

ALASKA LEGISLATURE

994

HOUSE and SENATE FINANCE COMMITTEE FILES, 1993-1994

AMENDMENT

3

BY: Rep. Brown

If, on or before November 30, 1994, the Governor determines that it is in the best interest of the beneficiaries of the mental health trust and the state that the December 15, 1994 deadline be extended, the Governor at that time may extend the December 15, 1994 deadline for not more than forty-five days.

A M E N D M E N T A

OFFERED IN THE HOUSE
TO: CSHB 201(FIN)

Page 1, line 2, after "Civil":

Insert ", and amending and repealing other laws relating to mental health institutions, programs, and services that are affected by ch. 66, SLA 1991"

Page 17, following line 8:

Insert new bill sections to read:

"* Sec. 19. AS 44.21.230(a), as amended by sec. 15, ch. 66, SLA 1991, is amended to read:

(a) The commission shall

(1) formulate a comprehensive statewide plan that identifies the concerns and needs of older Alaskans and, with reference to the plan adopted, prepare and submit to the governor and legislature an annual analysis and evaluation of the services that are provided to older Alaskans;

(2) make recommendations directly to the governor and legislature with respect to legislation, regulations, and appropriations for programs or services that benefit older Alaskans;

(3) encourage and aid the development of municipal commissions serving older Alaskans and community-oriented programs and services for the benefit of older Alaskans;

(4) employ an executive director who serves at the pleasure of the commission;

(5) help older Alaskans lead dignified, independent, and useful lives;

(6) request and receive reports and audits from state agencies and local institutions concerned with the conditions and needs of older Alaskans;

(7) administer, with the approval of the commissioner of

administration, federal programs as provided under 42 U.S.C. 3001 - 3045i (Older Americans Act), as amended;

(8) administer, with the approval of the commissioner of administration, state programs as provided under AS 47.65;

(9) give assistance, on request, to the senior housing office in the Alaska Housing Finance Corporation in administration of the senior housing loan program under AS 18.56.710 - 18.56.799 and in the performance of the office's other duties under AS 18.56.700; and

(10) provide to the Alaska Mental Health Trust Authority, for its review and consideration, recommendations concerning the integrated comprehensive mental health program for persons who are described in (d) of this section [AS 47.30.056(b)(4)] and the use of the money in the mental health trust income account in a manner consistent with regulations adopted under AS 47.30.031.

* **Sec. 20** AS 44.21.230 is amended by adding a new subsection to read:

(d) When the commission formulates a comprehensive statewide plan under (a) of this section, it shall include within the plan specific reference to the concerns and needs of older Alaskans who have a disorder described in AS 47.30.056(b)(4).

* **Sec. 21.** AS 44.29.140(c), as added by sec. 25, ch. 66, SLA 1991, is amended to read:

(c) The board shall prepare and maintain a comprehensive plan of services
(1) for the prevention and treatment of alcohol, drug, and other substance abuse; and

(2) for persons described in AS 47.30.056(b)(3)."

Renumber the following bill sections accordingly.

Page 20, lines 7 - 12:

Delete all material and insert:

** **Sec. 30.** AS 47.30.520, as amended by sec. 28, ch. 66, SLA 1991, is amended to read:

Sec. 47.30.520. LEGISLATIVE PURPOSE. It is the purpose of the Community Mental Health Services Act to

(1) provide a range of community based inpatient, outpatient, and support services for persons with mental disorders;

- (2) assist communities in planning, organizing, and financing community mental health services through locally developed, administered, and controlled community mental health programs;
- (3) better develop and use resources at both state and local levels;
- (4) develop and implement plans for comprehensive mental health services based on demonstrated need on a regional basis;
- (5) improve the effectiveness of existing mental health services;
- (6) integrate state-operated and community mental health programs into a unified mental health system;
- (7) ensure that consumers, families, and representatives of communities within mental health planning regions can participate in planning for, determining the need for, and allocating [THE ALLOCATION OF] mental health resources;
- (8) provide a means of allocating money available for state mental health services according to community needs;
- (9) encourage the full use of all existing public or private agencies, facilities, personnel, and funds to accomplish these objectives; and
- (10) prevent unnecessary duplication and fragmentation of services and expenditures.

* Sec. 31. AS 47.30.530(a) is amended to read:

- (a) The department shall administer the provisions of AS 47.30.520 - 47.30.620 and shall
 - (1) define and develop standards for various levels and qualities of mental health care;
 - (2) provide fiscal and professional technical assistance in planning, organizing, developing, implementing, and administering local mental health services;
 - (3) develop budgets and receive and distribute state appropriations and funds in accordance with the provisions of AS 47.30.520 - 47.30.620;
 - (4) establish standards of education and experience for professional, technical, and administrative personnel employed in community mental health services;
 - (5) assist the community in establishing the organization and operation of community mental health services;

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

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

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

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

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

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

(9) adopt regulations and establish priorities, after consultation with local communities affected and in conjunction with the Alaska Mental Health Board [A STATE MENTAL HEALTH ADVISORY COUNCIL], that are necessary to carry out the purposes of AS 47.30.520 - 47.30.620.

* Sec. 32. AS 47.30.550 is amended by adding a new subsection to read:

(e) In (a) and (b) of this section, "poverty area" means a census district in which at least 15 percent of the population, based upon the most recent census date, falls under 125 percent of the United States Department of Health and Human Services' Poverty Income Guidelines for Alaska, as reported in the Federal Register.

* Sec. 33. AS 47.30.660, as amended by sec. 36, ch. 66, SLA 1991, and by sec. 2, ch. 109, SLA 1992, is amended to read:

Sec. 47.30.660. POWERS AND DUTIES OF DEPARTMENT. (a) The department shall

(1) prepare, and periodically revise and amend, a plan for an integrated comprehensive mental health program, as that term is defined by AS 47.30.056(i); the preparation of the plan and any revision or amendment of it shall

(A) be made in conjunction with the Alaska Mental Health Trust Authority;

(B) be coordinated with federal, state, regional, local, and private entities involved in mental health services;

(2) in planning expenditures from the mental health trust income account, conform to the regulations adopted by the Alaska Mental Health Trust Authority under AS 47.30.031(b)(6); and

(3) implement an integrated comprehensive system of care that, within the limits of money appropriated for that purpose and using grants and contracts that are to be paid for from the mental health trust income account, meets the service needs of the beneficiaries of the trust established under the Alaska Mental Health Enabling Act of 1956, as determined by the plan.

(b) The department, in fulfilling its duties under this section and through its division of mental health and developmental disabilities, shall

(1) administer a comprehensive program of services for persons with mental disorders, for the prevention of mental illness, and for the care and treatment of persons with mental disorders, including inpatient and outpatient care and treatment and the procurement of services of specialists or other persons on a contractual or other basis;

(2) take the actions and undertake the obligations that are necessary to participate in federal grants-in-aid programs and accept federal or other financial aid from whatever sources for the study, prevention, examination, care, and treatment of persons with mental disorders;

(3) administer AS 47.30.660 - 47.30.915;

(4) designate, operate, and maintain treatment facilities equipped and qualified to provide inpatient and outpatient care and treatment for persons with mental disorders;

(5) provide for the placement of patients with mental disorders in designated treatment facilities;

(6) enter into arrangements with governmental agencies for the care or treatment of persons with mental disorders in facilities of the governmental agencies in the state or in another state;

(7) enter into contracts with treatment facilities for the custody and care or treatment of persons with mental disorders; contracts under this paragraph are governed by AS 36.30 (State Procurement Code);

(8) enter into contracts, which incorporate safeguards consistent with AS 47.30.660 - 47.30.915 and the preservation of the civil rights of the patients with another state for the custody and care or treatment of patients previously committed from this state under 48 U.S.C. 46 et seq., and P.L. 84-830, 70 Stat. 709;

(9) prescribe the form of applications, records, reports, request for release, and consents to medical or psychological treatment required by AS 47.30.660 - 47.30.915;

(10) require reports from the head of a treatment facility concerning the care of patients;

(11) visit each treatment facility at least annually to review methods of care or treatment for patients;

(12) investigate complaints made by a patient or an interested party on behalf of a patient;

(13) delegate upon mutual agreement to another officer or agency of it, or a political subdivision of the state, or a treatment facility designated, any of the duties and powers imposed upon it by AS 47.30.660 - 47.30.915;

(14) after consultation with the Alaska Mental Health Trust Authority, adopt regulations to implement the provisions of AS 47.30.660 - 47.30.915;

(15) provide technical assistance and training to providers of mental health services; and

(16) set standards under which each designated treatment facility shall provide programs to meet patients' medical, psychological, social, vocational, educational, and recreational needs.

* Sec. 34. AS 47.30.652(a), as repealed and reenacted by sec. 37, ch. 66, SLA 1991, is amended to read:

(a) The board consists of not fewer than 12 [18] nor more than 16 [24] members appointed by the governor, with due regard for the demographics of the state and balanced geographic representation of the state. The membership and committees of the board shall fulfill the requirements of P.L. 99-660, as amended.

* Sec. 35. AS 47.30.666, as repealed and reenacted by sec. 39, ch. 66, SLA 1991, is amended to read:

Sec. 47.30.666. DUTIES OF THE BOARD. The board is the state planning and coordinating body for the purpose of federal and state laws relating to mental health services for persons with mental disorders identified in AS 47.30.056(b)(1) [AND (4)]. On behalf of those persons, the board shall

(1) prepare and maintain a comprehensive plan of treatment and rehabilitation services;

(2) propose an annual implementation plan consistent with the comprehensive plan and with due regard for the findings from evaluation of existing programs;

(3) provide a public forum for the discussion of issues related to the mental health services for which the board has planning and coordinating responsibility;

(4) advocate the needs of persons with mental disorders before the governor, executive agencies, the legislature, and the public;

(5) advise the legislature, the governor, the Alaska Mental Health Trust Authority, and other state agencies in matters affecting persons with mental disorders, including, but not limited to,

(A) development of necessary services for diagnosis, treatment, and rehabilitation;

(B) evaluation of the effectiveness of programs in the state for diagnosis, treatment, and rehabilitation;

(C) legal processes that affect screening, diagnosis, treatment, and rehabilitation;

(6) provide to the Alaska Mental Health Trust Authority for its review and consideration recommendations concerning the integrated comprehensive mental health program for those persons who are described in AS 47.30.056(b)(1) [AND (4)] and the use of money in the mental health trust income account in a manner consistent with regulations adopted under AS 47.30.031; and

(7) submit periodic reports regarding its planning, evaluation, advocacy, and other activities."

Renumber the following bill sections accordingly.

Page 21, line 6, after "50":

Insert "53,"

Page 21, line 22:

Delete "sec. 33"

Insert "sec. 41"

Page 22, line 1:

Delete "sec. 33"

Insert "sec. 41"

Page 22, line 6:

Delete "sec. 32"

Insert "sec. 40"

Page 23, line 4:

Delete "sec. 32(a)(1)"

Insert "sec. 40(a)(1)"

Page 23, line 5:

Delete "sec. 30(a)(2)"

Insert "sec. 40(a)(2)"

Page 23, line 15:

Delete "and 31"

Insert "and 39"

Page 23, line 21:

Delete "and 31"

Insert "and 39"

Page 23, line 24:

Delete "and 31"

Insert "and 39"

Page 23, line 27:

Delete "sec. 32(a)(1)"

Insert "sec. 40(a)(1)"

Page 23, line 28:

Delete "sec. 32(a)(2)"

Insert "sec. 40(a)(2)"

Page 23, line 29:

Delete "sec. 34"

Insert "sec. 42"

Page 24, line 2:

Delete "sec. 32(a)(1)"

Insert "sec. 40(a)(1)"

Page 24, lines 18 - 29:

Delete all material and insert:

**** Sec. 46. TRANSITIONAL PROVISIONS: MEMBERS OF THE ALASKA MENTAL HEALTH BOARD.** Notwithstanding AS 47.30.662, as amended by sec. 37, ch. 66, SLA 1991, and sec. 34 of this Act, the members of the Alaska Mental Health Board who are serving on the effective date of this section continue to serve their unexpired terms. Vacancies on the board occurring after the effective date of this section, and new positions created by this section, shall be filled by the governor under the provisions of AS 47.30.662, as amended by sec. 37, ch. 66, SLA 1991, and sec. 34 of this Act. When making appointments to new positions on the board, the governor shall ensure that the initial terms

of new members maintain the staggered term requirement of AS 47.30.663.

* **Sec. 47.** If the conditions of sec. 58, ch. 66, SLA 1991, as amended by sec. 37 of this Act, are not met on or before December 15, 1994, then ch. 66, SLA 1991, is repealed and secs. 3 - 9, 12 - 16, 19 - 21, 23 - 30, 33 - 36, 43, and 46 of this Act do not take effect.

* **Sec. 48.** If the conditions of sec. 58, ch. 66, SLA 1991, as amended by sec. 37 of this Act, are met on or before December 15, 1994, then AS 37.14.013, added by sec. 10 of this Act, AS 37.14.023, added by sec. 11 of this Act, AS 47.30.546, and sec. 44 of this Act are repealed.

* **Sec. 49.** Subject to sec. 47 of this Act, secs. 3 - 9, 12 - 16, 19 - 21, 23 - 30, 33 - 36, 43, and 46 of this Act take effect December 16, 1994.

* **Sec. 50.** Sections 47 and 48 of this Act take effect December 16, 1994.

* **Sec. 51.** Sections 1, 2, 10, 11, 17, 18, 22, 31, 32, 37 - 42, 44, and 45 of this Act take effect immediately under AS 01.10.070(c)."

5

ADOPTED

On page 20, line 26, after "taken"
insert:

"or any appeals taken have been finally
resolved and the order dismissing
Weiss v. State, 4FA-82-2208 Civil,
having been affirmed on appeal"

On page 20, line ³¹26, after "taken"
insert:

[same amendment]

LETTER OF INTENT

for

Finance Committee Substitute for HB 201

It is the intent of the Legislature to finally resolve the mental health land trust litigation, Weiss v. State, 4FA-82-2208 Civil, by reconstituting a mental health trust under the Alaska Mental Health Enabling Act, P.L. 84-830, 70 Stat. 709 (1956), as required by the Alaska Supreme Court in State v. Weiss, 706 P.2d 681 (Alaska 1985). At the same time, it is the intent of the Legislature to do that (1) without prejudicing individual Alaskans, Native corporations, and municipalities to whom the state has conveyed land obtained under the Enabling Act, and (2) without removing land obtained under the Enabling Act from legislatively designated areas like parks and wildlife refuges and the control of state agencies to which it has been transferred or assigned.

To accomplish these varied and seemingly incompatible goals, the Legislature is exercising a number of the powers given to it by the Enabling Act and the Alaska Constitution. The purpose of this letter of intent is to identify some, but not necessarily all, of those powers, and to explain how the identified powers are being exercised to reconstitute the trust, to remove land from trust status and validate the actions taken with respect to that land, and to compensate the trust for the land removed from trust status.

Section 202(e) of the Enabling Act authorizes the Legislature to provide for management and use of the land. It also provides for the land to be "sold, leased, mortgaged, exchanged, or otherwise disposed of ... in order to obtain funds or other property to be invested, expended, or used" by the state for the purposes of the Act.

Article VIII, sec. 2 of the Alaska Constitution requires the Legislature "to provide for the utilization, development, and conservation of all natural resources belonging to the state, including land, for the maximum benefit of the people." The Alaska Supreme Court in State v. University, 624 P.2d 807 (Alaska 1981), held that art. VIII, sec. 2 authorizes the Legislature to remove land from trust status if the trust is fairly compensated for the land removed.

The Legislature intended to exercise that power in ch. 181 and 182, SLA 1978, but the Alaska Supreme Court held the 1978 legislation invalid in the Weiss decision. In Fairbanks North Star Borough v. State, 753 P.2d 1158 (Alaska 1988), however, the Alaska Supreme Court held that the Legislature may cure an earlier invalid act and validate actions taken under it, and noted that "[c]ourts have uniformly upheld the validity of curative legislation if (1) the Legislature originally had the power to authorize the acts

done, and (2) there is no constitutional impairment of vested rights as a result of the act's passage."

Under art. VIII, sec. 2 of the Alaska Constitution, there is no question that the Legislature has the power to remove land from the mental health trust, and under the Enabling Act there is no question that the compensation to the trust can be either money (under the authorization to sell) or land (under the authorization to exchange). The current legislation thus ratifies and confirms the 1978 removal from trust status of certain land obtained by the state under the Enabling Act, and compensates the trust with land that will be managed as the Enabling Act requires and money that will first be used for mental health programs as the Enabling Act requires.

In returning some land to trust status and providing for its management by the Department of Natural Resources consistently with the requirements of the Enabling Act and, to the extent they are consistent with the Enabling Act, the statutes governing management of other state land, the Legislature is (1) exercising its power under the Enabling Act to provide for the management and utilization of mental health trust land, (2) discharging its obligation under the Enabling Act to provide that the land is administered as "a public trust," and (3) exercising its power under art. VIII, sec. 2 of the Alaska Constitution to provide for the utilization, development, and conservation of state land for the maximum benefit of all Alaskans. The intent of the Legislature in doing so is to ensure that the land is administered as required by the Enabling Act and, to the extent permitted by the Enabling Act, that other public interests in the land are taken into consideration and accommodated.

In ratifying and confirming the 1978 removal from trust status of some land obtained by the state under the Enabling Act and validating the actions taken with respect to that land, the Legislature is exercising its powers (1) under the Enabling Act to sell, lease, mortgage, exchange, or otherwise dispose of the land, (2) under art. VIII, sec. 2 of the Alaska Constitution as interpreted by the Alaska Supreme Court in the University case to remove land from trust status, and (3) to enact curative legislation as described by the Alaska Supreme Court in the Fairbanks North Star Borough case.

To the extent it was not accomplished by the 1978 legislation and the ratification and confirmation of that legislation, in removing from trust status land obtained by the state under the Enabling Act since 1978, the Legislature is exercising its powers (1) under the Enabling Act to sell, lease, mortgage, exchange, or otherwise dispose of the land, and (2) under art. VIII, sec. 2 of the Alaska Constitution as interpreted by the Alaska Supreme Court in the University case to remove land from trust status.

In validating all actions with respect to the land removed from trust status, the Legislature is (1) exercising its power and discharging its responsibility under art. VIII, sec. 2 of the Alaska Constitution to provide for the utilization, development, and conservation of state land for the maximum benefit of all Alaskans, (2) exercising its power under the Enabling Act to provide for the sale, lease, exchange, or other disposal of the land, and (3) discharging its responsibility under the Enabling Act to act in a way that benefits the beneficiaries of the trust by bringing this controversy to an end and making it less likely that continuing the litigation will result in a backlash against the mental health community and make it increasingly difficult for its supporters, including those in the Legislature, to obtain appropriations of unrestricted state revenue to fund the state's mental health program.

The Legislature is aware that there has been a significant difference of opinion about the value of the original one million acre mental health land grant. In the Legislature's view, the values used in determining the amount of compensation the trust should receive for land removed from trust status -- values that in large part reflect the mental health plaintiffs' views -- are substantially higher than fair market value (i.e., the price a willing buyer would pay a willing seller), particularly with respect to the subsurface mineral estate.¹

¹ The Legislature is aware that the proposed settlement under chapter 48, SLA 1987, was not implemented primarily because of a dispute over the value of the mineral estate. The majority of the interim mental health trust commission, representing the Weiss plaintiffs, approved procedures that valued the mineral estate in 1987 at \$1.51 billion. The Department of Natural Resources valued the mineral estate at \$73.4 million. While not trying to determine which value is correct, the Legislature notes the following facts: (1) the \$1.51 billion figure presumes that the dollar value of current annual mineral production from the one million acres of mental health land is \$4.43 billion, but the total dollar value of all mineral production in Alaska in 1987 was \$202 million and there was no significant mineral production from mental health land; (2) of six known major mineral deposits in Alaska (Greens Creek, Red Dog, Quartz Hill, Fort Knox, Arctic Camp, and Pebble Copper), only one is currently in production and it is running at a loss; (3) the income from the subsurface estate of trust land in fifteen other states where substantially greater infrastructure already exists and where much more detailed information about subsurface resources is known (including Texas where the Texas Railroad Commission administers a substantial amount of oil-rich land for the University of Texas' benefit) was \$4.57 per acre per year in 1987, while the \$1.51 billion value would require annual per acre earnings of \$120.80; (4) until 1985, most mental health land was available for claim-staking -- the mineral rights were available

The state since 1978 has spent far more on the state's mental health program than the true fair market value of the land removed from trust status. Nonetheless, to eliminate any question about the fairness of the compensation provided, the Legislature has considered the very high values that the plaintiffs give to the land not returned to the trust. The plaintiffs' value for original mental health trust land not returned to the trust is between \$900 million and \$1.4 billion, roughly twice the value placed on that land by the Department of Natural Resources ("DNR"). The DNR value for the land is \$656 million, of which \$473 million is the value of the surface estate, \$173 million is the value of the mineral estate not including oil and gas,² and \$10 million is the plaintiffs' oil

for free -- but very little mental health land was staked; (5) the procedures employed by the commission majority were heavily and persuasively criticized by numerous experts in the field -- including Dr. DeVerle P. Harris of the University of Arizona upon whose scholarly works those procedures were purportedly based, the University of Alaska's Institute for Social and Economic Research (ISER), the Department of Natural Resources' natural resource economist, and the department's geologists who developed the geological data to which the procedures were applied; (6) the 2.2 million acres of Bering Straits Native corporation land, much of which was selected for its mineral potential in the vicinity of the Seward Peninsula, historically the most productive mineral province in the state, were valued in 1988 at \$343 million; and (7) the department's \$73.4 million value was based on actual sales of comparable mineralized land, perhaps the most reliable measure of the fair market value of the mineral estate of the original one million acre grant.

² The plaintiffs, who were initially responsible for valuing the mineral estate of land under the chapter 66 settlement process, only recently provided DNR with their valuation data. DNR's current estimates reflect adjustments it believes necessary based on its initial review of plaintiffs' valuation data and methodology. DNR anticipates that further analysis will reduce the value attributable to the mineral estate even more. The most fundamental flaws in the plaintiffs' valuation approach include the presumption that the land not returned to the trust has both the world's largest ore deposits (among the top ten percent in the world) and the world's highest grade deposits (again, among the top ten percent in the world). It is overly optimistic to presume that undiscovered deposits on the land not returned to trust status have either the world's largest deposits or the world's highest grades. It is extremely unrealistic to presume that they have both the world's largest deposits and the world's highest grades as the world's largest deposits tend to have lower grades and vice-versa. The cumulative effect of presuming both the largest deposits and the highest grades is a very substantial overstatement of the value of the mineral endowment. Another fundamental flaw in plaintiffs'

and gas value.

The value of the state land designated as mental health trust land to replace land not returned to the trust is, by both the plaintiffs' and the state's calculations, more than \$200 million. As a result, even using the plaintiffs' values, the state's maximum monetary liability to the trust for land not returned to trust status cannot exceed \$1.2 billion (\$1.4 billion, the plaintiffs' highest value for the land not returned, minus the \$200 million for the replacement land), which is \$100 million less than the \$1.3 billion set-off for past mental health expenditures authorized by the Alaska Supreme Court. And, even if the \$1.3 billion set-off is not taken into account, the state's monetary liability to the trust for the land not returned to trust status will be satisfied by virtue of the \$100 million per year allocation of funds to the trust to be expended on mental health programs as required by the Enabling Act. By any measure, in other words, the trust is being more than fairly compensated for the land not returned to it.

Finally, under the Enabling Act, the Legislature has the responsibility to determine both the programmatic aspects of the mental health program of Alaska and the level of funding to pay for it. Under art. VII, secs. 4 and 5 of the Alaska Constitution, the Legislature has the responsibility to "provide for the promotion and protection of public health" and to "provide for public welfare," again calling for decisions regarding both the program and its funding.

Since statehood, the Legislature has discharged both its Enabling Act and constitutional responsibilities by establishing and maintaining a mental health program and funding it at levels that, as both the Enabling Act and the Alaska Constitution permit, substantially exceeded both the revenues from mental health land, as the Alaska Supreme Court noted in the Weiss decision, and the absolute legal minimum required by the Alaska Constitution. In the words of the Enabling Act, however, all of these expenditures comprise the "necessary expenses of the mental health program of Alaska." Based on a review of actual amounts expended, moreover, the Legislature has determined that state expenditures for the state's mental health program have totalled more than \$1.3 billion

approach is that they overstate the net present value of the income stream by assuming royalty payments under a four percent net smelter return ("NSR") rate would equal four percent of the higher value of the metal contained in the ore reserve rather than the correct NSR rate which equals four percent of the much lower value of the amount paid by the smelter for the recovered metals.

from fiscal year 1979 through fiscal year 1994.³

In making this determination, the Legislature is mindful that Congress in the Enabling Act vested responsibility for both the substantive provisions of Alaska's mental health program and the decisions as to amounts to be spent in the Alaska Legislature. As stated in Sen. Rep. No. 2053, 84th Cong., 2d Sess. (May 25, 1956), reprinted in 1956 U.S. Code Cong. & Admin. News 3637 ("Senate Report"), the Senate struck all of the detailed program provisions in the bill that passed the House of Representatives, "leaving it up to the people of Alaska to enact their own mental-health program." The people's power to enact such a program -- i.e., to legislate on the subject -- is vested in the Legislature under art. II, sec. 1 of the Alaska Constitution.

The Enabling Act, moreover, divested the federal government of both fiscal and functional responsibility for the mental health program in Alaska, and provided in the words of the Senate Report for Alaska to "assume full responsibility for enactment of commitment, hospitalization, and care procedures, and gradually assume responsibility for all costs" of the program. Under art. IX, sec. 13 of the Alaska Constitution, no money may be withdrawn from the state treasury except in accordance with legislative appropriations.

In terms of revenues from the land grant, the Senate Report noted that "[a]mounts not needed for the mental health program can be used for other public purposes as the Legislature may determine." And the managers in the House of Representatives accepted a Senate amendment "which broadens the use of the revenues for use of the Alaska mental-health program rather than [only] for the hospitalization and care of the mentally ill in Alaska." Conference Report No. 2735, 84th Cong., 2d Sess. (July 17, 1956), reprinted in 1956 U.S. Code Cong. & Admin. News 3659.

In light of Congress' intent that the Alaska Legislature take the lead role in determining the mental health program of Alaska, and the Alaska Constitution's vesting of spending authority in the Legislature, it is only appropriate that the Legislature determine the amount spent in the past on the state's mental health program. As noted, from fiscal year 1979 through fiscal year 1994, that amount totals more than \$1.3 billion.

The Legislature respectfully requests that any court reviewing the Legislature's actions with respect to resolving the mental health land trust litigation, Weiss v. State, 4FA-82-2208 Civil, give appropriate consideration to these principles underlying the Legislature's actions.

³ \$1.32 billion is the amount actually spent. Adjusting that amount to 1994 dollars increases it to \$1.574 billion.

FISCAL NOTE

STATE OF ALASKA
1994 LEGISLATIVE SESSION

BILL NO. CS HB201 ()

Revision Date: <u>April 20, 1994</u>	Dept. Affected: <u>Health and Social Services</u>
Title: <u>An act amending provisions of Chap. 66</u>	BRU: <u>ALCOHOLISM & DRUG ABUSE SVC</u>
<u>SLA 1991...and providing for an effective date</u>	Component: <u>ADMINISTRATION</u>
Sponsor: <u>Senate Resources Committee</u>	
Requestor: <u>House Finance</u>	COMPONENT SERIAL NO. <u>302</u>

Expenditures/Revenues:

(Thousands of Dollars)

OPERATING	FY95	FY96	FY97	FY98	FY99	FY00
PERSONAL SERVICES	167.2	172.2	177.4	182.7	188.2	193.8
TRAVEL	89.0	91.7	94.4	97.3	100.2	103.2
CONTRACTUAL	45.5	46.9	48.3	49.7	51.2	52.7
SUPPLIES	6.3	3.5	6.7	6.9	7.1	7.3
EQUIPMENT	23.7	0.0	0.0	0.0	0.0	0.0
LAND & STRUCTURES	0.0	0.0	0.0	0.0	0.0	0.0
GRANTS, CLAIMS	0.0	0.0	0.0	0.0	0.0	0.0
MISCELLANEOUS	0.0	0.0	0.0	0.0	0.0	0.0
TOTAL OPERATING	331.7	317.2	326.7	336.5	346.6	357.0

CAPITAL EXPENDITURES	0.0	0.0	0.0	0.0	0.0	0.0
----------------------	-----	-----	-----	-----	-----	-----

CHANGES IN REVENUES	0	0	0	0	0	0
---------------------	---	---	---	---	---	---

FUND SOURCE

(Thousands of Dollars)

FUND SOURCE	FY95	FY96	FY97	FY98	FY99	FY00
1002 Federal Receipts	0.0	0.0	0.0	0.0	0.0	0.0
1003 GF Match	0.0	0.0	0.0	0.0	0.0	0.0
1004 GF	0.0	0.0	0.0	0.0	0.0	0.0
1005 GF/Program Receipts	0.0	0.0	0.0	0.0	0.0	0.0
1006 GF/MHTIA	331.7	317.2	326.7	336.5	346.6	357.0
Other	0.0	0.0	0.0	0.0	0.0	0.0
TOTAL	331.7	317.2	326.7	336.5	346.6	357.0

POSITIONS:

POSITIONS	FY95	FY96	FY97	FY98	FY99	FY00
FULL-TIME	3	3	3	3	3	3
PART-TIME	0	0	0	0	0	0
TEMPORARY	0	0	0	0	0	0

Estimate of current year (FY94) cost \$ 0.0

ANALYSIS: (Attach a separate page if necessary)

See Attached

Prepared by: Suzanne Perry
Division: Alcoholism & Drug Abuse

Phone: 465-2071
Date: 04/20/94

Approved by Commissioner: Margaret R. Lowe
Agency: Department of Health & Social Services

Date: 4/21/94

PREPARER TO PROVIDE ALL DISTRIBUTION COPIES TO GOVERNOR'S LEGISLATIVE OFFICE
For further distribution information call the Governor's Legislative Office

ANALYSIS:

Chapter 66, SLA 1991, Section 19, amended AS 44.29 regarding the composition, qualifications, responsibilities and staff of the Advisory Board on Alcoholism and Drug Abuse.

Implementation of Chapter 66 would require the implementation of staff and financial support for the board which was originally approved, but withdrawn when Chapter 66 was not implemented.

1. Membership of the Advisory Board increases from 12 to 15 members. The board is made responsible for developing a comprehensive plan for treatment and prevention services, and provides recommendations to the Alaska Mental Health Trust Advisory Authority for planning and funding regarding the target population of chronic alcoholics with psychosis.
2. Chapter 66 specifically specifies the Board to hire an Executive Director (Partially Exempt Service) and allows the Executive Director to hire additional staff in the classified service.
 - A. This fiscal note is based upon one Executive Director, Range 21, one Research Analyst III, Range 18, and one Secretary I, Range 10.
 - B. A detailed explanation of the line items for FY 95 is attached.
 - C. A 3% inflation factor was used for all subsequent years.

State of Alaska
Department of Health & Social Services
Division of Alcoholism & Drug Abuse

Budget reflects costs of three positions
Anticipates Board Structure similar to AK Mental Health Board
Costs allow for assumption of planning duties by Board
Assumes expansion of Board from 12 to 15 members

Personal Services

Executive Director, Range 21	\$71.4
Secretary I, Range 10	\$36.9
Research Analyst III, Range 18	\$58.9
Total	<u>\$167.2</u>

Travel

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

Contractual

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

Commodities

Office Supplies	\$6.3
-----------------	-------

Equipment (one-time only)

Workstations & Chairs	\$10.0
File Cab/4 drawer legal (3)	\$1.4
Computers/Software	\$12.3
Total	<u>\$23.7</u>

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

FISCAL NOTE

STATE OF ALASKA
1994 LEGISLATIVE SESSION

BILL NO. CSHB 201 (RES)

Revision Date: April 8, 1994
Title: "...amending provisions of ch. 66, SLA 1991...
mental health trust..."
Sponsor: House Resources Committee
Requestor: Governor's Office/OMB

Department Affected: Department of Law
BRU: Legal Services
Component: Mental Health Lands
COMPONENT SERIAL NO. 1421

EXPENDITURES/REVENUES:

OPERATING	FY 95	FY 96	FY 97	FY 98	FY 99	FY 00
PERSONAL		<263.9>				
TRAVEL		<9.0>				
CONTRACTUAL		<305.6>				
SUPPLIES		<12.3>				
EQUIPMENT						
LAND &						
GRANTS, CLAIMS	200.0	-0-	-0-	-0-	-0-	-0-
MISCELLANEOUS						
TOTAL OPERATING	200.0	<590.8>	-0-	-0-	-0-	-0-

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

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

FUNDING:

1002 Federal						
1003 GF Match						
1004 GF		<590.8>	-0-	-0-	-0-	-0-
1005 GF/Program						
1006 GF/MHTIA	200.0	-0-	-0-	-0-	-0-	-0-
OTHER						
TOTAL	200.0	<590.8>				

POSITIONS:

FULL-TIME	-0-	<4.0>	-0-	-0-	-0-	-0-
PART-TIME						
TEMPORARY						

Estimate of current year (FY94) impact: -0-

ANALYSIS: (Attach a separate page if necessary.)
Please see the attached analysis.

Prepared by: Richard I. Pegues, Director Phone: 465-3672
Division: Administrative Services Division Date: April 8, 1994
Approved by Commissioner: Bruce M. Botelho, Attorney General
Agency: Department of Law Date: Apr., 8, 1994

PREPARER TO PROVIDE ALL DISTRIBUTION COPIES TO GOVERNOR'S LEGISLATIVE OFFICE
For further distribution information call the Governor's Legislative Office

FISCAL NOTE

STATE OF ALASKA

BILL NO. CSHB201(FIN)

1994 LEGISLATIVE SESSION

Revision Date: 29-Apr-94 REVISED

Dept Affected: Natural Resources

Title: "An Act amending provisions of ch.66 sla 1991, that relate to reconstitution of the corpus of the mental health trust..."

BRU: Resource Development

Component: Mental Health Trust (NEW)

Sponsor: House Resources

Requestor: House Resources

Component Serial No.

NEW

Expenditures/Revenues

(Thousands of Dollars)

OPERATING EXPENDITURES	FY95	FY96	FY97	FY98	FY99	FY00
PERSONAL SERVICES	239.9	239.9	239.9	239.9	239.9	239.9
TRAVEL	10.0	10.0	10.0	10.0	10.0	10.0
CONTRACTUAL	475.0	25.0	25.0	25.0	25.0	25.0
SUPPLIES	4.0	4.0	4.0	4.0	4.0	4.0
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	728.9	278.9	278.9	278.9	278.9	278.9

CAPITAL EXPENDITURES	0.0	0.0	0.0	0.0	0.0	0.0
----------------------	-----	-----	-----	-----	-----	-----

CHANGE IN REVENUES (1004)	0.0	0.0	0.0	0.0	0.0	0.0
---------------------------	-----	-----	-----	-----	-----	-----

FUND SOURCE

(Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	458.0					
1005 GF/Program Receipts						
1006 GF/MHTIA	450.	278.9	278.9	278.9	278.9	278.9
1061 CIP Receipts	278.9					
TOTAL	728.9	278.9	278.9	278.9	278.9	278.9

Estimate of any current year (FY94) cost: \$ None

POSITIONS

FULL-TIME	3	3	3	3	3	3
PART-TIME	1	1	1	1	1	1
TEMPORARY	0	0	0	0	0	0

ANALYSIS:

SEE ATTACHED.

The Department of Natural Resources work activities will focus on the conveyance of original trust land and replacement land, the final recordation of the current encumbrances of conveyable original trust land and replacement state land, and the recordation of the aforementioned conveyable lands to the state's status graphics record.

Prepared by: B Ron Swanson, Director Phone: 762-2692
 Division: Land Date: 29-Apr-94
 Approved by Commissioner: Harry A. Noon Date: 29-Apr-94
 Agency: Natural Resources

PREPARER TO PROVIDE ALL DISTRIBUTION COPIES TO GOVERNOR'S LEGISLATIVE OFFICE

FISCAL NOTE

STATE OF ALASKA
1994 LEGISLATIVE SESSION

BILL NO. CSHB 201 (RES)

Revision Date: April 8, 1994
Title: "...amending provisions of ch. 66, SLA 1991...
mental health trust..."
Sponsor: House Resources Committee
Requestor: Governor's Office/OMB

Department Affected: Department of Law
BRU: Legal Services
Component: Mental Health Lands
COMPONENT SERIAL NO. 1421

EXPENDITURES/REVENUES:

OPERATING	FY 95	FY 96	FY 97	FY 98	FY 99	FY 00
PERSONAL		<263.9>				
TRAVEL		<9.0>				
CONTRACTUAL		<305.6>				
SUPPLIES		<12.3>				
EQUIPMENT						
LAND &						
GRANTS, CLAIMS	200.0	-0-	-0-	-0-	-0-	-0-
MISCELLANEOUS						
TOTAL OPERATING	200.0	<590.8>	-0-	-0-	-0-	-0-

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

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

FUNDING:

1002 Federal						
1003 GF Match						
1004 GF		<590.8>	-0-	-0-	-0-	-0-
1005 GF/Program						
1006 GF/MHTIA	200.0	-0-	-0-	-0-	-0-	-0-
OTHER						
TOTAL	200.0	<590.8>				

POSITIONS:

FULL-TIME	-0-	<4.0>	-0-	-0-	-0-	-0-
PART-TIME						
TEMPORARY						

Estimate of current year (FY94) impact: -0-

ANALYSIS: (Attach a separate page if necessary.)
Please see the attached analysis.

Prepared by: Richard I. Peques, Director Phone: 465-3672
Division: Administrative Services Division Date: April 8, 1994
Approved by Commissioner: Bruce M. Botelho, Attorney General
Agency: Department of Law Date: April 8, 1994

PREPARER TO PROVIDE ALL DISTRIBUTION COPIES TO GOVERNOR'S LEGISLATIVE OFFICE
For further distribution information call the Governor's Legislative Office

FISCAL NOTE

STATE OF ALASKA
1994 LEGISLATIVE SESSION

BILL NO. CSHB 201 (RES)

ANALYSIS CONTINUATION:

This bill amends provisions of ch. 66, SLA 1991, mental health trust settlement, that the superior court rejected and amends other provisions that the parties have found to be unworkable or unenforceable. The bill seeks to resolve the Weiss lawsuit by reconstituting the trust legislatively, establishing a Mental Health Trust Authority, and providing for annual cash payments to the Trust for fifteen years.

Between July 1, 1994 and December 31, 1994, the plaintiffs will be required to expend some effort to obtain dismissal of the litigation if this legislation is enacted as a compromise settlement. Because Weiss is a class action, the court will approve a settlement by following several steps. The court must first preliminarily approve the settlement after finding that it is within a range that is fair, reasonable, and adequate to the beneficiaries, considering the risks and uncertainties of continued litigation. After the court grants preliminary approval, notice of the proposed settlement will be given to the class, written comments will be received (which should take at least 90 days), and the court will hold a "fairness" hearing at which time the court will hear from all interested parties that desire to comment on the proposed settlement. Following that hearing, the court will determine whether to grant final approval of the proposed settlement and dismiss the Weiss case. We estimate that \$200,000 will be necessary for plaintiffs to participate in this mandatory process.

FISCAL NOTE

STATE OF ALASKA

BILL NO. CSHB201(FIN)

1994 LEGISLATIVE SESSION

Revision Date: 29-Apr-94 REVISED Dept Affected: Natural Resources
 Title: "An Act amending provisions of ch.66 sla 1991, BRU: Resource Development
that relate to reconstitution of the corpus of the mental health trust..." Component: Mental Health Trust (NEW)
 Sponsor: House Resources
 Requestor: House Resources Component Serial No. NEW

Expenditures/Revenues

(Thousands of Dollars)

OPERATING EXPENDITURES	FY95	FY96	FY97	FY98	FY99	FY00
PERSONAL SERVICES	239.9	239.9	239.9	239.9	239.9	239.9
TRAVEL	10.0	10.0	10.0	10.0	10.0	10.0
CONTRACTUAL	475.0	25.0	25.0	25.0	25.0	25.0
SUPPLIES	4.0	4.0	4.0	4.0	4.0	4.0
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	728.9	278.9	278.9	278.9	278.9	278.9

CAPITAL EXPENDITURES	0.0	0.0	0.0	0.0	0.0	0.0
----------------------	-----	-----	-----	-----	-----	-----

CHANGE IN REVENUES (1004)	0.0	0.0	0.0	0.0	0.0	0.0
---------------------------	-----	-----	-----	-----	-----	-----

FUND SOURCE

(Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	458.0					
1005 GF/Program Receipts						
1006 GF/MHTIA	450.	278.9	278.9	278.9	278.9	278.9
1061 CIP Receipts	278.9					
TOTAL	728.9	278.9	278.9	278.9	278.9	278.9

Estimate of any current year (FY94) cost: \$ None

POSITIONS

FULL-TIME	3	3	3	3	3	3
PART-TIME	1	1	1	1	1	1
TEMPORARY	0	0	0	0	0	0

ANALYSIS:

SEE ATTACHED.

The Department of Natural Resources work activities will focus on the conveyance of original trust land and replacement land, the final recordation of the current encumbrances of conveyable original trust land and replacement state land, and the recordation of the aforementioned conveyable lands to the state's status graphics record.

Prepared by: Ron Swanson, Director Phone: 762-2692
 Division: Land Date: 29-Apr-94
 Approved by Commissioner: Harry A. Noah Date: 29-Apr-94
 Agency: Natural Resources

PREPARER TO PROVIDE ALL DISTRIBUTION COPIES TO GOVERNOR'S LEGISLATIVE OFFICE

REVISED
FISCAL NOTE

STATE OF ALASKA
1994 LEGISLATIVE SESSION

BILL NO. CSHB 201 (FIN)

Revision Date: _____

Department Affected: Administration

Title: An Act relating to the Mental Health Land Trust

BRU: Senior Services

Component: Senior Services, Administration

Sponsor: House Resources Committee

Requestor: House Finance Committee

COMPONENT SERIAL NO. 1981

EXPENDITURES/REVENUES:

(Thousands of Dollars)

OPERATING	FY 95	FY 96	FY 97	FY 98	FY 99	FY 00
PERSONAL	31.4 62.8	64.8	66.7	69.0	71.0	73.4
TRAVEL	8.3 20.1	20.1	20.1	20.1	20.1	20.1
CONTRACTUAL	1.7 3.5	3.5	3.5	3.5	3.5	3.5
SUPPLIES	1.0 2.0	2.0	2.0	2.0	2.0	2.0
EQUIPMENT	3.5 3.5	0.0	0.0	0.0	0.0	0.0
LAND &	0.0	0.0	0.0	0.0	0.0	0.0
GRANTS, CLAIMS	0.0	0.0	0.0	0.0	0.0	0.0
MISCELLANEOUS	0.0	0.0	0.0	0.0	0.0	0.0
TOTAL OPERATING	45.9 91.9	90.4	92.3	94.6	96.6	99.0

CAPITAL EXPENDITURES	0.0	0.0	0.0	0.0	0.0	0.0
----------------------	-----	-----	-----	-----	-----	-----

CHANGE IN REVENUES	0.0	0.0	0.0	0.0	0.0	0.0
--------------------	-----	-----	-----	-----	-----	-----

FUNDING SOURCE:

(Thousands of Dollars)

1002 Federal	0.0	0.0	0.0	0.0	0.0	0.0
1003 GF Match	0.0	0.0	0.0	0.0	0.0	0.0
1004 GF	0.0	0.0	0.0	0.0	0.0	0.0
1005 GF/Program	0.0	0.0	0.0	0.0	0.0	0.0
1006 GF/MHTIA	45.9 91.9	90.4	92.3	94.6	96.6	99.0
OTHER	0.0	0.0	0.0	0.0	0.0	0.0
TOTAL	45.9 91.9	90.4	92.3	94.6	96.6	99.0

Estimate of any current year (FY 94) cost: \$ 0.0

POSITIONS:

FULL-TIME	1.0	1.0	1.0	1.0	1.0	1.0
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.) To meet its expanded duties under this bill, the Older Alaskans Commission (OAC) needs: (1) funds to increase commission meetings from three to four per year, one meeting for mental health (Alzheimer's) planning duties and public hearings; and (2) one staffer to carry out OAC's new planning duties and to monitor the mental health services funded by OAC. Staffer will attend, report back, and coordinate with the meetings, planning sessions, and regulatory requirements of the new Mental Health Authority, the Division of Mental Health, and the other three "coordinating" boards for mental health services.

Prepared by: Connie J. Sioe, Director

Phone: 465-3250

Division: Senior Services

Date: 4-27-94

Approved by Commissioner: Nancy Bear Usra

Agency: Department of Administration

Date: 4/29/94

PREPARER TO PROVIDE ALL DISTRIBUTION COPIES TO GOVERNOR'S LEGISLATIVE OFFICE

For further distribution information call the Governor's Legislative Office

FISCAL NOTE

STATE OF ALASKA
1994 LEGISLATIVE SESSION

BILL NO. CSHB 201 (FIN)

ANALYSIS (continued)

Personal Services

	<u>Months</u>	<u>Total</u>
1 Health Program Management Spec.II	126	62.8
<u>Travel</u> (for staff and OAC members)		20.1
<u>Contractual</u>		3.5
<u>Supplies</u>		2.0
<u>Equipment</u> (start-up)		3.5
	TOTAL:	91.9

FISCAL NOTE

STATE OF ALASKA
1994 LEGISLATIVE SESSION

BILL NO. CSHB201

Revision Date: _____ Dept. Affected: DHSS
 Title: "An Act amending provisions of ch. 66 SIA 1991, that relate to reconstitution of ..." BRU: Admin Services
 Component: AMHR
 Sponsor: House Resources Committee
 Requestor: _____ COMPONENT SERIAL NO. #951

Expenditures/Revenues

(Thousands of Dollars)

OPERATING EXPENDITURES	FY 95	FY 96	FY 97	FY 98	FY 99	FY 00
PERSONAL SERVICES						
TRAVEL 5.2	38.5	39.5	40.5	41.5	42.5	43.6
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	38.5	39.5	40.5	41.5	42.5	43.6

CAPITAL EXPENDITURES						
-----------------------------	--	--	--	--	--	--

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

FUND SOURCE

(Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1006 GF/MHTIA	38.5	39.5	40.5	41.5	42.5	43.6
Other						
TOTAL	38.5	39.5	40.5	41.5	42.5	43.6

Estimate of any current year (FY94) cost: \$ -0- 5.2

POSITIONS

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

Average travel costs per board member 3500/yr. Fiscal note is calculated on Ch. 66 as passed which would add up to 11 new board members. Inflation after FY 95 is calculated at 2.5%. If amendments, as proposed by the AMHB, pass FY 95 additional cost would be reduced to 10.5, (FY '96=10.8, FY97=11.1, FY98=11.4, FY99=11.7, FY00=12.0).

Prepared by: Deborah Smith, Ex. Director
 Division: Alaska Mental Health Board
 Approved by Commissioner: _____
 Agency: _____

Phone: 465-3071
 Date: 4/22/94
 Date: _____

PREPARER TO PROVIDE ALL DISTRIBUTION COPIES TO GOVERNOR'S LEGISLATIVE OFFICE
 For further distribution information, call the Governor's Legislative Office

REVISE
FISCAL NOTE

STATE OF ALASKA
1994 LEGISLATIVE SESSION

BILL NO. CS HB201 ()

Revision Date: April 20, 1994 Dept. Affected: Health and Social Services
 Title: An act amending provisions of Chap. 66 BRU: ALCOHOLISM & DRUG ABUSE SVCS
SLA 1991...and providing for an effective date Component: ADMINISTRATION
 Sponsor: Sena Resources Committee
 Requestor: House Finance COMPONENT SERIAL NO. 302

Expenditures/Revenues:

(Thousands of Dollars)

OPERATING	FY95	FY96	FY97	FY98	FY99	FY00
PERSONAL SERVICES	73.6 167.2	172.2	177.4	182.7	188.2	193.8
TRAVEL	27.0 89.0	91.7	94.4	97.3	100.2	103.2
CONTRACTUAL	22.7 45.5	46.9	48.3	49.7	51.2	52.7
SUPPLIES	3.0 6.3	6.5	6.7	6.9	7.1	7.3
EQUIPMENT	23.7 23.7	0.0	0.0	0.0	0.0	0.0
LAND & STRUCTURES	0.0	0.0	0.0	0.0	0.0	0.0
GRANTS, CLAIMS	0.0	0.0	0.0	0.0	0.0	0.0
MISCELLANEOUS	0.0	0.0	0.0	0.0	0.0	0.0
TOTAL OPERATING	150.0 331.7	317.2	326.7	336.5	346.6	357.0
CAPITAL EXPENDITURES	0.0	0.0	0.0	0.0	0.0	0.0
CHANGES IN REVENUES	0	0	0	0	0	0

FUND SOURCE

(Thousands of Dollars)

1002 Federal Receipts	0.0	0.0	0.0	0.0	0.0	0.0
1003 GF Match	0.0	0.0	0.0	0.0	0.0	0.0
1004 F	0.0	0.0	0.0	0.0	0.0	0.0
1005 GF/Program Receipts	0.0	0.0	0.0	0.0	0.0	0.0
1006 GF/MHTIA	150.0 331.7	317.2	326.7	336.5	346.6	357.0
Other	0.0	0.0	0.0	0.0	0.0	0.0
TOTAL	150.0 331.7	317.2	326.7	336.5	346.6	357.0

POSITIONS:

FULL-TIME	3	3	3	3	3	3
PART-TIME	0	0	0	0	0	0
TEMPORARY	0	0	0	0	0	0

Estimate of current year (FY94) cost \$ 0.0

ANALYSIS: (Attach a separate page if necessary)

See Attached

Prepared by: Suzanne Perry
 Division: Alcoholism & Drug Abuse

Phone: 465-2071
 Date: 04/20/94

Approved by Commissioner: Margaret R. Lowe
 Agency: Department of Health & Social Services

Date: 4/21/94

PREPARER TO PROVIDE ALL DISTRIBUTION COPIES TO GOVERNOR'S LEGISLATIVE OFFICE
 For further distribution information call the Governor's Legislative Office

ANALYSIS:

Chapter 66, SLA 1991, Section 19, amended AS 44.29 regarding the composition, qualifications, responsibilities and staff of the Advisory Board on Alcoholism and Drug Abuse.

Implementation of Chapter 66 would require the implementation of staff and financial support for the board which was originally approved, but withdrawn when Chapter 66 was not implemented.

1. Membership of the Advisory Board increases from 12 to 15 members. The board is made responsible for developing a comprehensive plan for treatment and prevention services, and provides recommendations to the Alaska Mental Health Trust Advisory Authority for planning and funding regarding the target population of chronic alcoholics with psychosis.
2. Chapter 66 specifically specifies the Board to hire an Executive Director (Partially Exempt Service) and allows the Executive Director to hire additional staff in the classified service.
 - A. This fiscal note is based upon one Executive Director, Range 21, one Research Analyst III, Range 18, and one Secretary I, Range 10.
 - B. A detailed explanation of the line items for FY 95 is attached.
 - C. A 3% inflation factor was used for all subsequent years.

State of Alaska
 Department of Health & Social Services
 Division of Alcoholism & Drug Abuse

Budget reflects costs of three positions
 Anticipates Board Structure similar to AK Mental Health Board
 Costs allow for assumption of planning duties by Board
 Assumes expansion of Board from 12 to 15 members

Personal Services

Executive Director, Range 21	\$71.4
Secretary I, Range 10	\$36.9
Research Analyst III, Range 18	\$58.9
Total	\$167.2

Travel

Statewide Travel, Professional Staff	\$49.0
Travel, 3 Additional Board Members	\$10.0
Per Diem	\$30.0
Total	\$89.0

Contractual

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

Commodities

Office Supplies	\$6.3
-----------------	-------

Equipment (one-time only)

Workstations & Chairs	\$10.0
File Cab/4 drawer legal (3)	\$1.4
Computers/Software	\$12.3
Total	\$23.7

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

FISCAL NOTE

REQUEST:

Revision Date:
Title: An Act amending provisions of Chap. 66
SLA 1991....and providing for an effective date.
Sponsor: House Resource Committee
Requestor: House Finance Committee

Dept: Health and Social Services
BRU: Alcoholism & Drug Abuse svcs
Components: Administration
No: 302

EXPENDITURES/REVENUES: (THOUSANDS OF DOLLARS)

OPERATING	FY 95	FY 96	FY 97	FY 98	FY 99	FY 00
Personal Services	73.6	172.2	177.4	182.7	188.2	193.8
Travel	27.0	91.7	94.4	97.3	100.2	103.2
Contractual	22.7	46.9	48.3	49.7	51.2	52.7
Supplies	3.0	6.5	6.7	6.9	7.1	7.3
Equipment	23.7	0.0	0.0	0.0	0.0	0.0
Land & Structures	0.0	0.0	0.0	0.0	0.0	0.0
Grants, Claims	0.0	0.0	0.0	0.0	0.0	0.0
Miscellaneous	0.0	0.0	0.0	0.0	0.0	0.0
TOTAL OPERATING	150.0	317.3	326.8	336.6	346.7	357.0

CAPITAL EXPENDITURES						
----------------------	--	--	--	--	--	--

CHANGE IN REVENUES						
--------------------	--	--	--	--	--	--

FUNDING: (THOUSANDS OF DOLLARS)

1002 Federal Receipts	0.0	0.0	0.0	0.0	0.0	0.0
1003 GF Match	0.0	0.0	0.0	0.0	0.0	0.0
1004 GF	0.0	0.0	0.0	0.0	0.0	0.0
1005 GF/Program Receipts	0.0	0.0	0.0	0.0	0.0	0.0
1006 GF/MHTIA	150.0	317.3	326.8	336.6	346.7	357.0
Other	0.0	0.0	0.0	0.0	0.0	0.0
TOTAL	150.0	317.3	326.8	336.6	346.7	357.0

ESTIMATE OF ANY CURRENT YEAR (FY 94) COST \$

0.0

POSITIONS:

Full-Time	3	3	3	3	3	3
Part-Time	0	0	0	0	0	0
Temporary	0	0	0	0	0	0

ANALYSIS: (Attach a separate page if necessary)

Eileen P. MacLean

Prepared By: Rep. Ron Larson, Co-Chair
Rep. Eileen MacLean, Co-Chair
Division: House Finance Committee
Approved By:
Agency:

465-3878
Phone: 465-4833
Date: 4/30/94

Date:

Back-up

Summary of Values and Compensation
Package for the Mental Health Trust

1. Original Trust

Lands to be returned to the Trust

466,000 acres of surface and subsurface lands

22,400 acres of subsurface lands (mineral estate)

76,000 acres of subsurface land (hydro carbon only)

total 564,400 acres

2. Value of original trust lands not returnable to Trust:

surface lands	\$480 million
subsurface lands	<u>\$156</u> million
total	\$636 million

3. Compensation for lands not returnable to Trust:

Land

Proposed replacement lands

356,000 acres of surface & subsurface lands \$264 million

200,000 acres of subsurface lands \$116 million

total 556,000 acres \$380 million

Cash

Administration proposal \$225 million

4. Value of lands not returnable to Trust	Value of proposed compensation package
<u>\$636 million</u>	<u>\$605*</u> million

5. Additional compensation for lands not returnable to the trust. (could be used, however, if there is a question of valuation)

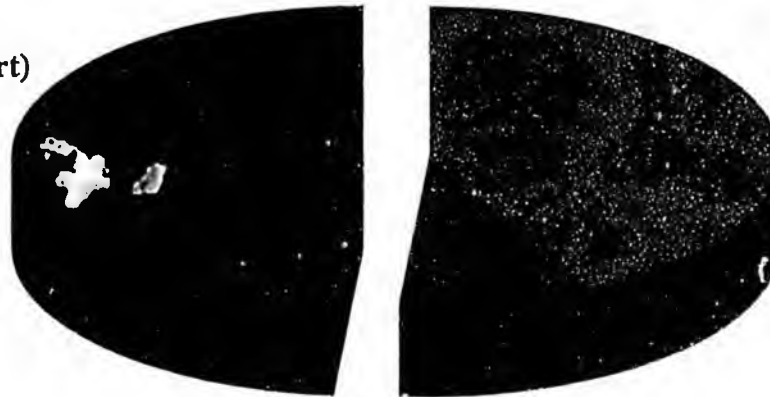
- Deduction for past mental health expenditures 1.3 billion
- Future allocations into the trust account up to 100 million per year to be spent for mental health

* As currently proposed in HB 201/SB 67

Attachment 1
4/18/94

ORIGINAL TRUST LAND

530,863 Acres
 Non-Returnable
 Surface + Subsurface (Part)



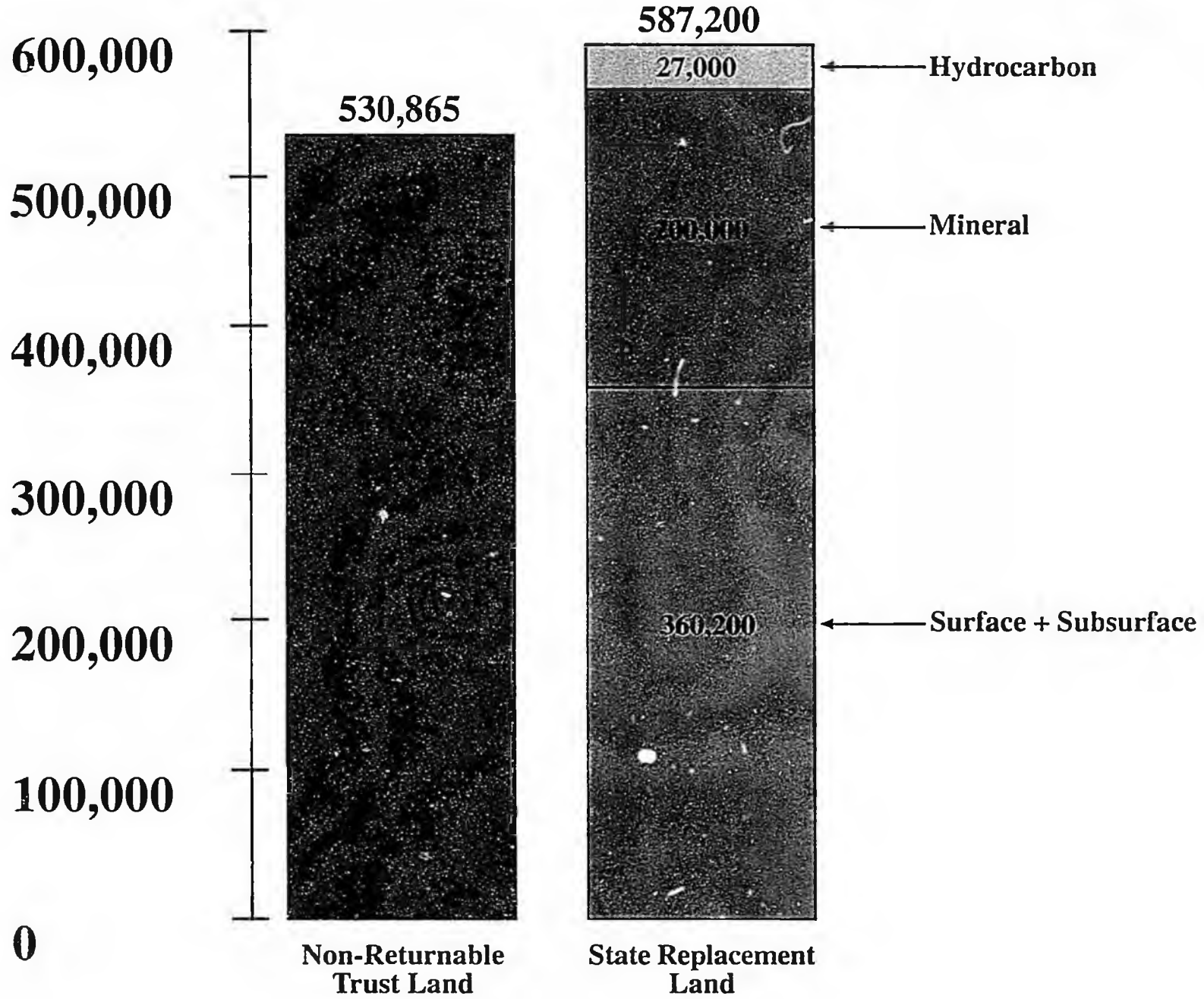
466,200
 Returnable Surface
 and Subsurface

98,400
 Returnable Subsurface (only)

Non-Returnable Surface and Subsurface (Part)

45,845	Mom and Pop Parcels
43,331	Municipalities
3,565	State Agencies
232,017	Legislatively Designated Areas
131,953	State Forests: Haines + Tanana Valley
<u>74,152</u>	<u>Other</u>
530,863	Total

ACRES



THE GRANTS-IN-AID PROVISION

Under the Senate amendment, the grants-in-aid are identical, in substance, to those approved by the House. That is, three different grants for different purposes are provided:

(1) \$6 1/2 million is authorized to be appropriated for construction of mental health facilities in Alaska. At present, there are none of any kind. Persons "convicted" by the mandatory jury trial are held in jail until arrangements can be made for transporting them away from Alaska to the private institution in Oregon.

(2) \$6 million is authorized to be appropriated over a 10-year period to assist the Territory in developing a rounded mental health program for its people until it can itself assume full financial responsibility. This amount would be available, subject to approval of appropriations bills for the purpose, as follows:

Fiscal year ---		Fiscal year -- Continued	
1958	\$1,000,000	1963	\$600,000
1959	1,000,000	1964	400,000
1960	800,000	1965	400,000
1961	800,000	1966	200,000
1962	600,000	1967	200,000

(3) One million acres of the "vacant, unappropriated, and unreserved" public lands of Alaska, to be selected by the Territory within a 10-year period. The income and proceeds from disposition of these lands must be administered as a public trust, with the expenses of the mental health program having first call on such funds. Amounts not needed for the mental health program can be used for other public purposes as the legislature may determine.

Public land grants for public purposes in the Territory of the United States are, of course, older than the Constitution itself, dating from at least the Northwest Ordinance of the Continental Congress in 1787. (See 1 Stat. 50, 51.) In all of the public land States of the West the Federal Government has made grants of the public lands in order to provide funds for schools or other public purposes. In five States, namely, Idaho, Oklahoma, South Dakota, Utah, and Wyoming, grants of public lands have been made specifically to provide means for the care of the insane.

The purpose of the grant is to afford revenues to the Territory for support of its mental-health program. If such revenues are in excess of needs for the program, they may be used, as a public trust, for other public purposes.

During Congressional markup of the 1956 Alaska mental health enabling legislation Alaska Delegate E.L. "Bob" Bartlett said in opposition to proposed "earmarking" of land proceeds exclusively for mental health purposes:

MR. BARTLETT. When previous legislation on this matter was being considered words substantially the same as those proposed by the gentleman were offered. My understanding is that they were not incorporated in this bill for this reason: No one knows what the land is going to be worth - 500,000 acres. It might have very slight value, it might be of average value; or again, we hope it might be enormously rich land containing oil. You might arrive at a situation where, if it did have oil, you would have revenues piled up there far in excess of the needs of any mental institution. The thought was that in any case the Territory of Alaska will have an obligation to appropriate money required for the care of the mentally ill, and it was thought it would not be desirable to hobble us possibly in that manner.

MR. DAWSON. Then I am to understand that the gift of this land is not for the purpose of the mentally ill alone, but you are to use it for any purpose you want in Alaska? Is that right?

MR. BARTLETT. It might very well be, Mr. Dawson, that the land would never provide more than a fraction of the funds required for the mentally ill.

Hearing before the Subcommittee of the Interior and Insular Affairs Committee of the House of Representatives April - July 1955 on bills providing for the care of Alaskan mentally ill.

ALASKA MENTAL HEALTH ENABLING ACT

Senate Report No. 2053, May 25, 1956 (To accompany H.R.6376)

LETTERS TO THE SENATE COMMITTEE

United States Department of the Interior,
Office of the Secretary,
Washington 25, D.C., January 9, 1956

Hon. James E. Murray,
Chairman, Committee on Interior and Insular Affairs,
United States Senate, Washington 25, D.C.

MY DEAR SENATOR MURRAY: This will refer further to your request for the views of the Department on S.2518, a bill to provide for the hospitalization and care of the mentally ill of Alaska, and for other purposes.

. . .

Finally, section 202 (e) was amended by the House committee to provide for the earmarking of funds derived from the land grants to the sole purpose of the hospitalization and care of the mentally ill. While it is, of course, anticipated that the land revenues will be used for this purpose, we are inclined to believe that it would be wiser not to restrict them in this manner. It is impossible at this time to predict accurately the cost to the Territory of the program envisaged by S. 2518. It is equally difficult to predict the amount of revenue that will accrue to the Territory under the land grant. It is possible that revenue resulting from the land grant will substantially exceed the costs of the program, in which case the Territory ought to be free to use such revenues for other purposes. It is also possible, however, that the land grant may be insufficient to sustain the Territory's financial responsibility under the program, and if that is so, the Territory should not be deterred from using funds from other sources to sustain it. We believe that it might be deterred if the earmarking requirement remains in the bill.

. . .

Wesley A. D'Ewart,
Assistant Secretary of the Interior

STATE v. WEISS, 706 P.2d 681, 684 (Alaska 1985)

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

ATTACHMENT 2
4/18/94 P

WEISS v. STATE, 4FA82-2208 Civil
Memorandum Decision and Order re:
Preliminary Approval of Proposed Settlement Agreement at 113-114
(Alaska Superior Court December 30, 1993)

Dissenting Plaintiffs contend that a primary concern of class members is adequate funding for mental health programs. However, the adequacy of funding and services is a separate issue outside the scope of this case.^{90/} The issue in Weiss is the state's breach of the federally-established mental health land trust, not breach of whatever responsibility the state may have to provide a particular level of care for Alaska residents in need of mental health services. The Alaska Mental Health Enabling Act of 1956 (AMHEA) specified only that income from the land trust was to be spent on mental health services first before excess funds, if any, were allocated to other uses. The AMHEA did not guarantee any particular level of services or full funding for Alaska's mental health needs.^{92/}

The remedy guidelines in the 1985 Weiss decision also did not discuss any guaranteed income stream for the trust. The Supreme Court stated that the state was entitled to subtract mental health expenditures for the corresponding time period from whatever monetary compensation it owed the trust for original trust land that had been sold. The Supreme Court also noted that the state had spent far more on mental health programs than it had received in revenue from trust lands. While some trust lands may have been sold or leased below market value or trust revenues inaccurately recorded, it appears unlikely that the value of trust land sold to private parties would exceed the amount for mental health expenditures. Unless the plaintiffs succeeded in severely limiting the land categorized as "sold," a trial could result in reconstitution of the trust with less land than under the proposed settlement and without any monetary compensation.

Based on the 1985 Weiss decision, a trial would require reconstitution of the land trust with only as much land as had not been sold and a set-off for the state that could equal or exceed the value of the land sold. The trust would then have less than the original one million acres of land with little or no monetary compensation for unreturned lands.

^{90/} [The court described a case in which the plaintiffs' objections were characterized as a "wish list...not even within the scope of the lawsuit."]

^{92/} ... The legislative record shows no evidence that Congress intended to provide funding for Alaska mental health programs in perpetuity.

STATE OF ALASKA

STEVE COWPER, GOVERNOR

OFFICE OF THE GOVERNOR

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

OFFICE OF MANAGEMENT AND BUDGET DIVISION OF BUDGET REVIEW

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

FISCAL YEAR 1990 BUDGET SUMMARY BY FUNDING SOURCE

FUNDING SOURCE	OPERATING BUDGET	LOANS BUDGET	NEW LEGISLATION BUDGET	CAPITAL BUDGET	TOTAL BUDGET
FEDERAL RECEIPTS	334,992,600		6,200		334,998,800
GENERAL FUND MATCH	119,016,600				119,016,600
GENERAL FUND	1,771,226,100		91,500,000	2,987,100 <i>EL</i>	1,776,515,400
GENERAL FUND/PROGRAM RECEIPTS	51,320,300		70,000	92,400 <i>EL</i>	51,616,700
GENERAL FUND/MENTAL HEALTH TRUST	41,675,100				41,675,100
INTR-AGENCY RECEIPTS	102,769,200		1,988,200		104,757,400
U/A INTEREST INCOME	2,449,500				2,449,500
DONATED COMMODITY/HANDLING FEE ACCT	207,700				207,700
U/A DORMITORY/FOOD/AUXILIARY SERVICE	15,034,200				15,034,200
GRAIN RESERVE LOAN FUND	48,800				48,800
AGRICULTURAL LOAN FUND	1,365,900				1,365,900
STATE CORPORATION RECEIPTS	25,404,900			350,000 <i>EL</i>	26,004,900
FICA ADMINISTRATION FUND ACCOUNT	64,900				64,900
FISH AND GAME FUND	9,118,700				9,118,700
HIGHWAY WORKING CAPITAL FUND	19,754,300				19,754,300
INTERNATIONAL AIRPORT REVENUE FUND	32,032,100				32,032,100
PUBLIC EMPLOYEES RETIREMENT FUND	7,224,900		237,600		7,462,500
SCHOOL FUND (CIGARETTE TAX)	2,700,000				2,700,000
SECOND INJURY FUND RESERVE ACCOUNT	3,264,800				3,264,800
DISABLED FISHERMANS RESERVE ACCOUNT	1,226,900				1,226,900
SURPLUS PROPERTY REVOLVING FUND	133,000				133,000
TEACHERS RETIREMENT SYSTEM FUND	4,822,400		158,500		4,980,900
VETERANS REVOLVING LOAN FUND	434,000				434,000
COMMERCIAL FISHING LOAN FUND	1,107,600				1,107,600
U/A STUDENT TUITION/FEES/SERVICES	20,614,400				20,614,400
U/A INDIRECT COST RECOVERY	6,413,000				6,413,000
SURETY FUND	145,400				145,400
JUDICIAL RETIREMENT SYSTEM	34,300				34,300
PUBLIC LAW 81-874	20,638,500				20,638,500
NATIONAL GUARD RETIREMENT SYSTEM	28,300				28,300
TITLE XX	5,926,100				5,926,100
UNIVERSITY RESTRICTED RECEIPTS	29,763,100				29,763,100
TRAINING AND BUILDING FUND	564,100				564,100
PERMANENT FUND DIVIDEND FUND	16,800,900				16,800,900
OIL/HAZARDOUS RESPONSE FUND(AS46.08.010)			4,371,800		4,371,800
SMALL BUSINESS LOAN FUND	52,100				52,100
TOURISM REVOLVING LOAN FUND	40,200				40,200
CORRECTIONAL INDUSTRIES FUND	2,737,300				2,737,300
CAPITAL IMPROVEMENT PROJECT RECEIPTS	49,967,800				49,967,800
POWER PROJECT LOAN FUND	76,000				76,000
NATIONAL PETROLEUM RESERVE FUND	937,000				937,000
HOUSING ASSISTANCE LOAN FUND	2,946,400				2,946,400
RURAL ELECTRIFICATION LOAN FUND	44,000				44,000
PUBLIC SCHOOL FUND	7,189,200				7,189,200
MINING REVOLVING LOAN FUND	231,300				231,300
CHILD CARE REVOLVING LOAN FUND	54,500				54,500
HISTORICAL DISTRICT REVOLVING LOAN FUND	9,300				9,300
FISHFRIES ENHANCEMENT REVOLVING LOAN FND	288,800				288,800

Chapter 116

PAGE 6

CCS HB 100

ALTERNATIVE ENERGY REVOLVING LOAN FUND	357,100				357,100
RESIDENTIAL ENERGY CONSERVATION LOAN FND	278,500				278,500
BULK FUEL REVOLVING LOAN FUND	74,400				74,400
MULTIPLE FUND SOURCES					132,800
**** TOTALS ****	82,733,806,300		91,500,000	10,144,100 <i>EL</i>	2,743,970,400 <i>EL</i>

FISCAL YEAR 1991 BUDGET SUMMARY BY FUNDING SOURCE

FUNDING SOURCE	OPERATING BUDGET	LOANS BUDGET	NEW LEGISLATION BUDGET	CAPITAL BUDGET	TOTAL BUDGET
FEDERAL RECEIPTS	406,303,700		2,441,600		408,745,300
GENERAL FUND MATCH	143,468,600		110,200		143,778,800
GENERAL FUND	1,873,545,000		17,650,000		1,891,195,000
GENERAL FUND/PROGRAM RECEIPTS	52,269,400		906,800		53,176,200
GENERAL FUND/MENTAL HEALTH TRUST	97,268,500				97,268,500
INTER-AGENCY RECEIPTS	118,239,800		110,000		118,369,800
U/A INTEREST INCOME	2,449,500				2,449,500
DONATED COMMODITY/HANDLING FEE ACCT	232,700				232,700
U/A DORMITORY/FOOD/AUXILIARY SERVICE	15,929,900				15,929,900
AGRICULTURAL LOAN FUND	1,073,600				1,073,600
STATE CORPORATION RECEIPTS	31,637,200		426,200		32,063,400
FISH AND GAME FUND	9,005,900		6,500		9,012,400
SCIENCE & TECHNOLOGY ENDOWMENT INCOME	3,060,000				3,060,000
HIGHWAY WORKING CAPITAL FUND	20,774,200				20,774,200
INTERNATIONAL AIRPORT REVENUE FUND	34,156,600				34,156,600
PUBLIC EMPLOYEES RETIREMENT FUND	11,282,800		51,500		11,334,300
SCHDOL FUND (CIGARETTE TAX)	2,600,000				2,600,000
SECOND INJURY FUND RESERVE ACCOUNT	3,264,800				3,264,800
DISABLED FISHERMANS RESERVE ACCOUNT	1,226,900				1,226,900
SURPLUS PROPERTY REVOLVING FUND	133,000				133,000
TEACHERS RETIREMENT SYSTEM FUND	7,451,400		333,590		7,784,900
VETERANS REVOLVING LOAN FUND	434,000				434,000
COMMERCIAL FISHING LOAN FUND	1,149,200				1,149,200
U/A STUDENT TUITION/FEES/SERVICES	23,680,600				23,680,600
U/A INDIRECT COST RECOVERY	10,217,700				10,217,700
SURETY FUND	145,400				145,400
JUDICIAL RETIREMENT SYSTEM	94,000				94,000
PUBLIC LAW 81-874	20,695,500				20,695,500
NATIONAL GUARD RETIREMENT SYSTEM	43,600				43,600
TITLE XX	6,101,000				6,101,000
UNIVERSITY RESTRICTED RECEIPTS	32,465,600				32,465,600
TRAINING AND BUILDING FUND	744,100				744,100
PERMANENT FUND DIVIDEND FUND	17,500,900		39,300		17,540,200
OIL/HAZARDOUS RESPONSE FUND(A546.08.010)	4,889,800		4,426,000		9,315,800
SMALL BUSINESS LOAN FUND	52,100				52,100
TOURISM REVOLVING LOAN FUND	40,200				40,200
CORRECTIONAL INDUSTRIES FUND	2,253,600				2,253,600
CAPITAL IMPROVEMENT PROJECT RECEIPTS	7,942,000				7,942,000
POWER PROJECT LOAN FUND	76,000				76,000
NATIONAL PETROLEUM RESERVE FUND	937,000				937,000
HOUSING ASSISTANCE LOAN FUND	2,987,700				2,987,700
RURAL ELECTRIFICATION LOAN FUND	9,500				9,500
PUBLIC SCHOOL FUND	7,278,000				7,278,000
MINING REVOLVING LOAN FUND	231,300				231,300
CHILD CARE REVOLVING LOAN FUND	54,500				54,500
HISTORICAL DISTRICT REVOLVING LOAN FUND	9,300				9,300
FISHERIES ENHANCEMENT REVOLVING LOAN FND	288,800				288,800
ALTERNATIVE ENERGY REVOLVING LOAN FUND	357,100				357,100

Chapter 209

PAGE 9

CCS HB 500

RESIDENTIAL ENERGY CONSERVATION LOAN FND	278,500				278,500
POWER DEVELOPMENT REVOLVING LOAN FUND	654,900				654,900
BULK FUEL REVOLVING LOAN FUND	74,400				74,400
ALASKA CLEAN WATER LOAN FUND	88,400				88,400
MULTIPLE FUND SOURCES			117,000		117,000
**** TOTALS ****	\$3,035,368,000		\$26,618,600		\$3,061,986,600

FISCAL YEAR 1992 BUDGET SUMMARY BY FUNDING SOURCE

FUNDING SOURCE	OPERATING BUDGET	LOANS BUDGET	NEW LEGISLATION BUDGET	CAPITAL BUDGET	TOTAL BUDGET
FEDERAL RECEIPTS	432,728,400		6,503,500		439,231,900
GENERAL FUND MATCH	157,869,400		115,500		157,984,900
GENERAL FUND	1,332,741,000		7,111,300		1,339,852,300
GENERAL FUND/PROGRAM RECEIPTS	56,798,300		2,406,500		59,204,800
GENERAL FUND/MENTAL HEALTH TRUST	122,376,800		1,319,900		123,696,700
INTER-AGENCY RECEIPTS	123,355,100		2,080,200		125,435,300
U/A INTEREST INCOME	2,449,500		261,200		2,710,700
DONATED COMMODITY/HANDLING FEE ACCOUNT	582,700				582,700
U/A DORMITORY/FOOD/AUXILIARY SERVICE	18,193,200				18,193,200
FEDERAL INCENTIVE PAYMENTS	981,900				981,900
AGRICULTURAL LOAN FUND	515,700				515,700
STATE CORPORATION RECEIPTS	37,376,500		42,000		37,418,500
FISH AND GAME FUND	10,004,900				10,004,900
SCIENCE & TECHNOLOGY ENDOWMENT INCOME	4,276,200				4,276,200
HIGHWAY WORKING CAPITAL FUND	21,573,300				21,573,300
INTERNATIONAL AIRPORT REVENUE FUND	35,938,900				35,938,900
PUBLIC EMPLOYEES RETIREMENT FUND	14,637,400		89,300		14,726,700
SECOND INJURY FUND RESERVE ACCOUNT	2,253,100				2,253,100
DISABLED FISHERMANS RESERVE ACCOUNT	1,247,500				1,247,500
SURPLUS PROPERTY REVOLVING FUND	164,800				164,800
TEACHERS RETIREMENT SYSTEM FUND	9,273,100		64,500		9,337,600
VETERANS REVOLVING LOAN FUND	428,700				428,700
COMMERCIAL FISHING LOAN FUND	1,179,500				1,179,500
U/A STUDENT TUITION/FEES/SERVICES	35,108,400				35,108,400
U/A INDIRECT COST RECOVERY	10,302,900				10,302,900
REAL ESTATE SURETY FUND	148,900				148,900
JUDICIAL RETIREMENT SYSTEM	117,500		500		118,000
PUBLIC LAW 81-874	73,100				73,100
NATIONAL GUARD RETIREMENT SYSTEM	46,600		100		46,700
TITLE XX	6,101,000				6,101,000
UNIVERSITY RESTRICTED RECEIPTS	39,091,100				39,091,100
TRAINING AND BUILDING FUND	986,500				986,500
PERMANENT FUND DIVIDEND FUND	20,885,900				20,885,900
OIL/HAZARDOUS RESPONSE FUND			532,000		532,000
SMALL BUSINESS LOAN FUND	39,200				39,200
TOURISM REVOLVING LOAN FUND	42,300				42,300
CORRECTIONAL INDUSTRIES FUND	2,253,600				2,253,600
CAPITAL IMPROVEMENT PROJECT RECEIPTS	68,850,100				68,850,100
POWER PROJECT LOAN FUND	26,000				26,000
NATIONAL PETROLEUM RESERVE FUND	600,000				600,000
HOUSING ASSISTANCE LOAN FUND	3,084,400				3,084,400
RURAL ELECTRIFICATION REVOLVING LOAN FUND	3,200				3,200
PUBLIC SCHOOL FUND	292,500				292,500
MINING REVOLVING LOAN FUND	234,700				234,700
CHILD CARE REVOLVING LOAN FUND	57,400				57,400
HISTORICAL DISTRICT REVOLVING LOAN FUND	9,800				9,800
FISHERIES ENHANCEMENT REVOLVING LOAN FUND	304,200				304,200

Chapter 73

PAGE 8

CCS HB75

FISCAL YEAR 1992 BUDGET SUMMARY BY FUNDING SOURCE (CONT.)

FUNDING SOURCE	OPERATING BUDGET	LOANS BUDGET	NEW LEGISLATION BUDGET	CAPITAL BUDGET	TOTAL BUDGET
ALTERNATIVE ENERGY REVOLVING LOAN FUND	363,500				363,500
RESIDENTIAL ENERGY CONSERVATION LOAN FUND	284,800				284,800
POWER DEVELOPMENT REVOLVING LOAN FUND	583,600				583,600
BIO FUEL REVOLVING LOAN FUND	75,600				75,600
ALTERNATIVE CLEAN WATER LOAN FUND	90,500				90,500
TRUCK HIGHWAY SYSTEM FUND	70,575,800				70,575,800
INDUSTRY/FOUNDATION/GOV'T GIFTS/GRANTS/REQUESTS	336,200				336,200
STORAGE TANK ASSISTANCE FUND	6,767,800				6,767,800
INTERNAL SERVICE FUND	22,029,600				22,029,600
MULTIPLE FUND SOURCES			6,700		6,700
**** TOTALS ****	62,676,712,600		620,533,200		62,697,245,800

Report to the Legislature
on
Mental Health Funding for
Fiscal Year 1992

Report 01-76

January 1991

Division of Audit and Management Services

OMB

STATE OF ALASKA

STAFF PAPERS AND REPORTS

OFFICE OF MANAGEMENT AND BUDGET

REPORT ORGANIZATION

The report is organized on the basis of budget components. For each component there are two parts: (1) a budget page that shows funding history and also our conclusions about individual FY 92 MHTIA allocations; and (2) narrative material about the component. The budget page is included to add perspective to FY 92 funding requests. The narrative section gives more detail about the budget components and additionally presents information about MHTIA allocation methodologies that should be used in FY 92 and beyond.

The narrative material for every component consists of a:

- Description of the component
- Description of the component's client population
- Description of the component's programs and services
- Citation of the criteria we used to determine whether it is appropriate to fund this particular component's activities - in whole or in part - from the GF/MHTIA funding source
- Our conclusion about the applicability of the evaluation criteria to client populations and the services provided
- Our conclusion on GF/MHTIA funding for FY 92.

HOW THE REPORT WAS PREPARED

Starting from the statement of legislative intent, we studied agency FY 92 budget submissions. Going beyond cases where MHTIA funding had been requested, we also identified budget components where elements of the state's comprehensive mental health program exist but where no funding had been requested. The scope of the review included both the operating and capital budgets. Capital budget requests were not finalized by the issue date of this report. We will issue a supplemental report when that information becomes available for analysis.

We identified criteria that could be used to make judgments about the eligibility of programs for MHTIA funding. We accumulated programmatic information by studying budget narratives, documentation describing agency programs, and interviews of agency staff. When we had sufficient information about programs we applied the evaluation criteria and drew conclusions about budget component funding.

EVALUATION CRITERIA

An objective basis was needed for making decisions about the programs that should be eligible for MHTIA funding. We researched the history to the mental health trust issue for evaluation criteria that could be applied. Three areas provided the criteria we used: (1) the Greene court decision, (2) the "Policy Report" prepared by the Alaska Mental Health Board, and (3) the components of the state's comprehensive mental health program.

GREENE DECISION GUIDANCE

The 1988 Greene court decision on who should be beneficiaries of the Mental Health Lands Trust provided some guidance on the types of mental disorders to be addressed by programs funded by the trust. The decision included the following comments:

"...it is the conclusion of the court that (U.S.) Congress intended that the mental health lands public trust benefit the recipients of the services of the (state's) comprehensive mental health program, which group must include, at a minimum, the mentally ill who may require hospitalization and the mentally defective and retarded. The court does not exclude from this operative definition either chronic alcoholics suffering from psychoses or senile people who as a result of their senility suffer major mental illness."

"The court concludes that it is within the discretion of the state to include other groups as recipients of services by the mental health program..."

"In the administration of this trust, the state must treat all the beneficiaries impartially."

"The state...must provide for necessary services as 'the necessary expenses' of the (state's) mental health program from the trust before it may allocate any money for a purpose other than the (state's) mental health program."

ALASKA MENTAL HEALTH BOARD POLICY

The Greene decision left hanging the question of what is the state's "comprehensive mental health program." The "Policy Report" prepared by the Alaska Mental Health Board in response to the Greene court decision offers comments on the definition of a comprehensive mental health program. They are as follows:

"...a comprehensive Mental Health Program must include services for the promotion of good mental health and the prevention of occurrence or worsening of mental conditions....Services for education, prevention, early intervention and outpatient care for persons not severely mentally disabled must be a part of a comprehensive mental health program."

"The AMHB (Alaska Mental Health Board) concludes that the class of persons to be provided the benefits of services funded, in part, from the proceeds and income of the mental health trust, is broader than the severely disabled groups listed in Judge Greene's decision....Through the adoption of a comprehensive program including preventative care, all Alaskans are to be included among the beneficiaries to receive trust funded benefit services. Preventative services are within the necessary services to be provided by the program."

"it is important to concentrate effort...upon the impartial delivery of necessary services for all beneficiaries. The state may not discriminate among

beneficiaries simply because some need more trust benefit services and some require less."

"The comprehensive program should provide for services that prevent mental and emotional disorders, promote mental health and rehabilitate those suffering from disorders as well as prosthetic services needed to maintain mentally and emotionally disabled persons as productive members of society."

THE STATE'S MENTAL HEALTH PROGRAM

The efforts of the Alaska Mental Health Board mentioned above in defining a comprehensive program are convincing. The state's comprehensive mental health program should offer the widest possible range of mental health services to the Alaskan population ranging from prevention to treatment to daily support and maintenance. The state's plans of programs and services, comprehensive in nature, for the mentally handicapped are the various multi-year plans directed at Alaskans with actual or potential mental disorders and disabilities. The pertinent plans are:

- "State of Alaska Alcoholism and Drug Abuse Plan, 1990-1992"
- "A Comprehensive Mental Health Plan for the State of Alaska, Fiscal Years 1988-1992"
- "Three Year State Plan, 1987-1989, Services for People with Developmental Disabilities and Other Substantial Handicaps"
- "State Plan for Services to Older Americans, 1989-1991"

These plans were important for our evaluation. To the extent these documents describe mental health services provided by state programs, these documents, when considered together, represent the state's comprehensive mental health program as it currently exists. Our view is that programs or services described in these multi-year plans can legitimately be funded by the Mental Health Trust.

In support of our view that the above plans represent Alaska's comprehensive mental health program, the Alaska Mental Health Board, in the "Policy Report" on the Greene court decision, commented on the state's comprehensive mental health program as follows:

"In order to arrive at a description of the full array of services that must be provided by a comprehensive mental health program, the AMHB recommends....the current comprehensive plan ("A comprehensive Mental Health Plan for the State of Alaska, 1988-1992") as well as relevant portions of other plans such as the plan for alcohol services ("State of Alaska Alcoholism and Drug Abuse Plan, 1990-1992") and services for the developmentally disabled ("Three Year State Plan, 1987-1989, Services for People with Developmental Disabilities and Other Substantial Handicaps") should be examined and integrated."

OTHER MENTAL HEALTH COSTS

During our research we identified two areas that deserve comment but for which we are unable to suggest specific FY 92 funding: (1) special appropriations the legislature will make, and (2) the cost of some administrative support services provided by departments and central agencies to budget components that directly carry out mental health programs. Both of these areas are parts of the state's investment in its comprehensive mental health program.

SPECIAL APPROPRIATIONS

It is likely that during the next legislative session, appropriations in the form of grants to municipalities may also contribute to the state's comprehensive mental health program. Since we have no information on these potential awards we are unable to express a conclusion regarding their potential funding from available mental health resources.

Looking at such past appropriations showed instances of substantial capital investments in the states comprehensive mental health program. A few are cited here to demonstrate the point.

1983: Ketchikan Alcohol Treatment Center	\$400,000
1983: Anchorage Community Mental Health Center	\$750,000
1984: Homer Community Mental Health Building	\$306,500
1985: Bethel Alcohol Treatment Center/Expansion	\$1,349,000
1986: Barrow Alcohol/Drug Treatment	\$2,155,000

Certainly a MHTIA funding source could be considered for FY 1992 and future legislative appropriations.

DEPARTMENTAL AND CENTRAL ADMINISTRATIVE COSTS

The cost of certain administrative costs are often not considered when thinking about total mental health program costs. In general, they are not budgeted from mental health funding resources.

The federal government authorizes a mechanism that allows states to charge federal grants for administrative costs when they support direct federal program delivery. Allowable administrative costs that support programs fall in three categories: (1) *divisional* administrative services for the operating divisions that administer mental health programs, (2) *departmental* administrative services provided to mental health programs by the department that manages the federal program, and (3) *central* administrative services which are provided to the administering department by central service agencies. Some examples of departmental administrative services are budgeting and personnel management. Some examples of central services are budgeting, computer services, state payroll processing, space management, personnel management, archives, audits, and treasury services.

Charging federal grants for administrative services is mentioned here because the concept of charging state administrative services could also apply to all components of the state's comprehensive mental health programs. State mental health programs are benefitted to the

extent that they are supported by administrative services, either at the divisional, departmental, or central levels. The benefit flowing from these administrative costs clearly contributes to accomplishing the state's mental health objectives.

As shown in the body of our report, some divisional administrative costs have been identified as to be funded from MHTIA. The budget for these divisional administrative services is relatively easy to determine. The link between service and recipient is direct.

The link between central, departmental, and other divisional administrative services and state mental health programs is not so direct. Since central, departmental and divisional services are provided to multiple recipients, including many non-mental health programs, the portion of expected MHTIA costs can only be determined by an allocation process. Although a negotiated allocation rate is achieved for federal programs, no similar indirect cost rate exists for state programs. In the absence of such an allocation methodology, the share of administrative costs that could properly be funded from mental health resources cannot be readily determined.

There are substantial indirect costs that the state will incur in FY 1992 to support the various elements of its comprehensive mental health program. For example, even though there is no state indirect costing mechanism in place, we estimate that mental health programs in the Department of Health and Social Services will receive central and departmental administrative services costing approximately \$3 million in FY 1992. This estimate is based on the various assumptions including the assumption that the department's negotiated federal indirect cost rate is a fair measure of administrative support for state programs also.

Our purpose for mentioning administrative costs in this report is that there needs to be an awareness that administrative costs are a significant cost element of the state's comprehensive mental health program.

DRAFT

A SPECIAL REPORT ON THE
STATE OF ALASKA'S MENTAL HEALTH PROGRAM EXPENDITURES
FOR THE INTERIM MENTAL HEALTH TRUST COMMISSION

July 1, 1978 - September 30, 1985

Audit Control Number

06-1276-86-R

The Interim Mental Health Trust Commission

Chairman - Plaintiffs	George Rogers
Member - Governor's Mental Health Advisory Council	Sharron Lobaugh
Member - Intervenor	Dr. Lidia Selkregg
Commissioner, Department of Natural Resources	Esther C. Wunnicke
Commissioner, Department of Health and Social Services	John R. Pugh

STATE OF ALASKA
MENTAL HEALTH LANDS TRUST REVIEW
Explanation of the Summary Schedule and Analysis of
Potential State Mental Health
Expenditures and Program Receipts
July 1, 1978 - September 30, 1985

The Summary Schedule and Analysis of Potential State Mental Health Expenditure and Program Receipts was prepared for the Interim Mental Health Trust Commission. The schedule was designed to assist the Commission in their review and identification of State expenditures. The Commission is required by law to submit recommendations regarding what State expenditures relate to the State's Mental Health Program to the 1987 Legislature.

We have attempted to provide sufficient information to allow the Commission to analyze services provided by various state agencies. In order to provide the Commission with the most extensive range of options, and mindful of the intent of the House Finance Committee (see Purpose of the Report) we have presented expenditures based on differing views and definitions of mental health services.

The schedule identifies aspects of various programs identified in the Alaska State Comprehensive Statewide Mental Health Plan, FY 77 (FY77 PLAN), analyzes programs in terms of Alaska Statute definitions and the professional diagnostic publication Diagnostic and Statistical Manual of Mental Disorders, Third Edition (DSM-III), and analyzes programs in terms of the working definition of mental health programs provided by the Commissioner of Health and Social Services (see Appendix A).

For the purposes of developing a "menu of costs" for the Commission's review, professionals from the Division of Mental Health and Developmental Disabilities (MHDD) assisted us in interpreting and applying DSM-III and Alaska statutory definitions of mental illness. Although cost estimates that were developed using this technical assistance are labeled "Allocation Per Mental Health Analysis," it is not meant to imply that MHDD necessarily endorses or accepts the analyzed agency's services as being mental health related.

The following is a discussion of the information presented in each column of the Summary Schedule and Analysis of Potential Mental Health Expenditures:

Column One - Program Title and 1977 Mental Health Plan Aspects

Column One presents state programs identified as potentially being part of the State's Mental Health Program. The column also contains our analysis of how the identified State programs relate to the FY77 PLAN which has been adopted by the Commission as a basis for the State's Mental Health Program.

Column Two - Program Receipts

Column Two presents revenues collected by the various State agencies identified in Column One. Program revenues are primarily Federal receipts. Amounts presented represent revenues collected from July 1, 1978 to September 30, 1985, as recorded in the State's accounting records or audited information reported by school districts. Revenues are presented at the request of the Commission in order that net State General Fund expenditures could better be estimated.

Column Three - Program Expenditures

Column Three presents the total expenditures from July 1, 1978 to September 30, 1985, as recorded in the State's accounting records for programs presented in Column One. Expenditures presented for MHDD and the State Office on Alcoholism and Drug Abuse have been audited. Other expenditure totals are presented as recorded in the State's accounting records as unaudited. However, these departments and programs have been audited for most, though not every, fiscal year for the period presented.

Column Four - Allocation Per Mental Health Analysis

Column Four presents an allocation of mental health-related program costs. The Commission requested that expenditures be allocated based on how various programs served individuals that could be classified as mentally ill either under DSM-III diagnoses and/or Alaska Statutes. (For further discussion of the statutory definition of mental illness, see the Mental Health Lands Suit - History and Issues section of this report.)

Based upon the analysis provided by an MHDD mental health professional, we allocated program expenditures in order to quantify mental health service aspects of the programs presented. Procedures used at arriving at estimates are discussed in Column Seven.

A major issue that was identified when applying both the DSM-III and the statutory criteria for mental illness was the unclear status of substance abusers and the developmentally disabled. Both of these populations of individuals are specifically excluded from the statutory definition of mental illness, but both are included under the diagnostic criteria of DSM-III. According to the MHDD analyst, how the Commission classifies services provided to these groups is a major underlying policy decision that will affect which of the programs will be identified as mental health related.

Column Five - Allocation Per Program Management Analysis

Column Five presents an allocation of mental health-related program costs. Based upon the analysis provided by program managers, expenditures were allocated, in order to quantify, in dollars, mental health service aspects of the programs presented. Procedures used at arriving at estimates are discussed in Column Seven.

Essentially, the analysis was based on how managers interpreted the "working" definition of mental health programs developed by the Commissioner of Health and Social Services, and/or the manager's own perceptions. As stated in the introduction, this different view was used in developing cost estimates in order to provide a more extensive "menu of costs" for consideration of the Commission.

All program services provided to individuals who could be classified as mentally ill, were included in the estimates and allocation of costs, even though the services were not treatment oriented in nature. We felt this was consistent with how services at Alaska Psychiatric Institute would be viewed. That is, costs associated with personnel, meals, administration, laundry, etc., would be considered mental health related as well as the more direct psychiatric treatment and nursing costs.

Column Six - Program Description and Analyses of Mental Health Professionals and Program Managers.

Column Six presents program descriptions that were developed from discussions with management and review of State budget documents. As discussed previously, the MHDD professional essentially analyzed the program descriptions and services provided using criteria set out in DSM-III and statutes.

Due to time constraints, we used the representations, estimates, and evaluations of program managers when applying the mental health analytical criteria. In order to apply the MHDD criteria more accurately would require a case-by-case review of various agency's client files.

As discussed in the Mental Health Lands Suit - History and Issues section of this report, there is not a clear definition of mental illness nor mental health. There is disagreement even among mental health professionals. The differences in the analyses of management and MHDD, where it occurs, reflects the uncertainty and debate involving mental health services. These differences also frequently came about because program management used the broader "working" definition of mental health services developed by the DHSS Commissioner, rather than the more restrictive DSM-III and/or statutory criteria applied by MHDD as requested by the Commission.

In addition, program managers also were more likely to consider programs that dealt with antisocial behavior as being mental health related. MHDD points out that DSM-III classifies much of antisocial behavior as "V" codes, and as such does not consider them a diagnosable mental disorder.

Column Seven - Nature and Extent of Audit Review, Allocation Procedures, and Other Comments.

The Commission requested that Legislative Audit document in the report our allocation and audit procedures applied in developing the mental health expenditures. This Column provides a narrative of the rationale, information, assumptions, and procedures used in the expenditure allocations presented in Columns Four and Five.



KENAI PENINSULA BOROUGH

144 N. BINKLEY • SOLDOTNA, ALASKA • 99669-7599
BUSINESS (907) 262-4441 FAX (907)262-1892

DON GILMAN
MAYOR

MEMORANDUM

TO: Representative Ron Larson, Chairman
House Finance Committee

Don Gilman
FROM: Don Gilman, Mayor, Kenai Peninsula Borough

DATE: April 18, 1994

SUBJ: House Bill 201

We submit the following comments for your committee's consideration on House Bill 201, and ask that they be included as part of the record. The Kenai Peninsula Borough has concerns regarding impact to the mental health lands settlement on municipal selections. Issuance of patent has long been delayed for a number of reasons, and many selections are not yet approved. Under the settlement we are advised that many selected but unapproved lands or unpatented lands may be considered for reconstitution of the trust. In some cases we have been asked to consent to lands being used to reconstitute the trust with the result that municipal land selection entitlements are given up. The boroughs want to assist

04 18 1994 12:50 PM FROM REP. WALTER J. GRIFFIN
100001-00225 1.00

House Bill 201
April 18, 1994
Page 2

in the resolution of this complex and long-standing problem for the state, but need some provision to allow reselection for any land selections given up by a municipality in order to allow the trust to be reconstituted.

Please distribute to committee members

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

(907) 588-3537

DAVID T. WALKER
GERALD K. DAVIS, JR.

TELECOPIER:
(907) 588-1350

April 16, 1994

HAND DELIVERED

Representative Eileen MacLean
Co-Chair, House Finance Committee
State Capitol Building, Room 507
Juneau, Alaska 99811

Re: House Bill 201/Settlement of the
Mental Health Trust Land Litigation

Dear Representative MacLean:

House Bill 201 has been identified as the vehicle for legislation resolving the Mental Health Trust Lands Litigation, Weiss v. State, 4FA-82-2208 Civil. The language of the bill has been provided in its entirety by the administration. In presentations to the legislature Attorney General Botelho and Commissioner Noah have discussed the renewed settlement negotiations and the administration's legislative proposal in very positive terms.

As you know, I represent Vern T. Weiss, et al., original Plaintiff and class representative in this class action litigation. I would like to confirm that the parties are actively negotiating for a settlement. We are hopeful that our negotiations will come to fruition and we are all cognizant of the fact that any settlement will require legislation as well as court approval.

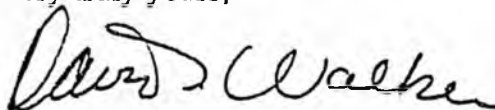
I share your concern that the legislature is running out of time to debate and consider any settlement legislation. I know that it will not be helpful for the legislature to learn at the last minute that a measure under active consideration is unacceptable. It is for that reason that I write this letter.

The administration's proposal presented in Chenoweth's work draft CS for House Bill 201 (_____), March 18, 1994, is not a settlement. It purports to buy out the Trust by funding the Mental Health program. It unfairly characterizes the beneficiaries and is in fact unacceptable to all the parties who represent beneficiaries. It is unrealistic to think that the measure would be accepted by the Plaintiffs or approved by the court. Any negotiated settlement will be very different from the proposition outlined in HB 201.

Representative Eileen MacLean
April 16, 1994
Page 2

I do not wish to cast a pall upon the settlement efforts. I am cautiously optimistic that we will be able to negotiate a settlement and present it to the legislature for consideration this session, but we have a long way to go and little time to do it in. I ask that you share my optimism for settlement while recognizing that the work draft CS HB 201 presently under consideration by the Committee fails utterly to achieve our goal.

Very truly yours,

A handwritten signature in cursive script that reads "David T. Walker". The signature is written in dark ink and is positioned above the printed name.

David T. Walker

DTW:ndp

cc: Committee Members



ALASKA MINERS ASSOCIATION, INC.

501 West Northern Lights Boulevard, Suite 203, Anchorage, Alaska 99503 fax: (907) 278-7927 telephone: (907) 276-0347

April 14, 1994

Honorable Ron Larson
Honorable Eileen MacLean
Co-Chairmen
House Finance Committee
State Capitol
Juneau, AK 99801

RE: CSHB-201, Mental Health Trust Lands

Dear Representatives Larson and MacLean,

The Alaska Miners Association wishes to go on record in support of CSHB-201 regarding Mental Health Trust lands. It is time that this issue be settled and we urge that this bill be passed this session.

One essential point included in this bill is that management of the Mental Health Trust lands will be by the Department of Natural Resources. This applies to both the original Trust lands and the substitute lands. We understand this to mean that Title 38.04 and 38.05 will apply to these lands and that the permitting requirements, access provisions, easement provisions, claim rentals, production royalties, etc. required for state lands will apply to the original and substitute lands. This is extremely important for long term stability for all users of the lands and especially the mining industry.

If we had the choice we would change several items in the bill to clarify the above points. However, we recognize that this bill must be passed this session and we therefore ask that the bill be passed as it now reads.

Thank you for your consideration and for all the work that has gone into settling this important issue. If you have any questions please contact me.

Sincerely,

Steven C. Borell, P.E.
Executive Director

cc: Commissioner Noah



217 Second Street, Suite 200 ■ Juneau, Alaska 99801 ■ Tel (907) 586-1325, Fax (907) 463-5480

April 21, 1994

Representative Ron Larson
Co-Chair, House Finance Committee
Alaska State Legislature
Juneau, Alaska 99811

Dear Representatives Larson:

As you know, the Alaska Municipal League, on behalf of Alaska's municipalities, has long been supportive of an expeditious and equitable settlement to the Mental Health Lands Trust dispute. In November 1993, AML members adopted the enclosed resolution (#94-7), urging all parties in the dispute to make every effort to work out their disagreements.

The League's Board of Directors, meeting today in Juneau, adopted a position in support of the concepts incorporated in the proposed draft CS for HB 201 that has been proposed by the Administration and has been discussed in your committee by the Attorney General and the Commissioner of the Department of Natural Resources. It is the Board's opinion that at the present time this proposed solution offers the best opportunity now in front of us to reach settlement. Thus, the Alaska Municipal League Board of Directors supports the concepts of HB 201. We ask that the League be kept informed about the specific details of the bill and amendments made to the work draft so that municipal attorneys can review them with the goal of protecting Alaska's municipal interests. Obviously each municipality will also have concerns about the specific pieces of land to be included within the lands selected to to compensate the Trust.

Municipalities want to see the trust dispute settled to allow them complete access to use and develop their municipal land entitlements. They remain concerned, however, that municipal rights to lands be recognized and that provisions be made for reselection by municipalities for lands already selected that may not yet have been approved and may be reclaimed by the state to help compensate the Trust for lands that have already been sold.

Thanks for your attention to this matter. I want to assure you that municipalities strongly support any effort that will lead to a speedy conclusion to this long-standing dispute.

Sincerely,



John Torgerson
President

cc: Governor Walter J. Hickel
Attorney General Bruce Botelho
Commissioner Harry Noah, Department of Natural Resources

Resolution of the Alaska Municipal League

Resolution No. 94-7

**A RESOLUTION URGING ALL PARTIES TO THE
MENTAL HEALTH LAND TRUST DISPUTE
TO COME TO AN AGREEMENT**

WHEREAS, in 1956 Congress granted the Territory of Alaska one million acres of land to be managed as an income-producing public trust to fund a mental health program in Alaska; and

WHEREAS, in 1978, the Alaska State Legislature passed legislation redesignating the mental health lands as general state lands subject to disposal and, subject to appropriation, setting aside state revenues from oil in lieu of the potential income from the land to meet the intent of Congress; and

WHEREAS, over 200,000 acres of the original trust was sold or otherwise disposed of; and

WHEREAS, according to Superior Court Judge Meg Greene, over 83,000 acres, in 888 conveyances, were conveyed to municipalities; and

WHEREAS, in 1985 (*State v. Weiss*) the Alaska Supreme Court held that the State of Alaska had breached its legal obligations as trustee of the Mental Health Trust established by Congress and ordered that the trust be restored, as nearly as possible, to its original holdings; and

WHEREAS, various pieces of legislation have been passed to try to solve the problem, including Chapter 66, SLA 1991, but each of these has resulted in more litigation brought by the mental health community; and

WHEREAS, the ongoing litigation has prevented those that hold former mental health trust lands, including municipalities, from developing the lands, reconveying them, or otherwise making use of them; and

WHEREAS, under the provisions of Chapter 66, SLA 1991, which is still being challenged in court, the Mental Health Trust would be reconstituted, but lands already conveyed, including those to municipalities, would be released; and

WHEREAS, under the provisions of Chapter 66, the legislation and arrangements made under it must be presented to the court for approval; and

WHEREAS, some of the plaintiffs in the *Weiss* suit, who represent the beneficiaries of mental health programs in Alaska, continue to challenge the solution presented in Chapter 66, but others have agreed to its provisions; and

WHEREAS, each week of delay in coming to an agreement on the issue prolongs the time when municipalities can make use of the lands they received from the state with the express purpose of providing income and resources for economic and community development:

NOW, THEREFORE, BE IT RESOLVED that the Alaska Municipal League urges the parties in the Mental Health Trust dispute to make every effort to work out their disagreements so that those who hold lands tied up in the dispute, specifically municipalities, can obtain clear title to their lands and proceed with development activities.


BE IT FURTHER RESOLVED that the Alaska Municipal League will make every effort to work with the parties to the dispute to expedite an agreement.

Adopted this 12th day of November 1993 in Soldotna, Alaska.



Rosalee T. Walker, President

ATTEST:



Kent E. Swisher, Executive Director

VALUE OF MENTAL HEALTH TRUST LAND
NOT RETURNED TO TRUST STATUS
AND REPLACEMENT TRUST LAND

The Department of Natural Resources ("DNR") and plaintiffs pursuant to the chapter 66 settlement process have valued both original mental health trust land that would not be returned to the trust and proposed substitute land that would go to the trust in exchange. Both the plaintiffs and DNR value the surface land and mineral estate of state land that will be designated as mental health trust land to replace land not returned to the trust at more than \$200 million. The parties, however, substantially disagree about the value of original trust land not returned to the trust. DNR values this land at no more than \$660 million, of which \$473 million is surface value, \$177 million is mineral estate value,¹ and \$10 million is the plaintiffs' value of oil and gas interests. The plaintiffs value these lands at roughly twice DNR's value, between \$900 million and \$1.4 billion. Most of the difference is in the value of the mineral estate.

Both DNR and plaintiffs' values overstate the fair market value (i.e., what a willing buyer would pay a willing seller) of original trust land that would not be returned to the trust.²

¹ The plaintiffs, who were initially responsible for valuing the mineral estate of trust land under the chapter 66 settlement process, provided DNR with their valuation data on April 5, 1994. DNR's values reflect adjustments it believes necessary based upon its initial review of plaintiffs' valuation data. DNR anticipates that additional analysis will further reduce the value it attributes to the mineral estate.

² The goal of that chapter 66 valuation process was to obtain
(continued...)

Under the chapter 66 valuation process, DNR and plaintiffs agreed to use the surface land values determined by the Interim Mental Health Trust Commission pursuant to chapter 48, SLA 1987. These surface land values reflect fair market value of individual parcels, but not of the aggregate as they ignore the market absorption factor (i.e. the market cannot absorb all of these parcels). These surface land value estimates could only be realized if mental health land were gradually developed and offered for disposal over many decades so that land prices would not be depressed by a flooded market. The demand for land in Alaska is not sufficient to absorb any significant portion of the one million acre land grant. To calculate the present fair market value of the original trust land that will not be returned to the trust, the parties' values would have to be reduced to reflect the considerable delay the trust would encounter attempting to develop or dispose of this land if it were returned to trust status.

DNR and plaintiffs' values also overstate the fair market value because they fail to consider the probable difficulty the trust would have developing a significant portion of the original trust lands that will not be returned to trust status. The trial court in Weiss v. State found that the trust would probably have difficulty developing the approximately 350,000 acres located

²(...continued)

comparable value estimates so that equal value exchanges of original trust and proposed substitute lands could be made. While the value the parties calculated might not reflect a true "fair market value," fair exchanges could be made as long as the values attributed to parcels were calculated using identical methods.

within legislatively designated areas, to which plaintiffs attribute a value in excess of \$650 million (surface land and mineral estate):

In addition, if the State was unsuccessful in including legislatively designated lands within the "sold" category, a trial potentially could result in a reconstituted trust composed partly of original trust lands within parks, refuges, and other legislatively designated areas. (n.95) The trust resulting from trial could contain a large number of these environmentally sensitive lands, such as the original trust lands within the Chilkat Bald Eagle Preserve, which would be difficult and expensive to develop commercially due to public opposition and the risk of related litigation. The proposed settlement [i.e. chapter 66] minimizes such an obvious disadvantage for the trust by substituting less sensitive state land for approximately 250,000 acres of the original trust land within legislatively designated areas. (Citation omitted, emphasis added).

n.95 Over 300,000 acres of original trust land are located within legislatively designated areas. (Citation omitted).

Memorandum Decision and Order Re: Preliminary Approval of Proposed Settlement Agreement (December 30, 1993) at 116-117. The values should be reduced to reflect the "obvious disadvantage for the trust" if original trust land within legislatively designated areas were returned to trust status.

In contrast to the general agreement on surface land values to be used for chapter 66 exchanges,³ significant disputes

³ One disputed surface land issue relates to encumbrances on original trust parcels to be returned to the trust (e.g. rights of way). Plaintiffs estimate that such encumbrances diminish the value of those parcels by \$10 - \$15 million. DNR believes that in aggregate, the encumbrances may or may not diminish value because many encumbrances increase value (e.g. by providing access or
(continued...))

continue regarding the values for the mineral estate of original trust lands. Plaintiffs were initially responsible for developing models to estimate mineral values, subject to DNR's review. Plaintiffs developed a series of geologic models to value the mineral endowment. The goal of these models was to estimate the amount and quality of minerals and coal located on parcels, and then estimate the present value of income likely to be generated from that resource endowment.

DNR developed its mineral values by making adjustments to plaintiffs' assumptions so that the valuation models would come closer to reflecting reality. DNR evaluated six economic parameters for each geologic model: 1) deposit size, 2) mine life, 3) annual production rate, 4) commodity prices, 5) calculation of net smelter return, and 6) calculation of net present value. DNR undertook only a cursory review of which geologic models were selected for each parcel and the probability of the deposit occurring on the parcel. A more careful examination of these topics would probably result in an overall further reduction in parcel values.⁴

³(...continued)

utilities to the parcel). DNR has not reduced values because of encumbrances.

⁴ For example, plaintiffs used multiple models for most parcels -- i.e. assumed that multiple mineral deposits would be produced. This assumption is probably not realistic for at least a portion of the parcels. Moreover, plaintiffs made assumptions on the likelihood of deposits occurring on any specific parcel without explaining any technical justification for their conclusions. This conclusion has a tremendous impact on the value attributed to the
(continued...)

Based upon DNR's review of plaintiffs' valuation to date, DNR estimates the mineral endowment excluding oil and gas to be worth at most \$173 million. The adjustments DNR made to plaintiffs valuation include:

1) Deposit size reduced: The plaintiffs' presumed deposit tonnages for bedded barite, Creede type gold, climax type molybdenum, tin greisen and uranium sandstone deposits were unrealistically large. Moreover, mines could not be developed at the presumed tonnages because the production could not be absorbed by the world commodity market (e.g., Red Dog mine is operating at a loss because zinc prices are depressed as the world commodity market can not absorb the current level of zinc production).

2) Mine life extended: The plaintiffs used a mine life of 10 or 20 years for all types of deposits, resulting in very high production rates for certain ore deposits. DNR extended the mine lives for exhalative lead-zinc deposits, bedded barite deposits, and molybdenum deposits, to 60 years, 50 years, and 50 years respectively to reflect realistic production rates, and to reduce the amount of the commodity entering the world market so that the presumed production would not depress prices.

3) Annual production rates: When the deposit size and mine life are adjusted, the annual production rate is correspondingly adjusted. When the production rate is reduced, the present value of the deposit is correspondingly reduced.

⁴(...continued)
mineral endowment. Further scrutiny of plaintiffs' conclusions is warranted.

4) Commodity prices: Plaintiffs' 1988 commodity prices were adjusted to current prices. Copper, zinc, lead and molybdenum have increased. Gold, silver, tin and uranium all decreased in price. Commodity prices have not kept up with inflation which has a negative impact on long-term profitability of any mining venture.

5) Calculation of net smelter return ("NSR"): Plaintiffs' valuation incorrectly assumed that royalties paid would equal four percent (4%) of gross metal values of ore reserves if 4% NSR rate is used. Under industry standards, however, the NSR is applied to the actual metal quantities recovered at the smelter. The per ton metal value recovered at the smelter can be significantly less than the per ton gross metal value of ore depending on the commodity (e.g. only 28% of gross metal value for certain ore types). Mining and milling recoveries and mine dilution all reduce the ore reserve values to the actual metal quantities recovered at the mill and ultimately at the smelter. Moreover, the standard industry contract for the purchase by smelters of ore concentrates from mine operators typically have terms that greatly favor the smelter, especially during periods of excess supply. There are percentage deductions based on the concentrate tonnage and then additional deductions from the total metal produced. There are penalties for deleterious elements and for low concentrate grades. Smelting charges are applied to the concentrate tonnage and are adjusted upward if metal prices increase. Significant deductions are made in precious metal payments when they are sold in base metal concentrates.

Transportation from the mill to the smelter is a deduction in most NSR royalty agreements and has been included in generic smelter schedules. When all recoveries and charges are applied, the result can be dramatic. For example, the Norilsk model (an ore deposit model based upon a Russian mine that contains platinum group minerals in addition to nickel and copper) calculates payment for the nickel concentrate at about 28% of the gross metal value contained in the ore reserve. In contrast, placer gold is not significantly affected by typical NSR deductions as this commodity is normally sold directly to a refiner or is provided to the royalty holder "in-kind." In calculating the NSR, operating and financial costs such as mining, milling and capital are not normally deducted. DNR made adjustments to how NSR would be calculated for different ore types to reflect industry standards.

6) Calculation of net present value: DNR used the same mathematical formula plaintiffs' used to calculate net present value of the annual revenue stream. The adjustments DNR made to plaintiffs' valuation, and in particular to the calculation of the net smelter return, (see 5 above) had a dramatic impact on the calculated present value. The modified values calculated by DNR provide much more realistic amounts compared to plaintiffs' valuation, but DNR's values still overstate probable values. It is likely that net present value will be reduced even further as more detailed analysis is performed on the geologic models, probabilities of discovery and smelter contracts.

DNR's valuation provides a much more realistic and

reasonable value than Plaintiffs' for the mineral endowment on original trust land that will not be returned to the trust. Plaintiffs' selected model types assume that the trust lands contain the worlds' largest deposits (top ten percentile) with the worlds' highest grades (top ten percentile). While it is overly optimistic to presume that undiscovered deposits on trust lands have either the worlds largest deposits or the worlds highest grades, it is extremely unrealistic to presume both as the worlds largest deposits tend to have lower grades, and vice-versa. By assuming trust lands have both, plaintiffs presume that trust lands are uniquely in the very highest percentile of mine size and grade of deposit. The cumulative effect of assuming both the largest deposits and highest grades results in an unrealistic and very substantial overstatement of value of the mineral endowment by plaintiffs.

DNR's valuation understates the value of original trust land to be returned to trust status subject to state mining claims. Because DNR did not have adequate time to evaluate the impact of state royalty rates, DNR's mineral valuation assumes that the acreage subject to state mining claims has lost 100% of its mineral value, even though the land will be returned to trust status subject to the mining claim. Plaintiffs' valuation of land to be returned to trust status assumes that the existence of a state mining claim reduces the value of the mineral estate returned to the trust by 75% because a 3% net profit income ("NPI") rate would apply rather than plaintiffs' 4% NSR rate.

Although DNR's valuation assumes a 100% loss of mineral value for acreage subject to a mining claim and plaintiffs assume a 75% reduction, plaintiffs methodology, in the aggregate, results in a greater undervaluation of land to be returned to trust status than DNR's. This is because DNR attributes the lost value to only that acreage actually subject to a mining claim whereas plaintiffs apparently applied the 75% reduction to entire parcels, even if only a portion is subject to a mining claim. A mining claim can affect at most 40 acres of land. It appears that plaintiffs calculated the impact of state mining claims as if mining claims covered larger parcels (usually an entire 640 +/- acre section). DNR evaluated the actual amount of the larger parcel that was subject to a state mining claim, attributed a pro-rata portion of the value of the larger parcel to the area subject to the state mining claim, and thereby substantially reduced the total "lost" mineral value of original trust land to be returned to trust status subject to state mining claims.

DNR excluded mineral values for small parcels with low mineral values because it is unrealistic to presume that they would ever be developed. Most of the smaller parcels of original trust lands not returned to the trust are those which were conveyed to mom and pop purchasers or municipalities, were never classified as mineral land, typically are in developed areas, and often times the parcels are isolated from other trust land parcels, all of which make it very unlikely that a successful mining operation could ever be developed. Moreover, the surface land value of these parcels

exceeds the assumed mineral value -- actual recovery of the assumed mineral value would usually require the trust to sacrifice the higher surface land value (a course that defies prudent economics). For these reasons, a small parcel with low mineral endowment, for all practical purposes, has no mineral value. DNR has not attributed a mineral value to such smaller parcels. Plaintiffs, in contrast, attribute a mineral value to every smaller original trust land parcel, but do not attribute mineral values to any smaller replacement land parcels, even though under the chapter 66 process they agreed to develop comparable values for both types of mineral lands.

The Department of Natural Resources' evaluation that original trust land that will not be returned to trust status is worth no more than \$660 million is a much more realistic value than that prepared by plaintiffs, and yet is fair and generous to the mental health trust because it also overstates the true fair market value of this land.

CONCLUSION

The proposed settlement encompassed in CSSB 67 (2d Fin) offers a fair resolution of the mental health trust dispute. The plaintiffs and state both value the state land that will be designated as mental health trust land to replace land not returned to the trust at more than \$200 million. DNR, using an evaluation that is fair and generous to the mental health trust, values the mental health trust land that will not be returned to the trust at no more than \$660. Plaintiffs value this same land at between \$900

million and \$1.4 billion.

The state's maximum monetary liability to the trust for land not returned to trust status can not exceed \$1.2 billion (\$1.4 billion, the plaintiffs highest value for the land not returned, minus the \$200 million, the minimum at which both plaintiffs and the state value the replacement land), which is \$100 million less than the \$1.3 billion set-off for past mental health expenditures authorized by the Alaska Supreme Court. Even if some or all of the \$1.3 billion set-off is not taken into account, the state's monetary liability will be satisfied by virtue of the \$100 million per year allocation of funds to the trust to be expended on mental health programs as required by the Enabling Act. By any measure, the trust is being more than fairly compensated for the land not returned to trust status.

WALTER J. HICKEL, GOVERNOR

DEPARTMENT OF LAW
OFFICE OF THE ATTORNEY GENERAL

P.O. BOX 110300 - DIMOND COURT HOUSE
JUNEAU, ALASKA 99611-0300
PHONE: (907) 465-3600
FAX: (907) 465-2075

April 29, 1994

The Honorable Kay Brown,
Alaska House of Representatives
Eighteenth Alaska Legislature -- Second Session
Room 517, State Capitol
Juneau, AK 99801-1182

Dear Representative Brown:

You asked for a section-by-section analysis of the 4/27/94 "V" work draft for CSHB 201 (FIN), and an identification of which sections take effect immediately, which take effect only if the case is dismissed by December 15, 1994, and which that take effect immediately are repealed if the case is dismissed by December 15, 1994.

Section 1 contains legislative findings and purposes that strengthen the state's legal position. It takes effect immediately and does not get repealed even if the case is dismissed by December 15, 1994.

Sections 2 and 37 extend the time for municipal selections for two years for those municipalities that have agreed to convey land to the state for designation as trust land (Anchorage, Mat-Su Borough, and Ketchikan Gateway Borough). They take effect immediately and do not get repealed even if the case is dismissed by December 15, 1994.

Section 3 is an "incentive" that amends chapter 66 provisions amending the permanent fund statutes to provided for the Alaska Permanent Fund Corporation to manage the monetary corpus of the trust. It takes effect only if the case is dismissed by December 15, 1994.

Sections 4, 5, and 6 are "incentives" that amend chapter 66 provisions regarding the governor's responsibilities as to considering the recommendations of the trust authority as to state general funds to pay for the state's mental health program. They take effect only if the case is dismissed by December 15, 1994.

Section 7 is an "incentive" that amends chapter 66 provisions regarding the legislature's responsibilities as to considering the recommendations of the trust authority as to state general funds to pay for the state's mental health program. They take effect only if the case is dismissed by December 15, 1994.

Sections 8 and 9 are "incentives" that amend chapter 66 provisions relating to the trust authority's powers, duties, and responsibilities to provide that (1) it is the trustee of the mental health trust, (2) it has a fiduciary obligation to ensure that the assets are managed consistent with the state's obligations under the federal Enabling Act, (3) it must contract with the Alaska Permanent Fund Corporation for management of the monetary corpus of the trust and with the Department of Natural Resources for management of mental health trust land, and (4) the contract with DNR must include certain provisions to protect the interests of the beneficiaries. They take effect only if the case is dismissed by December 15, 1994.

Sections 10 and 11 establish a new mental health trust income and proceeds account and provide for its utilization. The idea is that money will go into the account from both sales and leases of mental health land and, as required by the federal Enabling Act, first be spent for mental health programs (in a manner identical to the current treatment of the six percent allocation under chapter 66). They take effect immediately, but get repealed and effectively replaced by the mental health trust fund and the mental health trust income account (see next paragraph) if the case is dismissed by December 15, 1994, and the "incentive" provisions take effect.

Sections 12, 13, 14, 15, and 16 are "incentives" that amend provisions of chapter 66 that establish the mental health trust fund and the mental health trust income account. The trust fund is the cash principal of the trust, consisting of the \$200 million up-front appropriation and monetary land proceeds that, under Title 13 trust statutes, are considered part of the corpus of the trust (e.g., land sale proceeds; a portion of coal receipts; etc.) to be preserved in perpetuity. The income account consists of earnings on the trust fund and monetary land proceeds not considered part of the corpus that will be used annually by the trust authority to fund part of the state's mental health program. They take effect only if the case is dismissed by December 15, 1994.

Section 17 provides for Department of Natural Resources management of mental health trust land. It takes effect immediately and does not get repealed even if the case is dismissed by December 15, 1994.

Sections 18 and 19 provide that the Department of Natural Resources must establish a separate unit to manage mental health trust land, the employees of which will be in the partially-exempt service. They take effect immediately and do not get repealed even if the case is dismissed by December 15, 1994.

Sections 20, 21, 22, 23, 24, 25, 26, and 27 are "incentives" that amend provisions of chapter 66 relating to the trust authority's and other agencies' powers and duties with respect to the use of money from the income account. They take effect only if the case is dismissed by December 15, 1994.

Section 28 is not truly an "incentive," but is necessary to amend a provision of chapter 66 that otherwise would redirect to the trust funds that should reimburse the general fund for general funds spent on the state's mental health program under this new approach. Because it is only needed if chapter 66 goes into effect, it takes effect only if the case is dismissed by December 15, 1994.

Section 29 amends the effective date provision of chapter 66 to provide that it only takes effect upon dismissal of the lawsuit with no appeal having been taken by December 15, 1994. It takes effect immediately.

Section 30 provides that, if chapter 66 takes effect, it takes effect on December 16, 1994.

Section 31 repeals certain statutes that must be repealed whether the case is dismissed by December 15, 1994, or not. It takes effect immediately.

Section 32 provides for the return of some original mental health land to the trust and the redesignation of some other state land as mental health trust land, and also provides that -- unless taken care of by the set-off -- the compensation to the trust under the bill first compensates the trust for land conveyed to third parties, second for land conveyed to municipalities, and third for land in parks and wildlife refuges and used by state agencies. It takes effect immediately and does not get repealed even if the case is dismissed by December 15, 1994.

Section 33 confirms and ratifies the 1978 legislative removal from trust status of all original mental health land that will not be returned to the trust under the bill, removes from the trust any additional land received by the state under the Enabling Act not already removed from trust status under the 1978 legislation, and ratifies and confirms all actions the state has taken with respect the land removed from trust status. It takes effect immediately and does not get repealed even if the case is dismissed by December 15, 1994.

Section 34 establishes that state mental health expenditures to be set-off against state monetary liability to the trust for land not returned to trust status, as authorized by the Alaska Supreme Court in the Weiss decision, is \$1.32 billion. It

takes effect immediately and does not get repealed even if the case is dismissed by December 15, 1994.

Section 35 is an "incentive" that provides for an orderly transition to trust authority coordination of the state's mental health program. It is drawn from a similar provision in chapter 66. It takes effect only if the case is dismissed by December 15, 1994.

Section 36 provides that up to \$100 million per year is allocated to the income and proceeds account (section 10) for as long as it takes to satisfy any additional state monetary liability to the trust after the land and the set-off are taken into account. Any money allocated to the account under this provision would be treated just as the six percent allocated to the mental health trust income account under current law is treated -- i.e., appropriated by the legislature first for mental health programs as required by the federal Enabling Act with any surplus used for other public purposes. It takes effect immediately, but gets repealed (because it would be unnecessary) if the case is dismissed by December 15, 1994.

Section 38 provides that, if the case is not dismissed by December 15, 1994, chapter 66 is repealed and the "incentive" provisions do not take effect.

Section 39 provides that, if the case is dismissed by December 15, 1994, sections 10, 11, and 36 of the bill are repealed (along with a statute that currently provides priorities for mental health services that will be superseded by the priorities in the chapter 66 "incentives" that will go into effect).

Section 40 provides that the "incentives" go into effect on December 16, 1994, if the condition for their going into effect -- the case is dismissed by December 15, 1994 -- is satisfied.

Section 41 provides that sections 38 and 39 providing for the two possible contingencies -- (1) that the case is not dismissed by December 15, 1994, in which case the "incentives" are repealed, or (2) that the case is dismissed by then, in which case they go into effect -- take effect on December 16, 1994.

Section 42 provides that sections 1, 2, 10, 11, 17 -- 19, 29 -- 34, 36, and 37 take effect immediately.

We appreciate that this is all somewhat confusing, especially the contingent effective dates with some things taking effect now and remaining in effect, some taking effect now but subject to subsequent repeal if the case is dismissed, and some taking effect only if the case is truly over by December 15, 1994. We believe this approach is absolutely essential, however, to

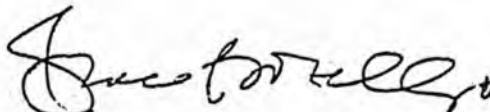
The Honcrable Kay Brown
Eighteenth Alaska Legislature

April 29, 1994
Page 5

ensure that all of the affected parties -- the third party purchasers, municipalities, development interests, environmental community, and the state -- can be assured of early dismissal in return for the "incentive" package offered. If the bill becomes law, it then remains only for the mental health community to accept the "incentive" package by agreeing to early dismissal of the case.

We hope you find this helpful. Please call if we can answer any additional questions.

Sincerely,



Bruce M. Botelho
Attorney General

BMB:TK:pml

cc: Commissioner Harry Noah
David Walker
Jim Gottstein
Philip Volland
Jeff Jessee
Eric Jorgensen
Tom Waldo
Rick Johannsen
Peter Maassen
Mark Davis
Julian Mason
Brian Bjorkquist
Wendy Feuer
Nick Atwood
Tom Koester

Handouts To Accompany Comments Made By

Attorney General Bruce Botelho

and

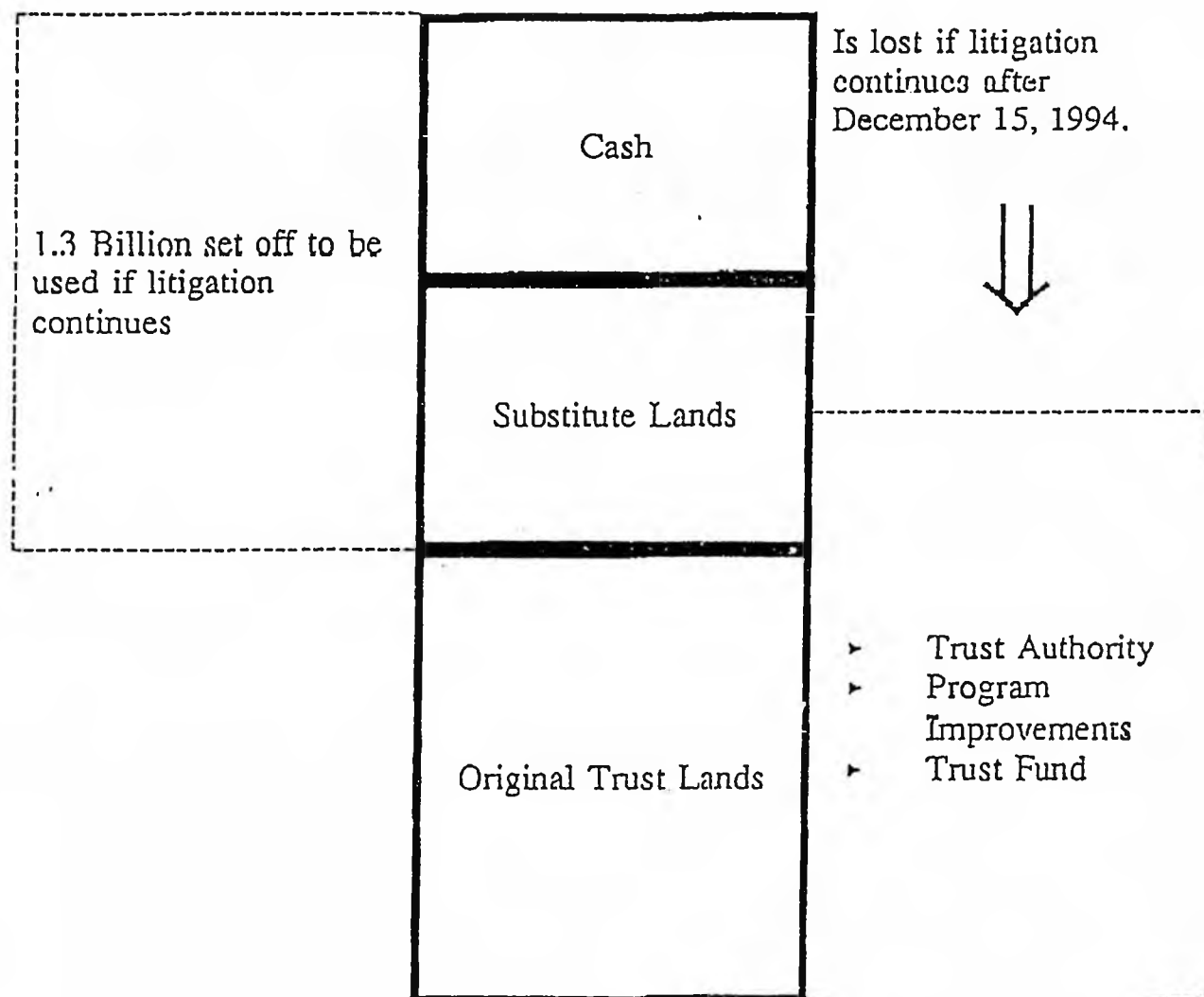
Dept. of Natural Resources Commissioner Harry A. Noah

On The CS For HB 201

Before House Finance Committee

April 11, 1994

Reconstructed Trust



MENTAL HEALTH SCHEDULE of EVENTS

