

ALASKA LEGISLATURE COMMITTEE BILL FILES - 1987 - 1988 8879

SB 96, SB 100 *Law. Finance* 42

SRB

96

SENATE COMMITTEE REPORT

FURTHER:

/4/29/87

DATE TURNED INTO OFFICE \_\_\_\_\_

Mr. President:

FINANCE Committee considered SB 96

implementing a settlement relating to the federally created mental health trust; efd.

and recommended:

replace with CS FOR \_\_\_\_\_ )  same title  
 or adopt \_\_\_\_\_ CS FOR \_\_\_\_\_ )  new title

attached amendment(s) and

do pass

do not pass

no recommendation

individual recommendations

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

letter of intent adopted \_\_\_\_\_

Committee  attached or  adopted fiscal note(s)

new  updated or  previous  
 zero  fiscal impact

MEMBERS SIGNING DO PASS

OTHER RECOMMENDATIONS

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Committee Backup Attached Chairman signature and recommendation

SENATE COMMITTEE REPORT

FURTHER: FINANCE

4/21/87

DATE TURNED INTO OFFICE

4/28/87

Mr. President:

JUDICIARY

Committee considered

SB 96

implementing a settlement relating to the federally created mental health trust; efd.

and recommended:

[ ] replace with or adopt CS FOR adoption HESS 05 ) [ ] same title
[ ] or adopt CS FOR SB 910 (HESS) ) [ ] new title

[ ] attached amendment(s) and

[X] do pass

[ ] do not pass

[ ] no recommendation

[X] individual recommendations

[ ] further referral to

[ ] letter of intent adopted

Committee [ ] attached or [ ] adopted fiscal note(s)

[ ] new [ ] updated or [X] previous
[ ] zero [X] fiscal impact

MEMBERS SIGNING DO PASS

OTHER RECOMMENDATIONS

Handwritten signatures: Mark Rodery, Rep. Peterson, Curtis Stangler, Rick Halford

Blank lines for other recommendations

Handwritten signature and 'do pass' recommendation

[ ] Committee Backup Attached

SENATE COMMITTEE REPORT

FIRST COMMITTEE OF REFERRAL

Date of 2/18/87 5-DAY NOTICE  
IN ACCORDANCE WITH UNIFORM RULE 23

FURTHER: JUDICIARY  
FINANCE

\*\*FISCAL NOTE(S) ATTACHED 1 \*\*  
IN ACCORDANCE WITH AS 24.08.035  
(see below)

DATE TURNED INTO OFFICE 4/21/87

Mr. President:

HESS Committee considered SB 96

implementing a settlement relating to the federally created  
mental health trust; efd.

and recommended:

replace with CS SB 96 (HESS) ~~same title~~  
~~new title~~

attached amendment(s) and

do pass

do not pass

no recommendation

individual recommendations

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

letter of intent adopted and attached

\*\* Committee  attached or  adopted fiscal note(s)  
 zero  fiscal impact

MEMBERS SIGNING DO PASS

OTHER RECOMMENDATIONS

Rick Halford  
[Signature]  
[Signature]  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

[Signature] DO PASS  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

[Signature] - Vice Chair  
Chairman signature and recommendation  
DO PASS

Committee Backup Attached

Offered: 4/21/87  
Referred: Judiciary & Finance

5-0525B

Original sponsor: Halford/Joint Special Committee  
on Mental Health Trust Land

1 IN THE SENATE

BY THE HEALTH, EDUCATION AND  
SOCIAL SERVICES COMMITTEE

2 CS FOR SENATE BILL NO. 96 (HESS)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FIFTEENTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act relating to the Alaska Mental Health Trust;  
7 and providing for an effective date."

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

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

10 (1) the United States Congress passed the Alaska Mental Health  
11 Enabling Act of 1956, P.L. No. 84-830, 70 Stat. 709, "To confer upon Alaska  
12 autonomy in the field of mental health, transfer from the Federal Govern-  
13 ment to the Territory the fiscal and functional responsibility for the  
14 hospitalization of committed mental patients, and for other purposes;"

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

19 (3) in subsection 202(e), the Congress specifically provided  
20 that the land so granted, as well as any income from the land and proceeds  
21 from dispositions of the land, were to be administered as "a public trust  
22 and such proceeds and income shall first be applied to meet the necessary  
23 expenses of the mental health program of Alaska," that "Such lands, income,  
24 and proceeds shall be managed and utilized in such manner as the Legisla-  
25 ture of Alaska may provide," that the land may be "sold, leased, mortgaged,  
26 exchanged or otherwise disposed of in such manner as the Legislature of  
27 Alaska may provide, in order to obtain funds or other property to be in-  
28 vested, expended or used by the Territory of Alaska," and that the Alaska  
29 legislature must exercise this broad authority "in a manner compatible with  
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CSSE 96 (HESS)

COMMITTEE COPY

1 the conditions and requirements imposed by this Act;"

2 (4) in requiring that the proceeds and income of the 1,000,000-  
3 acre land grant "first be applied to meet the necessary expenses of the  
4 mental health program of Alaska," it was the intent of the Congress that  
5 additional public funds be appropriated by the legislature to supplement  
6 the proceeds and income from the land grant if those proceeds and income  
7 are insufficient to meet the necessary expenses of the mental health pro-  
8 gram of Alaska;

9 (5) if the proceeds and income from the 1,000,000-acre land  
10 grant exceed the necessary expenses of the mental health program of Alaska,  
11 the Congress authorized the legislature to appropriate the excess proceeds  
12 and income for other public purposes;

13 (6) because of the highly desirable location and character of  
14 much of the land selected by the state under the Act, for example, in and  
15 around major population centers, suitable for parks and game refuges, and  
16 other uses, and the difficulties associated with disposing of or dedicating  
17 the land for purposes that would not result in the receipt of funds that  
18 could be used for mental health purposes, for example, satisfaction of  
19 municipal entitlements, placement in parks and game refuges, and other  
20 uses, without compensation to the trust, the Tenth Alaska State Legislature  
21 enacted ch. 181 and 182, SLA 1978, which, among other things, redesignated  
22 all mental health lands as general grant lands;

23 (7) both ch. 181 and 182, SLA 1978, also created the mental  
24 health fund into which, as compensation to the trust, a sum equal to one  
25 and one-half percent of all revenue received from the management of state  
26 land was to be deposited and from which only the income could be appro-  
27 priated exclusively for mental health purposes;

28 (8) a significant difference between ch. 181 and 182, SLA 1978,  
29 was that ch. 182 made the deposit of one and one-half percent of all public

1 land revenue into the mental health fund "subject to legislative appropri-  
2 ation of sufficient funds";

3 (9) because ch. 182, SLA 1978 became law after ch. 181, SLA 1978  
4 became law, the provisions of ch. 182, SLA 1978 have been considered con-  
5 trolling, including specifically the provision that deposits to the mental  
6 health fund would be "subject to legislative appropriation of sufficient  
7 funds";

8 (10) the legislature has never appropriated funds to the mental  
9 health fund;

10 (11) a class-action lawsuit, Weiss v. State, 4FA-82-2208, was  
11 filed on November 26, 1982, seeking a judicial determination that the  
12 Alaska Mental Health Enabling Act had established a "public trust" under  
13 which the state had received the 1,000,000-acre land grant, that the 1978  
14 legislation redesignating mental health land as general grant land was a  
15 breach of that trust, and that the appropriate remedy was to invalidate the  
16 1978 legislation and return mental health land to trust status;

17 (12) in State v. Weiss, 706 P.2d 681 (Alaska 1985), the Alaska  
18 Supreme Court held that the Alaska Mental Health Enabling Act established a  
19 public trust, that the 1978 legislation redesignating mental health land as  
20 general grant land was a breach of the trust, and that the appropriate  
21 remedy was to return mental health land still in state ownership to trust  
22 status and, for mental health land that the state had "sold" between 1978  
23 and the date of the court's decision, to compensate the trust for the fair  
24 market value of mental health land so "sold" as of the date of their  
25 "sale," subject to a set-off for state mental health expenditures during  
26 the same period;

27 (13) while the court returned mental health land to trust status,  
28 it did not specify the nature of the state's obligations with respect to  
29 managing the trust land, leaving significant questions unanswered that may

1 require additional costly and time-consuming litigation;

2 (14) continued costly and time-consuming litigation over mental  
3 health trust land management is not in the public interest because it  
4 diverts attention from the goal the Congress sought to achieve through the  
5 Act's land grant, the funding of a mental health program;

6 (15) continued costly and time-consuming litigation over mental  
7 health trust land management is not in the public interest because it has  
8 the potential to be extremely divisive, pitting the advocates of stringent  
9 mental health trust land management against those who envision state-owned  
10 mental health land managed for its highest and best use, including convey-  
11 ance to municipalities in satisfaction of municipal entitlements, placement  
12 in parks and game refuges, and other uses, without a major expenditure to  
13 compensate the mental health trust for the fair market value of the land;

14 (16) continued costly and time-consuming litigation over mental  
15 health trust land management is not in the public interest because advo-  
16 cates of stringent mental health trust land management may seek the in-  
17 validation of state conveyances of mental health land to third parties,  
18 particularly municipalities and Native corporations organized under the  
19 Alaska Native Claims Settlement Act, a course of action that at best will  
20 place a cloud on the third parties' title to those lands and at worst will  
21 result in those third parties losing title to their lands, causing economic  
22 and other harm and further dividing those who advocate stringent mental  
23 health trust land management from those who believe all state-owned land,  
24 including mental health land, should be managed for its highest and best  
25 use;

26 (17) continued costly and time-consuming litigation over mental  
27 health trust land management is not in the public interest because advo-  
28 cates of stringent mental health trust land management may seek the in-  
29 validation of legislative designations of mental health land as state

1 parks, state game refuges, state forests, etc., placing the future use of  
2 the land for the designated purposes in doubt and further dividing those  
3 who advocate stringent mental health trust land management from those who  
4 believe all state-owned land, including mental health land, should be  
5 managed for its highest and best use;

6 (18) the failure of the Alaska Legislature to deal with the  
7 current situation by properly reconstituting the mental health trust at  
8 this time will lead to continued costly, time-consuming, and divisive liti-  
9 gation, which is not in the public interest;

10 (19) the same problems that led to the 1978 redesignation of  
11 mental health land as general grant land, for example, the desirability of  
12 managing mental health land for its highest and best use, including the  
13 satisfaction of municipal entitlements, inclusion in parks and game ref-  
14 uges, will continue to pose difficulties in the state's efforts to accom-  
15 modate the public's needs generally with the obligation to administer  
16 mental health land as a trust;

17 (20) under art. VIII, sec. 2, Constitution of the State of  
18 Alaska, as construed by the Alaska Supreme Court in State v. University of  
19 Alaska, 624 P.2d 807 (1981), the legislature has the authority to remove  
20 land from trust status if the trust is compensated for the fair market  
21 value of the land;

22 (21) the state is not now, and in the foreseeable future will not  
23 be, in a position to compensate the mental health trust in money for the  
24 fair market value of mental health land;

25 (22) even if the state were able to compensate the mental health  
26 trust in money for the fair market value of mental health land, there is a  
27 substantial legal question whether that compensation, as the corpus of the  
28 trust, could be preserved in perpetuity or whether the prohibition on  
29 dedicated funds in art. IX, sec. 7, Constitution of the State of Alaska,

1 would require that those funds be made available for appropriation by the  
2 legislature under the terms of the Alaska Mental Health Enabling Act;

3 (23) under art. VIII, sec. 2, Constitution of the State of  
4 Alaska, and subsection 202(e) of the Alaska Mental Health Enabling Act, the  
5 legislature has broad authority over all state land, including mental  
6 health land, and can permissibly remove mental health land from trust  
7 status if, consistent with its trust responsibilities, it simultaneously  
8 designates other state land of equivalent value as mental health land;

9 (24) the Congress' goal of funding a mental health program, and  
10 the public interest in having attention focused on the problems of the  
11 mentally ill and not questions regarding mental health trust land manage-  
12 ment, will be best served by establishing a mechanism for generating reve-  
13 nue from mental health land that minimizes the number and complexity of  
14 related land management decisions;

15 (25) reconstituting the mental health trust with state land that  
16 has a substantial likelihood of remaining in state ownership in perpetuity,  
17 and compensating the mental health trust for state use of that land through  
18 annual identification of an amount of state general fund revenue equal to  
19 the fair market rental value of the land as a separate account in the  
20 general fund, would minimize the number and complexity of land management  
21 decisions and would result in the following benefits to the mental health  
22 trust:

23 (A) it would ensure that the mental health trust corpus  
24 will be preserved in perpetuity;

25 (B) it would reconstitute a mental health trust corpus  
26 equal in value to the original 1,000,000-acre mental health trust  
27 corpus, with no reduction (in the nature of a set-off) for state  
28 mental health expenditures;

29 (C) it would make the entire mental health trust corpus

1 productive in that each acre of mental health trust land would produce  
2 its fair market rental value annually;

3 (D) the mental health trust would not incur administrative  
4 expenses;

5 (E) it would focus attention on questions related to the  
6 state's mental health programs and the levels of appropriations for  
7 those programs;

8 (26) reconstituting the mental health trust with state land that  
9 has a substantial probability of remaining in state ownership in perpetuity  
10 would result in the following benefits to the state generally:

11 (A) it would free all mental health land not in legisla-  
12 tively designated areas for nontrust uses;

13 (B) the only significant expenditure of public funds that  
14 would be required would be appropriations for appraisal of the land to  
15 ensure equal value, an expenditure that would be required no matter  
16 what form of trust reconstitution is selected; and

17 (C) it would establish an additional safeguard against  
18 disposal of the newly designated mental health trust land, that is,  
19 those in legislatively designated areas, in that, prior to such dis-  
20 posal, equal value replacement land would have to be identified and  
21 redesignated as trust land;

22 (27) the legislature will best serve the public interest by  
23 reconstituting the mental health trust with land in legislatively des-  
24 ignated areas, continuing to use that land for the legislatively designated  
25 purposes, compensating the trust for the use of the land through annual  
26 identification of an amount of general fund revenue equal to the fair  
27 market rental value of the land and designation in the general fund of that  
28 amount of funds as the special mental health trust income account, and  
29 creating a board to assist and advise the legislative and executive

1 branches of government on matters relating to the mental health program of  
2 Alaska.

3 (b) The purposes of this Act are

4 (1) to implement the intent of the Congress underlying sec. 202  
5 of the Alaska Mental Health Enabling Act that mental health land be admin-  
6 istered in a way that makes funds available for the support of Alaska's  
7 mental health program;

8 (2) to the extent practicable, to eliminate the need for costly,  
9 time-consuming and divisive litigation over the state's management of  
10 mental health land;

11 (3) to ensure that the attention of the public and the govern-  
12 ment is focused on mental health programs, as contemplated by the Congress,  
13 and not on issues relating to the management of mental health land;

14 (4) to reconstitute a mental health land trust through identi-  
15 fication of land in legislatively designated areas that is equal in value  
16 to the land selected by and patented to the state under sec. 202 of the  
17 Alaska Mental Health Enabling Act;

18 (5) to remove from trust status the land selected by and pat-  
19 ented to the state under sec. 202 of the Alaska Mental Health Enabling Act  
20 that is not in legislative designated areas, thereby freeing them for other  
21 uses;

22 (6) to validate each deed, contract for sale, lease, easement,  
23 right-of-way, permit, mineral lease disposal, reservation of land for  
24 public use by statute, or land management actions, including use classi-  
25 fications under AS 38.05.300 and interagency land management assignments by  
26 the Department of Natural Resources, that may have been called into ques-  
27 tion by the Supreme Court's decision in State v. Weiss, 706 P.2d 681  
28 (Alaska 1985), returning mental health land to trust status;

29 (7) to identify a portion of annual state general fund revenue,

1 equal in amount to the fair market rental value of mental health land, as  
2 compensation to the trust for the continued use of the land in legisla-  
3 tively designated areas for the legislatively designated purposes; and

4 (8) to create a board to assist and advise the legislative and  
5 executive branches of government on matters relating to the mental health  
6 program of Alaska.

7 \* Sec. 2. AS 37.14 is amended by adding a new section to read:

8 Sec. 37.14.011. MENTAL HEALTH TRUST INCOME ACCOUNT. (a) There  
9 is established, as a separate account in the general fund, the mental  
10 health trust income account.

11 (b) The amount determined under (c) of this section as the fair  
12 market rental of the land constituting the mental health trust corpus  
13 is the earnings of the trust and the commissioner of revenue annually  
14 shall allocate that amount to the mental health trust income account.

15 (c) The fair market rental value of the land constituting the  
16 mental health trust corpus is equal to eight percent of the fair  
17 market value of the land. Following the initial determination of the  
18 fair market value of the land selected by and patented to the state  
19 under sec. 202 of the Alaska Mental Health Enabling Act, the com-  
20 missioner of natural resources shall redetermine the fair market value  
21 of the land constituting the mental health trust corpus at least every  
22 five years, and provide the redetermined value to the commissioner of  
23 revenue and the board established under AS 47.30.661.

24 \* Sec. 3. AS 37.14 is amended by adding a new section to read:

25 Sec. 37.14.021. UTILIZATION OF THE MENTAL HEALTH TRUST INCOME  
26 ACCOUNT. Money in the mental health trust income account established  
27 in AS 37.14.011(a) shall first be appropriated by the legislature to  
28 meet the necessary expenses of the mental health program of the state.  
29 In making annual appropriations from the mental health trust income

1 account, the legislature shall consider the recommendations of the  
2 Alaska Mental Health Board established under AS 47.30.661, including  
3 recommendations regarding capital improvements. After the necessary  
4 expenses of the state's mental health program have been funded, the  
5 legislature may make appropriations from the mental health trust  
6 income account for other public purposes.

7 \* Sec. 4. AS 38.05 is amended by adding a new section to article 11 to  
8 read:

9 Sec. 38.05.800. RECONSTITUTION AND ADMINISTRATION OF MENTAL  
10 HEALTH LAND TRUST. (a) The commissioner of natural resources, under  
11 procedures approved by the interim mental health trust commission,  
12 shall determine the fair market value, as of the effective date of  
13 this Act, of all land selected by and patented to the state under the  
14 Alaska Mental Health Enabling Act. The commissioner shall report the  
15 determination of that value to the board established under AS 47.30.-  
16 661.

17 (b) The commissioner of natural resources, with the approval of  
18 the interim mental health trust commission, shall identify land within  
19 legislative designations that is equal in value to all land selected  
20 by and patented to the state under sec. 202 of the Alaska Mental  
21 Health Enabling Act that is not in legislative designations.

22 (c) All land selected by and patented to the state under the  
23 Alaska Mental Health Enabling Act that is within legislative desig-  
24 nations, together with all land identified by the commissioner under  
25 (b) of this section, constitutes the corpus of the mental health lands  
26 trust.

27 (d) Upon reconstitution of the trust under this subsection, land  
28 selected by and patented to the state under sec. 202 of the Alaska  
29 Mental Health Enabling Act that is not within legislative designations

1 is removed from trust status.

2 (e) The land within legislative designations that constitutes  
3 the mental health land trust shall continue to be administered for the  
4 legislatively designated purposes. The trust shall be compensated for  
5 the continued use of the mental health trust land for the legisla-  
6 tively designated purposes as provided in AS 37.14.011.

7 (f) Before the state may remove land that is part of the mental  
8 health trust corpus from trust status, and in addition to any other  
9 requirements of law, the commissioner of natural resources, consistent  
10 with the state's trust responsibilities, shall identify replacement  
11 land, equal in value at the time of replacement, within legislative  
12 designations and incorporate them into the mental health trust corpus.  
13 The commissioner of natural resources annually shall report any  
14 actions under this subsection to the board established under AS 47.-  
15 30.661.

16 \* Sec. 5. AS 39.25.120(c)(9) is amended by adding a new subparagraph to  
17 read:

18 (L) Alaska Mental Health Board;

19 \* Sec. 6. AS 47.30 is amended by adding new sections to read:

20 Sec. 47.30.661. ALASKA MENTAL HEALTH BOARD. The Alaska Mental  
21 Health Board is established. For budgetary purposes, the board is  
22 located within the Department of Health and Social Services. The  
23 board is the state planning and coordinating agency for the purposes  
24 of federal and state laws relating to the mental health program of the  
25 state. The purpose of the board is to assist the state in ensuring an  
26 integrated comprehensive mental health program.

27 Sec. 47.30.662. COMPOSITION. (a) The board consists of the  
28 commissioner of health and social services, or the commissioner's  
29 designee, and not fewer than nine nor more than 12 other members,

1 appointed by the governor, with due regard for balanced geographic  
2 representation of the state.

3 (b) At least one-third of the members shall be consumers of  
4 mental health services, or parents or guardians of consumers.

5 (c) At least one-third of the members shall be either public or  
6 private providers of mental health services.

7 (d) The remaining members shall be representatives of the public  
8 at large.

9 Sec. 47.30.663. TERM OF OFFICE. (a) Board members serve  
10 staggered terms of three years.

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

14 (c) Members may be removed only for cause, including, but not  
15 limited to, poor attendance or lack of contribution to the board's  
16 work.

17 Sec. 47.30.664. OFFICERS AND STAFF. (a) The board, by a major-  
18 ity of its membership, shall annually elect a chair and other officers  
19 it considers necessary from among its membership.

20 (b) The board will have a paid staff provided by the Department  
21 of Health and Social Services, including, but not limited to, an  
22 executive director who shall be selected by the board from candidates  
23 provided by the department. The executive director is in the partial-  
24 ly exempt service and may hire additional employees in the classified  
25 service of the state. The executive director and the staff of the  
26 board shall be directly responsible to the board in the performance of  
27 their duties.

28 Sec. 47.30.665. BYLAWS. The board, on approval of a majority of  
29 its membership and consistent with state law, shall adopt and amend

1 bylaws governing its composition, proceedings, and other activities  
2 consistent with state law and including, but not limited to, pro-  
3 visions concerning a quorum to transact board business and other  
4 aspects of procedure, frequency and location of meetings, and estab-  
5 lishment, functions, and membership of committees.

6 Sec. 47.30.666. POWERS, DUTIES, AND RESPONSIBILITIES OF THE  
7 BOARD. The board shall

8 (1) measure the extent of the mental health need and, as  
9 necessary, conduct independent studies, evaluate the statewide mental  
10 health information system, and review the current mental health pro-  
11 gram of the state;

12 (2) provide a public forum for discussion of issues regard-  
13 ing current and potential services to persons served by the mental  
14 health program of the state;

15 (3) determine the needs, including those currently unmet,  
16 of the persons to be served by the mental health program of the state;

17 (4) review reports from the Department of Natural Resources  
18 regarding the valuation of the mental health land trust and the status  
19 of mental health trust land, from the Department of Revenue regarding  
20 allocations to the mental health income account, and from other de-  
21 partments regarding the current and projected revenue for the support  
22 of the mental health program of the state;

23 (5) subject to disclosure restrictions imposed by state or  
24 federal confidentiality or privacy laws, have access to information in  
25 the possession of state agencies;

26 (6) in conjunction with the Department of Health and Social  
27 Services, prepare and annually update a long-term comprehensive state  
28 mental health plan, to include the projected need and the services,  
29 facilities, and resources for the mental health program of the state

1 to meet that need;

2 (7) in conjunction with the Department of Health and Social  
3 Services, develop, prepare, adopt, and periodically review and revise  
4 as necessary an annual state implementation plan to meet the needs of  
5 persons served by the mental health program of the state;

6 (8) in conjunction with the Department of Health and Social  
7 Services, and before developing the annual state implementation plan,  
8 evaluate the effectiveness of the prior year's implementation plan and  
9 evaluate program performance and recommend improvements, set priori-  
10 ties, and establish criteria to utilize in funding allocations;

11 (9) report at least annually to the legislature, governor,  
12 and commissioner of health and social services, and meet with appro-  
13 priate legislative committees, concerning the board's activities,  
14 including its evaluation of the effectiveness of the prior year's  
15 implementation plan, and its recommendations to meet the necessary  
16 operating and capital expenses of the mental health program of the  
17 state;

18 (10) serve as an advocate before the executive and legisla-  
19 tive branches of government and the public on behalf of those served  
20 by the mental health program of the state;

21 (11) discourage duplication of services and promote effi-  
22 cient and coordinated use of federal, state, and private resources in  
23 the provision of mental health services; and

24 (12) review applicable statutes, regulations, and policies  
25 and recommend appropriate changes.

26 Sec. 47.30.669. DEFINITION. In AS 47.30.661 - 47.30.669,  
27 "board" means the Alaska Mental Health Board established in AS 47.30.-  
28 661.

29 \* Sec. 7. Section 1(b), ch. 132, SLA 1986, is amended to read:

1 (b) The commission established under (a) of this section con-  
2 sists of three [FIVE] members, including the commissioner of natural  
3 resources, or the commissioner's designee [AND THE COMMISSIONER OF  
4 HEALTH AND SOCIAL SERVICES, OR THEIR DESIGNEES], and two [THREE]  
5 members and two [THREE] alternates [APPOINTED BY THE GOVERNOR] as  
6 follows:

7 (1) a member and an alternate representing the plaintiffs  
8 who were [,] appointed by the governor from a list of three names  
9 submitted to the governor by the plaintiffs in Weiss v. State, 4 FA  
10 82-2208 Civil;

11 (2) a member and an alternate representing the intervenors  
12 who were [,] appointed by the governor from a list of three names  
13 submitted to the governor by the intervenors in Weiss v. State, 4 FA  
14 82-2208 Civil [; AND

15 (3) A MEMBER AND AN ALTERNATE REPRESENTING THE GOVERNOR'S  
16 MENTAL HEALTH ADVISORY COUNCIL, APPOINTED BY THE GOVERNOR FROM A LIST  
17 OF THREE NAMES SUBMITTED TO THE GOVERNOR BY THE GOVERNOR'S MENTAL  
18 HEALTH ADVISORY COUNCIL].

19 \* Sec. 8. Section 1(c), ch. 132, SLA 1986, is amended to read:

20 (c) The members of the commission shall elect a presiding offi-  
21 cer. A majority of the commission constitutes a quorum. The affirma-  
22 tive vote of two [THREE] members is required to take official action.  
23 A vacancy does not impair the power of the remaining members to exer-  
24 cise the powers of the commission.

25 \* Sec. 9. Section 2, ch. 132, SLA 1986, is repealed and reenacted to  
26 read:

27 Sec. 2. RESPONSIBILITIES OF THE COMMISSION. (a) The commission  
28 shall review procedures proposed by the commissioner of natural re-  
29 sources to determine the fair market value, as of the effective date

1 of this Act, of all land selected by and patented to the state under  
2 sec. 202 of the Alaska Mental Health Enabling Act, and review the  
3 final determination of the fair market value determined under those  
4 procedures.

5 (b) The commission shall review the identification by the com-  
6 missioner of natural resources under AS 38.05.800 of land within  
7 legislative designations that is equal in value to all land selected  
8 by and patented to the state under sec. 202 of the Alaska Mental  
9 Health Enabling Act that is not in legislative designations.

10 (c) In the exercise of the commission's responsibilities under  
11 this section, the commission and its staff may review the records of  
12 the Department of Natural Resources that are made confidential by law  
13 or regulation. An individual who acquires information made confiden-  
14 tial by law or regulation in the performance of functions authorized  
15 by this Act and discloses it without proper authority violates AS 11.-  
16 56.860.

17 \* Sec. 10. Section 6, ch. 132, SLA 1986, is repealed and reenacted to  
18 read:

19 Sec. 6. This Act is repealed on the certification of the commis-  
20 sioner of natural resources that the mental health land trust has been  
21 reconstituted under AS 38.05.800 to

22 (1) the Alaska Mental Health Board established under  
23 AS 47.30.661;

24 (2) the lieutenant governor; and

25 (3) the revisor of statutes.

26 \* Sec. 11. TRANSITIONAL PROVISIONS. Beginning in fiscal year 1989, and  
27 continuing until the commissioner of natural resources certifies to the  
28 commissioner of revenue that the mental health land trust has been recon-  
29 stituted under AS 38.05.800, as enacted in sec. 4 of this Act, the

1 commissioner of revenue shall make allocations to the mental health trust  
2 income account so that the total of allocations during the year equals five  
3 percent of all revenue received by the state's general fund during that  
4 fiscal year.

5 \* Sec. 12. Notwithstanding AS 47.30.663(a), as added by sec. 6 of this  
6 Act, of the initial appointees to the Alaska Mental Health Board appointed  
7 under AS 47.30.662, as added by sec. 6 of this Act, one-third shall serve  
8 for one year terms, one-third shall serve for two year terms, and one-third  
9 for three year terms.

10 \* Sec. 13. AS 37.14.010, 37.14.020, 37.14.030, 37.14.040, 37.14.050;  
11 AS 47.30.605; and sec. 3, ch. 132, SLA 1986, are repealed.

12 \* Sec. 14. This Act takes effect July 1, 1987.  
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Introduced: 2/2/87  
Referred: Health, Education and Social  
Services, Judiciary and Finance

5-0525A

1 IN THE SENATE

BY HALFORD BY REQUEST OF  
THE JOINT SPECIAL COMMITTEE  
ON MENTAL HEALTH TRUST LAND

2 SENATE BILL NO. 96

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FIFTEENTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act implementing a settlement relating to the  
7 federally created mental health trust; and providing  
8 for an effective date."

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

10 \* Section 1. FINDINGS AND PURPOSE. (a) The legislature finds that:

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

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

20 (3) in subsection 202(e), Congress specifically provided that  
21 the land granted and the proceeds and income from dispositions of the land  
22 were to be administered as "a public trust and such proceeds and income  
23 shall first be applied to meet the necessary expenses of the mental health  
24 program of Alaska";

25 (4) the Tenth Alaska State Legislature, in enacting ch. 181 and  
26 182, SLA 1978, redesignated all mental health land as general grant land  
27 and compensated the mental health trust for the value of the land by creat-  
28 ing the mental health fund into which a sum equal to one and one-half  
29 percent of all revenue received from the management of state land was to be  
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1 deposited and from which the income was to be appropriated for mental  
2 health programs;

3 (5) no funds were ever deposited in this account;

4 (6) a lawsuit, Weiss v. State, 4FA-82-2208, filed on Novem-  
5 ber 26, 1982, sought a judicial determination that the 1,000,000 acres  
6 received by the state under the Alaska Mental Health Enabling Act were  
7 received as a public trust and that the 1978 legislation redesignating the  
8 mental health trust land as general grant land breached the trust;

9 (7) the Alaska Supreme Court held in State v. Weiss, 706 P.2d  
10 681 (1985) that the Alaska Mental Health Enabling Act established a public  
11 trust, that the 1978 legislation redesignating mental health land as  
12 general grant land was a breach of that trust, and that the appropriate  
13 remedy was to return mental health land still in state ownership to trust  
14 status and to compensate the trust for the fair market value of mental  
15 health land disposed of between 1978 and the date of the court's decision  
16 subject to a set-off for state mental health expenditures during the same  
17 period;

18 (8) while the Alaska Supreme Court returned mental health land  
19 to trust status, the decision of the Supreme Court left unanswered signifi-  
20 cant questions that may require additional costly and time-consuming liti-  
21 gation;

22 (9) further litigation over mental health land management is not  
23 in the public interest because it diverts attention from the funding of the  
24 mental health program, which was the goal of the Congress in the enactment  
25 of the Enabling Act, because it has the potential to be extremely divisive  
26 because of incompatibilities between current land use and general trust  
27 management principles, and because of transfers of mental health land to  
28 third parties;

29 (10) the goal of the Congress in funding a mental health program

1 and the public interest in addressing mental health problems in the state  
2 will be better achieved by establishing a reasonable mechanism for funding  
3 mental health programs independent of the management of mental health land;

4 (11) subsection 202(e) of the Enabling Act specifically provides  
5 that land granted under the Act "may be sold, leased, mortgaged, exchanged,  
6 or otherwise disposed of in such manner as the Legislature of Alaska may  
7 provide, in order to obtain funds or other property to be invested, ex-  
8 pended, or used" as provided in the Act; and

9 (12) the legislature will best serve the public interest by  
10 exercising its authority under subsection 202(e) of the Enabling Act to  
11 dispose of mental health land by removing it from trust status and by  
12 simultaneously redesignating it as general grant land in order to obtain  
13 funds to be expended as provided in the Enabling Act, and to compensate the  
14 mental health trust for the value of the land removed from the trust  
15 through the establishment of a special account in the general fund of the  
16 state composed of five percent of all revenue received by the state general  
17 fund during each fiscal year.

18 (b) The purposes of this Act are to

19 (1) establish a funding source for the mental health trust to  
20 take the place of the land trust established in the Alaska Mental Health  
21 Enabling Act as authorized in subsection 202(e) of the Enabling Act and in  
22 the exercise of the power of the Legislature under art. VIII, sec. 2, of  
23 the Alaska Constitution;

24 (2) eliminate, to the extent practicable, the need for costly,  
25 time-consuming, and divisive litigation over the management of the mental  
26 health land;

27 (3) ensure that the attention of the public and the government  
28 is focused on mental health programs as contemplated by Congress and not on  
29 issues related to the management of the mental health land;

1 (4) satisfy the public interest in removing state-owned mental  
2 health land from its trust status so that the land may be managed for its  
3 highest and best use without regard to the maximum generation of income to  
4 the trust; and

5 (5) replace the original mental health corpus with a permanent  
6 direct funding source while, at the same time, pledging state assets for  
7 use in reconstituting the trust corpus if the state should fail to estab-  
8 lish the funding source.

9 \* Sec. 2. AS 37.14 is amended by adding new sections to read:

10 ARTICLE 1. SPECIAL MENTAL HEALTH ACCOUNT.

11 Sec. 37.14.011. SPECIAL MENTAL HEALTH ACCOUNT ESTABLISHED. (a)

12 The special mental health account is established in the general fund  
13 of the state.

14 (b) During each fiscal year, the commissioner of revenue shall  
15 make deposits into the special mental health account so that the total  
16 of deposits during the year equals five percent of all revenue re-  
17 ceived by the state general fund during that fiscal year.

18 Sec. 37.14.021. UTILIZATION OF THE SPECIAL MENTAL HEALTH AC-  
19 COUNT. Money in the special mental health account established in  
20 AS 37.14.011(a) shall first be appropriated by the legislature to meet  
21 the necessary expenses of the mental health program in the state. In  
22 making annual appropriations from the special mental health account,  
23 the legislature shall consider the recommendations of the Mental  
24 Health Board established under AS 37.14.041. After mental health  
25 programs have been funded, the legislature may appropriate for other  
26 purposes as determined by the legislature.

27 Sec. 37.14.031. PLEDGE OF STATE ASSETS. (a) Notwithstanding  
28 AS 09.50.270, the general assets of the state may be executed upon to  
29 the extent necessary to reconstitute the mental health trust

1 recognized by the Alaska Supreme Court in State v. Weiss, 705 P.2d 681  
2 (Alaska 1985) if the commissioner of revenue fails to make the de-  
3 posits required by AS 37.14.011 or if the legislature fails to make  
4 the appropriations required by AS 37.14.021.

5 (b) If an execution occurs under (a) of this section, state  
6 assets shall be executed upon in a prioritized order as provided by  
7 law.

8 Sec. 37.14.041. MENTAL HEALTH BOARD ESTABLISHED. (a) The  
9 Mental Health Board is established in the Department of Health and  
10 Social Services. The board is composed of the commissioner of health  
11 and social services, or a designee of the commissioner, and four  
12 public members appointed by the governor. The appointments shall be  
13 made from a list of nominees prepared by statewide or regional groups  
14 interested in mental health, including groups representing both pro-  
15 fessional providers and clients.

16 (b) The members of the Mental Health Board shall elect from its  
17 membership a presiding officer. Members of the board serve without  
18 compensation but are entitled to travel expenses and per diem au-  
19 thorized for members of boards under AS 39.20.180.

20 (c) The Mental Health Board may meet frequently. The board may  
21 use the teleconference facilities of the state for its meetings.

22 Sec. 37.14.051. POWERS AND DUTIES OF THE MENTAL HEALTH BOARD.  
23 The Mental Health Board shall

24 (1) recommend legislation and funding levels necessary to  
25 meet the needs of the mental health program of the state;

26 (2) submit a report to the legislature by the 10th day of  
27 each regular session on the use and expenditure of funds in the spe-  
28 cial mental health account established under AS 37.14.011.

29 \* Sec. 3. AS 37.14.160 is amended to read:

1           Sec. 37.14.160. DUTIES OF COMMISSIONER OF REVENUE. The commis-  
2 sioner of revenue is the treasurer of the funds created in AS 37.14.-  
3 011 [AS 37.14.010] and 37.14.110 and shall

4           (1) act as official custodian of the cash and securities  
5 belonging to those funds and provide adequate safe deposit facilities  
6 for each of them;

7           (2) receive cash belonging to those funds;

8           (3) collect the principal on securities acquired for each  
9 fund established under AS 37.14.011 [AS 37.14.010] and 37.14.110 and  
10 credit each fund accordingly;

11           (4) collect interest and dividends earned on investments of  
12 the funds established under AS 37.14.011 [AS 37.14.010] and 37.14.110  
13 and credit the income reserve account of each fund accordingly;

14           (5) invest and reinvest the principal of each fund in  
15 accordance with AS 37.14.170.

16 \* Sec. 4. AS 37.14.170(a) is amended to read:

17           (a) The commissioner of revenue, with the approval of each  
18 advisory board created in AS 37.14.041 [AS 37.14.020] and 37.14.120,  
19 may invest the principal of the funds created in AS 37.14.011 [AS 37.-  
20 14.010] and 37.14.110 in the same manner as specified for the invest-  
21 ment of surplus pension funds under AS 39.35.110.

22 \* Sec. 5. AS 38.05 is amended by adding a new section to read:

23           Sec. 38.05.815. REMOVAL FROM TRUST STATUS AND REDESIGNATION OF  
24 MENTAL HEALTH LAND. Land granted to the state under the Mental Health  
25 Enabling Act of 1956, 70 Stat. 709, and patented to or approved for  
26 patent to the state, and land designated as mental health land that  
27 was received by the state in exchange for land granted under that  
28 federal Act, is redesignated as general grant land and shall be  
29 managed and disposed of by the Department of Natural Resources under

1 applicable provisions of law.

2 \* Sec. 6. LEGISLATIVE INTENT. The redesignation of mental health land  
3 in AS 38.05.815, as enacted by sec. 5 of this Act, is intended to validate  
4 each deed, contract for sale, lease, easement, right-of-way, permit,  
5 mineral lease disposal, reservation of land for public use by statute, or  
6 land management actions, including use classifications under AS 38.05.300  
7 and interagency land management assignments by the Department of Natural  
8 Resources that may have been called into question by the Supreme Court's  
9 decision in State v. Weiss, 706 P.2d 681 (Alaska 1985) returning mental  
10 health land to trust status.

11 \* Sec. 7. AS 37.14.010, 37.14.020, 37.14.030, 37.14.040, and 37.14.050  
12 are repealed.

13 \* Sec. 8. This Act takes effect immediately under AS 01.10.070(c).  
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**STATE OF ALASKA 1987 LEGISLATIVE SESSION  
FISCAL NOTE**

REQUEST: \_\_\_\_\_

Bill Version: CS SB 96 (Hess)  
Publish Date: 4-21-87

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

Agency Affected: DHSS/DHDD  
BRU: Inst. & Administration

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

Components: Mental Health Admin.

*Beane*

**EXPENDITURES/REVENUES: (Thousands of Dollars)**

OPERATING	FY 87	FY 88	FY 89	FY 90	FY 91	FY 92
PERSONAL SERVICES		140.1	140.1	140.1	140.1	140.1
TRAVEL		38.0	38.0	38.0	38.0	38.0
CONTRACTUAL		78.8	78.8	78.8	73.8	78.8
SUPPLIES		1.8	1.8	1.8	1.8	1.8
EQUIPMENT		9.0	0	0	0	0
LAND & STRUCTURES		0	0	0	0	0
GRANTS, CLAIMS		0	0	0	0	0
MISCELLANEOUS		0	0	0	0	0
<b>TOTAL OPERATING</b>	<b>0</b>	<b>267.7</b>	<b>267.7</b>	<b>267.7</b>	<b>267.7</b>	<b>267.7</b>

CAPITAL	0	0	0	0	0	0
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REVENUE	0	0	0	0	0	0
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**FUNDING: (Thousands of Dollars)**

GENERAL FUND		267.7	267.7	267.7	267.7	267.7
FEDERAL FUNDS						
OTHER						
<b>TOTAL</b>		<b>267.7</b>	<b>267.7</b>	<b>267.7</b>	<b>267.7</b>	<b>267.7</b>

**POSITIONS:**

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

**ANALYSIS :**

\_\_\_\_\_

Prepared by: Mel Henry, Director  
Division: Mental Health & Dev. Disabilities

Phone: 465-3370  
Date: 4/4/87

Approved by Commissioner: Marya M. Morrison  
Agency: Department of Health & Social Services

Date: 4/6/87

**Distribution (by preparer):**

- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)
- Senate Secretary

## FISCAL NOTE

CSB 96 HBSS  
~~HB 91 #1~~

## Mental Health Board

## Personnel Services:

one (1) Mental Health Board Coord.	Range 22	\$ 63,900
one (1) Research Analyst III	Range 18	49,157
one (1) Clerk Typist III	Range 8	27,004
		<u>\$140,061</u>

## Travel:

*Board travel and per diem 4 meetings/year X 6,000/meeting =		\$ 24,000
Staff travel 7000/per prof. staff X 2 =		14,000
		<u>\$ 38,000</u>

## Contractual:

Phone, copying, printing, advertizing		\$ 8,000
Professional Services		50,000
Lease space 519 sq. ft. X 2.57 sq. ft./mo X 12 mo. =		16,000
Computer hook up 1600 X 3		4,800
		<u>\$ 78,800</u>

## Supplies:

50/mo. X 12 X 3 staff		<u>\$ 1,800</u>
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## Equipment:

3 Personal Computers 3000 X 3 =		<u>\$ 9,000</u>
3 Printers		
Software		

TOTAL		<u>\$267,661</u>
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\*The amount of \$10.0 is also available from the DMHDD/s budget.

CSRB 96 HES  
~~HB 91~~

FISCAL NOTE #1

Mental Health Board

House Bill 91 (CMI) recommends the establishment of a statewide Mental Health Board that would influence the actions and directions of the Department of Health and Social Services in attaining the overall mission of the mental health system in Alaska. The duties and responsibilities of the existing Governor's Mental Health Advisory Council (Sec. 47.30.605) would be absorbed and expanded by this new board structure.

Modeled after the Governor's Council for the Handicapped and Gifted (Sec. 47.80.030), the attached document describes the functions and responsibilities of the new board. Although advisory in scope, this Board will be significantly more influential than the "old" Council with respect to legislative/executive advocacy, impact on departmental policies, regulations and procedures, budget and program oversight, short and long range planning and quality assurance.

In order to effectively accomplish its goals and objectives, the Mental Health Board will be staffed by three full time professional and clerical staff. The Senior staff position, the Executive Director, will be partially exempt, and be hired by the balance of candidates submitted by the Commissioner. The remaining staff will be hired through the classified service by the Executive Director. Although the staff will be employees of

Back-up CSRB 96 HES

the Department of Health and Social Services, Division of Mental Health and Developmental Disabilities, and be guided by the policies and procedures of the Department, they will be directly responsible to the Board for their assignments and performance. They will work directly for the Board and not the Department. Ideally, the staff should be located in the Division of Mental Health and Developmental Disabilities regional office in Anchorage.

The staff for the Board will comprise three permanent full time employees:

- (1) Executive Director (Range 22). This person, a Mental Health Clinician or a Health Planner, would have responsibility for working directly with the Board to accomplish its mission, the overall coordination and supervision of the office, and coordinating and collaborating with the Department. In addition to the established requirements of a Mental Health Clinician III or a Health Planner, this individual must possess special knowledge in the areas of mental health administration and supervision, planning, research, program monitoring and evaluation, skills in oral and written communication, broad knowledge of Alaska's mental health system (including the private sector), previous experience in working with advisory or governing boards, and skilled at interagency coordination, collaboration and cooperation.

- (2) Research Analyst III (Range 18) who would have responsibility for planning and social indication forecasting, designing and conducting independent research and studies, collecting and analyzing data, providing reports and analysis for both policy and management recommendations. Ability to interface with the private sector is important.
- (3) Clerk Typist III (Range 8) will provide secretarial support to the two professional staff and the Board.

## FACT SHEET - MENTAL HEALTH LEGISLATION

### HB 92/SB 96 - Mental Health Trust Lands Settlement

#### BACKGROUND:

In 1956, the U.S. Congress gave the Territory of Alaska approval to select 1 million acres of federal land to create a "trust" -- the income of which was first to be used "to fund the necessary expenses of the mental health program of Alaska."

Although the Territory and State selected the million acres, no income from the acreage was ever identified for mental health uses.

In 1978, the legislature passed a law redesignating mental health trust lands as general grant lands. The law established a trust fund for mental health programs and specified that 1.5% of the annual receipts from all state land would go to the fund.

No appropriations were ever made into the fund.

In 1982 a suit was filed in Fairbanks Superior Court on behalf of Carl Weiss, a seven-year-old boy from Nenana and Earl Hilliker, a Fairbanks resident. Weiss v. State of Alaska contended that the plaintiffs were in need of mental health services which were not available in Alaska. They questioned the constitutionality of the 1978 law which abolished the land trust.

The court, in 1984, stated that the million acres of land was, indeed, intended to produce revenues for the benefit of Alaska's mentally ill and that the 1978 law was unconstitutional. The Supreme Court agreed with the lower court and stated that the million acre trust had to be reconstituted as nearly as possible. The court said further that the trust had to be reimbursed for lands sold since 1978.

The state, to the extent possible, has "tried to put Humpty Dumpty together again" but only 207 thousand of the original million acres remain as "unencumbered land." Nearly 300 thousand acres are described as "less than fee disposals." These include oil leased lands, coal leases, timber sales and other such uses. Proceeds from these lands are currently being credited to a special mental health account.

More than 360 thousand acres have gone into such limited-use designations as parks, game refuges, habitat areas, and state forests.

More than 40,000 acres have been allocated to municipalities. The Attorney General has advised the legislature that, without some sort of settlement, these lands may have to be returned to the trust.

The Legislature, in response to the decision, created a Joint Special Committee charged with trying to come up with a legislative solution to the decision that would meet with the approval of all concerned. It also created the Interim Mental Health Trust Commission and charged it with protecting the present diminished land trust, approving rentals and other administrative actions, and with making a report of its own concerning possible solutions to the problem.

#### WHY IS A LEGISLATIVE SOLUTION DESIRABLE?

At the present time, the court decision creates a cloud over many thousands of acres of land which have been transferred to municipalities, designated as state parks or set aside for other public uses. The decision effectively places a "freeze" not only on the use of mental health lands but potentially creates a "freeze" as well over additional lands which may have to be designated as mental health lands to make up for original lands which have been disposed of.

Too, it is not considered in the state's best interest for mental health lands to be administered separately from its other land holdings. Estimates are that it might cost as much as 25% of income generated for the state to administer the trust.

It will be far better -- assuming everyone concerned can have their needs met -- if the legislature can come up with a solution that satisfies the original Congressional grant language and yet avoids creation of a costly bureaucratic process.

#### PROPOSED LEGISLATION

HB 92 and SB 96, introduced in each house at the request of the Special Joint Committee, would attempt to fund the equivalent of trust lands earnings each year by designating 5% of the state's general revenues as being available for appropriation to the mental health program. The plan, sometimes called "the 5% solution," does not however reconstitute the trust in any form.

A new approach, suggested by the Interim Mental Health Commission and adopted as a Committee Substitute by both the House and Senate HESS committees, would do the following:

\*It would establish the value of the original mental health lands.

\*It would specify that a new mental health trust is created from certain legislatively-designated lands which have value equal in dollars to the former trust. These lands would be re-appraised every five years.

\*It would mandate that each year the Commissioner of Revenue would make rent or lease payments to the trust by depositing 8% of the value of the trust lands into a special account.

\*From this account, the Legislature would appropriate enough money to fund the necessary expenses of Alaska's mental health program. Excess moneys not necessary to fund mental health could be appropriated to meet other needs of the state.

\*A strong mental health board would be established, a prime function of which would be to determine each year what the necessary expenses of the program would cost.

\*As an interim measure, until valuations are made and the new trust is established, the "5% solution" proposed in the original House and Senate bills would go into effect. This would give the mental health program a temporary source of funds.

The advantages of the proposal are these:

1. It reconstitutes a permanent land trust and gets everybody out of court.
2. It allows mental health professionals to focus on mental health needs and on adequate budgeting, not on land management.
3. It eliminates all clouded land titles and frees lands for all other uses.
4. It is relatively easy to administer.
5. It requires no cash reimbursement for lands disposed of; its only special costs are for lands appraisal.
6. Most important, it creates a vehicle for the state -- three decades after the 1956 Congressional act -- to adequately fund the long neglected needs of the mentally ill.

BACKGROUND:

Historically in Alaska, the needs of the mentally ill have not been adequately recognized and funded. This situation has existed for a number of reasons, one of which is that until very recently people with mentally ill family members or friends were extremely hesitant to talk about it in any public forum. Treatment for the chronically mentally ill was an area of particular underfunding and therefore undertreatment.

Too, until the 1984 Weiss decision by the Alaska Supreme Court, there was no identifiable source of funding which advocates could point to as being available for treatment of mentally ill persons. That, of course, has now changed. The court has ruled that the 1954 million-acre federal grant of lands for a mental health trust must be reconstituted. From income off of these lands, the money must first go to meet expenses of the mental health program of Alaska. (Moneys excess to those needs may be appropriated for other public uses.)

Some members of the 14th Alaska Legislature attempted to remedy the underattention and underfunding of needs of the chronically mentally ill (CMI) last year. They introduced legislation which would have specifically mandated treatment for these individuals. The bill, however, took a considerable amount of time to develop and by the time it was in shape for consideration the legislature was approaching adjournment. The bill did, however, receive favorable attention from the House HESS Committee and was passed out of that committee with a majority do-pass recommendation.

The 1986 interim Joint Special Committee created by the legislature to look into mental health matters also recognized the need for legislation of this kind. In both houses of the 15th Alaska Legislature the committee prefiled legislation similar to the former bill. The identical bills are HB 91 and SB 97.

PRESENT STATUS:

HB 91 has been considered by the House HESS Committee and has been passed out of committee in the form of a recommended committee substitute, the principal features of which are these:

\*Priorities for treatment are established, the highest priority being for those facing immediate risk of hospitalization, for those in need of continuing services, for those who pose a hazard to themselves or others, and for severely mentally ill youth; second level priority would go to those who, because of geographic or income limitations, are not capable of obtaining assistance in the private sector; third

level attention would go to those suffering from mental or emotional disturbances of a less severe or persistent nature not requiring hospitalization in the foreseeable future.

\*General treatment services -- both outpatient and inpatient -- available to treat all types of mental illness are described. (These include such services as emergency services, counseling, screening, evaluation, prevention, education, etc.)

\*In addition, the particular needs of the chronically mentally ill -- never before truly recognized in statute -- are set out. Language identifying the services to meet these needs was taken from a model federal program initiated by the National Institute of Mental Health. These include such services as crisis stabilization, unique patient treatment services such as psychotropic medication, case management, residential living, vocation assistance and other services. Recent NIMH research demonstrates that acute psychotic episodes are significantly reduced when a community has an array of such services. (Many of these services, incidentally, have long been available for other needy individuals, but have not, until recently, been available for CMI individuals even in a limited way.)

\*The bill provides that in cases where the usual funding "match" for CMI services and other community mental health services cannot realistically be expected from a community or a local organization, the Department of Health and Social Services will fund the percent of costs that is necessary to ensure the services will be provided. (In some instances, this may be 100% of program costs.)

\*The bill also establishes broad standards for community health services

ALASKA STATE LEGISLATURE

15TH Legislature 1ST Session

SENATE BILL..... NO. ...96...

By HALFORD, BY REQUEST OF.....  
THE JOINT SPECIAL COMMITTEE ON  
MENTAL HEALTH TRUST LAND

"An Act implementing a settle-  
ment relating to the federally  
created mental health trust;  
and providing for an effective  
date."

Introduced in the Senate ...2-2..., 19.87.

HISTORY IN THE SENATE

1987

2 2

4 21

Read first time and referred  
to Committee on

HESS, JUDICIARY AND  
FINANCE  
Reported back with HESS  
recommendation that replace  
w/cs, 3 do pass, 1 no rec  
new title, fiscal note  
to Judiciary  
Sub: 5 do pass HESS-CS  
to Finance.

Read second time and

Read third time and

PASS	Effective Date
Yeas	Yeas
Nays	Nays
Absent	Absent
Excused	Excused

Reconsideration

PASS	Effective Date
Yeas	Yeas
Nays	Nays
Absent	Absent
Excused	Excused

Reported correctly engrossed  
Signed by President  
Sent to House

SECRETARY OF THE SENATE

HISTORY IN THE HOUSE

19

Read first time and referred  
to Committee on

Reported back with  
recommendation that

Read second time and

Read third time and

PASS	Effective Date
Yeas	Yeas
Nays	Nays
Absent	Absent
Excused	Excused

Reconsideration

PASS	Effective Date
Yeas	Yeas
Nays	Nays
Absent	Absent
Excused	Excused

Reported correctly engrossed  
Signed by Speaker  
Returned to Senate

CHIEF CLERK OF THE HOUSE

HISTORY IN THE SENATE

19

Received from House

To enrolling

Reported correctly enrolled

Sent to Governor

..... by Governor

Filed with Lt. Governor

Chapter No. ....

Updated  
1988

FNU.

Attach to  
bill

FISCAL NOTE

REQUEST:

Revision Date: \_\_\_\_\_  
Title: An act relating to the Alaska  
Mental Health Trust; and providing for an  
effective date.  
Sponsor: House HESS Committee  
Requestor: \_\_\_\_\_

Agency Affected: Department of Administration  
BRU: Personnel  
Components: Centralized Administrative Services

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 88	FY 89	FY 90	FY 91	FY 92	FY 93
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	0	0	0	0	0	0

FUNDING: (Thousands of Dollars)

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

ANALYSIS: (Attach a separate page if necessary)

*[Handwritten signature: Diana DeSimone]*

Prepared By: Diana DeSimone Phone: 465-4430  
Division: Personnel Date: 1-21-88

Approved by Commissioner: John M. Andrews Date: 1/25/88  
Agency: Department of Administration

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

*[Handwritten initials]*  
*[Stamp: JAN 27 1988]*  
*[Stamp: LEGISLATIVE FINANCE]*

STATE OF ALASKA 1987 LEGISLATIVE SESSION  
FISCAL NOTE

Bill Version: SB 96

Publish Date: \_\_\_\_\_

REQUEST: \_\_\_\_\_

Revision Date: \_\_\_\_\_  
Title: Implementing Settlement of  
Mental Health Trust  
Sponsor: Halford by Request  
Requestor: Senate HESS

Agency Affected: Department of Revenue  
BRU: Treasury

Components: \_\_\_\_\_

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 87	FY 88	FY 89	FY 90	FY 91	FY 92
OPERATING						
PERSONAL SERVICES	-	-	-	-	-	-
TRAVEL	-	-	-	-	-	-
CONTRACTUAL	-	-	-	-	-	-
SUPPLIES	-	-	-	-	-	-
EQUIPMENT	-	-	-	-	-	-
LANDS & STRUCTURES	-	-	-	-	-	-
GRANTS, CLAIMS	-	-	-	-	-	-
MISCELLANEOUS	-	-	-	-	-	-
TOTAL OPERATING	-	-	-	-	-	-
CAPITAL	-	-	-	-	-	-
REVENUE	-	-	-	-	-	-

FUNDING: (Thousands of Dollars)

GENERAL FUND	-	-	-	-	-	-
FEDERAL FUNDS	-	-	-	-	-	-
OTHER	-	-	-	-	-	-
TOTAL	-	-	-	-	-	-

POSITIONS:

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

ANALYSIS: Attach a separate page for analysis.

Prepared By: Milt Barker MB

Division: Treasury

Phone: 465-2350

Date: February 23, 1987

Approved by Commissioner: [Signature]

Agency: Department of Revenue

Date: 2/24/87

Distribution (by preparer):

- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)
- Senate Secretary

RECEIVED  
FEB 27 1987

LEGISLATIVE FINANCE

STATE OF ALASKA 1987 LEGISLATIVE SESSION  
FISCAL NOTE

REQUEST \_\_\_\_\_

Bill Version: SB 96

Publish Date: \_\_\_\_\_

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

Agency Affected: Revenue

Title: Relating to the Federally

BRU: \_\_\_\_\_

Created Mental Health Trust

Sponsor: Halford

Components: \_\_\_\_\_

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

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 87	FY 88	FY 89	FY 90	FY 91	FY 92
<b>OPERATING</b>						
PERSONAL SERVICES	-	-	-	-	-	-
TRAVEL	-	-	-	-	-	-
CONTRACTUAL	-	-	-	-	-	-
SUPPLIES	-	-	-	-	-	-
EQUIPMENT	-	-	-	-	-	-
LANDS & STRUCTURES	-	-	-	-	-	-
GRANTS, CLAIMS	-	-	-	-	-	-
MISCELLANEOUS	-	-	-	-	-	-
TOTAL OPERATING	-	-	-	-	-	-
<b>CAPITAL</b>	-	-	-	-	-	-
<b>REVENUE</b>	-	-	-	-	-	-

FUNDING: (Millions of Dollars)

GENERAL FUND	-	(66.3)	(68.7)	(69.9)	(68.0)	(67.4)
FEDERAL FUNDS						
SPEC. MENTAL HEALTH ACCT.		66.3	68.7	69.9	68.0	67.4
TOTAL	-	-	-	-	-	-

POSITIONS:

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

ANALYSIS: Attach a separate page if necessary

Figures are based on the January 1987 Department of Revenue Source Book estimates, and reflect the annual deposits to the Special Mental Health Account. It should be noted that the Analysis assumes five percent of General Fund Unrestricted Revenues.

Prepared By: Robert Elliott *RE*  
Division: Revenue/Research Section

Phone: 465-2173  
Date: 3/4/87

Approved by Commissioner: Hugh Malone *Hm*  
Agency: Department of Revenue

Date: 3/6/87

Distribution (by Agency preparing fiscal note):

- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)
- Senate Secretary

**RECEIVED**  
MAR 10 1987

SB

100

STATE OF ALASKA  
1988 LEGISLATIVE SESSION

BILL VERSION: SB 100  
PUBLISH DATE: \_\_\_\_\_

FISCAL NOTE

REQUEST:

Revision Date: January 14, 1988  
Title: Act relating to taxation of  
watercraft motor fuel  
Sponsor: Jones  
Requestor: Senate Finance Committee

Agency Affected: Dept. of Revenue  
BRU: \_\_\_\_\_  
Components: \_\_\_\_\_

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 88	FY 89	FY 90	FY 91	FY 92	FY 93
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0	0	0	0	0	0

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

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

FUNDING: (Thousands of Dollars)

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

POSITIONS:

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

ANALYSIS : (Attach a separate page if necessary)

Prepared by: *Rick Halford*  
Division: Senator Rick Halford, Co-chairman  
Senate Finance Committee

Phone: 465-4958  
Date: \_\_\_\_\_

Approved by Commissioner: \_\_\_\_\_  
Agency: \_\_\_\_\_

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

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

SENATE COMMITTEE REPORT

FURTHER:

2/23/87

DATE TURNED INTO OFFICE 3/12/87

Mr. President:

FINANCE Committee considered SB 100

taxation of watercraft motor fuel.

and recommended:

replace with CS FOR \_\_\_\_\_ )  same title  
 or adopt \_\_\_\_\_ CS FOR \_\_\_\_\_ )  new title

attached amendment(s) and

do pass

do not pass

no recommendation

individual recommendations

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

letter of intent adopted \_\_\_\_\_

Committee  attached or  adopted fiscal note(s)

new  updated or  previous  
 zero  fiscal impact

MEMBERS SIGNING DO PASS

OTHER RECOMMENDATIONS

*[Handwritten signatures: Paul Fishel, Jim Duncan, Rich Gehr, Willie Rowley, etc.]*

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

*[Handwritten signature]* Do Pass  
Chairman signature and recommendation

Committee Backup Attached

**STATE OF ALASKA 1987 LEGISLATIVE SESSION  
FISCAL NOTE**

**REQUEST:** \_\_\_\_\_

Bill Version: SB 100

Publish Date: \_\_\_\_\_

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

Agency Affected: Dept. of Revenue

Title: Act relating to taxation of  
watercraft motor fuel

BRU: \_\_\_\_\_

Sponsor: Jones

Components: \_\_\_\_\_

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

**EXPENDITURES/REVENUES: (Thousands of Dollars)**

OPERATING	FY 87	FY 88	FY 89	FY 90	FY 91	FY 92
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
<b>TOTAL OPERATING</b>	0	0	0	0	0	0

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

<b>REVENUE</b>						
----------------	--	--	--	--	--	--

**FUNDING: (Thousands of Dollars)**

GENERAL FUND	0	0	0	0	0	0
FEDERAL FUNDS						
OTHER						
<b>TOTAL</b>						

**POSITIONS:**

FULL-TIME						
PART-TIME						
TEMPORARY						

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

Prepared by: \_\_\_\_\_ Phone: 465-4985  
 Division: John E. Binkley, Co-chairman Date: March 12, 1987  
Senate Finance Committee  
 Approved by Commissioner: \_\_\_\_\_ Date: \_\_\_\_\_  
 Agency: \_\_\_\_\_

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

1 IN THE SENATE

BY JONES BY REQUEST

2 SENATE BILL NO. 100

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FIFTEENTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act relating to the taxation of watercraft motor  
7 fuel."

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

9 \* Section 1. AS 43.40.100 is amended to read:

10 Sec. 43.40.100. DEFINITIONS. In this chapter

11 (1) "dealer" means a person who sells or otherwise trans-  
12 fers in this state motor fuel upon which the taxes imposed by this  
13 chapter have not been paid;

14 (2) "motor fuel" means fuel used in an engine for the  
15 propulsion of a motor vehicle or aircraft, and fuel used in and on  
16 watercraft for any purpose, or in a stationary engine, machine or  
17 mechanical contrivance that [WHICH] is run by an internal combustion  
18 motor; "motor fuel" does not include fuel

19 (A) [FUEL] consigned to foreign countries;

20 (B) [FUEL] sold for use in jet propulsion aircraft  
21 operating in flights to foreign countries;

22 (C) [FUEL] used in stationary power plants operating  
23 as public utility plants and generating electrical energy for  
24 sale to the general public;

25 (D) [FUEL] used by nonprofit power associations or  
26 corporations for generating electric energy for resale;

27 (E) [FUEL] used by charitable institutions;

28 (F) that [FUEL WHICH] is at least 10 percent alcohol  
29 by volume;

S

1 (G) [FUEL] sold or transferred between qualified deal-  
2 ers;

3 (H) [FUEL] sold to federal, state, and local govern-  
4 ment agencies for official use;

5 (I) [FUEL] used in stationary power plants that gener-  
6 ate electrical energy for private residential consumption;

7 (J) [FUEL] used to heat private or commercial build-  
8 ings or facilities:

9 (K) [FUEL] used for other nontaxable purposes as pre-  
10 scribed by regulations adopted by the department; [OR]

11 (L) [FUEL] used in stationary power plants of 100 kw  
12 or less that generate electrical power for commercial enterprises  
13 not for resale; or

14 (M) originating outside the jurisdiction of the state  
15 and that is brought into the state in fuel storage tanks on a  
16 watercraft for the purpose of operating the watercraft, one or  
17 more auxiliary engines on the watercraft, or the auxiliary water-  
18 craft carried by the watercraft;

19 (3) "qualified dealer" means a person who (A) refines, (B)  
20 imports, (C) manufactures, (D) produces, (E) compounds, or (F) whole-  
21 sales motor fuel, who satisfies criteria for qualified dealers estab-  
22 lished by the department by regulation and who obtains a qualified  
23 dealer's license from the department;

24 (4) "user" means a person consuming or using motor fuel,  
25 who either

26 (A) purchases the fuel out of the state and ships it  
27 into the state for personal use in the state;

28 (B) manufactures the fuel in the state; or

29 (C) purchases or receives fuel in the state that is

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not taxed at the time of purchase or receipt or is taxed at a rate that is less than the rate prescribed by AS 43.40.010.

STATE OF ALASKA 1987 LEGISLATIVE SESSION  
FISCAL NOTE

REQUEST \_\_\_\_\_

Bill Version: SB 100  
Publish Date: 2/3/87

Revision Date: \_\_\_\_\_  
Title: An Act relating to the taxation  
of watercraft motor fuel  
Sponsor: Jones by Request  
Requestor: \_\_\_\_\_

Agency Affected: \_\_\_\_\_  
BRU: \_\_\_\_\_  
Components: \_\_\_\_\_

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 87	FY 88	FY 89	FY 90	FY 91	FY 92
OPERATING						
PERSONAL SERVICES	-	-	-	-	-	-
TRAVEL	-	-	-	-	-	-
CONTRACTUAL	-	-	-	-	-	-
SUPPLIES	-	-	-	-	-	-
EQUIPMENT	-	-	-	-	-	-
LANDS & STRUCTURES	-	-	-	-	-	-
GRANTS, CLAIMS	-	-	-	-	-	-
MISCELLANEOUS	-	-	-	-	-	-
TOTAL OPERATING	-	-	-	-	-	-
CAPITAL	-	-	-	-	-	-
REVENUE	-	(3000.0)	(3000.0)	(3000.0)	(3000.0)	(3000.0)

FUNDING: (Thousands of Dollars)

GENERAL FUND	-	-	-	-	-	-
FEDERAL FUNDS	-	-	-	-	-	-
OTHER	-	-	-	-	-	-
TOTAL	-	-	-	-	-	-

POSITIONS:

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

ANALYSIS: Attach a separate page if necessary

Analysis assumes an effective date of July 1, 1987. See attached.

Prepared By: <sup>DT</sup> David Tonkovich Phone: 465-2173  
Division: Research/Revenue Date: 2/12/87  
Approved by Commissioner: [Signature] Date: 2/16/87  
Agency: REVENUE

Distribution (by Agency preparing fiscal note):  
Legislative Finance  
Legislative Sponsor  
Requestor  
Office of Management and Budget  
Impacted Agency(ies)  
Senate Secretary

SEE ADDITIONAL  
FISCAL NOTE ON  
ADMINISTRATIVE COST

Continuation for Fiscal Note Analysis

SB 100

Analysis:

This legislation exempts from the \$.05/gallon marine fuel tax that fuel which is purchased outside the State's jurisdiction but is brought into the state for use by a watercraft.

It is the State's contention that fuel used within the three mile limit is subject to the fuel tax. This contention is currently the subject of an administrative hearing process. Because of uncertainty over the outcome of that process current revenue estimates do not include these potential revenues.

There are three pieces of information required to estimate the revenue impact of this bill: 1) The volume of vessel traffic into and out of Alaska; 2) The amount of fuel used within the State's jurisdiction by these vessels; and 3) The portion of the fuel purchased outside the State. Unfortunately there is only fragmentary data on any of these items.

An earlier fiscal note on this topic (SB 387, 1986 Legislative Session) tried to provide a rough estimate of the impact of excluding this fuel usage from the tax. The procedure to develop that estimate is summarized below. Because there have been no further returns filed on this element of the marine fuel tax (pending the outcome of the administrative hearing process) the figures developed for that legislation remain our best estimate of the impact.

The estimate contained in the note for SB 387 was prepared by dividing potential collections into two parts:

1. Revenues from users whose tax liability could be estimated from data on the number of trips, average fuel consumption and time in Alaska waters. Also, for several of these users a full year return was available. This part of the estimate covered these major users:

Tankers into and out of Valdez  
Cruiseships in Southeast Alaska  
Several large common carriers serving Southcentral Alaska  
Several carriers distributing petroleum products for local use.

Our estimate for these users is \$2 million annually.

2. Revenues for remaining users. This tax liability is more difficult to estimate because of the diversity of users and the fact that available returns cover only part of the year. This estimate would cover many of the common and contract carriers, freighters hauling raw materials and semi-finished products such as LNG, fish processors and a variety of other users.

Our estimate for these users is \$1 million. Because of the numbers and variety of users involved this estimate is probably conservative.

STATE OF ALASKA 1987 LEGISLATIVE SESSION  
FISCAL NOTE

Bill Version: SB 100

REQUEST \_\_\_\_\_

Publish Date: \_\_\_\_\_

Revision Date: 2/12/87

Agency Affected: Revenue

Title: An act relating to taxation of watercraft motor fuel

BRU: \_\_\_\_\_

Sponsor: Jones

Components: \_\_\_\_\_

Requestor: Transportation & Finance

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 87	FY 88	FY 89	FY 90	FY 91	FY 92
<b>OPERATING</b>						
PERSONAL SERVICES	-	-	-	-	-	-
TRAVEL	-	-	-	-	-	-
CONTRACTUAL	-	-	-	-	-	-
SUPPLIES	-	-	-	-	-	-
EQUIPMENT	-	-	-	-	-	-
LANDS & STRUCTURES	-	-	-	-	-	-
GRANTS, CLAIMS	-	-	-	-	-	-
MISCELLANEOUS	-	-	-	-	-	-
<b>TOTAL OPERATING</b>	<b>- 0 -</b>	<b>- 0 -</b>	<b>- 0 -</b>	<b>- 0 -</b>	<b>- 0 -</b>	<b>- 0 -</b>
<b>CAPITAL</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>
<b>REVENUE</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>

FUNDING: (Thousands of Dollars)

GENERAL FUND	-	-	-	-	-	-
FEDERAL FUNDS	-	-	-	-	-	-
OTHER	-	-	-	-	-	-
<b>TOTAL</b>	<b>-</b>	<b>- 0 -</b>	<b>- 0 -</b>	<b>- 0 -</b>	<b>- 0 -</b>	<b>- 0 -</b>

POSITIONS:

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

ANALYSIS: See attached.

Prepared By: Steven E. Kettel

Phone: 465-2320

Division: Audit

Date: 2/12/87

Approved by Commissioner: J. Malone

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

Agency: REVENUE

SEE ADDITIONAL

FISCAL NOTE  
ON REVENUE  
IMPACT

Distribution (by Agency preparing fiscal note):

Legislative Finance

Legislative Sponsor

Requestor

Office of Management and Budget

Impacted Agency(ies)

Senate Secretary

Senate Bill 100  
Fiscal Note Analysis  
February 12, 1987

SB 100 amends definitions in AS 43.40.100 by correcting language usage and adding a section under the definition of motor fuel which excludes from the definition that fuel originating outside the jurisdiction of the State and brought into the State in fuel storage tanks on watercraft for the purpose of operating said watercraft, engines on the watercraft or auxiliary watercraft carried by the watercraft.

It is current Department policy that watercraft of all types, whether engaged in intrastate or interstate commerce must pay the five-cent watercraft motor fuel tax on fuel consumed or used in Alaska. This policy has been conveyed to the water transportation, crude oil tanker, cruise ship and fish processing industries. This position has been challenged by the industry and is currently in the formal hearing process.

We believe it is sound public policy to assert the tax against the interstate shipping industry. First, the levy is borne by Alaska resident shipping companies and puts them at a competitive disadvantage with foreign companies which are not taxed or their fuel purchased in other jurisdictions. Second, there is substantial revenues at stake, conservatively estimated at \$3 million per year.

Suggested Amendments:

Sub-paragraph (M) exempts fuel consumed by "auxiliary watercraft carried by the watercraft." It is our understanding that the sponsors do not intend to exempt from tax fuel consumed by fish processing facilities in the State, especially fishing vessels or other smaller watercraft which enable the processing vessel to take fish in Alaskan waters. The amending language may provide a loophole for fish processors, and we suggest amending language be drafted which disallows the exemption to vessels while they are fishing in Alaskan waters.

The amendment also may permit fish processors to be exempt from tax on fuel used by on-board generators and other engines not associated with propulsion of the vessel. This is also outside the scope of the sponsor's intention.

# ALASKA STATE LEGISLATURE

Sen. Lloyd Jones, Chairman  
Sen. John B. "Jack" Coghill, Vice Chairman  
Sen. Mitch Abood  
Sen. Bettye Fahrenkamp  
Sen. Tim Kelly


P.O. Box V  
Juneau, AK 99811

907-465-4921

## Senate Transportation Committee

### MEMORANDUM

TO: Senate Finance Committee

FROM: Senator Lloyd Jones, Chairman   
Senate Transportation Committee

DATE: March 11, 1987

SUBJECT: Senate Bill 100, Taxation of watercraft motor fuel.

The Senate Transportation was unable to come to a consensus regarding the proper fiscal notes for this bill. It was determined that the Senate Finance Committee could better deal with this particular issue.

A few of the questions were:

Should the revenue loss shown by the passage of this bill be reflected on the fiscal note? Particularly, when the it is not reflected in the FY 88 budget.

How much revenue has actually been collected? Revenue, during the committee hearing on the bill, could not provide the committee with an estimate.

The committee would appreciate your consideration of these issues.

# ALASKA STATE LEGISLATURE


*Home Address*  
3813 Denali Street  
Ketchikan, AK 99901  
907-225-9082

*While in Juneau*  
P.O. Box V  
Juneau, AK 99811  
907-465-3743

**Senator Lloyd Jones**

## MEMORANDUM

TO: Senate Finance Committee Members

FROM: Senator Lloyd Jones 

DATE: March 11, 1987

SUBJECT: Senate Bill 100

I have introduced this legislation, by request, to clarify existing law with regard to the transportation of watercraft motor fuel into the state. This legislation is identical to Senate Bill 387(Fin) which died in the House Rules Committee during the last legislature.

From 1946 until 1985 the state has not taxed watercraft motor fuel which is purchased outside Alaska waters and brought into the state in fuel storage tanks on watercraft for the purposes of operating the vessel. This legislation would maintain that long-standing policy.

Issue can be taken with Revenue's zero fiscal note for administration of a watercraft motor fuel tax. The cost of checking inbound and outbound vessels to determine actual fuel use would be, I think, a big factor.

I urge the committee to support this legislation.

Position Paper

Submitted on behalf of Tote, Sealand Services, Crowley Maritime,  
Alaska Marine Lines, Western Pioneer, and Knappton Towboat.

## POSITION PAPER - SB 100

SB 100 is identical to CS SB 387 (Fin.) which passed the Senate but died in House Rules Committee upon adjournment in 1986.

This legislation is necessary to correct a new (1985) and onerous reinterpretation of the motor fuel tax by the Department of Revenue (D.O.R.). It concerns fuel brought into the state in a marine vessel's fuel storage tanks and consumed to operate the vessel while in Alaska waters. SB 100 would clarify that, consistent with the application of the motor fuel tax laws between 1946 and 1985, fuel brought into the state in fuel storage tanks for the purpose of operating the vessel is not subject to the motor fuel tax.

### Background Information

The motor fuel tax was enacted in 1946. Marine fuel purchased or transferred within Alaska is taxable in full at \$.05 per gallon.

Since its enactment in 1946 until 1985, motor fuel purchased outside Alaska and consumed in Alaska without first being stored or otherwise coming to rest in the state was not taxed under the motor fuel tax provisions.

In 1985, without benefit of any new legislative authorization, D.O.R. initiated a series of letters to certain marine cargo carriers, among others, attempting to levy a fuel tax on fuel consumed in Alaska but which was brought into the state in fuel storage tanks and used to propel and operate the vessel.

This "new interpretation" of the law has not been authorized by the Legislature or existing law and extends the tax beyond the original scope of the marine fuel tax statute.

D.O.R. contends that a 1982 amendment to its administrative regulations authorizes its "new interpretation." However, D.O.R. admits that nothing in the public notice of intent to adopt the regulations stated that D.O.R. intended to tax mere consumption of marine fuel or that it intended to change the application of the law it had used the previous 39 years.

The amendment in question consists of deletion of the word "and" used in the statute and substitution of the word "or" to define "user." The result is that the statute defines "user" as follows:

(4) "user means a person consuming or using motor fuel, who either

(A) purchases the fuel out of the state and ships it into the state for personal use in the state;

(B) manufactures the fuel in the state;

or

(C) purchases or receives fuel in the state that is not taxed at the time of purchase or receipt or is taxed at a rate that is less than the rate prescribed by AS 43.40.010. (emphasis added)

However, after the D.O.R. amendment, the regulations defines "user" as follows:

(6) "user" means a person consuming or using motor fuel who purchases the fuel out of state or ships it into the state for personal use in the state, who manufactures the

fuel in the state, or who purchases or receives in the state fuel that is not taxed at the time of purchase or receipt or is taxed at a rate that is less than the rate prescribed by AS 43.40.010; (emphasis added)

The regulations are obviously inconsistent with statute and appear to be an attempt to extend the scope of the fuel tax beyond that originally intended by the Legislature. This unilateral action by an executive branch agency which attempts to make substantive changes in the law without legislative authorization is highly questionable and unfair.

SB 100 would amend the statute to prevent this "new interpretation" and clarify legislative intent to ensure that D.O.R will tailor its administrative activity consistent with the 39-year history of the motor fuel tax.

It is worthy of note that D.O.R. has said that if successful in the marine fuel area, it will extend its "new interpretation" to vehicular motor transportation and aviation travel, which raises questions similar to those in the marine transportation area.

POLICY CONSIDERATIONS IN SUPPORT OF SB 100

1. D.O.R.'s "new interpretation" would certainly increase the costs of consumer goods, construction materials and equipment, and other products shipped to Alaska and thereby increasing the cost of living to all Alaskans;
2. The "new interpretation" would result in higher tourist travel costs to Alaska as cruise ships would be subject to the new fuel tax;
3. The "new interpretation" would impose the tax on the amount of marine fuel consumed while inside the three-mile limit of Alaska waters thereby placing certain ports at a competitive disadvantage due to their location farther inside bays, harbors and inlets;
4. The "new interpretation" would also apply to tanker traffic to and from Valdez, however, this merely increases transportation costs which are "netted back" reducing the well-head value to the state of Alaska;
5. The "new interpretation" would apply to the large fishing fleet and pleasure craft which ply Alaska waters raising questions of the administrative, enforcement, and personnel costs required to adequately monitor the expansion of the tax to fuel "consumed" in transit.
6. When the "new interpretation" is applied to motor vehicle transportation, it is readily apparent that revenue agents would be necessary at the Canadian border to measure fuel in tanks of automobiles, recreation vehicles and trucks

coming into Alaska to levy and collect this tax. (Ferry travel from Seattle would require similar treatment.)

7. No other west coast state, neither Texas nor Hawaii impose a "consumption tax" such as is being proposed under D.O.R.'s "new interpretation."
8. When applied to the aviation travel, both commercial and private, similar questions of increased travel costs and administrative costs are evident.
9. Aside from the obvious administrative costs and enforcement problems, as a matter of public policy, it does not make good sense to permit this extension of the motor fuel tax which will result in more expensive consumer goods, construction equipment and materials and which would possibly discourage tourist travel to Alaska. This is an especially sensitive question at this time of economic stagnation in the state.
10. There is no revenue loss to the state of Alaska because the tax has not been levied or collected between 1946-1985.

### ALASKA MOTOR FUEL TAX CHRONOLOGY

The following is a chronology of key events in the interpretation and application of the Alaska Motor Fuel Tax.

- 1946 Alaska Territorial Legislature imposes motor fuel tax on (1) all fuel sold and delivered or otherwise transferred within the Territory; and (2) all fuel consumed by a "user," defined as "any person, firm or corporation consuming or using any motor fuel, who shall have purchased such fuel out of the Territory and shipped it into the Territory for his or its own use within the Territory." Laws of Alaska 1946, Ch. 18 (emphasis added).
- 1946 - Present Alaska Legislature amends and reenacts motor fuel tax numerous times, without substantive change to provisions relevant here.
- 1946 - 1985 Division of Audit (DOA) of Department of Revenue applies motor fuel tax in accord with constitutional and statutory limits:
- A. Motor fuel purchased or transferred within Alaska was taxable in full without regard to the jurisdiction in which the fuel was actually consumed.
  - B. Motor fuel purchased outside Alaska and consumed in Alaska during propulsion without first being stored or otherwise coming to rest in the state was not taxed under the Motor Fuel Tax provisions.
- June 3, 1982 Governor approves House Bill 101, which amends the motor fuel tax statute without substantive change to the definition of "user" or other provisions relevant here.
- July 19, 1982 Department adopts first comprehensive motor fuel tax regulations, without prior notice. Finding of Emergency states that the regulations are necessary to implement House Bill 101. However, the regulations also purport to restate the definition of "user" as follows:

A. The statute defines "user" as a person consuming or using motor fuel who . . . purchases the fuel out of the state and ships it into the state for personal use in the state . . . AS 43.40.100(4) (emphasis added).

B. The regulations define "user" as "a person consuming or using motor fuel who purchases the fuel out of state or ships it into the state for personal use in the state . . ." 15 AAC 40.900(5) [now(6)] (emphasis added)."

July 20, 1982

Department issues Notice of Adoption of Emergency Regulation. Nothing in the notice states that the Department adopted a different definition of "user," or that the Department intended to tax fuel merely consumed in state waters, or that DOA intended to change the way it had applied the motor fuel tax since 1946. No notice is sent to marine fuel consumers as such, or to the Taxpayers here. Extensive comments are submitted on numerous topics, but none of them mention the definition of "user" or taxation of fuel merely consumed in state waters. Nothing in the Department's file on the regulations even discusses the definition of "user" or taxation of fuel merely consumed in state waters.

Nov. 14, 1982

The July 1982 regulations are adopted and made permanent by the Department.

1985

DOA begins to apply the motor fuel tax differently. DOA now interprets the statute and regulations as follows:

A. Motor fuel purchased or transferred within Alaska remained taxable in full at the time of purchase, but in-state purchasers could seek a refund of tax on any fuel consumed outside Alaska. Under this interpretation, fuel both purchased and consumed in the state would be subject to only one tax.

B. Motor fuel purchased outside Alaska and consumed while in transit through Alaska would be subject to Motor Fuel Tax on the fuel actually consumed within the state, even

though not stored or otherwise coming to rest in the state . . . without regard to whether such fuel was subject to actual or potential taxation in the state or foreign country where purchased, and without any express statutory or regulatory credit for taxes paid outside the state.

May 1985

DOA issues Questions and Answer Booklet reflecting its new interpretation as to motor fuel purchased in Alaska. DOA does not seek to comply with Alaska Administrative Procedure Act requirements in the issuance of the Booklet.

June 1985

DOA issues 200 letters applying its new interpretation of the statute to motor fuel purchased outside Alaska and merely consumed in state waters. The letters instruct the recipients, including the Taxpayers here, to file returns for the periods they had allegedly been using fuel in Alaska waters and to respond within 30 days, or else taxes, penalties, and interest would be assessed accordingly. DOA does not seek to comply with Alaska Administrative Procedure requirements in the issuance of the letters. The letters are the first written notice directed to Taxpayers or to marine fuel consumers in general regarding application of the tax to fuel merely consumed in state waters.

July - Nov. 1985

DOA requests that Taxpayers file returns as of January 12, 1985, and represents that it will not seek returns for any prior period.

Oct. Dec. 1985

DOA and Taxpayers agree on appeal procedures, under which Taxpayers file a return for one month, pay the tax for that month, and simultaneously file a refund claim. DOA agrees to stay all other reporting, collection, penalty and assessment procedures pending final administrative and judicial resolution of the matter.

Currently

The matter is now on appeal before the Department of Revenue.

RESOLUTION

WHEREAS, The Alaska Motor Fuel Tax laws have since 1946, levied a 5 cent per gallon tax on marine fuel purchased or transferred within Alaska; and

WHEREAS, for 39 years marine fuel purchased outside Alaska waters and brought into the state in fuel storage tanks on watercraft for the purpose of operating the vessel has not been taxed under the Motor Fuel Tax provisions of Alaska law; and

WHEREAS, in 1985, the Alaska Department of Revenue initiated a new and different interpretation of the law as applied to marine fuel brought into the state in fuel storage tanks on watercraft for the purposes of operating the vessel and began a tax collection effort; and

WHEREAS, this effort was undertaken without new authorizing legislation or amendment; and

WHEREAS, the new interpretation of the marine fuel tax will have serious implications for the business and individual consumers in Alaska by increasing the costs of goods brought into the state by water transportation; and

WHEREAS, the new interpretation will apply to cruise ships which visit Alaska waters thereby increasing costs of such tourist travel to our state; and

WHEREAS, because the new interpretation would impose the tax on the amount of marine fuel consumed while the watercraft is inside the 3 mile limits of Alaska waters, certain Alaska ports will be unfairly placed at a competitive disadvantage due to longer travel time inside bays, harbors and inlets; and

WHEREAS, in 1986 the Alaska Senate passed CS S.B. 387 (Finance) which would have specifically prevented application of the new interpretation; and

WHEREAS, the Alaska House of Representatives adjourned before S.B. 387 could reach the floor for a vote on the issue; and

WHEREAS, legislation similar to S.B. 387 would not result in a revenue loss to the State of Alaska because such a tax was not levied or collected between 1946 and 1985;

THEREFORE BE IT RESOLVED, that the Anchorage Chamber of Commerce urges that Governor Cowper and the Alaska Legislature take action to clarify the law so that marine fuel brought into the state in fuel storage tanks on watercraft for the purposes of operating the vessel not be taxed and avoid increasing costs of business and consumer goods to Alaska consumers, increasing the costs of tourist activities in the state and avoid the competitive discrimination against certain ports which could result;

BE IT FURTHER RESOLVED, that copies of this resolution together with a letter urging Governor Cowper and the legislative delegation to support a measure similar to S.B. 387 be sent to the appropriate state officials.

\* This resolution has been adopted by the Anchorage Chamber of Commerce

- Support Resolution -

TO: Senate Finance Committee members  
FROM: Tim Kelly

**ASKA**  
**REVENUE**

STEVE COWPER, GOVERNOR

FEB 25 1987

STATE OFFICE BUILDING  
P.O. BOX SA  
JUNEAU, ALASKA 99811-0400

February 20, 1987

The Honorable Tim Kelly  
P.O. Box V  
Juneau, AK 99811

Re: Senate Bill No. 100

Dear Senator Kelly:

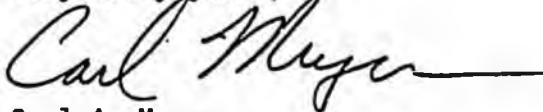
I am providing through this letter the information you requested during the hearing on the above referenced bill. The information concerns the amount of tax the Department has received with voluntary filings of motor fuel tax returns for fuel purchased outside the state but consumed in transit through the territorial waters of the state.

The department has received returns with tax payments of \$1,409,931.81 from marine fuel users falling within that category. Under Senate Bill No. 100, these taxpayers would have a right to seek refunds of those tax payments.

Marine fuel users are not currently filing returns with the department for fuel purchased outside the state but consumed within the state. The department and a number of the marine fuel users entered into an agreement in late 1985 that provides for additional returns to be filed, if necessary, with payment of tax and interest after the resolution of the dispute on the interpretation and reach of the motor fuel statute. Although other marine fuel users are not parties to this agreement and therefore face potential penalties, it appears that these taxpayers are also waiting to see how the dispute will be resolved before filing further returns. Therefore, the department does not anticipate receiving significant revenue in addition to that already received until after the conclusion of the appeal process.

Thank you for the opportunity to testify and to provide information on this subject.

Very truly yours,



Carl A. Meyer  
Chief of Audit Appeals  
(907) 465-2343

cc: Senator Lloyd Jones  
Chairman, Senate Transportation Committee

87-21

THE ALASKA STATE CHAMBER OF COMMERCE WISHES TO EXTEND ITS SUPPORT  
TO THE INTENT OF SB 100.

WE FEEL SB 100 WOULD AVOID INCREASES IN THE COST OF CONSUMER GOODS  
AND CONSTRUCTION MATERIALS.

THE ACTION OF THE DEPT. OF REVENUE TO EXPAND THE SCOPE OF MARINE FUEL  
TAX AT THIS TIME WOULD RETARD HEALTHY ECONOMIC DEVELOPMENT IN THE STATE OF  
ALASKA.

WE URGE PASSAGE OF THIS LEGISLATION.

2/19/87

## Anchorage chamber issues 3 resolutions

The Anchorage Chamber of Commerce has adopted three resolutions relating to state policy and Anchorage development.

The first asks Gov. Steve Cowper for release of road funds impounded during the Fiscal Year 87 budget adjustment. These funds will continue replacement and upgrade of critical traffic thoroughfares.

The second addresses a state Department of Revenue administrative decision to collect a five percent tax on marine fuel used for ship operation within the three-mile limit, including cruise ships. Payment of the tax will impact most seriously in Alaska on goods transported into the Cook Inlet, said the chamber. The Chamber has asked the Governor and Legislature to reverse this administrative decision as not equitable.

The final action provides for supporting the proposed 3,680-acre land exchange between the Eklutna Inc. village corporation and the state of Alaska.

The Eklutna land is adjacent to Chugach State Park. The state land lies between Fifth and Sixth avenues and Corodova and A streets in Anchorage.

Each parcel of land is valued at about \$9 million. The land exchange would further enhance the municipality's efforts to protect the Eagle River Greenbelt. The Chamber also asks the state to support and assist Eklutna Inc. in the development of a major resort area north of Anchorage.

The three items were recorded as resolutions and forwarded to Governor Cowper for action by the Administration. The chamber said it considers these items important to the quality of growth in Anchorage.

## RESOLUTION

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WHEREAS, this effort was undertaken without new authorizing legislation or amendment; and

WHEREAS, the new interpretation of the marine fuel tax will have serious implications for the business and individual consumers in Alaska by increasing the costs of goods brought into the state by water transportation; and

WHEREAS, the new interpretation will apply to cruise ships which visit Alaska waters thereby increasing costs of such tourist travel to our state; and

WHEREAS, because the new interpretation would impose the tax on the amount of marine fuel consumed while the watercraft is inside the 3 mile limits of Alaska waters, certain Alaska ports will be unfairly placed at a competitive disadvantage due to longer travel time inside bays, harbors and inlets; and

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B. Motor fuel purchased outside Alaska and consumed while in transit through Alaska would be subject to Motor Fuel Tax on the fuel actually consumed within the state, even

though not stored or otherwise coming to rest in the state . . . without regard to whether such fuel was subject to actual or potential taxation in the state or foreign country where purchased, and without any express statutory or regulatory credit for taxes paid outside the state.

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Currently

The matter is now on appeal before the Department of Revenue.

TESTIMONY

M.R. LADNER, PUBLIC AFFAIRS FOR  
SEALAND SERVICE, FAIRBANKS, ALASKA  
THE ALASKA SENATE FINANCE COMMITTEE  
MARCH 12, 1987, JUNEAU, ALASKA

MR. CHAIRMAN, MEMBERS OF THE COMMITTEE, MY NAME IS MIKE LADNER AND I AM THE PUBLIC AFFAIRS SPOKESMAN FOR SEALAND SERVICES IN ALASKA, BASED OUT OF FAIRBANKS. SEALAND SERVICES OPERATES THREE SHIPS BETWEEN SEATTLE AND THE RAILBELT AND ALEUTIAN CHAIN MARKETS OF ALASKA.

I AM TESTIFYING FOR SEALAND IN SUPPORT OF S.B. 100, WHICH WE STRONGLY FEEL CLARIFIES THE EXISTING LAW PASSED BY THE TERRITORIAL LEGISLATURE IN 1946. THE TERRITORIAL LEGISLATURE'S INTENT WE BELIEVE WAS TO STOP VESSEL OPERATORS FROM BRINGING IN BULK FUEL, FOR RESALE, THUS AVOIDING IN-STATE PURCHASES AND ALASKA TAXES.

THE ALASKA DEPARTMENT OF REVENUE IN JUNE OF 1985 CAME TO THE VESSEL OPERATORS AND STATED THEY WERE NOW GOING TO COLLECT A TAX ON FUEL BURNED BUT NOT PURCHASED IN ALASKA'S THREE MILE LIMIT. FOR THIRTY-NINE YEARS THIS TAX WAS NEVER COLLECTED NOR WAS THE LAW INTERPRETED IN SUCH A WAY FOR IT TO BE ASSESSED. THE DEPARTMENT OF REVENUE ARBITRARILY, FOR REASONS OF ITS OWN, ISSUED WITHOUT CLEAR LEGISLATIVE INTENT, A NEW TAX.

THIS USER TAX WOULD COST OUR COMPANY APPROXIMATELY \$150,000. PER YEAR BASED PRIMARILY ON OUR CRUISING TIME WITHIN COOK INLET, KODIAK ISLAND, CORDOVA, AND DUTCH HARBOR, AS WELL AS INTERMEDIATE POINTS. A USER TAX IS USUALLY BASED ON SERVICES RECEIVED, BUT ON THIS CONSUMPTION TAX, ALL AIDES TO NAVIGATION, INSPECTIONS, SAFETY AT SEA AND PORT CHARGES ARE EITHER PROVIDED BY THE FEDERAL OR LOCAL GOVERNMENTS.

SEALAND EMPLOYS 203 PEOPLE DIRECTLY AND INDIRECTLY IN ALASKA AND WE PAY TAXES ON PAYROLL, WORKERS COMPENSATION, PERSONAL PROPERTY, EXCISE, AND LICENSE TAX. OUR COMPANY PAYS ITS FAIR SHARE OF TAXES IN ALASKA AND FEELS WE ARE GOOD CORPORATE CITIZENS.

SINCE THE DEPARTMENT OF REVENUE HAS NEVER COLLECTED THIS TAX, THERE WOULD BE NO LOSS OF REVENUE IN PASSING THIS LEGISLATION. THE DEPARTMENT OF REVENUE HAS INITIALLY SINGLED OUT THE MARITIME INDUSTRY ON THIS TAX, BUT CHECKS FOR TRUCKS AT THE BORDER, CARS AND RECREATIONAL VEHICLES AT THE BORDER AND ON THE FERRIES AND ALL AIRLINES WHEN THEY HIT ALASKA AIRSPACE WOULD ALSO FALL UNDER REVENUES INTERPRETATION OF THIS TAX. AS ONE MIGHT IMAGINE, THE EQUITABLE ENFORCEMENT AND STAFFING TO ENFORCE THIS TAX WOULD BE A DIFFICULT AND COSTLY UNDERTAKING, PLUS THE ACCOUNTING BURDEN FOR THE TRANSPORTATION COMPANIES WOULD BE INCREASED.

IF THIS TAX WERE APPLIED TO THE COMMON CARRIERS OF ALASKA, IT WOULD BE ADDED TO THE RATES PAID FOR BY THE ALASKAN CONSUMER, EITHER BY ADDING TO THE RATE OR BY ADDING AN ALASKA FUEL TAX SURCHARGE TO THE BILL OF LADING.

SEALAND THEREFORE URGES PASSAGE OF S.B. 100. I WISH TO THANK THE CHAIRMAN AND THIS COMMITTEE FOR ALLOWING US TIME TO EXPRESS OUR OPINION ON THIS ISSUE.

THANK YOU.

TESTIMONY REGARDING SENATE BILL 100  
BEFORE THE SENATE FINANCE COMMITTEE  
BY BUD HANSEN, LYNDEN, INC.

Chairman Binkley and members of the Senate Finance Committee, my name is Bud Hansen, and I am here today on behalf of Lynden, Inc. and in support of SB 100.

We appreciate the introduction of SB 100 by Senator Jones.

It is unfortunate that we need to take up the Committee's time to clarify AS 43.40.100 on the applicability of the marine fuel tax to fuel consumed within Alaskan waters, because the existing statute is clear, and has been interpreted correctly since 1946 when the Territorial Legislature passed the original statute.

I am not going to take up more of your time discussing the existing statute or all of the legal arguments as to why the Department of Revenue's action is incorrect and inappropriate. Rather, I would like to make a few simple arguments why the tax is not in the best interest of Alaskans in any case:

(1) If commercial marine fuel is taxed when consumed in Alaskan waters, as proposed by the Department of Revenue, it will force us to pass this extra cost to Alaskan consumers in the form of higher freight rates or a special Alaska marine fuel surcharge. In Alaska, this means higher costs of almost everything we consume.

(2) Fuel purchased in Alaska, and consumed in Washington State waters is not taxed by the State of Washington. Washington realizes that

would simply be a disincentive to marine commerce, and a better reason for shippers to use alternative ports in other states. This is one reason why our Alaska statute was intended to be similar to Washington's statute.

(3) As we understand, the Department of Revenue has not attempted to enforce this tax on fishing vessels, pleasure boats, aircraft or other users of motor fuel purchased outside of Alaska and consumed in Alaskan waters or air. The reason is obvious - the tax cannot be easily collected or uniformly applied to all users. If the tax is not uniformly applied, it discriminates against certain users. For example, scheduled marine freight services would pay the tax, but out of state charters or itinerant operators would not likely pay, as the Department of Revenue would have no record of their trips in Alaska.

(4) There is no relationship between the proposed tax and services provided by the State. One reason fuel is taxed where it is sold, is that the fuel facilities themselves benefit from roads, police and fire protection, which are provided by the State or local government. No comparable State services are provided to vessels while in Alaskan waters.

For these reasons, we appreciate your consideration of SB 100, and urge the Committee's support for the bill. I would be pleased to answer any questions that the Committee might have.

Thank you.

TESTIMONY OF TOTEM OCEAN TRAILER EXPRESS, INC. (TOTE)  
BY LEIGHTON H. THETFORD, ALASKA GENERAL MANAGER

---

Mr. Chairman, members of the Committee, TOTE is testifying today on our own behalf and on behalf of other ocean carriers shipping between the states of Alaska and Washington. We wish to express our support of Senate Bill 100, which was introduced to clarify the original intent of the legislature for the Alaska Motor Fuel Tax Act, and to eliminate any ambiguity in that act in relation to fuel brought into the state in the fuel storage tanks of watercraft.

The Motor Fuel Tax Act was passed as law by the Territorial Legislature in 1942. We believe that the legislature intended to tax fuel sold in Alaska and bulk fuel shipped as cargo into Alaska for personal use in the state. The legislature intended to prevent the shipping of untaxed bulk fuel into Alaska and therefore prevent a loss of sales tax revenue. The legislature did not intend to tax fuel brought into the state in fuel storage tanks on a watercraft for the purpose of operating the watercraft.

Alaska followed this legislative intent until June of 1985. No tax was asserted or collected on fuel brought into the state in fuel storage tanks on a watercraft for the purpose of operating the watercraft. In June of 1985 the Department of Revenue arbitrarily determined to redefine the legislative intent and to collect a tax on this bunker fuel. We strongly disagree with this radical new interpretation and believe that, in attempting to reinterpret the law and impose a new tax, the department violated the intent of the legislature as expressed in both the Motor Fuel Tax Act and the Alaska Administrative Procedure Act.

The department has asserted this tax is a user tax. The fuel tax has not previously been based on fuel used, but on fuel purchased in state or shipped into the state. The concept of a user tax is to pay for a service. The State of Alaska itself provides virtually no service for our industry. Aids to navigation, dredging, safety at sea, inspections, and vessel safety are covered by the federal government. TOTE's port and dockside facilities are paid for by dockage fees and rental payments to the Port of Anchorage, which were approximately \$1.9 million in 1986. In addition, TOTE is an Alaska corporation and pays substantial taxes to the State of Alaska, including income, property and payroll taxes.

A tax on bunker fuel consumed in Alaskan waters encourages carriers to avoid travel within the three-mile limit. Ports such as Anchorage, which lie further within Alaskan waters, would be discriminated against, as would carriers serving those ports. TOTE serves the Port of Anchorage only, in our service to Alaska. Our ships cruise six hours in each direction through Cook Inlet. If a tax is imposed on bunker fuel, most of TOTE's tax would result from sailing through Cook Inlet to Anchorage.

Any increase in taxes would worsen the condition of the water transportation industry and increase costs to the Alaska consumer. In addition, our industry is a major source of commerce and employment in Alaska and any additional burden on the industry would be detrimental to the Alaskan economy. The past three years have been unprofitable for many carriers in our industry, and several operators have been forced from the business as a result. The next three years are expected to be more difficult.

Our industry has filed appeals with the Department of Revenue contesting this new tax. Although we expect to ultimately prevail in this matter, this arduous and expensive process can be avoided by clarifying the act through Senate Bill 100.

In summary, Senate Bill 100 was introduced to clarify the original intent of the legislature for the Alaska Motor Fuel Tax Act, and to eliminate any ambiguity in that act in relation to fuel brought into the state in the fuel storage tanks of watercraft. This bill will relieve the industry and the Department of Revenue from an expensive appeal and litigation process resulting from the department's radical new interpretation of the act. Finally, this bill will prevent a burden from being imposed on water carriers and consumers in Alaska.

I thank you for this opportunity to express the views of TOTE and of our industry. We encourage your support of Senate Bill 100 and will answer any questions you have at this time.

TESTIMONY  
OF  
M.R. LADNER  
PUBLIC AFFAIRS FOR  
SEALAND SERVICE  
FAIRBANKS, ALASKA  
BEFORE  
THE  
ALASKA SENATE  
TRANSPORTATION COMMITTEE  
ON  
FEBRUARY 19, 1987  
JUNEAU, ALASKA

MR. CHAIRMAN, MEMBERS OF THE COMMITTEE, MY NAME IS MIKE LADNER AND I AM THE  
PUBLIC AFFAIRS SPOKESMAN FOR SEALAND SERVICES, <sup>IN ALASKA</sup> BASED OUT OF FAIRBANKS, SEALAND  
SERVICES OPERATES THREE SHIPS BETWEEN SEATTLE AND THE RAILBELT, <sup>ALUTIAN CHAIN</sup> MARKETS OF  
ALASKA.

I AM TESTIFYING FOR SEALAND IN SUPPORT OF S.B. 100, WHICH WE STRONGLY FEEL  
CLARIFIES THE EXISTING LAW PASSED BY THE TERRITORIAL LEGISLATURE IN 1946. THE  
TERRITORIAL LEGISLATURE'S INTENT WE BELIEVE WAS TO STOP VESSEL OPERATORS FROM  
BRINGING IN BULK FUEL, FOR RESALE, THUS AVOIDING IN-STATE PURCHASES AND ALASKA  
TAXES.

THE ALASKA DEPARTMENT OF REVENUE IN JUNE OF 1985 CAME TO THE VESSEL OPERATORS  
AND STATED THEY WERE NOW GOING TO COLLECT A TAX ON FUEL BURNED BUT NOT PURCHASED  
IN ALASKA'S THREE MILE LIMIT. FOR THIRTY-NINE YEARS THIS TAX WAS NEVER COLLECTED  
NOR WAS THE LAW INTERPRETED IN SUCH A WAY FOR IT TO BE ASSESSED. THE DEPARTMENT  
OF REVENUE ARBITRARILY, FOR REASONS OF ITS OWN, ISSUED WITHOUT CLEAR LEGISLATIVE  
INTENT, A NEW TAX.

THIS USER TAX WOULD COST OUR COMPANY APPROXIMATELY \$150,000. PER YEAR BASED PRIMARILY ON OUR CRUISING TIME WITHIN COOK INLET, KODIAK ISLAND, CORDOVA, AND DUTCH HARBOR, AS WELL AS INTERMEDIATE POINTS. A USER TAX IS USUALLY BASED ON SERVICES RECEIVED, BUT ON THIS CONSUMPTION TAX, ALL AIDES TO NAVIGATION, INSPECTIONS, SAFETY AT SEA AND PORT CHARGES ARE EITHER PROVIDED BY THE FEDERAL OR LOCAL GOVERNMENTS.

SEALAND EMPLOYS (203) PEOPLE DIRECTLY AND INDIRECTLY IN ALASKA AND WE PAY TAXES ON PAYROLL, WORKERS COMPENSATION, <sup>PERS. PROP.,</sup> ( EXCISE ), OUR COMPANY PAYS ITS FAIR SHARE OF TAXES IN ALASKA AND FEELS WE ARE GOOD CORPORATE CITIZENS. <sub>LICENSE TAX</sub>

SINCE THE DEPARTMENT OF REVENUE HAS NEVER COLLECTED THIS TAX, THERE WOULD BE NO LOSS OF REVENUE IN PASSING THIS LEGISLATION. THE DEPARTMENT OF REVENUE HAS <sup>INITIALLY</sup> ~~RECENTLY~~ SINGLED OUT THE MARITIME INDUSTRY ~~RECENTLY~~ ON THIS TAX, BUT CHECKS FOR TRUCKS AT THE BORDER, CARS AND RECREATIONAL VEHICLES AT THE BORDER AND ON THE FERRIES AND ALL AIRLINES WHEN THEY HIT ALASKA AIRSPACE WOULD ALSO FALL UNDER REVENUE'S INTERPRETATION OF THIS TAX. AS ONE MIGHT IMAGINE, THE EQUITABLE ENFORCEMENT AND STAFFING TO ENFORCE THIS TAX WOULD BE A DIFFICULT AND COSTLY UNDERTAKING, PLUS THE ACCOUNTING BURDEN FOR THE TRANSPORTATION COMPANIES WOULD BE INCREASED.

IF THIS TAX WERE APPLIED TO THE COMMON CARRIERS OF ALASKA, IT WOULD BE ADDED TO THE RATES PAID FOR BY THE ALASKAN CONSUMER, EITHER BY ADDING TO THE RATE OR BY ADDING AN ALASKA FUEL USE TAX SURCHARGE TO THE BILL OF LADING.

SEALAND THEREFORE URGES PASSAGE OF S.B. 100. I WISH TO THANK THE CHAIRMAN AND THIS COMMITTEE FOR ALLOWING US TIME TO EXPRESS OUR OPINION ON THIS ISSUE.

TESTIMONY OF TOTEM OCEAN TRAILER EXPRESS, INC. (TOTE)  
BY LEIGHTON H. THETFORD, ALASKA GENERAL MANAGER  
BEFORE THE ALASKA SENATE TRANSPORTATION COMMITTEE  
IN SUPPORT OF SENATE BILL NO. 100  
FEBRUARY 19, 1987

Mr. Chairman, members of the Committee, TOTE is testifying today on our own behalf and on behalf of other ocean carriers shipping between the states of Alaska and Washington. We wish to express our support of Senate Bill 100, which was introduced to clarify the original intent of the legislature for the Alaska Motor Fuel Tax Act, and to eliminate any ambiguity in that act in relation to fuel brought into the state in the fuel storage tanks of watercraft.

The Motor Fuel Tax Act was passed as law by the Territorial Legislature in 1946. We believe that the legislature intended to tax fuel sold in Alaska and bulk fuel shipped as cargo into Alaska for personal use in the state. The legislature intended to prevent the shipping of untaxed bulk fuel into Alaska and therefore prevent a loss of sales tax revenue. The legislature did not intend to tax fuel brought into the state in fuel storage tanks on a watercraft for the purpose of operating the watercraft.

Alaska followed this legislative intent until June of 1985. No tax was asserted or collected on fuel brought into the state in fuel storage tanks on a watercraft for the purpose of operating the watercraft. In June of 1985 the Department of Revenue arbitrarily determined to redefine the legislative intent and to collect a tax on this bunker fuel. We strongly disagree with this radical new interpretation and believe that, in attempting to reinterpret the law and impose a new tax, the department violated the intent of the legislature as expressed in both the Motor Fuel Tax Act and the Alaska Administrative Procedure Act.

The department has asserted this tax is a user tax. The fuel tax has not previously been based on fuel used, but on fuel purchased in state or shipped into the state. The concept of a user tax is to pay for a service. The State of Alaska itself provides virtually no service for our industry. Aids to navigation, dredging, safety at sea, inspections, and vessel safety are covered by the federal government. TOTE's port and dockside facilities are paid for by dockage fees and rental payments to the Port of Anchorage, which were approximately \$1.9 million in 1986. In addition, TOTE is an Alaska corporation and pays substantial taxes to the State of Alaska, including income, property and payroll taxes.

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I thank you for this opportunity to express the views of TOTE and of our industry. We encourage your support of Senate Bill 100 and will answer any questions you have at this time.

SENATE COMMITTEE REPORT

FIRST COMMITTEE OF REFERRAL

Date of Feb 12, 1987 5-DAY NOTICE  
IN ACCORDANCE WITH UNIFORM RULE 23

FURTHER: FINANCE

\*\*FISCAL NOTE(S) ATTACHED \_\_\_\_\_ \*\*  
IN ACCORDANCE WITH AS 24.08.035  
(see below)

DATE TURNED INTO OFFICE Feb 19, 1987

Mr. President:

TRANSPORTATION Committee considered SB 100

taxation of watercraft motor fuel.

and recommended:

- replace with CS \_\_\_\_\_  same title
- attached amendment(s) and  new title

*majority* do pass

do not pass

no recommendation

individual recommendations

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

letter of intent adopted and attached *motion made to pass out of Comm. w/o fiscal note - to Finance*

\*\* Committee  attached or  adopted fiscal note(s) *(see attached note)*  
 zero  fiscal impact

MEMBERS SIGNING DO PASS

*[Handwritten signatures]*

OTHER RECOMMENDATIONS

*Tim Kelly - No Rec until fiscal note question is cleared up.*  
*Fabrenkamp - same as Kelly*

*[Handwritten signature]*  
Chairman signature and recommendation

Committee Backup Attached