          |       |       |       |       |       |       |
| CONTRACTUAL     |       |       |       |       |       |       |
| SUPPLIES        |       |       |       |       |       |       |
| EQUIPMENT       |       |       |       |       |       |       |
| LAND &          |       |       |       |       |       |       |
| GRANTS, CLAIMS  |       |       |       |       |       |       |
| MISCELLANEOUS   |       |       |       |       |       |       |
| TOTAL OPERATING | -0-   | -0-   | -0-   | -0-   | -0-   | -0-   |

|         |  |  |  |  |  |  |
|---------|--|--|--|--|--|--|
| CAPITAL |  |  |  |  |  |  |
|---------|--|--|--|--|--|--|

|         |  |  |  |  |  |  |
|---------|--|--|--|--|--|--|
| REVENUE |  |  |  |  |  |  |
|---------|--|--|--|--|--|--|

## FUNDING:

|                 |     |     |     |     |     |     |
|-----------------|-----|-----|-----|-----|-----|-----|
| 1002 Federal    |     |     |     |     |     |     |
| 1003 GF Match   |     |     |     |     |     |     |
| 1004 GF         |     |     |     |     |     |     |
| 1005 GF/Program |     |     |     |     |     |     |
| 1006 GF/MHTIA   | -0- | -0- | -0- | -0- | -0- | -0- |
| OTHER           |     |     |     |     |     |     |
| TOTAL           | -0- | -0- | -0- | -0- | -0- | -0- |

## POSITIONS:

|           |     |     |     |     |     |     |
|-----------|-----|-----|-----|-----|-----|-----|
| FULL-TIME | -0- | -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.Prepared by: Richard I. Pegues, DirectorDivision: Administrative Services DivisionPhone: 465-3672Date: December 14, 1993Approved by Commissioner: Charles E. Cole, Attorney GeneralAgency: Department of LawDate: December 14, 1993

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1994 LEGISLATIVE SESSION

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STATE OF ALASKA  
1994 LEGISLATIVE SESSION

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5/05/93

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# SENATE COMMITTEE REPORT

DATE: 2/8/93

FURTHER: FINANCE

DATE TURNED INTO OFFICE: 4/2/93

JUDICIARY Committee considered SENATE BILL NO. 67

*Mental Health Trust Amendment*  
 "An Act amending provisions of ch. 66, SLA 1991, that relate to reconstitution of the corpus of the mental health trust, the management of trust assets, and to the manner of enforcement of the obligation to compensate the trust; and providing for an effective date."

and recommends it  
 be replaced with

and recommends:

8-LS0409/K

☒ replace with \_\_\_\_\_ CS SB67 (JUD)

or ☐ adopt previous \_\_\_\_\_ CS \_\_\_\_\_

☐ attaches amendment(s) *and a maj. rpt. is  
 sub w/no action*

☐ same title  
☒ new title  
☐ technical  
 title change  
 (HB only)

☐ adopts \_\_\_\_\_ Letter of Intent

☐ further referral to the \_\_\_\_\_

☐ do pass

☐ do not pass

☐ no recommendation

☐ individual recommendations

*FOR  
 & FOR*

## NEW FISCAL NOTES

| Department | Date     | Zero | Fiscal |
|------------|----------|------|--------|
| LAW        | 4-1-93   | ✓    |        |
| DNR        | 03-31-93 |      | 1024.4 |
|            |          |      |        |
|            |          |      |        |
|            |          |      |        |
|            |          |      |        |

## PREVIOUS FISCAL NOTES

| Department | Date | Zero | Fiscal |
|------------|------|------|--------|
|            |      |      |        |
|            |      |      |        |
|            |      |      |        |
|            |      |      |        |
|            |      |      |        |
|            |      |      |        |

☐ Appropriation No Fiscal Note

DO PASS:

*Suzanne R. Little*

OTHER RECOMMENDATIONS:

*John Taylor*  
 (1) *John Taylor* no rec  
 (2) *Kirk Halford* no rec

*John Taylor* no rec

Chair: Signature and Recommendation

SENATE COMMITTEE REPORT  
FIRST COMMITTEE OF REFERRAL

DATE: 1/25/93

FURTHER: JUD  
FINANCE

Date of 5-Day Notice: 1/27/93  
(in accordance with Uniform Rule 23)

DATE TURNED  
INTO OFFICE: 2/5/93

RESOURCES Committee considered SENATE BILL NO. 67

*Mental Health Trust Amendments*  
"An Act amending provisions of ch. 66, SLA 1991, that relate to reconstitution of the corpus of the mental health trust, the management of trust assets, and to the manner of enforcement of the obligation to compensate the trust; and providing for an effective date."

and recommends:

and report it  
back as follows

☐ replace with \_\_\_\_\_ CS \_\_\_\_\_

☐ same title  
☐ new title  
☐ technical  
title change  
(HB only)

☐ attaches amendment(s)

☐ adopts \_\_\_\_\_ Letter of Intent

☐ further referral to the \_\_\_\_\_

☐ do pass

☐ do not pass

☐ no recommendation

☐ individual recommendations

FISCAL NOTE INFORMATION

| Department | Date   | Zero | Fiscal  |
|------------|--------|------|---------|
| DNR        | 2/2/93 |      | 1,941.7 |
| LAW        | 2/2/93 | ✓    |         |
|            |        |      |         |
|            |        |      |         |
|            |        |      |         |
|            |        |      |         |

| Department | Date | Zero | Fiscal |
|------------|------|------|--------|
|            |      |      |        |
|            |      |      |        |
|            |      |      |        |
|            |      |      |        |
|            |      |      |        |
|            |      |      |        |

☐ Appropriation No Fiscal Note

☐ Governor's Bill with Previous Fiscal Notes (enter information above)

DO PASS:

OTHER RECOMMENDATIONS:

2 *Peace - No Rec*  
2 *Shred NO REC FRANK*  
2 *Steven A. Simon NO REC*  
1 *Mike Miller Do Pass*

Chair: Signature and Recommendation