

ALASKA LEGISLATURE COMMITTEE FILES 1900-1900 00/2

3290 HJUD HB 127 - HB 128

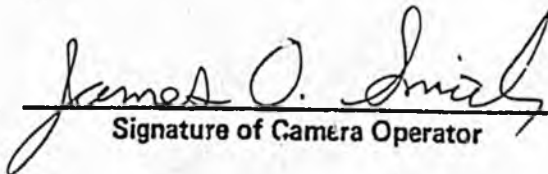
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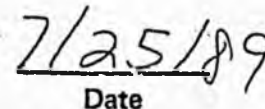


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STATE OF ALASKA
THE LEGISLATURE

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May, 1986

Copies of minutes listed below were originally included in this file. The minutes are available on the STAIRS date base CM 14. In order to save space copies of minutes have not been left in the files.

Jeanie Henry

House Judiciary	2-4-85	1:30 pm
" "	3-13-85	1:30 pm

Edwards
3/11/85✓

Original sponsor: Rules/Governor

1 IN THE HOUSE

BY THE JUDICIARY COMMITTEE

2 CS FOR HOUSE BILL NO. 127 (Judiciary)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FOURTEENTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act relating to notaries public."

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

8 * Section 1. AS 09.63.030(c) is amended to read:

9 (c) If the document is sworn to or affirmed before a notary
10 public of the state, the notary public shall

11 (1) endorse after the signature of the notary public the
12 date of expiration of the notary's commission;

13 (2) print or emboss the notary's seal on the document;

14 (3) comply with AS 44.50.060, 44.50.075, 44.50.080, and
15 44.50.101 or other applicable law.

16 * Sec. 2. AS 09.63.040(d) is amended to read:

17 (d) If the verification is sworn to or affirmed before a notary
18 public of the state, the notary public shall

19 (1) endorse after the signature of the notary public the
20 date of expiration of the notary's commission;

21 (2) print or emboss the notary's seal on the document;

22 (3) comply with AS 44.50.060, 44.50.075, 44.50.080, and
23 44.50.101 or other applicable law.

24 * Sec. 3. AS 09.63.100(b) is amended to read:

25 (b) If a document is acknowledged before a notary public of the
26 state, the notary public shall

27 (1) endorse after the notary's signature the date of ex-
28 piration of the notary's commission;

29 (2) print or emboss the notary's seal on the document;

1 (3) comply with AS 44.50.060, 44.50.075, 44.50.080, and
2 44.50.101 or other law.

3 * Sec. 4. AS 44.50.010 is amended by adding a new subsection to read:

4 (b) The lieutenant governor shall provide to a newly appointed
5 or renewed notary public a commission as notary public, a copy of this
6 chapter and AS 09.63, a copy of any regulations pertaining to notaries
7 public, and a copy of the oath set out in AS 39.05.045 with instruc-
8 tions for its return as required under AS 44.50.055.

9 * Sec. 5. AS 44.50 is amended by adding a new section to read:

10 Sec. 44.50.015. APPLICATION. (a) The application for a notari-
11 al commission shall be made on forms provided or approved by the
12 lieutenant governor and must include a sworn statement of the
13 applicant's personal qualifications. The statement of personal
14 qualifications must include at least the following information:

15 (1) the applicant's date of birth;
16 (2) the applicant's residence address;
17 (3) the applicant's occupation and work address;
18 (4) criminal convictions of the applicant, including pleas
19 of admission and nolo contendere; and

20 (5) issuances, denials, revocations, suspensions, restric-
21 tions, and resignations of a notarial commission or other professional
22 license of the applicant in this state or any other jurisdiction.

23 (b) Disciplinary information submitted by an applicant in a
24 statement of personal qualifications under (a)(4) and (5) of this sec-
25 tion is confidential, may be used by the lieutenant governor and des-
26 ignated state employees for the sole purpose of performing official
27 duties under this chapter, and may not be disclosed to any person
28 other than

29 (1) the applicant, or the applicant's authorized

1 representative or surety;

2 (2) a representative of federal, state, or municipal gov-
3 ernment acting in an official capacity; or

4 (3) a person specified by court order.

5 * Sec. 6. AS 44.50.040 is amended to read:

6 Sec. 44.50.040. FEES. A fee established by the lieutenant
7 governor by regulation [OF \$20] shall be paid to the lieutenant gover-
8 nor for each notarial commission issued other than to a state em-
9 ployee.

10 * Sec. 7. AS 44.50 is amended by adding new sections to read:

11 Sec. 44.50.043. BOND. (a) Except as provided in AS 44.50.045,
12 a person appointed a notary public after the effective date of this
13 section shall execute an official bond of \$10,000. The bond shall be
14 executed by a licensed surety for a term of four years commencing on
15 the notarial commission's effective date. It shall be filed with the
16 lieutenant governor before appointment.

17 (b) The lieutenant governor shall keep the bond for two years
18 after the end of the term of the notarial commission for which the
19 bond is issued. Disposition of the bond after the end of the notarial
20 commission does not affect the time for commencing an action on the
21 bond.

22 Sec. 44.50.045. FILING OF OATH. (a) A person who makes appli-
23 cation for a notarial commission, except for a commission under
24 AS 44.50.051, shall include with the application a statement under
25 oath that the applicant is a resident of Alaska. In this subsection,
26 "resident" has the meaning given in AS 44.50.020.

27 (b) After appointment as a notary public but before undertaking
28 official duties, a notary public shall sign a copy of the oath set out
29 in AS 39.05.045, have the oath notarized, and deliver the signed and

1 notarized oath, personally or by certified mail, to the lieutenant
2 governor.

3 Sec. 44.50.048. POSTMASTERS AS NOTARIES. (a) Each postmaster
4 in the state may perform the functions of a notary public in the
5 state.

6 (b) A postmaster is not required to post a bond or to have a
7 commission under this chapter.

8 (c) Each official act of a postmaster as a notary public shall
9 be signed by the postmaster, with a designation of the person's title
10 as postmaster, have the cancellation stamp of the post office affixed,
11 and state the name of the post office and the date on which the act
12 was performed.

13 (d) A postmaster may charge and receive the same fees as a
14 notary for similar services.

15 * Sec. 8. AS 44.50 is amended by adding a new section to read:

16 Sec. 44.50.051. STATE EMPLOYEES AS NOTARIES PUBLIC. (a) The
17 lieutenant governor may appoint and commission state employees as
18 notaries public of the state to act for a department of the state
19 government as the lieutenant governor considers proper. If a state
20 employee is appointed and commissioned, the executive officer of the
21 employee's department shall execute a certificate that the appointment
22 is made for the purposes of the department. A notary public
23 commissioned under this section may not charge fees for filing or
24 issuing a document in connection with the appointment.

25 (b) A department for which a notary public is appointed and
26 commissioned under this section may pay for premiums on the bond and
27 the cost of stamps, seals, or other supplies required in connection
28 with the appointment, notarial commission, or performance of the
29 duties of the notary public.

1 (c) Notwithstanding AS 44.50.030, the termination of employment
2 revokes the commission of a notary public whose documents have been
3 filed without charge and for whom bond premiums have been paid by a
4 state agency.

5 * Sec. 9. AS 44.50.060 is repealed and reenacted to read:

6 Sec. 44.50.060. DUTIES. (a) Unless the notary public has
7 stated a reason for refusal and recorded that reason in the notary's
8 official journal as required by AS 44.50.101(d), a notary public shall
9 perform the following notarial acts in lawful transactions for any
10 requesting person who tenders the appropriate fee established under
11 AS 44.50.091:

- 12 (1) take acknowledgments;
13 (2) administer oaths, affirmations, and verifications;
14 (3) witness affidavits and depositions upon oath or affir-
15 mation; and
16 (4) make certified copies.

17 (b) An acknowledgment, oath, affirmation, verification, certi-
18 fied copy, affidavit, or deposition shall be signed by a notary public
19 in the notary's own handwriting and the notary public shall endorse
20 after the signature the date of expiration of the notarial commission.

21 * Sec. 10. AS 44.50 is amended by adding a new section to read:

22 Sec. 44.50.065. PROHIBITED ACTS. (a) A notary public is dis-
23 qualified from performing a notarial act

24 (1) if the notary public is a signer of or named in the
25 document that is to be notarized;

26 (2) if the notary public will receive directly from a
27 transaction connected with the notarial act any commission, fee,
28 advantage, right, title, interest, cash, property, or other consid-
29 eration other than a fee specified in AS 44.50.091 except as a rea-

1 estate agent, banker, insurance agent, or attorney at law acting in
2 that capacity;

3 (3) if the notary public is related to the person whose
4 signature is to be notarized as a spouse, sibling, parent, child,
5 grandparent, or grandchild; or

6 (4) in a situation that impugns or compromises the notary's
7 impartiality.

8 (b) A notary public shall refuse to perform a notarial act

9 (1) for a transaction that the notary public knows or
10 suspects is illegal, false, or deceptive;

11 (2) involving a certificate with a statement known by the
12 notary public to be false;

13 (3) with intent to deceive or defraud;

14 (4) for a person who is being coerced; or

15 (5) for a person whose demeanor causes a compelling doubt
16 in the notary public about whether the person knows the consequences
17 of the transaction requiring the notarial act.

18 (c) A notary public may not endorse or promote any product,
19 service, contest, or other offering if the notary's title or seal is
20 used in the endorsement or promotional statement.

21 * Sec. 11. AS 44.50 is amended by adding new sections to read:

22 Sec. 44.50.071. UNAUTHORIZED PRACTICE OF LAW. (a) A notary
23 public who is not an attorney authorized to practice law in this state
24 may complete but may not select notarial certificates, and may not
25 assist another person in drafting, completing, selecting, or under-
26 standing the legalities of a document or transaction requiring a
27 notarial act.

28 (b) This section does not prohibit a notary public who is quali-
29 fied in, and, if required, licensed to practice, a particular

1 profession from giving advice relating to matters in that professional
2 field.

3 (c) A notary public may not make representations to have powers,
4 qualifications, rights, or privileges that the office of notary public
5 does not have, including the power to counsel on immigration matters
6 and to give legal advice.

7 Sec. 44.50.075. CERTIFICATION OF NOTARIAL ACTS. (a) A notary
8 public who performs a notarial act shall certify

9 (1) the identity of the signer, oath-taker, or affiant,
10 based on personal knowledge or on satisfactory evidence; and

11 (2) that the signer, oath-taker, affiant, or person who
12 requested a certified copy personally appeared before the notary
13 public on the date and in the place indicated on the notarial certifi-
14 cate and in the notary's official journal.

15 (b) A notary public who performs the following shall certify:

16 (1) for an acknowledgment, that the signer acknowledged
17 signing the document to the notary public;

18 (2) for an oath or affirmation, that the oath-taker swore
19 to or affirmed truthfulness under penalty of perjury;

20 (3) for an affidavit, that the signer signed the document
21 in the presence of the notary public, and that the notary public
22 administered an oath or affirmation to the signer; and

23 (4) for a certified copy, that it is a true and exact copy
24 of the original document.

25 (c) In this section

26 (1) "personal knowledge" means knowledge gained through
27 familiarity with the signer, oath-taker, or affiant;

28 (2) "satisfactory evidence" means clear and convincing
29 written proof of identification, including the signature and printed

1 name and address of a credible witness who swears to or affirms famil-
2 iarity with and the identification of the signer, oath-taker, or
3 affiant.

4 * Sec. 12. AS 44.50 is amended by adding a new section to read:

5 Sec. 44.50.091. FEES FOR NOTARIAL ACTS. (a) The lieutenant
6 governor shall establish by regulation the maximum fees that may be
7 charged by a notary public for notarial acts.

8 (b) A notary public may charge a travel fee when traveling to
9 perform a notarial act if

10 (1) the notary public explains to the person requesting the
11 notarial act that the travel fee is separate from the notarial fee
12 established under (a) of this section and is neither specified nor
13 required by law; and

14 (2) the notary public and the person requesting the notari-
15 al act agree upon the travel fee in advance.

16 (c) A notary public may establish an independent fee schedule
17 for acts not included within the fee schedule established by the
18 lieutenant governor under this section.

19 (d) If a notary public charges any fee, the notary public shall
20 prominently display a schedule of fees for notarial acts. The fees
21 may not exceed the maximum fees established under (a) of this section.
22 Upon request, the notary shall provide a person with a copy of the fee
23 schedule.

24 (e) Nothing in this section requires a notary public to charge
25 fees for services rendered.

26 * Sec. 13. AS 44.50 is amended by adding a new section to read:

27 Sec. 44.50.101. JOURNAL. (a) A notary public shall keep and
28 preserve a chronological, permanently bound, official journal of
29 notarial acts, containing numbered pages.

1 (b) For every notarial act, the notary public shall record in
2 the official journal at the time of the act at least the following:

3 (1) the date and time of day of the notarial act;

4 (2) the description of a document or proceeding that re-
5 quired the notarial act;

6 (3) the printed name and address of each signer, oath-
7 taker, or affiant for whom a notarial act is performed;

8 (4) the evidence of identity of each signer, oath-taker or
9 affiant for whom a notarial act is performed, in the form of either

10 (A) a statement that the signer, oath-taker, or
11 affiant is personally known to the notary public; or

12 (B) a description of the document used to identify the
13 signer, oath-taker, or affiant, its issuing agency, its serial or
14 identification number, and its date of issuance or expiration; or

15 (C) the signature and printed name and address of a
16 credible witness who swears to or affirms familiarity with and
17 the identification of the signer, oath-taker, or affiant; and

18 (5) the fee, if any, charged for the notarial act.

19 (c) At the time of notarization, the signer, oath-taker, or
20 affiant for whom a notarial act is performed shall sign the notary's
21 official journal.

22 (d) A notary public who refuses to perform or complete a notari-
23 al act shall record in the notary's official journal the circum-
24 stances, the date, and the identity of the person refused service.

25 (e) A journal of notarial acts is an official public record that
26 may be inspected in the notary's presence as provided in AS 09.25.110
27 and 09.25.120.

28 (f) Upon request, in compliance with (e) of this section, the
29 notary public shall provide a photocopy or a certified copy of an

1 entry in the notary's official journal at a cost not to exceed that
2 established by the lieutenant governor by regulation.

3 (g) The official journal shall be kept in the exclusive custody
4 of the notary public and may not be used by any other notary public or
5 surrendered to an employer upon termination of employment. Nothing in
6 this subsection prohibits a notary public from being required to
7 provide copies of the official journal to the notary's employer.

8 (h) A notary public or former notary public shall retain an
9 official journal used to record notarial acts, or a complete microfilm
10 copy of that journal, for at least two years following the date of the
11 last notarial act recorded in the journal.

12 * Sec. 14. AS 44.50 is amended by adding a new section to read:

13 Sec. 44.50.111. CHANGES OF STATUS. (a) Within 30 days after
14 the change of a notary's business or residence address, the notary
15 public shall deliver to the lieutenant governor, personally or by
16 certified mail, written notice of the change including both old and
17 new addresses.

18 (b) Within 30 days after the change of a notary's name, the
19 notary public shall deliver to the lieutenant governor, personally or
20 by certified mail, written notice of the change including both old and
21 new names and a certified copy of either a marriage license or a
22 court's certificate that verifies the name change. A notary public
23 with a new name shall sign that name on all notarial certificates, but
24 only after the following steps have been completed:

25 (1) the notice described in this subsection has been deliv-
26 ered;

27 (2) a new seal has been obtained, bearing the new name; and

28 (3) the surety for the notary's bond has been informed in

29 writing.

1 (c) Within seven days after the loss or theft of a notary's
2 official journal or seal, the notary public shall deliver to the
3 lieutenant governor, personally or by certified mail, a signed notice
4 of the loss or theft.

5 (d) A notary public may resign a notarial commission by deliver-
6 ing to the lieutenant governor, personally or by certified mail, a
7 letter stating the effective date of resignation. A notary public who
8 ceases to reside or work in this state or who loses the mental capac-
9 ity to carry out notarial duties shall resign the notarial commission.

10 (e) A notary public who resigns or whose commission has been
11 revoked under AS 44.50.165 shall, at the time of resignation or within
12 30 days of receiving notice of the revocation, return the notarial
13 commission, personally or by certified mail, to the lieutenant gover-
14 nor.

15 (f) If a notary public dies during the term of the notarial
16 commission or within two years after the commission's termination, the
17 notary's heirs or personal representative shall, as soon as reasonably
18 practicable after death

19 (1) destroy the notary's official seal; and

20 (2) deliver to the lieutenant governor, personally or by
21 certified mail, the notary's official journal and commission along
22 with a written confirmation of the notary's date of death.

23 * Sec. 15. AS 44.50.160 is repealed and reenacted to read:

24 Sec. 44.50.160. MISCONDUCT OR NEGLIGENCE. (a) A notary public
25 is liable to a person for all damages proximately caused that person
26 by the notary's official misconduct or negligence in performing a
27 notarial act.

28 (b) A surety for a notary's bond is liable to a person for
29 damages proximately caused that person by the notary's official

1 misconduct or negligence in performing a notarial act, but this
2 liability may not exceed the value of the bond or of any remaining
3 bond money that has not been paid to or on behalf of other claimants
4 regardless of the number of claimants.

5 (c) An employer of a notary public is liable

6 (1) to a person for all damages proximately caused that
7 person by the notary's official misconduct in performing a notarial
8 act related to the employer's business only if the employer actually
9 directed, encouraged, consented to, or approved the notary's official
10 misconduct, either in the particular transaction or, impliedly, by
11 previous actions in at least one similar transaction;

12 (2) to the notary public for all damages recovered from the
13 notary public as a result of official misconduct that was coerced by
14 threat of the employer, if the threat, such as of demotion or dismiss-
15 al, was made in reference to the particular notarial act or,
16 impliedly, by the employer's previous action in at least one similar
17 transaction; and

18 (3) to the notary public for damages proximately caused the
19 notary public by demotion, dismissal, or other action resulting from
20 the notary's refusal to commit official misconduct.

21 (d) In this section "official misconduct" means conduct know-
22 ingly engaged in that violates a provision of this chapter or regula-
23 tions adopted under it, and includes the failure to act when required
24 by law to perform an act.

25 * Sec. 16. AS 44.50 is amended by adding a new section to read:

26 Sec. 44.50.165. REVOCATION OF COMMISSION. (a) The lieutenant
27 governor shall revoke, or deny renewal of, the commission of any
28 notary public who, during the current term of appointment,

29 (1) commits an act of official misconduct or criminal

1 negligence under this chapter; or

2 (2) is found to have submitted an application or endorse-
3 ment for a notarial commission that contains a substantial and materi-
4 al misstatement or omission of fact.

5 (b) The adjudication provisions of the Administrative Procedure
6 Act (AS 44.62) apply to proceedings brought against a notary public
7 under this section.

8 (c) Proceedings or an investigation against a notary public
9 under this section may be pursued, at the discretion of the lieutenant
10 governor, after the resignation or expiration of the notarial commis-
11 sion. If pursued to conclusion, the results of the proceedings or
12 investigation are a matter of public record, including a finding of
13 whether or not grounds existed for revocation of or refusal to renew
14 the notarial commission.

15 * Sec. 17. AS 44.50 is amended by adding a new section to read:

16 Sec. 44.50.171. CRIMINAL PROSECUTION. (a) A notary public who
17 knowingly performs an act prohibited or, with criminal negligence,
18 fails to perform an act required by this chapter is guilty of a class
19 A misdemeanor.

20 (b) A person not a notary public who knowingly acts as or other-
21 wise impersonates a notary public is guilty of a class A misdemeanor.

22 (c) A person who knowingly and unlawfully obtains, conceals,
23 alters, defaces, or destroys the seal, official journal, or notarial
24 commission of a notary public is guilty of a class A misdemeanor.

25 (d) A person who knowingly solicits, coerces, or in any way
26 influences a notary public to commit official misconduct is guilty of
27 a class A misdemeanor.

28 (e) In this section "official misconduct" has the meaning given
29 in AS 44.50.160.

1 * Sec. 18. AS 44.50 is amended by adding a new section to read:

2 Sec. 44.50.181. REMEDIES. The remedies of this chapter supple-
3 ment other remedies provided by law.

4 * Sec. 19. AS 45.03.509(a) is amended to read:

5 (a) A protest is a certificate of dishonor made under the hand
6 and seal of a United States consul or vice consul [OR A NOTARY PUBLIC]
7 or other person authorized to certify dishonor by the law of the place
8 where dishonor occurs. It may be made upon information satisfactory
9 to the person.

10 * Sec. 20. The following laws are repealed: AS 44.50.050, 44.50.070,
11 44.50.090, 44.50.100, 44.50.110, 44.50.120, 44.50.130, 44.50.140, 44.50.-
12 150, 44.50.170, and 44.50.180.

AMENDMENT TO HB 127
IN THE HOUSE JUDICIARY COMMITTEE
By Representative Gruenberg

Page 5, line 23 - page 6, line 7

Amend AS 44.50.065(a) to read as follows:

Sec. 44.50.065. PROHIBITED ACTS.

(a) A notary public is disqualified from performing a notarial act if the notary public or if a spouse, sibling, parent, child, grandparent or grandchild of the notary public is a signer of or named in the document that is to be notarized.

Amendment to
44.50.092 Fees for Notarial Acts

Sub section (e) A Notary may establish an independent fee schedual for acts performed for which a fee is not stated in this section.

FISCAL NOTE

Revision Date: _____

*cc
supB*

REQUEST

Bill/Resolution No.: HB 127
 Title: An Act relating to notaries public
 Sponsor: Rules Committee
 Requestor: Governor
 Date of Request: _____

FISCAL DETAIL

Agency Affected: Office of the Governor
 Program Category Affected: Executive Operations
 BRU, Program or Subprogram(s) Affected: Office of the Lieutenant Governor

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 85	FY 86	FY 87	FY 88	FY 89	FY 90
OPERATING						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 SUPPLIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS						
800 MISCELLANEOUS						
TOTAL OPERATING						
CAPITAL						
REVENUE	70.0	140.0	140.0	140.0	140.0	140.0

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: Attach a separate page if necessary

Passage would double the revenue per year to the general fund. Currently the fee is \$20.00 per commission. This bill would increase the fee to \$40.00 (there is no fee for state employees). The revenues reflected above is an estimate based on 3,500 (per year) new and renewed notary commissions.

Prepared By: Sally R. Hanson

Phone: 465-3520

Division: Office of the Lieutenant Governor

Date: 01/21/85

Approved by Commissioner: Stephen McAlpine

Date: 01/21/85

Agency: Lieutenant Governor

Distribution (by Agency preparing fiscal note):

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

7/1/84

HB 126

The lease tracts these firms acquire are often the most likely to contain valuable oil, gas, or mineral resources. However, these firms conduct massive high pressure telephone sales and media advertising aimed at would-be investors in the lower 48 states, promising them high returns if they "invest" in a portion of one of these Alaskan oil or gas leases. The offering firms often falsely represent that they have expertise in oil, gas or mineral exploration or development. What is especially offensive to our state is that these slick operators often use names such as "Alaska Oil and Gas Exploration" or "Alaska Petroleum Investments," and set up empty "shell" corporations with Alaska addresses.

This bill would broaden the Alaska Securities Act to cover these business firms even if the "investment" sales are not made in our state or to Alaska residents. Essentially, the bill would do this by extending the jurisdiction of our state securities regulators and of our courts over these fraudulent schemes. The state would be able to take legal action against these out-of-state sellers of Alaska mineral rights. By amending the Securities Act, Alaska can require these firms to file securities registrations regarding their sales, and to give prospective purchasers truthful information about the likelihood of realizing a gain on such investments.

This legislation will not affect legitimate companies engaged in oil, gas, or mineral exploration or production, as they are already exempted from the Alaska Securities Act by AS 45.55.140(b)(17).

This bill should be supported by consumer groups as well as by the legitimate members of the oil and gas industry. Therefore, I urge your prompt action on this bill to prevent further damage to the commercial image, nationwide, of Alaska.

Sincerely,

/s/

Bill Sheffield
Governor"

HB 127

HOUSE BILL NO. 127 by the Rules Committee by request of the Governor, entitled:

"An Act relating to notaries public."

was read the first time and referred to the Judiciary and Finance Committees.

A fiscal note was attached and appears in House Journal Supplement No. 8.

The Governor's transmittal letter, dated January 25, 1985, appears as follows:

HB 127

"Dear Representative Grussendorf:

Under the authority of art. III, sec. 18, of the Alaska Constitution, I am transmitting a bill relating to notaries public. This bill amends AS 44.50 to provide both notaries and the public with a more detailed delineation of a notary's functions.

Besides amending several existing sections of AS 44.50, the bill incorporates many features of the Model Notary Act, a September 1984 revision of the 1973 Uniform Notary Act. The Model Notary Act was written by an advisory committee of the National Notary Association, comprised primarily of public officials and members of the legal profession. Interested persons should see the association's official commentary published with the Model Notary Act. As indicated in the preface to the Model Act, that Act is more comprehensive than the Uniform Law on Notarial Acts that was adopted by the National Conference of Commissioners on Uniform State Laws in 1982.

The attached bill increases the application fee for a notary other than a state employee from \$20 to \$40 (AS 44.50.040), as well as requiring posting of a bond in the amount of \$10,000, rather than \$1,000. New AS 44.50.045. A new section proposed by this bill, AS 44.50.015, requires an applicant for a notarial commission to submit a statement of personal qualifications. Other new sections specify the instances in which a notary is disqualified from performing a notarial act (AS 44.50.072), require the notary to be impartial (AS 44.50.074), prohibit the execution of a false certificate (AS 44.50.076), and proscribe the endorsement of products by a notary if the notary's title or seal is used in the promotion (AS 44.50.078). Furthermore, new AS 44.50.085 defines and prohibits the unauthorized practice of law by a notary.

The bill establishes for the first time maximum fees that can be charged for notarial acts and clearly states that a notary is not required to charge fees for services rendered. New AS 44.50.092. Another new provision requires all notaries to maintain an official journal of notarial acts performed, which must include information on the requesting party and description of the notarial act performed. New AS 44.50.095. The journal is to remain in the notary's sole custody, until revocation or expiration of the notarial commission or death of the notary, when the journal and the certificate of commission are to be delivered to the lieutenant governor's office. AS 44.50.100. The lieutenant governor's office is to be notified of changes of address or of name, loss or theft of an official journal or seal, resignation of a commission, or death of a notary, under new AS 44.50.105.

Liability of a notary, or the sureties on the notary's bond, for misconduct or neglect is described in greater detail than before. AS 44.50.160. This amended section also defines the liability of a notary's employer to the notary or the public, where the employer is responsible for misconduct in the performance of a notarial act. Finally, class A misdemeanor penalties of a \$5,000 fine, imprisonment for up to a year, or both, are provided for

HB 127

knowing violations of AS 44.50, impersonation of a notary; theft or destruction of a notary's seal, journal, or official records; and solicitation or coercion of a notary to commit official misconduct. New AS 44.50.165.

The current notary public statutes were enacted in 1960 and have not been amended since that time. The changes proposed by this bill would provide greater protection for the public and greater guidance to notaries. I urge your prompt and favorable consideration of this much-needed bill.

Sincerely,

/S/

Bill Sheffield
Governor"

HB 128

HOUSE BILL NO. 128 by Pignalbari, Gruenberg, Boucher, Jenkins, Koponen and Taylor, entitled:

"An Act relating to mental health trust lands; and providing for an effective date."

was read the first time and referred to the Resources, Judiciary and Finance Committees.

HB 129

HOUSE BILL NO. 129 by Pignalbari, Phillips and Jenkins, entitled:

"An Act relating to compensation of legislators; establishing a commission on legislative compensation; and providing for an effective date."

was read the first time and referred to the State Affairs, Judiciary and Finance Committees.

HB 130

HOUSE BILL NO. 130 by the Rules Committee by request of the Governor, entitled:

"An Act relating to educational employees' collective bargaining agreements; and providing for an effective date."

was read the first time and referred to the Labor & Commerce, Health, Education & Social Services and the Finance Committees.



A Non-Profit
Educational Organization

NATIONAL NOTARY ASSOCIATION

23012 Ventura Blvd., P.O. Box 4625, Woodland Hills, California 91365-4625
Telephone: (818) 347-2035, Cable: NOTARIAN

MILTON G. VALERA
President

DEBORAH M. THAW
Executive Director

RAYMOND C. ROTHMAN
Founder

MAR 4 1985

February 27, 1985

Representative Mike M. Miller
House of Representatives
Pouch V
Juneau, AK 99811

Dear Representative Miller:

On behalf of the National Notary Association, a non-profit educational organization serving the nation's 3.3 million Notaries, I want to commend the recent introduction of House Bill 127, a proposal affecting Notaries Public in Alaska.

Based in large part on the Model Notary Act, HB 127 is progressive legislation that many other states would do well to emulate. Of particular benefit to the public are the sections that establish a \$10,000 Notary bond, define disqualifying interests and the unauthorized practice of law, delineate the liability of both Notary and employer, and require journals of notarial acts. We suggest that a Notary journal would be an even more useful tool for the public protection if it included the signature of each document signer, in addition to the signature of each credible witness.

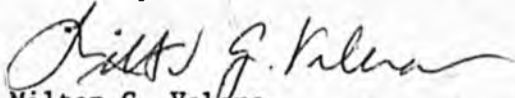
As you may know, the NNA assists Notaries through a variety of educational programs, including seminars, an annual conference, reference books, a magazine and newsletter, and an "Information Service." The NNA also provides information about the office of Notary to the general public and assists lawmakers in drafting notarial legislation.

Indeed, one of the NNA's major accomplishments was publication of the Model Notary Act in collaboration with a national panel of law professors, secretaries of state, attorneys and Notary-regulating officials. Notarial laws in many states have drawn heavily from this model legislation in its present and prior versions, and I would be pleased to send you a copy.

Representative Mike M. Miller
February 27, 1985
Page 2

As the nation's clearinghouse for notarial data, we welcome your questions about the laws, customs and practices of Notaries. Please let us know if we can be of service.

Sincerely,



Milton G. Valera
President

MGV:jd
020913

cc: Honorable Stephen McAlpine
Lieutenant Governor

P.S. - I'd also be pleased to send you complimentary copies of our magazine, The National Notary, and newsletter, Notary Viewpoint, on request.

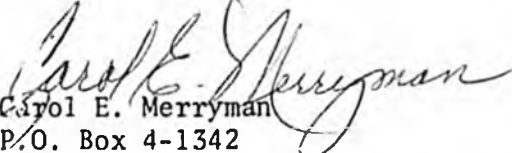
Honorable Mike Miller
Chairman, House Judiciary Committee
Honorable Pat Rodey
Chairman, Senate Judiciary Committee
Honorable John Sackett & Honorable Jan Faiks
Co-Chairman, Senate Finance Committee
Honorable Al Adams
Chairman, House Finance Committee

FEB 14 1985

Re: HB 127

Besides upping the price and making it more difficult to become a notary, I don't know what HB 127 will accomplish. In my case, I would just like simple clarification of what is considered "purposes of the department" when notary authorized by a State department. See attached.

I also find the Alaska Administrative Code lacking in any further clarification of Notary Public duties.


Carol E. Merryman
P.O. Box 4-1342
Anchorage, Alaska 99509

2/11/85

My Commission authorized by DOT&PF expires 11/17/85
My Private Notary Commission expires 4/28/86

Re HB 127 "An Act Relating to Notaries Public" as regards State employees

Sec. 44.50.170 (a) ... "head of the department shall execute a certificate that the appointment is made for the purposes of the department."

If the purpose of HB 127 is to clarify the rules for notaries, then I think "purposes of the department" should also be clarified.

In our office, because it is a State (DOT&PF) document signed by both a State official and a private individual, the department-sanctioned notary will notarize both signatures. Is it the document that is for "purposes" of the department or person that is "purposes" of the department? I have been a State employee for 21 years and have had a State furnished notary most of that time. Due to necessity in an effort to assist private individuals, I acquired another notary commission as a private individual about eight years ago. There are many occasions on State documents where I notarize with the two different commissions.

Since the private notary commission was acquired just to assist private individuals and State employees' private business, I do not now want to go to the expense of renewing it (under the new rules) if I do not have to. Am I authorized to notarize documents for individuals other than Department employees on Department documents with my State, or Department furnished notary? Or, in other words, would the State's bonding cover my notarization of a document for a private individual on private business? EXAMPLE: Contractor comes in few minutes before bid opening but finds he has not had his documents properly notarized and does not have time to go some place else. As a private notary, I have notarized his signature with my private commission; I would not notarize his signature with my State or Department furnished commission

I have never charged for this service I provide. It is easier to provide the service than to try to explain that you cannot notarize some things but can notarize others. This has been a longstanding problem but some employees with State or Department furnished notary commissions notarize anything.

I can see the expense for a private notary going to about \$100 now and if I don't have to acquire but can still provide the service, I would like to know. If I can have the notary commission furnished by the State it will be much cheaper for me.

Carol E. Merryman

2/11/85

Home: 345-1330
P.O. Box 4-1342
Anchorage, Ak 99509

work: DOT&PF
P.O. Box 6900
Anchorage, Ak 99502
266-1663

October 26, 1984

Re: Notary Public

Ms. Betty Michael
Notary Commission Clerk
Office of the Lieutenant Governor
Pouch AA
Juneau, Alaska 99811

Dear Ms. Michael:

Recently I became aware of legislation to increase the notary bond from \$1,000 to \$10,000. Since I am a private notary where I pay the cost of bonding out of my own pocket and also have a notary for "official" State (DOT&PF) business, I would like to have clarification of what is meant by "official" business.

Many of the individuals with notaries furnished by the State presume "official" business is the document, not the person. If this is the case, please advise. If this is not the case, please advise.

EXAMPLE: DOT&PF has a form to sign where they collect charges for damages done by private individuals in auto accidents. When the private individual commits himself to some form of payment for damages, I notarize his signature with my private notary, and the State "official" with my State furnished notary on the same form. This same situation also occurs on some State leases, MBE/EEO forms, etc.

Most all of the notarizing of private individuals signatures is done at the office because most of the forms/documents are State forms and people just forget to have them notarized before they come out here. There is a need to notarize non-State employee signatures, and I originally secured the private notary just for this need.

What I want to know, since the cost of bonding is going up, do I have to go to the personal expense of obtaining a private notary or, can I use the State-furnished notary for notarizing signatures of private (non-State employee) individuals?

Sincerely,

Carol E. Merryman
P.O. Box 4-1342
Anchorage, Alaska 99509

see 4B27

*No answer as of 2-11-85
rem*

Example

FEB 7 1985

DALE P. TURBBS
LAND MANAGEMENT CONSULTANT
1234 W. HILLCREST DRIVE ANCHORAGE, ALASKA 99503
TELEPHONE (907) 279-9831

February 4, 1985

Representative Mike Miller, Chairman
House Judiciary Committee
Alaska State Legislature
Pouch V (MS 3100)
Juneau, Alaska 99811

Re: HB 127, An Act Relating to Notaries Public

Dear Representative Miller:

I request your judiciary committee not pass HB 127 as requested by the Governor. The bill is over-restrictive and apparently attempts to fix a wagon that is not broken. This bill puts all kinds of restrictions and burdens on a notary public that are not warranted. An examination of Title 44 shows the present statute has been on the books since 1961 and shows one court case relating to notary public litigation in Alaska.

I am a notary public and use the authority in my right-of-way acquisition work for municipal and public utility matters. My work as the right-of-way agent requires the negotiation of the easement and when agreement is reached, I am able to have the property owner sign the agreement and notarize it at the same time. I also deliver the utilities' or municipalities' payment at the same time. Before I had the notary authority, the property owner was required to make a special trip to a notary and then make delivery of the document to the agency and wait for the payment. In some instances the return time was more than two months. It also required repeated follow-up calls.

AS 44.50.072(2) is of particular concern. I receive compensation for my services. That is how I make my living. This section of the bill says that if the notary receives cash (in this case my hourly fee), I cannot notarize the document. If I were to look at my best interest I would make more money if I can get more hours of work instead of providing the on-the-spot notary.

A further absurdity to the bill is that no one in an agency's office, or anyone's office, could notarize a document because the notary is on the payroll and is receiving compensation for documents required by the office.

I also have objections to AS 44.50.085(a) which states the notary, unless they are an attorney, may not assist a person in understanding a document. Again, in my right-of-way work I am more knowledgeable than an attorney on explaining the road or utility project to the land owner.

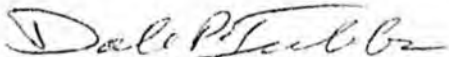
Some persons working in right-of-way acquisition work put a witness of signature statement on the document. The right-of-way agent then signs as a witness to the property owners' signature, then takes the form back to the office notary or another notary for notarizing. This is a sham and accomplishes nothing. The witnessing signature is no better. In fact, it removes the notary from even seeing the actual signing; if the agent is dishonest, there is a better chance for an impropriety.

It would seem AS 44.50.076 sums up the whole intent of the notary. If there are violations, then take back the stamp.

There are several other sections to the bill that are objectional. Most specifically, the journal to be kept.

Thank you for consideration of these comments. One really needs to look at the bottom line as to the real need for a notarized signature. All it provides is an act of witnessing. Perhaps the number of documents that require it is out of hand.

Sincerely,



DALE P. TUBBS

DPT:bw



A Non-Profit
Educational Organization

NATIONAL NOTARY ASSOCIATION

23012 Ventura Blvd. P.O. Box 4625, Woodland Hills, California 91365-4625
Telephone: (818) 347-2035. Cable: NOTARIAN

MILTON G. VALERA
President

DEBORAH M. THAIN
Executive Director

RAYMOND C. ROTHMAN
Founder

February 27, 1985

Representative Al Adams
House of Representatives
Pouch V
Juneau, AK 99811

Dear Representative Adams:

On behalf of the National Notary Association, a non-profit educational organization serving the nation's 3.3 million Notaries, I want to commend the recent introduction of House Bill 127, a proposal affecting Notaries Public in Alaska.

Based in large part on the Model Notary Act, HB 127 is progressive legislation that many other states would do well to emulate. Of particular benefit to the public are the sections that establish a \$10,000 Notary bond, define disqualifying interests and the unauthorized practice of law, delineate the liability of both Notary and employer, and require journals of notarial acts. We suggest that a Notary journal would be an even more useful tool for the public protection if it included the signature of each document signer, in addition to the signature of each credible witness.

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Representative Al Adams
February 27, 1985
Page 2

As the nation's clearinghouse for notarial data, we welcome your questions about the laws, customs and practices of Notaries. Please let us know if we can be of service.

Sincerely,

Milton G. Valera
President

MGV:jd
020912

cc: Honorable Stephen McAlpine ✓
Lieutenant Governor

P.S. - I'd also be pleased to send you complimentary copies of our magazine, The National Notary, and newsletter, Notary Viewpoint, on request.

RAND DAWSON
ATTORNEY AT LAW
A PROFESSIONAL CORPORATION
BOX 111646
ANCHORAGE, ALASKA 99511-1646
(907) 345-2687

June 14, 1985

Mr. Stephen McAlpine
Lieutenant Governor
Pouch AA
Juneau, AK 99811

RE: House Bill 127
Notary Conduct and Law

Dear Lieutenant Governor:

Thank you for your materials regarding HB 127.

As currently drafted, the Bill would essentially preclude my practice of law since my wife is my office staff. She routinely notarizes my signature for court materials several times a day.

I do not practice in a "downtown" urban or commercial area and do not have a notary readily available aside from my wife. I can think of no reasonable alternative aside from having to hire a separate staff member just to notarize my rather mundane signature on documents which often are no more significant than mere summaries describing materials I have already filed in court or events that have transpired in a particular case.

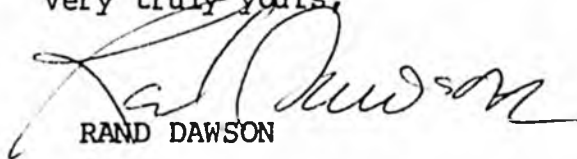
In this respect the "log" requirement is burdensome but not intolerable. I would suggest some form of division wherein specific categories of "significant" documents might be logged such as promissory notes or wills. However, in my ten years of litigation practice I have yet to see a case where the timing of the notary ever became an issue. Nor have I seen any cases discussed or reported in this jurisdiction as to that issue. Accordingly, I think, overall, the log requirement is unreasonably burdensome on balance with any benefits which may obtain from such requirement.

Frankly, I think, in this instance, I cannot see the need for the increased regulation. While the potential for abuse or deceit is always present, as it is in any transaction, I am simply not aware of an existing need for the regulatory scheme.

McAlpine
June 14, 1985
Page 2.

Thank you for this opportunity.

Very truly yours,



RAND DAWSON

cc: M. Mike Miller, House Judiciary Committee
Representative L. Adams, House Finance Committee
RD/kd

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240 MAIN STREET
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PAUL M HOFFMAN
J P TANGEN
HAROLD E SNOW, JR.
D ELIZABETH CUADRA
STEVEN W SILVER
JAMES M SHINE
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CARL W WINNER
SUSAN L MENDENHALL
KENNETH W LEGACKI
JULIA B BOCKMON

June 18, 1985

Hon. Stephen McAlpine
Lieutenant Governor
State of Alaska
Pouch AA
Juneau, Alaska 99811

Dear Steve:

Thank you for your letter of June 7, 1985 informing me of certain proposed changes to Alaska's present notary law which are embodied in House Bill 127.

The misuse of the notarial seal does not seem to be widespread in Alaska. House Bill 127 only adds more record keeping and paper to the bureaucracy. This in turn will only add expense to our clients. What is now a service performed without charge probably would have to pay for itself at about \$5.00 per whack.

As they say, "If it ain't broke, don't fix it."

Sincerely,

Bill

W. G. Ruddy

WGR:ee/1.030

cc: Hon. Bill Ray
Hon. Jim Duncan
Hon. Mike M. Miller

LARRY R. WEEKS
ATTORNEY AT LAW
319 SEWARD STREET • JUNEAU, ALASKA 99801
(907) 586-6812

June 17, 1985

Mike M. Miller
Pouch V
Juneau, AK 99811

Re: Notary Bill HB127

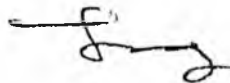
Dear Mike :

Unless there is something wrong with the notary law, we shouldn't change it. The proposed legislation HB127 adds a new level of bureaucracy on the existing framework virtually making notaries into European magistrates.

It will cause additional expense that has to be borne by the consumer. I've never heard of such abuse of the notary system that these steps are called for.

The added time and expense of having every piece of paper in a lawyer's practice notarized by someone independent of the lawyer means substantial additional expenses that is unnecessary.

Sincerely,



Larry R. Weeks

BISS AND HOLMES

ATTORNEYS AT LAW
AN ASSOCIATION OF PROFESSIONAL CORPORATIONS

BURTON C. BISS
ROGER F. HOLMES

618 CHRISTENSEN DRIVE
ANCHORAGE, ALASKA 99501
TELEPHONE (907) 277-8564

WASILLA OFFICE
SR BOX 5111
WASILLA, ALASKA 99687
TELEPHONE (907) 376-5318

June 7, 1985

Mr. Stephen McAlpine
Lieutenant Governor
State of Alaska
Pouch AA
Juneau, Alaska 99811

Re: House Bill 127

Dear Steve:

Thank you for bringing to my attention House Bill 127. I have obtained a copy of the proposed statute and reviewed it carefully. One of the disqualifications in 44.50.072 is paragraph 3 prohibiting a person from notarizing a document if they are related to the person whose signature is being notarized. In some instances I can see a reason why this should be true. For instance, wills, possibly deeds, etc.

However, as you are aware, many lawyers in the State of Alaska have their spouse as their secretary. A certain number of these attorneys, such as my partner Burt Biss, live in remote areas where no one else is available to notarize a document except their spouse working in their office. This provision in the law will place an almost insurmountable burden on sole practitioners in this position. Off the top of my head, I can think of six or eight lawyers whom I know personally who would find it almost impossible to carry on the day-to-day legal practice if they could not notarize their secretary's signature and vice-versa. In the course of a week each probably notarizes the other's signature at least 25 times on affidavits of service, etc.

While I have no objection to keeping a journal, and can see the merit for one in certain instances, my journal and that of my secretary, will certainly become voluminous in a very short period of time. In some of the larger law firms in the state I can foresee volumes of journals for basically routine transactions.

Mr. Stephen McAlpine
Page Two
June 7, 1985

Very truly yours,

BISS & HOLMES

Roger F. Holmes

RFH:kp

cc: Representative M. Mike Miller, House Judiciary
Representative L. Adams, House Finance



RECORDS CERTIFICATION



I, the undersigned, an employee of the State of Alaska, do hereby certify that the microfilm images on this microform are accurate reproductions of the original records of the State of Alaska as accumulated during the regular course of business, and that it is the established policy and practice of this State to microfilm its records and to dispose of the original records after microfilm reproductions have been made.

James O. Smith
Signature of Camera Operator

7/25/89
Date

H B

1 2 8

STATE OF ALASKA THE LEGISLATURE

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907-465-3800

May, 1986

Copies of minutes listed below were originally included in this file. The minutes are available on the STAIRS date base CM 14. In order to save space copies of minutes have not been left in the files.

Jeanie Henry

House Judiciary	4/7/86	8 Am
" "	4/8/86	8 Am
" "	4/15/86	1:30 pm
" "	4/16/86	1:30 pm

Original sponsors: Pignatelli, Gruenberg,
Beucher, et al

1 IN THE HOUSE

BY THE JUDICIARY COMMITTEE

2 CS FOR SPONSOR SUBSTITUTE FOR HOUSE BILL NO. 128 (Judiciary)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FOURTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to the interim management of mental
7 health trust land; and providing for an effective
8 date."

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

10 * Section 1. INTERIM MENTAL HEALTH TRUST LAND COMMISSION ESTABLISHED.

11 (a) The interim mental health trust land commission is established in the
12 Department of Natural Resources.

13 (b) The commission established under (a) of this section consists of
14 five members, including the commissioner of natural resources and the
15 commissioner of health and social services and three members appointed by
16 the governor as follows:

17 (1) a member representing the plaintiffs, appointed by the
18 governor from a list of three names submitted to the governor by the plain-
19 tiffs in State v. Weiss, 706 P.2d 681 (Alaska 1985);

20 (2) a member representing the intervenors, appointed by the
21 governor from a list of three names submitted to the governor by the inter-
22 veners in State v. Weiss; and

23 (3) a member representing the Governor's Mental Health Advisory
24 Council, appointed by the governor from a list of three names submitted to
25 the governor by the Governor's Mental Health Advisory Council.

26 (c) The members of the commission shall elect a presiding officer. A
27 majority of the commission constitutes a quorum. The affirmative vote of
28 three members is required to take official action. A vacancy does not
29 impair the power of the remaining members to exercise the powers of the

1 commission. A member of the commission may designate an individual to
2 represent the member at a meeting of the commission. An individual des-
3 ignated under this subsection may vote and has all the powers of a member.

4 (d) Members of the commission serve without compensation but are
5 entitled to per diem and travel expenses authorized by law for other boards
6 under AS 39.20.180.

7 (e) The commission may employ an executive director and staff to
8 assist it in fulfilling its responsibilities under this Act. The executive
9 director of the commission is in the exempt service under AS 39.25.110.

10 * Sec. 2. RESPONSIBILITIES OF THE COMMISSIONER OF NATURAL RESOURCES AND
11 THE COMMISSION. (a) The commissioner of natural resources shall inventory
12 and catalog the mental health trust land, shall audit each transaction
13 involving land that has been part of the mental health trust land, and
14 shall determine the status of mental health trust land under procedures and
15 guidelines established by the commissioner of natural resources as directed
16 by the commission.

17 (b) As directed by the commission, the commissioner of natural re-
18 sources shall retain appraisers to appraise land that was part of the
19 mental health trust. The commissioner shall provide the appraisers with
20 written procedures and instructions that have been adopted by the commis-
21 sion.

22 (c) The commissioner of natural resources shall manage the mental
23 health trust land as a public trust under P.L. 84-830, 70 Stat. 709, under
24 the direction of the commission. The commissioner of natural resources may
25 not sell, lease, or exchange mental health trust land or an interest in the
26 mental health trust land without the prior approval of the commission. The
27 commissioner of natural resources shall sell, lease, and exchange mental
28 health trust land as directed by the commission. The commissioner of
29 natural resources may transfer trust land to the federal government under

1 AS 36.05.035(b)(9) without the approval of the commission. The commis-
2 sioner of natural resources shall advise the commission of an intention to
3 transfer any trust land to the federal government and, after the transfer,
4 shall make every effort to ensure that the federal government will transfer
5 to the state trust land of equal value. In managing the trust and the
6 trust land the commission and the commissioner shall be guided by the
7 principles established for the Board of Trustees of the Alaska Permanent
8 Fund Corporation under AS 37.13.120(a).

9 (d) The income from the management of the mental health trust land
10 shall be deposited in a special trust account in the general fund of the
11 state and may be appropriated by the legislature only for the support of
12 the mental health program in the state.

13 * Sec. 3. RESPONSIBILITIES OF THE COMMISSIONER OF HEALTH AND SOCIAL
14 SERVICES AND THE COMMISSION. The commissioner of health and social ser-
15 vices, as directed by the commission, shall

- 16 (1) select auditors to audit the state's mental health program;
17 (2) establish the procedures and guidelines to guide the audi-
18 tors selected under this subsection;
19 (3) propose the guidelines and procedures to be used in de-
20 termining a range of expenditures for mental health programs necessary to
21 comply with the state's comprehensive mental health plan.

22 * Sec. 4. ADDITIONAL RESPONSIBILITIES OF THE COMMISSION. The commis-
23 sion shall report to the legislature on February 1 of each year on matters
24 of concern to it including recommendations for amendment of laws relating
25 to the management of the mental health trust, the mental health trust land,
26 and the mental health program of the state.

27 * Sec. 5. DEFINITION. In secs. 1 - 4 of this Act "commission" means
28 the interim mental health trust land commission established in sec. 1 of
29 this Act.

1 * Sec. 6. Sections 1 - 5 of this Act are repealed July 1, 1978.

2 * Sec. 7. This Act takes effect immediately in accordance with AS 01.-
3 10.070(c).
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Bradley
4/15/86 ✓

Original sponsors: Pignalberi, Gruenberg,
Boucher, et al

1 IN THE HOUSE BY THE JUDICIARY COMMITTEE
 2 CS FOR SPONSOR SUBSTITUTE FOR HOUSE BILL NO. 128 (Judiciary)
 3 IN THE LEGISLATURE OF THE STATE OF ALASKA
 4 FOURTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to the interim management of mental
 7 health trust land; and providing for an effective
 8 date."

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

10 * Section 1. INTERIM MENTAL HEALTH TRUST LAND COMMISSION ESTABLISHED.

11 (a) The interim mental health trust land commission is established in the
 12 Department of Natural Resources.

13 (b) The commission established under (a) of this section consists of
 14 five members, including the commissioner of natural resources and the
 15 commissioner of health and social services and three members appointed by
 16 the governor as follows:

17 (1) a member representing the plaintiffs, appointed by the
 18 governor from a list of three names submitted to the governor by the plain-
 19 tiffs in State v. Weiss, 706 P.2d 681 (Alaska 1985);

20 (2) a member representing the intervenors, appointed by the
 21 governor from a list of three names submitted to the governor by the inter-
 22 venors in State v. Weiss; and

23 (3) a member representing the Governor's Mental Health Advisory
 24 Council, appointed by the governor from a list of three names submitted to
 25 the governor by the Governor's Mental Health Advisory Council.

26 (c) The members of the commission shall elect a presiding officer. A
 27 majority of the commission constitutes a quorum. The affirmative vote of
 28 three members is required to take official action. A vacancy does not
 29 impair the power of the remaining members to exercise the powers of the

1 commission. A member of the commission may designate an individual to
2 represent the member at a meeting of the commission. An individual des-
3 ignated under this subsection may vote and has all the powers of a member.

4 (d) Members of the commission serve without compensation but are
5 entitled to per diem and travel expenses authorized by law for other boards
6 under AS 39.20.180.

7 (e) The commission may employ an executive director and staff to
8 assist it in fulfilling its responsibilities under this Act.

9 * Sec. 2. RESPONSIBILITIES OF THE COMMISSIONER OF NATURAL RESOURCES AND
10 THE COMMISSION. (a) The commissioner of natural resources shall inventory
11 and catalog the mental health trust land, shall audit each transaction
12 involving land that has been part of the mental health trust land, and
13 shall determine the status of mental health trust land under procedures and
14 guidelines established by the commissioner of natural resources as directed
15 by the commission.

16 (b) As directed by the commission, the commissioner of natural re-
17 sources shall retain appraisers to appraise land that was part of the
18 mental health trust. The commissioner shall provide the appraisers with
19 written procedures and instructions that have been adopted by the commis-
20 sion.

21 (c) The commissioner of natural resources shall manage the mental
22 health trust land as a public trust under P.L. 84-830, 70 Stat. 709, under
23 the direction of the commission. The commissioner of natural resources may
24 not sell, lease, or exchange mental health trust land or an interest in the
25 mental health trust land without the prior approval of the commission. The
26 commissioner of natural resources shall sell, lease, and exchange mental
27 health trust land as directed by the commission. The commissioner of
28 natural resource. may transfer trust land to the federal government under
29 AS 38.05.035(b)(9) without the approval of the commission. The

1 commissioner of natural resources shall advise the commission of an inten-
2 tion to transfer any trust land to the federal government and, after the
3 transfer, shall make every effort to ensure that the federal government
4 will transfer to the state trust land of equal value. In managing the
5 trust and the trust land the commission and the commissioner shall be
6 guided by the principles established for the Board of Trustees of the
7 Alaska Permanent Fund Corporation under AS 37.13.120(a).

8 (d) The income from the management of the mental health trust land
9 shall be deposited in a special trust account in the general fund of the
10 state and shall be appropriated by the legislature for the support of the
11 mental health program in the state.

12 * Sec. 3. RESPONSIBILITIES OF THE COMMISSIONER OF HEALTH AND SOCIAL
13 SERVICES AND THE COMMISSION. The commissioner of health and social ser-
14 vices, as directed by the commission, shall

15 (1) select auditors to audit the state's mental health program;

16 (2) establish the procedures and guidelines to guide the audi-
17 tors selected under this subsection;

18 (3) propose the guidelines and procedures to be used in de-
19 termining a range of expenditures for mental health programs necessary to
20 comply with the state's comprehensive mental health plan.

21 * Sec. 4. ADDITIONAL RESPONSIBILITIES OF THE COMMISSION. The commis-
22 sion shall report to the legislature on February 1 of each year on matters
23 of concern to it including recommendations for amendment of laws relating
24 to the management of the mental health trust, the mental health trust land,
25 and the mental health program of the state.

26 * Sec. 5. DEFINITION. In secs. 1 - 4 of this Act "commission" means
27 the interim mental health trust land commission established in sec. 1 of
28 this Act.

29 * Sec. 6. Sections 1 - 5 of this Act are repealed July 1, 1988.

1 * Sec. 7. This Act takes effect immediately in accordance with AS 01.-
2 10.070(c).
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A M E N D M E N T

Offered in the House Judiciary Committee

By: Goll

TO: CS SSHB 128 (Resources)

Page 3, line 24:

Delete "The" and insert "Except as authorized under AS
38.05.035(b)(9), the"

Pignalberi
April 8, 1986

Proposed revisions of Goll amendment

Proposal #1:

Page 3, Line 29:

state as directed by the commission. Subsequent to quit claiming mental health land or an interest in land under AS 38.05.035(b)(9) the commissioner shall replenish the trust with lands of equal value.

Proposal #2:

Page 3, Line 29:

state as directed by the commission. The commissioner may transfer trust land to the federal government under AS 38.05.035(b)(9) in exchange for lands of equivalent value. The equivalent land to be conveyed to the trust need not be identified at the time of the transfer.

Investment: procedure language revision

Page 4, Line 1:

land the commission and the commissioner shall be guided by the principles established for the Board of Trustees of the Alaska Permanent Fund under AS 37.13.120 [SEEK TO MAXIMIZE THE INCOME EARNED AND RECEIVED BY THE TRUST CONSISTENT WITH A TRUSTEE'S OBLIGATION TO PROTECT AND PERPETUATE THE TRUST].



Alaska State Legislature

House

Official Business

Pouch V
State Capitol
Juneau, Alaska 99811

M E M O R A N D U M

TO: The Honorable Mike M. Miller, Chair
House Judiciary Committee

FROM: *M. Miller* Representative Marco A. Pignalberi

DATE: April 10, 1986

RE: Suggested Amendments to CSSSHB 128 (res)

Per our conversation about expediting subcommittee deliberation, I have attached amendment proposals which address several of the concerns raised by Judiciary Committee members at the April 8 hearing on CSSSHB 128 (res).

cc: The Honorable Max Gruenberg
The Honorable Robin Taylor

Pignalberi
April 10, 1986

Amendments suggested during 4/8/86 Judiciary Hearing

Page 2, Sec. 2.(B) amended to read:

(b) The commission established under (a) of this section consists of five members, including the commissioner of natural resources and the commissioner of health and social services, or their designees, and five [THREE] members appointed by the governor as follows:

(1) a member representing the plaintiffs, appointed by the governor from a list of three names submitted to the governor by the plaintiffs in State v. Weiss, 706 P.2d 681 (Alaska 1985);

(2) a member representing the intervenors, appointed by the governor from a list of three names submitted to the governor by the intervenors in State v. Weiss, 706 P.2d 681 (Alaska 1985);

(3) a member representing the Governor's Mental Health Advisory Council, appointed by the governor from a list of three names submitted to the governor by the Governor's Mental Health Advisory Council ; and

(4) two members representing the general public appointed by the governor .

Page 3, subsection (c) is amended to read:

(c) The commissioner of natural resources is responsible for the management of the mental health land of the state as a public trust under P.L. 84-830, 70 Stat. 709, under the direction of the commission. [THE COMMISSION MAY CONTRACT WITH THE PLAINTIFFS OR THE INTERVENORS FOR THE PERFORMANCE OF FUNCTIONS ASSIGNED TO IT] The commissioner of natural resources may not sell, lease, or exchange mental health trust land of the state without the prior approval of the commission. The commissioner of natural resources shall sell, lease, and exchange mental health trust land of the state as directed by the commission. Subsequent to quit claiming mental health land or an interest in land under AS 38.05.035(b)(9) the commissioner shall make every effort to ensure that the federal government replenish the trust with lands of equal value. In managing the trust and the trust land the commission and the commissioner shall be guided by the principles established for the Board of Trustees of the Alaska Permanent Fund under AS 37.13.120.

Page 3, Line 5 is amended to read:

THE COMMISSION. (a) The commissioner of natural resources
shall inventory and

Page 3, Line 8 is amended to read:

land of the state, and shall determine the status of mental
health trust land on

Page 4, Line 4 is amended to read:

(d) The [PROCEEDS] income from the management of the
mental health trust land

Page 4, delete Line 29:

[* Sec. 7. Sections 1-6 of this Act are repealed July 1,
1988.]

STATE OF ALASKA

DEPARTMENT OF NATURAL RESOURCES

OFFICE OF THE COMMISSIONER

BILL SHEFFIELD, GOVERNOR

POUCH M
JUNEAU, ALASKA 99811
PHONE: 907-465-2400

April 7, 1986

The Honorable M. Mike Miller
Chair, House Judiciary Committee
Alaska State Legislature
P.O. Box V
Juneau, AK 99811

Dear Representative Miller:

I am writing to provide Department of Natural Resources comments on HB 128 which is scheduled for hearing in your committee today. This bill would establish an interim committee to oversee mental health land management by the department. I understand that HB 651 is not formally scheduled but can be discussed. Since your intent is to move HB 128, I will address several areas for which the department offers amendment.

Amendment 1

Section 3 requires several actions by the department, some of which are already completed or will be completed this fiscal year. As a technical amendment I suggest the following:

Amend Section 3, page 3, commencing on line 5 as follows:

- (a) The commissioner of natural resources shall inventory and maintain appropriate title and status records pertaining to [CATALOG] the mental health trust land of the state and, to the extent necessary, shall audit...

Amendment 2

I recommend deleting the last sentence in subsection 3(a), page 3, lines 11-13, since all such department records are freely available.

Amendment 3

Subsection 3(c) requires the commissioner to take whatever disposal actions the commission desires in maximizing the income earned from mental health land. Since there is substantial disagreement about the meaning of the Supreme Court's decision in Weiss v. Alaska, the Attorney General is

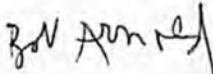
April 7, 1986

considering seeking clarification of that decision by the Superior Court. One of the questions that would be posed is whether the state has an affirmative obligation to manage mental health lands for maximum revenue generation. In order to avoid prejudging this issue, we suggest that subsection 3(c) be amended as follows:

(c) The commissioner of natural resources is responsible for the management of the mental health land of the state as a public trust under P.L. 84-830, 70 Stat. 709, under the direction of the commission. [THE COMMISSION MAY CONTRACT WITH THE PLAINTIFFS OR THE INTERVENORS FOR THE PERFORMANCE OF FUNCTIONS ASSIGNED TO IT.] The commissioner of natural resources may not sell, lease, or exchange mental health trust land of the state or an interest in the mental health trust land of the state without the prior approval of the commission. [THE COMMISSIONER OF NATURAL RESOURCES SHALL SELL, LEASE, AND EXCHANGE MENTAL HEALTH TRUST LAND OF THE STATE AS DIRECTED BY THE COMMISSION.] In managing the trust and the trust land the commission [AND THE COMMISSIONER] shall deny or approve actions consistent with the terms of the trust established by the Alaska Mental Health Enabling Act. [SEEK TO MAXIMIZE THE INCOME EARNED AND RECEIVED BY THE TRUST CONSISTENT WITH A TRUSTEE'S OBLIGATION TO PROTECT AND PERPETUATE THE TRUST.]

I will be available to testify and answer questions at today's hearing. If there is additional information I might supply, please let me know.

Sincerely,



Robert D. Arnold
Deputy Commissioner

cc: Representative Pignalberi
Representative Gruenberg
Senator Fahrerkamp
Senator Sturgulewski
Senator Josephson
Jim Gottstein
David Walker
Tom Koester, Department of Law
Jim Ayers, Governor's Office
Molly McCammon, Governor's Office
Tom Hawkins, DLWM
Salli Slaughter, DLWM

STATE OF ALASKA

BILL SHEFFIELD, GOVERNOR

DEPARTMENT OF FISH AND GAME

OFFICE OF THE COMMISSIONER

P.O. BOX 3-2000
JUNEAU, ALASKA 99802
PHONE: 907 / 465-4100

April 15, 1986

The Ponorable Mike M. Miller
Alaska State Legislature
P. O. Box V
Juneau, AK 99811

Dear Representative Miller:

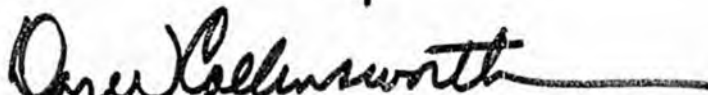
I understand that at a recent hearing on Mental Health Grant Lands questions arose regarding commercial timber volume and beach frontage lands in the proposed Dude Creek Critical Habitat Area near Gustavus.

The area encompassed by the proposed Critical Habitat Area is, for the most part, a perched wetland covered with sedge meadows and willow thickets. The only timber stands are limited to areas immediately adjacent to the two streams that flow through the area. Given the limited volume available and the roading required for access to it, the stands are probably not commercially viable.

With regard to the beach frontage question, a review of the enclosed map of the proposed Critical Habitat Area clearly illustrates that no beach frontage is included.

I hope this clears up any misunderstandings that have arisen. If I can be of further assistance, please let me know.

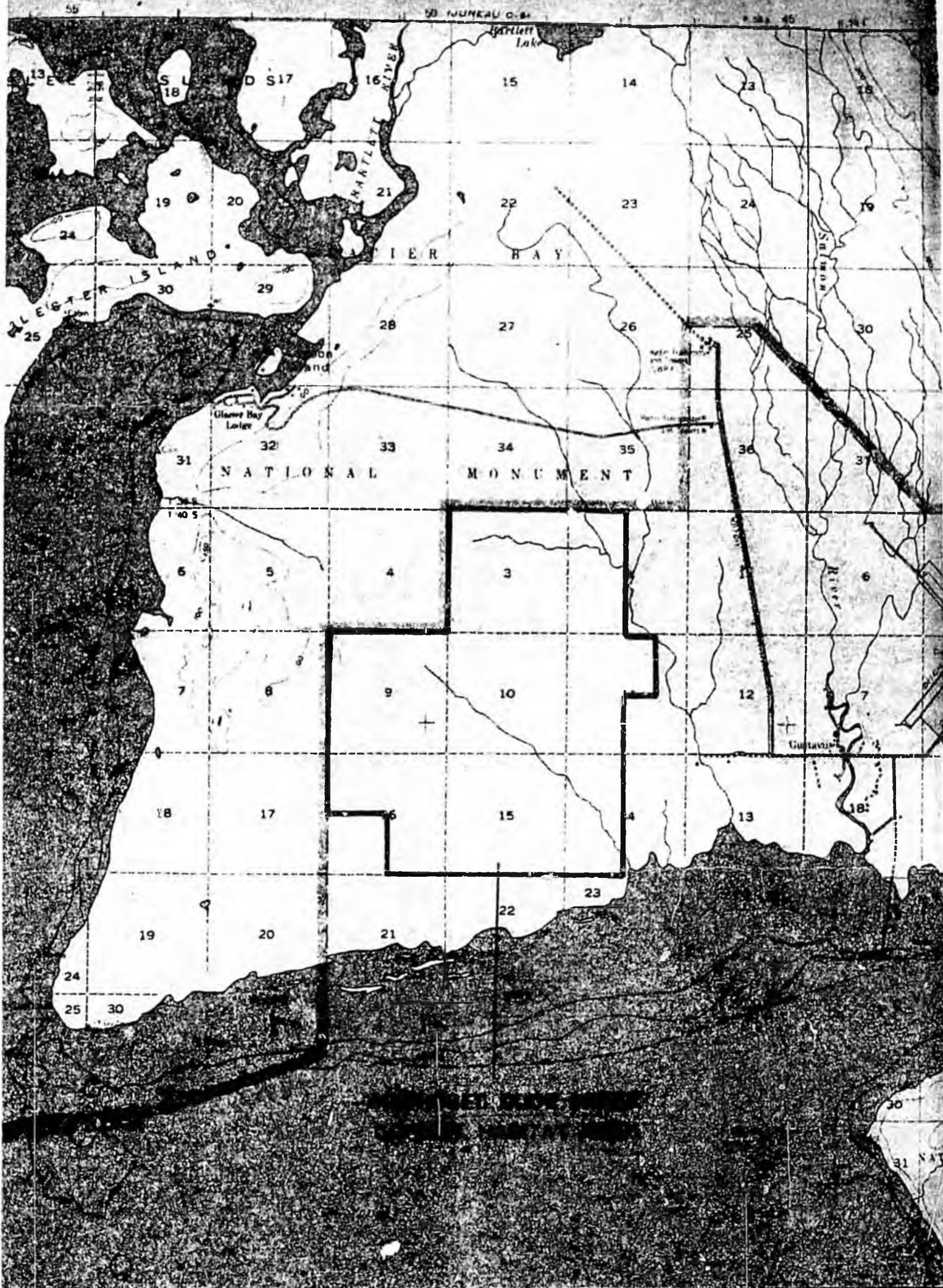
Sincerely,



Don W. Collinsworth
Commissioner

Enclosure

cc: Dr. George Rogers
Esther Wunnicke, Commissioner, ADNR



STATE OF ALASKA
THE LEGISLATURE

POUCH Y - STATE CAPITOL

JUNEAU, ALASKA 99811

907-465-3800

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

April 8, 1986

SUBJECT: Conflicts of interest: CSHB 128(Resources)
TO: Representative M. M. Miller
Chair, House Judiciary Committee
FROM: Richard A. Bradley
Legislative Counsel

Nancy Groszek has asked that I comment on the question whether there is a conflict of interest raised under CSHB 128(Resources). In sec. 3(c), the bill provides that "The (interim mental health trust land) commission may contract with the plaintiffs or the intervenors for the performance of functions assigned to it." The "plaintiffs" and "intervenors" are the respective parties so described in State v. Weiss, 706 P.2d 681 (Alaska 1985).

I agree that the commission is representative of the parties to the litigation; the plaintiffs and intervenors are assured representation on the commission by virtue of the limited discretion granted to the governor in making appointments to the commission under sec. 2 of the bill; I note that Sec. 2 of the bill comes close to treading (if it does not in fact tread) on the governor's constitutional powers of appointment.

But I must assume that there is no conflict of interest, as such, if the legislature itself authorizes the commission to contract with its members. This follows necessarily from the authorization; in the absence of the authorization, a conflict would seem to be presented.

If I may be of further assistance, please advise.

RAB:csh
c6/068

POSITION PAPER
CSSSHB 128

For an Act entitled: "An Act relating to the interim management of mental health trust land; and providing for an effective date."

Section 4 of CSSSHB 128 requires the department to establish guidelines for and obtain an independent audit of mental health expenditures. It also requires the department to prepare guidelines to determine by some mechanism the level of funding necessary to comply with the state's mental health plan. It requires the department to seek the approval of the commission prior to embarking on these tasks.

Position

The department has been asked to comment on Section 4 of this bill. The department believes an audit of mental health expenditures needs to be performed. The commission provides a valuable forum for this agreement to be reached.

It would be prudent for all parties to agree on the guidelines for such an audit prior to commitment of funds for that purpose. The department would work with the commission to achieve consensus on such a set of guidelines.

With regard to the second section, the department feels it important that the interim commission examine the needs for mental health services and be involved in a needs assessment which would result in determining what is "necessary" for the state to implement a comprehensive mental health program. A broad based effort to come to an agreement on the level and range of services needed to meet Alaskan's mental health program would provide a valuable yard stick by which to measure how existing services fail to meet the true need and what level of commitment is needed in the future.

Recommended by: *Karen Perdue*
Karen Perdue
Assistant Commissioner
for Administration

Date: 4/7/86

Approved by: *John R. Pugh*
John R. Pugh
Commissioner

Date: 4/8/86

STATE OF ALASKA 1986 LEGISLATIVE SESSION FISCAL NOTE

Revision Date : _____

REQUEST

Bill/Resolution No. : CSSSHB 128
 Title : An Act relating to the interim management of mental health trust land; and providing for an effective date.
 Sponsor : Pignalberi, Gruenberg, Boucher
 Requestor : Pignalberi
 Date of Request : March 24, 1986

FISCAL DETAIL

Agency Affected : Health & Social Services
 BRU : DHSS Administrative Services
 Components : Audit

EXPENDITURES/REVENUES : (Thousands of Dollars)

OPERATING	FY 86	FY 87	FY 88	FY 89	FY 90	FY 91
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL		81.0	0			
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING		81.0	0	0	0	0

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

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

FUNDING : (Thousands of Dollars)

GENERAL FUND		81.0				
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS :

FULL-TIME		0				
PART-TIME		0				
TEMPORARY						

ANALYSIS : Attach a separate page if necessary

Prepared by : *Karen Perdue* Karen Perdue, Assistant Commissioner
 Division : Commissioner's Office Phone : 465-3030
 Date : 3/26/86

Approved by Commissioner : *Jan R. O'Byrne* Date : 4/1/86
 Agency : Health and Social Services

Distribution (by Agency preparing fiscal note):

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

The definition of mental health is not clear, and was not defined by the courts. The parties may agree to a definition or the court may be asked to define it for these purposes.

The department's cost estimate for an independent audit includes the accounting for a broad range of possible mental health expenditures. Auditing all possible expenditures and then applying those relevant to the final definition would be cheaper than presupposing the definition of mental health and then reperforming the audit should the definition be expanded beyond the original scope.

Department audit staff could perform this audit at a negligible cost if it is determined that a private firm is not needed. DHSS audit staff includes 3 CPAs who regularly perform hundreds of audits per year.

STATE OF ALASKA

DEPARTMENT OF NATURAL RESOURCES

OFFICE OF THE COMMISSIONER

BILL SHEFFIELD, GOVERNOR

POUCH M
JUNEAU, ALASKA 99811
PHONE: 907-465-2400

April 8, 1986

The Honorable M. Mike Miller
Chair, House Judiciary Committee
Alaska State Legislature
P.O. Box V
Juneau, AK 99811

Dear Representative Miller:

During yesterday afternoon's hearing on CSSSHB 128, related to a mental health lands commission, a member of your committee asserted that the proposed commission was the proper forum for determining the disposition of mental health lands, since the Alaska Mental Health Enabling Act (AMHEA) made clear that the lands were to be used for mental health purposes.

The AMHEA assigns to the legislature of Alaska the authority to determine the disposition of mental health lands. Section 202(e) of the Act provides as follows:

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

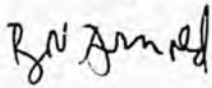
The Honorable M. Mike Miller

-2-

April 8, 1986

I hope this information is useful to your committee's deliberations.

Sincerely,



Robert D. Arnold
Deputy Commissioner

MEMORANDUM

State of Alaska

TO: DISTRIBUTION

DATE: April 9, 1986

FILE NO:

TELEPHONE NO: 465-2400

FROM: Mike Vediner *MV*
Land and Water Management
Department of Natural Resources

SUBJECT: Acreage Correction
Anch. Coastal State
Wildlife Refuge

Please note on the attached chart a correction for the total acreage of mental health land within the proposed Anchorage Coastal State Wildlife Refuge (HB 186, SB 19). The original chart indicated 516 acres and the corrected figure is 740.5 acres.

Attachment

DISTRIBUTION

Honorable Al Adams
Honorable Mike Szymanski
Honorable M. Mike Miller
Honorable Marco Pignalberi
Honorable Max Gruenberg
Honorable Peter Goll
Honorable Dick Shultz
Honorable Adelheid Herrmann
Honorable Jan Faiks
Honorable John Sackett
Honorable Vic Fischer
Honorable Arliss Sturgulewski
Honorable Joe Josephson
Honorable Bettye Fahrenkamp
Honorable Edna DeVries
Jim Gottstein
David Walker
Jim Ayres
Molly McCammon
Bob Arnold
Tom Koester
John Pugh
Karen Perdue
Dana LaTour
Norm Cohen
Tom Hawkins
Salli Slaughter
Meg Hayes

PENDING LEGISLATION CONTAINING MENTAL HEALTH LAND
December, 1985

This chart pertains to legislative bills containing mental health lands which were left pending at the close of the 1985 session. This information was obtained through the Legislative Affairs computer system. See attached sheet for a listing of all bills reviewed for the inclusion of mental health land.

Bill #	Description of Bill	Sponsor	Legal Description of Mental Health Lands	Approximate* Total Acreage	Approximate MH Acreage
HB 44	Establishment of Additional State Land as Marine Park Units of the State Park System	M. M. Miller, Goll, Duncan	T. 58 S., R. 79 E., C.R.M. within secs. 18, 19, 20, 29 and 32	16,611	1512.41
HB 86	Lands designated as Willow Creek State Recreation Area	Rules Committee at the request of the Governor	T. 20 N., R. 4 W., S.M. within Sec. 31	3,669	76
HB 93	Establishment of a system of Recreation Rivers	Rules Committee at the request of the Governor	T. 17 N., R. 4 W., S.M. within Secs. 4, 6, 7, 17 and 18 T. 26 N., R. 4 W., S.M. within Sec. 7 and 18 T. 26 N., R. 5 W., S.M. within Secs. 12, 13, and 23 T. 18 N., R. 3 W., S.M. within Secs. 28, 29 and 30	226,070	3,893
HB 312	Establishment of the Dude Creek Critical Habitat Area	Goll, Duncan, M. M. Miller, Brinkley	T. 40 S., R. 58 E., C.R.M. within Secs. 2, 3, 9, 10, 11, 14 and 15	4,083	3,443
SB 19 HB 186	Creation of Anchorage Coastal State Wildlife Refuge	V. Fischer, Kerttula Szymanski	T. 12 N., R. 4 W., S.M. within Secs. 15, 22, 23, 25 and 26 T. 12 N., R. 3 W., S.M. within Secs. 30, 31 and 32 T. 11 N., R. 3 W., S.M. within Sec. 10	**1,653	**516 740.5
SB 30	Yakataga State Forest	Eliason, V. Fischer, Kerttula	T. 22 S., R. 19-22 E., C.R.M. within all secs T. 23 S., R. 21-22 E., C.R.M. within all secs	360,834	47,316

*Pertains to uplands only. The mental health lands in SB 19 are currently included in the Potter Point State Game Refuge.

**These estimates were made from the legal descriptions provided in the bills and may contain non-state land or lands already encumbered.

POSITION PAPER
CSSSHB 128

For an Act entitled: "An Act relating to the interim management of mental health trust land; and providing for an effective date."

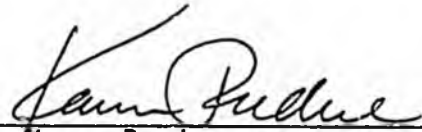
Section 4 of CSSSHB 128 requires the department to establish guidelines for and obtain an independent audit of mental health expenditures. It also requires the department to prepare guidelines to determine by some mechanism the level of funding necessary to comply with the state's mental health plan. It requires the department to seek the approval of commission prior to embarking on these tasks.

Position

The department has been asked to comment on Section 4 of this bill. The department believes an audit of mental health expenditures needs to be performed.

It would be prudent for all parties to agree on the guidelines for such an audit prior to commitment of funds for that purpose. The department would work with the commission to achieve consensus on such a set of guidelines. If agreement cannot be reached however, the parties may want to request that the court adjudicate the appropriateness of certain guidelines i.e. the definition of mental health.

With regard to the second section, the department feels it important that the interim commission examine the needs for mental health services and be involved in a needs assessment which would result in determining what is "necessary" for the state to implement a comprehensive mental health program. However, it should be noted that the Mental Health Advisory Council (AS 47.30.605) has a statutory mandate to oversee and review the mental health plan for the state. The Commission's work should not conflict with functions already in statute.

Recommended by: 
Karen Perdue
Assistant Commissioner
for Administration

Date: 3/28/86

Approved by: 
John R. Pugh
Commissioner

Date: 4/1/86

STATE OF ALASKA

BILL SHEFFIELD, GOVERNOR

DEPARTMENT OF NATURAL RESOURCES

POUCH M
JUNEAU, ALASKA 99811
PHONE: 907-465-2400

OFFICE OF THE COMMISSIONER

March 21, 1986

The Honorable Dick Shultz
The Honorable Adelheid Herrmann
Alaska State Legislature
P.O. Box V
Juneau, Alaska 99811

Dear Representatives Shultz and Herrmann:

I am writing to provide comments on SSHB 128, which creates an interim mental health trust land commission. The bill is scheduled for hearing in your committee on Monday, March 24, 1986.

Although we have no objection to oversight of this department's administration of mental health lands, SSHB 128 is unclear regarding the roles of the commission and the department. For example, the bill would assign the commission its responsibilities for trust land management. Indeed, one provision would allow the commission to contract with the intervenors for the performance of its duties. The same section, however, implies that management is the responsibility of the department, with the additional requirement that all actions obtain the approval of the commission and counsel for the plaintiffs and intervenors, or approval by the court. If the department retains management responsibility, the multiple approvals required would likely cause substantial delay, possibly to the detriment of the trust as well as to citizens generally.

Four responsibilities that would be assigned to the commission (inventory, catalog, audit transactions of, and determination of status of mental health land) are presently being carried out by the department and, except for the audit, will be accomplished this fiscal year; other tasks required by the Supreme Court's decision would apparently be performed by the department since they are not listed in the bill.

It should be noted that this bill would assign all proceeds to a fund for appropriations to support mental health programs, but the federal enabling legislation allows the use of such funds for other public purposes once mental health needs are funded.

Hon. Rep. Shultz
Hon. Rep. Herrmann

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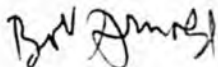
March 21, 1986

In a letter to Representative M. Mike Miller, a copy of which is enclosed, we commented on HB 651 which is similar to SSHB 128 in that it would create a commission for mental health land management. However, the commission established under HB 651 is established within the Department of Natural Resources and may include persons with necessary land management expertise. The commission formed under SSHB 128 however is not within the department and its membership includes the commissioners of health and social services and revenue and three members from mental health advocacy groups with no required land management experience.

Our understanding of this bill suggests there would be no fiscal impact upon the department arising from its passage.

Please let me know whether there is further information I might provide.

Sincerely,



rc Esther C. Wunnicke
Commissioner

Enclosure

cc: The Honorable Marco Pignalberi
The Honorable M. Mike Miller
SSHB 128 Sponsors
Tom Koester
Molly McCammon
Dana Latour
Karen Perdue
Norm Cohen
Tom Hawkins



Alaska State Legislature

HOUSE OF REPRESENTATIVES
COMMITTEE ON RESOURCES

POUCH V
JUNEAU, ALASKA 99811
(907) 465-3715

MEMORANDUM

March 21, 1985

TO: Representative Mike Miller
Chairman, House Judiciary

FROM: Representative Dick Shultz *DS*
Co-Chair, House Resources

SUBJ: HB 128: Mental Health Lands

The Resources Committee has had under consideration HB 128 and has reported the bill out of committee. This legislation which deals with the topic of mental health lands is fairly straight forward, however, there was one question raised by Representative Thompson that DNR has promised to try and answer. In the interest of time Resources members decided to move this bill on to your committee after DNR indicated they would provide, if possible, the total value of the mental health lands in question. Deputy Commissioner Bob Arnold from DNR stated that the Department has calculated the value, however, he was not sure that it could be released to the legislature because of the present litigation of this issue. I would encourage you as Chairman to follow through and obtain the mental health land values if at all possible. It is a question that needs to be answered before it goes to the floor and it is one that both Representative Thompson and other members of the Resources Committee feel is relevant to this difficult issue.

Dick Shultz
Rep. Dick Shultz, Co-Chair

Rep. Adelheid Herrmann, Co-Chair

Rep. May Wallace, Vice-Chair

Bette Cato
Rep. Bette Cato

Michael W. Miller
Rep. Mike Miller

David W. Thompson
Rep. David Thompson

John Sund
Rep. John Sund

Roger L. Jenkins
Rep. Roger Jenkins

Rep. Drue Pearce

STATE OF ALASKA

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

BILL SHEFFIELD, GOVERNOR

REPLY TO:

1031 W 4th AVENUE
SUITE 200
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PHONE: (907) 276-3550

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

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

March 21, 1985

The Honorable Richard Shultz
Alaska State House of Representatives
Pouch V
Juneau, AK 99811

Re: HB 128 (Mental Health Trust Lands)

Dear Representative Shultz:

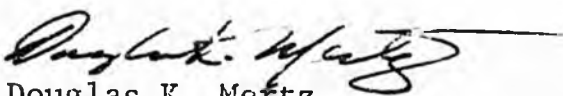
At the House Resources hearing yesterday on HB 128, relating to mental health trust lands, some interest was expressed by committee members in seeing the results of DNR appraisals on the lands. Last week DNR completed the preliminary appraisals, for the mental health lands in state ownership as of their redesignation as general grant lands in 1978. By May 15, DNR will have a final appraisal, including mental health lands on which third party interests were created before 1978.

The appraisal documents are court-ordered discovery requested by the plaintiffs' attorney, Stephen Cowper of Fairbanks. We are willing to release the documents to the committee, but since they are still privileged attorney/client materials not yet filed with the court, we must ask that Mr. Cowper's agreement be secured first. As soon as that agreement is received, we will be happy to deliver to the committee the appraisal summaries to date.

We regret that because of time constraints we were not able to present our position on HB 128 to the committee yesterday. We are available to discuss it with any member who wishes to hear our views.

Sincerely,

NORMAN C. GORSUCH
ATTORNEY GENERAL

By: 
Douglas K. Mertz
Assistant Attorney General

DKM:d.1
cc: Stephen Cowper, Esq.

STATE OF ALASKA

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

April 10, 1985

BILL SHEFFIELD, GOVERNOR

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JUNEAU, ALASKA 99811
PHONE: (907) 465-3600

The Honorable Peter Goll
Alaska State House of Representatives
Pouch V
Juneau, AK 99811

Re: HB 128 (mental health trust land)

Dear Representative Goll:

You asked "[h]ow will HB 128, relating to mental health trust lands, affect any wrongfully conveyed Mental Health lands?" The thrust of your inquiry appears to be whether HB 128, which would preclude the state from conveying or otherwise disposing of any land owned in fee, which the state received from the federal government under section 202 of the Alaska Mental Health Enabling Act of 1956, P.L. 84-830, would preclude the state from implementing ch. 152, SLA 1984. That statute authorized the state to transfer land back to the federal government if the land was wrongfully or erroneously conveyed by the federal government to the state in the first place. It was designed particularly to facilitate the granting of certain Native allotments.

The short answer to your question is that HB 128, if enacted, probably would preclude the state from transferring the land back to the federal government. The general rule is that a subsequently passed law takes precedence over a previously passed law to the extent of any inconsistency. However, if there was sufficient legislative history indicating that the legislature did not intend HB 128 to prevent the state from implementing ch. 152, SLA 1984, it is possible that HB 128 would not preclude the transfer back to the federal government which that earlier statute authorized. In other words, there is no clear answer to your question, although (in the absence of rather clear evidence of legislative intent to the contrary) it is likely that HB 128 would preclude a transfer back to the federal government.

To ensure that HB 128 does not have that effect, you suggest that an amendment to HB 128 might solve the problem. You propose that the word "properly" be inserted on line 12 after the word "was." We would suggest, as a possible alternative, that

The Honorable Peter Goll

April 10, 1985
Page 2

the following phrase be inserted at the end of line 13 after the reference to "(P.L. 84-830):" ", except as authorized by AS 38.-05.035(b)(9)." This would make it abundantly clear that HB 128 was not intended to preclude the state from implementing the 1984 statute which added paragraph (9) to AS 38.05.035(b).

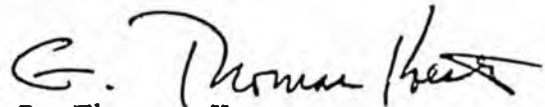
As you may know, the Administration has not yet had an opportunity to comment in detail on HB 128. We believe that there are a number of considerations that have not yet been brought to the legislature's attention regarding this bill, and look forward to an opportunity to make our concerns known. As a result, our suggestion of the foregoing amendment to take care of the problem you raise should not be considered as Administration approval or agreement with the bill as a whole.

If we can provide further information or answer any additional questions, please contact us at your convenience.

Sincerely,

NORMAN C. GORSUCH
ATTORNEY GENERAL

By:



G. Thomas Koester
Assistant Attorney General

GTK:dlm

cc: Honorable Esther C. Wunnicke
Commissioner
Department of Natural Resources

STATE OF ALASKA

BILL SHEFFIELD, GOVERNOR

DEPARTMENT OF NATURAL RESOURCES

POUCH M
JUNEAU, ALASKA 99811
PHONE: 907-465-2400

OFFICE OF THE COMMISSIONER

March 8, 1985

The Honorable Richard Shu'tz
Alaska State House
Pouch V
Juneau, AK 99811

Dear Representative ^{Shu'tz} Shultz:

I am writing each member of the Legislature to provide current information on two issues of rising concern to Alaskans: the management of the state's mental health lands and progress in negotiations between the state and Seldovia Native Association, Inc. (SNA) regarding a possible land exchange in Kachemak Bay State Park. These two issues are largely unrelated, but they are summarized in this letter owing to the broad interest that has been exhibited in them.

Mental Health Lands Status

I am enclosing a briefing packet on the mental health lands issue, but let me also provide a summary progress report.

The current issue regarding mental health land management arises from a class action lawsuit that has reached the Alaska Supreme Court, in which plaintiffs contest 1978 legislation that redesignated mental health lands for general use and provided for a mental health trust fund to which appropriations have not been made (AS 37.14.010-.050).

The mental health lands include valuable acreage in the Swanson River oil and gas field, Beluga coal field, Trans Alaska Gasline System project, and Eklutna water project. Pursuant to the 1978 legislation, other mental health lands have been conveyed to municipalities in fulfillment of their entitlements and to individuals under land disposal programs. At the Court's direction we are conducting an audit and inventory of mental health lands that will produce preliminary results in mid-March and will be complete in mid-May. The audit will indicate more clearly what is at stake, but we are already aware that the mental health lands could be very valuable

March 8, 1985

because of their location and resources. I will keep you informed as this information becomes available.

The state has expressed to the sponsors of HB 128 (providing for a moratorium on conveyances of mental health lands) its interest in discussing settlement of the litigation that is pending in the State Supreme Court or of possible litigation in federal court (as threatened by the Alaska Mental Health Association). Our attorney, Tom Koester of the Department of Law, has been designated by the administration to serve as the point of contact in these negotiations. Either Tom or members of my staff remain available to brief you further.

I believe that passage of legislation such as HB 128 could have an adverse effect on the state's management of these lands without corresponding benefits for the plaintiffs in the suit. I want to be sure that you are aware of our interest in constructive resolution of the litigation.

Kachemak Park Land Exchange

A 1978 agreement between the state and the Seldovia Native Association, Inc., (SNA) provides for a full trade-out of the corporation's land within Kachemak Bay State Park for an equal-value amount of state land outside the park. This exchange has been under way for several years, during which time the state has exchanged for about 3,500 acres of SNA land within the park. At present, there are another 23,000 acres of SNA land within the park.

To the frustration of both parties, completion of the trade has been delayed by several factors. Foremost is the difficulty of identifying a sufficient amount of state land of interest to SNA which can be made available for the trade. Our experience indicates that Seldovia is primarily interested in developable state land with road access or water frontage. Obviously, this type of state land is in short supply and in high demand from other competing interests (particularly on the Kenai Peninsula).

In an attempt to complete this trade as soon as possible in a single action (rather than in phases), I have instructed my staff to identify a large inventory of potential trade land, including land outside the Kenai Peninsula area. We will identify a pool of land well in excess of that needed to complete an equal value exchange, so as to afford Seldovia and the state the flexibility to refine the land pool as needed. Mr. Fred Elvsaas,

March 8, 1985

President of the SNA, has received a preliminary list of some available state land, and I've explained to him that our statutes require our preliminary agreement to undergo public and legislative review. The department cannot unilaterally commit state land to the trade without this review.

In recent correspondence copied to members of the Legislature, the president of SNA signalled a lack of confidence in the department's approach to the exchange. I have met with Mr. Elvsaas on numerous occasions and each time I have reiterated my interest in and commitment to the trade -- but I also have tried to clarify that land exchanges are subject to a public process and that no agreement can be considered final unless it passes through the required process. I want you also to be aware of this process and my interest in the trade.

As you will see in the enclosed briefing paper on land exchanges, an exchange of such magnitude is subject to legislative approval. AS 38.05.020 requires legislative approval if an exchange involves the land having an appraised or estimated fair market value of more than \$5,000,000, or is for other than equal appraised fair market value. The department will continue attempts to negotiate the trade this spring and summer with SNA. Assuming we reach an agreement, I expect to hold public hearings on the trade this fall and submit the exchange for legislative review under AS 38.50.140 at the beginning of the 1986 session.

I will do my best to keep you advised as we continue to negotiate with SNA. I would be pleased to arrange a briefing on the trade for you if you are interested.

Sincerely,



Esther C. Wunnicke
Commissioner

Enclosures

cc: Governor Bill Sheffield
John Shively, Office of the Governor
Attorney General Norm Gorsuch
Tom Koester, Department of Law
Tom Hawkins, Division of Land
and Water Management
Fred Elvsaas, Seldovia Native Association, Inc.



THE ALASKA
ALLIANCE FOR THE MENTALLY ILL

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

March 11, 1986

Honorable Don Bennett
President of Alaska State Senate
Alaska State Legislature
Juneau, Alaska 99801

Dear Senator Bennett and Members of the Senate:

The Alaska Alliance for the Mentally Ill believes it is essential that some legislation address the mental health lands dispute this session and appreciates the opportunity to present its position to the members of the Senate.

In addition to the proposed interim joint committee (either SCR 36 or HCR 50) the Alliance supports HB 128 as a further vehicle needed for resolution of the mental health lands dispute. Basic concepts embodied in this bill which we believe are essential to this or any other legislation are:

- The direction of the Supreme Court to reconstruct the trust must be implemented.
- A process for resolution of the mental health lands dispute must be set in motion
- Authority must be vested in an independent interim board to direct the necessary appraisals, inventories, and research; to oversee the management of the trust lands; draft proposed settlement legislation acceptable to all parties; and conduct other trust responsibilities.
- Representatives of the plaintiffs and intervenors (as well as legislators) must be part of the interim board and be funded sufficiently to responsibly review the State's audits, appraisals, and program expenditures and participate in consensus building efforts between the mental health community and the State.
- Sufficient funding must be made available for the departments of Natural Resources and Health and Social Services to conduct the necessary appraisals, audits, research and inventories required by the court order.
- Increased funding for the Division of Mental Health to address needs through the operation budget and SB 388/HB 412 initiating programs for the chronically mentally ill to demonstrate the legislature's intent to correct past inadequacies in mental health programming.

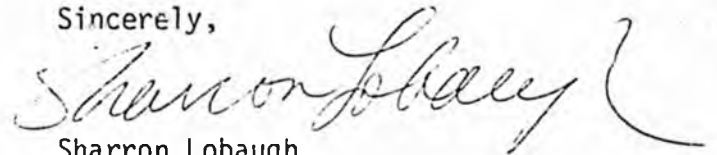
Our overall goal in resolving the mental health lands issue is to develop a

trust of sufficient size to adequately fund mental health programs for future generations.

The Alliance has voted to endorse the transfer of representation for the class from William Council to David T. Walker both of Juneau. The Alliance has agreed to serve as advisory to Mr. Walker on behalf of the class and are working closely with him on this issue. If you have any questions regarding the legal issues of this legislation, please contact him at 586-3537.

This session, Pat Clasby (789-2317) and George Rogers (586-1202) are legislative liaisons for the Alliance. We also have active professionals and family members statewide who are available to participate at any time. Please feel free to contact me if there are further questions.

Sincerely,



Sharron Lobaugh
Vice President, Alaska Alliance
for the Mentally Ill

cc: Representatives:
Pignalberi, Miller, Gruenberg
Office of the Governor
Commissioners HESS and DNR
Alaska Mental Health Association
David Walker
Alliance Chapters

POSITION OF THE ALASKA ALLIANCE ON MENTAL HEALTH LANDS

Before transferring care of the mentally ill to Alaska, Congress in 1956 provided \$12.5 million in transition appropriations and one million acres of land to be managed as a "public trust" to carry out "plans for an integrated mental health program for the Territory, including outpatient and inpatient care and treatment." This would be the basis for determining "necessary expenses" which had a first claim on the proceeds of the trust.

Except 1977-81 Alaska operated without a plan, the program simply being budgeted annually without needs assessments or program priorities. Without a plan there is no basis for a mental health program or its "necessary expenses."

Furthermore, mental health lands were treated as general lands without separate accounting. This was formalized by 1978 legislation redesignating these lands as general grant lands. This was challenged in 1982 and on October 4, 1985 the Alaska Supreme Court ruled that the trust established by the Congress had been breached and ordered it reconstituted.

The Legislature has recognized the necessity for responding to the issues raised by the court's order and the past mismanagement of the trust lands both in protecting the welfare of mentally ill Alaskans and removing restraints on future land management. There is need, however, to make a choice among the several proposals under consideration and the Alaska Alliance for the Mentally Ill and its community alliances has its recommendations.

The Legislature recognizes the complexity of problems thirty years in the making and that their resolution cannot be arrived at within one session. Accordingly each house has introduced concurrent resolutions (SCR 36 and HCR 50) to create an interim joint committee to study and propose resolution of the trust litigation and recommend an adequate mental health program. These are very similar, but the Alliance has a preference for the Senate version.

The Legislature also recognizes that at present there is no statutory authority providing for interim management of the trust lands as a trust and two proposals have been introduced to meet this need. HB 651 proposes a non-paid six member management commission within the Department of Natural Resources to manage the lands and seek to maximize the income. HB 128 proposes an interim and independent commission which in addition to these trust responsibilities would also carry out all the necessary inventory, accounting and appraisal functions necessary for settlement of the litigation. The Alliance recommends passage of HB 128 because it holds the greatest promise for a resolution in keeping with the original intent of the Congress and the Court.

The lack of an appropriate mental health program for Alaska is being addressed by the Department of Health and Social Services in a five year plan currently being drafted and in two companion bills (HB 412 and SB 388) providing for community based and locally or regionally coordinated care and treatment. This legislation is critically needed and the Alliance urges its passage this session.

George W. Rogers

George W. Rogers

March 11, 1986