

ALASKA LEGISLATURE COMMITTEE FILES, 1989-1990 8672
6022 HOUSE RESOURCES

FLC

Page 3, lines 8-10:

penalty and interest, \$10,000,000 or more and relates to a calendar year that is five or more years before the current year, the commissioner shall, not later than 14 days after commencement of negotiations, advise the [COMMISSIONER OF REVENUE AND THE ATTORNEY GENERAL] governor at least once . . .

Page 3, line 17:

interest, \$10,000,000 or more[,] and relates to a calendar year that is five or more years before the current year, the commissioner may not enter into an . . .

Page 4, lines 19-21:

totals, with applicable penalty and interest, \$10,000,000 or more and relates to a tax year that is five or more years before the current year, the commissioner shall, not later than 14 days after commencement of negotiations, advise the [COMMISSIONER OF NATURAL RESOURCES AND THE ATTORNEY GENERAL] governor at least once . . .

Page 4, line 29:

and interest, \$10,000,000 or more[,] and relates to a tax year that is five or more years before the current year, the commissioner may not enter into . . .

Page 5, line 29 - Page 6, line 2:

or more and relates to a tax year that is five or more years before the current year, the commissioner shall, not later than 14 days after commencement of negotiations, advise the [COMMISSIONER OF NATURAL RESOURCES AND THE ATTORNEY GENERAL] governor at least once . . .

Page 6, line 8:

totals, with applicable penalty and interest, \$10,000,000 or more[,] and relates to a tax year that is five or more years before the current year, the . . .




Alaska State Legislature

HOUSE RESOURCES COMMITTEE

P.O. Box V
State Capitol
Juneau, Alaska 99811
(907) 465-3715

TO: House Resources Committee Members

FROM: Representative Cliff Davidson, Co-chair
Representative Curt Menard, Co-chair
House Resources Committee 

DATE: April 3, 1990

SUBJECT: Department of Revenue Amendments to HB 541

Attached are proposed amendments to HB 541 provided by the Department of Revenue but redrafted by the Legislative Legal Division. These amendments were suggested by Commissioner Malone in testimony before the Committee last week.

A M E N D M E N T

OFFERED IN THE HOUSE

BY THE RESOURCES COMMITTEE

TO: HB 541

Page 1, line 8, after "Revenue":

Insert "to legislative audit of the Department of Revenue and the release of a report of that audit, that may include or refer to confidential information, to the legislature and public, and to the interest rate on unpaid taxes and to overpaid taxes"

Page 1, following line 9:

Insert a new bill section to read:

"* Section 1. AS 24.20.271 is amended to read:

Sec. 24.20.271. POWERS AND DUTIES. The legislative audit division shall

(1) conduct a performance post-audit of boards and commissions designated in AS 44.66.010 and of those programs and activities of agencies subject to termination as determined in the manner set out in AS 44.66.020 and 44.66.030, and submit the audit, together with a written report, not later than the first day of the regular session of the legislature convening in each year set out with reference to boards, commissions, or agency programs whose activities are subject to termination as prescribed in AS 44.66;

(2) audit at least once every three years the books and accounts of all custodians of public funds and all disbursing officers

of the state;

(3) at the direction of the Legislative Budget and Audit Committee, conduct performance post-audits on any agency of state government;

(4) cooperate with state agencies by offering advice and assistance as requested in establishing or improving the accounting systems used by state agencies;

(5) require the assistance and cooperation of all state officials and other state employees in the inspection, examination, and audit of state agency books and accounts;

(6) have access at all times to the books, accounts, reports, or other records, whether confidential or not, of every state agency;

(7) ascertain, as necessary for audit verification, the amount of agency funds on deposit in any bank as shown on the books of the bank; a [NO] bank may not be held liable for making information required under this paragraph available to the legislative audit division;

(8) complete studies and prepare reports, memoranda, or other materials as directed by the Legislative Budget and Audit Committee;

(9) have direct access to any information related to the management of the University of Alaska and have the same right of access as exists with respect to every other state agency;

(10) annually

(A) conduct a performance audit of the tax functions

of the Department of Revenue, including the department's resolution of disputed taxes;

(B) prepare a report summarizing the results of the audit that may contain information made confidential by AS 43.-05.230 and a version of the report edited for the public; and

(C) submit the audit and the unedited report prepared under (B) of this paragraph to the legislature not later than the first day of the regular legislative session."

Page 1, line 10:

Delete "Section 1"

Insert "Sec. 2"

Renumber the following bill sections accordingly.

Page 2, following line 12:

Insert new subsections to read:

"(i) The commissioner may not enter into a settlement or compromise of a dispute between the department and a person as to a royalty or net profit payment if the settlement or compromise provides that information relevant to the settlement or compromise, or the terms of the settlement or compromise, are confidential beyond the confidentiality otherwise provided for by law.

(j) The commissioner shall maintain for review full documentation of a settlement or compromise of a dispute between the department and a person as to a royalty or net profit payment."

Page 3, following line 15:

Insert a new subsection to read:

"(d) In making an agreement under (a) of this section, neither the department nor the attorney general may agree that information relevant to the agreement, or the terms of the agreement, are confidential beyond the confidentiality otherwise provided for by law. The department must maintain for review full documentation of the agreement."

Page 4, following line 17:

Insert new bill material to read:

"(e) In compromising a tax or penalty under this section, neither the department nor the attorney general may agree that information relevant to the compromise, or the terms of the compromise, are confidential beyond the confidentiality otherwise provided for by law. The department must maintain for review full documentation of the compromise.

* Sec. 5. AS 43.05.225 is amended by adding a new subsection to read:

(b) If a tax imposed by AS 43.55, AS 43.56, AS 43.57, former AS 43.21, or former AS 43.58 is not paid on or before the date prescribed for payment, it bears interest at the rate of five percentage points above the annual rate charged member banks for advances by the 12th Federal Reserve District, as established on the first day of each calendar quarter, compounded quarterly."

Page 5, following line 12:

Insert a new bill section to read:

"* Sec. 7. AS 43.05.280(a) is amended to read:

(a) Interest shall be allowed and paid on any overpayment of a tax under this title at the rate prescribed in AS 43.05.225 less two percentage points."

FISCAL NOTE

REQUEST:

Revision Date: _____
Title: An Act Relating to certain
agreements & settlements by CNR & DOR
Sponsor: Cotten, Navarre
Requestor: _____

Agency Affected: _____
BRU: _____
Component: _____

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 91	FY 92	FY 93	FY 94	FY 95	FY 96
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING						
CAPITAL						
REVENUE	See analysis.					

FUNDING: (Thousands of Dollars)

GENERAL FUND					
FEDERAL FUNDS					
OTHER					
TOTAL					

POSITIONS:

FULL-TIME					
PART-TIME					
TEMPORARY					

ANALYSIS : (Attach a separate page if necessary)

See attached.

Prepared by: Charles J. Loosdon
Division: Oil and Gas Audit

Phone: 277-5627
Date: March 22, 1990

Approved by Commissioner: [Signature]
Agency: _____

Date: 3/26/90

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

Fiscal Note
HB 541
March 22, 199

Analysis

This bill would establish a review and or a 14 day cooling off period for agreements and settlements of tax and royalty disputes in excess of \$10 million entered into by the Department of Revenue or the Department of Resources.

The aim of this bill is to provide additional assurance that the State receives the maximum expected value from oil and gas tax and royalty revenue.

FISCAL NOTE

REQUEST:

Revision Date: _____
Title: "An Act relating to... agreements, compromises... Natural Resources and Revenue."
Sponsor: Repr. Cotten
Requestor: House Resources

Agency Affected: Department of Law
BRU: Oil and Gas Special Projects
Components: Operations

EXPENDITURES/REVENUES: (Thousands of Dollars)

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

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

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

FUNDING: (Thousands of Dollars)

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

POSITIONS:

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

ANALYSIS : (Attach a separate page if necessary)

Please see the attached analysis.

Prepared by: Richard I. Pegues, Director Phone: 465-3672
Division: Administrative Services Date: March 21, 1990
Approved by Commissioner: Richard I. Pegues / FOR / Date: March 21, 1990
Agency: Douglas B. Baily, Attorney General
Department of Law

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

CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. HB 541

This bill amends AS 38.05.035 to require that if the commissioner of natural resources enters into negotiations to compromise or settle a dispute between the department and a person as to a royalty or net profit payment involving a claim that totals, with applicable penalty and interest, \$10,000,000 or more, the commissioner shall advise the commissioner of revenue and the attorney general that negotiations have commenced, not later than 14 days after the commencement of negotiations.

This bill also amends AS 43.05.070 to require that if the Department of Revenue enters into negotiations to compromise or settle a tax dispute between the department and a taxpayer involving a claim that totals, with applicable penalty and interest, \$10,000,000 or more, the commissioner of revenue shall advise the commissioner of natural resources and the attorney general that negotiations have commenced, not later than 14 days after the negotiations commenced.

In effect, the bill institutionalizes the notification process to be followed whenever the Departments of Natural Resources or Revenue seek to settle major royalty or tax claims. Inasmuch as notification is a normal part of business, there should not be a fiscal impact for the Department of Law.

FISCAL NOTE

REQUEST:

Revision Date: 3/27/90
Title: Revenue and DNR Agreements and Settlements
Sponsor: Rep. Cotten, Rep. Navarre
Requestor: House Resources

Agency Affected: Natural Resources
BRU: Petroleum Management

Components: _____

EXPENDITURES/REVENUES: (Thousands of Dollars)

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

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS : (Attach a separate page if necessary)

* If the independent appraisal of a proposed settlement, as required by this bill, is completed by an employee of the Department of Natural Resources there would likely be no additional cost. If the appraisal is completed by a consultant, there would be additional costs. Costs for consulting services would depend on the topic of the settlement and the degree of technical expertise required for review.

Prepared by: Carol Wilson Phone: 465-2400

Division: Commissioner's Office Date: 3/27/90

Approved by Commissioner: [Signature] Date: 3/27/90

Agency: Department of Natural Resources

Distribution (by preparer):

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

STATE OF ALASKA
THE LEGISLATURE

POUCH V STATE CAPITOL
JUNEAU ALASKA 99811
907 465 3800


LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

March 9, 1990

SUBJECT: House Bill 541 -- Sectional analysis

TO: Representative Cliff Davidson, Co-Chair
House Resources Committee

FROM: Jack Chenoweth
Legislative Counsel 

The measure sets out statutory guidelines applicable to the handling and disposition of agreements, compromises, and settlements relating to certain royalty and net profit payments payable under AS 38.05 and to certain tax disputes arising under AS 43.

The handling of royalty and net profit payments involving claims totalling, with applicable penalty and interest, \$10,000,000 or more, is addressed by the new subsection added to AS 38.05.035 by bill section 1. In that change:

- at the time the Department of Natural Resources commenced negotiations with an eye toward compromise or settlement, the department would be required, within 14 days, to advise the commissioner of revenue and the attorney general;
- while negotiations were in progress, the commissioner of natural resources would be required to give notice to the other two state officers at least every 30 days;
- the commissioner of natural resources would not be permitted to enter into a compromise or settlement agreement unless (1) the commissioner first obtained and reviewed an independent appraisal of the effects of the proposed compromise or settlement, and (2) unless 14 days passed between the commissioner's receipt of the proposed compromise or settlement agreement and the date of the commissioner's execution of the proposed agreement.

Representative Cliff Davidson
Page 2
March 9, 1990

The bill also contains [page 1, line 27 - page 2, line 9] provisions indicating who may prepare the required independent appraisal of the proposed compromise or settlement and what that appraisal must contain.

*

Substantially similar procedures, time limitations, and guidelines would apply to tax settlements under the additions made by bill sections 2 - 4. In those instances, negotiations would be undertaken by the commissioner of revenue, who must regularly advise the commissioner of natural resources and the attorney general. Otherwise, the same general parameters and limitations attach to tax disputes as are described above for resolutions involving royalties and net profit payments.

In these sections,

-- the additional materials added by bill section 2 address negotiations to resolve a tax dispute by means of agreements respecting the taxpayer's tax liability;

-- the additional materials added by bill section 3 involve the authority of the Department of Revenue to compromise a tax or penalty in the event of doubt as to the taxpayer's tax liability; and

-- the additional materials added by bill section 4 are incorporated to govern redeterminations or revisions of tax liability (i.e. redetermination of tax liability through department-initiated tax assessments).

JBC:lmb
L10/006

Internal Independent Settlement Review Procedures for Royalty Settlements (Section 1)

To ensure that any major settlement of the State's royalty litigation is in the public interest -- and to assure the public that this is the case -- this measure requires the Commissioner of Natural Resources, before settling any dispute involving amounts greater than \$10 million in a tax year five years or more prior to the current year, to conduct an independent review of the proposed settlement.

The review will specify objectives, indicate how these objectives are met and evaluate how the settlement affects other outstanding disputes. Additionally, there shall be a minimum of 14 days between the time the Commissioner receives a final settlement offer and the date s/he approves the settlement.

With settlement offers increasingly likely as trial date approaches, there are no procedures in place to ensure that settlement review will be thorough and deliberate.

— [Statute Reference: AS 38.05.035]

— [See Fineberg Report: Recommendation #8, pp. 23-24]

Tax Settlement Internal Independent Review Procedures (Sections 2-4)

The remaining three sections of HB 541 contain language similar to Section 1 for insertion at three places in the tax statutes:

Sec. 2: Adds new subsections to AS 43.05.060 (on closing agreements) requiring settlement review for settlements over \$10,000,000.

Sec. 3: Adds new subsections to AS 43.05.070 (on compromises) requiring settlement review for settlements over \$10,000,000.

Sec. 4: Adds new subsections to AS 43.05.260 (on assessment revisions) requiring settlement review in settlements over \$10,000,000.

— [Statute Reference: AS 43.05.060, .070, .260]

— [See Fineberg Report: Recommendation #15 (pp. 30-31)]




Alaska State Legislature

Official Business

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

TO: House Resource Committee members

FROM: Representative Curt Menard 

DATE: April 3, 1990

SUBJECT: Amendments to HB 541

Attached are two amendments to HB 541 that I would like to see incorporated into a Committee Substitute prior to passing the bill from Committee. Although these amendments look somewhat technical in nature, they accomplish a simple purpose, better public accountability for oil and gas, tax and royalty settlements.

Amendment #1 embodies one of the recommendations made by Commissioner Malone in his presentation to the Committee last week. It provides that no oil and gas settlement agreement shall provide for greater confidentiality than provided for under state law.

Amendment #2 expands the sunshine provisions of HB 541 by providing for public disclosure of any oil and gas settlement involving amounts greater than \$10 million or for a tax year more than five years old.

I will be happy to talk to Committee members about either of these amendments.

HIB 541 Amendment # 1

Settlements Shall Not Extend Royalty or Taxpayer Confidentiality

Bars any settlement agreement from further restricting the taxpayer confidentiality under AS 09.25.100 or royalty confidentiality under AS 38.05.035 .

The Department of Revenue agreed in the 1988 ARCO income tax settlement to a provision that seeks to prevent the department from responding to legislative inquiries unless the taxpayer is present. (The specific mechanism is that the Department of Revenue promised in the closing agreement to advise the Legislature of this agreement with the taxpayer, and to ask the Legislature to honor it.)

This agreement restricts communication with the Legislature in two ways: (1) With the taxpayer present, there are liable to be some matters of strategy (as well as implications for other cases) that the Department is reluctant to discuss. Thus the Legislature may not get the whole picture. (2) Because there has been only one major settlement under this Administration, information is liable to be restricted because the Department of Revenue may find it difficult to discuss settlements in any specific way in the absence of the taxpayer.

By extending taxpayer confidentiality, this agreement runs directly counter to the spirit of the Alaska Supreme Court's recent decision barring public entities from entering into confidential settlements. However, that decision apparently does not apply to tax cases because tax information is exempt from public disclosure laws (AS 09.25.100).

- [Statute Reference: AS 43.05.060, .070, .260; AS 09.25.100; AS 38.05.035]
- [Fineberg report recommendation #18 (Chapter V, pp. 33)]

A M E N D M E N T # 1

OFFERED IN THE HOUSE

BY THE RESOURCES COMMITTEE

TO: HB 541

Page 1, line 8, after "Revenue":

Insert ", and to the release of tax information by the Department of Revenue and of information relating to royalty and net profit payment claims by the Department of Natural Resources"

Page 2, line 12, after "agreement.":

Insert a new subsection to read:

"(i) An agreement or compromise concerning a royalty or net profit payment entered into between the department and a person may not extend the confidentiality provisions of (a)(9) of this section."

Page 3, line 15, after "agreement.":

Insert a new subsection to read:

"(d) An agreement under this section may not extend the confidentiality provisions of AS 09.25.100."

Page 4, line 17, after "agreement.":

Insert a new subsection to read:

"(e) A compromise under this section may not extend the confidentiality provisions of AS 09.25.100."

Page 4, line 18:

Delete "a new subsection"

Insert "new subsections"

Page 5, line 12, after "revision.":

Insert a new subsection to read:

"(e) A written consent or agreement relating to a tax assessment may not extend the confidentiality provisions of AS 09.25.100."

HB 541 Amendment #2

Public Disclosure of Settlements Covered by Internal Independent Review Provisions

This amendment would require public disclosure of the essential facts about any oil and gas revenue settlement involving amounts greater than \$10 million for a royalty production or tax year five or more years prior to the current year.

— [Statute Reference: AS 09.25.100; AS 43.05.230]

A M E N D M E N T #2

OFFERED IN THE HOUSE

Y REP. MENARD

TO: HB 541

Page 1, line 8, after "Revenue":

Insert ", and to the release of tax information by the Department of Revenue and of information relating to royalty and net profit payment claims by the Department of Natural Resources."

Page 1, following line 9:

Insert a new bill section to read:

"* Section 1. AS 09.25.100 is amended by adding a new subsection to read:

(b) Notwithstanding (a) of this section, if, having once assessed a tax, penalty, or interest due the state, the Department of Revenue enters into an agreement or compromise involving a taxpayer's tax liability under AS 43.05.060 or 43.05.070, the department

(1) shall prepare and disclose a summary of the essential facts about the tax dispute or the terms and amounts of the agreement or compromise entered into between the department and the taxpayer

(A) if the tax liability disclosed is for a period ending not less than five years before the tax year in which the disclosure is made; and

(B) if, as a result of the agreement or compromise,

the taxpayer's tax liability involves an overpayment or underpayment that totals, with applicable penalty and interest, \$10,000,000 or more;

(2) may not make a disclosure under (1) of this subsection to the extent that the commissioner of revenue determines that disclosure would involve public~~ation~~ ion of a trade secret of the taxpayer; in this paragraph, "trade secret" has the meaning given in AS 45.50.940."

Page 1, line 10:

Delete "Section 1."

Insert "Sec. 2."

Renumber the following bill sections accordingly.

Page 2, following line 12:

Insert a new subsection to read:

"(i) Notwithstanding (a)(9) of this section, in a dispute between the department and a person as to a royalty or net profit payment, if, having made a determination applicable to allocation of costs and production or to any other factor bearing upon determination of the royalty or net profit share and assessed the payment, penalties, and interest due, or if the department enters into an agreement or compromise relating to the payment due, the commissioner

(1) shall prepare and disclose a summary of the essential facts about the dispute or the terms and amounts of the agreement or compromise entered into between the department and the person

(A) if the agreement or compromise involves a royalty or net profit payment that is at least five years old; and

(B) if, as a result of the agreement or compromise, the claim of the person involves an overpayment or underpayment of a royalty or net profit claim that totals, with applicable penalty and interest, \$10,000,000 or more;

(2) may not make a disclosure under this subsection to the extent the commissioner determines that disclosure would involve publication of a trade secret of the person; in this paragraph, "trade secret" has the meaning given in AS 45.50.940."

HB

548



**ALASKA'S
MENTAL HEALTH TRUST
LANDS**

**A Summary of
*Procedures For Determining the Fair
Market Value of Alaska's Mental
Health Trust Lands***

March, 1990

OVERVIEW

The Interim Mental Health Trust Commission approved its *Procedures for Determining the Fair Market Value of Alaska's Mental Health Trust Lands* on Dec. 20, 1989. The Department of Natural Resources (DNR), in a dissenting report released Feb. 1, 1990, disputed the Commission's findings.

The Commission, DNR, and the Plaintiffs in the Mental Health Trust Lands lawsuit have now reached a standstill. At stake are services for developmentally disabled and seriously mentally ill individuals, including senior citizens with Alzheimer's and dementia and alcoholics with psychoses, as determined by Judge Greene in the 1988 *Weiss v. State* decision. These persons are the beneficiaries of the trust.

Using valuation procedures adopted by the Commission, the total value of the original one million acre trust is \$2.2 billion. Under DNR's valuation procedures, this figure approximates only \$564 million. This difference amounts to over \$1.6 billion.

The Legislature must now reaffirm the process it established in 1986, when it created the Commission and in 1987, when it passed Chapter 48, SLA 1987, of effecting a resolution of the litigation. It must either confirm the work adopted by its mandated Commission or provide sufficient funds to allow for complete valuation.

Without legislative action, Plaintiffs to the lawsuit may be forced to challenge title to approximately 750,000 acres of Mental Health Trust lands and take other actions, as necessary steps to protect their rights against the continuing breach of the trust by the State of Alaska in properly discharging its fiduciary responsibilities in managing the trust.

RECOMMENDATIONS

Beneficiaries of the Mental Health Trust, through the Mental Health Trust Coalition, recommend that the Legislature:

1. recognize the dilemma over valuation procedures; and
2. intervene on behalf of disabled people to confirm the Commission's adopted valuation procedures; and
3. pass legislation that acknowledges the Commission's work under Chapter 48 and adopt its conclusions in the Final Report.

BACKGROUND

This brochure is based on the results of the Mental Health Trust Commission's report of Dec. 1989 and borrows heavily from other documents used to develop the procedures. It identifies the valuation procedures approved by the Commission, indicates points of agreement and disagreement, and recommends action to resolve the issue.

The Mental Health Trust Coalition, formed in Fall, 1989, represents the beneficiaries. Its express purpose is to be an active voice in administrative, legislative, judicial and other matters which may affect the provision of services for these disabled individuals.

The Coalition endorses the Commission's Final Report, *Approved Procedures for Determining the Fair Market Value of Alaska's Mental Health Trust Lands*. Its conclusions were the result of several years of intensive research, analysis, negotiation, scrutiny, and public review, which have combined to create procedures widely accepted as industry standard, within the necessary constraints of time and money.

The task given to the Commission was an exceedingly difficult one, one which was made even more difficult by the discord among the members over which procedures were acceptable to consider and the exact application of the term *fair market value* in consideration of those procedures. Of concern to observers of the process was the apparent lack of good faith and unwillingness of DNR to reach a compromise.

As the Commission noted in its report, "the actual task of arriving at satisfactory valuation procedures was much bigger, complicated and controversial than anyone initially envisioned. Indeed, for a brief period between April and July, 1989, the Commission considered publicly stating that "continued work on valuation procedures no longer appeared possible."

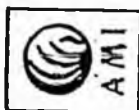
Part of the problem may lie in the composition of the Commission itself. During the entire process, the State of Alaska has had a built-in conflict of interest. Not only does the Commissioner of Natural Resources sit on the Commission, but the Commission must submit its report to the Commissioner, who then decides whether or not to agree with the Commission's majority viewpoint.

The second conflict of interest lies in the assignment of a single Attorney General (AG) to act as counsel both to DNR and to the Commission. Again, if all three Commissioners were in agreement, any conflict of interest would be suppressed or minimized by agreement. However, as long as DNR is in the minority, the AG must answer to two masters. Throughout the entire process, it became clear that the AG has consistently taken the side of the State.

Between June 9, 1986 and November, 1989 the Commission held over 30 meetings, all open to the public, for discussion of the valuation procedures. Because the Coalition has a vested interest in the Commission's proceedings, representatives have attended almost every meeting. On our own initiative, we have independently hired consultants to review industry-accepted standard valuation procedures of the various categorical lands and requested the right to present their findings to the Commission. Due to the open nature of the meetings, the Commission granted this right.

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VALUATION PROCEDURES

Valuation Procedures were obtained through extensive review of all methods of land valuation used by real estate and natural resources assessors. They were determined after adoption of standard and specific industry methodologies, modified for use within the severe constraints of available time and money. Above all, Commission actions reflected the necessity for deriving fair market value — instead, for example, of obtaining an inflated value — from the procedures in order to assure fairness to all residents of Alaska.

1. Surface Estate

Procedures: The difference between the results of the State appraisal and that of the Plaintiffs, split equally between the two values, was approved.

Methods Explored: The original procedure provided for an *opinion of value* process by three geo-panels of appraisers, an opportunity for review and questioning by interested parties, referral back to the panels for re-evaluation of their original values when necessary, and mediation, including the possibility of site visits.

However, due to the large number of questioned values and the limited funds available, the Commission agreed to use a *sampling strategy* for the review. Results varied widely. The State assigned a value of \$499.8 million. The Plaintiff's appraisers assigned a value of \$833,280,096.

Decision of Commission: The Commission recognized that such differences are usually resolved through mediation. However, mediation was not an option due to limited funds. The Commission determined that the only reasonable procedure it could approve was to split the difference between the two figures.

2. Timber

Procedure: The methodology, data, assumptions and judgments utilized in *An Economic Evaluation of Timber Potential on Mental Health Grant Lands and Legislatively Designated Replacement Lands - Final Report* by McMahon, Wallingford, and Wehrman, August, 1988 was approved.

Opinion of the Plaintiff: The Plaintiffs disputed the appropriateness of deducting the approximately \$31 million in reforestation costs, because the timber should be valued as if "sold" to the State as "standing timber."

Decision of Commission: The Commission regarded these costs as essential to sustained yield forest management and because the original selections were made with the intention that they would become the core of a State forest system.

3. Oil and Gas

Procedure: The methodology, data, assumptions and judgments utilized in the *Hydrocarbon Potential of Mental Health Grant (Trust) Lands and Legislatively Designated Replacement Pool Lands in Alaska* by Arey, Hansen, Kornbrath, Philips, Ryherd and Smith, July, 1988, with the fair market value being the midpoint between the low to the high range, was approved.

Opinion of the Plaintiff: The Plaintiffs assert the State's analysis did not follow the procedures approved by the Commission and that the value range appears grossly low, although no separate valuation was submitted to support this assertion.

Decision of Commission: The Commission rejected the assertion, in light of the lack of any specific valuation from the Plaintiffs.

4. Minerals, Coal and Aggregate

Procedure: The methodology, data assumptions and judgments utilized in *Mineral, Coal and Aggregate Resource Appraisal of Alaska Mental Health Trust Lands* by Paul Metz and Colin Dixon, dated December 31, 1988 was approved.

Methods Discussed: The industry standard for valuation of minerals, coal and aggregate is the *income or discounted cash flow approach*. This approach, adopted by the Commission, resulted in an estimated \$1.5 billion value. DNR used the *comparable sales approach*, which produced an initial value of zero and later, after revision, a value of approximately \$16 million.

Decision of Commission: The Commission rejected the use of the comparable sales approach because it was 1) not in accordance with accepted industry valuation practices, 2) considered unrealistic and unreasonable in light of the fact that these lands were all within the three major active mining districts of Alaska and had been selected by a team of experts as representing the most promising lands in these areas, 3) not pursued with any sort of rigor by the State, and 4) not supported by its own independent study.

HOUSE COMMITTEE REPORT

(9)

Date Referred: April 11, 1990

FURTHER REFERRALS:

FINANCE

Date of Committee Action: 4/24/90

The RESOURCES Committee considered:

HB 548

HOUSE BILL NO. 548

MENTAL HEALTH TRUST

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

RECOMMENDATIONS:

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

ADOPTS: _____ letter of intent

ATTACHES NEW FISCAL NOTE(s): _____ APPROVES PREVIOUS: _____ (Date/Dept)
(Dept)

- fiscal impact _____ fiscal note(s) _____
- zero fiscal note Health + Soc. Svcs. zero fiscal note(s) _____
- zero with analysis _____ zero fn/analysis _____

SIGNING DO PASS:

SIGNING:
(Check approp. column)

		Do Not Pass	No Rec	Amend
<u>[Signature]</u> MENARD	<u>[Signature]</u> NAVARRE		X	
<u>[Signature]</u> DAVIDSON	<u>[Signature]</u> SHARP		←	
	<u>[Signature]</u> HUDSON		✓	

[Signature]
Chairman's Signature

TELECOPY COVER SHEET

Fairbanks Legislative Information Office

Office - (907) 452-4448

Fax - (907) 456-3346

TO: Ann Lio FAX: — PHONE: —

FROM: Ann Lio PHONE: 452-4448

INSTRUCTIONS: Written Testimony for House

Resource Teleconference 90-04-085 4-24-90

(I don't know if the Resource rule still needs this they passed

RECEIVED: Date 4-24-90 Time 3:15pm

HB 548 to
Finance
cmte

SENT: Date 4-24-90 Time 4:22

DISPOSAL OF ORIGINAL: Discard — Hold for Pickup P

NUMBER OF PAGES: 1 (Not counting cover sheet)

SENT BY: Christ



Alaska State Legislature

Please enter into the record my testimony to the Hess Committee
committee name

committee on HB 5456, dated 4-24-90
bill/subject

I am the parent of a special needs child who will never be able to be the sole provider for his needs. I request that you support this bill to ensure we have a future for this special population in our state.

Thank you.
Sincerely,

Jessie Yamamoto

Signed: Jessie Yamamoto
Testifier

Representing (Optional)

PO BOX 83496, FBKS AK 99508

Address

479-0185

Phone No.



Alaska State Legislature

Please enter into the record my testimony to the House Resource
 committee name
 committee on HB 548, dated 4-24-90
 bill/subject

I would encourage legislators settle quickly on the value of the mental health trust, for the senior population in Kodiak will be affected by this decision.

(500+)

The older Alaskan Commission is matching funds received from the mental health trust so that adult day care centers can be maintained and new ones opened in communities where they are needed. One such community is Kodiak.

~~Senior Citizens~~ ~~Kodiak~~ have a desperate need to fill the gap between seniors who can live independently and those who are in the hospital nursing home. An adult day care facility is being planned to fill that dangerous gap. The Senior Citizens of Kodiak urge you legislator to act on the mental health trust in a fair

Signed: Pat Braum Testifier and immediate manner.
 Representing (Optional) Senior Citizens of Kodiak, The
302 E. Skene
 Address
480-6181
 Phone No.



Alaska State Legislature

Please enter into the record my testimony to the House Resources Committee
committee name
committee on HB 548, dated April 24, 1990
bill/subject

Kodiak Island Mental Health Center

Pamela J. Delys-Baglien, Ph.D, Director



316 Mission Road • Suite 119 • Kodiak, Alaska 99615 • Telephone (907) 486-5742

April 23, 1990

Dear Committee Members:

Thank you for this opportunity to submit testimony in support of House Bill 548.

My name is Dr. Pamela Baglien and I have worked in the community mental health system in Alaska for nearly fifteen years.

The state mental health system has grown throughout those years, but continues to fall far short of meeting the mental health needs for our communities. The State Mental Health Board and the Interim Commission have worked diligently for several years to document the actual mental health need and to arrive at a fair value on the Mental Health Land Trust. House Bill 548 recognizes a responsible value on the trust and will enhance adequate development of the mental health system in a planned and cohesive manner. I strongly urge your support of House Bill 548.

Sincerely,

Pamela Baglien, Ph.D.
Director



Alaska State Legislature

House Education & Social Services

Please enter into the record my testimony to the _____

committee name

committee on HB 548, dated April 5, 1990

bill/subject

Please pass HB 548. It is so important to put the land issue behind us. Those who have been working for years to resolve these issues and those of us who have been waiting for needed services for our loved ones are very discouraged at what appears to be the state's lack of good faith in arriving at a negotiated settlement.

This bill represents a last hope for a fair and equitable reconstitution and administration of the mental health trust.

Thank you for your careful consideration of this bill.

Signed: Frances R. Cater Frances R. Cater

Testifier

Kodiak Island Mental Health Advisory Board; Kodiak Alliance for the Mentally Ill

Representing (Optional)

Alaska Alliance for the Mentally Ill

Mailing address: P.O. Box 1472 (st. address: 4254 Cliffside Rd.)

Address

Kodiak, Alaska 99615-1472

(907) 486-5604

Phone No.

Older Alaskans Commission

Box C
Juneau, Alaska 99811-0209
907/465-3250

POSITION PAPER ON HOUSE BILL 548

The Older Alaskans Commission supports House Bill 548, which would finish the process started in 1987, of reconstituting the mental health lands trust.

The OAC was appointed by Governor Cowper to represent the interests of one of the mental health "beneficiary" groups as declared by Judge Greene's April 1988 decision in the second part of the Weiss v. State lawsuit, namely "senile seriously mentally ill" persons (known today as Alzheimers and related disorders).

Since mid-1988, the OAC has worked extensively with the Alaska Mental Health Board on issues related to the mental health trust. We have become acutely aware of the need to get the lands trust reconstituted and the valuation of the lands settled, so that the present "interim settlement" of the Weiss litigation can come to final resolution--and remove the overshadowing threat of more court battles.

The OAC would also urge legislators to remember that the 8% fair "rental value" which the State would pay each year into the Mental Health Trust Income Account is a compromise figure already adopted in Chapter 48 of the 1987 Session Laws. As we understand the situation, the 1987 Legislature wrote Chapter 48 to avoid continued litigation over all the various trust lands which had been disposed of by the state for less than full market value, or otherwise in contradiction of the state's trust duties.

The Older Alaskans Commission does not have expertise on these land valuation matters. However, the OAC feels that the 1987 Legislature set up the Interim Mental Health Lands Commission, in Chapter 48, and that the current Legislature should give great weight and deference to the majority report of that Commission, a report which would support the system and valuation contained in HB 548.

The Older Alaskans Commission urges your early and favorable action on this bill.

APPROVED:

Peggy A. Burgin
Peggy A. Burgin, Chair
Older Alaskans Commission

DATED: March 27, 1990

REVIEWED AND no comment:

Frank S. Baxter
Frank S. Baxter, Commissioner
Department of Administration

DATED: 3/27/90

USIBELLI COAL MINE, INC.

122 First Avenue - Suite 302
Fairbanks, Alaska 99701

Telephone (907) 452-2625
Facsimile (907) 451-6543

April 11, 1990

RECEIVED APR 18 1990

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

Dear Representative Miller:

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

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

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

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

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

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

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



Charles P. Boddy
Regulatory Compliance Manager

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

me/CPB

al041190

STATE OF ALASKA

STEVE COWPER, GOVERNOR

DEPARTMENT OF NATURAL RESOURCES

DIVISION OF LAND AND WATER MANAGEMENT

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

February 2, 1990

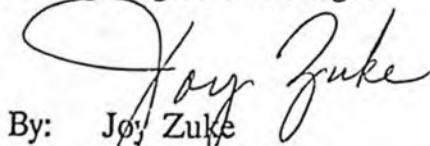
Usibelli Coal Mines, Inc.
Attn: Charles P. Boddy
P.O. Box 1000
Healy, Alaska 99743

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

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

Sincerely,

FREDERICK L. SMITH
Acting Regional Manager



By: Joy Zuke
Natural Resource Officer

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

JZ/kz

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

SS# _____

\$50.00 Filing Fee

MATERIAL APPLICATION

ADL# 414143

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

USIBELLI COAL MINE, INC.

P.O. Box 100J
Healy, Alaska 99743
(907) 683-2226
Telecopier (907) 683-2253

July 26, 1989

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

Dear Mr. Newman:

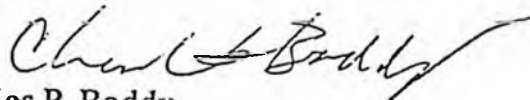
Please find attached the completed material application for an additional 50,000 cubic yards of gravel from the site near the Gold Run Pass mine area.

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

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

With best regards, I remain,

Sincerely,



Charles P. Boddy
Regulatory Compliance Manager

CC: JEUj, W.A.M, MDU, LPJ
mw: dl072689

STATE OF ALASKA

STEVE COWPER, GOVERNOR

DEPARTMENT OF NATURAL RESOURCES

DIVISION OF LAND AND WATER MANAGEMENT

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

December 19, 1989

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

Re: Material Contract, ADL No. 414143

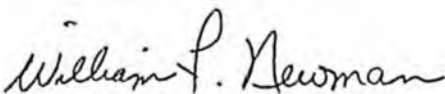
Dear Mr. Boddy,

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

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

Sincerely,

FREDERICK L. SMITH
Acting Regional Manager



By: William F. Newman
Natural Resource Officer

WFN/kz

What does HB548 do?

Sections 3 & 4 of the bill in effect replace parts of Chapter 48, SLA, 1987 and accomplish two things

First, on page 2, lines 14 through 17 the Legislature certifies the Trust value of \$2,243,000,000 established under procedures approved by the IMHTC. This was item (1) in the Board's recommendations.

Second, page 2, lines 18 through 20, establishes a new Trust corpus from all land presently or in the future included within legislatively designated lands. This is one way to accomplish item (2) of the Board's recommendations.

The balance of section three of the bill makes no changes to the Chapter 48 SLA, 1987 settlement. Sub-section (c) releases the cloud over the title of original trust lands. Sub-section (d) is part of the mechanism making the new trust corpus productive through a contract rent of the corpus by the state.

Sub-section (e) permits removal of land provided equal value replacement land is offered by DNR and approved by the AMHB.

Sections 1 and 2 provide, in a formula, one method for accomplishing the third (3) recommendation of the Board.

11 AAC 58.910

(11) "fair market value" means the highest price, estimated in terms of money, which the property would bring if exposed for sale for a reasonable time in the open market, with a seller, willing but not forced to sell, and a buyer, willing but not forced to buy, both being fully informed of all the purposes for which the property is being adapted or could be used;

Table 1
 Mental Health Land Selections
 by
 Location and Anticipated Type of Income Generation

<u>Area</u>	<u>Projected Source of Income</u>
Anchorage Area (Proper)	Settlement*, commercial
Beluga River	Oil, gas, coal, and timber
Fairbanks	Settlement, timber
Haines	Timber, recreation**, minerals
Healy	Coal
Juneau	Settlement, recreation
Kenai Peninsula	Oil, gas, settlement, agriculture timber
Susitna Valley	Timber, agriculture, settlement, recreation
Yakutat-Icy Straits	Oil, gas, timber, recreation

* settlement probably means residential development

** recreation probably means commercial recreation development

Source: DNR records

TRUST LANDS: MENTAL HEALTH GRANT (1956)



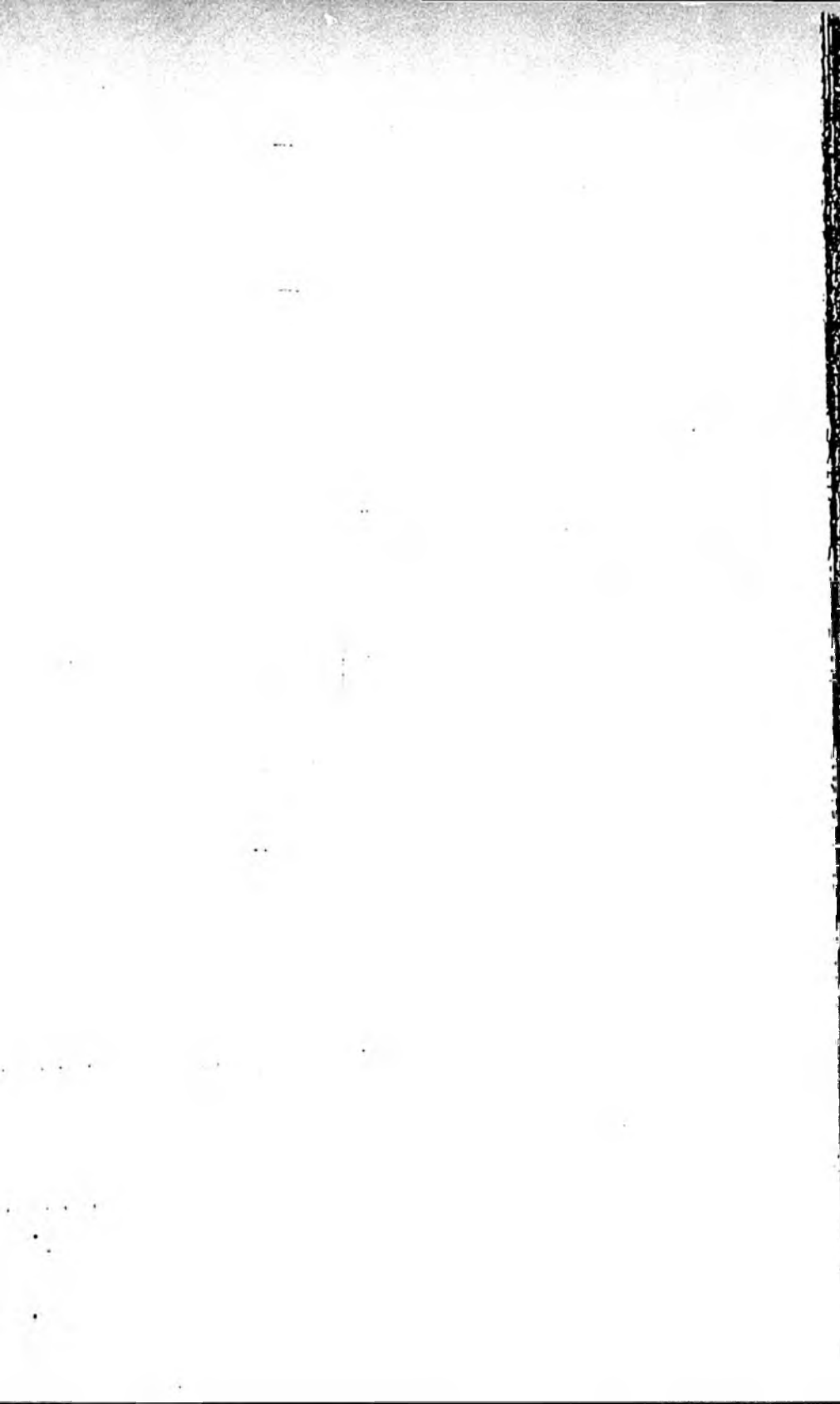
**PREPARED BY RESOURCE ANALYSIS SECTION
DIVISION OF MINING AND GEOLOGICAL AND GEOPHYSICAL SURVEYS**

Furthermore, the IMHTC in its majority report adopted not only procedures, but also an actual set of resultant values. As mentioned above, only the Commissioner has the authority and responsibility to determine the fair market value of the land. Therefore, the IMHTC again clearly exceeded its statutory authority.

2. The procedures proposed and adopted by the IMHTC in the majority report do not result in fair market value, as required by Chapter 48; initially they produce a value substantially greater than fair market value.

AS 38.05.800(a) requires the Commissioner to "determine the fair market value, as of September 6, 1987 of all land selected by and patented to the state under the Alaska Mental Health Enabling Act." At its September 21-22, 1987 meeting, the IMHTC initiated the valuation process by adopting, as proposed by the department, the definition of fair market value found in American Institute of Real Estate Appraisers/Society of Real Estate Appraisers, Real Estate Appraisal Terminology (rev. ed. 1981). This definition specifies "The most probable price in terms of money which a property should bring in a competitive and open market under all conditions requisite to a fair sale." Employing that definition and procedures, the department determined the fair market values for the surface estate and resources associated with the mental health and replacement lands (timber, oil and gas, coal, material sources, and hard rock minerals). Those procedures and values are outlined in this section. *

The surface estate of all mental health trust and replacement land was valued by the department using the opinion of value approach. This approach, as amended by the IMHTC to make adjustments for certain disputed values submitted by the lawyers for the plaintiffs and intervenors, was approved by the Commissioner and became the accepted procedure for valuing the surface estate. However, the IMHTC majority report reflects a surface estate valuation procedure and value different from that developed by the IMHTC, approved by the Commissioner, and employed by the department. As a result of this significant departure from accepted and approved procedures, the resulting value does not reflect fair market value and is inconsistent with the fair market value requirement. Once the opinion of value panels completed their work, the plaintiffs and intervenors hired their own appraisal consultants to examine the results. The review appraisers, however, did not employ the same valuation approach used by the department. Instead, the plaintiffs' and intervenors' appraisal consultants were given the following



Selling Your House Without a Broker

The Complete Guide to
Saving Thousands of Dollars
in Commissions
by Selling Your Own Home

- ▣ Preparing and pricing your house
- ▣ Marketing and advertising
- ▣ Qualifying prospective buyers
- ▣ Closing the deal

Dale Chaney and Mary Beth Libbey

11 The Appraisal

While some sellers may opt for hiring an appraiser before they set their asking price, most sellers will meet their first appraiser when their buyer's mortgage lender orders an appraisal.

The purpose of the appraisal is to get an expert opinion of your property's value. It assures the mortgage lender that in the rare event of a default, it would be able to get most if not all of its money back by selling the property.

As a seller, you may be a bit anxious at the prospect of an appraisal. What if the appraiser comes in with a price far below the price you've agreed to with your buyer? Even more dreadful, what if the appraiser comes in with a much higher value than the one on the sales contract? Will you find out you're giving your property away?

As interest rates fluctuate more dramatically than ever before, and as rehabilitation of many city neighborhoods changes the value of property (almost overnight in some cases), appraisals have become less predictable and appraisers have come under fire for not doing a thorough job of analyzing a property. As mentioned earlier, you will

probably have no say in who will perform the appraisal. In nearly all real estate transactions, the appraiser will be selected by the mortgage lender.

FINDING AN APPRAISER

In seller-financed deals, you and your lawyer will be responsible for finding an appraiser. If you are, look for members of the American Institute of Real Estate Appraisers. They are listed in a directory published by the American Institute of Real Estate Appraisers every January. The institute's directory is available by writing to:

American Institute of Real Estate Appraisers
430 N. Michigan Avenue
Chicago, Ill. 60611-4088
(312) 329-8559

Locally, ~~institute members~~ will publish MAI (Member, Appraisal Institute) or RM (Residential Member) after their names in the telephone directory. If you are financing the sale and are responsible for finding an appraiser, your lawyer may be the best source for referral, particularly if the lawyer does a great deal of real estate work.

In any event, a member of the appraisal institute is worth finding. Though membership is no guarantee, at least you know your appraiser has had specialized training in appraisal work, is aware of industry-enforced codes of ethics and standards of professional practice, and has received professional recognition for mastery of the institute's educational program.

HOW AN APPRAISER DOES THE JOB

Appraisers, it is important to understand, give an expert opinion of what a property is worth. They do not determine a property's value.

The appraiser uses one of these methods to value property:

1. The value indicated by recent sales of comparable properties in the market
2. The value that the property's net earning power will support
3. The current cost of reproducing or replacing a building, minus an estimate for depreciation, plus the value of the land

The first method, called a sales comparison, is always used for residential real estate appraisals. The second method is used on income-producing properties, and the final method is usually used for insurance purposes.

When an appraiser does a sales comparison, he or she researches the market within about one mile of your house. The appraiser gets information about transactions, listings, and other offerings of properties similar to yours. He or she verifies this information with a knowledgeable source to check that the data are accurate and that the transactions with which yours is compared reflect arm's-length market considerations.

Finally, the appraiser determines relevant units of comparison—square feet if your property is a single-family home or condominium, or acreage if your property is, say, a ranch—and develops a comparative analysis for each unit. He or she compares your property to comparable sales and adjusts the sale price of each comparable as appropriate or eliminates the property as a comparable. He or she reconciles the several value indications that result from the comparables into a single valuation.

Appraisal requires a great deal of judgment even after all the numbers have been crunched. It is an inexact science because so many variables can affect a house's price. In general, however, elements of comparison include the following:

- Financing
- Conditions of sale
- Market conditions
- Location

- Physical characteristics
- Income characteristics, if the property includes rental units

Other Appraisal Approaches

We have detailed the sales comparison appraisal because it is the approach most often used for single-family houses. If your home happens to be a two-flat or duplex, you may have an appraisal based on income capitalization. Briefly, capitalization begins with an estimate of net operating income, from which the appraiser develops a rate of capitalization and estimates the property's value.

The third method of appraisal, the cost approach, is used almost exclusively to determine insurable value.

The Appraisal Report

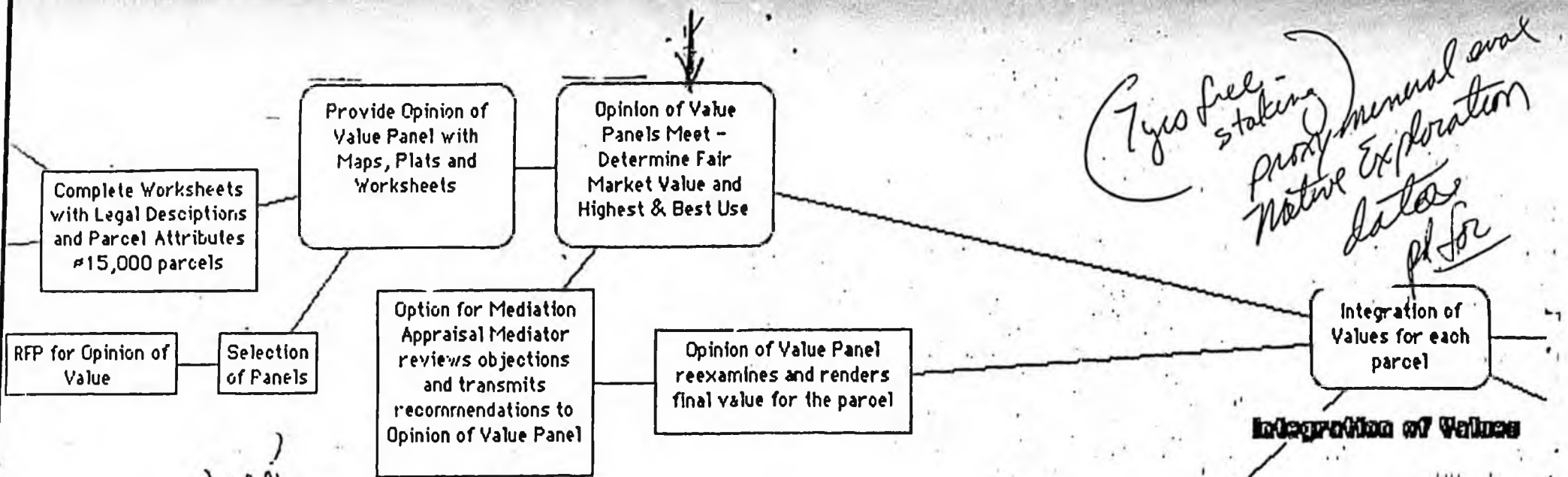
The form, length, and content of an appraisal report depend on the type of property covered. However, the American Institute of Real Estate Appraisers has set some standards for what should be included in an appraiser's report.

As a seller, you probably will not see the appraisal, as long as it satisfies the buyer and the mortgage lender. However, you may request through your lawyer a copy of the appraisal if it comes in below your contract price and buyer's remorse sets in on your once-enthusiastic buyer. An appraiser is required to defend every aspect of the report and justify all of the comparables.

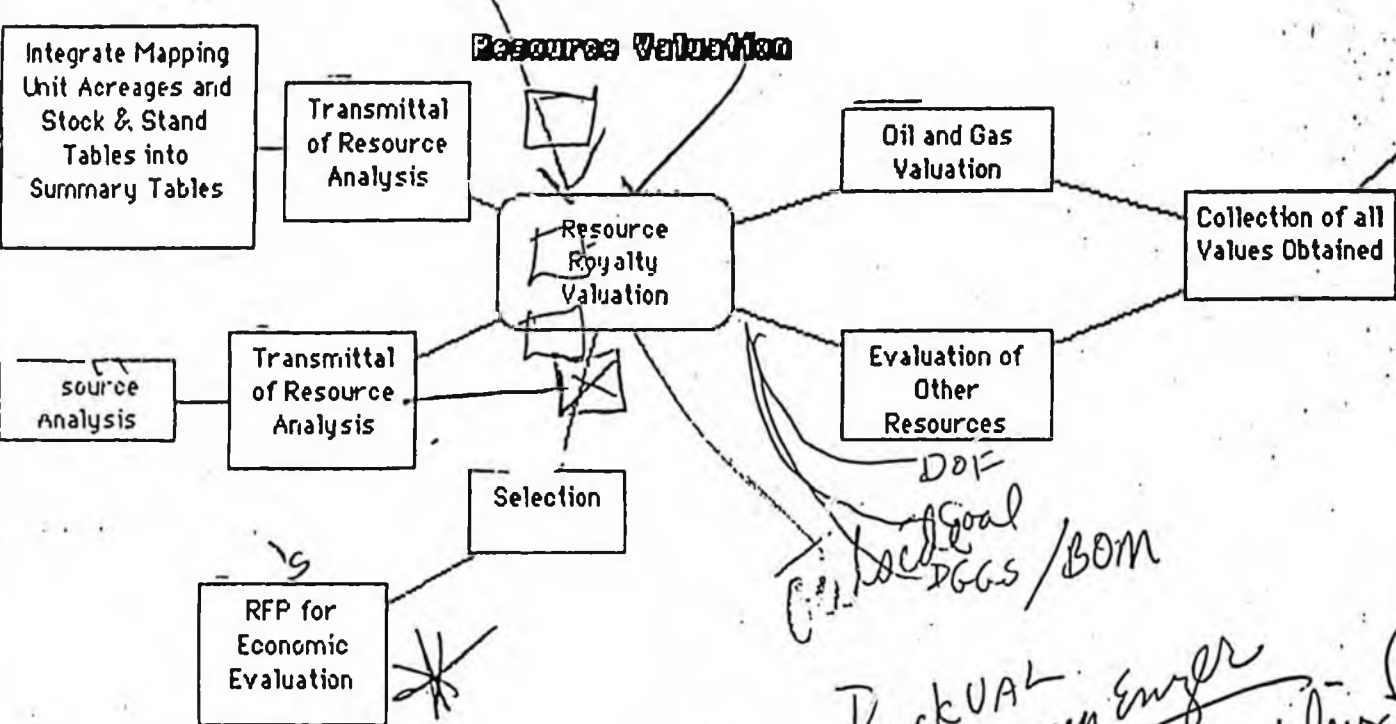
If the appraisal comes in lower than the sales price, you may consider yielding on your price, say meeting your buyer halfway on the difference, if it means keeping the deal alive.

THE APPRAISAL APPOINTMENT

If you were using a real estate broker, he or she would probably make a point of being present when the appraiser



(Eyes free-staking proxy mineral and Native Exploration later pl for)



(Some swap with only assessment)

DGS

*DOF Goal DGS/BOM
RockVAZ Herman Engler
modeling for estimating reserves*

- Ref: Nature concerns*
- tourism -
 - fisheries -
 - power -

Commission
Review of Values

Selection of Equal
Value Replacement
Lands

Commission
Approval of
Replacement Lands

Redesignation of
Replacement Lands

Note Land Records

D.O. 121
Terminated

Commissioner of DNR reports Determinations of
Values to Alaska Mental Health Board and
Commissioner of the Dept of Revenue

*Annual
Re-evaluate
process*

ALI Restatement of TRUST LAW

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- 191. Power to mortgage or pledge or borrow money
- 192. Power to compromise, arbitrate and abandon claims
- 193. Powers with respect to shares of stock
- 194. Several trustees
- 195. Surviving trustees
- 196. Successor trustees

TOPIC 4. REMEDIES OF THE BENEFICIARY AND LIABILITIES OF THE TRUSTEE

- 197. Nature of remedies of beneficiary
- 198. Legal remedies of beneficiary
- 199. Equitable remedies of beneficiary
- 200. Persons other than beneficiaries
- > 201. What constitutes a breach of trust
- 202. Following trust property into its product
- 203. Accountability for profits in the absence of a breach of trust
- 204. Non-liability for loss in the absence of a breach of trust
- 205. Liability in case of breach of trust
- 206. Liability for breach of duty of loyalty
- 207. Liability for interest
- 208. Liability for breach of trust by selling trust property
- 209. Liability for breach of trust by failing to sell trust property
- 210. Liability for breach of trust by purchasing property
- 211. Liability for breach of trust by failing to purchase property
- 212. Violations of more than one of the duties specified in §§ 208-211

QUESTIONS REGARDING SB 493 AND HB 548

1. What are the implications of making all land currently in legislative designations, and all land made subject to legislative designations in the future, subject to trust status?

a. If the Legislature wanted to remove land from legislative designations and no state land was available for an equal value exchange, would the Legislature have to purchase it from the trust before it could be removed from trust status?

b. Might development or other use of such land, even if consistent with the purpose of the legislative designations, be precluded by virtue of the trust?

c. Will making all land in future legislative designations subject to trust status make it politically more difficult to identify and include such land in future legislative designations?

d. If future unrestricted state general fund revenues are insufficient to pay the 8 percent "rent" for continued use of mental health trust land in legislative designations for the legislatively designated purposes, will the state be forced to use the land to generate revenue to make up any shortfall?

original
billion?

2. Is it reasonable to determine that the value of the one million acre mental health land grant is \$2.243 billion?

a. Is it reasonable to assume that all mental health lands were in full mineral production on September 7, 1987, the date of valuation? If full production would not be reached for ten years, the value of the mineral estate drops from \$1.5 billion to \$585 million; if full production is not reached for 20 years, the value drops to \$225 million.

b. Is it reasonable to conclude that the gross annual value of mineral production from the one million acres of mental health land is equal to \$4.43 billion (required to reach a \$1.5 billion net present value under the discounted future income valuation approach approved by the majority of the interim mental health trust commission)? The total value of mineral production from all of Alaska's 350 million acres was \$202 million in 1987 and, according to the Alaska Minerals Commission, will be less than \$1.2 billion in 1990.

c. With respect to the value of the surface

estate, is it reasonable to split the difference between (1) values determined under the standard definition of fair market value (the most probable selling price) and then adjusted upward by 30 percent, and (2) values determined under instructions to determine the "highest value supported by market data" for only those parcels where the first value was believed to be too low?

3. Might the valuation methodology used to derive the \$2.243 billion figure be employed against the state in other contexts (e.g., land exchanges, condemnation proceedings, etc.)? Chapter 48, SLA 1987, was predicated on the concept of fair market value, advocates of the \$2.243 billion figure assert that the procedures employed to reach that figure determine fair market value, and those engaged in land transactions with the state are always looking for new ways to increase the amount the state must pay in land and/or money to acquire other land.

4. Is it reasonable to use an indexing method for revaluation purposes which is based on annual changes in land values only in organized municipalities? Much mental health land is in the unorganized borough.

ALASKA MENTAL HEALTH BOARD

STEVE COWPER, GOVERNOR
STATE OF ALASKA

ST. ANN'S CENTER
419 6th STREET, SUITE 124
JUNEAU, ALASKA 99801
907-465-3071

April 23, 1990

Members, House Resources Committee
P.O. Box "V"
Juneau, Alaska 99811

Honorable Representatives,

In 1987, the Legislature created the Alaska Mental Health Board (AMHB) to assist the state in ensuring a comprehensive, integrated mental health program. The AMHB must review applicable statutes, regulations and policies and recommend appropriate changes. The AMHB must also review reports from the Department of Natural Resources regarding the valuation of the mental health land trust and the status of mental health trust land. Because of these duties, the AMHB offers recommendations on Legislation before you, HB548.

The purpose of the one million acre land grant made by Congress in the 1956 Alaska Mental Health Enabling Act was to assist the Territory with meeting the necessary expenses of an integrated mental health program. To receive the grant the Territory had to submit program plans to the Surgeon General of the Public Health Service for approval. The land grant, its income and proceeds were to be administered as a public trust. Unfortunately, the Territory and later the State failed to administer the land grant as a public trust. In October, 1985, the Alaska Supreme Court, relying upon basic trust law principles, ruled the legislature had breached its duties as trustee. That ruling came about because of 1978 legislation taking trust property. Since the Supreme Court ruling, the legislature has tried to reach a settlement fulfilling the Court order to reconstitute the trust. Chapter 132, SLA, 1986 and Chapter 48, SLA, 1987 demonstrated the Legislature's desire for settlement. The legislation before you, HB548, addresses settlement issues.

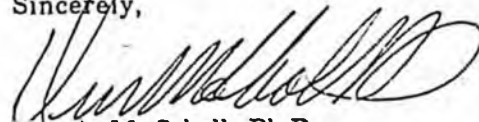
The AMHB expresses support for the intent of HB548 including that:

- (1) the legislature recognize the trust value of \$2,243,000,000 established under procedures approved by the Interim Mental Health Trust Commission,
- (2) land and resources in legislatively designated areas be identified as security for the trust corpus and,
- (3) revaluation procedures be established which effectively continue to reflect the value of the original trust lands over time.

The AMHB has closely monitored the work of the Interim Mental Health Trust Commission (IMHTC) chaired by Dr. George Rogers. The AMHB reviewed and endorsed the IMHTC Resolution of November 7th, 1989, "Final Approval of Procedures for Determining Fair Market Value." The AMHB has just received a letter/report from DNR Commissioner Gorsuch, dated April 17, 1990 indicating she will not apply the IMHTC approved procedures. The AMHB will try to complete review of DNR reports promptly.

Relevant to the entire settlement issue, the AMHB repeatedly has advised appointment of an independent trustee for the mental health trust. Such a body would help ensure proper reconstitution and administration of the Alaska Mental Health Land Trust and also proper use of proceeds of the mental health trust income account. If we can further assist you with your mental health trustee responsibilities please let us know.

Sincerely,



Dennis M. Scholl, Ph.D.
Executive Director

FISCAL NOTE

REQUEST: HB548

Revision Date: _____	Agency Affected: <u>Health & Social Services</u>
Title: <u>An Act relating to the reconstitution and administration of the Mental Health Trust</u>	BRU: _____
Sponsor: <u>Rep. Miller</u>	Components: _____
Requestor: <u>Rep. Miller</u>	_____

EXPENDITURES/REVENUES: (Thousands of Dollars)

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

FUNDING: (Thousands of Dollars)

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

POSITIONS:

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

ANALYSIS: (Attach a separate page if necessary)

No effect on the FY90 Budget.

Prepared by: Richard Renninger
Division: Administrative Services

Phone: 465-3331
Date: March 27, 1990

Approved by Commissioner: *Myra M. Munson*
Agency: Health & Social Services

Date: 3/27/90

Distribution (by preparer):

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

STATE OF ALASKA
THE LEGISLATURE

POUCHY STATE CAPITOL
JUNEAU, ALASKA 99801
907 465 3600


LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

February 13, 1990

SUBJECT: Mental health trust
(HB 548)

TO: Representative Mike Miller

FROM: Richard A. Bradley 
Legislative Counsel

Gene Therriault has requested a sectional analysis of the above described bill.

As a preliminary matter, note that a sectional analysis or summary of a bill should not be considered an authoritative interpretation of the bill and the bill itself is the best statement of its contents. If you would like an interpretation of the bill as it may apply to a particular set of circumstances, please advise.

Section 1 of the bill repeals and reenacts AS 37.14.011(c). AS 37.14.010 - 37.14.050 establishes the "Mental Health Trust Income Account; AS 37.14.011 also establishes the "mental health trust income account." The subsection now provides:

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

As repealed and reenacted (it would not have been possible to "amend" it), the section continues the value at "eight

percent of the fair market value of the land" but it affirmatively establishes a mathematical formula for that valuation. I believe that since that formula is all critical to the definition, it would be inappropriate to recast the language in a "sectional analysis" format and I believe that the four paragraphs of (c) should be read directly. While they are technical, they are understandable.

Section 2 of the bill adds a new subsection (d) to AS 37.-74.011; the subsection directs the commissioner of natural resources to "calculate the redetermined value of the trust under (c) and provide the redetermined value to the commissioner of revenue and the board."

Section 3 of the bill provides for the "reconstitution and administration of mental health land trust." Note that Section 4 of the bill repeals AS 38.05.800, a section with the same caption; in drafting this section, I made the judgement that it was not possible to "amend" existing AS 38.05.800 and hence the suggested approach was taken. In the nature of things, it will be necessary to quote much of the language directly-- and then to comment on it. I do not want to misstate any of the language in this analysis.

Sec. 38.05.801(a) states that the "value of all land selected by or patented to the state under the Alaska Mental Health Enabling Act as of September 7, 1987, is \$2,243,000,000." I do not know the source of the figure but I believe that the date is the effective date of ch. 48, SLA 1987 (CSHE 92 (Fin) am), the Act that responded to the Alaska Supreme Court's decision invalidating the earlier legislative management of the land received under the Alaska Mental Health Enabling Act, P.L. 84- 839, 70 Stat. 709.

Sec. 38.05.801(b) provides that "[a]ll land within legislative designations on the effective date of this Act and all land made subject to legislative designations in the future constitute the corpus of the mental health land trust." As I understand the usage, a "legislative designation" is an Act by the legislature that withdraws land for a particular purpose. The land established for parks, state forests, public use areas, recreational rivers, and so forth, primarily within AS 41 but also within AS 16.20 (sanctuaries, critical habitats, etc.) would be within these "designations."

The term "corpus" is legalese for the "body" or the substance of the trust.

Representative Mike Miller
Page 3
February 13, 1990

Thus, if this section is enacted, the future establishment of land within a "legislative designation" would, by that act, commit the land to the corpus of the trust.

Sec. 38.05.801(c) provides that "[o]n the reconstitution of the trust under this section," the remainder of the land of the state "that is not within legislative designations is removed from trust status." The provision seems self-explanatory.

Sec. 38.05.801(d) provides that the land within the "legislative designations" shall be managed under the provisions of law now governing them. The trust will be compensated under AS 37.14.011; see existing law as amended by Sections 1 and 2 of this bill.

Sec. 38.05.801(e) provides that "[b]efore the state may remove land [from a legislative designation], replacement land equal in value at the time of replacement shall be designated mental health land and added to the trust corpus." What this means is that land may not be withdrawn from a legislative designation (park, state forest, etc.) until equal value land is added to a legislative designation. The latter portion of the section outlines this procedure.

While it seems that there is a Catch 22 here in that when land is established as a legislative designation, by that designation it becomes part of the trust corpus and thus not available for use as replacement land, it seems that there may be an option for the state to establish the new legislative designation conditionally; that is, to create it subject to its use as matching land for land removed from designation. While the legislature has not removed land from a legislative designation very often, the legislature may wish to avail itself of this option prospectively to protect itself and to maintain flexibility.

Section 4 of the bill repeals AS 38.05.800. Note my comments on the repeal under Section 3.

If I may be of further assistance, please advise.

RAB:pl
WKP2/036

§ 37.13.205

PUBLIC FINANCE

§ 37.14.011

tion of particular reports, items, persons, or enterprises. (§ 5 ch 18 SLA 1980)

Sec. 37.13.205. Regulations. The board may adopt regulations under the Administrative Procedure Act (AS 44.62) to interpret and implement this chapter. (§ 12 ch 81 SLA 1982)

Sec. 37.13.210. Definitions. In this chapter

(1) "board" means the Board of Trustees of the Alaska Permanent Fund Corporation;

(2) "corporation" means the Alaska Permanent Fund Corporation. (§ 5 ch 18 SLA 1980)

Chapter 14. Trust Funds.

Article

1. Mental Health Trust Income Account (§§ 37.14.010 — 37.14.050)
2. Public School Trust Fund (§§ 37.14.110 — 37.14.170)
3. Alaska Children's Trust Fund (§§ 37.14.200 — 37.14.270)

Revisor's notes. — Section 4, ch. 182, SLA 1978 purported to add an article 2, entitled "University Fund," to this chapter. Section 27 of ch. 182 made that article effective on the date that the Board of Regents voted to approve the matters under

consideration as provided in § 24 of the act. However, the Board of Regents disapproved all matters on August 17, 1978; consequently, that article 2 was ineffective.

Article 1. Mental Health Trust Income Account.

Section

11. Mental health trust income account
21. Utilization of the mental health trust income account

Cross references. — For legislative findings and purpose of the Act that enacted AS 37.14.011 and 37.14.021 and re-

pealed the former provisions of this article, see § 1, ch. 48, SLA 1987 in the Temporary and Special Acts.

Sec. 37.14.010. Mental health fund established. [Repealed, § 13 ch 48 SLA 1987.]

Sec. 37.14.011. Mental health trust income account. (a) The mental health trust income account is established as a separate account in the general fund.

(b) The amount determined under (c) of this section as the fair market rental of the land constituting the mental health trust corpus

is the earnings of the trust and the commissioner of revenue shall annually allocate that amount from the general fund to the mental health trust income account.

(c) The fair market rental value of the land constituting the mental health trust corpus is equal to eight percent of the fair market value of the land. Following the initial determination of the fair market value of the land selected by and patented to the state under sec. 202 of the Alaska Mental Health Enabling Act, the commissioner of natural resources shall redetermine the fair market value of the land constituting the mental health trust corpus at least every five years and provide the redetermined value to the commissioner of revenue and the board established under AS 47.30.661. (§ 2 ch 48 SLA 1987)

Cross references. — For mental health land trust, see AS 38.05.800; for a transitional provision and duties of the commissioner of revenue until the mental health land trust has been reconstituted under AS 38.05.800, see § 11, ch. 48, SLA 1987 in the Temporary and Special Acts.

Sec. 37.14.020. Mental Health Fund Advisory Board created. [Repealed, § 13 ch 48 SLA 1987.]

Sec. 37.14.021. Utilization of the mental health trust income account. Money in the mental health trust income account established in AS 37.14.011(a) shall first be appropriated by the legislature to meet the necessary expenses of the mental health program of the state. In making annual appropriations from the mental health trust income account, the legislature shall consider the recommendations of the Alaska Mental Health Board established under AS 47.30.661, including recommendations regarding capital improvements. After the necessary expenses of the state's mental health program have been funded, the legislature may make appropriations from the mental health trust income account for other public purposes. (§ 3 ch 48 SLA 1987)

Secs. 37.14.030 — 37.14.050. Powers and duties of board; fund utilization; contributions. [Repealed, § 13 ch 48 SLA 1987.]

Article 2. Public School Trust Fund.

Section	Section
110. Public school trust fund established	150. Contributions
120. Public School Fund Advisory Board created	160. Duties of the commissioner of revenue
130. Powers and duties of board	170. Investments
140. Utilization of income	

Sec. 37. is established trust fund (b) The consists of (1) the and (2) sum (c) The the fund in manner th and that principal c pal shall b (§ 4 ch 18

Effect of amendment trust fund "fund the pu

Sec. 37 (a) There Fund Adv three mer membersh (b) The from the r tion but a law for ot

Sec. 37 in AS 37 (1) to h sary; (2) to b income o. (3) (Rej § 33 ch 1

Effect of amendment (3), which re

Title 37 Public Finance

ALASKA MENTAL HEALTH BOARD

STEVE COWPER, GOVERNOR
STATE OF ALASKA

ST. ANN'S CENTER
419 6th STREET, SUITE 124
JUNEAU, ALASKA 99801
907-465-3071

March 27, 1990

Health, Education & Social Services Committee
Alaska State House of Representatives
P.O. Box "V"
Juneau, AK 99811

Honorable Representatives,

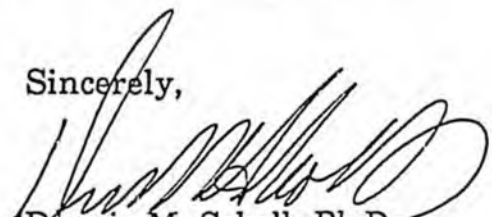
The Alaska Mental Health Board (AMHB) has reviewed HB548, "An Act relating to the reconstitution and administration of the mental health trust." At its meeting in February the AMHB took action in support of the intent of HB548 including that:

- (1) the Legislature recognize the trust value of \$2,243,000,000 established under procedures approved by the Interim Mental Health Trust Commission,
- (2) land and resources in legislatively designated areas be identified as security for the trust corpus, and
- (3) revaluation procedures be established which effectively continue to reflect the value of the original trust lands over time.

In actions related to the AMHB discussion of HB548, the Board re-affirmed its prior action supporting appointment of an independent trustee for the mental health trust and urging the appointment of an interim trustee pending final resolution of issues in the Weiss v. State litigation.

On behalf of the Alaska Mental Health Board I convey their support for the intent of HB548.

Sincerely,



Dennis M. Scholl, Ph.D.
Executive Director

cc.
AMHB
Rep. Miller

1 ALASKA MENTAL HEALTH BOARD INTERIM REPORT
2 ON CHAPTER 48 REVISIONS (6.6.4)

3 January 1990
4

5 INTRODUCTION
6

7 In 1987, when the Alaska State Legislature adopted revisions to Alaska law
8 which reconstituted the Mental Health Lands Trust and created the Alaska
9 Mental Health Board, it was with the hope that these changes would resolve
10 the issues raised in the Weiss v. State lawsuit. All parties to the suit felt
11 that a workable compromise was better than the continuation of litigation,
12 and they expected that the Legislative changes set forth in Chapter 48 would
13 form the basis of a settlement.
14

15 The plaintiffs in the Weiss suit expected that these legislative changes
16 would ensure that the monies set aside for the Alaska Mental Health Trust
17 would be used first and foremost to meet the needs of the mentally ill. They
18 contemplated that these needs would be determined by the Alaska Mental
19 Health Board and that upon identification the Legislature would
20 appropriate funds to meet those needs. It was their expectation that only
21 after the basic needs of the trust beneficiaries were met would the
22 Legislature take advantage of the statutory provisions that allowed excess
23 revenues from the trust to be used for general expenses of the State.
24

25 The legislative changes have not worked. First, the Greene decision
26 identified a group of beneficiaries not contemplated by the original Weiss
27 litigants. Not only were considerable questions raised about the proper way
28 to identify who beneficiaries of the Trust were, but also considerable
29 confusion was created about the role of the Alaska Mental Health Board.
30 The Board has been forced to function in two conflicting roles at once. As
31 the statutorily mandated body charged with responsibility to identify needs
32 of Trust beneficiaries, it has had to act as a neutral arbiter of claims to the
33 Trust's funds from all of the beneficiaries, including those identified in the
34 Greene decision. At the same time, as the body charged with representing
35 the mentally ill, the Board has been required to be an advocate on behalf of a

1 specific population that competes with other trust beneficiaries for the
2 Mental Health Trust Funds.

3

4 Second, and perhaps more important, there has been insufficient
5 appropriation of Trust funds to meet the needs of the Trust beneficiaries.
6 Over the last three years, the Alaska Mental Health Board has identified
7 needs far in excess of those being presently met. Each year, the Board has
8 made modest recommendations, not sufficient even to meet identified
9 needs, but at least sufficient to begin to redress some of the severe
10 shortcomings of Alaska's Mental Health Program. Even these minimal
11 recommendations have not been accepted. More money has been
12 transferred from the Mental Health Trust Lands income account into the
13 general fund than was spent on the entire Mental Health Program. The
14 Weiss litigants, have concluded -- reasonably in the estimate of most
15 members of the Alaska Mental Health Board -- that the reconstitution of
16 the Mental Health Trust has resulted in no real change in the way in which
17 Trust revenues are spent. An additional concern, which may become more
18 important over the years, is that the Department of Natural Resources
19 (DNR), which has a broad range of responsibilities for the management of
20 State lands, has full authorization over the management of Mental Health
21 Trust lands as well. There is no agency or group with a particular
22 mandate to represent the beneficiaries of the Trust who can review the
23 management decisions of the DNR to make sure that, over the years,
24 management decisions which are based solely on the best interests of the
25 Trust are made and that the value of trust lands are not eroded over time.

26

27 The Alaska Mental Health Board, has recognized the serious nature of
28 these problems for some time. Beginning in July of 1988 the Board
29 facilitated a series of meetings with affected groups to discuss the proper
30 way to define the beneficiaries of the Trust. After this Greene group issued
31 its report the Board adopted "A Policy Report Pertinent to the Greene
32 Decision", a report discussing the implications of the Greene decision. In
33 April of this year, the Board passed a resolution calling for public hearings
34 to examine the role of the Board in light of the Greene decision. The Board
35 delegated to its Legislative Committee the task of gathering information
36 that might lead to proposed changes to Chapter 48. The Committee has

1 held public hearings and devoted two work sessions to the subject. The
2 purpose of this report is to outline the conclusions and recommendations of
3 the committee.

4
5 BACKGROUND
6

7 None of these issues is new. The Legislature reviewed the proper role of a
8 mental health board and the proper mechanism for funding programs
9 from the Trust in-depth in 1986 when originally attempting to reach a
10 settlement of the Weiss litigation. At that time, the Joint Special Committee
11 on Mental Health Trust Land suggested three possible alternatives. The
12 first alternative was a "secured revenue stream". Under this proposal,
13 eight percent of all State unrestricted general fund revenues would be
14 dedicated to the mental health program, secured by a pledge of State assets
15 which could be executed upon in the event that the Legislature failed to
16 appropriate sufficient funds to meet the necessary expenses of the mental
17 health program.¹

18
19 The second alternative was reconstitution of the Mental Health Land Trust
20 and the creation of a Mental Health Trust Corporation which would be
21 responsible for managing the assets of the Trust. The unencumbered Trust
22 land would be re-transferred, and a cash settlement of lands encumbered
23 or patented would be made. This alternative was less desirable, because of
24 the difficulty and expense inherent in identifying, transferring, and then
25 subsequently managing the Trust lands.

26
27 Finally, the Legislature recognized the alternative of permitting the court-
28 ordered reconstitution of the Trust to take place under court supervision.

29
30 In supporting the secured income stream alternative, the Joint Committee
31 recognized the inherent difficulty with that solution. There was no way to
32 guarantee that the Legislature would necessarily appropriate sufficient
33 funds each year to meet the needs of the Mental Health program.

¹ See report to the Legislature of the Joint Special Committee on Mental Health Trust Land, January, 1987, pg. 14, this was the preferred alternative

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"Earmarking" Trust land income in the general fund and appropriating an amount equal to the income is permissible, but it does not insure that income will go toward funding mental health programs. Since one Legislature cannot bind future Legislatures, enactment of a law stating that income will be spent on mental health programs is subject to the will of each Legislature and dependent on annual appropriation of funds.²

The Joint Committee recommended a Statement of Legislative Intent as a means of guiding future legislatures as to the appropriate levels of funding.

At the same time, the joint Committee recognized that present funding levels were inadequate.

State appropriations for mental health programs have grown from slightly less than \$1.2 million in 1959 to slightly more than \$23.4 million in 1986. However, when an inflation factor is applied, actual State spending on mental health has declined over the last few years.

The draft Mental Health Plan, released in August 1986, estimates the cost of developing a comprehensive mental health system at \$106.9 million in annual operating costs, an increase over FY87 operating expenditures of approximately \$82.1 million. It also identifies a need for \$102.1 million in one-time capital costs.

...

[I]n the Committee's view, the draft clearly demonstrates that Alaska's current level of mental health funding is

² *Id.* pg 8-9

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insufficient to serve our mentally ill population. It should be noted that the Alaska Alliance for the Mentally Ill has testified that the draft falls short of the goals of an adequate program.

The Committee's view is supported by testimony received from the National Conference of State Legislatures (NCSL). Their review of Alaska's mental health program led to several recommendations, primarily that our programs be expanded.³

The Interim Mental Health Trust Commission reached a similar conclusion, ultimately suggesting that a revenue-stream option be adopted by the Legislature.⁴ The Interim Mental Health Trust Commission also recognized the necessity of binding the Legislature in a constitutionally accepted manner so that future legislatures would be required to use the revenues generated to meet the needs of the mental health program:

Furthermore, the enabling legislation should be very clear that the Legislature intends to fully fund an adequate mental health program in perpetuity. To satisfy the court-ordered reconstitution, such an arrangement would have to include collateral -- an identifiable, quantifiable entity -- which could be redeemed by the Trust in the event that the promised revenue stream failed to materialize or was somehow diverted. . . . While falling short of binding the hands of future legislatures, such a surety bond would make them always cognizant of the revenue stream legislation's original intent.⁵

These recommendations were the genesis of the present Chapter 48.

³ *Id.* at pg. 19-21
⁴ Report to the Legislature by the Interim Mental Health Trust Commission, February 1987, at pg 199
⁵ *id* at pg., 19-21.

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As enacted, Chapter 48 did not include any provisions for enforcement. Over the last three funding cycles, funding for the mental health program has continued to be inadequate. In FY88, the Alaska Mental Health Board, recognizing the need for a phasing in of increased funding for mental health programs, recommended increased program funding of \$15,322,400 over the Governor's proposed operating budget. Despite the fact that even this recommendation was far below the minimum necessary to fund an adequate program for the State and meet the goals of the Comprehensive Mental Health Plan, only \$8,868,900 in additional operating funds was appropriated. Similarly, FY89 recommendations of the Alaska Mental Health Board were \$15,791,800 in additional operating funds over the prior year's base budget. Only \$5,026,000 more than the base, was appropriated while \$17,072,733.93 was transferred from the Mental Health Trust income account into the general fund.⁶ The result has been that mental health services throughout the state have failed to keep pace with rising demand. Similarly, the Board's recommendations to meet long standing capital improvement requirements have been rejected. The needs identified in the State Comprehensive Mental Health Plan are being funded at a fraction of the amount necessary to meet the Plan's goals.

In 1978, when the Legislature re-designated Trust lands as general grant lands, the Legislature failed to ever make the necessary appropriations to compensate for the loss, and the Mental Health Trust was never funded. This was the reason for the Weiss suit in the first place. It is the perception of many members of the Alaska Mental Health Board, as well as of the Weiss litigants, that a variation of this situation continues to exist under the Chapter 48 revisions. Mental Health Trust funds are used for general fund purposes with little regard to the requirement that the Mental Health Trust account be spent first to meet the needs of the mental health program.

⁶ Letter from Milt Barker, Department of Revenue, December 1, 1989

1
2 PROPOSED RESOLUTIONS
3

4 The AMHB, IMHTC, relevant advocacy groups, and litigants generally
5 agree that changes to the present structure must be made. The Legislative
6 Committee has received a broad spectrum of recommendations. These
7 range from recommendations that nothing be done or that the status of the
8 Alaska Mental Health Board be diminished, to proposals that the entire
9 way in which the State approaches funding and operation of mental health
10 programs be modified. Some examples of proposed ways of resolving the
11 conflicts raised by the present Chapter 48 follow.

12
13 PROPOSAL A Status quo with a Re-definition of the Alaska Mental
14 Health Board's Responsibilities
15

16 The Legislative Committee received several suggestions to the effect that
17 little change should be made to the present system. In response to our
18 request for information, the Department of Natural Resources indicated
19 that:

20
21 The only change the Commission anticipates at this point is
22 a proposal to alter the five-year reappraisal requirement.
23 We have indicated support for an indexing system which
24 would automatically adjust the value of the trust lands. As
25 yet, however, there has been no uniform agreement
26 concerning the adjustment methodology.⁷
27

28
29 Under this approach, there would be no changes to the present procedure
30 for determining how Trust revenues are spent. The provisions of Chapter
31 48 requiring that eight percent of the land value be place in the Mental
32 Health Trust income account would remain in effect and the Legislature
33 would continue to appropriate on the basis of its perception of the needs of

⁷ Letter, Rod Swope, Commissioner Designate to the Interim Mental Health Trust Commission, to Nelson G. Page, September 6, 1989.

1 the mental health program of the State, with unexpended revenue going to
2 the general fund.

3

4 The Division of Mental Health and Developmental Disabilities also prefers a
5 limited approach.

6

7

I would like to have the presently constituted Mental Health
8 Board able to give its entire attention and effort to the
9 hospital and community mental health services
10 administered by the Division.

11

12

The Governor's Council for the Handicapped and Gifted, the
13 Older Alaskans' Commission, and the SOADA Board are
14 already serving planning, advisory, evaluative and
15 advocacy functions for the other Mental Health Trust
16 beneficiaries, and there is no other board to provide these
17 functions for the "mentally ill who may require
18 hospitalization" nor for the other recipients of traditional
19 mental health services.⁸

20

21

22 Thus, the Mental Health Board would be divested of its present
23 responsibility for oversight and budget recommendations regarding all
24 trust beneficiaries. Although this would eliminate the confusion which
25 has resulted from the Greene decision, relieving the Board from its dual,
26 and often conflicting role of being an advocate for one group while being an
27 umbrella organization representing all groups, it would leave no entity
28 with responsibility for trust oversight and would tend to perpetuate a
29 fragmented and uncoordinated approach to the delivery of mental health
30 services.

31

32 In the Committee's view, limited modifications to the Alaska Mental
33 Health Board's role and structure do not change the problems with the

⁸ Letter, Todd R. Riskey, Director, Division of Mental Health and Developmental
Disabilities, to Nelson G. Page, October 16, 1989.

1 take over the responsibility for protecting and advocating on behalf of the
2 Trust itself.

3
4 Although the exact scope and nature of the independent Board of Trustees
5 remains to be determined, at a minimum, the Board would be a separate
6 entity with separate legal status akin to the Alaska Power Authority, the
7 Alaska Public Utilities Commission, or the Permanent Fund Board. As
8 such, it would have the capacity to sue and be sued and to hire its own
9 counsel to provide independent legal representation. At a minimum, the
10 Board of Trustees would be charged with the responsibility to :

- 11
12 1. Oversee and approve land management decisions of the
13 Department of Natural Resources, as they affect the Mental
14 Health Trust lands, and to negotiate with the State when it
15 became necessary to revalue State land. Under the present
16 Chapter 48, such re-valuation is to take place every five years;
17
- 18 2. Invest and oversee any designated funds, such as funds
19 appropriated for capital improvements;
20
- 21 3. Determine annually the extent to which the needs of the
22 beneficiaries of the Mental Health Trust have been met, based
23 on the goals and objectives of the Alaska State Comprehensive
24 Mental Health Plan, and to certify annually the extent to which
25 the needs have been met or not met;
26
- 27 4. To review and approve expenditures from the Trust to ensure
28 that the expenditures are properly charged to the Trust.
29

30 This independent Board of Trustees would have the power to promulgate
31 regulations to implement its authority, the power to hire and fire its
32 employees, and the power to set employees salaries, as a necessary element
33 of its independence.

34
35 Under this proposal, the language of Chapter 48 would be amended to
36 prohibit the expenditure of funds held in the Mental Health Trust revenue

1 account without either (1) approval of the Board of Trustees, or (2) in the
2 event that the Board of Trustees does not approve, a specific finding from
3 the Legislature that the expenditure is necessary and appropriate to meet
4 the needs of the Mental Health program of the State of Alaska. In addition,
5 Chapter 48 would be amended to provide that no reappropriation to the
6 general fund from the Mental Health Trust revenue account could take
7 place unless (1) the trustees had certified that the necessary expenses of the
8 Health program had been met for the previous year, or (2) in the event that
9 the trustees did not so certify, the Legislature had made a specific finding to
10 that effect.

11

12 For this structure to work, the members of the Board of Trustees would
13 have to act with a clear fiduciary responsibility for the Mental Health Trust
14 and the beneficiaries of that Trust. It would be essential that members of
15 the Board of Trustees consist of individuals who could fairly, impartially
16 and knowledgeably review and evaluate the needs of the Trust and of the
17 beneficiaries of the Trust. Ideally, this Board of Trustees would take over
18 the present responsibility of the Alaska Mental Health Board to ensure that
19 the plans of the various entities and agencies responsible for the mental
20 health program are integrated and comprehensive.

21

22 **PROPOSAL C** Separate Trust with Operating Authority

23

24 Most proposals for modification of Chapter 48, however expansive, do not
25 change the underlying way in which mental health services are provided in
26 the State of Alaska. The services are delivered through the Department of
27 Health and Social Services and funding levels are determined by the
28 legislative process. Recent actions in other parts of the United States have
29 focused attention upon the feasibility of creating a public authority or
30 corporations into which the assets or income of the Alaska Mental Health
31 Trust would be transferred. This public authority would be empowered and
32 authorized to do those things set forth in Proposal B. In addition it would
33 act as an operating authority, providing mental health services for the State
34 of Alaska. The general outlines of the program and the goals of the
35 program would be set by the Legislature, and additional funding, as
33 necessary, would be available through appropriations through the

1 Legislature or, in the case of capital expenditures, through a bonding
2 power given to the public authority. The primary responsibility for the
3 payment for and delivery of mental health services would be with this
4 "Mental Health Authority".

5
6 Similar broad and sweeping changes to the method for delivering mental
7 health services have been enacted in the states of Washington and
8 Wisconsin. In those states, the legislature contracts through a separate
9 authority with regional mental health entities to provide mental health
10 services on a local level. The overriding advantage of this system is that it
11 provides incentives for greater local responsiveness to meet individual
12 needs and creates a system which de-emphasizes institutionalization and
13 in which dollars more closely follow patient needs.

1 These important recommendations are the result of careful analysis and
2 reasoned decision-making. They are essential to making the "dedicated
3 revenue stream" approach successful. At a minimum the Legislature
4 should act this session to adopt procedures approved November 7, 1989 by the
5 IMHTC. Thus, the Committee's first recommendation is that the
6 Legislature should resolve the long-standing issue of Mental Health Trust
7 lands valuation by accepting the procedures adopted by the
8 recommendation of the Interim Mental Health Trust Commission during
9 this legislative session.

10
11 **B. PREPARE COMPREHENSIVE PROPOSALS FOR THE 1991**
12 **LEGISLATIVE SESSION**
13

14 The Committee recommends that no specific changes in Chapter 48 be
15 made during this legislative session so that a more comprehensive
16 approach to an overhaul of Chapter 48 and of the Alaska Mental Health
17 program can be undertaken during the following legislative session. The
18 changes outlined in this report provide only a summary of possible options
19 and do not purport to be a comprehensive view of the possible ways in which
20 a separate Board of Trustees could function. Alaska is not the only state
21 that has been faced with these issues over the last few years. There is a
22 wealth of information and knowledge which can and should be evaluated
23 for precedent to determine the best way to structure mental health services
24 delivery for the State of Alaska. The Legislative Committee recommends,
25 therefore, that the Legislature appropriate sufficient funds for the purpose
26 of conducting a study which will lead to comprehensive recommendations
27 for enactment of legislation during the 1990/91 session.

28
29 **C. AUGMENT THE BOARD'S COMMITTEE STRUCTURE ON AN INTERIM**
30 **BASIS**
31

32 Finally, the Legislative Committee recognizes that if no changes are made
33 to Chapter 48 and to the structure of the Alaska Mental Health Board at the
34 present time, the built-in conflict between the Alaska Mental Health
35 Board's role as an advocate for the traditional Mental Health program and
36 its role as a neutral arbiter of claims to the Trust's funds will continue, at

1 least on an interim basis. The Legislative Committee wishes to emphasize
2 its belief that the Alaska Mental Health Board, on the whole, has done an
3 excellent job of attempting to juggle these conflicting responsibilities.
4 However, those beneficiaries of the Trust who are not presently required by
5 statute to be represented on the Alaska Mental Health Board must be made
6 to feel that their interests are being given full and fair consideration by the
7 Board when it acts in its capacity as planning and oversight body for the
8 Mental Health Trust as a whole. This issue was recognized by Governor
9 Cowper in a letter which he sent to the Board February 17, 1989, in which he
10 requested that the Board itself make recommendations as to any changes
11 that should be implemented in its membership and structure.

12

13 The Legislative Committee believes that, for the time being, no formal
14 changes need to be made to the structure and membership of the Board.
15 Instead, in order to ensure that the interests of all of the beneficiaries are
16 represented on an interim basis, and, as importantly, in order to ensure
17 that these beneficiaries perceive that their interests are adequately
18 represented, the Legislative Committee recommends that the Board take
19 the step of augmenting its Committee structure by adding to each of its
20 committees voting members from one or more of the affected beneficiary
21 groups. This augmentation would be on an interim basis until final
22 recommendations can be made as to changes in the Board's structure and
23 in Chapter 48. This recommendation can be implemented by the Board
24 itself, and does not require any legislative changes. The Board has already
25 had experience with this arrangement. Its Budget Committee has been an
26 augmented committee for the last year, and the Legislative Committee itself
27 welcomed and benefitted substantially from the participation of several
28 interested parties. Thus, the Legislative Committee recommends Board
29 Committees be expanded by the Executive Committee in accordance with
30 established Board procedures to provide reasonable representation of
31 beneficiary groups. The Committee further recommends that the
32 committee expansions include coordination with the three affected boards
33 and coalition attorneys representing plaintiffs in the litigation.

34

35

36

1
2
3 CONCLUSION

4 The challenge that is faced by the Board, the State, and the Weiss litigants
5 is to find a way to make a permanent, binding commitment that adequate
6 funding for the State's mental health program will be provided in the
7 future. It is disheartening that the problems which led to the present
8 dissatisfaction with Chapter 48 as a proposed resolution to the Weiss
9 litigation are in many respects the same problems which existed and led to
10 the Weiss lawsuit in the first place. Without a commitment to an
11 enforceable and workable arrangement for funding the mental health
12 programs, the Weiss litigants have no incentive to abandon their original
13 demand that the Trust be reconstituted in its entirety. The State has at the
14 present time an opportunity to look carefully at the way in which mental
15 health services should be funded and delivered in the State of Alaska. The
16 Legislative Committee recommends that steps be taken so that the mental
17 health program and the Mental Health Trust can be structured in a
18 manner that is forward looking and takes into consideration the needs of
19 the State of Alaska over the next several decades.

Interim Report 6.6.4



LAWS OF ALASKA

1987

Source

CSHB 92(Fin) am

Chapter No.

48

AN ACT

Relating to the Alaska Mental Health Trust; and providing
for an effective date.

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

THE ACT FOLLOWS ON PAGE 1, LINE 9

UNDERLINED MATERIAL INDICATES TEXT THAT IS BEING ADDED TO
THE LAW AND BRACKETED MATERIAL IN CAPITAL LETTERS INDICATES
DELETIONS FROM THE LAW; COMPLETELY NEW TEXT OR MATERIAL
REPEALED AND RE-ENACTED IS IDENTIFIED IN THE INTRODUCTORY
LINE OF EACH BILL SECTION.

Approved by the Governor: June 8, 1987
Actual Effective Date: Sections 7-10 take effect July 1,
1987; remainder of Act takes effect September 5, 1987.

AN ACT

Relating to the Alaska Mental Health Trust;
and providing for an effective date.

* Section 1. FINDINGS AND PURPOSE. (a) The legislature finds

(1) the United States Congress passed the Alaska Mental Health Enabling Act of 1956, P.L. No. 84-830, 70 Stat. 709, "To confer upon Alaska autonomy in the field of mental health, transfer from the Federal Government to the Territory the fiscal and functional responsibility for the hospitalization of committed mental patients, and for other purposes;"

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

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

Chapter 48

1 the conditions and requirements imposed by this Act;"

2 (4) in requiring that the proceeds and income of the 1,000,000-
3 acre land grant "first be applied to meet the necessary expenses of the
4 mental health program of Alaska," it was the intent of the Congress that
5 additional public funds be appropriated by the legislature to supplement
6 the proceeds and income from the land grant if those proceeds and income
7 are insufficient to meet the necessary expenses of the mental health pro-
8 gram of Alaska;

9 (5) if the proceeds and income from the 1,000,000-acre land
10 grant exceed the necessary expenses of the mental health program of Alaska,
11 the Congress authorized the legislature to appropriate the excess proceeds
12 and income for other public purposes;

13 (6) because of the highly desirable location and character of
14 much of the land selected by the state under the Act, for example, in and
15 around major population centers, suitable for parks and game refuges, and
16 other uses, and the difficulties associated with disposing of or dedicating
17 the land for purposes that would not result in the receipt of funds that
18 could be used for mental health purposes, for example, satisfaction of
19 municipal entitlements, placement in parks and game refuges, and other
20 uses, without compensation to the trust, the Tenth Alaska State Legislature
21 enacted ch. 181 and 182, SLA 1978, which, among other things, redesignated
22 all mental health lands as general grant lands;

23 (7) both ch. 181 and 182, SLA 1978, also created the mental
24 health fund into which, as compensation to the trust, a sum equal to one
25 and one-half percent of all revenue received from the management of state
26 land was to be deposited and from which only the income could be appro-
27 priated exclusively for mental health purposes;

28 (8) a significant difference between ch. 181 and 182, SLA 1978,
29 was that ch. 182 made the deposit of one and one-half percent of all public
CSHB 92(Fin) am

income of the 1,000,000-acre land necessary expenses of the program of the Congress that legislature to supplement those proceeds and income of the mental health program of Alaska, state the excess proceeds location and character of Act, for example, in and game refuges, and disposing of or dedicating the receipt of funds that example, satisfaction of game refuges, and other Alaska State Legislature her things, redesignated also created the mental trust, a sum equal to one the management of state income could be appro- 181 and 182, SLA 1978, 15 percent of all public

land revenue into the mental health fund "subject to legislative appropriation of sufficient funds";

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

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

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

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

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

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1 require additional costly and time-consuming litigation;

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

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

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

26 (17) continued costly and time-consuming litigation over mental
27 health trust land management is not in the public interest because advo-
28 cates of stringent mental health trust land management may seek the in-
29 validation of legislative designations of mental health land as state
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1 parks, state game refuges, state forests, etc., placing the future use of
2 the land for the designated purposes in doubt and further dividing those
3 who advocate stringent mental health trust land management from those who
4 believe all state-owned land, including mental health land, should be
5 managed for its highest and best use;

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

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

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

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

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

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

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

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

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

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

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

(C) It would make the entire mental health trust corpus

able for appropriation by the
Mental Health Enabling Act;

restitution of the State of
Mental Health Enabling Act, the
state land, including mental
health trust land from trust
abilities, it simultaneously
as mental health land;

a mental health program, and
used on the problems of the
mental health trust land manage-
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state use of that land through
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a separate account in the
complexity of land management
benefits to the mental health

mental health trust corpus

mental health trust corpus
100-acre mental health trust
of a set-off) for state

mental health trust corpus

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

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

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

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

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

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

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

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

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

(b) The purposes of this Act are

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

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

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

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

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

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

(7) to identify a portion of annual state general fund revenues;

the mental health program of
Congress underlying sec. 202
mental health land be admin-
for the support of Alaska's
eliminate the need for costly,
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ice v. Weiss, 706 P.2d 681
trust status;
state general fund revenue,

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

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

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

Sec. 37.14.011. MENTAL HEALTH TRUST INCOME ACCOUNT. (a) The
mental health trust income account is established as a separate ac-
count in the general fund.

(b) The amount determined under (c) of this section as the fair
market rental of the land constituting the mental health trust corpus
is the earnings of the trust and the commissioner of revenue shall
annually allocate that amount from the general fund of the state to
the mental health trust income account in the general fund of the
state.

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

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

Sec. 37.14.021. UTILIZATION OF THE MENTAL HEALTH TRUST INCOME
ACCOUNT. Money in the mental health trust income account established
in AS 37.14.011(a) shall first be appropriated by the legislature to