

ALASKA LEGISLATURE COMMITTEE BILL FILES - 1987 - 1988 8879

CSHB 91 cont. ; HB 92 247

NOTICE: This opinion is subject to formal correction before publication in the Pacific Reporter. Readers are requested to bring typographical or other formal errors to the attention of the Clerk of the Appellate Courts, 303 K Street, Anchorage, Alaska 99501, in order that corrections may be made prior to permanent publication.

THE SUPREME COURT OF THE STATE OF ALASKA

STATE OF ALASKA,)	
)	
Appellant/Cross-Appellee,)	File Nos. S-653/678
)	
v.)	<u>O P I N I O N</u>
)	
VERN T. WEISS, et al.,)	
)	
Appellee/Cross-Appellant.))	[No. 2987 - October 4, 1985]

Appeal from the Superior Court of the State of Alaska, Fourth Judicial District, Fairbanks, Warren W. Taylor, Judge.

Appearances: G. Thomas Koester, Assistant Attorney General, Norman C. Gorsuch, Attorney General, Juneau, for Appellant/Cross-Appellee. Stephen C. Cowper, Fairbanks, for Appellee/Cross-Appellant. Russ Winner, McGrath & Associates, Anchorage, for Amicus Curiae Cook Inlet Region, Inc.

Before: Rabinowitz, Chief Justice, Burke, Matthews and Compton, Justices. [Moore, Justice, not participating]

COMPTON, Justice.

The State of Alaska ("state") appeals from a judgment of the superior court holding that the state breached its duty as trustee of federal mental health grant lands when the legislature redesignated the property as "general grant land." For the reasons set forth below, we

affirm the holding to this extent, but reverse the superior court's conclusion that the redesignation legislation was valid.

I. FACTUAL AND PROCEDURAL BACKGROUND

In 1956 the United States Congress passed the Alaska Mental Health Enabling Act (AMHEA) which, insofar as it concerns this case, granted the Territory of Alaska one million acres of federal land to be held in public trust to help effectuate the creation and operation of mental health care facilities in Alaska. Pub. L. No. 34-530, 70 Stat. 709 (1956). Section 202(e) of the Act specifically provides:

All lands granted to the Territory of Alaska under this section, together with the income therefrom and the proceeds from any dispositions thereof, shall be administered by the Territory of Alaska as a public trust and such proceeds and income shall first be applied to meet the necessary expenses of the mental health program of Alaska. Such lands, income and proceeds shall be managed and utilized in such manner as the Legislature of Alaska may provide. Such lands, together with any property acquired in exchange therefor or acquired out of the income or proceeds therefrom, may be sold, leased, mortgaged, exchanged, or otherwise disposed of in such manner as the Legislature of Alaska may provide in order to obtain funds or other property to be invested, expended or used by the Territory of Alaska. The authority of the Legislature of Alaska under this subsection shall be exercised in a manner compatible with the conditions and requirements imposed by other provisions of this Act. (emphasis added)

The state managed these lands without maintaining a separate account until 1978. The Alaska State Legislature made its practice law in 1978 when it passed the following statutory provision:

REDESIGNATION AND DISPOSAL OF MENTAL HEALTH LAND

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

Ch. 131, § 3(a), SLA (1978).

Alaska has provided continuous mental health care since statehood. The record indicates that between 1959 and 1982 the state spent over \$222,000,000 on mental health care. Generally speaking, there has been a constant increase from 1959 to the present in mental health expenditures: slightly less than \$1,200,000 was expended in 1959, and slightly more than \$29,000,000 was expended in 1982. The record does not indicate how much of the trust land at issue has been disposed of, nor the total value of such disposed land. In the state's answer to the complaint, it alleges that "state expenditures for mental health purposes exceeded revenues from mental health grant lands in all years for which revenues from those lands were calculated

separately." The record does indicate that as of 1973, total revenues from these mental health trust lands amounted to \$19,555,582. The state's total expenditures to that point amounted to \$66,726,176.

Weiss et al. filed a class action in 1992 alleging that the state breached the public trust by 1) failing to account for revenues realized, 2) using revenues for purposes other than mental health care and 3) passing legislation redesignating the property "general grant land." Plaintiffs sought declaratory relief invalidating the redesignation legislation; injunctive relief compelling the state to administer the trust according to the law; general relief establishing a trust account "for the receipt of funds generated from all lands selected by the State of Alaska under the aforesaid mental health land grant"

The superior court ruled that invalidation of the redesignation legislation was not an available remedy, based on State v. University of Alaska, 624 P.2d 807, 815 (Alaska 1981). However, the court did hold that the state breached its duties as trustee by removing the federal grant lands from the trust. As a remedy, the court ordered that

[t]he public trust established by P. L. 84-830, 70 Stat. 709, shall recover from the defendant State of Alaska an amount equal to the fair market value of all lands conveyed from the trust as of the date of conveyance, plus prejudgment interest from the date of each conveyance. For the purposes of this judgment, all lands remaining in the trust as of July 19, 1973, shall be considered

as having been removed from trust status
by the State of Alaska on that date . . .

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

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

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

A. Nature of the Trust.

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

which establishes that Congress did not wish to limit the use of grant lands exclusively to mental health programs.¹

Despite these observations, we think it irrefutable that Congress intended to create a trust, to be based on a corpus of one million acres of federal land. It is a commonplace of the law that without trust property there can be no trust. Restatement (Second) of Trusts § 74 (1959).² When the state, through the legislature, altered the status of the property grant the trust was thereby effectively terminated. The state, as trustee, had no power to do this

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

We note that the language in the federal grant was changed from designating the proceeds of the land grant to be used as a public trust for Alaska's mental health program, to saying that the proceeds "shall first be applied to meet the necessary expenses of the mental health program" only because of worry among members of Congress that the land may actually have a value far in excess of the necessary health care expenses. The record in this case shows that income from the land grant was actually less than state expenditures for mental health programs.

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

and consequently breached its duty to preserve the corpus.³ The fact that the state has provided mental health care in the past and will most likely do so in the future is no justification for termination of the trust. Whether a beneficiary can rely on the bona fides of a trustee to continue voluntarily to uphold the terms of a defunct trust is quite beside the point. We decline the opportunity to encourage the state, or any trustee for that matter, to determine unilaterally when to terminate a trust without specific authority to do so.

B. Remedy.

Having concluded that the state breached the trust, we find it necessary on the facts of this case to invalidate the redesignation statute, Ch. 131, § 3(a), SIA (1978). State v. University of Alaska, 624 P.2d 807, 815 (Alaska 1981) does not compel a different result. In that case, the federal government had granted 100,000 acres to the state "for the exclusive use and benefit" of the

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

University. Id. at 811. Years after the grant, the state included 5,040 acres of the trust land in a state park. This action was not in itself a breach of the trust so long as the University was paid fair market value for the land. We inferred that the legislature intended to pay the University for this disposition, stating:

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

524 P.2d at 316.

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

beyond the power which had been granted it with respect to the trust lands by Congress, the redesignation act must be declared invalid.

It follows from our conclusion that the redesignation legislation is invalid that the trust must be reconstituted to match as nearly as possible the holdings which comprised the trust when the 1973 law became effective. The case is remanded so that requisite findings can be made. We take this opportunity to provide some guidance to the trial court to simplify its task.

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

position just prior to the conveyance effected by the
redesignation legislation.⁴

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

DELIVER TO: <u>Sally Slaughter</u>	LOCATION: <u>LHUM</u>
FROM: <u>Mike Vedner</u>	LOCATION: <u>110 - 3rd</u>
TELEPHONE/TELECOPIER # _____	TOTAL NUMBER OF PAGES: <u>10</u>
TRANSMITTING ON/SPEED: <u>5</u>	DATE: <u>10-9</u> TIME: <u>7:10</u>
PHONE FOR PROBLEMS-NAME/NUMBER: <u>415-257-5111</u>	
COMMENTS: _____	

Oppiller
Oppiller
10-14-85
BY RECORDER OF COURSE
10-2-85

4. Amicus raises questions regarding the title held by conveyancees and bona fide purchasers of mental health lands. In view of our disposition of this case, we deem it unnecessary to address those issues at the present time.

STATE OF ALASKA

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL :

January 23, 1987

STEVE COWPER, GOVERNOR

REPLY TO:

1031 W 4th AVENUE
SUITE 200
ANCHORAGE, ALASKA 99501
PHONE: (907) 276-3550

1st NATIONAL CENTER
100 CUSHMAN ST.
SUITE 400
FAIRBANKS, ALASKA 99701
PHONE: (907) 452-1568

P.O. BOX K-STATE CAPITOL
JUNEAU, ALASKA 99811
PHONE: (907) 465-3600

The Honorable Pat Pourchot
The Honorable Rick Halford
Co-Chairmen
Joint Special Legislative
Committee on Mental Health
Alaska State Legislature
P.O. Box V
Juneau, Alaska 99811

Re: Dedication of mental health income
stream (our file 663-87-0319)

Dear Representative Pourchot and Senator Halford:

Sandra Schubert indicated that you would like a short memorandum outlining the legal analysis I presented at the committee's last meeting to the effect that dedicating a portion of state general funds annually as a "mental health income stream" would not violate the dedicated fund prohibition in article IX, section 7, of the Alaska Constitution. In pertinent part, that provision provides: "The proceeds of any state tax or license shall not be dedicated to any special purpose, except as provided in section 15 of this article or when required by the federal government for state participation in federal programs." (Emphasis added.)

In section 202(e) of the Alaska Mental Health Enabling Act, P.L. 84-830, Congress required that the income and proceeds from the one million acre land grant "shall first be applied to meet the necessary expenses of the mental health program of Alaska." We believe this requires, as a condition of the state's receipt of the one million acre land grant, that the portion of state revenues attributable to the mental health trust be separately identified, segregated out of the general budget process and made available first for funding the state's mental health program. Accordingly, the identification and establishment of a mental health trust income stream does not violate the prohibition on dedicated funds because it falls within the exception for dedications required for participation in federal programs. We believe this is true whether the revenues constituting

The Honorable Pat Pourchot
The Honorable Rick Halford
Our File No. 663-87-0319

January 23, 1987
Page 2

the income stream are actually generated from administration of mental health lands or are simply a portion of general fund revenues constituting compensation to the trust for lands removed from trust status.

It should be noted that the federal Act does not require that the entire income stream be dedicated to the state's mental health program. Instead, it requires that it first be made available to fund the state's mental health program; any remaining funds in the income stream may thereafter be used for other public purposes.

We hope this brief analysis satisfies your requirements. If we can be of further assistance, please contact us at your convenience.

Sincerely yours,

RONALD W. LORENSEN
ACTING ATTORNEY GENERAL

By: 

G. Thomas Koester
Assistant Attorney General

GTK/dlm

cc: Interim Mental Health Trust Commission

David T. Walker, Esq.

James G. Gottstein, Esq.

Dick Bradley, Legislative Affairs

Gary Gustafson, DNR

Tony Braden, DNR

NB 9/1/92

Mark Boren

M Y T U R N

The Sound and Fury of Mania



We parents of the mentally ill are a tongue-tied, self-castigating, silently grieving subculture

BY SASCHA GARSON

At 9 in the morning I took a front-row seat in Department 15 of the Superior Court in San Diego. I had not been subpoenaed nor am I a professional court watcher. A conservatorship hearing had been scheduled for my 45-year-old son, who graduated Phi Beta Kappa from Berkeley 24 years ago, and I was hoping there would be no glitch.

I have other perversities. When my son is jailed I relax; when he is hospitalized I feel relieved. I am not the only parent swimming against the current. We parents of the mentally ill are a tongue-tied, self-castigating, silently grieving subculture. Within our ranks, we understand each other's fears when an adult child disappears or constructs some get-rich-quick scheme that is on the wrong side of the law. With macabre humor born of pain, we chuckle when our children are hospitalized—even jailed. In a hospital, they will receive treatment for their illness; in jail, protection, perhaps, from being beaten or raped.

My son's behavior is not a personality defect. It has a medical name: manic-depressive disorder. A no-fault illness, it is basically a genetic and biochemical dysfunction. Society defines it as maladaptive behavior, yet within the framework of the disease there is logic. For example:

My son talks to cats in the street in front of my house. It's proper to pet and stroke them on our laps while watching TV, but when it takes place publicly, in an unusual context, neighbors summon the men in white jackets.

He goes into a bank, seats himself at the desk of a vice president, expounds on the evil bond between banks and money and demands immediate changes in the system. Police suddenly appear in response to a silent alarm because, although there has been no threat of bodily harm or evidence of a weapon, this man is opposed to money and may be dangerous.

He receives a citation for soliciting money in the street without a license. The police officer doesn't know that just an hour before, my saint had gone to an almost deserted street in the inner city and had strewn about all his small change because our religion recommends that the giver try to be anonymous to avoid shaming the poor. Withholding nothing for himself, he opens his full hands and heart to strangers and then asks others to help him with his own needs. The police are trained to enforce local regulations, not to be aware of the exhortations of the prophets. And so my son pays a \$50 fine that leaves him penniless for a month.

He had already paid Central Manor, the board-and-care facility whose residents provide for their own keep with the Supplemental Security Income (SSI) checks they receive because of mental disability.

Once, my Don Quixote decided to tilt against the Scholastic Aptitude Test (SAT). Not that he had a personal ax to grind—on the contrary, he had scored the maximum 800 on his verbals and had been able to choose between four scholarships. Filled only with zeal for his mission to benefit all aspiring college students, he managed to board an east-bound Greyhound bus in San Diego without paying. His goal was the SAT citadel in Princeton, N.J. In Brawley, Calif., roughly 70 miles ahead, his stowaway status was revealed and he was forced to get off.

These incidents may seem like escapades, pranks, fun and games. But when inspired by mania, they are undertaken with great seriousness. Worse things occur during a mania-heightened frenzy—baseless accusations, verbal abuse, assaultive behavior ranging from spitting at someone he despises to a slap or a punch because someone expresses different political views. There are threats; sometimes, but only rarely, actual mayhem. During a manic phase, there is little sleep. He burns with flaming energy and rage. He becomes a human battering ram, Samson pulling down pillars of destruction against the Philistines, consuming only himself until the illness causing the flagrant behavior is subdued by neuroleptic medication.

Handful of aspirin: Although I long for relief from the sound and fury of mania, I am more distressed when the pendulum swings and casts my son into a pit of depression. From that black hole of despair comes what seems to him to be the only hope for release: suicide. Alone in skid-row rooms from Minneapolis to San Francisco he has courted that surcease five times. Those attempts failed through sheer luck. There was the handful of aspirin that only made him ill; the furniture that didn't catch fire and only the varnish was scarred; the shower rod that broke under his weight as he tried to hang himself; the ingestion of lighter fluid that stopped short of the desired effect. In another try, the railroad train stopped in its tracks short of obliterating him.

How would any parent feel hearing about such attempts? There is vast relief that life prevailed over death. But it is combined with the deep understanding of the misery and suffering that sought extinction, with my desire to soothe and comfort, and with my always deeply felt but unspoken fear about the outcome of another downturn into clinical depression.

I sat alone in that courtroom, remembering the crises and near crises, the efforts to thwart danger to himself or others, powerless to prevent hoodlums from mocking, making sport of him, tearing his clothing while beating him to his knees.

Where are the others whose lives he has intimately touched? My son has two ex-wives, both of whom he abandoned when madness ruled; he has teenage children who cannot be expected to be parents to their father; he has a sister who avoids getting involved, and he has nieces and nephews who distance themselves from their uncle's countercultural lifestyle and unpredictably labile moods.

I sat alone last month, a 70-year-old mother, insulated in my carapace of emotional numbness. I waited for his name to be called in this bizarre graduation ceremony where the diploma certifies that he is not permitted to drive a car, purchase firearms or enter into a contract. I was relieved. And there was hope for my son yet, as well as the political process. He can still vote.

Garson is the author of "Out of Our Minds," a how-to-cope guide for patients and their families.

STATE OF ALASKA

DEPARTMENT OF NATURAL RESOURCES

OFFICE OF THE COMMISSIONER

STEVE COWPER, GOVERNOR

400 WILLOUGHBY AVE.
JUNEAU, ALASKA 99801-1796
PHONE: (907) 465-2400

April 24, 1987

The Honorable Jan Faiks
President of the Senate

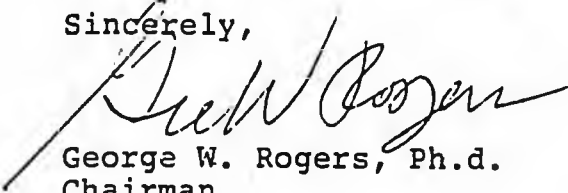
The Honorable Ben Grussendorf
Speaker of the House

Alaska State Legislature
P.O. Box V
Juneau, AK 99801

Dear Senator Faiks and Representative Grussendorf:

At its meeting of April 22, 1987, the Interim Mental Health Trust Commission unanimously went on record supporting CS for HB 91 and SB 97, "An Act relating to the mentally ill." The Commission urges passage of this legislation as critically important to the development and implementation of programs and planning for the mentally ill and providing standards for community mental health services.

Sincerely,


George W. Rogers, Ph.d.
Chairman
Interim Mental Health Trust Commission

cc: Senate Members
House Members

HB 91 RELATING TO THE MENTALLY ILL.

RATIONALE

1. Mental Health Lands lawsuit prompted review of Alaska's mental health program.
2. Interim Mental Health Commission and Special Legislative Committee concluded mental health services are in desperate need of expansion.
3. Persons with the most critical mental health problems should be the treatment priority.

SUMMARY

1. Establishes as the first priority for treatment mentally ill persons at risk of immediate hospitalization, in need of continuing services, who pose a hazard to their own or others health and safety, or who are under 18 and at immediate risk of removal from their home.
2. Lists services for which community mental health centers may receive state funds.
3. Allows the department to reduce or eliminate the 25% local match requirement for services for which sufficient funds from other sources are not available.
4. Defines chronically mentally ill adult and severely mentally ill child.

FISCAL NOTE

Allows for augmentation of existing services and establishment of new services to meet the unmet needs within the mental health system, with a strong emphasis on the needs of the chronically mentally ill and persons in rural communities.

HB 91

Alaska State Legislature

REPRESENTATIVE
PAT POURCHOT

HOUSE FINANCE COMMITTEE,
VICE CHAIR

HOUSE ETHICS COMMITTEE, CHAIR

LEGISLATIVE BUDGET & AUDIT
COMMITTEE



ANCHORAGE
P.O. BOX 104836
ANCHORAGE, AK 99510
(W) (907) 276-6818
(H) (907) 338-2425

JUNEAU
P.O. BOX V
STATE CAPITOL
JUNEAU, AK 99811
(907) 465-3712

House of Representatives

May 8, 1987

Senator Don Bennett, Co-Chairman
Senator John Binkley, Co-Chairman
Senate Finance Committee
Post Office Box V
Juneau, Alaska 99801

Dear Senators:

Two important pieces of legislation, HB 91 and HB 92, have recently been referred to your committee. HB 92 proposes a settlement to the long-standing dispute over the management of mental health trust lands. HB 91, by recognizing the deficiencies in our current mental health program, demonstrates the state's good faith in settling the mental health lands lawsuit. We would urge the scheduling of both bills for a hearing at your earliest convenience.

In brief, HB 92 would replace the original million acres of trust land with land of equal value currently designated by the legislature as state parks, refuges, and forests. This would remove the "cloud" on the title and use of trust lands selected by municipalities and purchased by third parties, and would satisfy the court's order to reconstitute the trust.

Current uses of the legislatively designated areas would continue. In lieu of managing the lands for maximum revenue generation, as is required under general trust law, the state would annually allocate 8% of the fair market value of the land to a mental health income account within the state's general fund. These "trust earnings" would be appropriated first to meet the necessary expenses of the state's mental health program, and then for other public purposes. This satisfies the state's legal obligation under federal law to create a permanent funding source for mental health.

HB 91 restructures our community mental health statute by prioritizing populations community centers must serve, and encourages the development of services by allowing the local funding requirement to be waived under certain conditions. These changes are intended to result in improved service for those mentally ill populations most in need.

Senator Bennett
Senator Binkley
May 8, 1987
Page 2

A primary beneficiary of the passage of HB 91 is our chronically mentally ill population. Historically, this population has been underserved. Not only is their illness difficult to treat, but the intensive and continuous nature of the treatment they require is very expensive. Statistics provided by the State Division of Mental Health indicate that only approximately one in five chronically mentally ill Alaskans are currently receiving services. The \$2 million in funding attached to HB 91 would allow for enhanced services to these and other clients.

Passage of HB 91 and HB 92 has been recommended by the Joint Special Committee on Mental Health Trust land. We commend the bills to you, and would be happy to discuss them with you further at your convenience.

Sincerely,



Representative Pat Pourchot
Co-Chairman
Joint Special Committee on
Mental Health Trust Land



Senator Rick Halford
Co-Chairman
Joint Special Committee on
Mental Health Trust Land

MENTAL HEALTH TRUST LANDS

History

- 1956 1 million acres of federal land granted to Alaska to create a trust, the income of which was to first be used to fund mental health programs. Acres were selected, but income wasn't designated for mental health uses.
- 1978 Legislature redesignated mental health land as general grant land. Established a trust fund to be financed by 1.5% of annual receipts from all state land; no receipts were ever deposited.
- 1982 Class action suit filed against state (Weiss v. State) questioning constitutionality of 1978 redesignation.
- 1985 Alaska Supreme Court declared redesignation law invalid; ordered the state to reconstitute the trust.
- 1986 Joint Legislative Committee and Interim Trust Lands Commission created to address reconstitution.

Problems with Reconstituting the Trust

- 90,000 acres have been patented to private parties.
- 43,000 acres have been conveyed to municipalities.
- 370,000 acres have been legislatively designated for limited use (parks, refuges, forests).
- 290,000 acres is under special use (oil and gas leases, residential leases, coal leases, timber sales, mining claims, rights of way).
- Securing unencumbered land of equal value as replacement acreage would be difficult if not impossible.
- Replacing the land trust with cash would require hundreds of millions, if not billions, of dollars. In light of current revenues, large cash payments would be nearly impossible.

The Solution

1. 1 million acres of original trust land is replaced with land of equal value currently in legislative designations (parks, refuges, forests). Current uses of these lands would be unaffected.
2. 8% of the fair market value of the land, paid as "rent", constitutes the trust earnings, and is annually allocated from the general fund to the mental health income account.
3. Appropriations from the account are first made to meet the necessary expenses of the state's mental health program, and are then available for other public purposes.
4. Mental Health Board makes recommendations to the legislature on mental health program needs and necessary expenses.

Advantages

1. Satisfies state's legal obligation under federal law to create a permanent funding source for mental health.
2. Frees 1 million acres of land from trust status. Removes the "cloud" on title and/or use of trust lands selected by municipalities and purchased by 3rd parties.
3. Doesn't require a major cash outlay.
4. Settlement avoids further costly and time consuming litigation.

MENTAL HEALTH LAND

REP. POURCHOT

Unencumbered land		207,225 acres
Less-than-fee disposals		286,562 acres
Limited use designations		368,241 acres
Parks/recreation areas	150,576 ac.	
Game refuges	85,710 ac.	
Forests	131,955 ac.	
ILMAs	4,473 ac.	
Municipal conveyances		43,087 acres

THE FOLLOWING FIGURES INCLUDE ACRES SELECTED AS WELL AS THOSE ALREADY CONVEYED.

Anchorage	2,122 ac.	
Fairbanks	16,470 ac.	
Haines	1,261 ac.	
Houston	87 ac.	
Juneau	5,338 ac.	
Kenai	14,454 ac.	
Ketchikan	5,625 ac.	
Mat-Su	7,484 ac.	
Sitka	1,077 ac.	
Conveyed to private parties		90,412 ac.
Sold to individuals	45,994 ac.	
Lands condemned	5,149 ac.	
Litigation settlements	39,269 ac.	
	<u>TOTAL</u>	<u>995,527 ac.</u>

Figures provided by DNR 1/87.
Municipal figures provided 8/86.

ALASKA

MAP E

UNIVERSITY OF ALASKA
STATE COLLEGE
1000 UNIVERSITY AVENUE
FAIRBANKS, ALASKA

MENTAL HEALTH LANDS ACT OF JULY 20, 1958 (70 STAT. 711)

☐ - TOWNSHIPS WITHIN WHICH A PORTION OF THE LANDS WERE SELECTED, APPROVED AND/OR PATENTED TO THE STATE OF ALASKA UNDER THE MENTAL HEALTH ACT OF JULY 20, 1958 (70 STAT. 711)

— REGIONAL BOUNDARIES (FORMERLY DISTRICTS) SHOWN AS LABELED

DATA COMPILED SEPTEMBER 1984

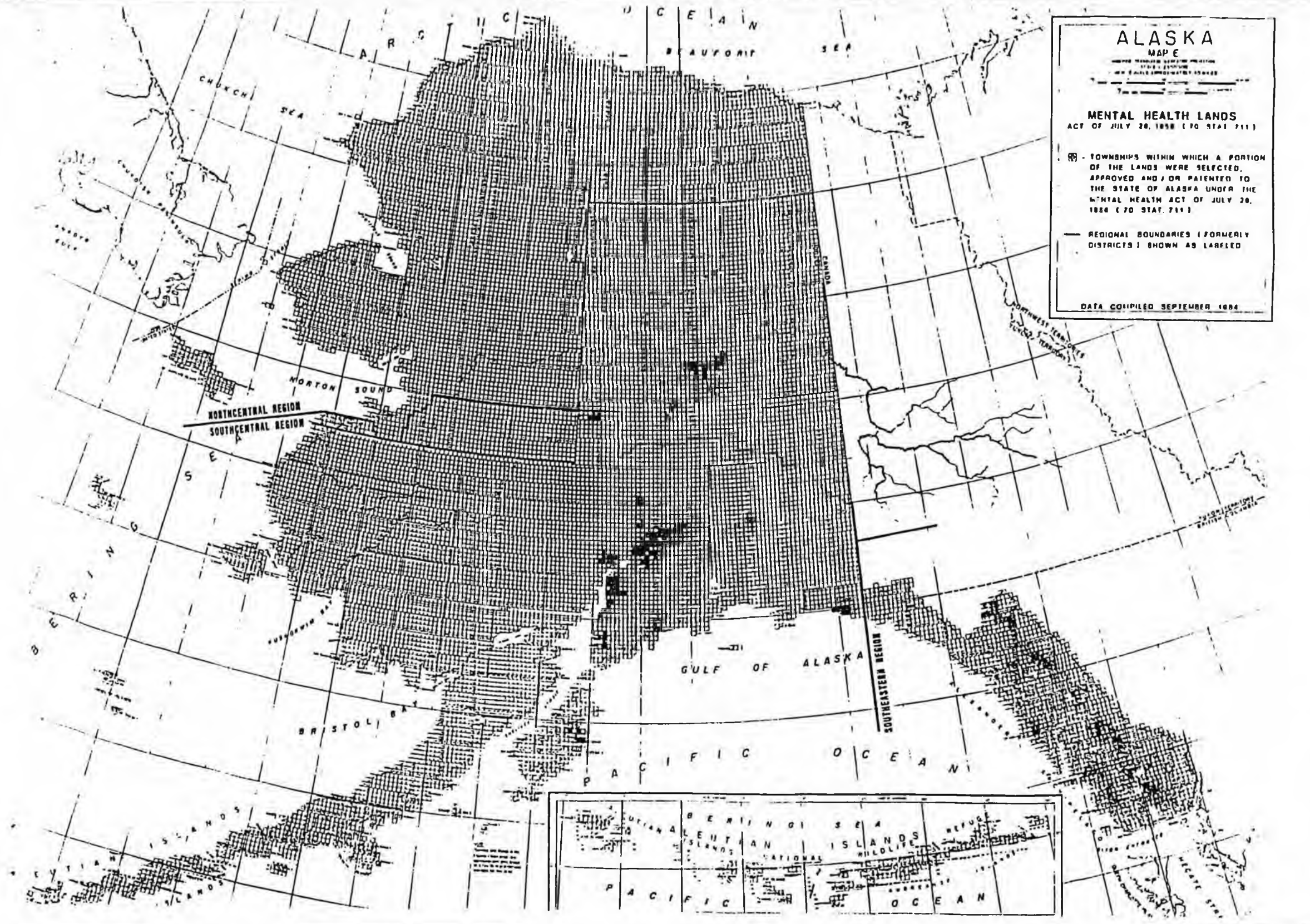


TABLE 8

POTENTIAL CAPITAL COSTS FOR
 MENTAL HEALTH SERVICES*
 (Children, Adolescents, Adults Combined)

<u>Service</u>	<u>Number Of Beds/Placements</u>	<u>Number of Sq/Ft Per Bed/Placement</u>	<u>Cost Per Square Foot</u>	<u>Total Cost</u>
Inpatient Care	65	445	3285	\$ 8,243,625
Forensic Hospital	40	589	300	8,400,000
Crisis/Respite Service Center	20	445	285	2,536,500
Supervised Group Home/Halfway House	343	666	190	43,403,220
Board and Care	154	275	125	5,293,750
Supervised Apartments	400	450	125	22,500,000
Structure and Support/Day Treatment	205**	188	150	5,781,000
Transportation (Vans)	6,138	na	na	540,000
Vocational Training	114**	100	150	1,710,000
Outpatient Services	106**	188	150	2,989,200
Administration	14	150	3150	315,000
TOTAL CAPITAL COST				\$101,712,295
RECURRING CAPITAL COST (For Ongoing Maintenance)				\$ 3,559,930
<u>TOTAL CAPITAL NEW MONIES</u>				\$105,272,225

* costs are approximate; it may be more effective to lease certain space

** numbers for client placement determined using the following calculation:

$$\frac{\text{number of individuals served} \times \text{units of service per individual}}{\text{total time per year per placement}}$$

HB 91

CMI

STATE OF ALASKA

DEPT. OF HEALTH AND SOCIAL SERVICES

OFFICE OF THE COMMISSIONER

STEVE COWPER, GOVERNOR

P.O. BOX H-01
JUNEAU, ALASKA 99811-0601
PHONE: (907) 465-3030

April 24, 1987

The Honorable Albert P. Adams
House of Representatives
P.O. Box V
Juneau, AK 99811

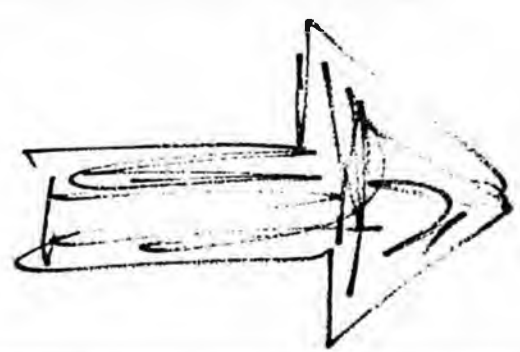
Dear Representative Adams:

In a conversation with former Representative Mike Miller, he informed me of your interest in knowing the actual numbers of persons, statewide, who are chronically mentally ill.

Data from the statewide community mental health system, both public and private, indicates that there are 5,515 persons who are diagnosed as chronically mentally ill. Of this number, 1,145 are currently receiving active treatment through the state supported mental health system. This data refer to adults only. No comprehensive study has been done on children. The Department's rough estimate of severely mentally ill youth is 500.

The definition of chronic mental illness includes both a medical/psychiatric diagnosis (e.g. schizophrenia or a major affective disorder) and a disturbance in social role functions rendering the individual incapable of independent living without guidance, learning opportunities and an array of community support.

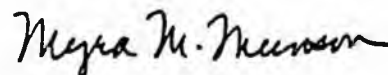
The chart below lists the 27 state supported community mental health centers and the chronically mentally ill population in each service area.



MENTAL HEALTH CENTER	NUMBER IN NEED	NUMBER CURRENTLY SERVED
Anchorage	2,489	522
Fairbanks	722	96
Wasilla	410	51
Juneau	318	34
Kenai	294	23
Ketchikan	211	44
Bethel	156	76
Kodiak	134	41
Nome	97	57
Homer	94	44
Sitka	83	10
Barrow	79	26
Dillingham	68	30
Kotzebue	65	22
Aleut/Prib	48	1
Valdez	36	11
Seward	29	28
Prince of Wales	25	1
Cordova	25	3
Galena	22	4
Tok	20	9
Haines	20	5
Copper Center	19	2
McGrath	14	1
Aniak	13	1
Fort Yukon	13	1
Tanana	11	2
TOTAL	5,515	1,145

I trust that this information has been helpful. If you have any other questions, please contact me.

Sincerely,



Myra M. Munson
Commissioner

✓cc: Mike Miller

Introduced: 2/2/87
Referred: Health, Education and Social
Services, Judiciary and Finance

5-0524A

HB91

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

1 IN THE SENATE

2 SENATE BILL NO. 97

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 chronically mentally ill."

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

8 * Section 1. AS 47.30 is amended by adding new sections to read:

9 Sec. 47.30.545. TREATMENT OF THE CHRONICALLY MENTALLY ILL. The
10 department shall provide for community based and locally or regionally
11 coordinated care and treatment of the chronically mentally ill.

12 Sec. 47.30.546. COMMUNITY SUPPORT SERVICES FOR THE CHRONICALLY
13 MENTALLY ILL. Communities that provide eligible mental health ser-
14 vices for the chronically mentally ill may receive funds from the
15 department for the following program elements:

16 (1) a short-term residential treatment program for indivi-
17 duals experiencing an acute episode or a situational crisis requiring
18 temporary removal from their home environment;

19 (2) a long-term residential treatment program with a full
20 day treatment component for persons who require intensive support;

21 (3) a transitional residential treatment program designed
22 for persons who are able to take part in programs in the general
23 community, but who, without continued support, would be at risk of
24 returning to a hospital;

25 (4) a semi-supervised, independent, but structured living
26 arrangement for persons who, without some support and structure, would
27 be at risk of returning to the hospital;

28 (5) a day treatment program capable of providing services
29 for clients whose residential needs are being met, but who require
S

CSHB 91 (HESS) RELATING TO THE MENTALLY ILL.

Sec. 1

AS 47.30.520. Amends purpose section of Community Mental Health Act to emphasize that a range of services will be provided.

Sec. 2

AS 47.30.545. Prioritizes populations community mental health centers must serve.

1st, people at risk of immediate hospitalization, in need of continuing services due to a persistent disturbance, or who pose a hazard to their own or others' health and safety, and children at immediate risk of removal from their home.

2nd, people least able of obtaining private sector assistance (because of nature of illness, income, or geographic location)

3rd, others.

AS 47.30.546. Lists the type of services for which community programs may receive state funds, including services specifically for the chronically mentally ill and severely mentally ill children.

AS 47.30.547. Outlines standards providers must meet.

Sec. 3

AS 47.30.550. Allows the department to pay the full cost of mental health services (rather than requiring a 25% match as under current law) if the department determines that sufficient funds from other sources are unavailable. Limits expenditure of program fees and 3rd party reimbursements to program enhancement.

Sec. 4

AS 47.30.610. Updates definition of "poverty area" to reference the most recent census data.

Sec. 5

AS 47.30.610. Defines "chronically mentally ill adult" and "severely mentally ill child".

Sec. 6

Repeals a section of temporary law.

Sec. 7

Immediate effective date.

Article 4. Community Mental Health Services.

Section	Section
520. Legislative purpose	580. Comprehensive services
530. Duties of department	590. Patient rights and the confidential nature of records and information
540. Eligible local community entities	600. Applicability to existing programs
550. Cost-sharing formula; limitations	605. Mental Health Advisory Council
560. Funds for local programs	610. Definitions
570. Eligible costs; maintenance of local effort	620. Short title

Sec. 47.30.520. Legislative purpose. It is the purpose of the legislature in enacting the Community Mental Health Services Act to assist local communities in planning, organizing, and financing community mental health services through locally developed, administered, and controlled community mental health programs. It is further intended to better utilize existing resources at both state and local levels in order to

(1) develop and implement plans for initiating maximum mental health services based on demonstrated need for services in each geographical planning area, as well as regionalized comprehensive mental health services;

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

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

(4) provide a means for participation by local communities in the determination of the need for and the allocation of mental health resources;

(5) establish a uniform ratio of local and state government responsibility for financing mental health services;

(6) provide a means of allocating state mental health funds according to community needs;

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

(8) prevent unnecessary duplication and fragmentation of services and expenditures. (§ 1 ch 121 SLA 1975)

Sec. 47.30.530. Duties of department. — The department shall administer the provisions of AS 47.30.520 — 47.30.620 and shall

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

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

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

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

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

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

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

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

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

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

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

(9) adopt regulations and establish priorities, after consultation with local communities affected and in conjunction with a state mental health advisory council which are necessary to carry out the purposes of AS 47.30.520 — 47.30.620. (§ 1 ch 121 SLA 1975)

Sec. 47.30.540. Eligible local community entities. (a) A city or borough government or other political subdivision of the state, a nonprofit corporation, or a combination of these, is eligible to receive funds and administer local programs under AS 47.30.520 — 47.30.620. In order to ensure equitable access to funds and programs through the state, the department shall determine appropriate geographical areas to be served by local programs in consultation with representatives of the geographical areas in question.

(b) The entity designated by the department in the local area as the organizational unit to receive funds under AS 47.30.520 — 47.30.620 and to administer the program shall ensure a broad base of community support as evidenced by a governing board reasonably representative of the professional, civic, and citizen groups in the community. No more than two members, or 40 per cent of the membership, whichever is greater, may be providers of services under the program. In order to receive funds under AS 47.30.520 — 47.30.620, a local community entity shall agree to

(1) give priority to mental health programs and services that have a maximum impact on other tax funded programs;

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

(3) conform to a state cost accounting system showing the true cost of services rendered, collect fees for services according to a schedule

based on an analysis of reasonable ability to pay, and provide that a person may not be refused services because of inability to pay for those services;

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

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

(6) furnish the department each year a satisfactory annual update of a long-range planning and budget statement that describes program goals for the coming year, the steps and resources necessary to implement the goals, the projected means by which these resources will be secured, and the procedures necessary to evaluate the program.

(c) Members of local governing boards may be reimbursed for necessary travel expenses incurred in the organization and operation of local programs as may be determined by the department. (§ 1 ch 121 SLA 1975)

Sec. 47.30.550. Cost-sharing formula; limitations. If the department finds that it is necessary for the purposes of AS 47.30.520 — 47.30.620, the department may enter into a contract with an eligible community entity under which the department purchases community mental health services from the entity in accordance with the community entity's approved plan and AS 47.30.520 — 47.30.620. The department shall purchase the services by participating in 75 per cent of the eligible costs of the services to be furnished under the plan subject to the availability of state funds to the department for implementing AS 47.30.520 — 47.30.620. In districts designated by the department as poverty areas, the department shall purchase the services by participating in 90 per cent of the eligible costs. (§ 1 ch 121 SLA 1975)

Sec. 47.30.560. Funds for local programs. The contracts for services provided for in AS 47.30.520 — 47.30.620 shall be reviewed, revised if necessary, and approved at the expiration of each contract year. A contract shall be approved if the department finds that the community entity has complied with its plan, AS 47.30.520 — 47.30.620, and any applicable regulations adopted by the department. Expenditures for the purchase of services shall be made in accordance with the approved contract, budgets, and program projections. (§ 1 ch 121 SLA 1975)

Sec. 47.30.570. Eligible costs; maintenance of local effort. The department shall adopt regulations specifying the types of services and program costs eligible for state participation. These regulations shall include

- (1) a provision excluding capital expenditures as eligible costs; and
- (2) a requirement that the community entity contractor or applicant agrees as a condition of contract approval that it will not supplant

existing local fund support of community mental health services with funds received under AS 47.30.520 — 47.30.620 and that it will continue local funding support of community mental health services, in any year in which it contracts with the department, at a level that is at least equal to the local funding support in the previous year. (§ 1 ch 121 SLA 1975)

Sec. 47.30.580. Comprehensive services. Plans and regulations adopted under AS 47.30.520 — 47.30.620 shall allow local programs sufficient administrative and program flexibility so that local community mental health programs may be joined with other programs such as mental retardation programs, drug abuse programs, alcoholism programs and comprehensive mental health services programs. (§ 1 ch 121 SLA 1975)

Sec. 47.30.590. Patient rights and the confidential nature of records and information. The department shall adopt regulations to assure patient rights and to safeguard the confidential nature of records and information about the recipients of services provided under AS 47.30.520 — 47.30.620. The regulations shall require that local community entities develop and include in any plan submitted for approval adequate provisions for safeguarding confidential information. The department's regulations shall provide for disclosure of confidential information to mental health professionals providing services to a recipient and to other appropriate service agencies when it is in the defined best interests of the patient. (§ 1 ch 121 SLA 1975)

Sec. 47.30.600. Applicability to existing programs. No local community entity existing on January 1, 1974 that received state funds for a community mental health services program in the fiscal year ending June 30, 1974 may receive less state support through the purchase of services under AS 47.30.520 — 47.30.620 in the fiscal year ending June 30, 1975 than it received in the preceding fiscal year. In order to assure the continuity of state support of existing programs the department may waive requirements of AS 47.30.520 — 47.30.620 in approving contracts with existing entities for the fiscal year ending June 30, 1975, only. (§ 1 ch 121 SLA 1975)

Sec. 47.30.605. Mental Health Advisory Council. (a) There is created a Mental Health Advisory Council appointed by the governor to advise and assist the department in initiating and implementing mental health services. The council consists of 12 appointed voting members who are interested and knowledgeable in mental health. The composition of the council is as provided in the federal Community Mental Health Act (P.L. 94-63).

(b) The council shall

(1) advise the division on the state mental health plans before implementation of these plans;

(2) periodically review all mental health services in the state, reports of which shall be prepared and submitted to the governor, the legislature, the department, and the Statewide Health Coordinating Council;

(3) conduct independent investigations and studies as may be necessary;

(4) recommend regulations, standards and legislation for the administration of community and institutional mental health services;

(5) encourage coordination of all mental health services on a regional basis to insure nonduplication, nonfragmentation, and efficiency in the delivery of services;

(6) act as a subcommittee of the Statewide Health Coordinating Council in the area of mental health to assist that council in meeting its responsibilities under federal and state law.

(c) The council shall meet at the call of the chairman but shall meet at least once quarterly.

(d) Members of the council are not entitled to a salary, but are entitled to per diem, reimbursement for travel, and other expenses authorized by law for other boards. (§ 1 ch 121 SLA 1975; am § 1 ch 40 SLA 1977)

Cross references. — For provisions establishing the Statewide Health Coordinating Council, see AS 18.07.011.

Editor's notes. — Section 2, ch. 121, SLA 1975 provides: "Upon the creation of the Statewide Health Coordinating Council, as required by the National Health Planning and Resource Development Act of 1974, PL 93-641, sec. 605(a), (c) and (d) of this Act are repealed and the duty specified under sec. 605(b) of this Act shall be assumed by the Statewide Health Coordinating Council."

The Statewide Health Coordinating Council referred to in § 2, ch. 121, SLA 1975 (see editor's note above) was created by § 2, ch. 275, SLA 1976 (AS 18.07.011). Accordingly, AS 47.30.605(a), (c) and (d) would have been repealed and the duties of the Mental Health Advisory Council listed in AS 47.30.605(b) assumed by the Statewide Health Coordinating Council under the provisions of § 2, ch. 121, SLA 1975. Subsequently, however, AS 47.30.605 was reenacted in its present form in § 1, ch. 40, SLA 1977.

Sec. 47.30.610. Definitions. In AS 47.30.520 — 47.30.610

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

(2) "poverty area" means a district in which 15 per cent or more of the population, based upon 1970 census data, falls under 125 per cent of the Office of Economic Opportunity poverty guidelines. (§ 1 ch 121 SLA 1975)

Sec. 47.30.620. Short title. AS 47.30.520 — 47.30.620 may be cited as the Community Mental Health Services Act. (§ 1 ch 121 SLA 1975)

TABLE 7

OPERATING ESTIMATES FOR COMMUNITY SERVICES
FOR ADULTS*

<u>Service</u>	<u>Individuals In Need</u>	<u>Individuals Served</u>	<u>Units of Service Per Individual</u>	<u>Occupancy</u>	<u>No. of Beds</u>	<u>Unit Cost</u>	<u>Annual Cost</u>
Case Management	5,500	2,750	52 hrs.	na ^{**}	na	\$ 18.00	\$ 2,574,000
Outreach	1,000	500	7 hrs.	na	na	15.00	52,500
Medication Management	3,960	1,980	12 hrs.	na	na	60.00	1,125,600
Structure and Support	5,500	2,750	204 hrs.	na	na	11.25	6,311,250
Vocational Training	3,960	990	960 hrs.	na	na	7.50	7,128,000
Board and Care	352	176	255 days	80%	154	22.00	1,236,620
Halfway House	436	218	365 days	80%	273	70.00	6,975,150
Foster Care	104	52	182.5 days	80%	33	22.00	264,990
Supervised Apartments	997	499	224 days	80%	383	30.00	4,193,850
Outpatient Services	65,327	13,065	8 hrs.	na	na	50.00	5,226,000
Prevention and Education (5% of Total)							\$1,769,400
TOTAL FOR ADULTS							\$37,157,360

OPERATING ESTIMATES FOR COMMUNITY SERVICES
FOR CHILDREN AND ADOLESCENTS

<u>Service</u>	<u>Individuals In Need</u>	<u>Individuals Served</u>	<u>Units Of Service Per Individual</u>	<u>Occupancy</u>	<u>No. Of Beds</u>	<u>Unit Cost</u>	<u>Annual Cost</u>
Group Homes	234	70	365 days	100%	70	\$150.00	\$ 3,332,500
Specialized Foster Homes	625	188	365 days	100%	188	65.00	4,460,300
Home Based Services	4,330	1299	80 days	100%	na	40.00	4,156,800
Day Treatment	1,290	387	250 days	na	na	50.00	4,337,500
Respite Care	1,310	393	52 days	100%	56	65.00	1,328,340
Outpatient Services	10,960	3,288	10 hrs.	na	na	50.00	1,644,000
Case Management	2,660	798	26 hrs.	na	na	18.00	373,464
Supervised Apartments	55	17	365 days	100%	17	18.00	496,400
Prevention and Education (5% of Total)							1,056,465
TOTAL FOR CHILDREN AND ADOLESCENTS							\$22,185,769

OPERATING ESTIMATES FOR INPATIENT
AND CRISIS SERVICES

<u>Service</u>	<u>Individuals In Need</u>	<u>Individuals Served</u>	<u>Units Of Service Per Individual</u>	<u>Occupancy</u>	<u>No. Of Beds</u>	<u>Unit Cost</u>	<u>Annual Cost</u>
Inpatient Care	634	634	30 days	80%	65	\$350.00	\$8,303,750
Crisis Beds	374	374	10 days	100%	20	120.00	876,000
Crisis Lines	10,000	10,000	1 call	na	na	30.00	300,000
Forensic	40	40	365 days	100%	40	400.00	5,840,000
TOTAL							\$15,319,750
Administration	na	na	na	na	na	na	\$ 2,677,200

TOTAL OPERATING COSTS FOR MENTAL HEALTH SYSTEM

\$77,340,079

CURRENT FUNDING (FY 1987 Revised)

(23,573,900)

TOTAL OPERATING NEW MONIES NEEDED

\$53,766,179

* Costs are best estimates only based on assumptions in text.
** Not applicable.

5/1/87

DATE TURNED INTO OFFICE _____

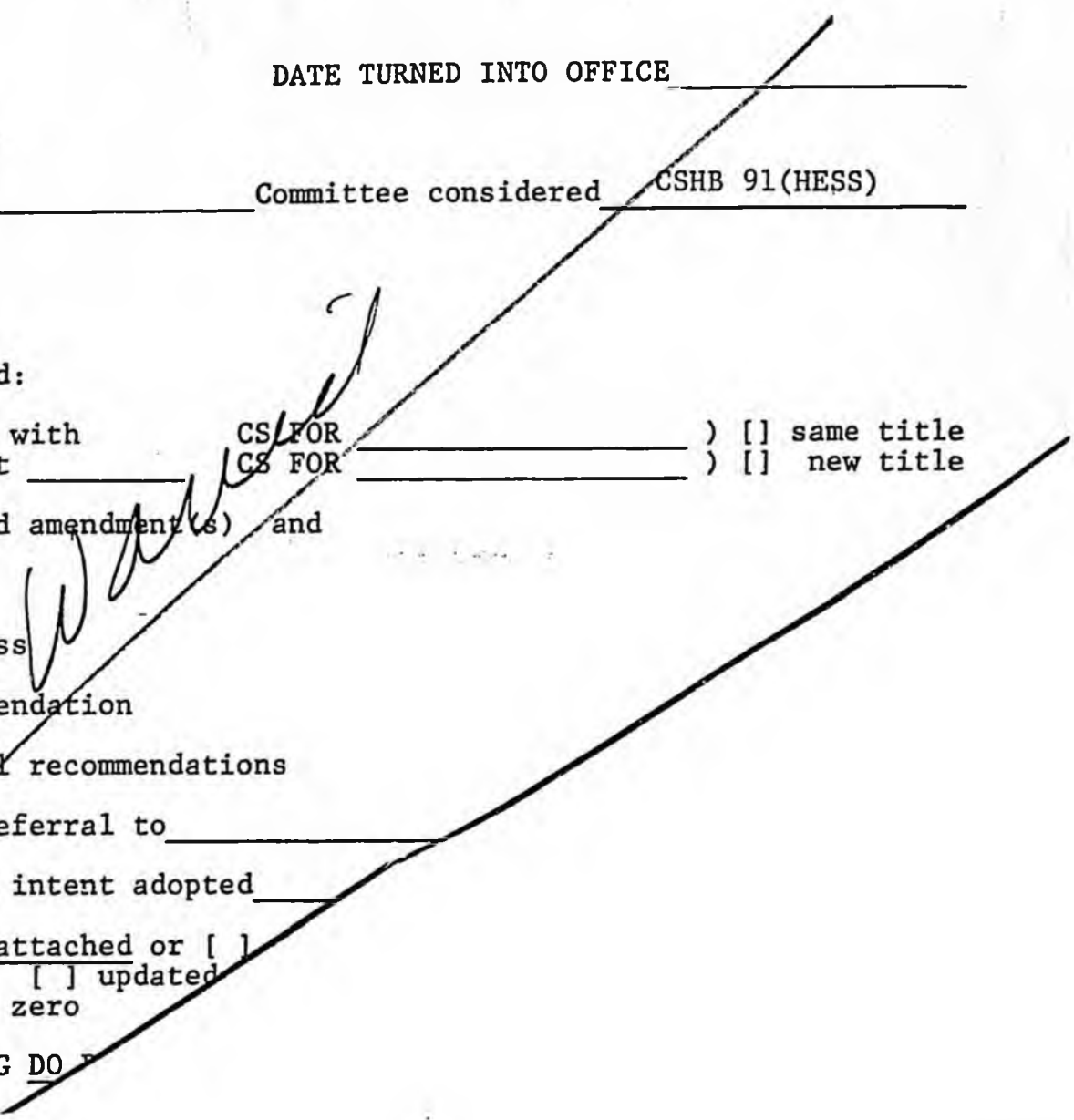
Mr. President:

HESS Committee considered CSHB 91 (HESS)

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 _____
- new updated
- zero

MEMBERS SIGNING DO P



H B
9 2

HOUSE COMMITTEE REPORT

(11)

Date referred: 4/15/87

FURTHER REFERRALS:

DATE: 4/27/87

The Finance Committee has considered HB 92

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

RECOMMENDS:

- replace with CS HB 92 (Fin) the same title
- attached amendment(s) a new title
- do pass
- do not pass
- no recommendation
- individual recommendations
- additional referral to the _____ Committee

ADOPTS: _____ letter of intent

ATTACHES NEW FISCAL NOTE(S):

- fiscal impact same as previous fiscal note published _____
- zero fiscal note same as previous zero fiscal note published _____
- zero with analysis

SIGNING DO PASS:

SIGNING OTHER RECOMMENDATIONS:

POWERSHOT <u>Pat Powershot</u>	LARSON <u>Ronald J Larson No Rec</u>
BROWN <u>Fay Brown</u>	FRANK <u>J Frank No Rec</u>
DAVIS <u>Michael Davis</u>	ADAMS <u>Al Adams</u>
BOYER <u>Mark Boyer</u>	RIEGER <u>Steve Rieger DO NOT PASS</u>
WALLIS <u>Ray Wallis</u>	GOLL <u>Peter Goll NO REC</u>

Al Adams
Chairman's signature

R.O HFC
4/27/87

STATE OF ALASKA 1987 LEGISLATIVE SESSION
FISCAL NOTE

(FIN)

REQUEST: _____

Bill Version: CS.B 92
Publish Date: 4/15/87

Revision Date: 4/23/87
Title: An Act relating to the Alaska
Mental Health Land Trust

Agency Affected: DHSS/DMHDD
BRU: Inst. & Admin.

Sponsor: Pourchot/Mental Health Comm.
Requestor: _____

Components: Mental Health Admin.

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 87	FY 88	FY 89	FY 90	FY 91	FY 92
PERSONAL SERVICES		115.6	126.1	126.1	126.1	126.1
TRAVEL		34.0	34.0	34.0	34.0	34.0
CONTRACTUAL		45.9	47.2	47.2	47.2	47.2
SUPPLIES		1.6	1.8	1.8	1.8	1.8
EQUIPMENT		6.0	0	0	0	0
LAND & STRUCTURES		0	0	0	0	0
GRANTS, CLAIMS		0	0	0	0	0
MISCELLANEOUS		0	0	0	0	0
TOTAL OPERATING		203.1	209.1	209.1	209.0	209.1

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

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

FUNDING: (Thousands of Dollars)

GENERAL FUND		193.1	209.1	209.1	209.1	209.1
FEDERAL FUNDS						
OTHER		10.0*				
TOTAL						

POSITIONS:

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

ANALYSIS : (Attach a separate page if necessary)

10.0 in travel funds will be transferred from DMHDD Administration to the Mental Health Board.

Prepared by: Pat Pourchot, Vice-Chair
Division: House Finance Committee

Phone: 465-3712
Date: 4/23/87

Approved by Commissioner: *Pat Pourchot*
Agency: _____

Date: 4/23/87

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

FISCAL NOTE
 CSHB 92 (HESS)
 MENTAL HEALTH BOARD

Personnel Services (11 months funding):

(1) Mental Health Board Coord.	Range 22	\$ 52,718
(1) Research Analyst III	Range 18	40,554
(1) Clerk Typist III	Range 8	22,279
		<u>\$115,551</u>

Travel:

Board travel and per diem	\$ 24,000*
4 meetings/year X 6,000/meeting	
Staff travel	10,000
5000/per prof. staff X 2	
	<u>\$ 34,000</u>

Contractual:

Phone, copying, printing, advertising	\$ 8,000
Professional services	20,000
Lease space 519 sq ft X 2.57 sq ft/mo X 11 mo.	14,666
Computer hook up 1600 X 2	3,200
	<u>\$ 45,867</u>

Supplies:

50/mo. X 11 X 3 staff	\$ 1,650
-----------------------	----------

Equipment:

2 personal computers 3000 X 2	\$ 6,000
2 printers	
Software	

TOTAL	<u>\$203,068</u>
-------	------------------

* Includes 10.0 from the DMHDD budget, currently identified for travel costs for the Governor's Mental Health Advisory Council. The 10.0 will be transferred from DMHDD Administration to the Mental Health Board.

STATE OF ALASKA 1987 LEGISLATIVE SESSION
FISCAL NOTE

REQUEST: _____

Bill Version: CS HB 92 (FIN)
Publish Date: _____

Revision Date: _____
Title: An Act relating to the federally created mental health trust
Sponsor: Rep. Pourchor
Requestor: House HESS

Agency Affected: Natural Resources
BRU: Land and water management

Components: _____

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 87	FY 88	FY 89	FY 90	FY 91	FY 92
PERSONAL SERVICES		126.9				126.9
TRAVEL		29.0				14.0
CONTRACTUAL		535.0				535.0
SUPPLIES		1.0				1.0
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING		690.9				576.9

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

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

FUNDING: (Thousands of Dollars)

GENERAL FUND		690.9				576.9
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS:

FULL-TIME		3				3
PART-TIME						
TEMPORARY						

ANALYSIS : (Attach a separate page if necessary)

Prepared by: Tom Hawkins Phone: _____
Division: DNIR Date: _____

Approved by Commissioner: Al Adams Date: 4/23/87
Agency: House Finance Comm.

Distribution (by preparer):

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

CONTINUATION of FISCAL NOTE ANALYSIS

-- For Bill/Resolution No. CSHB 92/CSSB 96

With the passage of CSHB 92/CSSB 96 state-owned lands which have a substantial probability of remaining in state ownership in perpetuity would be used to reconstitute the Mental Health Trust. The Department of Natural Resources will be responsible for providing necessary staff support to the Interim Mental Health Trust Commission. Additionally, the department will also be responsible for the process of valuing the lands originally obtained by the state under the Alaska Mental Health Enabling Act and the replacement lands which are of equal value within legislative designations, this fiscal note assumes use of an opinion of value panel. If traditional appraisals are required to establish values, the cost of valuing the land will increase by \$700,000 for FY 88. The redetermination of the fair market value to be conducted in FY 92 would not require a traditional appraisal should one be accomplished this year. (Attached are a summary of an opinion of value covering approximately 52,000 acres of former mental health land which were selected, approved or patented to municipalities, traditional appraisals on 14 of those parcels and a comparison of the values for the 14 parcels which reveals a 7% difference in the total values between the two processes.)

Line Item Explanation

100 - Three positions - NRMI (18C) Staff - NRMI (18C) Review Appraiser - CT III (8A) Clerk,	126.9
200 - Travel to Interim Mental Health Trust Commission Meetings by Staff and the Commission members,	28.0
300 - Advertising, preparation of opinion of values on the original one million acres of MH Grant land and the equal value replacement lands, taking into account the differences in geographic areas, experience of the appraiser in the area, and any other conditions required by the Interim Mental Health Trust Commission.	535.0
400 - Supplies and commodities for Staff,	1.0

COST ESTIMATES - OPINION OF VALUE

3 member panel = \$2,200/day

3,000,000 acres to be valued
Approximately 5,000 parcels per 1,000,000 acres

15,000 parcels total

65 parcels valued per day

230 days work for the panel = \$507.7

Contract typing = \$7.8

Advertising = \$2.0

Purchase Maps, Plats = \$15.0

Publication of Final Values Forms = \$2.5

Total \$535.0

MEMORANDUM

State of Alaska

TO: HB 92 (Mental Health lands) file DATE: 4/23/87

FILE NO.:

THRU:

TELEPHONE NO.:

FROM: *jam*
Frank Mielke

SUBJECT: Breakdown of costs in
fiscal note to CSHB 92-
Mental Health Lands

The breakdown of the costs for implementing CSHB 92 are as follows:

- (1) Personal services - \$126,900 for 2 Natural Resource Manager I (range 18); 1 NRM I to advertise, negotiate contracts, issue instructions, review opinions of value, etc. ; 1 NRM I land manager to prepare maps, plats, aerial photography, legal descriptions and to generally assist the commission in selecting and reviewing lands.
+ CTCB who actually does the work.
- (2) Travel - \$28,000 for board travel and per diem; the commission established by section 5 will be reviewing lands for replacement, holding public hearings on those lands, and meeting with other interests groups potentially affected by the replacement and redesignation of the land.
- (3) Contractual - \$535,000 is for (a)\$500,000 for contractual services by private appraisers to prepare opinions of value for MH land within legislatively designated areas (\$200,000) and for replacement land (\$300,000); (b)\$35,000 is for contractual services in analyzing replacement lands, including mapping, platting, minor surveys, aerial photography, soil analysis and other consultant services.
- (4) Supplies - \$1,000 is principally for map reproduction copy paper, and other office supplies.

DELIVER TO: <i>Tom Hawkins</i>	LOCATION: <i>Comm Ofc. JNU</i>
FROM: <i>Frank Mielke / LBSUM</i>	LOCATION: <i>Anchorage</i>
TELEPHONE/TELECOPIER # <i>586-2254</i>	TOTAL NUMBER OF PAGES: <i>1</i>
TRANSMITTING ON/SPEED: <i>Fast</i>	DATE: <i>4/23/87</i> TIME: <i>1:15</i>
PHONE FOR PROBLEMS-NAME/NUMBER: <i>Charlotte Spence / 569-2066</i>	
COMMENTS:	

OPINION OF VALUE

The opinion of value process involves three knowledgeable appraisers one from each of three geographic areas of the state (Southeast, Southcentral, and Northern). These appraisers sit as a panel, examine plats, maps and legal descriptions of mineral health land and, without benefit of field inspection of the subject or comparables, render an opinion of value for each parcel of property examined. Panel members bring appraisal reports and/or market data with them to panel sessions to use as support in the valuation process. The comprehensive appraisal files of the Department of Natural Resources are also made available to the panel.

The values rendered by the panel are not considered "market value" in the strictest accepted definition of the term. Proper appraisal reports are not required nor are field inspections conducted. The panel's findings are recorded on forms provided by the Department of Natural Resources. This form contains all available information relative to the parcel and is supplemented by plats and maps. At least two members of the three member panel sign signature blocks on each form indicating that they concur with the opinion of value. The lead appraiser for the affected geo-area must be one of the two signatures appearing on each parcel form.

The objective of using the panel method is to obtain a reasonable value estimate, at reasonable expense, in the shortest possible timeframe of the lands in total. The success of this process depends upon the expertise, appraisal background and market data resource each member brings to the panel.

personal ANCHORAGE-APPRAISAL/OPINION OF VALUE
on-site *panel w/pics, etc.*

Parcel	Appraisal		Opinion of Value		Percent Change
	Date	Value	Date	Value	
SM 196	2/27/79	805,000	2/27/79	792,000	...1.6%
SM 221	11/30/79	2,882,000	11/30/79	2,541,500	13.4%
SM 223	7/19/78	1,778,000	7/19/78	2,613,600	47%
SM 223	12/5/86	(5,691,000)	None for this date		
SM 224	11/30/79	2,292,000	11/30/79	1,760,000	30%
SM 271	7/19/78	(1,043,000)	None for this date		
SM 271	12/5/86	1,639,000	10/4/85	1,280,000	.28%

*7% higher -
as an average*

Ct. says do full blown appraisal

JUNEAU-APPRAISAL/OPINION OF VALUE

<u>Parcel</u>	<u>Appraisal</u>		<u>Opinion of Value</u>		<u>Percent Change</u>
	<u>Date</u>	<u>Value</u>	<u>Date</u>	<u>Value</u>	
CRM 86	7/19/78	42,750	7/19/78	20,000	214%
CRM 86	7/14/81	59,000	7/14/81	24,000	246%
CRM 90	7/19/78	(1,450,000)	None for this date		
CRM 90	7/14/81	1,900,000	7/14/81	407,000	467%
CRM 110	7/19/78	14,000	7/19/78	30,000	214%
CRM 110	5/1/80	19,275	5/1/80	35,000	182%
CRM 151	7/19/78	547,000	7/19/78	972,500	178%
CRM 151	7/14/81	607,000	7/14/81	1,215,600	200%
CRM 177	7/19/78	31,300	7/19/78	47,000	50%
CRM 177	7/14/81	46,950	7/14/81	54,800	17%
CRM 211	7/19/78	1,475,000	7/19/78	1,145,700	29%
CRM 211	7/14/81	2,000,000	7/14/81	1,309,400	53%

FAIRBANKS-APPRAISAL/OPINION OF VALUE

<u>Parcel</u>	<u>Appraisal</u>		<u>Opinion of Value</u>		<u>Percent Change</u>
	<u>Date</u>	<u>Value</u>	<u>Date</u>	<u>Value</u>	
FM 23	7/19/78	15,000	7/19/78	40,200	268%
FM 28	6/27/80	15,000	6/27/80	40,200	268%
FM 38	7/19/78	44,000	7/19/78	25,000	76%
FM 38	6/27/80	44,000	6/27/80	25,000	76%
FM 45	7/19/78	349,000	7/19/78	699,300	200%
FM 45	6/27/80	349,000	6/27/80	1,165,000	344%
FM 93	7/19/78	23,800	7/19/78	190,000	798%
FM 93	4/23/81	24,700	4/23/81	190,000	769%

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

1 IN THE HOUSE

BY THE FINANCE COMMITTEE

2 CS FOR HOUSE BILL NO. 92 (Finance)

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

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
CSHB 92(Fin)

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
CSHB 92(Fin)

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,
CSHB 92(Fin)

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) The
9 mental health trust income account is established as a separate ac-
10 count in the general fund.

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 shall
14 annually allocate that amount from the general fund of the state to
15 the mental health trust income account in the general fund of the
16 state.

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

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

27 Sec. 37.14.021. UTILIZATION OF THE MENTAL HEALTH TRUST INCOME
28 ACCOUNT. Money in the mental health trust income account established
29 in AS 37.14.011(a) shall first be appropriated by the legislature to

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

9 * Sec. 4. AS 38.05 is amended by adding a new section to article 11 to
10 read:

11 Sec. 38.05.800. RECONSTITUTION AND ADMINISTRATION OF MENTAL
12 HEALTH LAND TRUST. (a) The commissioner of natural resources, under
13 procedures approved by the interim mental health trust commission,
14 shall determine the fair market value, as of the effective date of
15 this section, of all land selected by and patented to the state under
16 the Alaska Mental Health Enabling Act. The commissioner shall report
17 the determination of that value to the board established under AS 47.-
18 30.661.

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

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

29 (d) Upon reconstitution of the trust under this subsection, land

1 selected by and patented to the state under sec. 202 of the Alaska
2 Mental Health Enabling Act that is not within legislative designations
3 is removed from trust status.

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

9 (f) Before the state may remove land that is part of the mental
10 health trust corpus from trust status, and in addition to any other
11 requirements of law, the commissioner of natural resources, consistent
12 with the state's trust responsibilities, shall identify replacement
13 land, equal in value at the time of replacement, within legislative
14 designations and incorporate them into the mental health trust corpus.
15 The commissioner of natural resources annually shall report any
16 actions under this subsection to the board established under AS 47.-
17 30.661.

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

20 (L) Alaska Mental Health Board;

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

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

29 Sec. 47.30.662. COMPOSITION. (a) The board consists of the

1 commissioner of health and social services, or the commissioner's
2 designee, and not fewer than nine nor more than 12 other members,
3 appointed by the governor, with due regard for balanced geographic
4 representation of the state.

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

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

9 (d) The remaining members shall be representatives of the public
10 at large.

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

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

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

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

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

1 Sec. 47.30.665. BYLAWS. The board, on approval of a majority of
2 its membership and consistent with state law, shall adopt and amend
3 bylaws governing its composition, proceedings, and other activities
4 consistent with state law and including, but not limited to, pro-
5 visions concerning a quorum to transact board business and other
6 aspects of procedure, frequency and location of meetings, and estab-
7 lishment, functions, and membership of committees.

8 Sec. 47.30.666. POWERS, DUTIES, AND RESPONSIBILITIES OF THE
9 BOARD. The board shall

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

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

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

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

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

28 (6) in conjunction with the Department of Health and Social
29 Services, prepare and annually update a long-term comprehensive state

1 mental health plan, to include the projected need and the services,
2 facilities, and resources for the mental health program of the state
3 to meet that need;

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

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

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

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

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

26 (12) review applicable statutes, regulations, and policies
27 and recommend appropriate changes.

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

1 AS 47.30.661.

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

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

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

13 (2) a member and an alternate representing the intervenors
14 who were [,] appointed by the governor from a list of three names
15 submitted to the governor by the intervenors in Weiss v. State, 4 FA
16 82-2208 Civil [; AND

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

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

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

27 * Sec. 9. Section 2, ch. 132, SLA 1986, is repealed and reenacted to
28 read:

29 Sec. 2. RESPONSIBILITIES OF THE COMMISSIONER OF NATURAL RE-

1 SOURCES AND THE COMMISSION. (a) The commission shall review proce-
2 dures proposed by the commissioner of natural resources to determine
3 the fair market value, as of the effective date of AS 38.05.800, of
4 all land selected by and patented to the state under sec. 202 of the
5 Alaska Mental Health Enabling Act, and review the final determination
6 of the fair market value determined under those procedures.

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

12 (c) In the exercise of the commission's responsibilities under
13 this section, the commission and its staff may review the records of
14 the Department of Natural Resources that are made confidential by law
15 or regulation. An individual who acquires information made confiden-
16 tial by law or regulation in the performance of functions authorized
17 by this Act and discloses it without proper authority violates AS 11.-
18 56.860.

19 (d) The commissioner of natural resources is responsible for the
20 management of the mental health land of the state as a public trust
21 under P.L. 84-830, 70 Stat. 709. Except as provided in (e) of this
22 section, the commissioner of natural resources may not sell, lease, or
23 exchange mental health trust land of the state or an interest in the
24 mental health trust land of the state without the prior approval of
25 the commission. In reviewing a proposal for the sale, lease, or ex-
26 change of mental health trust land from the commissioner of natural
27 resources, the commission may approve the proposal of the commissioner
28 on its determination that the proposal is consistent with the terms of
29 the trust established by the Alaska Mental Health Enabling Act.

1 (e) The commissioner of natural resources may transfer trust
2 land to the federal government under AS 38.05.035(b)(9) without ap-
3 proval of the commission. The commissioner of natural resources shall
4 advise the commission of an intention to transfer trust land to the
5 federal government and, after the transfer, shall make every effort to
6 acquire replacement land to fulfill the state's remaining entitlement
7 based on a prioritization, approved by the commission, of existing
8 valid mental health selections.

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

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

14 (1) the Alaska Mental Health Board established under
15 AS 47.30.661;

16 (2) the lieutenant governor; and

17 (3) the revisor of statutes.

18 * Sec. 11. TRANSITIONAL PROVISIONS. Beginning with fiscal year 1989
19 and continuing until the commissioner of natural resources certifies to the
20 commissioner of revenue that the mental health land trust has been recon-
21 stituted under AS 38.05.800, as enacted in sec. 4 of this Act, the commis-
22 sioner of revenue shall annually allocate from the general fund of the
23 state to the mental health trust income account in the general fund an
24 amount equal to five percent of the unrestricted revenue of the state for
25 the fiscal year.

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

1 for three year terms.

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

4 * Sec. 14. Sections 7 - 10 of this Act take effect July 1, 1987.
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29

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

REQUEST: _____

Bill Version: CSHB 92 (HESS)

Publish Date: _____

Revision Date: April 9, 1987

Title: An Act relating to the Alaska Mental Health Land Trust

Agency Affected: DHSS/DHDD

BRU: Inst. & Administration

Sponsor: Pourchot/Mental Health Land Comm

Components: Mental Health Admin.

Requestor: _____

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	73.3	78.8
SUPPLIES		1.8	1.8	1.3	1.3	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
TOTAL OPERATING	0	267.7	267.7	267.7	267.7	267.7

CAPITAL	0	0	0	0	0	0
---------	---	---	---	---	---	---

REVENUE	0	0	0	0	0	0
---------	---	---	---	---	---	---

FUNDING: (Thousands of Dollars)

GENERAL FUND		267.7	267.7	267.7	267.7	267.7
FEDERAL FUNDS						
OTHER						
TOTAL		267.7	267.7	267.7	267.7	267.7

POSITIONS:

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

ANALYSIS : (Attach a separate page if necessary)

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

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

Approved by Commissioner: Mary M. McConson
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
CSHB 92 (HESS)

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	27,034
		<u>\$140,091</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>
-----------------------	-----------------

Equipment:

3 Personal Computers 300C X 3 =	\$ 9,000
3 Printers	
Software	

TOTAL	<u>\$267,551</u>
-------	------------------

*The amount of \$10.0 is also available from the DMHDD/s budget.

CSHB 92 (HESS)

FISCAL NOTE

Mental Health Board

The Department 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

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.

STATE OF ALASKA 1987 LEGISLATIVE SESSION
FISCAL NOTE

REQUEST: _____

Bill Version : HB 92
Publish Date : _____

Revision Date: _____
Title: An Act relating to the federally created mental health trust
Sponsor: Rep. Pourchot
Requestor: House HESS

Agency Affected: Natural Resources
BRU: Land and Water Management
Components : _____

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 87	FY 88	FY 89	FY 90	FY 91	FY 92
PERSONAL SERVICES		126.9				
TRAVEL		28.0				
CONTRACTUAL		535.0				
SUPPLIES		1.0				
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING		690.9				

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

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

FUNDING: (Thousands of Dollars)

GENERAL FUND		690.9				
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS:

FULL-TIME		3				
PART-TIME						
TEMPORARY						

ANALYSIS : (Attach a separate page if necessary) If appraisals are required to establish values, cost of valuing lands will be increased by \$700,000. Fiscal note assumes use of opinions of value. Two NRM I (review appraiser & land staff) and CT III, positions for calculation of 670 acres of mental health land outs de legislatively designated areas; locate and appraise replacement lands with legislative areas from 8.3 million acres designated; board funding - Sec. 5.

Prepared by: Frank Mielke Phone: 465-2400
Division: Land and Water Management Date: 4-6-87

Approved by Commissioner Judith M. Bunt Date: 4-6-87
Agency: Natural Resources

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

APR 07 1987
LEGISLATIVE FINANCE

STATE OF ALASKA 1987 LEGISLATIVE SESSION
FISCAL NOTE

Bill Version: HB 92
Publish Date: _____

REQUEST: _____

Revision Date: _____
Title: Implementing Settlement of
Mental Health Trust
Sponsor: Proposed by Request
Requestor: House 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: April 2, 1987

Approved by Commissioner: [Signature]
Agency: Department of Revenue

Date: 4/2/87

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

RECEIVED

APR 07 1987

page 1 of 1

LEGISLATIVE FINANCE

STATE OF ALASKA 1987 LEGISLATIVE SESSION
FISCAL NOTE

Bill Version: CSHB 92(HESS)
Publish Date: _____

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: Administration
BRU: Personnel
Components: Personnel

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 87	FY 88	FY 89	FY 90	FY 91	FY 92
OPERATING						
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

Prepared By: Diana DeSimone *DD* *AK* Phone: 465-4430
Division: Personnel Date: April 23, 1987

Approved by Commissioner: Garrey Peska *[Signature]* Date: 4/24/87
Agency: Department of Administration

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

[Stamps and Signatures]
APR 27 1987

LEGISLATIVE FINANCE

POSITION PAPER
CSHB 92(HESS)

Committee Substitute for House Bill 92 (Health and Social Services Committee) establishes the Alaska Mental Health Board.

Section 47.30.664 specifies that the board shall hire an executive director and other staff. The proposed language clearly and appropriately places the employees of the board in the classified service. This section also stipulates that the executive director is in the partially exempt service. This legislation requires an amendment to AS 39.25.120 in order to list the executive director in the partially exempt service.

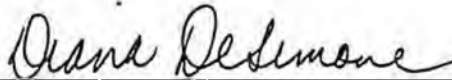
The following amendments are suggested:

1. On Page 12, Line 24 add "under AS 39.25.120" after the word "service."
2. Add another section to the bill which states:

AS 39.25.120(9) is amended by adding a new paragraph to read:

(L) the executive director of the Alaska Mental Health Board.

The Department of Administration's position on this bill is neutral.



Diana DeSimone, Director
Division of Personnel

4/23/87
Date



Commissioner Garrey Peska
Department of Administration

4/27/87
Date

CSHB 92 (HESS) RELATING TO THE ALASKA MENTAL HEALTH TRUST

Sec. 1

Findings, which lay out the history of the mental health trust, and purposes, which explain the settlement proposal.

Sec. 2

Establishes the mental health trust income account in the general fund. Specifies the trust earnings as 8% of the fair market value of the land constituting the mental health trust corpus. Earnings are to be annually allocated from the general fund to the mental health account.

Sec. 3

Provides that funds in the mental health account shall first be appropriated to meet the necessary expenses of the state's mental health program, with the balance available for appropriation for other public purposes.

Sec. 4

Calls upon DNR to determine the fair market value of the original 1 million acres of trust land, and identify replacement land of equal value within legislative designations (parks, refuges, forests). Once this reconstitution of the trust is accomplished, all original trust land is removed from trust status.

Sec. 5

Adds employees of the Mental Health Board to the partially exempt service.

Sec. 6

Establishes a Mental Health Board in the Department of Health and Social Services to assist the state in ensuring an integrated comprehensive mental health program. Membership of consumers, providers, and others; staff; duties.

Sec. 7 - 8

Continues the Interim Mental Health Trust Commission (established last year), with a reduced membership and new duties.

Sec. 9

Outlines commission's duties to include oversight of the trust reconstitution and oversight of trust land management by DNR.

Sec. 10

Terminates the commission upon reconstitution of the trust.

Sec. 11

Provides that until the trust is reconstituted, and beginning with FY 89, the mental health trust income account shall consist of 5% of the state's unrestricted revenue each year.


Sec. 12

Addresses initial appointment of Mental Health Board members.

Sec. 13

Repeals the Governor's Mental Health Advisory Council statute and the existing mental health fund.

MEMORANDUM

To: Anchorage Caucus members
From: Chip Dennerlein 
Subject: Mental Health Trust Lands

The Municipality of Anchorage strongly urges passage of CSHB 92.

The Municipality has worked with the Mental Health Trust lands issue for a number of years. I have represented the interests of Anchorage and of other communities (on behalf of the Alaska Municipal League) which are severely affected by the present controversy regarding the Mental Health trust. We have participated in the deliberations of the Interim Legislative Committee on Mental Health Trust Lands.

The solution embodied in CSHB 92 is the most equitable and most workable I have seen in all my years of familiarity with this issue. It is very creative, while at the same time simple and straightforward. It protects the interests of many constituencies - the Mental Health class, local communities, sportsmen and recreationists, and commodity resource users. All of these groups have established (or been granted by the legislature) legitimate interests in various mental health lands over the years.

It is important that legislation pass this session. Failure to act will result in further protracted litigation which will create land management havoc in and around communities throughout the state. Many of the lands at issue are located around population centers and subject to existing uses and designations. Additional litigation which will undoubtedly tie up these lands and cloud title will make the Udall land freezes of the late 60s seem mild by comparison.

I have scrutinized the bill carefully. As a result of earlier testimony I submitted several questions to the Attorney General in writing. The Attorney General has provided a written response which I can make available. I am satisfied with the response which is now part of the record of this legislation.

I cannot see a better way to settle this significant issue. Please support passage of CSHB 92.

FACT SHEET - MENTAL HEALTH LEGISLATION

File 1-10-37

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.

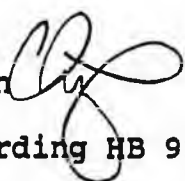
*General treatment services -- both outpatient and inpatient -- available to treat all types of mental illness are described. (These include such services as emergency services, counseling, screening, evaluation, prevention, education, etc.)

*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.

MEMORANDUM

To: Tom Koester
From: Chip Dennerlein 
Subject: Questions regarding HB 92, Mental Health Trust Lands

During my oral testimony before House H&SS regarding HB 92 I raised several questions which I felt should be clearly answered for the record before the bill is acted upon. Rep. Ellis asked you to address the questions, and I am forwarding them to you in writing so you can respond.

1. HB 92 reconstitutes the trust from lands already designated by the legislature as parks, refuges, forests and other public purpose lands. In essence, general grant park and refuge lands are disposed of and trust lands are substituted. During the testimony of several individuals there was a fair amount of discussion about the "leasing" of these new park/trust lands by the state to create a revenue stream for the trust. I am disturbed by the use of the term "lease" and believe it is incorrect. Park lands in particular derive their statutory existence from Article 8, Sec.7 of the Constitution. This is the "special purpose sites" provision. These lands are reserved from the public domain. All of the general statutory authority for leasing and disposal of state lands stems from Art.8, Sec.8. These are the lands in the public domain. Former Attorney General opinions have confirmed that "special purpose site" lands cannot be leased. Once the legislature enacts HB 92, the Mental Health Trust lands are (at least in some cases) state park lands. These lands cannot be "leased" - to the state or otherwise. How does the proposed legislation avoid the issue of "leasing" of state park lands (and other special purpose site lands)? As a matter of public policy, the bill should neither imply, nor open the door for future discussions about the leasing of these lands.

2. You have testified that the reconstitution of the trust from existing legislatively designated areas acts to provide an extra layer of protection for these areas. In essence, the lands will not only be covered by the statutory protection of

their original designations as refuges or forests, but will now also be protected by trust responsibilities. However, could the trust status also become a reason someday to abolish park and refuge lands where no other reason might exist? For example, suppose, the legislature fails to appropriate the required revenue stream payment in a given year or years. A reason might be that state revenues are extremely limited. Could the trust then move to "free" their lands from park and refuge designation in order to turn the lands directly into cash via disposal? Could the legislature decide to "pay" the trust in lands by abolishing parks and refuges in order to avoid the cash debt? In essence, could the proposed legislation create a lever which does not now exist and which may well be used in the future to pry lands out of parks, refuges and forests? If no, how does the bill ensure that the remedy to the trust for failure of a future legislature to appropriate funds is action to secure the money, not secure lands, thereby destroying public purpose areas?

3. From the perspective of municipalities, one of the major virtues of the bill is that it removes the cloud which currently hangs over many acres of municipal selections. However, the bill is not specific as to when this cloud is removed. Are the municipal selections freed upon passage of the legislation? Are they freed bit by bit as the trust is reconstituted? If so, in what order are individual municipal selections freed? The appraisal and reconstitution process may take some time to complete. How long do communities have to wait?

4. The Mental Health Trust issue is a matter of litigation. By enacting the proposed legislation, the legislature does not actually settle that litigation. Rather, the legislature merely provides the terms of settlement. To ensure that a future legislature cannot change the deal, the legislation should be adopted by the court as the settlement. What plans does the state have to ensure that the court adopts the proposed legislation as final settlement of the issue? Does the state view the legislation as the terms of settlement or as a "framework" within which to further negotiate a court settlement? Municipalities would not view the legislation as a basis for settlement, but as the final deal. Do you see any room for departure?

HB 92 has tremendous merit. The Municipality of Anchorage is inclined to strongly support its passage this session. Failure to act soon will, we believe result in further litigation which will create land management havoc in and around many communities throughout the state. Since the lands at issue in the debate are around population centers and are subject to existing resource uses, additional litigation will make the Udall lands freezes of the late 60s seem mild by comparison. However, we believe it is also important to protect the interests of the broad constituency of all Alaskans as well as

the members of the mental health class who are seeking to remedy their existing situation. Thousands of Alaskans worked long and hard to establish parks, refuges, state forests, and other public purpose areas. It is incumbent that we assure ourselves that the proposed legislation creates no hidden booby traps which would promote or cause destruction of these areas in the future. Communities throughout the state have selected certain lands in good faith and in accordance with past legislative direction in fulfillment of their municipal entitlements. We should be clear about the removal of the cloud which now hangs over many of these lands, remembering that these are lands which will be put to the benefit of local people around the state. Many people are working to secure passage of this legislation in the hopes of achieving a final resolution to this difficult issue. We must make certain that it is affirmed by the court, and that the parties do not alter the deal. In this light, the above questions should be clearly answered on the record. Thank you.

STATE OF ALASKA

STEVE COWPER, GOVERNOR

DEPARTMENT OF LAW

POUCH K - STATE CAPITOL
JUNEAU, ALASKA 99811
PHONE: (907) 465-3600

OFFICE OF THE ATTORNEY GENERAL

April 20, 1987

The Honorable Johnny Ellis
Co-Chairman
House Health, Education & Social
Services Committee
P.O. Box V
Juneau, AK 99811

Re: CSHB 92 (relating to the
mental health trust)

Dear Representative Ellis:

At the House Health, Education and Social Services Committee meeting on Tuesday, April 14, 1987, Chip Dennerlein of the Municipality of Anchorage asked a number of questions regarding Committee Substitute for House Bill 92, which relates to the mental health trust. Following the meeting, you asked me to address Mr. Dennerlein's concerns, which Mr. Dennerlein subsequently included in a memorandum to me (a copy of which is enclosed), and to forward my response to you and to Representative Pourchot.

1. Mr. Dennerlein's first question relates to the legislature's authority to administer state lands. Under article VIII, section 7 of the Alaska Constitution, the legislature may establish special purpose sites. These special purpose sites constitute the "legislatively designated areas" referred to in CSHB 92. The legislature's authority over the disposal of state lands stems from article VIII, section 8 of the Alaska Constitution. Mr. Dennerlein is concerned that this bill not confuse (the continued use of replacement mental health trust lands in legislatively designated areas for the legislatively designated purposes) with (the leasing and other disposal of state lands which are not in legislatively designated areas).

In our view, there should be no such confusion. In this bill, the legislature would be exercising its authority under section 202(e) of the Alaska Mental Health Enabling Act, P.L. 84-830, to "exchange" the lands the state

originally obtained under the Act for the lands in the legislatively designated areas. It then would be exercising its authority under article VIII, section 8 of the Alaska Constitution to preserve the use of those lands for the legislatively designated purposes while, simultaneously, compensating the mental health trust for the continued use of those lands for those legislatively designated purposes through the establishment of the Mental Health Trust Income Account.

This solution is not the same as a true disposal of state lands, which is a contractual relationship between the state and a third party, because there is no actual transfer of an ownership interest. In this case, the state simultaneously is the landowner, the land user, and the trustee. While the lands will in fact be trust lands at the conclusion of the process set out in the bill, the use to which those trust lands will be put has already been determined by the legislature; establishment of the Mental Health Trust Income Account ensures that the trust is fully compensated for the continued use of those lands for the legislatively designated purposes. In this way, the trust is fully compensated while the user conflicts which have developed over the original lands selected by and patented to the state under the Alaska Mental Health Enabling Act are eliminated.

2. Mr. Dennlerlein's second question is whether the trust status of lands in legislatively designated areas might eventually place additional pressure on the legislature to remove those lands from the legislatively designated area for disposal or for other purposes. In our view, no such additional pressure would be placed on the legislature. The combination of existing state law and a principle of general trust law, a principle incorporated as an explicit provision in the bill (proposed AS 38.05.800(f), found at p. 11, lines 7-15), would require that two separate actions occur before such lands could be disposed of. First, the existing provisions of law creating the legislatively designated area would have to be amended to remove the lands from the legislatively designated area. Second, before the lands could be removed from trust status and disposed of, replacement land of equal value at the time of replacement would have to be identified and incorporated into the corpus of the mental health trust. In our view, this creates a substantial additional disincentive to the disposal of these lands, not an additional threat to them.