

Chapter 048

CHAPTER: CH048

SOURCE: CSHB92(FIN)AM

Action Date: JUNE 8, 1987

Year: 87

Effective Date: SEE CHAPTER

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:

* 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 the conditions and requirements imposed by this Act;"

(4) in requiring that the proceeds and income of the 1,000,000- acre land grant "first be applied to meet the necessary expenses of the mental health program of Alaska," it was the intent of the Congress that additional public funds be appropriated by the legislature

to supplement the proceeds and income from the land grant if those proceeds and income are insufficient to meet the necessary expenses of the mental health program of Alaska;

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

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

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

(8) a significant difference between ch. 181 and 182, SLA 1978, was that ch. 182 made the deposit of one and one-half 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 may require additional costly and time-consuming litigation; (14) continued costly and time-

consuming litigation over mental health trust land management is not in the public interest because it diverts attention from the goal the Congress sought to achieve through the Act's land grant, the funding of a mental health program; (15) continued costly and time-consuming litigation over mental health trust land management is not in the public interest because it has the potential to be extremely divisive, pitting the advocates of stringent mental health trust land management against those who envision state-owned mental health land managed for its highest and best use, including conveyance to municipalities in satisfaction of municipal entitlements, placement in parks and game refuges, and other uses, without a major expenditure to compensate the mental health trust for the fair market value of the land; (16) continued costly and time-consuming litigation over mental health trust land management is not in the public interest because advocates of stringent mental health trust land management may seek the invalidation of state conveyances of mental health land to third parties, particularly municipalities and Native corporations organized under the Alaska Native Claims Settlement Act, a course of action that at best will place a cloud on the third parties' title to those lands and at worst will result in those third parties losing title to their lands, causing economic and other harm and further dividing those who advocate stringent mental health trust land management from those who believe all state-owned land, including mental health land, should be managed for its highest and best use; (17) continued costly and time-consuming litigation over mental health trust land management is not in the public interest because advocates of stringent mental health trust land management may seek the invalidation of legislative designations of mental health land as state parks, state game refuges, state forests, etc., placing the future use of the land for the designated purposes in doubt and further dividing those who advocate stringent mental health trust land management from those who believe all state-owned land, including mental health land, should be managed for its highest and best use; (18) the failure of the Alaska Legislature to deal with the current situation by properly reconstituting the mental health trust at this time will lead to continued costly, time-consuming, and divisive litigation, which is not in the public interest; (19) the same problems that led to the 1978 redesignation of mental health land as general grant land, for example, the desirability of managing mental health land for its highest and best use, including the satisfaction of municipal entitlements, inclusion in parks and game refuges, will continue to pose difficulties in the state's efforts to accommodate the public's needs generally with the obligation to administer mental health land as a trust; (20) under art. VIII, sec. 2, Constitution of the State of Alaska, as construed by the Alaska Supreme Court in *State v. University of Alaska*, 624 P.2d 807 (1981), the legislature has the authority to remove land from trust status if the trust is compensated for the fair market value of the land; (21) the state is not now, and in the foreseeable future will not be, in a position to compensate the mental health trust in money for the fair market value of mental health land; (22) even if the state were able to compensate the mental health trust in money for the fair market value of mental health land, there is a substantial legal question whether that compensation, as the corpus of the trust, could be preserved in perpetuity or whether the prohibition on dedicated funds in art. IX, sec. 7, Constitution of the State of Alaska, 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 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 legislatively 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 disposal, equal value replacement land would have to be identified and redesignated as trust land; (27) the legislature will best serve the public interest by reconstituting the mental health trust with land in legislatively designated 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 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 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 legislatively 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 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 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 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.

* 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 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.

* Sec. 4. AS 38.05 is amended by adding a new section to article 11 to read:

Sec. 38.05.800. RECONSTITUTION AND ADMINISTRATION OF MENTAL HEALTH LAND TRUST. (a) The commissioner of natural resources, under procedures approved by the interim mental health trust commission, shall determine the fair market value, as of the effective date of this section, of all land selected by and patented to the state under the Alaska Mental Health Enabling Act. The commissioner shall report the determination of that value to the board established under AS 47.30.661.

(b) The commissioner of natural resources, with the approval of the interim mental health trust commission, shall identify land within legislative designations that is equal in value to all land selected by and patented to the state under sec. 202 of the Alaska Mental Health Enabling Act that is not in legislative designations.

(c) All land selected by and patented to the state under the Alaska Mental Health Enabling Act that is within legislative designations, together with all land identified by the commissioner under (b) of this section, constitutes the corpus of the mental health land trust.

(d) Upon reconstitution of the trust under this subsection, land selected by and patented to the state under sec. 202 of the Alaska Mental Health Enabling Act that is not within legislative designations is removed from trust status.

(e) The land within legislative designations that constitutes the mental health land trust shall continue to be administered for the legislatively designated purposes. The trust shall be compensated for the continued use of the mental health trust land for the legislatively designated purposes as provided in AS 37.14.011.

(f) Before the state may remove land that is part of the mental health trust corpus from trust status, and in addition to any other requirements of law, the commissioner of natural resources, consistent with the state's trust responsibilities, shall identify replacement land, equal in value at the time of replacement, within legislative designations and incorporate them into the mental health trust corpus. The commissioner of natural resources annually shall report any actions under this subsection to the board established under AS 47.30.661.

* Sec. 5. AS 39.25.120(c)(9) is amended by adding a new subparagraph to read:

(L) Alaska Mental Health Board;

* Sec. 6. AS 47.30 is amended by adding new sections to read:

Sec. 47.30.661. ALASKA MENTAL HEALTH BOARD. The Alaska Mental Health Board is established. For budgetary purposes, the board is located within the Department of Health and Social Services. The board is the state planning and coordinating agency for the purposes of federal and state laws relating to the mental health program of the state. The purpose of the board is to assist the state in ensuring an integrated comprehensive mental health program.

Sec. 47.30.662. COMPOSITION. (a) The board consists of the commissioner of health and social services, or the commissioner's designee, and not fewer than nine nor more than 12 other members, appointed by the governor, with due regard for population and balanced geographic representation of the state.

(b) At least one-third of the members shall be consumers of mental health services, or parents or guardians of consumers.

(c) At least one-third of the members shall be either public or private providers of mental health services.

(d) The remaining members shall be representatives of the public at large.

Sec. 47.30.663. TERM OF OFFICE. (a) Board members serve staggered terms of three years.

(b) A vacancy occurring in the membership of the board shall be filled by appointment of the governor for the unexpired portion of the vacated term.

(c) Members may be removed only for cause, including, but not limited to, poor attendance or lack of contribution to the board's work.

Sec. 47.30.664. OFFICERS AND STAFF. (a) The board, by a majority of its membership, shall annually elect a chair and other officers it considers necessary from among its membership.

(b) The board will have a paid staff provided by the Department of Health and Social Services, including, but not limited to, an executive director who shall be selected by the board from candidates provided by the department. The executive director is in the partially exempt service and may hire additional employees in the classified service of the state. The executive director and the staff of the board shall be directly responsible to the board in the performance of their duties.

Sec. 47.30.665. BYLAWS. The board, on approval of a majority of its membership and consistent with state law, shall adopt and amend bylaws governing its composition, proceedings, and other activities consistent with state law and including, but not limited to, provisions concerning a quorum to transact board business and other aspects of procedure, frequency and location of meetings, and establishment, functions, and membership of committees.

Sec. 47.30.666. POWERS, DUTIES, AND RESPONSIBILITIES OF THE BOARD. The board shall

(1) measure the extent of the mental health need and, as necessary, conduct independent studies, evaluate the statewide mental health information system, and review the current mental health program of the state;

(2) provide a public forum for discussion of issues regarding current and potential services to persons served by the mental health program of the state;

(3) determine the needs, including those currently unmet, of the persons to be served by the mental health program of the state;

(4) 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, from the Department of Revenue regarding allocations to the mental health income account, and from other departments regarding the current and projected revenue for the support of the mental health program of the state;

(5) subject to disclosure restrictions imposed by state or federal confidentiality or privacy laws, have access to information in the possession of state agencies;

(6) in conjunction with the Department of Health and Social Services, prepare and annually update a long-term comprehensive state mental health plan, to include the projected need and the services, facilities, and resources for the mental health program of the state to meet that need;

(7) in conjunction with the Department of Health and Social Services, develop, prepare, adopt, and periodically review and revise as necessary an annual state implementation plan to meet the needs of persons served by the mental health program of the state;

(8) in conjunction with the Department of Health and Social Services, and before developing the annual state implementation plan, evaluate the effectiveness of the prior year's implementation plan and evaluate program performance and recommend improvements, set priorities, and establish criteria to utilize in funding allocations;

(9) report at least annually to the legislature, governor, and commissioner of health and social services, and meet with appropriate legislative committees, concerning the board's activities, including its evaluation of the effectiveness of the prior year's implementation plan, and its recommendations to meet the necessary operating and capital expenses of the mental health program of the state;

(10) serve as an advocate before the executive and legislative branches of government and the public on behalf of those served by the mental health program of the state;

(11) discourage duplication of services and promote efficient and coordinated use of federal, state, and private resources in the provision of mental health services; and

(12) review applicable statutes, regulations, and policies and recommend appropriate changes.

Sec. 47.30.669. DEFINITION. In AS 47.30.661 - 47.30.669, "board" means the Alaska Mental Health Board established in AS 47.30.661.

* Sec. 7. Section 1(b), ch. 132, SLA 1986, is amended to read:

(b) The commission established under (a) of this section consists of three FIVE members, including the commissioner of natural resources, or the commissioner's designee AND THE COMMISSIONER OF HEALTH AND SOCIAL SERVICES, OR THEIR DESIGNEES, and two THREE members and two THREE alternates APPOINTED BY THE GOVERNOR as follows:

(1) a member and an alternate representing the plaintiffs who were, appointed by the governor from a list of three names submitted to the governor by the plaintiffs in Weiss v. State, 4 FA 82-2208 Civil;

(2) a member and an alternate representing the intervenors who were , appointed by the governor from a list of three names submitted to the governor by the intervenors in Weiss v. State, 4 FA 82-2208 Civil ; AND

(3) A MEMBER AND AN ALTERNATE REPRESENTING THE GOVERNOR'S MENTAL HEALTH ADVISORY COUNCIL, APPOINTED BY THE GOVERNOR FROM A LIST OF THREE NAMES SUBMITTED TO THE GOVERNOR BY THE GOVERNOR'S MENTAL HEALTH ADVISORY COUNCIL .

* Sec. 8. Section 1(c), ch. 132, SLA 1986, is amended to read:

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

* Sec. 9. Section 2, ch. 132, SLA 1986, is repealed and reenacted to read:

Sec. 2. RESPONSIBILITIES OF THE COMMISSIONER OF NATURAL RESOURCES AND THE COMMISSION. (a) The commission shall review procedures proposed by the commissioner of natural resources to determine the fair market value, as of the effective date of AS 38.05.800, of all land selected by and patented to the state under sec. 202 of the Alaska Mental Health Enabling Act, and review the final determination of the fair market value determined under those procedures.

(b) The commission shall review the identification by the commissioner of natural resources under AS 38.05.800 of land within legislative designations that is equal in value to all land selected by and patented to the state under sec. 202 of the Alaska Mental Health Enabling Act that is not in legislative designations.

(c) In the exercise of the commission's responsibilities under this section, the commission and its staff may review the records of the Department of Natural Resources that are made confidential by law or regulation. An individual who acquires information made confidential by law or regulation in the performance of functions authorized by this Act and discloses it without proper authority violates AS 11.56.860.

(d) The commissioner of natural resources is responsible for the management of the mental health land of the state as a public trust under P.L. 84-830, 70 Stat. 709. Except as provided in (e) of this section, the commissioner of natural resources may not sell, lease, or exchange mental health trust land of the state or an interest in the mental health trust land of the state without the prior approval of the commission. In reviewing a proposal for the sale, lease, or exchange of mental health trust land from the commissioner of natural resources, the commission may approve the proposal of the commissioner on its determination that the proposal is consistent with the terms of the trust established by the Alaska Mental Health Enabling Act.

(e) The commissioner of natural resources may transfer trust land to the federal government under AS 38.05.035(b)(9) without approval of the commission. The commissioner of natural resources shall advise the commission of an intention to transfer trust land to the federal government and, after the transfer, shall make every effort to acquire replacement land to fulfill the state's remaining entitlement based on a prioritization, approved by the commission, of existing valid mental health selections.

* Sec. 10. Section 6, ch. 132, SLA 1986, is repealed and reenacted to read:

Sec. 6. This Act is repealed on the certification of the commissioner of natural resources that the mental health land trust has been reconstituted under AS 38.05.800 to

(1) the Alaska Mental Health Board established under AS 47.30.661;

(2) the lieutenant governor; and

(3) the revisor of statutes.

* Sec. 11. TRANSITIONAL PROVISIONS. Beginning with fiscal year 1989 and continuing until the commissioner of natural resources certifies to the commissioner of revenue that the mental health land trust has been reconstituted under AS 38.05.800, as enacted in sec. 4 of this Act, the commissioner of revenue shall annually allocate from the general fund of the state to the mental health trust income account in the general fund an amount equal to five percent of the unrestricted revenue of the state for the fiscal year.

* Sec. 12. Notwithstanding AS 47.30.663(a), as added by sec. 6 of this Act, of the initial appointees to the Alaska Mental Health Board appointed under AS 47.30.662, as added by sec. 6 of this Act, one-third shall serve for one year terms, one-third shall serve for two year terms, and one-third for three year terms.

* Sec. 13. AS 37.14.010, 37.14.020, 37.14.030, 37.14.040, 37.14.050; AS 47.30.605; and sec. 3, ch. 132, SLA 1986, are repealed.

* Sec. 14. Sections 7 - 10 of this Act take effect July 1, 1987.