

ALASKA LEGISLATURE COMMITTEE BILL FILES - 1987 - 1988 8879

HB 92 cont., CSHB 92 . . . . . 248

A second possible concern in this context is that the plaintiffs may seek to divest the state of title to these lands and dispose of them to generate revenue if the commissioner of revenue does not make the required deposit to the Mental Health Trust Income Account or the legislature attempts to appropriate money from the account for purposes other than mental health before it appropriates from the account to meet the necessary expenses of the state's mental health program. Initially, we would point out that it would be extremely unlikely that either of those events would ever occur because the state would gain absolutely nothing from either of those actions.

In the unlikely event that one of them does occur, however, a suit to divest the state of title almost undoubtedly would be unsuccessful. See State v. University of Alaska, 624 P.2d 807 (1981)). Moreover, the plaintiffs have much easier remedies than seeking to divest the state of title to the lands.

If the commissioner of revenue fails to make the required deposit, he would be acting contrary to statute. Accordingly, the plaintiffs could bring an injunctive action against the commissioner, seeking a court order directing him to follow the statute.

If the legislature attempts to appropriate from the Mental Health Trust Income Account for purposes other than mental health before it appropriates from the account to meet the necessary expenses of the state's mental health program, the plaintiffs again could seek an injunction enjoining the state from disbursing any of the funds in that account prior to the state satisfying the federal precondition on the use of those funds for purposes other than mental health -- i.e., first using funds in the account to meet the necessary expenses of the state's mental health program.

In other words, the plaintiffs have simple and almost certainly successful remedies available should either of those unlikely events occur, and would have no need to seek to divest the state of title to the lands (an action which almost certainly would be unsuccessful in any event).

3. Mr. Dennerlein's third question relates specifically to municipal entitlements to land which currently are in limbo because of the mental health lands controversy. In brief, he asks when the existing cloud over municipal

selections will be removed and when conveyances to municipalities will be resumed.

There are two answers to Mr. Dennerlein's question, depending on whether the lands have already been patented to the municipalities or whether patent has not yet issued. With respect to lands already patented to municipalities, subsection 1(b)(6) of the bill (p. 8, lines 22-28) states that one of the purposes of the bill is to validate prior transactions involving lands selected by and patented to the state under the Alaska Mental Health Enabling Act. Accordingly, with respect to lands which already have been patented to municipalities, we believe passage of this bill as a practical matter would validate those patents and minimize any cloud on title to lands which have already been patented to municipalities.

With respect to lands which have been selected by but not yet patented to municipalities, proposed AS 38.05.-800(d) (pp. 10-11, lines 27-29 and 1 respectively) provides that lands selected by and patented to the state under the Alaska Mental Health Enabling Act which are not within legislative designations are removed from trust status upon reconstitution of the trust. At that time, conveyances to municipalities could resume without question. In the meantime, however, it is conceivable that such conveyances could occur since ch. 132, SLA 1986, makes clear that the commissioner of natural resources can convey lands selected by and patented to the state under the Alaska Mental Health Enabling Act if the conveyance is approved by the Interim Mental Health Trust Commission. As the land identification process goes forward, it certainly is possible that the commissioner, with the commission's approval, could proceed with municipal conveyances.

-- 4. Mr. Dennerlein's final question relates to the interplay between this legislation and the litigation in court. We believe this legislation, standing alone, satisfies the state's legal obligations under the Alaska Mental Health Enabling Act. If we are correct, the court could make such a determination even if the plaintiffs and intervenors argue that it does not.

At the same time, we do not believe that the plaintiffs and intervenors will oppose this resolution and indeed will support it. In that respect, we look at this bill as establishing the basic parameters for final judicial resolution of the litigation. Before the litigation can be

The Honorable Johnny Ellis


April 20, 1987  
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finally resolved, some other actions may have to occur (e.g., valuation of lands selected by and patented to the state under the Alaska Mental Health Enabling Act; identification of replacement lands; appointment of members to the Alaska Mental Health Board; determination of class membership; resolution of questions relating to attorney's fees; etc.). However, in our view, none of those matters will have any effect on the basic principles established under this bill. In other words, those subsidiary matters relate either to implementation of the provisions of this bill or to matters unique to the litigation context in which they are raised.

We hope this information is useful. As always, we remain ready to answer your questions at your convenience.

Sincerely,

GRACE BERG SCHAIBLE  
ATTORNEY GENERAL

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Interim Mental Health Trust Commission

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

1 IN THE HOUSE

BY THE HEALTH, EDUCATION AND  
SOCIAL SERVICES COMMITTEE

2

CS FOR HOUSE BILL NO. 92 (HESS)

3

IN THE LEGISLATURE OF THE STATE OF ALASKA

4

FIFTEENTH LEGISLATURE - FIRST SESSION

5

A BILL

6

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

7

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  
Enabling Act of 1956, P.L. No. 84-830, 70 Stat. 709, "To confer upon Alaska  
autonomy in the field of mental health, transfer from the Federal Govern-  
ment to the Territory the fiscal and functional responsibility for the  
hospitalization of committed mental patients, and for other purposes;"

15

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

19

(3) in subsection 202(e), the Congress specifically provided  
that the land so granted, as well as any income from the land and proceeds  
from dispositions of the land, were to be administered as "a public trust  
and such proceeds and income shall first be applied to meet the necessary  
expenses of the mental health program of Alaska," that "Such lands, income,  
and proceeds shall be managed and utilized in such manner as the Legisla-  
ture of Alaska may provide," that the land may be "sold, leased, mortgaged,  
exchanged or otherwise disposed of in such manner as the Legislature of  
Alaska may provide, in order to obtain funds or other property to be in-  
vested, expended or used by the Territory of Alaska," and that the Alaska  
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

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

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

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

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

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

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

1 require additional costly and time-consuming litigation;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

3 (b) The purposes of this Act are

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

9 Sec. 38.05.800. RECONSTITUTION AND ADMINISTRATION OF MENTAL  
10 HEALTH LAND TRUST. (a) The commissioner of natural resources, under  
11 procedures approved by the interim mental health trust commission,  
12 shall determine the fair market value, as of the effective date of  
13 this section, of all land selected by and patented to the state under  
14 the Alaska Mental Health Enabling Act. The commissioner shall report  
15 the determination of that value to the board established under  
16 AS 47.30.661.

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

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

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

1 is removed from trust status.

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

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

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

18 (L) Alaska Mental Health Board;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 to meet that need;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 of AS 38.05.800, of all land selected by and patented to the state  
2 under sec. 202 of the Alaska Mental Health Enabling Act, and review  
3 the final determination of the fair market value determined under  
4 those procedures.

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

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

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

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

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

24 (2) the lieutenant governor; and

25 (3) the revisor of statutes.

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

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

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

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

12 \* Sec. 14. Sections 7 - 10 of this Act take effect July 1, 1987.

Introduced: 1/30/87  
 Referred: Health, Education &  
 Social Services and Finance

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

1 IN THE HOUSE

2 HOUSE BILL NO. 92

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FIFTEENTH LEGISLATURE - FIRST SESSION

5 A BILL

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

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

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

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

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

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

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

1 deposited and from which the income was to be appropriated for mental  
2 health programs;

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

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

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

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

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

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

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

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

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

18 (b) The purposes of this Act are to

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

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

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

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

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

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

10                           ARTICLE 1. SPECIAL MENTAL HEALTH ACCOUNT.

11           Sec. 37.14.011. SPECIAL MENTAL HEALTH ACCOUNT ESTABLISHED. (a)  
12       The special mental health account is established in the general fund  
13       of the state.

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

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

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

1 recognized by the Alaska Supreme Court in State v. Weiss, 706 P.2d 681  
2 (Alaska 1985) if the commissioner of revenue fails to make the de-  
3 posits required by AS 37.14.011 or if the legislature fails to make  
4 the appropriations required by AS 37.14.021.

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

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

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

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

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

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

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

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

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

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

7           (2) receive cash belonging to those funds;

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

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

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

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

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

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

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

1 applicable provisions of law.

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

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

13 \* Sec. 8. This Act takes effect immediately under AS 01.10.07C(c).

CSHB

92

SENATE COMMITTEE REPORT

FURTHER:

5/6/87

DATE TURNED INTO OFFICE 5/16/87

Mr. President:

FINANCE Committee considered CSHB 92(Fin) am  
Alaska Mental Health Trust; efd.

and recommended:

- replace with \_\_\_\_\_ CS FOR \_\_\_\_\_ )  same title
- or adopt \_\_\_\_\_ CS FOR \_\_\_\_\_ )  new title
- attached amendment(s) and
- do pass
- do not pass
- no recommendation
- individual recommendations
- further referral to \_\_\_\_\_
- letter of intent adopted \_\_\_\_\_

Committee  attached or  adopted fiscal note(s)  
 new  updated or  previous  
 zero  fiscal impact

MEMBERS SIGNING DO PASS

OTHER RECOMMENDATIONS

*[Handwritten signatures]*  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

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

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

Committee Backup Attached

A/B

STATE OF ALASKA 1987 LEGISLATIVE SESSION  
FISCAL NOTE

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

Bill Version: CSHB 92(Fin)  
Publish Date: HOUSE 4/28/87

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

No. 4  
 CSHB 92(Fin)  
 4/28 /87

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

Bill Version: CSHB 92(Fin)  
Publish Date: HOUSE 4/28/87

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

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 |       |       |       | 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)

APA

Prepared by: Al Adams, Chairman Phone: 465-3706  
Division: House Finance Committee Date: 4/27/87

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

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. .

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<br>- NRMI (18C) Review Appraiser<br>- 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

No. 5  
CSHB 92(Fin)  
4/28/87

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

No. 5  
CSHB 92(Fin)  
4/28/87

TO: HB 92 (Mental Health lands) file

FILE NO.:

THRU:

TELEPHONE NO.:

FROM: Frank Mielke *fm*

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.  
*+ CTO 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. JMU</i>         |
| FROM: <i>Frank Mielke / LHM</i>                                     | LOCATION: <i>AnCharge</i>              |
| TELEPHONE/TELECOPIER # <i>586-2754</i>                              | TOTAL NUMBER OF PAGES: <i>1</i>        |
| TRANSMITTING ON/SPEED: <i>Fast</i>                                  | DATE: <i>4/29/87</i> TIME: <i>1:15</i> |
| PHONE FOR PROBLEMS-NAME/NUMBER: <i>Charlotte Spansel / 563-2066</i> |  |
| COMMENTS:   |  |

OPINION OF VALUE

No. 5  
CSHB 92(Fin)  
4/28/87

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 mental 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*  
*on-site*      ANCHORAGE-APPRAISAL/OPINION OF VALUE  
*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   | 1.5%           |
| 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 29         | 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) am  
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

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

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

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

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

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

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

1 require additional costly and time-consuming litigation;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

3 (b) The purposes of this Act are

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

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

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

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

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

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

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

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

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

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

8 Sec. 37.14.011. MENTAL HEALTH TRUST INCOME ACCOUNT. (a) 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 population and balanced  
4 geographic 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

1 RESOURCES 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.

HB 92

# Alaska State Legislature

REPRESENTATIVE  
PAT POURCHOT

HOUSE FINANCE COMMITTEE,  
VICE CHAIR

HOUSE ETHICS COMMITTEE, CHAIR

LEGISLATIVE BUDGET & AUDIT  
COMMITTEE



## House of Representatives

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

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.

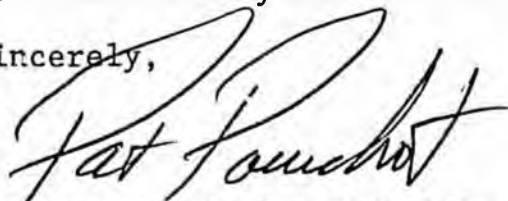
HB 91 restructures our community mental health statute by prioritizing populations community centers must serve, and encourages the development of services by allowing the local funding requirement to be waived under certain conditions. These changes are intended to result in improved service for those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

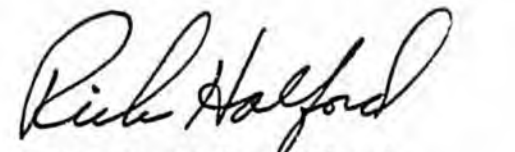
Senator Bennett  
Senator Binkley  
May 8, 1987  
Page 2

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

Pourchot 4/29/87

## 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.

|                          |             |               |
|--------------------------|-------------|---------------|
| 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

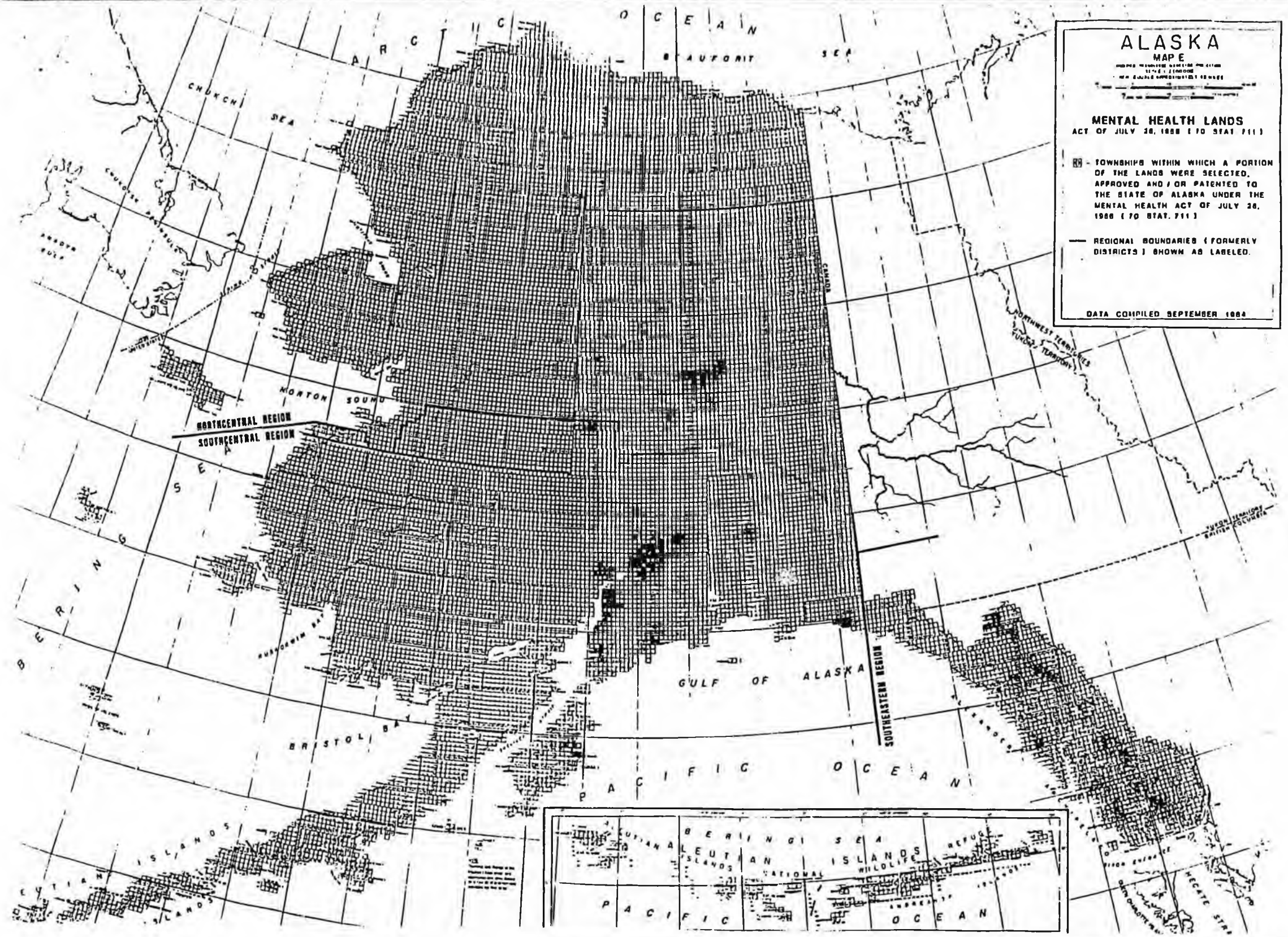
UNITED STATES DEPARTMENT OF THE INTERIOR  
BUREAU OF LAND MANAGEMENT  
WASHINGTON, D. C. 20250

## MENTAL HEALTH LANDS ACT OF JULY 28, 1988 (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 28, 1988 (70 STAT. 711)

— REGIONAL BOUNDARIES (FORMERLY DISTRICTS) SHOWN AS LABELED.

DATA COMPILED SEPTEMBER 1984



## CSHB 92 ( FIN ) 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.

# 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

Document No. 87-90

April 30, 1987

The Honorable Pat Pourchot  
Alaska State House  
P.O. Box V  
Juneau, AK 99801

RE: CSHB92 (Fin), MH Lands  
Settlement Bill

Dear Representative Pourchot:

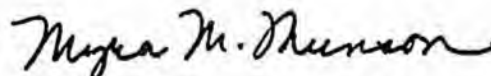
As spokesperson for the Administration regarding settlement of the mental health lands litigation, Weiss v. State, I am writing to express the Administration's wholehearted endorsement of the settlement provisions incorporated in CSHB 92 (Fin). We are convinced that the terms of this bill, if adopted by the Legislature, fully satisfy the requirements of the original federal mental health trust and the order of the Alaska Supreme Court to reconstitute the mental health lands.

Moreover, we believe the legislation provides an equitable settlement which restores the trust, but does not impinge on either the authority or responsibility of the legislative or executive branches.

The House committees of Health, Education and Social Services and Finance are to be congratulated for their quick action on this bill. We are hopeful of the earliest possible passage of CSHB 92 (Fin) by the full House.

Your help throughout the process of trying to develop a solution is very much appreciated. Your work has been a significant factor in the progress made to date.

Sincerely,



Myra M. Munson  
Commissioner

**JAMES B. GOTTSTEIN**

ATTORNEY AT LAW

408 G STREET, SUITE 208  
ANCHORAGE, ALASKA 99501  
(907) 274-7686

April 30, 1987

Rep. Pourchot  
P.O. Box V.  
Juneau, Alaska 99811

Re: HB 91 &amp; 92

Dear Representative Pourchot:

As the attorney for the Alaska Mental Health Association, Mary C. Nanuwak and John Martin, on behalf of themselves and all others similarly situated, in the Mental Health Trust Lands litigation, Weiss et al v. State, 4FA 82-2208 Civ, and as a member of the board of directors of the Alaska Mental Health Association, this is to confirm in writing that we all support -- indeed urge -- the passage of both HB 91 & CSHB 92 (Finance) (& their companions in the Senate, SB 97 & 96, respectively).

Further, we wish to express our deep gratitude and heartfelt thanks to yourself, Senators Halford, Fischer, Fahrenkamp, Kerttula, Sturgelewski, and Josephson, as well as Representatives Gruenberg, Boyer, Brown, Cato, Davis, Donley, Ellis, Goll, Speaker Grussendorf, and all the other members of both houses and staff who have worked so diligently to forge these critical pieces of legislation and move them through the legislative process to this point.

Yours truly,

  
James B. Gottsteincc: Alaska Mental Health Association  
Interim Mental Health Health Trust Commission  
David T. Walker  
G. Thomas Koester  
C. Geraty  
P. Volland

# 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 30, 1987

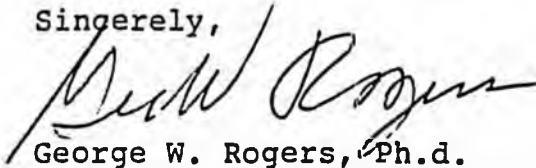
The Honorable Jan Faiks  
President of the Senate  
Fifteenth Alaska Legislature

The Honorable Ben Grussendorf  
Speaker of the House of Representatives  
Fifteenth Alaska Legislature

Dear Senator Faiks and Representative Grussendorf:

The Interim Mental Health Trust Commission endorses and strongly urges passage of CSHB 92 and CSSB 96 as the best means of settling the Weiss vs. State lawsuit and providing for the implementation of a comprehensive mental health program as intended by Congress. These bills were developed by the Commission and the Special Legislative Committee and have the support of the representatives of all litigants.

Sincerely,



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



THE ALASKA  
**ALLIANCE FOR THE MENTALLY ILL**

*"An affiliate of the National Alliance for the Mentally Ill"*

April 28, 1987

Honorable Pat Pourchot  
House of Representatives  
Alaska State Legislature  
Pouch V  
Juneau, Alaska 99802


Dear Representative Pourchot:

The Alaska Alliance for the Mentally Ill would like to thank you for all your efforts to date in behalf of the mentally ill of Alaska. You have fairly represented our concerns and we are confident that this solution is in the best interests of all Alaskans.

The Alaska Alliance supports both HB 91 and HB 92 as integral components of a solution to the problems related to the Weiss litigation. We believe the lands bill (HB 92) will satisfy the legal obligation to the court and the treatment bill (HB 91) will satisfy the need for a public policy statement for the chronically mentally ill which we believe meets the Congressional mandate established by the Alaska Mental Health Enabling Act.

Again, our thanks and appreciation for your support and encouragement.

Sincerely,

  
Sharron Lobaugh  
President, Alaska Alliance for  
the Mentally Ill

JAMES B. GOTTSTEIN

ATTORNEY AT LAW

408 G STREET, SUITE 208  
ANCHORAGE, ALASKA 99501  
(907) 274-7688

EVE COWPER, GOVERNOR

10 WILLOUGHBY AVE.  
SITKA, ALASKA 99801-1796  
PHONE: (907) 465-2400

April 30, 1987

11

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ative Pourchot:

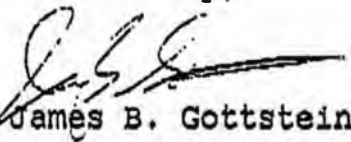
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all litigants.

Yours truly,



James B. Gottstein

ission

alth Association  
ealth Health Trust Commission

*Alaska*  
MUNICIPAL  
*League*

TELEPHONE  
(907) 586-1325

105 MUNICIPAL WAY, SUITE 301  
JUNEAU, ALASKA 99801

April 30, 1987

The Honorable Ben Grussendorf, Speaker  
and Members of the House of Representatives  
Alaska State Legislature  
Post Office Box V (MS 3100)  
Juneau, Alaska 99811

Dear Mr. Speaker and Representatives:

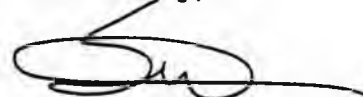
The Alaska Municipal League supports CS FOR HOUSE BILL NO. 92 (Finance) - "An Act relating to the Alaska Mental Health Trust; and providing for an effective date."

The Alaska Municipal League Board of Directors met by conference call yesterday, April 29, 1987, to discuss the new CS in detail, and reaffirmed their support of this legislation which would reconstitute the Mental Health Trust in response to Weiss v. State of Alaska. Specifically, the Board motion approved was:

The AML Board supports CS for HB 92 (Finance) and CS for SB 96 (HESS) as the most equitable and realistic solution to reconstituting the Mental Health Trust; settling the Weiss vs State of Alaska litigation; and, removing the cloud over the title to mental health lands granted to municipalities as fulfillment of their municipal entitlements. The Board urges the Legislature to pass this legislation during the First Session of the 15th Alaska Legislature."

Over 53,000 acres of selected, approved or patented municipal entitlement land is in question pending the Legislature's action. Passage of HB 92 will reconstitute the Trust, and release municipal lands, allowing municipalities to continue the selection, planning and development of their entitlement lands for the future growth and development of our communities. On behalf of the AML Board of Directors, and the League's 125 member municipalities, I urge you and the members of the Alaska House of Representatives to vote YES on CS HB 92 (Finance). I have also attached AML Resolution #87-5 which was adopted by the AML membership at their annual meeting, November 1986. Thank you.

Sincerely,



Scott A. Burgess  
Executive Director

Enclosure

RESOLUTION OF THE ALASKA MUNICIPAL LEAGUE

RESOLUTION NO. 87-5

A RESOLUTION REQUESTING THE STATE OF ALASKA  
TO COMPLETE THE CONVEYANCE OF MUNICIPALLY SELECTED  
MENTAL HEALTH TRUST LANDS.

WHEREAS, municipalities have been given the right to select state lands in their communities for future growth and expansion under the Municipal Entitlement Act of 1978, and

WHEREAS, in 1978, the Alaska State Legislature redesignated the mental health trust lands as general grant lands and made these lands available for municipal selection for the benefit of all Alaskans, and

WHEREAS, many of the municipalities selected lands formerly designated as mental health trust land, and

WHEREAS, the Alaska Supreme Court on October 4, 1985, found that the 1978 redesignation of mental health trust land to general grant land was a breach of the mental health trust, and

WHEREAS, the Alaska Department of Natural Resources has suspended the transfer of title of municipally selected former mental health trust lands, and

WHEREAS, Alaskan communities are entitled to select 712,360 acres of state land including former mental health trust lands, and

WHEREAS, municipalities are entitled to select their entitlements of state land which includes former mental health trust lands, and

WHEREAS, the municipalities have selected 53,918 acres of former mental health trust lands, of which 23,259 acres have been patented and 18,968 acres have been tentatively approved for conveyance, and

WHEREAS, the former mental health lands selected by municipalities are of critical importance to the growth and development of communities;

# STATE OF ALASKA

## DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

from Rep. Riegr

STEVE COWPER, GOVERNOR

REPLY TO:

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

1st NATIONAL CENTER  
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JUNEAU, ALASKA 99811  
PHONE: (907) 465-3600

April 30, 1987

The Honorable Albert P. Adams  
Alaska State Legislature  
P.O. Box 7  
Juneau, AK 99811

Re: CSHB 92(Fin)

Dear Representative Adams:

LouAnn Cutler of your office asked whether it would be possible to modify the provisions of CSHB 92 (Fin), which is intended to resolve the mental health lands case, should it appear at some future time that another approach may be more appropriate. In our view, there are a number of possible resolutions which would be permissible as long as certain basic principles were not changed. Those basic principles are:

(1) There must be a trust corpus, either land or money;

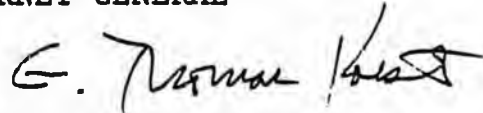
(2) The state, as trustee, must fulfill its duty to preserve the trust corpus; and

(3) The corpus must be managed to generate an income stream which must first be used to fund the mental health program of Alaska.

We hope this answers your questions. Of course, we are available to answer any questions at your convenience.

Sincerely,

GRACE BERG SCHAIBLE  
ATTORNEY GENERAL

By:   
G. Thomas Koester  
Assistant Attorney General



# Editor

## Settling an old issue

**BACK AT** the time when Alaska's territorial status was waning and statehood was on the horizon, mental health care and treatment was something of a burning issue. Now, some 30 years later, it still is.

There were little or no professional facilities or services available back in those old days for those Alaskans suffering from mental illness. Alaskans who needed institutional care were often sent Outside under court orders. Morningside Hospital in Portland, Ore., was one often utilized area for treatment for Alaskans.

The situation led to a phrase that echoed across the state, "Inside, Outside or Morningside" — a slogan that at the time championed the cause for local treatment facilities.

**AS A RESULT** of concerns by Alaskans, Congress established a million acre trust of land, given to the territory in 1956, revenues from which were to be dedicated to the development and funding of mental health programs.

One of the ultimate outcomes of this statewide concern was the establishment of Alaska Psychiatric Institute here in Anchorage.

But over a period of years, as other priorities of early statehood came along, the matter of using revenue from the trust lands got mostly lost in the shuffle. By the time 20 years had passed, the trust had been partially dissolved and many of the mental health lands had been disposed of — in

various land selection processes, to municipalities, boroughs, native corporations and others.

Five years ago a lawsuit was filed challenging the state for failure to utilize revenue from the trust lands for mental health services. The courts ruled that the state, indeed, had violated the provisions of the trust and somehow must reimburse the fund for the land which was given away.

**BUT THAT'S** no easy task. Unscrambling the mental health egg has been a difficult challenge.

But the legislature may now be on track of a solution that will satisfy the courts, meet the requirements of the trust and, in the process, sustain mental health programs.

In bills introduced in both the House and Senate in Juneau, the state would set aside 5 percent of its income each year as a starting point for determining allocations for mental health funding. Under provisions of this plan, not all the money would have to be spent for mental health services. But all of it would have to be available if necessary to meet needs as determined by a state Mental Health Board.

At the moment, mental health programs are receiving about \$28 million in state aid. What that figure would be if this proposed solution is adopted hasn't been spelled out. But a resolution must be reached, and this concept looks favorable.

# **CORRECTION**

**THIS DOCUMENT  
HAS BEEN REPHOTOGRAPHED  
TO ASSURE LEGIBILITY**

RESOLUTION OF THE ALASKA MUNICIPAL LEAGUE

RESOLUTION NO. 87-5

A RESOLUTION REQUESTING THE STATE OF ALASKA  
TO COMPLETE THE CONVEYANCE OF MUNICIPALLY SELECTED  
MENTAL HEALTH TRUST LANDS.

WHEREAS, municipalities have been given the right to select state lands in their communities for future growth and expansion under the Municipal Entitlement Act of 1978, and

WHEREAS, in 1978, the Alaska State Legislature redesignated the mental health trust lands as general grant lands and made these lands available for municipal selection for the benefit of all Alaskans, and

WHEREAS, many of the municipalities selected lands formerly designated as mental health trust land, and

WHEREAS, the Alaska Supreme Court on October 4, 1985, found that the 1978 redesignation of mental health trust land to general grant land was a breach of the mental health trust, and

WHEREAS, the Alaska Department of Natural Resources has suspended the transfer of title of municipally selected former mental health trust lands, and

WHEREAS, Alaskan communities are entitled to select 712,360 acres of state land including former mental health trust lands, and

WHEREAS, municipalities are entitled to select their entitlements of state land which includes former mental health trust lands, and

WHEREAS, the municipalities have selected 53,918 acres of former mental health trust lands, of which 23,259 acres have been patented and 18,968 acres have been tentatively approved for conveyance, and

WHEREAS, the former mental health lands selected by municipalities are of critical importance to the growth and development of communities;

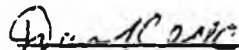
NOW, THEREFORE, BE IT RESOLVED BY THE ALASKA MUNICIPAL LEAGUE:

1. That the State of Alaska is encouraged to complete the conveyance of municipally selected former mental health trust lands as rapidly as possible.


2. That the State of Alaska work towards a speedy resolution of the mental health trust lands issue with the Interim Mental Health Trust Commission.

3. That the State of Alaska find means of compensating the mental health trust as part of the state's liability without jeopardizing land selections made by Alaskan communities.

Adopted this 14th day of November 1986.

  
\_\_\_\_\_  
Dan Keck, President

Attest:

  
\_\_\_\_\_  
Scott A. Burgess, Executive Director

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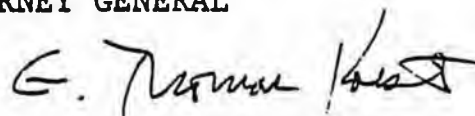
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MEMORANDUM

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

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.