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the State of Alaska Prudhoe Bay Sale in September 1959, a total of 17 exploratory wells were drilled on leased parcels adjacent to unleased parcels scheduled for the 1969 sale. Although these operators were hoping to find oil, they were obviously attempting to gain information that would allow them to construct realistic bids on the adjoining parcels.

From 1974 through 1979, no State lease sales were held due to various factors including complications of the Alaska Native Claims Settlement Act. From 1974 through 1978, very few exploratory wells were drilled. In 1976, in anticipation of the joint State-Federal Beaufort Sea Sale scheduled for 1978, exploratory activity picked up. In 1978, when it became apparent that this sale would have to be delayed, the State enacted the current law which allowed operators to apply for extended confidentiality on wells drilled in the vicinity of unleased lands.

The message here, I believe, is clear. Operators are looking beyond the drilling of an exploratory well in an attempt to gain information near unleased parcels.

This leads to my second line of evidence which is a personal one. I have been involved in numerous lease sales in my career, and in every one a major strategic element was the consideration of drilling a well or wells at a location that would gain information for an upcoming sale. In previous discussions on HB 41, there have been statements made to the effect that operators only drill wells to find oil and gas. That is true up to a point. We do not normally drill these offsetting wells without an economically feasible venture, but the strategy involves finding the combination of the est prospect located in the optimum position to gain information on adjacent unleased lands. It is a standard part of our lease sale preparation as I'm

certain it is of any aggressive exploratory company. The aggressive explorer must look to the future. The early release of well data punishes the aggressive explorer.

A second item that I feel needs clarification is the contention that the current law stifles competition by denying a broad common data base to any company that may want to explore in Alaska. Of the more than 100 exploratory wells drilled in Alaska since the enactment of the extended confidentiality in 1978, only 50 have received extensions of confidentiality beyond the normal two-year period. Currently, only 17 wells are in extended confidentiality. Of those 33 wells removed from the list, the average period of extended confidentiality was 2.3 years. A broad common data base does indeed exist.

The companies that are aggressive explorers and have the expertise, capital and commitment to explore Alaska have been here doing so since statehood and are exploring now. Other companies who have not been involved in drilling in Alaska already have a wealth of information available; all but 17 wells are available to them free of cost, courtesy of those who have taken the risks and expended the capital. This bill will not motivate drillers to take exploratory risks. It should be pointed out that the release of over 100 wells drilled on the NPRA has not increased competition and not encouraged any more companies to explore the area other than those who have operated on the North Slope historically.

A third point that I would like to speak to concerns a suggestion that firms which drill exploratory wells in frontier areas do not actually provide free information to other firms, even under a two-disclosure rule, because the firm doing the drilling is able to recoup most of its costs from other firms through the process of cost equalization.

But cost equalization will occur only if the lease owned by the exploratory firm is later included with other leases in a potential producing unit. In the period since 1978, 77 percent (or 11) of the 144 exploratory wells drilled in Alaska have not been included in a potential producing unit. Furthermore, of the eight potential producing areas where the other 33 wells are located, most have not yet been developed and, as a result, these wells may never have their costs shared. What is most important to note in this regard is that if an exploratory well is incapable of production--and this is true of most exploratory wells--there is generally no cost equalization.

Another contention of HB 41 proponents is that the release of well data to the public will allow a safer and more efficient drilling practices. The Alaska Oil and Gas Conservation Commission (AOGCC) already obtains the drilling data from every well drilled. It is aware if there are known drilling hazards in certain formations and it ensures safe drilling practices, because all drilling operations must be permitted by them. The AOGCC currently reviews and approves all drilling plans prior to the drilling of each well in Alaska, without having to divulge well data to the public. Making all well data public will not make drilling operations any safer or more efficient than they already are.

Now I would like to discuss two of the provisions of Committee Substitute for HB 41. First is the provision that the AOGCC shall provide access to all of the confidential well data to the Department of Natural Resources. Chevron strongly objects to this provision. We are, frankly, concerned with security. There are large turnovers within DNR which industry has no control over. Often these former employees end up in industry. We believe this to be an unacceptable

risk. Within our own company, we operate on a need-to-know basis. There are wells which Chevron has drilled in Western Region that I am not privy to because I don't need to know in order to perform my function as Chief Geologist. As previously mentioned, the AOGCC is charged with insuring safe and efficient drilling practices. They need to know, DNR does not. We are particularly concerned about the release of this data from wells on private lands.

A second provision of the Committee Substitute involves continuing the present law as status quo until July 1991. Chevron's reaction to this is that this is an arbitrary date and, like any arbitrary data or time period, overlooks the fact that critical exploratory wells will continue to be drilled in Alaska as long as there is open acreage and a probability that this open acreage will be sold. For your consideration, I present the scenario that few or no critical wells requiring confidentiality may be drilled until after 1991. Although I hope this is not the case, I believe anyone who follows the oil industry in general, and Alaska oil in particular, could consider this possibility.

Chevron hopes that the committee will not change the current law and leave open the possibility that all critical offsetting wells to be drilled in Alaska may receive extended confidentiality.

Thank you. I will be happy to answer any questions.

TESTIMONY OF
JOHN CARSON
April 28, 1987

CARSON: Thank you, Mr. Chairman. My name is John Carson. I'm currently the Chief Geologist for Chevron U.S.A. for their Western Region which includes all of Alaska and the West Coast. I'm speaking today on behalf of Chevron. I've spent roughly 31 years in the, and some of it's been quite rough, in the petroleum industry and exploration and about two-thirds of that has been involved with the State of Alaska's exploration problem. Chevron wishes to thank the Committee for this opportunity to speak again. Because of the fact that we, as a company, have presented some testimony before, both written and because of Dr. Sorenson's comments, I will keep my comments brief, but I'll be glad to answer any questions that you may have.

Chevron opposes Committee Substitute 41 because we feel the best interests of the State of Alaska and the petroleum industry are served by continuing the present legislation. A prudent operator won't drill, given the harsh climate, the long lead time, multiple landowners, the uncertain sales schedule on a block of land if the adjacent block is unleased and they don't know for certain when it's going to be sold. This is a hard statement to prove on either side and I know that you've had a great deal of discussion on it in some of the committees. But I would like to cite a couple of examples and the question we're trying to get at here is, "does the

current legislation restrict or encourage exploratory drilling?"

I'd like to cite first of all that prior to the 1969 Prudhoe Bay sale, 17 wells were drilled within two years of that sale. They were all drilled by operators on lands that they held the mineral rights to and they were all adjacent to parcels that were to be sold in the 1969 sale and the same came off on time.

From about 1974 to 1979, due to various problems, the Alaska Native Claims Settlement, etc., there were no sales from '74 to '79, but in about 1976, companies started drilling on the North Slope in anticipation of a sale to be held, joint Federal and State, in the near-shore and submerged waters off of Prudhoe bay and open sea. When it became obvious that that sale was not going to take place as scheduled, then the current legislation was enacted, and that was in 1978, to allow for extended confidentiality to those operators who had drilled a well adjacent to unleased lands.

I believe that you can go back through and you can chart when leases were coming and lease sales were coming and you can plot the frequency of exploratory drilling and you will see a correlation.

I have heard it mentioned that oil companies drill only to find oil. That's a truism up to a point. I'd like to cite up my own personal experience along those lines. Quite obviously we cannot sell to our management a well just for the whimsy of a well, trying to get some information, and so

we are definitely looking for oil, there's no question about that, oil and gas. But a part of our strategy has been, and hopefully will continue to be, what else can we get out of drilling this well? What will it do for us in upcoming lease sales? What information can we get from this well that will give us the opportunity to construct a meaningful and realistic bid on offsetting acreage. I have been involved in state sales in Alaska in Cook Inlet, on the North Slope. I've been involved in OCS sales in both California and in Alaska and in every sale that I've been involved in that has become a part of the strategy. It is in our shop and I believe it is in the other major companies. As I say, it's a fairly difficult thing to prove, but I will guarantee you that it does take place. We are looking for information to help us with these other lease sales. Agressive companies are doing this and they're looking to the future and the companies that are not doing this may not see the future.

A second item that I would like to discuss has to do with the supposition, perhaps, that an unrestricted confidentiality might stifle, or might help, competition in that some kind of extended confidentiality will help us, will keep other companies from getting into Alaskan oil problems, oil exploration. Essentially the assumption that making the data public would spark competition because they would all have a broad data base. Since 1978, of all the exploration wells drilled in Alaska, only 50 have been given this special

extended confidentiality. Of those, only 17 still have that, still enjoy that privilege. In the average extended confidentiality of those wells that have since lost that has been roughly 2.3 years. All of the other several hundred wells are available. A broad data base does indeed exist.

The companies that are aggressive explorers and have the expertise, capital and commitment to explore Alaska have been here doing so since statehood and are exploring now. Other companies who have not been involved in drilling in Alaska already have a wealth of information available; all but 17 wells are available to them free of cost, courtesy of those who have taken the risks and expended the capital. This bill would not motivate drillers to take exploratory risks. It should further be pointed out the release of over 100 wells drilled on the NPRA has not increased competition and not encouraged any more companies to explore the area than those who have operated on the North Slope historically.

A third item that I would like to address has to do with unitization. It has been suggested that firms drill exploratory wells in frontier areas do not actually provide free information to other firms even under a two-year disclosure rule because the firm doing the drilling is able to recoup most of its cost from other firms through the process of cost equalization. But cost equalization occurs only if a lease owned by the exploratory firm is later included with other leases in a potential producing unit. In the period since 1978, 77 percent (or 111) of the exploratory wells

drilled in Alaska have not been included in a potential producing unit. Furthermore of the eight potential producing areas where the other 33 are located, other 33 wells, most have not yet been developed, and as a result, these wells may never have their costs shared. What is important to note in this regard is that if an exploratory well is incapable of production -- and this is true of most exploratory wells -- there is generally no cost equalization. Quickly moving on then to a, to a fourth point, it has been suggested that releasing all materials will allow for safer, safe practices. The Alaska Oil and Gas Conservation Commission already obtains the drilling data from every well drilled. It is aware if there are known drilling hazards in certain formations and it ensures safe drilling practices, because all drilling operations must be permitted by them. The AOGCC currently reviews and approves all drilling plans prior to the drilling of each well in Alaska, without having to divulge well data to the public. Making all well data public will not make drilling operations any safer or more efficient than they already are.

And now I'd like to speak to two of the provisions in the Committee Substitute. The first, the provision that all well information be released to the Department of Natural Resources and they will hold confidential. Chevron objects to this, largely on the basis of security. Within our own shop, we, on our highly confidential wells, we allow those people who need to know only access to those wells. As

Chief Geologist of our Western Region, there are wells that we have drilled that I do not know what we have found in them. Why? Because I don't need to know to perform my function. Those people who do need to know as part of their function, they know about them. We are concerned of the numbers of people that would have access to this data and the numbers of people who would be turned over possibly to job rotations, back to the industry, and so forth. As stated before, the Conservation Commission, from a safety point, needs to know; the Department of Natural Resources doesn't from a safety point.

And then the second item that I would like to speak to on the Substitute provides that the current status of allowing extended confidentiality be continued until 1991. This, like any other arbitrary date or time supposes that we know when the largest number of critical exploratory wells will be drilled. I would like to present for the, for the Committee's consideration a scenario that says there will be no more critical exploratory wells until after 1991. I can make a case for that. Given the current economic conditions, given the current problems of opening of ANWR, it could very easily be 1991 before, if you'll pardon it, Secretary Hodel's long gas lines start again and things break out all over. I don't think we know when the most critical wells will be drilled. I submit that any exploratory well that is drilled next to adjacent lands is a critical exploratory well and

that can happen five years, ten years, certainly I hope it would be happening after 1991.

I believe I've covered the five or six points that I wanted to. I'll be happy to try to answer any questions this Committee has.

Chairman: Are there questions of Mr. Carson? Representative [indiscernible]. [END OF TAPE 1, SIDE 2]

TAPE 2, SIDE 1

Representative: I've forgot all the secrets you had on this [indiscernible]. The question I would have would be in your, in this testimony here, Mr. Carson, you talked about the fact that, Texas, I believe, they have a confidentiality of, they can extend, some place in here it talks about a three-year statute of limitations on confidentiality, but I could be wrong.

Carson: In the materials that have been handed to you, those are some comments that Dr. Sorenson had put together after his, you may also have his original testimony there, you probably do and he had determined from the Texas Railroad Commission, I believe, that they can extend on-shore to three years and on submerged lands to five. I think probably trying to compare any of those other states, California, Louisiana and Texas, to Alaska is kind of futile because of the problems that are here that they don't have -- multiple land ownership and so forth -- but I know there's been a lot of discussion whether you can really go two or three in Texas. I think we're satisfied now it's three but on-shore, it's five off-shore.

Representative: I guess my [indiscernible] the other frontier areas [indiscernible] not, not sure what the California statutes are, they are [indiscernible] years?

Carson: Yes, they are. But you can apply for some extended confidentiality. There are several of the questions here, Mr. Chairman, which have some economic ramifications which is outside of my expertise. We have been in touch with Dr. Sorenson and if it would be of any benefit to the Committee, he has been, he has assured us that he would have the opportunity and could be here on short notice if you wanted to talk to him and I would offer that to you at this time.

Chairman: Further questions. If not, thank you very much, Sir.

AN ECONOMIC ANALYSIS OF H.B. 41
Relating To
EXTENDED CONFIDENTIALITY OF OIL AND GAS WELL INFORMATION

Testimony Before the House Finance Committee
Alaska State Legislature
March 19, 1987

by

Dr. Philip E. Sorensen
Professor of Economics
Florida State University

Over the past decade I've had the pleasure of visiting Alaska many times. On each of these visits, I've come away with a deeper appreciation for the unique character of the people and environment of Alaska. I'm very happy to be here again, and I thank the members of this Committee for their courtesy in allowing me to present my views on this most important question.

The proponents of H.B. 41 assert that its passage will expedite oil and gas exploration and production and enhance competition for leases. But in my opinion the bill will have no beneficial effects. In fact, there is strong evidence, derived both from economic theory and from the results of several recent studies of oil and gas leasing and lease development which I have co-authored,[1] that erosion of the current protection given to well drilling data in Alaska, as proposed in H.B. 41, will:

1. Reduce the number and size of bonus bids for leases in frontier areas in Alaska on both state and private lands;

2. Reduce the number of wells drilled in frontier areas where nearby acreage remains unleased;

3. Reduce the number of firms participating in leasing and lease development in Alaska; and

4. Reduce the future level of oil production in Alaska together with all associated economic benefits including state revenues, employment, and development of critically needed infrastructure facilities.

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[1] These studies are summarized in Mead, et al., "Competitive Bidding Under Asymmetrical Information," The Review of Economics and Statistics, August 1984; and Offshore Lands: Oil and Gas Leasing and Conservation on the Outer Continental Shelf, Pacific Institute for Public Policy Research, 1985.

In the sections which follow, I will summarize the evidence which has led me to reach the conclusions stated above.

I. EXTERNAL ECONOMIES IN OIL AND GAS EXPLORATION

When an inventor develops a new idea or technique which reduces the cost or improves the quality of a good and service sold in a market, he profits from his effort or investment only to the degree that he is able to keep outsiders from freely copying (or "free-riding") on his investment. If the benefits of inventive efforts are allowed to spill over to individuals or firms who pay nothing for them, an "external economy" is created which has the effect of greatly reducing inventive efforts. In recognition of the cost to society of discouraging the creation of new and original ideas and information, laws creating property rights in information and ideas (such as patents, trademarks, and copywrite protection) have been an essential part of U.S. law from the beginning of our Republic.

The extended confidentiality provisions of AS 31.05.035(c) are founded on the same principles as the laws protecting patents and trade secrets. To encourage maximum levels of investment in exploratory drilling in frontier areas in Alaska, firms accepting the risks associated with these investments have been protected by state law from having the information they obtain spill over to "free riders"--other firms which have <u>not</u> invested in these drilling activities.

The proponents of H.B. 41 have argued that the people of Alaska would benefit by way of higher bonus bids on neighboring acreage if the information now maintained as confidential under AS 31.05.035(c) were suddenly to be released and made available to the public. But a deeper analysis will show that these benefits would occur (if at all) only once. In the long-run the erosion of these confidentiality provisions would seriously impair, if not destroy, the motive for any firm to engage in exploratory activity in frontier areas in Alaska.

To make this point more clear, consider the likely effects of a repeal of the patent laws which presently protect drug manufacturers in the U.S. Certainly this would lower some drug prices as competitors would be permitted to copy all existing drug formulas. But is there any question that society would be greatly harmed in the long-run by this action? Who would invest in research on new drugs if the benefits from such research could not be captured by inventing firms? And by similar reasoning, who would invest in exploratory drilling in frontier areas of Alaska if the benefits of such investments could not be captured by the firms doing the investing?

In fact, a considerable portion of the benefits produced by exploratory drilling already spill over to other firms as a result of an informal network of information provided by oil scouts, members of the drilling team, and others. One study has estimated the fraction of benefits which spill over as a result of this informal network to be about 25 percent.[2] This means that even under the protection of confidentiality statutes (such as the one in Alaska), a firm investing in exploratory drilling will always provide a large information subsidy to non-drilling firms. This discourages exploration in frontier areas since it rewards firms that wait for free information while it penalizes those who carry out pioneering exploratory ventures. And if the remaining portion of information benefits which can still be kept proprietary by exploratory drillers in Alaska were to be reduced (or eliminated) by repeal of AS 31.05.035(c), what incentive would remain for these firms to take the tremendous risks they do when they invest in frontier drilling?

II. COMPARISON OF RATES OF RETURN EARNED IN LEASING AND LEASE DEVELOPMENT

Our recently reported studies of rates of return earned by firms who were winning bidders for leases issued by the federal government in the Gulf of Mexico over the first 16 years of Outer Continental Shelf (OCS) lease sales, cited above, show that firms leasing wildcat tracts earned an average after-tax rate of return on investment of 10.04 percent, while firms who were winning bidders for leases located in areas near to proven wildcat tracts (referred to as "drainage tracts") earned higher rates of return on average: 14.59 percent.

The overall rate of return to firms on all OCS tracts leased was 10.74 percent. This was lower than the rate of return earned by all U.S. manufacturing corporations over this same period of years: 11.7 percent.[3]

The proponents of H.B. 41 suggest that the level of competition in drainage-type lease sales is reduced by the fact that some bidders have information advantages over other bidders. But our study shows that the number of bids cast for each lease sold in drainage lease sales (2.9) was only slightly lower than the average number of bids for wildcat leases (3.2).

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[2] See F.M. Peterson, "Two Externalities in Petroleum Exploration," in G. Brannon (ed.), Studies in Energy Tax Policy, Cambridge: Ballinger, 1975, p. 102.

[3] See Offshore Lands, Table 3.1, p. 53; and Table 3.2, p. 55.

Furthermore, those firms which had "no information" from prior wildcat drilling were able to win 43 percent of the leases sold in these sales, and these "no information" firms were able to earn a 25 percent higher rate of return on these drainage leases, or average, than was earned on wildcat leases in the same OCS areas over this same time period.

These facts lend support to the conclusion that a great deal of information is available to "no information" bidders in lease sales of acreage located near wildcat tracts which have previously been drilled on, and this information is used to the advantage of such bidders in these sales.

To summarize our findings regarding rates of return, it might appear that winners of drainage leases on the OCS earn higher than normal rates of return on these leases. But this appearance is deceptive. In fact, bidders in wildcat lease sales expect to earn lower-than-normal rates of return on these leases in the prospect of being able to recover part or all of their investment from the information they obtain through exploratory drilling. Overall, for wildcat and drainage leases combined, they earn a normal, competitive rate of return.

A major conclusion of our study is that bidders in wildcat lease sales determine the levels of their bonus bids on the basis of <u>two</u> variables: the expected net production value of the wildcat lease itself, and the expected value of the information they will be able to gain as a result of drilling on the wildcat lease. This means that if lessees of wildcat tracts are denied the opportunity to capture the information they obtain through exploratory drilling on these tracts, <u>they will lower their bonus bids by an amount equal to the value of the information they can no longer capture</u>.

Relating this conclusion to the situation in Alaska, if the confidentiality of well drilling information is eroded, as would happen through passage of H.B. 41, the value of wildcat (or frontier) acreage in Alaska will be greatly reduced. As a result, bidders will reduce the size of any bonus bids offered for such acreage. And in many cases, since the value of wildcat leases in frontier areas in Alaska is based almost entirely on the potential to obtain information of possible value in later lease sales, H.B. 41 will have the perverse result that <u>no bids at all will be offered for many leases in frontier areas and no investments in well drilling will be made in these areas</u>.

Since the impact of H.B. 41 will be felt not only in respect to state lands but also by the owners of private lands in Alaska (mainly Native Corporations or Villages), the proposed statute will seriously damage the prospects for leasing and developing such lands.

This point deserves emphasis: H.B. 41 will have the same negative impact on private landowners as it will have on state lands, reducing or eliminating bonus bids for leases in frontier areas and greatly lowering the chances that such lands will ever be developed.

III. ALTERNATIVE POLICIES FOR DEALING WITH EXTERNAL ECONOMIES IN EXPLORATORY DRILLING

Economists now recognize the fact that information spill-overs (or external economies) in exploratory drilling have the effect of reducing the level of exploratory drilling below that which is optimal for society. To deal with this problem, they have recommended a number of policies, any of which might be considered by the State of Alaska for its frontier lands:[4]

1. Tax breaks for exploratory drilling.
2. Government subsidies for exploratory drilling.
3. Leasing in frontier areas using huge lease blocks.
4. Drilling in frontier areas by the government.
5. Forcing buyers of leases in drainage-type lease sales to share in the costs of prior exploratory drilling done by other firms on nearby wildcat acreage.

As can be seen, all of these proposed policies would be far more costly to the state and involve a much greater bureaucratic involvement in leasing and lease development than the present system of protecting the investments made by exploratory drillers in Alaska through extended confidentiality of well drilling data.

IV. THE UNIQUENESS OF ALASKA

It has been argued that Alaska should reduce the time period permitted for maintaining the confidentiality of well drilling data for the reason that other states have shorter time periods during which such confidentiality is maintained. It should be noted, however, that all four of the top oil producing states in the U.S. (Texas, Alaska, Louisiana, and California) have provisions in law for extending the protection of confidentiality beyond two years.

More important, it is not really appropriate to compare the situation in Alaska with the situation in Alabama, Michigan, or North Dakota. The average cost per foot of onshore wells drilled in Alaska in 1985 was more than four times as great as for the U.S. as a whole. And for wells in the category between 15,000

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[4] See Peterson, op. cit., p. 107; and J. Stiglitz, "The Efficiency of Market Prices in Long-Run Allocations in the Oil Industry," also in Brannon, op. cit., pp. 55-99.

and 17,500 feet, the cost in Alaska was over 13 times as great as the average for the U.S.[5]

Furthermore, Alaska's harsh climate, the remoteness of its location, the lack of developed systems for transporting drilling gear and materials into interior areas and production to markets, and the delays and uncertainty which have surrounded leasing schedules in the state--all these factors make Alaska a unique leasing and drilling environment. The average cost of obtaining exploratory well information in Alaska far exceeds that of any other producing state. And because of the long lead times involved, the value of that information remains high for many years following the drilling of an exploratory well. For these reasons, the impact of H.B. 41 would be devastating in Alaska even though similar statutes might have little impact in other states.

H.B. 41 is an exercise in wishful thinking. It assumes that information is a free good, and that future wildcat exploration and drilling will not be affected by changes in the time period during which the confidentiality of well drilling data from frontier areas is maintained. As a result, it proposes to release such data at an earlier time in the hope of increasing the bid values of leases sold in subsequent sales in the same area. But the essential issue for Alaska should be to enhance the prospects for wildcat leasing and lease development in the state. If frontier acreage in Alaska is not leased and not explored, there will be no subsequent lease sales, no subsequent bonus revenues, no subsequent production.

Given the current economic climate for the oil industry in the U.S. (and the even more grave problems facing future oil exploration in Alaska), it would be a dangerous error for the state to further impair the economic rationale for exploratory drilling in frontier areas. I am convinced that H.B. 41 would be a serious mistake for Alaska. I urge that it not be adopted.

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[5]American Petroleum Institute, 1985 Joint Association Survey on Drilling Costs, Tables 2, 4, 6, and 7.

Additional Comments on H.B. 41
Relating to
Extended Confidentiality of Oil and Gas Well Data

by

Dr. Philip E. Sorensen
April 22, 1987

At the time of my testimony before the House Finance Committee on March 19, 1987, several important issues were raised which required additional research. The sections which follow provide additional information concerning these questions.

1. In my testimony, I stated that "...all four of the top oil producing states in the U.S. (Texas, Alaska, Louisiana, and California) have provisions in law for extending the protection of confidentiality (of well data) beyond two years." A member of the Committee questioned the conclusion that Texas presently permits a period of confidentiality in excess of two years. In clarification of this question, I have attached copies of Texas Railroad Commission Rule 16 (Log and Completion Report) and Sections 91.551 - 91.556 of the Texas Natural Resources Code. These regulations indicate that Texas permits well logs to be kept confidential for periods of three years for onshore wells and five years for wells drilled on submerged state lands.

2. I previously testified that H.B. 41 would reduce the incentive of firms to drill exploratory wells in frontier areas because it would greatly reduce the information advantage these firms might have in subsequent bidding for unleased lands in nearby areas. I would like to explain this point further.

Records of the AOGCC indicate that at least 17 exploratory wells were drilled in Alaska on the North Slope just prior to the 1969 Prudhoe Bay sale. All of these wells were located near unleased acreage which was scheduled for sale within a year or so.

During the period from late 1974 until July 1979, no competitive oil and gas lease sales were held by the state because of various lawsuits and the uncertainty created by the Alaska Native Claims Settlement Act. Exploratory drilling adjacent to open lands in Alaska essentially stopped from 1974 through 1976, most likely because firms planning such drilling could not be sure they would be able to gain any advantage from the drilling information they might obtain within the two year period then provided for confidentiality of well data.

Five exploratory wells were drilled on the North Slope in 1977 in anticipation of the planned joint federal/state Beaufort Sea lease sale. When this sale was delayed, Alaska enacted legislation in 1978 to permit extended confidentiality for these and future wells. Subsequently, at least 21 exploratory wells were drilled on the North Slope adjacent to unleased acreage. Of these 21 wells, 13 were drilled near acreage where no sale was scheduled or where a sale was scheduled to take place at a time more than two years in the future. It is reasonable to assume that most, if not all, of these 13 wells would not have been drilled at that time in the absence of Alaska's extended confidentiality statute.

3. It has been suggested that firms which drill exploratory wells in frontier areas do not actually provide free information to other firms, even under a two-year disclosure rule, because the firm doing the drilling is able to recoup most of its costs from other firms through the process of cost equalization. But cost equalization will occur only if the lease owned by the exploratory firm is later included with other leases in a potential producing unit. In the period since 1978, 77 percent (or 111) of the 144 exploratory wells drilled in Alaska have not been included in a potential producing unit. Furthermore, of the eight potential producing areas where the other 33 wells are located, most have not yet been developed and, as a result, these wells may never have their costs shared. What is most important to note in this regard is that if an exploratory well is incapable of production — and this is true of most exploratory wells — there is generally no cost equalization.

4. A statute providing for a five-year or a ten-year time period for confidentiality of well data would do less damage to exploratory drilling in Alaska than a two-year time period, as proposed in H.B. 41. But it should be recognized that even a ten-year period of confidentiality would conflict with the extremely long lead times involved in leasing frontier areas in Alaska. Therefore, some exploratory wells that would be drilled under the present statute will not be drilled.

It is critically important to the future of Alaska that additional frontier areas in the state be explored and opened up for production. Exploratory drilling in Alaska requires large investments of capital and the assumption of tremendous risks. Those firms willing to make such investments and assume such risks should be accorded maximum protection of the information they obtain from drilling, as is true under the present Alaska statute providing for extended confidentiality of well data.

Standard Alaska
Production Company
900 East Benson Boulevard
P.O. Box 196612
Anchorage, Alaska 99519-6612
(907) 564 5111

STANDARD
ALASKA PRODUCTION

TESTIMONY OF STANDARD ALASKA PRODUCTION COMPANY
ON HB 41, CONFIDENTIALITY OF
EXPLORATORY WELL INFORMATION - FEBRUARY 18, 1987

My name is John A. Reeder and I am employed as Senior Counsel for Standard Alaska Production Company in Anchorage. I have been employed in this capacity by Standard or its affiliate, BP Alaska, Inc., since 1974 and served in the Department of Law as an Assistant Attorney General from 1971 to 1974. During this time, I have been almost exclusively involved in natural resource law in Alaska. My purpose in testifying today is to discuss the constitutional limitations in making public data from wells drilled on private or native land. Previously, Standard has indicated to this Committee that it does not favor HB 41 on policy grounds.

HB 41 seeks to repeal provisions of AS 31.05.035(c) which were adopted in 1978, and which now permit the Commissioner, Department of Natural Resources (DNR) to determine if information from oil and gas wells drilled in Alaska should be held by the Alaska Oil and Gas Conservation Commission (AOGCC) on a confidential basis, rather than released to the public after two years as would otherwise be provided under that section.

In the process of reviewing HB 41, I have come to the conclusion that the present structure of AS 31.05.035(c) may have significant constitutional flaws as it would be required to be applied to private (Native) lands regardless of the policy questions presented by HB 41. Removal of the

Commissioner's discretion would almost certainly cause the provision to be administered contrary to constitutional limitations.

While the AOGCC, in the exercise of its statutory oil and gas conservation responsibilities, clearly has authority to require the submission of data from wells drilled on private lands, the public release of economically valuable data from private lands (which some authorities have called the "speculative value" of land) is difficult to support as a valid exercise of the State's police power, and this is particularly true in the context of Alaska's difficult and time-consuming exploration environment. Premature release of such data destroys its commercial value to the landowner, and may subject the State to liability for an unpermitted "taking" of that value without compensation. Retroactive application of HB 41 also destroys the priority value of data from wells drilled on private lands.

Private ownership of the mineral estate in Alaska was virtually unknown prior to the implementation of the Alaska Native Claims Settlement Act and the acquisition by Regional Corporations of mineral rights in the subsurface of Native lands. The lack of private lands is one of the unique aspects of land management in Alaska.

As originally enacted in 1960, the confidentiality provision provided an automatic two-year period of confidentiality for data submitted from wells drilled in Alaska. This section was amended in 1970 to establish a separate section, AS 31.05.035, and provided that certain information be made immediately available to the public. In 1978, the section was again amended to its present form to provide a means of holding data confidential beyond the 24-month automatic period where the value of unleased lands might be affected by the information.

While this was a recognition of the commercial value of confidential data obtained by the State's oil and gas lessees, it is important to understand that, as applied to State lands, no real constitutional issue was or is presented by the prospective application of the submittal requirements. As applied to State lands, the issue of the duration of a confidentiality requirement, and the conditions under which it can be extended, is a policy matter to be decided by the legislature. As previously stated to this Committee, Standard feels a mechanism to extend the period of confidentiality on State lands is vital to the continued drilling of exploration wells in frontier areas, and should be retained as a matter of policy.

The issue is quite different with respect to private lands. As I will discuss later, the issue with respect to private lands concerns the exercise of the State's police power in the context of applicable constitutional limitations. The issue has rarely been raised in Alaska due to the manner in which the 1978 amendments to Section 35 have been implemented. Apparently the Commissioner, DNR, has made a determination with respect to private lands as well as State lands. In fact, of the 13 wells now assigned extended confidentiality status, eight are on Native lands.

Previously, this Committee has received a copy of a letter from former Commissioner Robert E. LeResche to Texaco, Inc. concerning a well drilled on Native lands in which he raised the issue of the applicability of the 1978 amendment to Section 35 to private lands. Commissioner LeResche decided to hold the data from the well confidential pending clarification of the law. No regulations were adopted concerning the applicability of Section 35(c) to private lands, and the DNR continued to deal with both private and State lands in the same manner.

Thus, to date the issue of a possible taking of the speculative value of private lands under these circumstances has been avoided.

The right of a landowner to keep information concerning his mineral estate confidential has been recognized in the United States for some time. Attached to my statement is a listing of material your staff may find useful which discusses this right. The property right has most often been examined in connection with a trespass committed by a third party in which geologic information affecting the value of the land was made public without the permission of the landowner. The trespass is said to have destroyed the speculative value of the land, the right of the landowner to hold such information confidential in the expectation of obtaining valuable consideration from others wishing to explore on his land.

Almost all oil-producing states recognize this right in requiring landowners to file information on oil and gas wells with conservation agencies, as almost all make some provisions for the landowner to automatically, or by application, protect the right of confidentiality.

At least one reported case involved the assertion by a lessee that the requirement to file such data was a taking of property without compensation, where, in the judgment of the lessee, an inadequate period was allowed in which the data was to be kept confidential. In this case, a copy of which is attached to my statement, the Kansas Corporation Commission (the equivalent of the AOGCC) had refused to grant an exemption to a two-year confidentiality provision on the grounds that the existing regulations adequately protected the speculative value of the lands held by the oil and gas lessee. The court upheld the Commission's decision. The importance of the case is the clear

recognition by both the Commission and the court of the existence of the speculative value of the lessee's lands. The Commission merely decided that in this instance a two-year period was adequate.

In Alaska, I believe the automatic two-year period of confidentiality which would remain in AS 31.05.035(c) if HB 41 is passed is not adequate to protect the speculative value of well data from private lands. The long development times, difficult environmental conditions and extreme distance from markets which impede oil and gas development in Alaska are well known to the Committee and need not be repeated here, but these obstructions to development usually result in geologic information retaining its commercial value for much longer times than in the rest of the United States. In practice, geologic data from wells drilled on private lands may remain valuable for commercial purposes for many years, and some mechanism needs to be included in AS 31.05.035(c) to extend the period of confidentiality to protect the speculative value of such lands. In this respect, Alaska has distinctly different requirements from other oil-producing states.

On the other hand, there seems to be little need to include development wells, wells drilled in producing reservoirs, (either on private or State land) in any system intended to protect the speculative value of private or State lands. Elimination of this requirement would ease a significant administrative burden on the AOGCC.

In conclusion, Standard, as previously stated to the Committee, feels the present provisions of AS 31.05.035(c) should be retained, both as a sound policy to encourage the drilling of exploration wells on State land and to protect the speculative value of private lands as required by Alaska's Constitution.

Authorities Discussing Description of Speculative Value

For general background see:

1. 1 H. Williams & C. Meyers, Oil and Gas Law §§ 229-230 (1986).

2. 1 W. Summers, The Law of Oil and Gas §§ 21-40 (2d ed. 1954 & Supp. 1986).

Concerning constitutional limitations see:

1. Retroactive application of HB 41. Norton v. Alcoholic Beverage Control Board, 695 P.2d 1090 (Alaska 1985).

2. Unconstitutional taking of private property. Ruckelhaus v. Monsanto Co., 104 S. Ct. 2862 (1984); State v. Hammer, 550 P.2d 820 (Alaska 1976).

STATEMENT OF STANDARD ALASKA PRODUCTION COMPANY

CS FOR HOUSE BILL NO. 41 (FINANCE)

THE MOST RECENT VERSION OF HB 41 ALLOWS THE DEPARTMENT OF NATURAL RESOURCES ACCESS TO DATA FROM WELLS HELD CONFIDENTIAL BY THE ALASKA OIL AND GAS CONSERVATION COMMISSION, WITHOUT DISTINGUISHING BETWEEN PRIVATE OR STATE LANDS. WHILE STANDARD DOES NOT OBJECT TO THIS PROVISION WITH RESPECT TO WELLS DRILLED ON LANDS BELONGING TO THE STATE, STANDARD BELIEVES THERE IS NO LEGITIMATE BASIS FOR ALLOWING THE DEPARTMENT OF NATURAL RESOURCES ACCESS TO DATA FROM PRIVATE LANDS.

THE STATE AND PRIVATE LANDOWNERS ARE COMPETITORS IN SELLING OIL AND GAS LEASES. THE STATE SHOULD NOT BE ALLOWED TO ACQUIRE VALUABLE COMMERCIAL DATA FROM PRIVATE LANDS UNDER THE GUISE OF DISCHARGING STATUTORY DUTIES TO DEVELOP LANDS BELONGING TO IT. STANDARD BELIEVES THAT SUCH ACTION WOULD BE TAKING OF PRIVATE PROPERTY AND NOT SUPPORTABLE UNDER THE DUTIES ASSIGNED TO THE DEPARTMENT OF NATURAL RESOURCES BY STATUTE.

STANDARD ALSO QUESTIONS THE LANGUAGE IN THE NEW DRAFT OF HB 41 WHICH ALLOWS INFORMATION FROM EXPLORATORY OR STRATEGRAPHIC TEST WELLS TO BECOME PUBLIC AFTER 1991. WE HAVE TESTIFIED PREVIOUSLY THAT ALLOWING THIS TYPE OF INFORMATION TO BECOME AVAILABLE TO COMPETITORS WILL MOST ASSUREDLY DAMPEN INTEREST IN EXPLORATORY DRILLING. THERE WILL BE FEWER EXPLORATORY WELLS DRILLED AFTER 1991 IF THIS PROVISION IS ENACTED INTO LAW.

THE PRECEDING PAGES WERE TREATED AS
A UNIT IN THE ORIGINAL FILE.

HB

59

Introduced: 1/20/87
Referred: Resources, Judiciary
and Finance

IN THE HOUSE BY DAVIS AND KOPONEN

HOUSE BILL NO. 59

IN THE LEGISLATURE OF THE STATE OF ALASKA

FIFTEENTH LEGISLATURE - FIRST SESSION

A BILL

For an Act entitled: "An Act relating to the recycling and reduction of litter; and providing for an effective date."

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

* Section 1. AS 46.06.010 is repealed and reenacted to read:

Sec. 46.06.010. POWERS OF THE DEPARTMENT. The department may

(1) serve as the coordinating agency among public and private organizations in the state that are involved in the control, reduction, and recycling of litter;

(2) assist local governments in the adoption and amendment of ordinances relating to the control, reduction, and recycling of litter;

(3) promote voluntary local programs and information campaigns that encourage the public to refrain from littering and to participate in efforts to clean up and recycle litter;

(4) inform the public of, and encourage the public to comply with, the provisions of this chapter and regulations adopted under this chapter;

(5) encourage federal, state, and local agencies to assist programs for the recycling of litter by allowing the use of publicly owned land, buildings, or equipment for those programs whenever possible;

(6) apply for, receive, and expend grants, loans, and other monetary and nonmonetary assistance for use in programs established under this chapter;

(7) determine the types of materials or energy that may be profitably recovered from litter, and adopt regulations under the Administrative Procedure Act (AS 44.62) that require the recovery of the materials or energy;

(8) adopt other regulations under the Administrative Procedure Act (AS 44.62) necessary to implement this chapter.

2 yea 5 NO no fail

* Sec. 2. AS 46.06.060 is amended to read:

Sec. 46.06.060. LITTER BAGS. The department may [SHALL] design and have produced a litter bag bearing the state anti-litter symbol and a statement of the penalties for littering in the state. The department may [SHALL] make litter bags available to the division of motor vehicles in the Department of Public Safety for this purpose. The [TO THE GREATEST EXTENT PRACTICABLE, THE] division of motor vehicles may [SHALL] distribute one litter bag to each person who applies for registration or reregistration of a motor vehicle and shall notify the person of the person's responsibilities under the law. The department may [SHALL] make litter bags available to all vehicle and vessel operators entering the state. The commissioner shall designate distribution points for the broadest possible distribution of litter bags to persons entering the state by vehicle or vessel.

* Sec. 3. AS 46.06.080(c) is amended to read:

(c) A person who violates this section is guilty of a violation [CLASS B MISDEMEANOR], and may be sentenced to pay a fine of not more than $1,000. In [IN] addition [TO THE PUNISHMENT IMPOSED BY AS 12.55.035(b)(4) AND 12.55.135(b)], the court may order the person to gather and dispose of litter in an area and for a length of time determined by the court.

* Sec. 4. AS 46.06.020, 46.06.030, 46.06.040, and 46.06.070(b) are

CORRECTION

THIS DOCUMENT
HAS BEEN REPHOTOGRAPHED
TO ASSURE LEGIBILITY

Introduced: 1/20/87
Referred: Resources, Judiciary
and Finance

IN THE HOUSE BY DAVIS AND KOPONEN

HOUSE BILL NO. 59

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(4) inform the public of, and encourage the public to comply with, the provisions of this chapter and regulations adopted under this chapter;

(5) encourage federal, state, and local agencies to assist programs for the recycling of litter by allowing the use of publicly owned land, buildings, or equipment for those programs whenever possible;

(6) apply for, receive, and expend grants, loans, and other monetary and nonmonetary assistance for use in programs established under this chapter;

(7) determine the types of materials or energy that may be profitably recovered from litter, and adopt regulations under the Administrative Procedure Act (AS 44.62) that require the recovery of the materials or energy;

(8) adopt other regulations under the Administrative Procedure Act (AS 44.62) necessary to implement this chapter.

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2 yea 5 NO MD. Jail

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* Sec. 3. AS 46.06.080(c) is amended to read:

(c) A person who violates this section is guilty of a <u>violation</u> [CLASS B MISDEMEANOR], and <u>may be sentenced to pay a fine of not more than $1,000.</u> <u>In</u> [IN] addition [TO THE PUNISHMENT IMPOSED BY AS 12.55.035(b)(4) AND 12.55.135(b)], the court may order the person to gather and dispose of litter in an area and for a length of time determined by the court.

* Sec. 4. AS 46.06.020, 46.06.030, 46.06.040, and 46.06.070(b) are

repealed.

* Sec. 5. Section 5, ch. 149, SLA 1980, as amended by sec. 9, ch. 164, SLA 1984, is repealed.

* Sec. 6. This Act takes effect immediately under AS 01.10.070(c).

HOUSE COMMITTEE REPORT

(9)

Date referred: 1/20/87

FURTHER REFERRALS: Judiciary
Finance

DATE: 2/2/87

The Resources Committee has considered HB 59

"An Act relating to the recycling and reduction of litter; and providing for an effective date."

RECOMMENDS:

[ ] replace with _____ [ ] the same title
[ ] a new title

[ ] attached amendment(s)

[✓] do pass

[ ] do not pass

[ ] no recommendation

[ ] individual recommendations

[ ] additional referral to the _____ Committee

ADOPTS: [ ] _____ letter of intent

ATTACHES NEW FISCAL NOTE(s):

[ ] fiscal impact

[✓] zero fiscal note

[ ] zero with analysis

[ ] same as previous fiscal note published _____

[ ] same as previous zero fiscal note published _____

SIGNING DO PASS:

Adelheid Herrmann

Cliff Davidson

Bill Peace

Mike Navarre

Jerald R. Ott

SIGNING OTHER RECOMMENDATIONS:

Dick Shultz (No Rec)

Lynn Hoffa (No Pass)

Jerald R. Ott

Chairman's signature

STATE OF ALASKA

STEVE COWPER, GOVERNOR

DEPT. OF ENVIRONMENTAL CONSERVATION

POSITION PAPER

Bill No: HB 59

Date: January 30, 1987

Title: An Act relating to the recycling and reduction of litter

Contact: Randy Bayliss 465-2600

Department's Position

We support the bill.

Effect of the Bill

HB 59 reenacts most of Alaska's litter program, now on the eve of its "sunset." It also reduces the costs of the program, either by eliminating some functions (such as the Litter Advisory Council) or by making most other functions optional. The bill would also change littering from a "misdemeanor" to a "violation," which eliminates jail time as a penalty.

According to several opinion polls, many Alaskans consider littering to be a top environmental priority. Litter alongside tourist attractions has drawn national attention on television news and magazines. The litter program has enjoyed popular support from Alaskan cities and has encouraged start-up and operations of many recycling centers throughout Alaska.

Impact on the Agency

HB 59 was drafted with minimal operating expenses in mind. We have prepared a "zero" fiscal note.

Dennis D. Kelso
Commissioner

Rep. Mike Davis
February 1, 1987

Sectional Analysis of HB 59

An Act Relating to the Recycling and Reduction of Litter

Sec. 1. AS 46.06.010 is rewritten to eliminate redundant language, and to incorporate the provisions of AS 46.06.040. The department may, rather than must, act upon the provisions of this section.

Sec. 2. AS 46.06.060 is amended to provide that the Department of Environmental Conservation and the Department of Public Safety may, rather than must, provide litter bags to the public.

Sec. 3. The penalty for littering is reduced from a Class B misdemeanor to a violation, and prison terms for littering are eliminated.

Sec. 4. The following sections are repealed:

AS 46.06.020, which requires an annual report.

AS 46.06.030, which establishes an advisory council.

AS 46.06.040, which establishes public awareness programs. Provisions of this section have been incorporated into AS 46.06.010.

AS 46.06.070(b), which establishes litter patrol regulations. These regulations are authorized under AS 46.06.010(8).

Sec. 5. All sunset provisions in AS 46.06 are repealed.

Sec. 6. Immediate effective date.

Official Business

COMMITTEE: Resources

DATE: Feb 2, 1987

SIGN-IN

Subject of meeting: HB 59

NAME	ADDRESS	PHONE	REPRESENTING	DO YOU WANT TO TESTIFY?
BAYLISS	POBOX 0 99811	465-2606	DEC	YES

STATE OF ALASKA 1987 LEGISLATIVE SESSION
FISCAL NOTE

Bill Version : HB 59
Publish Date :

REQUEST:

Revision Date:
Title : An Act relating to the recycling and reduction of litter
Sponsor : Representative Mike Davis
Requestor : House Resources

Agency Affected : DEC
BRU : Environmental Quality
Components : Regional Offices

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 87	FY 88	FY 89	FY 90	FY 91	FY 92
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0	0	0	0	0	0
CAPITAL						
REVENUE	0	0	0	0	0	0

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS:

FULL-TIME						-
PART-TIME						-
TEMPORARY						

ANALYSIS : (Attach a separate page if necessary)

Prepared by : Randy Bayliss
Phone : 465-2600
Division : Office of the Commissioner
Date : January 30, 1987

Approved by Commissioner : Dennis D. Kelso
Date : January 30, 1987
Agency : Environmental Conservation

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

BEAUTIFICATION AND LITTER CONTROL COMMITTEE

Greater Fairbanks Chamber of Commerce

First National Center
100 Cushman Street

(907) 452-1105

P.O. Box 74446
Fairbanks, Alaska 99707

January 29, 1987

Representative Mike Davis
Pouch V
Juneau, AK 99811

Mail Stop 3100

Dear Rep. Davis:

The Beautification and Litter Control Committee of the Greater Fairbanks Chamber of Commerce strongly supports passage of HB 59, An Act Relating to the Recycling and Reduction of Litter. Our committee has worked hard over the past several years to make Fairbanks a cleaner, more beautiful place for the enjoyment of residents and visitors alike. We feel that continued State support in the form of litter reduction and recycling legislation is important to our success.

Litter reduction and recycling are more than just "environmental" concerns. These programs enhance economic development and tourism in our state. We are proud of the contributions our committee has made in these areas; we encourage the Alaska State Legislature to support our local efforts through passage of this legislation.

Sincerely,

Art Buswell
Art Buswell
Co-Chairman

Heather Stockard
Heather Stockard
Co-Chairman

(1)

Alaska State Legislature

Representative Mike Davis

P.O. Box V
Juneau, Alaska 99811
(907) 465-4930/4941

Interim Office:
P.O. Box 81435
Fairbanks, Alaska 99708

MEMORANDUM

To: All Interested Persons

From: Rep. Mike Davis

Date: January 30, 1987

Re: HB 59; An Act Relating to the Recycling and Reduction of Litter.

The 1986 legislature failed to fund the state's litter reduction and recycling program for FY 87, and the program is due to sunset on June 30, 1987. However, this is an important program that coordinates community efforts to clean up litter throughout the state. Litter along the state's highways has a a negative impact upon visitors to Alaska as well as upon the state's residents, and maintaining a litter program should continue to make the state a destination point for tourists.

The provisions of HB 59 would reduce the costs of operating an effective litter program by repealing requirements for an advisory council and the publication of an annual report. The legislation also reduces costs by allowing, rather than requiring, DEC to provide litter bags. These changes have allowed the bill to receive a zero fiscal note.

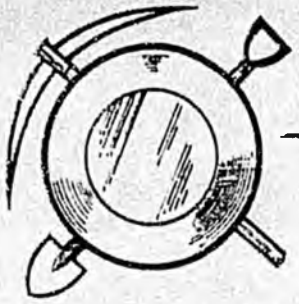
HB 59 would reduce the penalty for littering from a misdemeanor to a violation in order to eliminate court costs, and a prison term would be eliminated as a penalty for littering. The bill would also repeal the sunset provision of the program.

Discussions with ALPAR (Alaskans for Litter Prevention and Recycling), the Fairbanks Litter and Beautification Committee, the Department of Environmental Conservation, and several municipalities have been very positive toward this legislation. The remarks of a few municipal leaders are presented below:

City and Borough of Juneau, Mayor Ernest Polley: "The City and Borough certainly supports litter reduction and recycling programs. The City and Borough of Juneau has a considerable litter problem as well as disposal problems concerning metals, household garbage, and hazardous liquids. I feel that this is a statewide problem and should be addressed on a statewide basis. We would be happy to work with your office to review any proposed legislation in this area."

Municipality of Anchorage, Mayor Tony Knowles: "As a strong supporter of a healthy, clean environment, I share your wish to avoid sunsetting the litter reduction and recycling program within DEC. Although unfunded at this point, I believe a mechanism should exist for revitalizing this program should revenue levels again allow for funding of the program."

Matanuska-Susitna Borough, Mayor Dorothy Jones: "As for the litter reduction and recycling program, we find it a boon to the Matanuska-Susitna area and would most assuredly like to see funding restored and the program remain."



August 5, 1985

The Honorable Mike Davis
House of Representatives
Alaska State Legislature
Pouch V (MS 3100)
Juneau, AK 98111

Dear Representative Davis:

It has come to the attention of the Fairbanks Convention and Visitors Bureau that your office is seeking legislative support for litter reduction via a financial appropriation. The F.C.V.B. supports funding for litter reduction and control at the legislative level.

Litter drastically reduces the aesthetic value of an area, resulting in a bad impression of a place by all who pass by. This affects visitors as well as residents. While litter control is not directly related to the visitor industry per se, it does have an impact on visitors, as it does all people.

Litter control has a positive effect on a community. Visitors view a clean community as a nice place to visit, and residents see it as a good place to live.

Funding at the legislative level is appropriate for litter reduction and control as it affects all Alaskans and the people who visit our state. The Fairbanks Convention and Visitors Bureau supports funding at the legislative level.

Sincerely,

Kari M. Kornfeind
Director of Tourism

KMK/bap

Fifth Annual Report

May 1985

ALASKA LITTER REDUCTION AND RESOURCE RECOVERY PROGRAM

BILL SHEFFIELD
Governor
State of Alaska

BILL ROSS
Commissioner
Department of Environmental Conservation
Pouch O, Juneau, Alaska 99811

INTRODUCTION

Early in fiscal year 1984 the Division of Legislative Audit completed its review and evaluation of the first four years of the Department of Environmental Conservation's (DEC) Litter Reduction and Resource Recovery Program. Its performance report concluded that the popular and successful program, and its authorizing legislation, should be continued. On June 8, 1984, the Litter Reduction and Resource Recovery Act was reauthorized until July 1, 1987.

Since the inception of the Litter Reduction and Resource Recovery Program in 1980, DEC has actively pursued projects to reduce litter and encourage recycling and large-scale resource recovery in Alaska. According to the 1983 Alaska litter survey, much has been achieved in the first years of the program. Some of the highlights are:

- 36% decrease in fresh litter generation
- 35% decrease in litter accumulation
- 63.3% decrease of hazardous items in litter
- 20% increase in car litter bag use
- 40% decrease in aluminum can litter
- 36.6% decrease in litter at sites where receptacles have been added

Large-scale resource recovery significantly decreases certain kinds of litter, and saves resources and energy. The program provides support and assistance to resource recovery endeavors throughout Alaska. With the establishment of a culp (shredder) mill in Anchorage (to be in operation in late 1985), an estimated 20,000 tons a year of ferrous metals will be recovered and possibly sold to a Pacific Rim country. This tonnage will represent a substantial increase over past years. At present, about 7% of over 50,000 tons of paper shipped to Alaska per year is recovered for reuse. Due to recent reduction of rates by freight carriers, the potential for recovery of waste paper is increasing. As demand for both energy and resources rises and supplies decline, such recovery becomes even more important.

This report documents DEC's accomplishments in litter reduction, litter prevention, resource recovery, and increasing public support of the program during FY 1984. In 1984, the program changed its reporting period to coincide with the State's fiscal year. Some of the figures in the report may overlap with figures in the 1983 annual report, which was based on a calendar year.

LITTER REDUCTION

Results from the 1983 Alaska litter survey performed by the Institute for Applied Research indicate that during the first three years of the litter and recycling program's existence, there has been a 36% reduction in the rate that fresh litter is generated (Syrek, 1983). Similar decreases were measured in the rate at which long term accumulations of litter build up. These results show a 35% decline when corrected for traffic and weather conditions.

What are the causes of these significant decreases in litter? Alaskans are becoming more involved in both picking up litter already on the ground (litter reduction) and eliminating acts of littering (litter prevention).

In an executive proclamation, Governor Sheffield declared May 1984 as Litter Prevention and Cleanup Month. Letters seeking similar local declarations were sent to mayors. DEC staff sent mailouts to city and village councils, schools, community leaders, and local media asking for their involvement in cleanup efforts.

The results of these activities were once again gratifying. Again in 1984, Alaska saw an increase in the number of community cleanups statewide. A current list of communities with cleanups appears in Appendix A. Table I shows 1984 cleanup results.

Table I
1984 Spring Cleanups

	Southeastern Region	Southcentral Region	Northern Region	TOTAL
Communities with cleanups	18	126	61	205
Participants	3,124	31,223	18,505	52,852
Bags Collected	6,729	105,590	55,700	168,019
Truckloads	379	12,401	not available	12,753
Junk Autos Removed	63	2,198	366	2,621

Youth Litter Patrols

As part of statewide litter reduction efforts in 1984, summer youth litter patrols were funded for a second year by Alaskans for Litter Prevention and Recycling (ALPAR, a private organization of business and industry) and a cash grant of $120,000 from the State. Approximately 284 young people on the patrols picked up litter in 26 communities, with more than double the participation of the first year of the program. Table II shows a comparison between 1983 and 1984.

Table II

Youth Litter Patrols

	1983	1984
Number of Participants	120	284
Number of Communities	11	26
Number of Patrols	27	71
Bags Collected	6,500	Data not available
Total Cost	$82,000	$171,348

Fairbanks, a star in the youth litter program, had an impressive 20 patrols in 1984, up from 4 patrols in 1983. The patrols worked for 13 weeks cleaning up 400 miles of roadways and over 3,300 bags of litter. This program created 21 full-time seasonal jobs for youths 14-17 years old in the Fairbanks area. The "bottom line" summary of the 1984 Greater Fairbanks litter patrol effort was 8.3 bags of litter abated per mile of roadway cleaned up, at a cost of $13.90 per bag.

Anchorage doubled its youth litter patrols from 10 in 1983 to 20 in 1984. Communities with two patrols each in 1984 were Homer, Juneau, Kenai, Ketchikan, Nenana, Palmer, and Valdez. The following communities had one youth litter patrol each: Bethel, Deering, Delta Junction, Dillingham, Ekwok, Kodiak, Koliganek, Saxman, Skagway, Soldotna, Togiak, Wasilla, and Wrangell.

Alternative Sentencing and Pretrial Diversion Programs

The Department of Law Pretrial Diversion Program made an outstanding contribution to litter reduction in 1984. The results of the efforts of this program were well up over 1983 (See Table III).

Table III

The Department of Law Pretrial Diversion Program

	1983	1984
Number of participants	50	220
Number of hours	1,600	2,800
Number of communities	1 - Juneau	4 - Fairbanks, Juneau*, Kenai and Sitka

* 40 assigned to ALPAR patrols for 700 hours
100 assigned to DOT/PF on weekends for 800 hours

In FY 1984, the Municipality of Anchorage's Community Work Services Program assigned 400 sentenced misdemeanants to 8,000 hours of litter pickup. These misdemeanants were referred by the Court to this program, and picked up a total of 250,000 pounds of litter. The program not only reduced litter in Anchorage, but seemed to have a positive impact on the recidivism of the offenders, most of whom had been convicted of DWI. Other offenses included shoplifting, reckless driving, and littering. Virtually all the participants commented they would never litter again, after seeing firsthand what a problem litter is.

Working closely with the District Court, the Fairbanks North Star Borough's Environmental Services Division supervised the community service work required of litter offenders and those who had committed other minor offenses. The 53 individuals assigned to this program performed 1,001 hours of work, for an average of 18.9 hours per person. Juveniles performed 465 hours of work; adults, 536 hours. Thirty-three persons were assigned to community work service who did not perform the work, totalling 1344 hours of work assigned which was not performed.

Volunteer Efforts

DEC spring cleanups mobilize the people in a community and often lead to voluntary efforts to keep their communities clean year round. One spinoff of the DEC spring cleanup in 1984 was the voluntary placement of litter receptacles and antilitter signs in more than a dozen communities. Port Heiden went a step further, installing a large community dumpster and instituting a weekly pickup. In some areas, which did not have formal youth litter patrols, local people started voluntary cleanups. In Takotna such activity led to the demolition of three houses and the graveling over of the resulting vacant lot.

Many communities went beyond picking up litter and beautified areas which had previously been eyesores. They developed gardens and parks, planted trees, and placed flower boxes. In these communities volunteers did the work of creating and maintaining the beautified areas. Juneau and Fairbanks established committees, which included DEC litter program staff, to plan, carry out, and reward beautification activities. In Juneau the Beautification Subcommittee of the Mayor's Hospitality Committee honored individuals, businesses, and government agencies for their significant efforts to beautify Juneau. The Fairbanks Chamber of Commerce Beautification Committee beautified formerly littered areas in response to a perceived need in the community to enhance civic pride and foster ongoing antilittering behavior.

LITTER PREVENTION

Reduction of litter on the ground is necessary and desirable, but prevention of acts of littering is the key to long-term litter reduction in Alaska.

Litter is the result of personal habits and decisions. In order to affect the litter rate in Alaska, individual attitudes towards litter must be changed, and efforts made to influence personal decisions about the act of littering.

Secured Truckloads

The 1981 litter survey showed that deliberate littering comes from pedestrians aged 6 to 25 and occupants of motor vehicles aged 10 to 45. Most accidental littering is from unsecured truckloads and trash escaping from truck beds.

Since 1981 there has been a shift in the composition of litter. Deliberately littered convenience product packaging litter has decreased from 56% of all fresh litter items in 1981 to 49% in 1983. At the same time, the percentage of accidentally littered items from trash can spills, unsecured loads and uncovered truck beds has increased from 38% to 45%.

These figures indicate public attitudes towards deliberate littering is improving; fewer people are unconsciously tossing wrappers on the ground. The figures show, however, that more work needs to be done to motivate truck owners to cover their loads.

In 1984 the Municipality of Anchorage passed an ordinance requiring that trucks bringing loads to the municipal landfill be covered or pay an "uncovered load" fee of $10.00 for small trucks and $10.00 a ton plus a $30.00 fee for large trucks. By July 1984, 98.8% of the trucks coming to the landfill were covered.

DEC will encourage other municipalities to follow the lead of this highly successful program and conduct their own covered load campaigns in FY 85.

Community Outreach

Using information provided by litter surveys, DEC gears educational efforts to those groups primarily responsible for litter in Alaska. Attitudes and decisions are substantially shaped by both the mass media and personal contact.

1984 DEC media efforts included press releases, production and distribution of public service announcements, and arrangement of media coverage of local cleanup and recycling efforts. Litter caused by travelers was addressed by a full page ad in the 1984 Milepost. A full page "ad" on uncovered loads was published in the April 1984 edition of the State of Alaska's Driver's Manual.

Public information and public education services are an important means of encouraging litter reduction and resource recovery activities throughout Alaska. Table IV shows public awareness services provided by litter program staff in FY 1984.

Table IV

Community Outreach Services

School Presentations	12
Community Presentations	44
Hotline Calls	1591
Newspaper Interviews	161
TV Interviews	18
Radio Interviews	3
Other	12

Commodities Distributed

Another way DEC encourages communities and citizens to become involved in litter control is by distributing free commodities. These range from car litter bags to cleanup incentives for children, including patches and "sort-n-save" magnets. Table V shows the items distributed during FY 1984.

Table V

Commodities Distributed

DEC car litter bags	27,550
SOHIO car litter bags	90,800
Cleanup bags	166,100
Milepost posters	123
Fish & Game posters	30
Pins	12,995
Patches	8,981
Receptacle decals	6,668
"Aluminum only" decals	928
Miscellaneous brochures	4,002

At the beginning of the 1984 tourist season, DEC sent 2,000 DOT/PF car litter bags to U.S. border stations at ALCAN/TOK and Skagway.

Education

Since young people comprise a large number of those groups identified as deliberate litterers, DEC has attempted to reach them through an elementary school curriculum.

The Legislature appropriated $150,000 for litter reduction programs in schools. With the approval of the Litter Reduction and Resource Recovery Advisory Council, DEC contracted with the Department of Education to produce a series of three 15-minute lessons on videotape for the Learn/Alaska instructional television network. The series will be designed for grades 4-6 and aired on Learn/Alaska. Printed teacher's guides will be developed and used in conjunction with the video program.

The educational objectives of this series of video lessons are to increase the students' knowledge of their environment, affect their attitude toward conservation of natural resources, and encourage their personal commitment to antilitter, antiwaste behavior. By airing this program on the Learn/Alaska network, we expect to reach the largest possible target audience in the most effective way. The video series is expected to be aired on the Learn/Alaska network beginning in the fall semester 1985.

Litter Receptacles

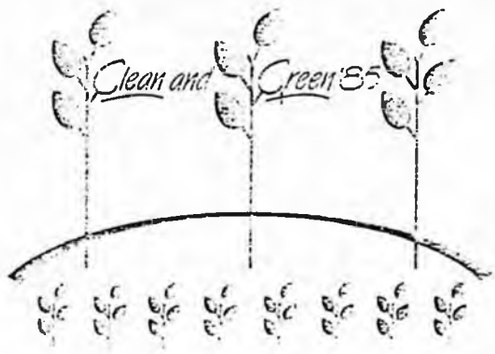
An important means of preventing litter is to make receptacles available in high use areas. Litter receptacle regulations became effective in October, 1983. Those regulations require receptacles marked with the State's anti-litter logo to be installed, routinely serviced and maintained at commercial, recreation and civic areas. The 1983 litter survey showed a significant increase in receptacles at 10 commercial sampling sites (Syrek, 1983). Table VI shows the additions by site.

Litter, BEWARE!

With energy and enthusiasm characteristic of Alaskans, a unique mix of private and public efforts sent that message ringing throughout the Tanana Valley in 1984. The result: the cleanest roads, highways and streets in recent memory.

Keeping a town clean is not an easy task, and the Beautification and Litter Control Committee of the Greater Fairbanks Chamber of Commerce recognizes that its work is just beginning. But the seeds of success that were planted in 1984 have begun to sprout. With your help, future rewards will be easier and easier to harvest.

Following is a synopsis of the committee's major activities in 1984:



Beautification and Litter Control Committee
GREATER FAIRBANKS CHAMBER OF COMMERCE

LITTER PATROL

Using a $50,000 grant from ALPAR (Alaskans for Litter Prevention and Recycling) and local contributions, a litter patrol composed primarily of youth age 14-17 combed area highways for 10 weeks, and worked on a reduced scale for three additional weeks to close the season on August 31. Approximately 400 miles of road were covered this summer. Patrollers collected 3,300 bags of litter, which amounted to 8.3 bags of litter per mile.

This program received an award as the outstanding youth litter control program in Alaska.

BEAUTIFICATION

The Beautification Subcommittee recruited volunteers and utilized court referrals to landscape, plant and maintain Golden Heart Park, Park Plaza and numerous downtown flower and tree boxes. Special attention was paid to the banks of the Chena River in the downtown area.

School children and several businesses cooperated in creating, hanging and maintaining 60 banners that were hung at the airport, along Airport Road and the Richardson Highway. The banners carried a warm greeting to all who visited our city.

EDUCATION

Working primarily through the schools, this subcommittee stressed good citizenship and personal responsibility when using the outdoors. Children were encouraged to participate in the beautification of their school grounds through litter pickup, planting and respect for property.

ENFORCEMENT

Working closely with the District Court, the Fairbanks North Star Borough's Environmental Services Division supervised the community service work required of litter offenders and those who had committed other minor offenses. The 53 individuals assigned to this program performed 1,001 hours of work, which consisted of litter pickup and beautification. Enforcement efforts will be expanded next year to solicit the cooperation of construction companies, garbage haulers and major businesses in keeping litter off the streets and highways.

SPRING CLEANUP

Our most visible effort, this subcommittee really earned its stripes in 1984. Faced with the visit of the Pope and the President just 10 days before the traditional spring cleanup, the committee recruited volunteers who made Airport Road, Chena Pump Road, University Avenue, Geist Road and College Road spotless. Reporters from around the world commented on how clean Fairbanks was.

The traditional Clean Up Day drew 11,000 participants and produced 30,000 bags of rubbish, the largest one-day effort in the history of Alaska. This program received an award from the state as the top volunteer clean up effort in Alaska in 1984.

GREATER FAIRBANKS CHAMBER OF COMMERCE

Clean & Green in '85 Project
% Fairbanks Chamber of Commerce
P.O. Box 74446
Fairbanks, AK 99707

HOW CAN YOU HELP?

A community-based litter control and beautification program must have broad support. Your assistance is urgently needed in the following areas:

Take pride

in your own home and business. Keep your sidewalk and storefront neat and clean. Add flowers. Call us for ideas.

Bend over.

If you see some litter or trash, stop to pick it up. If everyone did this, we wouldn't need a committee like ours.

Financial support.

Private sector donations represent a large part of the budget required to successfully operate this program. If you can, please give generously. Major contributors will be recognized by having their names displayed on safety bibs worn by litter patrol members.

Sweat equity.

Lend a hand on some sunny afternoon. Join the committee. Donate your time. Get involved!

Report offenders.

If you see someone toss litter out of their car or truck, or if garbage blows off a truck enroute to the landfill, call the Troopers or the city police.

For further information, call 452-1105.

GREATER FAIRBANKS CHAMBER OF COMMERCE

Yes! I want to help keep Fairbanks clean and beautiful.

_____ I will sponsor a litter patrol member for:
_____ 1 day ($50) _____ 1 week ($250) _____ 1 month ($1,000)*

_____ I like the work you are doing. Here is my donation of _____

_____ I cannot give money, but will volunteer my time.
Please call me at _____ (day phone).

_____ You can count on me. I pledge to keep my home and/or business clean and beautiful in 1985.

_____ I have _____ tools _____ equipment _____ a vehicle that I will loan to the committee to help it achieve its goals.

NAME _____

ADDRESS _____

Make checks payable to: Clean & Green in '85 Project
% Fairbanks Chamber of Commerce
P.O. Box 74446 Fairbanks, AK 99707

*Donors may have their names printed on the highway safety bibs worn by litter patrol members.

HB

61

(9) 2/11

HOUSE COMMITTEE REPORT

Date referred: 1/22/87 FURTHER REFERRALS: Judiciary

DATE: 2/9/87

The Resources Committee has considered HB 61

"An Act relating to the renewal of permits for the use of mental health land of the state; and providing for an effective date."

RECOMMENDS:

[✓] replace with CS HB 61 (Res) [ ] the same title
[✓] a new title
[ ] attached amendment(s)

- [✓] do pass
- [ ] do not pass
- [ ] no recommendation
- [ ] individual recommendations
- [ ] additional referral to the ______ Committee

ADOPTS: [ ] ______ letter of intent

ATTACHES NEW FISCAL NOTE(s):

[ ] fiscal impact
[✓] zero fiscal note
[ ] zero with analysis
[ ] same as previous fiscal note published ______
[ ] same as previous zero fiscal note published ______

SIGNING DO PASS:

Terrick Longuys
Cliff Davidson
[illegible]
[illegible] Pearce
Mike Navarre
Samuel R. Cotten

SIGNING OTHER RECOMMENDATIONS:

Dick Shultz No Rec.

Samuel R. Cotten
Chairman's signature

STATE OF ALASKA

DEPARTMENT OF NATURAL RESOURCES

OFFICE OF THE COMMISSIONER

STEVE COWPER, GOVERNOR

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

"Timely" fashion in Nov.

1-7-87

February 5, 1987

The Honorable Sam Cotten
The Honorable Adleheid Herrmann
Co-Chairs, House Resources Committee
Alaska State Legislature
P.O. Box V
Juneau, AK 99811

Dear Representatives Cotten and Herrmann:

Subject: HB 61, which provides for the extension of permits until the Mental Health Commission has had the opportunity to determine that such action is consistent with the terms of the trust established by the Alaska Mental Health Enabling Act.

Response: The department supports this legislation. It provides a more orderly process for conducting business on mental health lands. Additionally, we think its coverage should be expanded to include other actions provided in AS 38.05.850 and 38.05.110.

Commentary: The meeting schedule of the Mental Health Commission does not always coincide with the termination date of permits and other land use authorizations. Thus a gravel sale contract, for instance, could be terminated before the commission was able to consider its consistency with trust purposes and approve its extension. The bill would remedy this problem.

Sincerely,

BrV Brady

for Judith M. Brady
Commissioner

cc: Committee Members
Governor's Legislative Liaison

10-J9LH

STATE OF ALASKA

DEPARTMENT OF NATURAL RESOURCES

OFFICE OF THE COMMISSIONER

STEVE COWPER, GOVERNOR

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JUNEAU, ALASKA 99801
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Sincerely,

for Judith M. Brady
Commissioner

cc: Committee Members
Governor's Legislative Liaison

10-J9 LH

STATE OF ALASKA 1987 LEGISLATIVE SESSION
FISCAL NOTE

REQUEST:

Bill Version : HB 61
Publish Date :

Revision Date: February 5, 1987
Title : Permits for Use of Mental Health Land
Sponsor : Representative Sund
Requestor : House Resources

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

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 87	FY 88	FY 89	FY 90	FY 91	FY 92
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

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

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS : (Attach a separate page if necessary)

Prepared by : Tom Hawkins
Phone : 465-2400
Division : Land and Water Management
Date : February 5, 1987

Approved by Commissioner : Norm D Sund Deputy
Date : 2/6/87
Agency : Natural Resources

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

HB 61

JOHN SUND, REPRESENTATIVE
2505 2nd Avenue
Ketchikan, Alaska 99901
(907) 225-5552

While in Juneau
P. O. Box V
Juneau, Alaska 99811
(907) 465-4919

January 23, 1987

MEMORANDUM

TO: Honorable Adelheid Herrmman
Honorable Sam Cotten

FROM: Representative John Sund

RE: HB61 "An Act relating to the renewal of premits for the use of mental health land of the state; and providing for an effective date."

.....

I would appreciate it if you would schedule HB61 at your earliest convenience.

The renewal of permits on mental health lands is becoming a serious problem due to policies adopted by the Department of Natural Resources, the attorneys for the plaintiffs and interveners in the Weis lawsuit, and the Mental Health Review Commission.

A contractor in my district received a letter from DNR requesting an application for permit renewal on 11/13/86. He reapplied to DNR within the week, and his application was passed along to the attorneys for the plaintiffs and interveners. Under Department order, the attorneys are allowed 30-60 days to review each permit before it can be reviewed by the Commission.

In this case the permit expired on 1/7/87 while under review and it is not scheduled to go before the Mental Health Review Commission until 1/23/87. In the meantime the contractor can't operate and is facing possible bankruptcy. Attornies have requested a thirty day extension to appraise resourse value, enenthough DNR and the Commission have each apraised the permit within the last year.

Under Sec. 2. (g) of this bill, If a person files a timely application for the renewal of a permit for the use of mental health land of the state and the commission fails to reject it before the termination of the permit, the commissioner may extend the permit until the commission has acted on the application for the renewal.

Introduced: 1/22/87
Referred: Resources and Judiciary

IN THE HOUSE BY SUND

HOUSE BILL NO. 61

IN THE LEGISLATURE OF THE STATE OF ALASKA

FIFTEENTH LEGISLATURE - FIRST SESSION

A BILL

For an Act entitled: "An Act relating to the renewal of permits for the use of mental health land of the state; and providing for an effective date."

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

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

(d) 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. Except as provided in [(e) OF] this section, 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. In reviewing a proposal for the sale, lease, or exchange of mental health trust land from the commissioner of natural resources, the commission may approve the proposal of the commissioner on its determination that the proposal is consistent with the terms of the trust established by the Alaska Mental Health Enabling Act.

* Sec. 2. Section 2, ch. 132, SLA 1986, is amended by adding a new subsection to read:

(g) If a person files a timely application for the renewal of a permit or contract for the use of mental health land of the state and the commission fails to reject it before the termination of the permit, the commissioner may extend the permit until the commission has acted on the application for the renewal.

* Sec. 3. This Act takes effect immediately under AS 01.10.070(c).

under 38.05.850 or contract under 38.05.110

Introduced: 1/22/87
Referred: Resources and Judiciary

IN THE HOUSE BY SUND

HOUSE BILL NO. 61

IN THE LEGISLATURE OF THE STATE OF ALASKA

FIFTEENTH LEGISLATURE - FIRST SESSION

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THE FOLLOWING PAGES WERE TREATED AS
A UNIT IN THE ORIGINAL FILE.

INTERIM MENTAL HEALTH TRUST COMMISSION

SECOND SESSION

14TH ALASKA LEGISLATURE

George Rogers, PhD., Chairman
Judith M. Brady, Commissioner, ADNR
Robert D. Arnold, Deputy Commissioner, ADNR
Sharron Lobaugh, Governor's Mental Health Advisory Council
Myra M. Munson, Commissioner, ADHSS
Karen Perdue, Deputy Commissioner, ADHSS
Lidia Selkregg, PhD., Representing the Intervenors
K.J. Metcalf, Alternate
Dr. Dennis Scholl, Alternate
Barbara Wihlborg, Alternate

REPORT TO THE LEGISLATURE

February 1987

This report is issued pursuant to Chapter 132, SLA 1986.

STATE OF ALASKA
DEPARTMENT OF NATURAL RESOURCES
OFFICE OF THE COMMISSIONER

STEVE COWPER, GOVERNOR

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

February 20, 1987

The Honorable Jan Faiks
President of the Senate
Fifteenth Alaska Legislature

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

Dear Senator Faiks and Representative Grussendorf:

Passage of SB 472 (Chapter 132, SLA 1986) created the Interim Mental Health Trust Commission and charged it with the following:

- oversight of management of the trust lands
- oversight of appraisals and audits related to reconstitution of the trust
- recommendations related to mental health program
- recommendations related to future trust management
- recommendations related to resolution of the mental health trust litigation
- and a report to the legislature on these and other issues of concern to the commisssion

The commission concurs with many of the conclusions contained in the January 1986 report of the Joint Special Committee on Mental Health Trust Land. In particular, the land issue is complex and will not go away, and funding for mental health programs is inadequate. A negotiated resolution of the litigation is in the public interest and will require action by the legislature.

The commission's discussions and deliberations were aided by the participation, suggestions, and assistance of numerous individuals. These include public alternates K.J. Metcalf, Dr. Dennis Scholl, and Barbara Wihlborg; G. Thomas Koester, Attorney for the commission; David T. Walker, Esq., Attorney for the plaintiffs; and James B. Gottstein, Esq., Attorney for the intervenors; Gary Gustafson, Tony Braden, Salli Slaughter, Mary Kluis, Sue Putnam and other personnel of the Division of Land & Water Management and the staff of the Commissioner's Office, ADNR; Dr. Mel Henry, Director, and staff of the Division of Mental Health; Pat Ryan-Clasby, of the Governor's Advisory Council on Mental Health; Keith Busch and other staff of the Division of Legislative Audit; and Sandra Schubert, staff to the Joint Special Committee on Mental Health.

George Rogers, PhD.
Chairman, Interim Mental Health Trust Commission

Judith M. Brady
Commissioner, ADNR

Myra M. Munson
Commissioner, ADHSS

Robert D. Arnold,
Deputy Commissioner, ADNR

Karen Perdue
Deputy Commissioner, ADHSS

Sharron Lobaugh
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Lidia Selkregg, PhD.
Representing Intervenors

K.J. Metcalf
The Plaintiff's Alternate

Dr. Dennis Scholl
The Intervenor's Alternate

Barbara Wihlborg
Governor's Advisory Council on Mental Health Alternate

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I. EXECUTIVE SUMMARY

Background

The Alaska Supreme Court's 1985 Weiss Opinion invalidated the 1978 legislative redesignation of mental health trust land as general grant land. The Court ordered the State to reconstitute the trust to its status on the effective date of the 1978 Redesignation Act (Chapters 181-182, SLA 1978). The Court ordered that the trust should be compensated for any lands which had been sold, but that the state should receive a credit for mental health program expenditures between the effective date of the 1978 legislation and the court's opinion.

Because of the importance of the issues and the diversity of opinion between the litigants about how to reconstitute the trust, the legislature created the Joint Special Committee on Mental Health Trust Lands (committee) (SCR 36, 1986) and the Interim Mental Health Trust Commission (commission) (SB 472, 1986) to avoid another round of prolonged litigation and the legal, financial, political, and administrative repercussions associated with a wholesale restoration of mental health trust lands and/or a large cash award.

Chapter 132, 1986 directed the commission to oversee the reconstitution process and interim management of trust lands, develop recommendations to improve trust management and mental health programs, propose a resolution to the litigation, and report back to the legislature. The following summarizes the commission's findings to date.

The Status of the Mental Health Program

The commission's review of relevant statistics and historical material establishes the current and long-standing inadequacy of the state mental health system. The commission determined that mental health program expenditures from July 19, 1978 through September 30, 1985 total $197 million. Therefore, the commission recommends that the legislature increase appropriations for mental health programs and projects in order to rectify the inadequacies of the present system.

The Current Status of Trust Lands

The Department of Natural resources has determined that 51,286 acres of the original 1 million acres have been conveyed out of both trust and state ownership by sales, 34,269 by exchanges, and

litigation settlements, and 43,088 acres were patented or approved for patent to municipalities. Another 372, 268 acres conveyed from the trust remain in state ownership but have been legislatively designated for non-trust purposes. Approximately 281,791 acres encumbered and 212,300 unencumbered acres are immediately returnable to the trust.

It should be noted, however, that the state retains mineral rights on all former trust lands, except on the 36,275 acres conveyed to Native corporations.

Table 2 in Chapter II of this report presents a more detailed description and accounting of the acreages in each category. As charged by Chapter 132, 1986, DNR today submits its complete report to the co-chairmen of the committee. Copies of Inventory of Land Activities on Mental Health Lands, July 19, 1978 - October 4, 1985 are available for inspection at the Department of Natural Resources in Juneau and Anchorage.

Value of and Credit for Lands Sold from the Trust

The court ordered that "to the extent that former mental health lands have been sold since the date of the conveyance (July 19, 1978) the trust must be reimbursed for the fair market value at the time of sale." The legislature anticipating that other lands might be involved in reimbursement authorized the commissioner of natural resources to appraise all or part of the former mental health trust lands. Given the lack of funding this effort has focused on municipal conveyances and using estimates. The process is still in progress.

The court instructions allow a credit or offset to cash reimbursement for the state for expenditures for mental health programs since the 1978 redesignations. From an audit for the period, the commission concluded that qualifying expenditures total $197 million.

Elements for an Acceptable Settlement

One interpretation of the court's instructions would lead to essentially an all-land trust. Although legally possible, this approach does not appear desirable or politically feasible. Both the commission and the committee, therefore, have explored alternative forms of reconstitution which would satisfy the court and be acceptable to all parties to the litigation. To guide the committee in its deliberations, the commission submitted a progress report on November 21, 1986, and a letter from the chairman on January 14, 1987, which included the necessary general conditions necessary for a satisfactory negotiated

alternative to continued litigation. These are revised to address all settlement options currently known:

An adequate process must be established for determining the necessary expenses for the mental health program. The program was the purpose for which the trust was originally created. A clearly defined program and the accompanying funding commitment are central to any non-land or partial land alternative.

Trust reconstitution or replacement is central to any acceptable response to the court's order. Absent restoring all of the original trust lands, the reconstitution and/or replacement must be clearly identifiable and quantifiable and of equivalent value, whether it be land, cash (lump sum or guaranteed income stream) or some combination thereof.

The trust corpus or its replacement must be protected permanently. The conversion of any portion of the trust lands into cash, either through a settlement or subsequent sale of trust land, must be dedicated to the corpus, inflation-proofed, and managed in a manner similar to the Alaska Permanent Fund. This would require legislation creating a monetary trust and providing means for protecting its corpus and first dedicating its proceeds to the purposes for which the trust was originally established. Similarly a commitment to increasing support for programs must be secured by assets and/or some sort of mechanism to guarantee its permanence.

If the settlement recreates a trust, trust management must provide both for the realization of maximum income yield and protection and preservation of the corpus. Any land in the Trust must be managed actively for maximum income. To maximize income from any monetary portion of the trust consistent with protection of the corpus, investment strategy must obey the "prudent investor" rule as practiced by the Alaska Permanent Fund. This requires that the Trustee (a division in an existing Department, a special board, a corporation, etc.) be clearly designated and empowered for and capable of operating as an active managing Trustee.

Income generated by Trust management or revenue streams must be first applied to fund the necessary expenses, including capital construction costs, of mental health programs--as required in the federal law. Means must be provided to assure such dedication. In the event of a cash trust, means must also be found for inflation-proofing the corpus, just as the corpus of the permanent fund is inflation-proofed.

Absent a complete reconstitution of the mental health trust, a process must be established for assuring a level of appropriation adequate to provide sufficient funding for the mental health program.

Accommodation of other interests in Mental Health Trust Land can be considered after sufficient provision is made to meet present and future needs of the mentally ill. A return of former mental health lands to trust status could be very disruptive. The potential disruption should be reflected in decisions regarding the trust reconstitution or substitution.

Trust Reconstruction Alternatives

Chapter III of this report discusses at length trust reconstruction options in the context of the above requirements. Any single approach, whether it be land, cash, or a guaranteed revenue stream could be fashioned in such a manner that would satisfy both the court's instructions. Each approach presents legal and political problems which while difficult are not insurmountable and pale in comparison to the problems which could arise in the event of renewed litigation.

After dismissing the other alternatives as too complex or controversial, the Joint Special Committee on Mental Health Trust Lands focused on the revenue stream option and introduced legislation based upon it (HB 92/SB 96). With major modifications (e.g. an identifiable trust, a means of guaranteeing appropriations, etc.) the revenue stream approach might be acceptable to the Weiss litigation parties. The Interim Mental Health Trust Commission is continuing to consider this option. However, should those modifications prove politically unfeasible, or if the negotiations should bog down, then the legislature will have to reconsider the other alternatives presented above.

II. CHARGE TO THE COMMISSION: PROGRESS REPORT & FINDINGS

In October 1985, the Supreme Court invalidated the state's 1978 redesignation of federally granted mental health trust lands to general grant lands and ordered that the trust be reconstituted as nearly as possible to its 1978 status with reimbursement for lands sold from the trust. In response, the legislature in 1986 found that:

> "the funding level for the mental health programs in the state is one of the lowest in the nation on a per capita basis....
> the legislature, the administration, and mental health advocates agree that the state must comply with the intent of the Congress that mental health programs in the state receive sufficient funding....
> it is not in the public interest that continued litigation over the mental health land trust divert attention from the underlying goal of increased funding for mental health programs....
> present state statutes do not explicitly provide for maximum revenue production....
> and the return of mental health trust land to trust status precludes management of mental health trust lands for its highest and best use...." [SCR 36, 1986]

As a result, the legislature created the Joint Special Committee on Mental Health Trust Land to develop a proposal for resolving the litigation. The committee released its final report on January 20, 1987 and, based upon its recommendations to the legislature, introduced draft legislation (HB 92/SB 96) on January 26, 1987.

The legislature also created the Interim Mental Health Trust Commission (commission) and charged it with overseeing and setting guidelines for the interim management of trust lands, providing data analysis for determining the state's liability to the trust, and submitting a report to the legislature "on matters of concern to the commission" including its "recommendations for amendment of the laws relating to the management of the mental health trust, the mental health trust land, and the mental health program of the state." (Chapter 132, SLA 1986)

This following chapter presents a progress report on the specific charges to the commission; the balance of the report deals with "matters of concern to the commission," including approaches for reconstituting the trust, the necessary conditions for a satisfactory negotiated settlement of the litigation, and recommendations related to the management of the trust, trust lands, and the mental health program.

Status of Former Mental Health Trust Lands

The legislature's first charge to the commission and the commissioner of natural resources was to establish the current status of mental health lands through a process of inventorying, cataloging, and auditing of each transaction involving lands which had been a part of the trust. This task was substantially completed and the results released in a report in January 1987. Because of the size of the report and the resultant reproduction costs, the report was given only limited distribution; instead, several reference copies are available for inspection at DNR field offices. Table 1 on the page following summarizes the determination of the current status of the mental health trust lands.

Table 1 - MENTAL HEALTH TRUST LANDS
Inventory by status as of October 4, 1985

	Acres	Acres Remaining
1. Trust Land Base (as corrected 1/23/87)		
Patented to state	845,838.84	
Approved for patent	159,872.00	
Possible overconveyance	(5,710.84)	1,000,000[a]
2. Conveyed Out of Trust and State Ownership		
Land sales to individuals	46,137.49[b]	
Condemned for Chena River Lakes Project (1978)	5,148.86	
Total Out of Trust and State Ownership	51,286.35	948,713.65
3. Conveyed Out of Trust & State, by Exchange and Settlement of Litigation[c]		
Native Corporation land exchanges		
- CIRI/USA (1979)	34,507.70	
- Seldovia (1979)	1,768.11	
U of A Settlement (1982)	2,993.37	
Total Out Of Trust & State	39,269.08	909,446.27
4. Conveyed Out of Trust to Municipalities[d]		
- Patented to municipalities	22,680.73	
- Approved for patent	20,407.01	
Total Conveyed to Municipalities, Ownership in Question	43,087.74	866,358.53
5. Conveyed Out of Trust, In State Ownership for Non-trust Purposes		
State Refuge & Habitat Areas	85,709.61	
State Forests	131,955.00	
State Parks	150,576.35	
Interagency Land Management/Transfer Agreements (ILMA's & ILMT's)	4,027.27	
Total former M.H. Lands Designated For Non-trust Purposes	372,268.23	494,090.30
6. Immediately Returnable to Trust, Encumbered with Lease & Sale Contracts		
Land Leases	1,913.74	
Mining Claims[e]	61,825.71	
Coal Leases	54,563.22	
Oil & Gas Leases	131,904.40	
Material & Timber Sale Contracts	29,815.63	
Permits	1,767.87	
Total Returnable with Encumbrances	281,790.57	212,299.73
6. Immediately Returnable Unencumbered[f]	212,299.73	

[a] The state--and therefore the trust-- retains all mineral rights on former mental health trust lands, except the 36,275 acres conveyed to Native corporations.

[b] Includes 19,797.52 acres conveyed prior to 7/19/78. Includes patented lands and lands under sales contracts in which vested interests exist.

[c] Lands received by state in exchange not readily identifiable.

[d] State may have legal authority to rescind, in which case title uncertain.

[e] Not tied to revenue production for trust. Holders required only to perform $200 of "annual labor."

[f] Includes 12,552.33 acres selected by municipalities but not yet approved for patent.

SOURCE: Alaska Department of Natural Resources, Inventory of Land Activities On Mental Health Lands, July 19, 1978 - October 4, 1985.

The trust land base was determined as of January 23, 1987 to consist of 845,838.84 acres patented to the state and 159,872.00 acres approved for patent, indicating a possible 5,710.84 acres of overconveyance. For purposes of determining the status classification, the statutorily designated one million acres is taken as the land base.

Lands conveyed out of trust and state ownership by sale total 51,286.35 acres (46,138.49 acres by sale to individuals and 5,148.86 acres by condemnation for the Chena River Lakes federal flood control project for which the state received monetary compensation). This includes lands upon which patent has been issued by the state and lands under sales contract in which DNR has determined a vested right for full conveyance exists. The inventory shows that 26,339,97 acres were conveyed out of the trust by sale after July 19, 1978.

According to the court's reconstitution instructions, the trust is to be reimbursed for the fair market value at the time of sale for all lands sold since the date of the 1978 redesignation (July 19, 1978). The court is silent on what reimbursement, if any, should be made for prior conveyances. Although sales by auction and lottery are generally based upon appraised values, existing statutes permit sales for less than fair market value in a number of cases (refer to discussion in Appendix C). In calculating the amount of cash owed, the court allowed an offset for mental health expenditures made during the period (July 1, 1978 - September 30, 1985), as discussed more fully below.

According to the court's instructions, lands conveyed out of the trust by exchanges are to be replaced by the lands which can be traced to the exchange. Complicated three-way exchanges between Native corporations and the state and federal governments agreed upon in 1979 involved substantial acreages of mental health lands as an economic land base for the corporations and for expanding the state park system. In 1982 mental health lands were used in settling the University of Alaska land case. This was in effect a form of exchange as the state retained the former University lands in exchange for mental health lands. The inventory indicates that a total of 39,269.18 acres were conveyed from the trust by exchange and settlement of litigation. Although according to the Supreme Court order lands received in exchanges are automatically returned to the trust, the DNR audit of transactions indicates that they "are not readily identifiable." Identifying them would require considerable effort and expense.

Municipal conveyances, patented and approved for patent total 43,087.74 acres. Although the attorney general has advised that if certain circumstances exist (i.e. private trust law applies to this public trust), then municipalities which have received title

to mental health trust lands could be compelled to return them to the trust. Most municipalities are on record as opposing this and intending to press their selection of an additional 12,552.23 acres awaiting action at the time of the court decision.

Former trust lands legislatively designated for non-trust purposes (state parks, forests, refuge and habitat areas and interagency land management transfers) total 372,268.23 acres. These lands are still in state ownership and could arguably be restored to the trust. Trust management for maximum revenue production, however, would be incompatible with the purposes for which they were redesignated.

Lands immediately returnable to the trust encumbered with leases and sales contracts total 281,790.57 acres. Although many of these encumbrances return revenues at or close to those which would have realized under active trust management (e.g. oil and gas leases), 61,825.71 acres of mining claims involve only affidavits of annual labor and others were made available at special discounts (refer to Appendix C).

Of the original million acre land base, only 212,299.73 acres are immediately returnable without encumbrances.

Determining Land Values

Although the court's reconstitution instructions only require the determination of the fair market value of the land sold from the trust after July 19, 1978 (26,339.97 acres), the legislature recognized that an actual reconstitution would involve much more than simply ordering the return of the remaining land base. Accordingly, it instructed the commissioner of natural resources and the commission to "retain an appraiser or appraisers to appraise all or a portion of land that, at any time, was part of the mental health trust land"--leaving the extent of the appraisals to the commission's discretion.

To date, there have been three land valuation efforts. In 1985, an opinion of value panel evaluated the 779,835 acres remaining in the trust on July 19, 1978 and assigned a 1985 value of $567 million, or $727 per acre. In January 1987, DNR released a compilation based on appraisals of fair market value mental health land transactions. This summary shows that since July 1, 1978, 28,888 acres were sold for approximately $13.8 million, or $478 per acre. In both cases, the plaintiffs consider the resultant per acre average not representative of their true value.

The commission recognized that appraisals of all lands affected by the Redesignation Act would be prohibitively expensive. Given the limited funds available for the task (approximately $65,000), the commission opted for opinion of value process to evaluate all municipally selected, approved, and patented mental health lands. The opinion of value showed that those lands had a value slightly in excess of $100 million. To check those values, 15 of these parcels in Anchorage, Fairbanks, and Juneau were appraised. (Patented and approved municipal selections were thought to be those lands most likely to be involved in some form of monetary settlement.) There have been some difficulties in evaluating the two processes of valuation, and questions have been raised by the litigants concerning the appropriateness of the methods used for valuing income-production potential. This project is still in progress, and its results will be reported when they become available.

Calculating the State's Credit

The court's reconstitution instructions allow the state to offset the fair market value at the time of sale of the lands sold from the trust by the mental health program expenditures between July 1, 1978 and September 30, 1985. With the participation and overview of the commissioner of health and social services and a subcommittee of the commission, Division of Legislative Audit carried out an audit of a broad range of expenditures for that period. With further analysis reflecting acceptable definitions of the program during that period, it was determined that state expenditures totaled $197,792,060 (for completed discussion of the audit process and results refer to Appendix F).

The court instructions provide that "In the event that the expenditures exceeded the value of the lands sold, the state need not furnish cash as part of the reconstitution." However, the court did not supply a definition for the word "sold," although the standard definition means an exchange for money or its equivalent. Until the definition of sold can be agreed upon by the parties to the litigation, further discussion of net cash reimbursement to the trust is academic.

Interim Land Management Since October 5, 1985

The day the Weiss Opinion was issued, the Commissioner of DNR ordered a moratorium on all activities on mental health land and later adopted emergency regulations closing all mental health lands to mineral entry. However, because the resolution of the remaining details would not occur for some time, the state had to provide for interim management.

In December 1985, DNR issued Order 121, "Mental Health Land Interim Management." That order established criteria for interim management of mental health land based on receipt of fair market value for all transactions or full reimbursement for the trust in land or money for other transactions executed for the general public good. To enable the state to account for revenue generated from management of these lands, two mental health fund collocation codes were established within the department: a "corpus account" to hold funds obtained from the sale of mental health land, and an "earnings account" to hold funds earned from mental health land other than through land sale.

In May 1986, Department Order 121 was substantially revised. These revisions required: (1) Notice to and approval by the Interim Mental Health Trust Commission of proposed sales, leases and exchanges; (2) Special notice to the attorneys for the plaintiffs and the intervenors in Weiss. This notice was for a period of 30 days with an additional 30 days upon request and; (3) A method for implementation of vested rights.

The legislature directed the commissioner of natural resources to manage trust lands as a public trust. With the exception of A.S. 38.05.035(b)(9), land reconveyances to the federal government under provision of CSSB 427, the Commissioner of Natural Resources could no longer sell, lease, or exchange mental health land or interest thereof, without the approval of the Interim Mental Health Trust Commission. In turn, the commission could approve only those proposals determined to be consistent with the terms of the trust established by the 1956 Alaska Mental Health Enabling Act.

Accordingly, the commission has functioned as trustee for the Mental Health lands since its first meeting on August 5, 1986. Proposed land management actions brought before the commission fall into three categories: (1) sale or lease of resources; (2) the sale of land; and (3) the implementation of vested rights. For each category the commission applied sets of criteria to determine whether the proposal "is consistent with the terms of the trust."

Sales and leases of resources such as timber, gravel, oil and gas were approved when it could be shown that the transaction was generating the highest revenue possible for the trust. The acceptable methods for determining the amount to be charged are: auction, appraisal, DNR fee schedule, or a combination thereof. Between July 1, 1986 and January 11, 1987, this resource sale/lease category included the following proposed actions: three material sales; four timber sales; two tracts for oil and gas leasing; one land use permit; one land lease; and one right-of-way permit.

Land sales, other than to implement vested rights, have all been denied. On August 20, 1986 the commission adopted the following resolution:

> "The Interim Mental Health Trust Commission adopts as a policy that future fee title sales of mental health lands to third parties (rights to purchase not vested on or before October 4, 1985) be suspended until the monetary proceeds of such sales, as trust corpus, can be preserved in perpetuity."

This policy cancelled or suspended two (2) FY 1987 Lottery Disposals and twenty-five (25) Lease Preference Sales totalling 300.162 acres at a projected income of $2,611,300.

Implementation of vested rights is the third category of land actions upon which the commission has acted. The commission's criteria for action are: (1) had the right to the use or ownership of the land vested prior to the Supreme Court Opinion in Weiss and (2) did it involve a bona fide purchaser? The rationale behind these criteria is two-fold; first is that pre-Weiss, the purchaser may have been relying on the 1978 redesignation or may not have been knowledgeable of the trust status of the land; and secondly if the disposal had taken place pre-Weiss the state is liable to the trust for the fair market-value of the disposal. It was in this category that the commission approved the issuance of 51 patents, 5 sales contracts for remote parcel and OTE lease conversions, 4 sales contracts for lottery, auction and over-the counter applicants, and 1 right-of-way permit.

III. TRUST RECONSTITUTION & SETTLEMENT ALTERNATIVES

Creation and Redesignation of the Mental Health Trust

In 1956, Congress vested in the Territory of Alaska authority and responsibility for establishment and operation of an "integrated mental health program for the Territory," provided transitional funding for the first ten years of operation and construction of needed facilities, and granted one million acres to be selected from "vacant, unappropriated, and unreserved" federal lands to be managed as a "public trust [from which the] proceeds and income shall first be applied to meet the necessary expenses of the mental health program of Alaska."

Unlike most other federal land grants, the proceeds from this grant were not for the exclusive use of the designated purpose; instead, mental health was given priority use only, anything beyond that amount needed for necessary expenses being available for other purposes. This condition appears to have been made to avoid the problems associated with previous exclusive grants which had generated income far in excess of the needs of the specified purpose. During the transitional period, these "necessary expenses" were to be determined by a program implementation plan reviewed by the Surgeon General. (For text of the statute and the legislative reports and debates, refer to Appendix B).

Because income generation was the trust's purpose, the selections made between 1956 and 1966 targeted lands surrounding the principle urban centers and on known petroleum, coal, timber, and other commercially-valuable natural resource lands. (Refer to Table 1 and Figure 1 in Appendix C. The legislature, however, did not provide any statutory framework for trust management which would have assured realization of the lands' maximum income potential. Absent such direction, the Department of Natural Resources managed all public lands in accordance with existing statutes for the highest and best use, which sometimes included less than fair-market-value disposal of lands and resources. In accordance with the "highest and best use" principle of management, between 1964 and 1978 some 164,385.64 acres of mental health trust lands were legislatively designated for non-trust purposes (state parks, forests, and habitat areas). (Appendix C contains a fuller discussion of the 1956-78 management experience.)

The legislature redesignated all trust lands as general grant lands in 1978, in order to make permanent the results of past management and make trust lands available to accommodate competing interests. To compensate the mental health trust for

this action, a trust fund for mental health programs was established into which the legislature was to annually deposit 1.5% of all receipts from state lands (Chapters 181-182, SLA 1978). No appropriation was ever made.

As a result of the Redesignation Act, an additional 70,758.01 acres were conveyed out of the former mental health trust (26,339.97 by sale, 5,148.86 acres by condemnation, and 39,269.18 by exchange). Trust acreage dedicated to non-trust purposes (parks, forests, habitat protection, and administration) increased to a total of 372,268.23 acres and 43,087.74 acres were conveyed to municipalities. By October, 4, 1985 less than half of the original trust acreage remained available for trust purposes and of those, 281,790.57 were encumbered with leases, contracts, and permits. (Refer to Appendix C. and Table 1, above).

The Supreme Court Order to Reconstruct the Trust, 1985

That the 1978 redesignation was possible probably reflected the lack of effective political advocacy on behalf of the mentally ill. However, partly as a result of the redesignation, the advocacy broadened from its earlier base of mental health practitioners to include concerned citizens and the families of the mentally ill. This growing advocacy formed the membership of the Governor's Mental Health Advisory Council, the Alaska Mental Health Association, the Alaska Mental Health Program Director's Association, and the Alaska Alliance for the Mentally Ill. In November 1982, the Alaska Mental Health Association filed a class action lawsuit in Fairbanks Superior Court seeking to (1) void the 1978 redesignation as illegal, (2) establish a trust for the receipt of funds generated by trust lands, and (3) direct the state to administer the lands in accordance with trust principles.

On October 4, 1985, the Supreme Court concluded that the redesignation was invalid and ordered that the "trust must be reconstituted to match as nearly as possible the holdings which comprised the trust when the 1978 law became effective." The Supreme Court then remanded the case to the Superior Court with the following instructions to guide the reconstitution of the trust to its July 19, 1978 status:

> "Those general grant lands which were once mental health lands will return to their former trust status. In the event exchanges have been made, those properties which can be traced to an exchange involving mental health lands will also be included in the trust. To the extent that mental health lands have been sold since the date of the conveyance the trust must be reimbursed for the fair market value at the time of

sale. In calculating the total amount owed, the trial court should grant a set-off for mental health expenditures made by the state during the same period. In the event that expenditures exceeded the value of lands sold, the state need not furnish cash as part of the reconstitution. The goal is to restore the trust to its position just prior to the conveyance effected by the redesignation legislation.' (emphasis added)

One interpretation of these instructions is that the court intends that all former trust lands are automatically returned "to the their former trust status" except those lands exchanged or sold from the trust following the redesignation. In the case of exchanges, properties received for lands exchanged from the trust would be added to the trust. Assuming the exchanges were on an equal value acreage basis, the trust would have contained 948,856.91 acres, as of July 19, 1978--and as of today, according to Weiss. In the case of lands sold, as discussed in Chapter II, it appears that the amount expended upon mental health programs probably exceeds the fair market value of the 26,339.97 acres conveyed from state ownership after that date. If this assumption is correct, no further cash reimbursement is likely and an all-land reconstruction of the trust is required.

Although an all-land reconstruction might be possible, both the commission and the committee recognized the political realities arguing against it. Such a reconstitution would alienate the mental health community from the rest of the state and disrupt programs established in the name of the "highest and best use." For example, most of the municipalities involved have indicated, individually and/or through the Alaska Municipal League, their opposition. Miners and other lease and permit holders might oppose trust reconstitution. Return of mental health land presently incorporated in state parks, forests, and habitat areas would compromise those areas and also could arouse vigorous opposition.

Alternate Forms of Trust Reconstruction

In effect, the Weiss Opinion calls for a reconstitution of the trust which would be a combination of land and cash for lands which have been sold less expenditures for a mental health program. The court and all parties to the litigation probably would consider favorably other options which achieve the same results as the court approach if they would:

- create an identifiable, quantifiable, and equitable trust;
- benefit all Alaskans;
- and maintain legislative prerogatives.

Both the commission and the committee have explored alternative forms of reconstitution which probably would satisfy the court and be acceptable to all parties to the litigation. To guide the committee in its deliberations, the commission submitted a progress report on November 21, 1986, and a letter from the chairman on January 14, 1987, which included the general conditions necessary for a satisfactory negotiated settlement. The options considered include an all-land or all-cash trust, a combination land-and-cash trust, or a guaranteed revenue stream.

All Land Trust

Although occasionally subject to cataclysms, nothing is more permanent than land. Land values may diminish during economic declines, but they generally recover, and unlike cash, land assets rarely evaporate. A land corpus meets the identifiable and quantifiable criteria mentioned above, and good land--which is what the mental health trust selections mostly were--provides a long term revenue source. Two approaches may be feasible for reconstituting an all-land trust.

Million-Acre Trust

Means are available to fully reconstitute the trust to 1 million-acres (minus those lands which have been sold) with lands in addition to original trust acreage immediately recoverable. One potential source is the state's 219,198 acre entitlement on National Forest lands. These lands must be within 25 miles of existing or planned communities and must be appropriate for residential or recreational use. Because of their urban or suburban nature, they probably would satisfy the "equivalent value" requirement of trust reconstitution. These lands could increase the land trust to 724,749 acres.

Finding replacement acreage of equal value for the remaining land, however, could be difficult. The original trust selections were potentially high-value lands, and the available equivalent value acreage suitable for trust purpose and in state ownership is relatively small.

Managing land trusts can be an expensive proposition, especially when trust assets are distributed over such a large area. A study of the management of public land trusts in other states and the University of Alaska indicates that, under the best of circumstances, management is extremely labor intensive, consuming as much as a quarter of trust income. (Refer to Appendix D.)

Furthermore, Alaska's history reveals a citizenry with an unrelenting hunger for public land, and there is never enough