

LEGISLATIVE FINANCE-HOUSE / SENATE FINANCE COMM. FILES 8879

SB 493 cont. - SB 501 694 385

5/6/90
ADOPTED

DRAFT LETTER OF INTENT TO ACCOMPANY FINANCE CS FOR CSSB 493 (Res) ^{FIN}

The Finance Committee has adopted a committee substitute for CSSB 493 (Res) which takes a different approach to compensating the reconstituted mental health trust for the use of its land from the approach taken in the committee substitute adopted by the Natural Resources Committee. Instead of basing the compensation on an arbitrarily selected value for the original one million acre land grant as in the Natural Resources Committee substitute, the Finance Committee substitute dispenses with a compensation formula based on valuing the original grant and simply establishes a guaranteed income stream for the mental health trust by annually allocating a fixed percentage of the state's unrestricted general fund revenues to the mental health trust income account.

In adopting this approach, the Finance Committee was guided by the following considerations:

(1) in chapter 48, SLA 1987, the legislature enacted a framework for settlement of the mental health trust controversy;

(2) under chapter 48, it was contemplated that (i) the state and the plaintiffs and intervenors in the mental health trust land litigation, Weiss v. State, 4FA-82-7208, would reach consensus on the value of the original one million acre mental health land grant, (ii) the original mental health land not in legislatively designated areas (e.g., parks, game refuges; etc.) would be exchanged for equal value general grant land in such areas, (iii) the original mental health

land and the equal value exchange land in those areas would constitute the mental health trust corpus which the state would lease from the trust for eight percent of its fair market value per year, and (iv) the original mental health land not in legislatively designated areas would be removed from trust status;

(3) the state and the plaintiffs and intervenors in the Weiss case have been unable to reach consensus on the procedures to be used to value the original one million acre land grant and the pool of potential exchange land, the plaintiffs and intervenors arguing that procedures producing a value of \$2.243 billion should be used and the state arguing that procedures producing a value of \$564.7 million should be used;

(4) this impasse over valuation may lead to continued costly, time-consuming, and divisive litigation over land issues, matters having nothing to do with the state's mental health program, leading to all of the adverse consequences noted by the legislature in subsections 1(a)(14)-1(a)(17) of chapter 48;

(5) while the legislative findings in chapter 48 are still true, the potential for continued costly, time-consuming, and divisive litigation over the value of the original one million acre grant, a matter having nothing to do with the state's mental health program, makes it no longer in the best interest of either the trust or the public to try

to resolve the mental health trust controversy by determining the value of the original grant;

(6) instead, it is in the best interest of both the trust and the public to resolve the mental health trust controversy by reconstituting the mental health trust corpus as contemplated in chapter 48 but, instead of attempting to determine a rental value for the reconstituted corpus based on fair market value, a goal which cannot be achieved by consensus, compensating the trust for the use of the reconstituted corpus through the establishment of a permanent mental health trust income account into which five percent of the state's unrestricted revenue is allocated annually, and from which the legislature must first appropriate funds to meet the necessary of the state's mental health program; and

(7) annually allocating five percent of the state's unrestricted general funds in perpetuity will fairly compensate the mental health trust for the loss of its land because (i) even the most aggressive management of the land for the purpose of generating revenue cannot be guaranteed to generate any given amount of funds, (ii) the dedication of five percent of the state's unrestricted revenues to the mental health trust income account will provide greater predictability in the amount of funds available in that account annually, (iii) there will be no administrative expenses associated with generating funds for the account, as there would be if funds had to be generated for the account

through aggressive management of the land for that purpose, and (iv) the average per acre earnings for trust lands in other states in fiscal year 1988 was \$8.97, the highest per acre earnings (in the State of Washington because of its prime and easily accessible timber lands) was \$45.68, and the dedication of five percent of the state's unrestricted revenue will result in per acre earnings of approximately \$125 per acre for the the mental health trust in fiscal year 1991.

The purposes of the Finance Committee substitute for CSSB 493 (Res) accordingly are:

- (1) to accomplish the purposes of chapter 48, SLA 1987, as set out in subsections 1(b)(1)-1(b)(7) of that Act; and
- (2) to establish, as full and complete compensation to the trust, and to "obtain," as that term is used in section 202(e) of the Alaska Mental Health Enabling Act, a permanent allocation of five percent of the state's unrestricted revenues from the general fund to the mental health trust income account.

Original sponsor(s): SEN. COGHILL

1 IN THE SENATE

BY THE FINANCE COMMITTEE

2

CS FOR SENATE BILL NO. 493 (Finance)

3

IN THE LEGISLATURE OF THE STATE OF ALASKA

4

SIXTEENTH LEGISLATURE - SECOND SESSION

5

A BILL

6

For an Act entitled: "An Act relating to the reconstitution and adminis-

7

tration of the mental health trust; and providing for

8

an effective date."

9

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

10

* Section 1. AS 37.14.011(b) is amended to read:

11

(b) The amount determined under (c) of this section as the [FAIR

12

MARKET] rental value of the land constituting the mental health trust

13

corpus is the earnings of the trust and the commissioner of revenue

14

shall annually allocate that amount from the general fund to the

15

mental health trust income account.

16

* Sec. 2. AS 37.14.011(c) is repealed and reenacted to read:

17

(c) The rental value of the land constituting the mental health

18

trust corpus is equal to five percent of the unrestricted general fund

19

revenue of the state for the fiscal year.

20

* Sec. 3. AS 37.14.021 is amended to read:

21

Sec. 37.14.021. UTILIZATION OF THE MENTAL HEALTH TRUST INCOME

22

ACCOUNT. Money in the mental health trust income account established

23

in AS 37.14.011(a) shall first be appropriated by the legislature to

24

meet the necessary expenses of the mental health program of the state.

25

In making annual appropriations from the mental health trust income

26

account, the legislature shall consider the recommendations of the

27

Alaska Mental Health Board established under AS 47.30.661, including

28

recommendations regarding capital improvements. After the necessary

29

expenses of the state's mental health program have been funded, the

1 commissioner annually shall report any actions under this subsection
2 to the board established under AS 47.30.661.

3 * Sec. 5. The provisions of this Act are not severable.

4 * Sec. 6. Section 2(a), ch. 132, SLA 1986, as amended by sec. 9,
5 ch. 48, SLA 1987, is repealed.

6 * Sec. 7. Section 11, ch. 48, SLA 1987 is repealed.

7 * Sec. 8. This Act takes effect immediately under AS 01.10.070(c).

Sen. Pourchot
May 4, 1990

MENTAL HEALTH LANDS TRUST
VALUATION AND RECONSTITUTION

SB 493 has been introduced to solve problems encountered in implementing Chapter 48 SLA 1987, the proposed settlement of the Mental Health Trust Lands litigation.

Ch. 48 directed the Commissioner of DNR to determine the fair market value of the original Mental Health Trust lands under procedures approved by the Interim Mental Health Trust Commission. The State would pay 8% of this value annually into the mental health trust account to be used first for the necessary expenses of the mental health program. Chapter 48 also directed the Commissioner to identify land within legislative designations (parks, refuges, etc.) equal in value to the original trust to become the reconstituted trust. The 8% payment noted above would compensate the trust for continued use of these lands for their designated purposes. These lands would be revalued every five years.

The Commissioner has declared impasse because the Commission developed its own procedures rather than simply approving procedures developed by DNR -- procedures which, in her view, do not result in fair market value. The Commission's procedures result in a value of \$2.243 billion, while DNR's valuation is some \$700 million.

Due to this impasse, the Commission has stopped all transfers of Mental Health Trust Lands because there is no assurance the settlement will ever be implemented. In addition, the beneficiaries of the trust may be able to reverse dispositions by the State of up to 750,000 acres of trust land.

SB 493 is designed to prevent these problems by doing three things:

1. Establish the value. SB 493 sets the value at \$2,243 billion. CSSB 493(Res) sets the value at \$1.8 billion.
2. Reconstitute the trust. The bill presumes a rough equality in the value of the original 1 million acres of trust land and the legislative designations. CSSB 493(Res) includes all legislative designations as of 9/7/87 (approximately 9 million acres) as the reconstituted trust.
3. Establish a formula for revaluation. All parties agree that they do not want to go through a contentious valuation process every five years and that an indexing system is desirable. The bill does this.

WHILE THE BENEFICIARIES CONTINUE TO SUPPORT THE \$2.243 BILLION VALUATION, THE RESOURCES C.S. IS A GOOD-FAITH ATTEMPT AT A REASONABLE COMPROMISE. WHILE ADOPTING THE RESOURCES C.S. MAY NOT AVOID FURTHER LITIGATION, DOING NOTHING WILL ABSOLUTELY ENSURE CONTINUED LAWSUITS AND LAND DISRUPTION.

CORRECTION

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

Original sponsor(s): SEN. COGHILL

1 IN THE SENATE BY THE FINANCE COMMITTEE
2 CS FOR SENATE BILL NO. 493 (Finance)
3 IN THE LEGISLATURE OF THE STATE OF ALASKA
4 SIXTEENTH LEGISLATURE - SECOND SESSION
5 A BILL
6 For an Act entitled: "An Act relating to the reconstitution and adminis-
7 tration of the mental health trust; and providing for
8 an effective date."
9 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:
10 * Section 1. AS 37.14.011(b) is amended to read:
11 (b) The amount determined under (c) of this section as the [FAIR
12 MARKET] rental value of the land constituting the mental health trust
13 corpus is the earnings of the trust and the commissioner of revenue
14 shall annually allocate that amount from the general fund to the
15 mental health trust income account.
16 * Sec. 2. AS 37.14.011(c) is repealed and reenacted to read:
17 (c) The rental value of the land constituting the mental health
18 trust corpus is equal to five percent of the unrestricted general fund
19 revenue of the state for the fiscal year.
20 * Sec. 3. AS 37.14.021 is amended to read:
21 Sec. 37.14.021. UTILIZATION OF THE MENTAL HEALTH TRUST INCOME
22 ACCOUNT. Money in the mental health trust income account established
23 in AS 37.14.011(a) shall first be appropriated by the legislature to
24 meet the necessary expenses of the mental health program of the state.
25 In making annual appropriations from the mental health trust income
26 account, the legislature shall consider the recommendations of the
27 Alaska Mental Health Board established under AS 47.30.661, including
28 recommendations regarding capital improvements. After the necessary
29 expenses of the state's mental health program have been funded, the

1 legislature may authorize transfer of the unobligated and unappro-
2 priated fiscal year-end balance in the mental health trust income
3 account as of June 30 to the unreserved portion of the general fund
4 [MAKE APPROPRIATIONS FROM THE MENTAL HEALTH TRUST INCOME ACCOUNT] for
5 other public purposes.

6 * Sec. 4. AS 38.05.800 is repealed and reenacted to read:

7 Sec. 38.05.800. RECONSTITUTION AND ADMINISTRATION OF MENTAL
8 HEALTH LAND TRUST. (a) All land within legislative designations on
9 September 7, 1987, constitutes the corpus of the mental health land
10 trust.

11 (b) On reconstitution of the trust under this section, land the
12 state receives under sec. 202 of the Alaska Mental Health Enabling Act
13 that is not within legislative designations is removed from trust
14 status.

15 (c) The land within legislative designations that constitutes
16 the mental health land trust shall be administered for the legisla-
17 tively designated purposes. The state shall continue to manage the
18 legislatively designated areas in accordance with state law and
19 policy; the authority of the state includes the issuance of permits,
20 rights-of-ways, mining leases, oil and gas leases, coal leases, timber
21 contracts, and other actions that do not constitute a conveyance in
22 fee simple. The income from the use of the trust land shall be depos-
23 ited into the general fund.

24 (d) Before the state may remove land that is part of the mental
25 health trust corpus from trust status, and in addition to any other
26 requirements of law, the commissioner, consistent with the state's
27 trust responsibilities, shall identify replacement land, equal in
28 value at the time of replacement, within legislative designations and
29 incorporate them into the mental health trust corpus. The

1 commissioner annually shall report any actions under this subsection
2 to the board established under AS 47.30.661.

3 * Sec. 5. The provisions of this Act are not severable.

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5 ch. 48, SLA 1987, is repealed.

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The Commissioner has declared impasse because the Commission developed its own procedures rather than simply approving procedures developed by DNR -- procedures which, in her view, do not result in fair market value. The Commission's procedures result in a value of \$2.243 billion, while DNR's valuation is some \$700 million.

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State of Alaska

Refuges, Forests and Parks

February 1990

Name	Statute	Acres
Fish & Game Designations (AS 16.20)		
Walrus Island State Game Sanctuary	(AS 16.20.090-140)	9,700
McNeil River State Game Sanctuary	(AS 16.20.160-170)	83,800
	Total sanctuary acres	93,500
Palmer Hay Flats State Game Refuge	(AS 16.20.032)	26,000
Mendenhall Wetlands State Game Refuge	(AS 16.20.034)	3,800
Susitna Flats State Game Refuge	(AS 16.20.036)	300,800
Trading Bay State Game Refuge	(AS 16.20.038)	160,960
Cape Newenham State Game Refuge	(AS 16.20.030)	14,000
Izembek (Lagoon) State Game Refuge	(AS 16.20.030)	181,440
Creamer's Field Migratory Waterfowl Refuge	(AS 16.20.039)	1,664
Goose Bay State Game Refuge	(AS 16.20.030)	10,880
Anchorage Coastal Wildlife Refuge	(AS 16.20.031)	32,500
Minto Flats State Game Refuge	(AS 16.20.037)	500,000
	Total refuge acres	1,232,044
Port Moller Critical Habitat Area	(AS 16.20.550)	127,000
Port Heiden Critical Habitat Area	(AS 16.20.555)	72,000
Cinder River Critical Habitat Area	AS 16.20.560)	26,000
Egegik Critical Habitat Area	(AS 16.20.565)	8,000
Pilot Point Critical Habitat Area	(AS 16.20.570)	46,000
Kalgin Island Critical Habitat Area	(AS 16.20.575)	3,500
Fox River Flats Critical Habitat Area	(AS 16.20.580)	7,100
Chilkat River Critical Habitat Area	(AS 16.20.585)	4,800
Kachemak Bay Critical Habitat Area	(AS 16.20.590)	222,000
Clam Gulch Critical Habitat Area	(AS 16.20.595)	2,500
Copper River Delta Critical Habitat Area	(AS 16.20.600)	597,000
Anchor River & Fritz Creek Critical Habitat Area	(AS 16.20.605)	19,000
Tugidak Island Critical Habitat Area	(AS 16.20.615)	50,240
Dude Creek Critical Habitat Area	(AS 16.20.610)	4,083
Willow Mountain Critical Habitat Area	(AS 16.20.620)	22,720
Redoubt Bay Critical Habitat Area	(AS 16.20.625)	183,640
	Total critical habitat area acres	1,395,583
Forestry Designations (AS 41.15-17)		
Tanana Valley State Forest	(AS 41.17.400)	1,786,000
Haines State Forest Resource Mgmt. Area	(AS 41.15.300-330)	247,000
	Total forestry acres	2,033,000

Park Units (AS 41.21-23)

Chilkat State Park	(AS 41.21.111-120)	6,045
Chugach State Park	(AS 41.21.121-125)	495,000
Kachemak Bay State Park	(AS 41.21.131-134)	165,370
Kachemak Bay State Wilderness Park	(AS 41.21.140-'43)	210,240
Denali State Park	(AS 41.21.151-152)	421,120
Wood/Tikchik State Park	(AS 41.21.161-167)	1,428,320
Shuyak Island State Park	(AS 41.21.172-178)	11,000
Pt. Bridget State Park	(AS 41.21.181-183)	2,800
Marine Parks:	(AS 41.21.300-306)	*14,440

Beecher Pass, Bettles Bay, Chilkat Islands, Dall Bay, Funter Bay, Horseshoe Bay, Joe Mace Island, Oliver Inlet, Saint James Bay, Sawmill Bay, Security Bay, Shelter Island, Shoup Bay, South Esther Island, Sullivan Island, Surprise Cove, Taku Harbor, Thoms Place, Zeigler Cove

* does not include 22,510 acres of water

Captain Cook State Recreation Area	(AS 41.21.415-425)	3,620
Caines Head State Recreation Area	(AS 41.21.435-445)	5,961
Nancy Lake State Recreation Area	(AS 41.21.455-465)	22,685
Chena River State Recreation Area	(AS 41.21.475-490)	254,080
Willow Creek State Recreation Area	(AS 41.21.491-495)	3,583
Kenai River Special Management Area	(AS 41.21.502-514)	2,693
Alaska Chilkat Bald Eagle Preserve	(AS 41.21.611-630)	49,000
Total Park Acres		3,095,957

Other Designations

Delta Junction Bison Range Area	(AS 16.20.300)	*72,000
Matanuska Valley Moose Range	(AS 16.20.340)	**132,500
Nelchina Public Use Area	(AS 41.23.010-040)	2,350,000
Hatcher Pass Public Use Area	(AS 41.23.100-130)	5,100
Ernie Haugen Public Use Area	(AS 41.23.050-080)	420
Recreation Rivers:	(AS 41.23.400-510)	***243,000

Alexander Creek, Kroto Creek & Moose Creek, Lake Creek, Little Susitna River, Talachulitna River, Talkeetna River

Total other designations 2,803,020

* does not include additional 17,500 acres within military withdrawal

** does not include selected land

*** does not include borough or private land

NOTE: Most figures are approximate and many include tide and submerged acreage. Fish & Game estimates that half of the acreage designated in Title 16 is submerged.

Fish & Game designations	2,721,127
Forestry designations	2,033,000
Park designations	3,095,957
Other designations	2,803,020
Total legislative designations	10,653,104



Alaska Department of
**NATURAL
RESOURCES**

STATE OF ALASKA

DEPARTMENT OF NATURAL RESOURCES

OFFICE OF THE COMMISSIONER

STEVE COWPER, GOVERNOR

400 WILLOUGHBY AVE.
JUNEAU, ALASKA 99801-1796
PHONE: (907) 485-2400

April 17, 1990

Ms. Thelma Langdon
Chair
Alaska Mental Health Board
2363 Captain Cook Drive
Anchorage, AK 99517

Dear Ms. Langdon:

In accord with AS 38.05.800(a), the commissioner of natural resources is charged with determining the fair market value of the original one million acre mental health land grant under procedures approved by the Interim Mental Health Trust Commission (commission). In addition, the commissioner, with the approval of the commission, is to identify land within legislative designations that is equal in value to the original mental health trust lands.

On February 1, 1990, my designee to the commission submitted a minority report regarding procedures to determine the fair market value of the mental health trust and replacement lands. The report detailed the reasons for his dissent from the majority report, and outlined procedures used by the Department of Natural Resources (department) to produce a fair market value of \$564,700,782.82 for the total original mental health trust lands.

On March 20, 1990, I received the final majority report of the commission. The report critiqued the minority report and confirmed a December 20, 1989 draft as the commission's final report. The December 20, 1989 report of the commission specifically approved procedures for determining the fair market value of the original mental health trust lands. The procedures produced a value of \$2,243,000,000 for all land selected by or patented to the state under the Alaska Mental Health Enabling Act.

After reviewing the two reports and their respective valuation procedures, I have concluded that I cannot use either set of procedures and still act consistently with the law. Therefore, I have no choice but to declare an impasse as I am prevented from

fulfilling my statutory mandate of determining the fair market value of the mental health land grant, as well as to identify equal value replacement land.

In retrospect, I believe Chapter 48, SLA 1987 set an unrealistic goal when it contemplated that all parties could work together on a consensus basis to implement the law. Initially, it appeared as though the consensus approach would be successful. Later in the process, particularly after initial land values began to emerge, the consensus process began to deteriorate as the parties began to disagree over valuation approaches. Since the legislation provided no specific mechanism to resolve such disagreements other than through the commission, the process soon became unworkable as the parties gravitated to their respective positions.

The Commission's Report

Chapter 48, SLA 1987 specifically required a determination of "fair market value." However, my reading of the commission's December 20, 1989 report causes me to conclude that fair market value is not what is produced by the procedures the commission majority approved.

For example, the review appraisers (who examined the work of the three opinion of value geo-panels valuing the surface estate) were instructed in writing by the lawyers for the plaintiffs and intervenors to determine "the highest value that can be supported in the market." Under the procedures approved by the commission majority, the resultant value was later averaged with the final adjusted fair market value determined by the geo-panels. These same review appraisers were also instructed by the same lawyers to look only at those individual mental health parcels which might have been "undervalued" by the geo-panels. As there was no corresponding search or review of any "overvalued" parcels, I believe this approach was disproportionately weighted to the high value end of the spectrum. I also conclude the commission acted arbitrarily when it decided to establish a final value of the surface estate by simply splitting the difference between the revised parcel values determined by the geo-panels and the unadjusted values determined by the review appraisers. In my opinion, the resultant compromise value bears no relationship to fair market value.

The most significant problem in the procedures approved by the commission majority in the December 20, 1989 report, however, lies with the hard rock mineral valuation. The commission

majority based its hard rock mineral value on the work and recommendations of two consultants hired independently by the lawyers for the plaintiffs and intervenors. The consultants used a discounted cash flow approach, producing a hard rock mineral value of \$1.51 billion for the original mental health land grant. The minority member used a comparable sales approach, the standard for determining fair market value, producing a value of \$73.5 million.

While I do not necessarily disagree with the income value approach, several assumptions used in that approach were incorrect. Dr. DeVerle Harris, a nationally recognized expert on valuation procedures and the discounted cash flow approach, noted several incorrect assumptions used by the consultants which resulted in a gross overestimation of the hardrock mineral value, as did the University of Alaska's Institute for Social and Economic Research. One such assumption was that there was full mineral production from all one million acres of the original grant on the date of valuation. The reality is that there is little if any production even today. The unreasonableness of the \$1.5 billion value is clear when it is recognized that more than \$4 billion in annual mineral production would be required to support that figure. Annual statewide production in 1987 was only \$200 million.

Finally, in my view, the majority report also fails to adhere to the statutory requirement that there be consensus on the valuation procedures used. Section 2 of chapter 132, SLA 1986, as amended by section 9 of chapter 48, requires the commission to review valuation procedures proposed by the commissioner. AS 38.05.800(a), also enacted as part of chapter 48, requires the commissioner to use valuation procedures approved by the commission. Section 2 of chapter 132, as amended, requires the commission to then review the value thus determined. Particularly when it is remembered that chapter 48 was viewed by all parties as a framework for settlement, the only reasonable construction of these provisions is that neither the plaintiffs and intervenors nor the department can adopt valuation procedures over the other's objection. Yet that is what the commission majority has done. The December 20, 1989 majority report reflects the use of numerous procedures which were not proposed by the commissioner and are unacceptable to the department.

The Minority Report

AS 38.05.800(a) requires the commissioner to determine "fair market value" based on procedures approved by the commission. Several of the procedures included in the minority report were not approved by the commission.

I do believe, however, that the department took very seriously its charge to determine the fair market value of the mental health lands. Under the statutes the department normally operates under, there are numerous references to "fair market value" (i.e. AS 38.05.055, 38.05.057, 38.05.067, 38.05.068, 38.05.075, 38.05.087, 38.05.102, 38.05.105, etc.). The department has operated most of its disposal and lease programs using this appraisal standard. The interpretation of fair market value has been consistently interpreted and applied by the department over the years. I also believe that the values provided in the minority report accurately reflect fair market value.

Among the first procedural decisions made by the commission in September, 1987 was its adoption of the definition of "fair market value" proposed by the department. This definition was the same as that used by the American Institute of Real Estate Appraisers/Society of Real Estate Appraisers, and the same one used over the years by the department. Based upon this action, the department consistently used this definition while the commission later departed from its use.

Summary

Although I have no recourse but to declare an impasse, I believe there are ways to break this procedural logjam so as to achieve the primary goal of all affected parties--namely **to ensure that there is a guaranteed source of state funds from which the legislature would first appropriate to cover the needs of the state's mental health programs:**

1. Request that the court issue instructions prior to any further legislative action. There are several legal questions which could be answered before policy options are pursued. The Department of Law has advised that the court will issue advisory opinions which involve a trust, and trustees can obtain such instructions as they relate to their trust administration powers and responsibilities. I believe these instructions could be timely obtained and pledge to assist in their

development. The interim provision in Chapter 48, SLA 1987 that pays the trust five percent of the state's unrestricted general fund per annum could remain in effect until an advisory opinion is rendered.

2. Replace "fair market value" with "value" as it appears in AS 38.05.800(a).
3. Remove the requirement in AS 38.05.800(a) that the commission approve the procedures to be used to value the original grant and the replacement lands.
4. Again, consistent with #1 above, another possibility (although one which would not provide a guaranteed source of funds for the state's mental health program in perpetuity) would be to purchase the lands from the trust at fair market value over time and appropriate the proceeds for the state's mental health program. Over time, this would result in all the mental health lands being purchased from the trust and removed from trust status, with the proceeds of the sales going to the state's mental health income trust account. The Alaska Supreme Court seemed to authorize this approach in the Weiss decision when it stated that the remedy for lands which the state has sold is to pay the trust the fair market value of the lands at the time of sale, but that the state should receive a set-off against that liability for money it has spent for the state's mental health program, and that this could result in the state having no monetary liability to the trust (In pointing out this alternative, I am not suggesting that this is an appropriate policy for funding the state's mental health program. As the state's land manager, however, I feel compelled to point it out as a possible option for removing mental health lands from trust status so they can be managed for their highest and best use and not merely to raise revenue).
5. Replace the five year reappraisal requirement in Chapter 48, SLA 1987 with a simple index formula which accounts for inflation and appreciation. This index could then be implemented automatically, with the mental health income trust account adjusted on an annual basis.

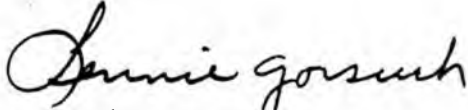
Ms. Thelma Langdon

-6-

April 17, 1990

I appreciate the immense importance and timely resolution of this very complex and sensitive matter. Accordingly, the department is prepared to offer any assistance that may be required to resolve this dilemma consistent with the Alaska Mental Health Enabling Act.

Sincerely,

A handwritten signature in cursive script that reads "Lennie Gorsuch".

Lennie Gorsuch
Commissioner

USIBELLI COAL MINE, INC.

122 First Avenue - Suite 302
Fairbanks, Alaska 99701

Telephone (907) 452-2625
Facsimile (907) 451-6643

April 11, 1990

Representative Mike Miller
Alaska State Legislature
P.O. Box "V" (MS 3100)
Juneau, Alaska 99811

Dear Representative Miller:

I was advised by your staff that you were interested in receiving material and information regarding the impact of the current mental health situation as it relates to Usibelli Coal Mine (UCM). The following information is supplied for your consideration.

All of the state coal leases that UCM holds are situated on patented mental health (PMH) lands. Much of the unappropriated state land that lies adjacent or contiguous to these coal lease is also designated PMH. Also common to the Healy area are material sale sites for gravel and rock extraction that are located on PMH lands.

The problems have become visible by virtue of an ADNR administrative decision, in late January of this year, to suspend all lease or material sales that were in process. One of the in process material sales was for 50,000 cubic yards of gravel that UCM needs to complete the topping of a currently used haul road that links the Gold Run Pass mine to the rail head tipple facility. The attached paperwork indicates our application and request dated July 26, 1989 has yet to be acted upon. The latest letter, dated February 2, 1990 relays to UCM that we will be notified as soon as there is a resolution to this issue.

The administrative order that halted all transactions on PMH lands was executed so that an argument could not be made later, that present-day decisions relating to PMH lands diminished the corpus of the mental health fund. In my humble estimation, the inaction we are currently experiencing is doing just that, and additionally is frustrating efforts by companies like UCM who have major projects on hold pending the outcome of this problem.

Looming larger in the background is the need that UCM has to secure a surface lease on adjacent PMH property to continue development of the Poker Flats Mine, in particular an area east of the current operation. This area, named Runaway Ridge, contains minable reserves of approximately 2.9 million tons of sub-bituminous coal, and is due for initial development this summer. Overburden from this area is being designed to be disposed of in a permanent storage facility that will be located to the south of the current mining area. The site is once again on PMH land, so we are locked out from even applying for a lease on this area. It is fruitless to proceed with ancillary development plans, when the disposal site needed in conjunction with the mining can't be secured.

UCM supports the mental health community in it's attempt to make sure the money received from PMH lands is legislatively appropriated to provide for the proper care of those in need. However, during this interim period we need to proceed with normal functions in the consideration of material sales and leases that have been conducted in a workmanlike manner by the competent staff of the Division of Land and Water Management.

Your support in resolving this most important issue is appreciated. Please contact me if I can be of further assistance. With best regards, I remain,
Cordially yours,



Charles P. Boddy
Regulatory Compliance Manager

cc: JEUj, WAM, MDU, RCH, LPJ, file
attachments

me/CPB

al041190

STATE OF ALASKA

STEVE COWPER, GOVERNOR

DEPARTMENT OF NATURAL RESOURCES

DIVISION OF LAND AND WATER MANAGEMENT

NORTHERN REGION
3700 AIRPORT WAY
FAIRBANKS, ALASKA 99709-4613
PHONE: (907) 451-2700

December 19, 1989

Charles P. Boddy
Usibelli Coal Mine, Inc.
P.O. Box 1000
Healy, Alaska 99743

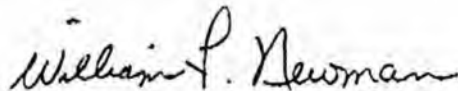
Re: Material Contract, ADL No. 414143

Dear Mr. Boddy,

Your request for gravel from Section 3, Township 12 South, Range 6 West, Fairbanks Meridian was scheduled to be reviewed by the Mental Health Board on December 1, 1989. It was decided that no action would be taken on any casefile at that meeting. It was rescheduled to be heard on December 18th. That meeting was cancelled.

Since the affected property is on mental health trust lands approval of the Commission is required. I cannot issue the contract without this approval. It is not known at this time when, or if, the Commission will meet again. I regret to inform you that I must hold your application in abeyance until such time as the Commission meets and takes affirmative action on your request.

Sincerely,

FREDERICK L. SMITH
Acting Regional ManagerBy: William F. Newman
Natural Resource Officer

WFN/kz

USIBELLI COAL MINE, INC.

P.O. Box 1000
Healy, Alaska 99743
(907) 683-2226
Telecopier (907) 683-2253

July 26, 1989

Mr. William F. Newman
Alaska Department of Natural Resources
Division of Land & Water Management
3700 Airport Way
Fairbanks, Alaska 99709-4613

Dear Mr. Newman:

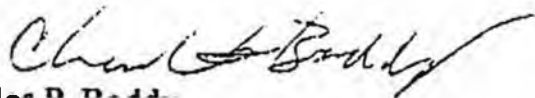
Please find attached the completed material application for an additional 50,000 cubic yards of gravel from the site near the Gold Run Pass mine area.

Usibelli Coal Mine Incorporated request that the division conduct a public oral outcry auction for this competitive sale of material.

Your prompt attention to this matter is appreciated, and either myself or Mr. Larry Jackson may be used as your contact. My number locally is 452-2625, and Mr. Jackson may be reached at the Healy office number, 683-2226.

With best regards, I remain,

Sincerely,



Charles P. Boddy
Regulatory Compliance Manager

CC: JEUj, WAM, MDU, LPJ
mw: dl072689

STATE OF ALASKA

STEVE COWPER, GOVERNOR

DEPARTMENT OF NATURAL RESOURCES

DIVISION OF LAND AND WATER MANAGEMENT

NORTHERN REGION
3700 AIRPORT WAY
FAIRBANKS, ALASKA 99709-4513
PHONE: (907) 451-2700

February 2, 1990

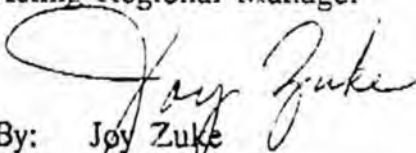
Usibelli Coal Mines, Inc.
Attn: Charles P. Boddy
P.O. Box 1000
Healy, Alaska 99743

Enclosed is the latest announcement for all uses of Mental Health lands (both pending and existing). Our instructions are clear and your pending casefile is now being held in abeyance until such time that we receive further instructions.

We will notify you as soon as there is a resolution to this issue.

Sincerely,

FREDERICK L. SMITH
Acting Regional Manager


By: Joy Zuke
Natural Resource Officer

cc: Birch, Horton, Bittner, Cherot and Anderson Law Offices

JZ/kz

STATE OF ALASKA
DEPARTMENT OF NATURAL RESOURCES
DIVISION OF LAND & WATER MANAGEMENT
3601 C Street
Anchorage, AK 99503

SS# _____

\$50.00 Filing Fee

MATERIAL APPLICATION

ADL# 414143

1. Name and address (please include zip code) USIBELLI COAL MINE, INC.
P.O. BOX 1000, HEALY, ALASKA 99743 ATTN: Charles P. Boddy REG/COMI
2. Applicant is at least 19 years old YES Yes _____ No
3. Applicant is a citizen of the U.S. YES Yes _____ No
4. Quantity of material desired (cubic yards) 50,000 Fifty thousand
5. Length of time requested for removal 180 Days
6. When will removal operation begin? Upon Approval
7. Location of material site (please include section, township, range and meridian) Within ADL#68139 Referenced to the Fairbanks Meridian as follows: Section 3, Range 6 W, Township 13 S.
8. Approximate size of material site in acres 7.2
9. For what purpose will the material be used Road Construction/Overlayment
10. Are there any existing permits or leases covering any part of the land applied for? YES Yes _____ No _____ Lease _____ Permit
11. If 10 is answered yes, state name and last known address of permittee or lessee Right-Of-Way ADL # 68139
12. Are there any improvements on the lands applied for? _____ Yes NO No
13. If 12 is answered yes, describe and state approximate value and name and address of last known owner _____
14. Describe the proposed method of excavation including the type of equipment to be used Front end loader or hydraulic shovel and Wabco haul trucks.

MEMORANDUM

State of Alaska

Community and Regional Affairs

TO: G. Thomas Koester
Asst. Attorney General
Department of Law

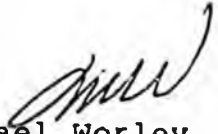
DATE: April 26, 1990

FILE NO: 0526T/MW/cbs/1410.12

TELEPHONE NO: 465-4750

THRU:

SUBJECT: CS HB 493 (HESS)


FROM: Michael Worley
State Assessor
Municipal and Regional
Assistance Division

You have requested my comments with regard to the revaluation formula contained in CS HB 493 (HESS).

Under the proposed formula, the actual assessed value for land in property taxing municipalities would be used to develop the ratios and resulting "revaluation factor" for time-adjusting the estimated values for these lands. That approach raises three concerns:

1. Municipalities have the flexibility under AS 29.45.050 to exempt property from local taxation by local option. Property values which are optionally exempted, or for which an optional exemption is removed, would change the levels of actual local assessed values. Changes in assessed land values resulting from these actions would skew the ratios and factors set out in the current version of the revaluation procedure.
2. The proposed revaluation procedure does not provide for geographic differentials in the increases (or reductions) in land values. The proposal calls for land value changes only in property taxing jurisdictions to serve as a basis for all of these lands statewide. In fact, there are often wide disparities in the rates of property value changes, based on their geographic location within the State. In addition, Alaska's property taxing jurisdictions tend to be more highly populated than other jurisdictions and areas of the State. In highly populated areas, supply and demand generally causes annual property appreciation rates to be higher than those in lower populated areas. Therefore, under the current proposal, remote properties would likely be revalued using rates which are too high, and therefore inaccurate.

Mr. G. Thomas Koester
RE: CS HB 493 (HESS)
April 26, 1990
Page Two

3. The proposal calls for these properties to be revalued every five years. In the five year period from 1980 through 1985, taxable property values in Alaska experienced a change equal to plus 64.25%. In the four year period from 1986 through 1989, those values dropped 24.23%. Because Alaska's boom and bust history, it is likely similar drastic changes in property values will occur in the future. To reflect a true picture of the rises or drops in property values, a revaluation of these lands should be conducted annually.

Each of three concerns noted above could be successfully addressed if, instead of using the actual local assessed values in the proposal procedure, the Full Value Determination (under AS 14.17.140) were used. The Full Value Determination takes into account locally exempted property values and is estimated virtually for all areas of the State, not just for those municipalities which levy a property tax. Therefore, the Full Values could, and should be, geographically segregated to reflect more accurate adjustments to these lands according to their location. In addition, the Full Value Determination is already required under statutes to be developed annually. Therefore, an annual revaluation of the lands would be relatively simple to accomplish.

In the event the Full Value Determination were used for this purpose, and assuming geographic differential adjustment factors were established in regulations, the cost to the Department of Community and Regional Affairs for the public hearing process would be approximately \$5,000.

STATE OF ALASKA
1990 LEGISLATIVE SESSION

BILL VERSION: CSSB 493
PUBLISH DATE: _____

FISCAL NOTE

REQUEST:

Revision Date: 3-May-90
Title: Relating to reconstitution
and administration of the mental health trust
Sponsor: Coghill
Requestor: Senate Resources

Agency Affected: Natural Resources
BRU: Management and Administration
Components: Information Resource
Management

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 91	FY 92	FY 93	FY 94	FY 95	FY 96
PERSONAL SERVICES	54.5	37.9	37.9	37.9	37.9	37.9
TRAVEL						
CONTRACTUAL						
SUPPLIES	0.5	0.5	0.5	0.5	0.5	0.5
EQUIPMENT	1.0					
LAND&STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	56.0	38.4	38.4	38.4	38.4	38.4
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND	56.0	38.4	38.4	38.4	38.4	38.4
FEDERAL FUNDS						
OTHER						
TOTAL	56.0	38.4	38.4	38.4	38.4	38.4

POSITIONS:

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

ANALYSIS:

See Attached

Prepared by: Sharon Barton Phone: 465-2406
Division: Management and Administration Date: 3-May-90

Approved by Commissioner: [Signature] Lennie Gorsuch Date: 3-May-90
Agency: Department of Natural Resources

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

Q by JFC

boundary information.

Funding would be from the general fund.

By maintaining the integrity of the computerized and graphic land records data base, the State reduces the risk of unsound land management, such as allowing conflicting activities on the same piece of land (critical in the replacement land process). Keeping the data base current and accurate will allow the State to move in a timely, efficient manner when redetermining the value of the Mental Health Enabling Act land.

Computations:

The Drafting Technician III is a permanent position requiring office furniture, office supplies and an area to work. The Analyst/Programmer II is a temporary position that will not require any special equipment or supplies.

FY91

Position	Personal Svs.	Supplies	Equipment	Total
DTIII	37.9	0.5	1.0	\$39.4
A/PII	16.6	0.0	0.0	\$16.6
Total	\$54.5	\$0.5	\$1.0	\$56.0

The DTIII is an on-going position, therefore \$38.4 (37.9 + 0.5) will be necessary in FY92 - FY96.

land records;

- c. developing the specialized computer program that accesses the LAS data base (both the Land and Case Subsystems) to determine the number of acres as required by CSSB No. 493; and
- d. setting up a job stream that will run the specialized program on an on-going basis.

It is necessary to keep the data base current and accurate in order to correctly redetermine the value of the Alaska Mental Health Enabling Act land. Therefore, it is an incremental on-going responsibility to research, update and load:

- a. new and changing municipal boundary information into the LAS Land Subsystem; and
- b. additional land received under the Alaska Mental Health Enabling Act into the LAS Case Subsystem.

2. It is an incremental and on-going responsibility to note the public record that, in addition to being a legislatively designated area (LDA), the land within the legislative designation constitutes the corpus of the mental health land trust. This requires:

- a. loading the LDA into the LAS Case Subsystem, as of 1989; there were 76 LDA's;
- b. notating the boundaries of the LDA to the graphic record, covering approximately 10.65 million acres of state land; and
- c. annotating the LDA as to the corpus of the mental health trust.

3. It is an incremental and on-going responsibility to identify replacement land to the corpus of the mental health trust. This requires:

- a. researching and identifying suitable replacement land;
- b. loading the information into LAS Case Subsystem; and
- c. notating the boundaries of the replacement land to the graphic record as part of the corpus of the mental health trust.

To implement this legislation is an incremental impact to the department that cannot be done with current operating funds. To adequately do this project requires:

- a. one temporary Analyst/Programmer II for six months in FY91 to complete the specialized computer program; and
- b. one full time Drafting Technician III capable of research, data entry, computer graphics and manual drafting for determining the municipal boundaries, updating the data base, and noting the graphic record with current and accurate

Fiscal Note for CSSB No. 493 (HESS)

An act relating to the reconstitution and administration of the mental health trust.

Assumptions:

1. Through the formula defined in the CSSB No. 493, DNR must redetermine the value of the Alaska Mental Health Enabling Act land every five years, commencing in 1992.

To accomplish this task, DNR must:

- a. Determine the number of acres of Alaska Mental Health Enabling Act land in each municipality that assesses land for property tax purposes;
- b. Calculate the "weighting factor" for each municipality and determine the "revaluation factor";
- c. Apply the "revaluation factor" to the determine the current value of the Mental Health Enabling Act land.

The most efficient way to determine the number of acres in each municipality is through a specialized computer tracking program.

Keeping the data base current and accurate is required in order to accomplish this task. Therefore, as municipal boundaries change and new municipalities are created, the data base must be updated and the public record noted.

2. DNR must note to the public record all land within legislative designations, which constitute the corpus of the mental health land trust. Since the legislature will continue to establish new legislatively designated areas, it is a continuing responsibility to keep the public record current and accurate.

3. DNR must identify replacement land before the state may remove land from the corpus of the mental health land trust, i.e. before the state may remove land from a legislatively designated area. It is critical that the replacement land is quickly and accurately noted to the public record to avoid mismanagement of trust lands.

Program Summary:

1. To redetermine the value of the Alaska Mental Health Enabling Act land requires:

- a. researching municipal boundaries;
- b. loading the data into the Land Administration System (LAS), Land Subsystem, which requires updating approximately 525,000

STATE OF ALASKA
1990 LEGISLATIVE SESSION

BILL VERSION: CSSB 493 (HESS) (b)
PUBLISH DATE: 3/7/90

FISCAL NOTE

REQUEST:

Revision Date: <u>2-Mar-90</u>	Agency Affected: <u>Natural Resources</u>
Title: <u>An Act relating to the reconstitution and administration of the mental health trust.</u>	BRU: <u>Land & Water Mgmt Management & Administration</u>
Sponsor: <u>Coghill</u>	Components: <u>Land & Water Mgmt</u>
Requestor: <u>Senate HESS</u>	<u>Commissioner's Office</u>

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 91	FY 92	FY 93	FY 94	FY 95	FY 96
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND&STRUCTURES						
GRANTS,CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL						
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REVENUE						
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FUNDING: (Thousands of Dollars)

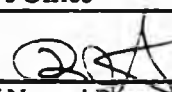
GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

See Attached

Prepared by: <u>Larry Ostrovsky</u>	Phone: <u>465-2400</u>
Division: <u>Commissioner's Office</u>	Date: <u>2-Mar-90</u>
Approved by Commissioner: <u> Lennie Gorsuch</u>	Date: <u>2-Mar-90</u>
Agency: <u>Department of Natural Resources</u>	

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

S B

493

HOUSE COMMITTEE REPORT

File 5/8

Rules

+ Calendar

(11)

Date Referred: May 7, 1990

FURTHER REFERRALS:

Date of Committee Action: 5/7/90

The FINANCE Committee considered:

CSSB 493 (FINANCE) am

CS SB NO. 493 (Finance) am

MENTAL HEALTH TRUST

"An Act relating to the reconstitution and administration of the mental health trust; and providing for an effective date."

RECOMMENDATIONS:

- be replaced with HCS CSSB 493 (FIN) the same title
- a new title
- have attached amendment(s)
- do pass
- do not pass
- no recommendation
- individual recommendations
- additional referral to the _____ Committee

ADOPTS: HOUSE FINANCE letter of intent

ATTACHES NEW FISCAL NOTE(S):
(Dept)

APPROVES PREVIOUS: (Date/Dept)

- fiscal impact _____
- zero fiscal note _____
- zero with analysis _____
- fiscal note(s) _____
- zero fiscal note(s) 5/7/90 SFINANCE
- zero fn/analysis _____

SIGNING DO PASS:

Ronald J. Larson LARSON

SIGNING:

(Check approp. column)

Do Not Pass No Rec Amend

Signature	Do Not Pass	No Rec	Amend
<u>Swackhammer</u> SWACKHAMMER	<input checked="" type="checkbox"/>		
<u>Ray Brown</u> BROWN	<input checked="" type="checkbox"/>		
<u>Koponen</u> KOPONEN	<input checked="" type="checkbox"/>		
<u>Ulmer</u> ULMER	<input checked="" type="checkbox"/>		
<u>Barnes</u> BARNES	<input checked="" type="checkbox"/>		
<u>Rieger</u> RIEGER	<input checked="" type="checkbox"/>		
<u>Shultz</u> SHULTZ	<input checked="" type="checkbox"/>		
<u>Wallis</u> WALLIS			<input checked="" type="checkbox"/>
<u>Ronald J. Larson</u> LARSON			<input checked="" type="checkbox"/>

Chairman's Signature

FISCAL NOTE

REQUEST:

Revision Date: _____
 Title: Reconstitution & administration of the mental health trust
 Sponsor: Senator Coghill
 Requestor: _____

Agency Affected: Dept Natural Resources
 BRU: Management & Administration
 Components: Information Resource Management

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 91	FY 92	FY 93	FY 94	FY 95	FY 96
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0	0	0	0	0	0

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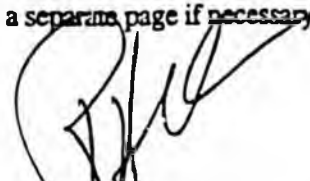
FUNDING: (Thousands of Dollars)

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

POSITIONS:

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

ANALYSIS : (Attach a separate page if necessary)



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

Phone: 465-4821
 Date: 5/6/90

Approved by Commissioner: _____
 Agency: _____

Date: _____

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

FISCAL NOTE

REQUEST:

Revision Date: _____ Agency Affected: Health & Social Services
 Title: An Act relating to the reconstitution and BRU: _____
administration of the Mental Health Trust
 Sponsor: Senator Coqhill Components: _____
 Requestor: Senate Resource Committee

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 91	FY92	FY93	FY94	FY 95	FY 96
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0
CAPITAL	0.0	0.0	0.0	0.0	0.0	0.0
REVENUE	0.0	0.0	0.0	0.0	0.0	0.0

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

POSITIONS:

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

ANALYSIS: (Attach a separate page if necessary)
FY 90 fiscal impact is "0".

Prepared by: Richard Renninger Phone: 465-3331
 Division: Administrative Services Date: _____
 Approved by Commissioner: Myra M. Manson Date: 5/2/90
 Agency: Department of Health and Social Services

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

Changes in CSSB 493 (Fin) have no fiscal impact. This fiscal note is appropriate. 5/6/90

Original sponsor(s): SEN. COGHILL

1 IN THE SENATE

BY THE FINANCE COMMITTEE

2 HOUSE CS FOR CS FOR SENATE BILL NO. 493 (Finance)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 SIXTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to the reconstitution and adminis-
7 tration of the mental health trust; and providing for
8 an effective date."

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

10 * Section 1. AS 37.14.011(b) is amended to read:

11 (b) The amount determined under (c) of this section as the [FAIR
12 MARKET] rental value of the land constituting the mental health trust
13 corpus is the earnings of the trust and the commissioner of revenue
14 shall annually allocate that amount from the general fund to the
15 mental health trust income account.

16 * Sec. 2. AS 37.14.011(c) is repealed and reenacted to read:

17 (c) The rental value of the land constituting the mental health
18 trust corpus is equal to six percent of the unrestricted general fund
19 revenue of the state for the fiscal year.

20 * Sec. 3. AS 37.14.021 is amended to read:

21 Sec. 37.14.021. UTILIZATION OF THE MENTAL HEALTH TRUST INCOME
22 ACCOUNT. Money in the mental health trust income account established
23 in AS 37.14.011(a) shall first be appropriated by the legislature to
24 meet the necessary expenses of the mental health program of the state.
25 In making annual appropriations from the mental health trust income
26 account, the legislature shall consider the recommendations of the
27 Alaska Mental Health Board established under AS 47.30.661, including
28 recommendations regarding capital improvements. After the necessary
29 expenses of the state's mental health program have been funded, the

1 legislature may authorize transfer of the unobligated and unappro-
2 priated fiscal year-end balance in the mental health trust income
3 account as of June 30 to the unreserved portion of the general fund
4 [MAKE APPROPRIATIONS FROM THE MENTAL HEALTH TRUST INCOME ACCOUNT] for
5 other public purposes.

6 * Sec. 4. AS 38.05.800 is repealed and reenacted to read:

7 Sec. 38.05.800. RECONSTITUTION AND ADMINISTRATION OF MENTAL
8 HEALTH LAND TRUST. (a) All land within legislative designations on
9 September 7, 1987, constitutes the corpus of the mental health land
10 trust.

11 (b) On reconstitution of the trust under this section, land the
12 state receives under sec. 202 of the Alaska Mental Health Enabling Act
13 that is not within legislative designations is removed from trust
14 status.

15 (c) The land within legislative designations that constitutes
16 the mental health land trust shall be administered for the legisla-
17 tively designated purposes. The state shall continue to manage the
18 legislatively designated areas in accordance with state law and poli-
19 cy; the authority of the state includes the issuance of permits,
20 rights-of-ways, mining leases, oil and gas leases, coal leases, timber
21 contracts, and other actions that do not constitute a conveyance in
22 fee simple. The income from the use of the trust land shall be depos-
23 ited into the mental health trust income account.

24 (d) Before the state may remove land that is part of the mental
25 health trust corpus from trust status, and in addition to any other
26 requirements of law, the commissioner, consistent with the state's
27 trust responsibilities, shall consult with the Alaska Mental Health
28 Board, shall identify replacement land, equal in value at the time of
29 replacement, within legislative designations and incorporate them into

1 the mental health trust corpus. The commissioner annually shall
2 report any actions under this subsection to the board established
3 under AS 47.30.661.

4 * Sec. 5. The provisions of this Act are not severable.

5 * Sec. 6. Section 2(a), ch. 132, SLA 1986, as amended by sec. 9,
6 ch. 48, SLA 1987, is repealed.

7 * Sec. 7. Section 11, ch. 48, SLA 1987 is repealed.

8 * Sec. 8. This Act takes effect immediately under AS 01.10.070(c).



Official Business

Alaska State Legislature

HOUSE OF REPRESENTATIVES

Committee on Finance

HOUSE FINANCE COMMITTEE

LETTER OF INTENT

FOR

HCS CS SB 493 (FINANCE)

P.O. Box V
State Capitol
Juneau, Alaska 99811

The legislature reaffirms 1987 SLA Chapter 48 (Chapter 48) as a proposed mechanism to settle the Mental Health Trust Lands litigation (Weiss v. State, 4FA-82-2208 Civil). The legislature accepts the Final Report of the Interim Mental Health Trust Commission on Approved Procedures for Determining the Fair Market Value of Alaska's Mental Health Trust Lands, dated December 20, 1989, and finds that the Commission has satisfied the procedural requirements and followed the process established by Chapter 48. The value of land selected by or patented to the State under the Alaska Mental Health Enabling Act is the value calculated under the procedures approved by the Interim Mental Health Trust Commission by its resolution of November 7, 1989.

Handwritten signature of Ronald J. Larson in cursive.

Co-Chairman Ron Larson
House Finance Committee

Handwritten signature of Lyman Hoffman in cursive.

Co-Chairman Lyman Hoffman
House Finance Committee

HOUSE FINANCE COMMITTEE LETTER OF INTENT RE CSSB 493 (FIN) am S

This bill adopts a new approach to compensating the mental health trust for the use of its land from that taken in chapter 48, SLA 1987. The chapter 48 approach required that the value of the original one million acre mental health land grant be determined, a task which has proven extremely difficult. The new approach would compensate the mental health trust by annually allocating six percent of the state's unrestricted general fund revenues to the mental health trust income account.

In approving this approach, the House Finance Committee was guided by the following considerations:

(1) the state and the plaintiffs and intervenors in the Weiss case do not agree on the value of the original one million acre land grant, the plaintiffs and intervenors arguing for a value of \$2.243 billion and the state arguing for a value of \$564.7 million;

(2) the impasse over valuation may lead to continued costly, time-consuming, and divisive litigation over land issues, matters having nothing to do with the state's mental health program, leading to all of the adverse consequences noted by the legislature in subsections i(a)(14)-1(a)(17) of chapter 48;

(3) it is not in the best interest of either the trust or the public to try to resolve the mental health trust controversy by determining the value of the original grant;

(4) annually allocating six percent of the state's unrestricted general funds in perpetuity will fairly compensate the mental health trust for the use of its land because (i) there will be no administrative expenses associated with generating funds for the account, and (ii) the average per acre earnings for trust lands in other states in fiscal year 1988 was \$8.97, the highest per acre earnings (in the State of Washington because of its prime and easily accessible timber lands) was \$45.68, and the dedication of six percent of the state's unrestricted revenue will result in per acre earnings (based on the original one million acres) of approximately \$145 per acre for the mental health trust in fiscal year 1991; and

(5) it is in the best interest of both the trust and the public to resolve the mental health trust controversy by reconstituting the mental health trust corpus and compensating the trust for the use of the reconstituted corpus through the establishment of a permanent mental health trust income account into which six percent of the state's unrestricted revenue is allocated annually.

5/7/90 11 pm

Amendments

#1) line 18 pg 1 - substitute 7% for 6%

#2) change words section (c) pg 2
line 23 delete "general fund" ^{trust}
substitute mental health ^{trust} income
account.

#3) pg 3 section 8
takes affect upon final approval
of reconstitution ~~by the act~~ of the
trust by the court.

#4) substitute letter of intent
as ~~for~~ amended which re-affirms
the 1987 SCA Chapter 88 as a
proposed mechanism to settle the
MHT Lands litigation by
accepting the Final Report of the
Interim Mental Health Trust.

Commission on Approval procedures
for determining the Fair Market Value
of All MHT Lands dated Dec 20, 1989.

42

A M E N D M E N T

Offered in the
Senate Resources Committee

TO: CSSB 493 (HESS)

HCS CS SB 493 (F III)

HOUSE

Page 2, lines 15 - 17:

Letter of Intent

~~Delete subsection (a) and insert the following:~~

(a) The legislature reaffirms 1987 SLA Chapter 48 (Chapter 48) as a proposed mechanism to settle the Mental Health Trust Lands litigation (Weiss v. State, 4FA-82-2208 Civil). The legislature accepts the Final Report of the Interim Mental Health Trust Commission on Approved Procedures for Determining the Fair Market Value of Alaska's Mental Health Trust Lands, dated December 20, 1989, and finds that the Commission has satisfied the procedural requirements and followed the process established by Chapter 48. The value of land selected by or patented to the State under the Alaska Mental Health Enabling Act is the value calculated under the procedures approved by the Interim Mental Health Trust Commission by its resolution of November 7, 1989.

RATIONALE FOR RECONSTITUTING THE MENTAL HEALTH TRUST CORPUS
AT 6% AND PLACING APPROXIMATELY 9 MILLION ACRES OF LAND IN
THE LAND TRUST

Since enacted in 1987, program costs have grown:

In 1987, identified mental health expenditures were approximately \$40 million. Since that time, the court has ruled that the program must include not only "traditional" mental health services, but also services for the developmentally disabled, Alzheimer's victims, and the chronic alcoholic.

Mental Health Program is now defined through allocation of expenditures in the operating budget -- total for FY 91 is approximately \$94 million.

Complete accounting of mental health expenditures is not complete. Intent language in the FY 91 operating budget directs OMB to audit additional programs in which mental health dollars may be spent (for example, foster care, Medicaid, child abuse prevention programs, public health nursing). Although some allocations may be adjusted downward, the audit will almost certainly result in increased appropriations from the trust.

This bill will:

Using FY 91 estimates allocate \$145 million toward the mental health trust account (6 percent of the unrestricted general fund revenues), slightly more than FY 91 revenues under the Senate Resources Committee Substitute for this bill (8 percent of the land value of \$1.8 billion).

Allow for necessary growth in the mental health program.

Accommodate additional current expenditures which may be identified as "mental health" expenditures by pending OMB audit.

Reconstitute the land trust by placing all legislatively designated lands, as of 1987, into a land trust.

746-1046

WEISS v. STATE: AN OVERVIEW

September 28, 1990

The mental health trust litigation, Weiss v. State, has substantially affected economic development in Alaska, and probably will continue to do so until it is resolved. To understand the issues, this memorandum is intended to review the history of the case and its current status.

The federal law

Prior to 1956, the Territory of Alaska was precluded from legislating with respect to mental health. Only the federal government -- as distinct from the territorial government -- had the legal authority to take action with respect to mental health problems in the territory.

The mental health "program" administered by the federal government, to the extent it could be called a program, was barbaric. The United States Attorney would file a complaint in court alleging that there was an "insane person at large." The person would be incarcerated, and then tried by a jury. If found "not insane," the person would simply be released back into the community. If found "insane," the person would be shipped to Morningside Hospital in Portland, Ore., and institutionalized in a custodial (as opposed to therapeutic) setting.

Alaskans were outraged by this approach to mental illness, and continually petitioned Congress to be given the authority to deal with the issue. They finally succeeded when Congress enacted the Alaska Mental Health Enabling Act ("AMHEA"), P.L. 84-830, 70 Stat. 709 (1956). In that Act, Congress granted the Territory of Alaska the same authority with respect to the subject of mental health that the other states and territories had. Section 101 of the AMHEA provided:

For the purpose of vesting in the Territory of Alaska authority comparable in scope to that of the States and the other Territories of the United States in the field of mental health, the Territorial legislature is hereby authorized to enact such laws on the subject of mental health as it may deem appropriate, and such legislation may supersede any of the Acts cited in section 301.

The bill that became the AMHEA had not started out that way. Indeed, as introduced, it included detailed and stringent commitment and other procedures, but it was amended in the Senate to delete even a temporary federally-mandated program which the territory could then supersede.

Since the territory had no taxing power, the AMHEA contained two forms of grants-in-aid. The first was in the form of

a temporary transitional grant of decreasing amounts of money, and required that the territory meet certain program minimums. See sec. 201 of the AMHEA. The second was a one million acre land grant, to serve as a source of revenue for the territory since, unlike a state, the territory had no independent power to raise revenue. The land grant has been the focus of the litigation to date.

As introduced, the bill that became the AMHEA included no connection between the income from the lands and the mental health program. To remedy that, it was amended to require the income and proceeds from the lands to be dedicated to the mental health program. Because no one knew either how much the program would cost or how much revenue the lands would generate, however, the bill ultimately provided for a first draw trust in favor of the mental health program:

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

Sec. 202(e) of the AMHEA.

The land grant was confirmed to the state in sec. 6(k) of the Alaska Statehood Act.

The state' administration of the grant

Initially, the state did not establish and maintain a separate account for proceeds from the lands. A record of trust land income was kept until 1973, however, and a board was set up to oversee management of the lands. As a rule, mental health expenditures greatly exceeded revenues from the lands.

Municipal and private parties' demands for land in the late 1970s resulted in passage of chs. 181 and 182, SLA 1978, both

of which redesignated all mental health lands as general grant lands. Chapter 181 would have compensated the trust by payment of one and one-half percent of all state land revenues to a permanent trust fund. Chapter 182 did the same thing, but made it subject to legislative appropriation of sufficient funds. As the latter enactment, ch. 182 controlled. The legislature never appropriated any money.

The litigation

On November 26, 1982, a complaint was filed on behalf of a class of plaintiffs needing mental health services. The complaint alleged, *inter alia*, that (1) plaintiffs sought to enforce rights to benefit from the mental health land grant and the trust established thereunder; (2) the state illegally redesignated mental health lands as general grant lands in ch. 181, SLA 1978; (3) pursuant to that legislation, the state disposed of mental health lands without spending the proceeds for trust purposes; (4) the state also disposed of mental health lands for less than adequate consideration; and (5) plaintiffs were entitled to an order invalidating the 1978 legislation, establishing a trust for receipt of funds, directing the state to administer the lands as a trust, and other appropriate relief.

The class was certified on January 26, 1983.

The plaintiffs moved for partial summary judgment that (1) the lands could not be unilaterally converted into general grant lands, and the 1978 legislation was therefore void, and (2) the lands are subject to a federal trust. The state opposed the motion on the ground that the 1978 legislation was consistent with the purpose of the 1956 federal Act -- maintenance by the state of a mental health program -- and cross-moved for summary judgment that the 1978 legislation was valid.

The plaintiffs and the state stipulated to certain facts for summary judgment purposes: (1) because of the 1978 legislation, the state administered mental health lands as general grant lands; (2) the state did not separately administer mental health lands; and (3) the state did not maintain a separate account for the income and proceeds of the lands.

On June 15, 1983, Superior Court Judge Warren Taylor held (1) that the 1978 legislation was a breach of the trust, but (2) that the remedy was not to invalidate the 1978 law but instead to order the state to compensate the trust for the value of the lands.

The state appealed the first holding, and the plaintiffs cross-appealed the second holding.

In the meantime, the plaintiffs filed lis pendens 1/ on all mental health lands, including those which the state had conveyed to third parties. The state moved to expunge the lis pendens on the grounds that (1) title to mental health lands was not at issue in the case; and (2) the lis pendens were overbroad in that (i) they reached lands the state had conveyed away, and (ii) they affected the rights of innocent third parties. The plaintiffs opposed, as did the Alaska Mental Health Association and two individuals (collectively "AMHEA"), even though at that time they were not parties to the action. They also moved to intervene, basically on the ground that the original plaintiffs were not providing the class with adequate representation.

Cook Inlet Region, Inc. ("CIRI"), filed an amicus brief in support of the state's motion to expunge the lis pendens and in opposition to AMHEA's motion to intervene.

On October 31, 1984, Judge Taylor granted the motion to expunge the lis pendens on the ground that the plaintiffs' remedy was money and not the land, and denied AMHEA's motion to intervene on the ground that they had delayed too long before moving to intervene. AMHEA appealed the denial of the motion to intervene.

In State v. Weiss, 706 P.2d 681 (Alaska 1985), the Alaska Supreme Court affirmed the trial court's finding that the 1978 legislation was a breach of trust, but reversed on the monetary compensation remedy and invalidated the 1978 legislation. The Court distinguished State v. University of Alaska, 624 P.2d 807 (Alaska 1981), which held that monetary compensation was the proper remedy (and not invalidation of the law which dedicated trust lands to a specific purpose in violation of the trust), on the ground that one could infer a legislative intent to compensate the trust in the law including university trust lands in Chugach State Park, but such an intent could not be inferred from the 1978 mental health lands legislation. 2/

The Court remanded the case to the superior court to reconstitute the mental health trust with those mental health lands which were still in state ownership. For those "former mental health lands" which the state had "sold," the superior court was instructed that the trust was entitled to receive the fair market value of the lands at the time of sale, less a set-off for

1/ Lis pendens are notices filed with the state recorder's office, giving notice that the lands are the subject of litigation. The filing of a lis pendens on a particular parcel of land makes it difficult to sell the land or use it as collateral to obtain a loan.

2/ The Court did not mention the explicit provision in the 1978 legislation providing that the mental health trust would receive one and one-half percent of all state land revenues as compensation for the redesignation of the trust lands as general grant lands.

state mental health expenditures during the same time period. 3/

On January 24, 1986, the Supreme Court issued a Memorandum Order and Judgment ("MOJ") to the effect that the AMHEA could intervene. AMHEA renewed their motion to intervene, and Judge Mary E. Greene (to whom the case was assigned following Judge Taylor's retirement) granted the motion. She allowed AMHEA to file an amended complaint "only insofar as the Additional Claims relate directly to the reconstitution of the trust ordered by the Alaska Supreme Court in State v. Weiss."

In ch. 132, SLA 1986, the state created the interim mental health trust commission to oversee the state's administration of the lands (no sales, leases, or exchanges were allowed without commission approval), to determine state mental health program expenditures since 1978, and to make recommendations to the legislature on how to fix the problem. 4/

About this time, two additional groups intervened: the mentally retarded and defective (represented by Advocacy Services of Alaska and hereafter referred to as "Advocacy Services"), and Nugen's Ranch and chronic alcoholics with psychosis.

Advocacy Services moved for a declaratory judgment that the beneficiaries of the trust included the mentally retarded and defective on the ground that Congress intended the beneficiaries of the trust to include all those who were at risk of being institutionalized at Morningside Hospital, a group that included the mentally retarded and defective. The state opposed the motion on the ground that such a construction of the AMHEA was contrary to the basic purpose of the Act, which was to give the territory and now the state plenary authority to determine what its program was to include and not include, that the AMHEA accordingly gave the state the power to determine which groups it covered and which groups it did not cover, and that the state's program covered only those considered mentally ill in the traditional sense. The original plaintiffs also opposed Advocacy Service's motion and agreed with the state. AMHEA said Congress only intended those traditionally considered mentally ill to be covered by the territory's mental health program, but even if it intended others it did not intend that the territory (and now the state) could pick and choose. Nugen's Ranch said that Advocacy Services was right, but that chronic alcoholics also were included in Congress' contemplation.

3/ In light of this resolution, the Court saw no need to address questions regarding third party title.

4/ The commission included five members: the commissioners of health and social services and natural resources, and three plaintiffs' representatives.

Judge Greene agreed with Advocacy Services and Nugen's Ranch, and held that the beneficiaries of the trust at minimum include those traditionally thought of as mentally ill, the mentally retarded and defective, chronic alcoholics with psychoses, and the elderly who, as a result of the aging process, have mental problems.

In ch. 48, SLA 1987, the state took what was thought to be a giant step toward settlement by enacting a four-step approach: (1) the commissioner of natural resources would value the original one million acre land grant as of the effective date of ch. 48 ^{5/} under procedures she proposed which would be approved by the commission; ^{6/} (2) the original lands would be exchanged for lands within legislatively designated areas (parks, wildlife refuges, etc.) of equal value (using the same valuation procedures), which would then comprise the reconstituted mental health trust corpus; (3) the state would rent the reconstituted corpus for eight percent of its fair market value annually, adjusted every five years; and (4) pending conclusion of the valuation and exchange process, the state would pay five percent of unrestricted general fund revenues as a transitional measure. The payments would go into the mental health trust income account in the general fund (AS 37.14.011), and the legislature would first have to make appropriations from the fund to meet the necessary expenses of the state's mental health program before it could appropriate any money in the account for other purposes.

The process broke down when the commissioner and the commission could not agree on procedures to determine the value of the one million acre land grant. The commissioner proposed procedures that produced a value of \$574 million; the commission approved procedures that produced a value of \$2.243 billion. The commissioner then declared impasse and suggested that the matter would have to be resolved by the legislature.

The plaintiffs' attorneys wrote letters to a number of third parties to whom the state had conveyed mental health lands, threatening to file title challenges and suggesting that, in order to avoid such litigation, they urge their legislators to accept the plaintiffs' value of the original land grant. The state moved to enjoin the plaintiffs from filing such actions on the grounds that (1) filing quiet title actions in an effort to influence the political process was an abuse of the legal process, (2) the state would be irreparably harmed by that abuse of the legal process, (3) the plaintiffs could be adequately protected under the University of Alaska and Weiss cases' monetary compensation remedy, (4) the state would prevail on the monetary compensation theory, and (5) the public interest would be harmed if the preliminary

^{5/} September 7, 1987.

^{6/} The commission also was reduced to three: the commissioner and two plaintiffs' representatives.

injunction was not granted. No decision was immediately forthcoming, but the plaintiffs held off filing title challenges while the motion remained pending.

The 1990 legislature resolved the valuation impasse by enacting an alternative resolution mechanism which is not predicated on the value of the lands. Chapter 210, SLA 1990, provides that all lands that were in legislatively designated areas on September 7, 1987, are exchanged for the original mental health lands not in such areas, and that the state will pay the trust, as rent, six percent of unrestricted general fund revenues plus all incidental revenues from those lands (camping fees, etc.).

After the bill which became ch. 210 passed the legislature, but before it was signed by the governor, the plaintiffs moved for a preliminary injunction to enjoin the state from issuing any patents, leases, rights-of-way, permits, or other authorizations for activities on the original mental health lands on the ground that doing so might diminish the trust. The state opposed on basically the same grounds on which the state's preliminary injunction motion was based (adequacy of monetary compensation, etc.).

On July 9, 1990, Judge Greene denied the state's motion and granted the plaintiffs' motion. She concluded that it was not clear that the plaintiffs could be adequately compensated in money, that the Alaska Supreme Court had directed the superior to reconstitute the trust as it existed just prior to the 1978 legislation (to the extent that was possible), and that she had no authority to deviate from the Supreme Court's mandate.

The state filed a petition for review in the Alaska Supreme Court. The Supreme Court denied the petition on August 24, 1990, but the order was not entered and filed until September 11, 1990.

The state also moved in superior court for clarification of the July 9, 1990 decision. Chapter 210 became effective on July 10, 1990, and there was confusion whether the injunction runs to the original mental health lands, the reconstituted ("new") trust lands in legislatively designated areas, or both. Judge Greene clarified that the injunction runs only to the original mental health grant lands and not the new trust lands placed in trust status under ch. 210. She also ruled that the state could continue issuing camping permits for original mental health lands in state parks as long as the fee charged was comparable to that charged for similar private camping privileges and the fees generated were deposited in a mental health trust account.

The plaintiffs also filed a motion for leave to file new *lis pendens*. Judge Greene granted the motion on August 12, 1990.

Usibelli Coal Mine, Inc. and Idemitsu Alaska, Inc. (operator of the Wishbone Hill coal project) moved to intervene in

order to seek modifications of the preliminary injunction. Usibelli wants to do some exploratory drilling on mental health lands it has under lease; Idemitsu needs a mining plan approved. 7/

The plaintiffs also filed a motion for a preliminary injunction to prevent the transfer to the general fund of the unappropriated balance in the mental health trust income account for FY 1990 -- that is, the portion of the five percent of unrestricted general fund revenues allocated to that account under the transitional provision of ch. 48 which was not appropriated to fund the state's mental health program. 8/ The state opposed on the grounds that (1) the FY 1991 budget was predicated on the transfer of those funds, and preventing the transfer had the potential to unbalance the budget, and (2) preparation of the FY 1991 budget began in the fall of 1989 and was concluded with legislative passage of the operating budget at the end of the 1990 session, and it was unfair to allow the plaintiffs to challenge the transfer of funds on which the budget was predicated after it already had been enacted. Following oral argument on August 6, 1990, Judge Greene denied the plaintiffs' preliminary injunction motion to prevent the transfer of funds on the ground that the potential harm to the state of an unbalanced budget which granting the motion might cause outweighed any potential harm to the plaintiffs. Judge Greene cautioned, however, that the state should not rely on such transfers to balance the budget in the future unless the state could show that the necessary expenses of the state's mental health program had been met.

The plaintiffs also moved for a declaratory judgment that the AMHEA requires that the legislature consider the state's mental health needs independently of any other state needs and, to the extent that mental health trust revenues are available, must fund programs to meet those needs regardless of any other needs which might exist. That motion is still pending.

The major issues

One major issue is whether ch. 210, SLA 1990, is valid as discharge of the state's obligation as trustee with respect to management of the original mental health land grant or, alternatively, whether the state must attempt to reconstitute the mental health trust with the same lands the state originally received from the federal government. The other major issue is whether the AMHEA places an obligation the state with respect to

7/ The Matanuska-Susitna Borough moved for leave to file an amicus brief in support of Idemitsu; the Wishbone Hill coal project would create approximately 200 new jobs in the Mat-Su Borough.

8/ The five percent totaled \$125 million; \$44 million was appropriated for the state's mental health program, leaving an unappropriated balance of \$81 million.

funding the state's mental health program which is entirely independent of any other state needs.

These are related in the sense that ch. 210 provides for compensation to the mental health trust independent of the value of the original land grant, and there is evidence that the amount of compensation under ch. 210 substantially exceeds what the original land grant might have generated if managed to raise revenue. If the state must fund the state's mental health program independently of other state needs, it may not be in the state's interest to resolve the case in a manner which provides the trust with substantially greater revenue than the original grant could reasonably be expected to earn.

In short, there is no question that the state has a trust obligation under the AMHEA. There are substantial questions, however, over the specifics of that obligation.

HOUSE FINANCE COMMITTEE LETTER OF INTENT RE CSSB 493 (FIN) am S

This bill adopts a new approach to compensating the mental health trust for the use of its land from that taken in chapter 48, SLA 1987. The chapter 48 approach required that the value of the original one million acre mental health land grant be determined, a task which has proven extremely difficult. The new approach would compensate the mental health trust by annually allocating six percent of the state's unrestricted general fund revenues to the mental health trust income account.

In approving this approach, the House Finance Committee was guided by the following considerations:

(1) the state and the plaintiffs and intervenors in the Weiss case do not agree on the value of the original one million acre land grant, the plaintiffs and intervenors arguing for a value of \$2.243 billion and the state arguing for a value of \$564.7 million;

(2) the impasse over valuation may lead to continued costly, time-consuming, and divisive litigation over land issues, matters having nothing to do with the state's mental health program, leading to all of the adverse consequences noted by the legislature in subsections 1(a)(14)-1(a)(17) of chapter 48;

(3) it is not in the best interest of either the trust or the public to try to resolve the mental health trust controversy by determining the value of the original grant;

(4) annually allocating six percent of the state's unrestricted general funds in perpetuity will fairly compensate the mental health trust for the use of its land because (i) there will be no administrative expenses associated with generating funds for the account, and (ii) the average per acre earnings for trust lands in other states in fiscal year 1988 was \$8.97, the highest per acre earnings (in the State of Washington because of its prime and easily accessible timber lands) was \$45.68, and the dedication of six percent of the state's unrestricted revenue will result in per acre earnings (based on the original one million acres) of approximately \$145 per acre for the mental health trust in fiscal year 1991; and

(5) it is in the best interest of both the trust and the public to resolve the mental health trust controversy by reconstituting the mental health trust corpus and compensating the trust for the use of the reconstituted corpus through the establishment of a permanent mental health trust income account into which six percent of the state's unrestricted revenue is allocated annually.

STATE OF ALASKA

OFFICE OF THE GOVERNOR

OFFICE OF MANAGEMENT AND BUDGET DIVISION OF BUDGET REVIEW

STEVE COWPER, GOVERNOR

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

May 2, 1990

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

Dear Senator Binkley and Representative Larson:

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

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

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

May 2, 1990

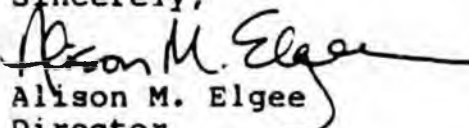
Page 2

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

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

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

Sincerely,


Alison M. Elgee
Director

Attachments

GF/GFM CONVERSION TO GF MENTAL HEALTH TRUST

DEPARTMENT/COMPONENT	GF	GF	GF
	MENTAL HLTH		MATCH
HEALTH & SOCIAL SERVICES:			
Medicaid Non-Facility	2,096.5		-2,096.5
Medicaid Facilities	8,839.2		-8,839.2
Adult Services	21.6	-21.6	
Foster Care	740.7	-740.7	
Residential Child Care	3,064.2	-3,064.2	
Northern Region	67.1	-67.1	
McLaughlin Youth Center	62.9	-62.9	
Fairbanks Youth Facility	82.6	-82.6	
Nome Youth Facility	0.8	-0.8	
Maniilaq/Alcohol & Drug Abuse	476.5	-476.5	
Norton Sound/Public Health	69.9	-69.9	
Norton Sound/Alcohol & Drug	488.7	-488.7	
Norton Sound/Mental Hlth & DD	49.0	-49.0	
SEARHC/Alcohol & Drug Abuse	146.4	-146.4	
Tanana Chiefs/Alcohol & Drug	294.2	-294.2	
Yukon Kuskokwim/Alcohol & Dru	252.0	-252.0	
Bureau of Vital Statistics	-150.0	150.0	
Infant Learning Program	938.1	-938.1	
SOADA/Administration	981.3	-981.3	
SOADA/Alcohol Abuse Grants	7,830.4	-7,830.4	
Community DD Grants	10,169.6	-10,169.6	
Mental Health Admin	359.4	-359.4	
Harborview	4,047.4	-573.1	-3,474.3
AK Youth Initiative	7.6	-7.6	
Office of Prevention	44.0	-44.0	
EDUCATION:			
112 Schools for the Handicapped	938.5	-938.5	
108 Voc Rehab/Svcs to Clients	640.2	-540.2	
104 Voc Rehab/Counsel & Placement	516.1	-516.1	
Voc Rehab/Administration	130.9	-130.9	
CORRECTIONS:			
Personal Services/Contractual			
Statewide Programs	177.0	-177.0	
Fairbanks CC	74.7	-74.7	
Palmer CC	70.3	-70.3	
Hiland Mountain CC	175.7	-175.7	
Cook Inlet CC	174.2	-174.2	
Wildwox CC	115.9	-115.9	
Spring Creek CC	172.4	-172.4	
Lemon Creek CC	72.5	-72.5	

GF/GFM CONVERSION TO GF MENTAL HEALTH TRUST

DEPARTMENT/COMPONENT	GF	GF	GF
	MENTAL HLTH		MATCH
ADMINISTRATION:			
Office of Public Advocacy	578.1	-578.1	
LAW:			
Legal Services/Operations	64.7	-64.7	
TOTAL	44,881.3	-30,471.3	-14,410.0

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SENATE FINANCE COMMITTEE REPORT

DATE: 5/5/90

FURTHER:

DATE TURNED INTO OFFICE: _____

The Finance Committee considered SB 500

"An Act relating to the Alaska Coastal Policy Council."

and recommended:

- replace with _____ CS _____ same title
- or adopt _____ CS _____ new title
- attached amendment(s) technical title change (HB only)
- _____ letter of intent adopted

do pass

do not pass

no recommendation

individual recommendations

further referral to _____

Bill died in committee.

ATTACHES NEW FISCAL NOTE(S):

Dept/Date:

fiscal note(s) _____

zero fiscal note(s) _____

appropriation-no fiscal note

APPROVES PREVIOUS:

Dept/Date:

fiscal note(s) _____

zero fiscal note(s) _____

SIGNING DO PASS:

OTHER RECOMMENDATIONS:

1. _____

2. _____

Co-Chairs: Signatures and Recommendations

SENATE COMMITTEE REPORT
FIRST COMMITTEE OF REFERRAL

6-2236E/3
b

DATE: 2/15/90

FURTHER: Finance

Date of 5-Day Notice: _____
(in accordance with Uniform Rule 23)

DATE TURNED INTO OFFICE: 5-5-90

C & R A

Committee considered

SB 500

Act relating to the Alaska Coastal Policy Council.

and recommended: 5

replace with _____ CS

SB 500 (C & RA)

same title
 new title

attached amendment(s)

and report it
back as follows

_____ letter of intent adopted

do pass

do not pass

no recommendation

individual recommendations

further referral to _____

ATTACHES NEW FISCAL NOTE(S):

Department(s)/Date:

Department(s)/Date:

fiscal note(s) _____

zero fiscal note(s) _____

DGC - 3-2-90 CS 500

appropriation-no fiscal note

Governor's bill w/fiscal note

SIGNING DO PASS:

OTHER RECOMMENDATIONS:

raise - no rec
PA Fund A no rec
Sto no rec

Chair: Signature and Recommendation

FISCAL NOTE

REQUEST:

Revision Date: _____
Title: Alaska Coastal Policy Council

Agency Affected: Office of the Governor
BRU: Office of Management and Budget

Sponsor: Senate Resource
Requestor: Fahrenkamp

Components: Division of Governmental Coordinator

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 91	FY 92	FY 93	FY 94	FY 95	FY 96
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-

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

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

FUNDING: (Thousands of Dollars)

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

POSITIONS:

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

ANALYSIS : (Attach a separate page if necessary)

Prepared by: Robert I. Grogan, Director *Kent Feddersen for* Phone: 465-3562
Division: Governmental Coordination Date: 3/2/90

Approved by Commissioner: _____ Date: 3/2/90
Agency: _____

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

Changes in CSSB 500 (C&RA)
have no fiscal impact.
This fiscal note is *MSB*
appropriate.

FISCAL NOTE

REQUEST:

Revision Date: _____
 Title: Alaska Coastal Policy Council
 Sponsor: Senate Resource
 Requestor: Fahrenkamp

Agency Affected: Office of the Governor
 BRU: Office of Management and Budget
 Components: Division of Governmental
Coordinator

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 91	FY 92	FY 93	FY 94	FY 95	FY 96
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-

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

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

FUNDING: (Thousands of Dollars)

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

POSITIONS:

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

ANALYSIS : (Attach a separate page if necessary)

Prepared by: Robert L. Grogan, Director *Kent Feddersen for* Phone: 465-3562
 Division: Governmental Coordination Date: 3/2/90

Approved by Commissioner: _____ Date: 3/2/90
 Agency: _____

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

Offered: 5/5/90
Referred: Finance

6-2236H

Original sponsor(s): Resources Committee

1 IN THE SENATE

BY THE C&RA COMMITTEE

2 CS FOR SENATE BILL NO. 500 (C&RA)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 SIXTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to the Alaska coastal management
7 program."

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

9 * Section 1. AS 46.40.100(b) is repealed and reenacted to read.

10 (b) On petition of an applicant for a project or an affected
11 coastal resource district, stating that a district coastal management
12 program is not being implemented by a state coordinating agency during
13 a state consistency review for a particular project, the council may
14 convene a public meeting held to consider the matter. The petition
15 may be filed only within the five days following receipt of a proposed
16 determination by the commissioners of the state resource agencies
17 during a project consistency review. A public meeting must be held
18 within 30 days after the filing of the petition. The council shall
19 fully consider the matter and render a decision within 15 days of the
20 public meeting. At a meeting held under this subsection, the council
21 shall make a written finding on whether the state coordinating agency
22 has followed the project consistency review procedures, has properly
23 considered enforceable policies and standards during the project
24 consistency review, or if the use or activity authorized by the per-
25 mit, license, or approval is consistent with the district coastal
26 management program and the regulations adopted under it. After a
27 meeting held under this subsection, the council may

28 (1) dismiss the petition for failure to prove that the
29 state coordinating agency was acting improperly;

1 (2) direct the resource agency commissioners or the state
2 coordinating agency to correct the deficiencies identified in the
3 written findings; or

4 (3) revise the Alaska coastal management program under
5 AS 46.40.010(c).

6 * Sec. 2. AS 46.40.100(c) is repealed and reenacted to read:

7 (c) On the petition of a resident of the district, an affected
8 coastal resource district, or a state agency stating that an approved
9 district coastal management program is not being properly implemented
10 by a coastal resource district or state agency in its general imple-
11 mentation of law and regulations of the Alaska coastal management
12 program, the council may convene a public meeting to consider the
13 matter. A petition may be filed at any time and shall demonstrate
14 that the petitioner sought to resolve the matter with the coastal
15 resource district or the state agency before filing the petition. If
16 the council holds the public meeting, it shall make a written finding
17 on whether

18 (1) a coastal resource district or a state agency has

19 (A) properly considered enforceable policies and
20 standards of its coastal management program approved by the
21 council; and

22 (B) followed the procedures approved by the council
23 for implementation of the coastal management program of the
24 district or of the state agency; and

25 (2) a state agency has satisfactorily performed coastal
26 management responsibilities required by law, regulations, or a reim-
27 bursable services agreement.

28 * Sec. 3. AS 46.40.100(d) is repealed and reenacted to read:

29 (d) After a meeting held under (c) of this section, the council

1 may

2 (1) dismiss the petition for a failure to prove that the
3 coastal resource district was acting improperly;

4 (2) direct the coastal resource district or the state
5 agency to correct the deficiencies identified in the written finding
6 prepared under (c) of this section; and

7 (3) revise the Alaska coastal management program under
8 AS 46.40.010(c).

9 * Sec. 4. AS 46.40.100(e) is amended to read:

10 (e) Notwithstanding the powers conferred on the council under
11 (b) - (d) of this section, the council may not review a case under (b)
12 of this section if action by a state agency has been challenged in
13 court as inconsistent with the Alaska coastal management program. The
14 superior courts of the state have exclusive appellate jurisdiction
15 over that action [TO ENFORCE LAWFUL ORDERS OF THE COUNCIL].

16 * Sec. 5. AS 46.40.100 is amended by adding a new subsection to read:

17 (f) In this section,

18 (1) "affected coastal resource district" means a coastal
19 district in which a project is proposed to be located, or that may
20 experience a direct and significant effect from a proposed project or
21 the implementation of a district coastal management program;

22 (2) "coordinating agency" means the agency responsible for
23 coordination and facilitation of the review and the rendering of the
24 consistency determination;

25 (3) the "resource agency commissioners" are

26 (A) the commissioner of natural resources;

27 (B) the commissioner of fish and game; and

28 (C) the commissioner of environmental conservation.
29

BY THE RESOURCES COMMITTEE

1 IN THE SENATE

2 SENATE BILL NO. 500

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 SIXTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to the Alaska Coastal Policy Coun-
7 cil."

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

9 * Section 1. AS 46.40.100(b) is amended to read:

10 (b) On petition of a coastal resource district, a citizen of the
11 district, or a state agency, stating [SHOWING] that a district coastal
12 management program is not being implemented, enforced, or complied
13 with, the council may [SHALL] convene a public hearing to consider the
14 matter. After the public hearing, the council may make a recommenda-
15 tion to the coastal resource district or to a state agency that it
16 considers appropriate and may revise the Alaska coastal management
17 program under AS 46.40.010(c). [A HEARING CALLED UNDER THIS SUB-
18 SECTION SHALL BE HELD IN ACCORDANCE WITH THE ADMINISTRATIVE PROCEDURE
19 ACT (AS 44.62). AFTER THE HEARING, THE COUNCIL MAY ORDER THAT THE
20 COASTAL RESOURCE DISTRICT OR STATE AGENCY TAKE ANY ACTION WHICH THE
21 COUNCIL CONSIDERS NECESSARY TO IMPLEMENT, ENFORCE OR COMPLY WITH THE
22 DISTRICT COASTAL MANAGEMENT PROGRAM.]

23 * Sec. 2. AS 46.40.100(c) is amended to read:

24 (c) At a hearing convened under (b) of this section concerning
25 implementation of, enforcement of, or compliance with [IN DETERMINING
26 WHETHER] an approved district coastal management program [IS BEING
27 IMPLEMENTED, ENFORCED OR COMPLIED WITH] by a coastal resource district
28 that [WHICH] exercises zoning authority or control [CONTROLS] on the
29 use of resources within the coastal area, the council may consider
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1 whether [SHALL FIND IN FAVOR OF THE DISTRICT IF]

2 (1) zoning or other regulations have been adopted and are
3 being enforced;

4 (2) variances are being granted according to procedures and
5 criteria that [WHICH] are elements of the district coastal management
6 program, or the variance is otherwise approved by the council; and

7 (3) procedures and standards adopted by the coastal re-
8 source district as required by this chapter or by the guidelines and
9 standards adopted by the council and subsequently approved by the
10 legislature have been followed and considered.

11 * Sec. 3. AS 46.40.100(d) is amended to read:

12 (d) At a hearing convened under (b) of this section concerning
13 implementation, enforcement, or compliance by a state agency [IN
14 DETERMINING WHETHER A STATE AGENCY IS COMPLYING] with a district
15 coastal management program with respect to its exercise of regulation
16 or control of the resources within the coastal area, the council may
17 consider whether [SHALL FIND IN FAVOR OF THE AGENCY IF

18 (1)] the use or activity for which the permit, license, or
19 approval is granted is consistent with the district coastal management
20 program and regulations adopted under it [; AND]

21 (2) THE USE OR ACTIVITY FOR WHICH THE PERMIT, LICENSE OR
22 APPROVAL IS GRANTED IS CONSISTENT WITH REQUIREMENTS IMPOSED BY STATE
23 STATUTE, REGULATION, OR LOCAL ORDINANCE APPLICABLE TO THE USE OF
24 ACTIVITY].

25 * Sec. 4. AS 46.40.100(e) is amended to read:

26 (e) Notwithstanding the powers conferred on the council under
27 (b), (c), and (d) of this section, the council does not have appellate
28 jurisdiction over a case in which an action by a municipality or a
29 state agency is challenged as inconsistent with the Alaska coastal

1 management program. The superior courts of the state have exclusive
2 appellate jurisdiction over that action [TO ENFORCE LAWFUL ORDERS OF
3 THE COUNCIL].
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SENATE FINANCE COMMITTEE REPORT

DATE: 5/2/90

FURTHER:

DATE TURNED INTO OFFICE: _____

The Finance Committee considered

SB 501

Relating to the retail sale of pull-tabs, tickets, and cards for charitable gaming activities.

and recommended:

replace with _____ CS _____
 or adopt _____ CS _____

same title
 new title
 technical title change (HB only)

attached amendment(s)

_____ letter of intent adopted

do pass

do not pass

no recommendation

individual recommendations

further referral to _____

ATTACHES NEW FISCAL NOTE(S):

Dept/Date:

fiscal note(s) _____

zero fiscal note(s) _____

appropriation-no fiscal note

SIGNING DO PASS:

APPROVES PREVIOUS:

Dept/Date:

fiscal note(s) _____

zero fiscal note(s) _____

OTHER RECOMMENDATIONS:

1. _____

2. _____

Co-Chairs: Signatures and Recommendations

SENATE COMMITTEE REPORT

DATE: 5/2/90

FURTHER: Finance

DATE TURNED INTO OFFICE: _____

C & R A

Committee considered

SB 501

"An Act relating to the retail sale of pull-tabs, tickets, and cards for charitable gaming activities."

and recommended:

- replace with _____ CS _____
- or adopt _____ CS _____
- attached amendment(s)
- _____ letter of intent adopted

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

- do pass
- do not pass
- no recommendation
- individual recommendations
- further referral to _____

ATTACHES NEW FISCAL NOTE(S):

Dept/Date:

- fiscal note(s) _____
- zero fiscal note(s) _____
- appropriation-no fiscal note

APPROVES PREVIOUS:

Dept/Date:

- fiscal note(s) _____
- zero fiscal note(s) _____
- Governor's bill w/fiscal note

SIGNING DO PASS:

OTHER RECOMMENDATIONS:

Chair: Signature and Recommendation

SENATE COMMITTEE REPORT

DATE: 3/27/90

FURTHER:

C & RA

Finance

DATE TURNED INTO OFFICE: _____

Judiciary

Committee considered

SB 501

"An Act relating to the retail sale of pull-tabs, tickets, and cards for charitable gaming activities."

and recommended:

[>] replace with _____ CS
[] or adopt _____ CS

SB 501 (JUD)

[X]

same title
new title
technical
title change
(HB only)

[] attached amendment(s)
[] _____

letter of intent adopted

+ rpts it had a follow

[] do pass

[] do not pass

[] no recommendation

[>] individual recommendations

[] further referral to _____

ATTACHES NEW FISCAL NOTE(S):

Dept/Date:

[] fiscal note(s) _____
COMMERCE (JUD CS)

[] zero fiscal note(s) _____

[] appropriation-no fiscal note

APPROVES PREVIOUS:

Dept/Date:

[] fiscal note(s) _____

[] zero fiscal note(s) _____

[] Governor's bill w/fiscal note

SIGNING DO PASS:

OTHER RECOMMENDATIONS:

Rich Harford No REC

Pat Rodley Under

Chair Signature and Recommendation
Jan. Feb. No Rec

Original sponsor(s): Finance Committee

1 IN THE SENATE

BY THE JUDICIARY COMMITTEE

2 CS FOR SENATE BILL NO. 501 (Judiciary)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 SIXTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act licensing and regulating pull-tab vendors;
7 prohibiting certain conduct by charitable gaming
8 licensees and permittees and their agents; relating
9 to charitable gaming awards, contracts between opera-
10 tors and permittees, and to the enforcement of chari-
11 table gaming laws; and providing for an effective
12 date."

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

14 * Section 1. AS 05.15.060 is amended to read:

15 Sec. 05.15.060. REGULATIONS. The department shall adopt regula-
16 tions under the Administrative Procedure Act (AS 44.62) necessary to
17 carry out this chapter covering, but not limited to,

18 (1) the issuance, renewal, and revocation of permits, [AND]
19 licenses, and vendor registrations;

20 (2) a method of ascertaining net proceeds, the determina-
21 tion of items of expense that may be incurred or paid, and the limita-
22 tion of the amount of the items of expense to prevent the proceeds
23 from the activity permitted from being diverted to noncharitable,
24 noneducational, nonreligious, or profit-making organizations, individ-
25 uals, or groups;

26 (3) the immediate revocation of permits, [AND] licenses,
27 and vendor registrations authorized under this chapter if this chapter
28 or regulations adopted under it are violated;

29 (4) the requiring of detailed, sworn, financial reports of
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1 operations from permittees and licensees including detailed statements
2 of receipts and payments;

3 (5) the investigation of permittees, licensees, registered
4 vendors, and their employees, including the fingerprinting of those
5 permittees, licensees, registered vendors, and employees whom the
6 commissioner considers it advisable to fingerprint;

7 (6) exclusion from participation as a permittee, licensee,
8 registered vendor, or employee of a permittee [OR] licensee, or regis-
9 tered vendor, of a person convicted of, in prison for, or on parole
10 for a felony within the preceding five years, or convicted of a crime
11 involving theft or dishonesty or of a violation of a municipal, state,
12 or federal gambling law;

13 (7) the method and manner of conducting authorized activ-
14 ities and awarding of prizes or awards, and the equipment that may be
15 used;

16 (8) the number of activities that may be held, operated, or
17 conducted under a permit during a specified period; however, the
18 department may not allow more than 14 bingo sessions a month and 35
19 bingo games a session to be conducted under a permit;

20 (9) a method of accounting for receipts and disbursements
21 by operators, including the keeping of records and requirements for
22 the deposit of all receipts in a bank;

23 (10) the disposition of funds in possession of a permittee,
24 [OR] a person, municipality, or qualified organization that possesses
25 an operator's license, or a registered vendor at the time a permit,
26 [OR] a license, or a vendor registration is surrendered, revoked, or
27 invalidated;

28 (11) restrictions on the participation by employees of the
29 Department of Fish and Game in salmon classics;

1 (12) the minimum percentage of the ideal net that an opera-
2 tor conducting a pull-tab game on behalf of a permittee must by
3 contract agree to return to the permittee;

4 (13) other matters the commissioner considers necessary to
5 carry out this chapter or protect the best interest of the public.

6 * Sec. 2. AS 05.15.070 is amended to read:

7 Sec. 05.15.070. EXAMINATION OF BOOKS AND RECORDS. The commis-
8 sioner may examine or have examined the books and records of a per-
9 mittee, an operator, a registered vendor, or a person licensed to
10 manufacture or to distribute pull-tab games in the state. The commis-
11 sioner may issue subpoenas for the attendance of witnesses and the
12 production of books, records, and other documents.

13 * Sec. 3. AS 05.15.115(b) is amended to read:

14 (b) The contract between an authorizing permittee and an opera-
15 tor must include the amount and form of compensation to be paid to the
16 operator, the term of the contract, the activities to be conducted by
17 the operator on behalf of the permittee, the location where the activ-
18 ities are to be conducted, the name and address of the member in
19 charge, and other provisions the department may require. if the
20 contract is for the conduct of a pull-tab game, it must include a
21 provision that the operator will return to the permittee at least the
22 percentage of the ideal net required under regulations issued by the
23 department.

24 * Sec. 4. AS 05.15.124 is amended to read:

25 Sec. 05.15.124. MUNICIPAL REGULATION OF OPERATORS. A municipi-
26 tality may by ordinance prohibit an operator or a vendor from conduct-
27 ing activities under this chapter within the municipality.

28 * Sec. 5. AS 05.15.128(a) is amended to read:

29 (a) The department shall revoke the license of an operator who

1 does not

2 (1) report an adjusted gross income of at least 15 percent
3 of gross income for two consecutive quarters based on the total opera-
4 tion of the operator; [OR]

5 (2) pay to each authorizing permittee for two consecutive
6 quarters at least 15 percent of the adjusted gross income, as de-
7 termined under (1) of this subsection, received from activities other
8 than pull-tab games conducted on behalf of the authorizing permittee;
9 or

10 (3) pay to each authorizing permittee for two consecutive
11 quarters a percentage of the ideal net received from pull-tab games
12 conducted on behalf of the authorizing permittee that is equal to or
13 greater than the percentage required under regulations adopted by the
14 department.

15 * Sec. 6. AS 05.15.170 is repealed and reenacted to read:

16 Sec. 05.15.170. SUSPENSION OR REVOCATION OF PERMIT, LICENSE, OR
17 VENDOR REGISTRATION. (a) The commission may suspend or revoke a
18 permit, license, or vendor registration, after giving notice to and an
19 opportunity to be heard by the permittee, licensee, or vendor, if the
20 permittee, licensee, or vendor

21 (1) violates or fails to comply with a requirement of this
22 chapter or of a regulation adopted under this chapter;

23 (2) breaches a contractual agreement with a permittee,
24 licensee, or registered vendor;

25 (3) is convicted of a felony, of a crime involving theft or
26 dishonesty, or of a violation of a municipal, state, or federal gam-
27 bling law; for the purposes of this paragraph, a permittee, licensee,
28 or registered vendor that is not a natural person is considered con-
29 victed if an owner or manager of the permittee, licensee, or vendor is

1 convicted; or

2 (4) knowingly submits false information to the department
3 or, in the case of a registered vendor, to a permittee or operator
4 when the vendor knows that the false information will be submitted to
5 the department as part of an application for registration.

6 (b) If the department revokes a permit, license, or vendor
7 registration under this section, it may prohibit the permittee, li-
8 censee, or vendor from reapplying for a permit, license, or vendor
9 registration for a period of up to five years.

10 * Sec. 7. AS 05.15.180(g) is amended to read:

11 (g) A permittee [MUNICIPALITY OR A QUALIFIED ORGANIZATION] may
12 award a maximum of \$1,000,000 in prizes each year in activities au-
13 thorized under this chapter; [HOWEVER, IF A MUNICIPALITY OR A QUALI-
14 FIED ORGANIZATION CONTRACTS WITH AN OPERATOR TO CONDUCT ON ITS BEHALF
15 ACTIVITIES AUTHORIZED UNDER THIS CHAPTER, THE MUNICIPALITY OR QUALI-
16 FIED ORGANIZATION MAY AWARD A MAXIMUM OF \$500,000 IN PRIZES EACH
17 YEAR]. In this subsection, "activities authorized under this chapter"
18 means all activities subject to this chapter other than bingo.

19 * Sec. 8. AS 05.15.183 is amended by adding a new subsection to read:

20 (e) A distributor may not

21 (1) take an order for the purchase of a pull-tab series
22 from a vendor;

23 (2) sell a pull-tab series to a vendor; or

24 (3) deliver a pull-tab series to a vendor location.

25 * Sec. 9. AS 05.15.187 is amended by adding a new subsection to read:

26 (h) An owner, manager, or employee of a person holding a permit
27 or license under this chapter, or registered under this chapter as a
28 vendor, may not purchase a pull-tab from any pull-tab series manu-
29 factured, distributed, or sold by the permittee, licensee, or

1 registered vendor.

2 * Sec. 10. AS 05.15 is amended by adding a new section to article 2 to
3 read:

4 Sec. 05.15.188. PULL-TAB SALES BY VENDORS ON BEHALF OF PERMIT-
5 TEES AND OPERATORS; VENDOR REGISTRATION. (a) A permittee or operator
6 may contract with a vendor to sell pull-tabs on behalf of the permit-
7 tee or operator, if the permittee or operator first registers the
8 vendor with the department by applying for registration on a form pre-
9 scribed by the department and by submitting the registration fee of
10 \$50 for each location at which the vendor will sell pull-tabs. If a
11 vendor location is within the boundaries of a municipality, the per-
12 mittee or operator shall, concurrently with applying for registration
13 with the department, submit a copy of the application form to the
14 governing body of the municipality.

15 (b) The department shall approve or disapprove an initial vendor
16 registration request within 10 working days of receipt of the regis-
17 tration form from a permittee or operator.

18 (c) Upon approval of the vendor registration, the department
19 shall issue an endorsement to the permittee's permit or the operator's
20 license that authorizes the conduct of pull-tab sales at that vendor
21 location.

22 (d) The endorsement issued under (c) of this section is an
23 extension of the permittee's or operator's privilege under AS 05.15.-
24 100 to conduct pull-tab sales in this state. A vendor may not sell a
25 pull-tab series until the permit or license containing the endorsement
26 for the new vendor location has been posted by the permittee or opera-
27 tor in the registered vendor establishment. The endorsed permit or
28 license must be clearly visible to the gaming public.

29 (e) A separate endorsement shall be issued for each vendor

1 location. The permittee or operator shall inform the department when
2 a vendor with whom the permittee or operator is contracting changes
3 the physical location at which pull-tabs are sold, and shall return to
4 the department the endorsed permit or license of a vendor that is no
5 longer selling pull-tabs on behalf of the permittee or operator.
6 Failure to inform the department of a change in vendor location, or to
7 return the endorsed permit or license to the department after a vendor
8 change, may constitute grounds for the suspension or revocation of a
9 permittee's permit or an operator's license.

10 (f) At the time that a permittee or operator annually renews its
11 permit or license, it shall also renew the registration of all loca-
12 tions where a vendor is selling pull-tabs on the permittee's or opera-
13 tor's behalf and shall pay a registration fee of \$50 for each vendor
14 location.

15 (g) A permittee or operator that uses a vendor to sell pull-tabs
16 on its behalf shall enter into a written contract with that vendor.
17 The department may inspect this contract. If the contract contains
18 provisions that violate this chapter or the regulations adopted under
19 it, the department may declare the contract void, and may suspend or
20 revoke the registration of the vendor and the license of the operator
21 or the permit of the permittee.

22 (h) A person, other than a permittee's member-in-charge or an
23 operator, may not directly supply a pull-tab series to a registered
24 vendor for sale by that vendor on behalf of the permittee or operator.
25 A vendor may not acquire a series from a licensed distributor.

26 (i) If a permittee contracts with a vendor under (a) of this
27 section, the contract must provide that the permittee shall receive no
28 less than 70 percent of the ideal net.

29 (j) An amount equal to the ideal net less the compensation paid

1 to the vendor shall be paid by the vendor within 30 days of the date
2 that the member in charge or operator delivers a pull-tab series to
3 the vendor for sale. The amount required to be paid by the vendor
4 under this subsection must be paid by check and shall be deposited by
5 the permittee or operator directly into its gaming checking account.

6 (k) A vendor may not enter into a contract with a permittee to
7 sell pull-tabs for compensation if

8 (1) the permittee is a qualified organization, and the
9 owner or manager of the vendor is a member of the governing body of
10 the organization, or is the organization's designated member in charge
11 under AS 05.15.112; or

12 (2) the permittee is a municipality, and the owner or
13 manager of the vendor is an elected official of the municipality or is
14 employed by the municipality in a managerial position.

15 * Sec. 11. AS 05.15.188(g) is repealed and reenacted to read:

16 (g) At the time that a permittee or operator annually renews its
17 permit or license, it shall also renew the registration of all loca-
18 tions where a vendor is selling pull-tabs on the permittee's or opera-
19 tor's behalf and shall pay a registration fee of \$50 for each vendor
20 location. The permittee or operator shall also forward, with each
21 vendor registration renewal, that vendor's annual payment of the
22 assessment to the charitable gaming surety fund.

23 * Sec. 12. AS 05.15.188 is amended by adding a new subsection to read:

24 (m) The vendor registration required by (a) of this section
25 shall be accompanied by payment of the vendor's assessment to the
26 charitable gaming surety fund under AS 05.15.230. The assessment
27 amount shall be set by the department by regulation and may not exceed
28 \$100. The payment shall be drawn on the checking account of the
29 vendor and may not be paid by the permittee or operator on the

1 vendor's behalf.

2 * Sec. 13. AS 05.15 is amended by adding a new section to read:

3 Sec. 05.15.195. ORDER PROHIBITING ACTION IN VIOLATION OF CHAP-
4 TER. (a) If the commissioner determines that a person has engaged in
5 an act or practice in violation of this chapter or a regulation adopt-
6 ed under this chapter, the commissioner may, after giving reasonable
7 notice to the person and an opportunity for the person to be heard,
8 issue an order prohibiting the violation by the person. The order
9 remains in effect until the person has submitted evidence acceptable
10 to the commissioner showing that the violation has been corrected.

11 (b) If the public interest requires, the commissioner may issue
12 an emergency order prohibiting an act or practice in violation of this
13 chapter or a regulation adopted under this chapter without notice to
14 or an opportunity to be heard by the person affected by the order.
15 The commissioner shall immediately serve the person with a copy of the
16 emergency order. An emergency order expires 60 days after the date it
17 is issued, if the person affected by the order requests a hearing
18 within 15 days of receipt of the order. If the person does not re-
19 quest a hearing within 15 days of receipt of the emergency order, the
20 order becomes permanent. Following a hearing, the commissioner may
21 rescind, modify, or make permanent the emergency order.

22 * Sec. 14. AS 05.15.200(b) is amended to read:

23 (b) A person who, with the intent to mislead a public servant in
24 the performance of the public servant's duty, submits a false state-
25 ment in an application for a permit, license, or vendor registration
26 under this chapter [,] is guilty of unsworn falsification.

27 * Sec. 15. AS 05.15.210 is amended by adding new paragraphs to read:

28 (35) "ideal net" means an amount equal to the total amount
29 of receipts that would be received if every individual pull-tab ticket