

SENATE CS FOR CS FOR HOUSE BILL NO. 428(L&C)

IN THE LEGISLATURE OF THE STATE OF ALASKA

NINETEENTH LEGISLATURE - SECOND SESSION

BY THE SENATE LABOR AND COMMERCE COMMITTEE

Offered: 4/24/96
Referred: Finance

Sponsor(s): HOUSE FINANCE COMMITTEE

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to the authority of the Department of Corrections to contract
2 for facilities for the confinement and care of prisoners, and annulling a
3 regulation of the Department of Corrections that limits the purposes for which
4 an agreement with a private agency may be entered into; and giving notice of
5 and approving a lease-purchase agreement for the design, construction, and
6 operation of a correctional facility, and setting conditions and limitations on the
7 facility's design, construction, and operation."

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

9 * Section 1. AS 33.30.031(a) is amended to read:

10 (a) The commissioner shall determine the availability of state correctional
11 facilities suitable for the detention and confinement of persons held under authority of
12 state law or under agreement entered into under (e) of this section. If the
13 commissioner determines that suitable state correctional facilities are not available, the

1 commissioner may enter into an agreement with a public or private agency to provide
2 necessary facilities, **subject to the following:**

3 **(1) the commissioner may not enter into an agreement with a**
4 **public or private agency that is unable to provide a degree of custody, care, and**
5 **discipline to the extent required by the laws of this state;**

6 **(2) correctional** [. CORRECTIONAL] facilities provided through
7 agreement with a public agency for the detention and confinement of persons held
8 under authority of state law may be in this state or in another state;

9 **(3) correctional** [. CORRECTIONAL] facilities provided through
10 agreement with a private agency

11 **(A)** must be located in this state unless the commissioner finds
12 in writing that

13 **(i)** [(1)] there is no other reasonable alternative for
14 detention in the state; and

15 **(ii)** [(2)] the agreement is necessary because of health
16 or security considerations involving a particular prisoner or class of
17 prisoners, or because an emergency of prisoner overcrowding is
18 imminent;

19 **(B) may provide for the detention and confinement of all**
20 **persons held by the commissioner under authority of state law, whether**
21 **charged with or convicted of felonies or misdemeanors, without regard to**
22 **the custody classifications for prisoners as determined by the**
23 **commissioner, unless the security of the facility is inconsistent with those**
24 **custody classifications; and**

25 **(C) may not by regulation be restricted or limited by the**
26 **commissioner to use only for prisoners involved in certain rehabilitative or**
27 **treatment programs authorized by law.** [THE COMMISSIONER MAY
28 NOT ENTER INTO AN AGREEMENT WITH AN AGENCY UNABLE TO
29 PROVIDE A DEGREE OF CUSTODY, CARE, AND DISCIPLINE SIMILAR
30 TO THAT REQUIRED BY THE LAWS OF THIS STATE.]

31 * Sec. 2. NOTICE AND APPROVAL OF LEASE-PURCHASE AGREEMENT. (a) To

1 provide for the design, construction, and operation of a new correctional facility in order to
2 relieve overcrowding of existing correctional facilities, the Department of Administration, on
3 behalf of the Department of Corrections, may enter into a lease-purchase agreement under
4 AS 33.30.031 for the design, construction, and operation of a correctional facility that will
5 house persons who are committed to the custody of the commissioner of corrections. The
6 project approval given by this subsection is subject to the conditions of (b), (c) and (d) of this
7 section and to the following limitations:

8 (1) the total construction and related costs of establishing the correctional
9 facility may not exceed \$100,000,000;

10 (2) the total lease payments for the full term of the agreement may not exceed
11 \$200,000,000 and the anticipated annual amount of the rental obligation to be paid by the
12 Department of Corrections under the lease must be reasonably commensurate with that total;
13 and

14 (3) at the end of the term of the lease-purchase agreement, the state shall own
15 the correctional facility.

16 (b) The correctional facility to be designed, constructed, and operated under the notice
17 and approval given in (a) of this section

18 (1) must be designed and constructed so as to house, in separate housing,
19 female prisoners and male prisoners;

20 (2) must be operated to provide a degree of custody, care, and discipline to the
21 extent required by the laws of this state, including the standards of custody, care, and
22 discipline that are required by order of a court;

23 (3) may not contain a total population of more than 1,000 prisoners, but must
24 be designed and constructed so as to allow expansion of the facility to a greater capacity; and

25 (4) may not be operated by the state except temporarily when
26 (A) the private third-party contractor with whom the state has entered
27 into an agreement to operate defaults in performance under the contract and state
28 operation is reasonably necessary to ensure the facility's continued operation; or

29 (B) the state is unable to contract with a private third-party contractor.

30 (c) The lease-purchase agreement entered into under this section shall provide for

31 (1) an agreement under which the correctional facility is designed, constructed,

1 and, except for services to prisoners described in (2) of this subsection, operated by a private
2 third-party contractor; the agreement described in this subsection is made for the purpose of
3 acquiring, improving, and maintaining the correctional facility structure under
4 AS 36.30.085(b), and is exclusive of one or more contracts for the custody, care, and
5 discipline of prisoners housed in the facility as may be authorized by AS 33.30.031(a)(1) and
6 (3);

7 (2) an agreement, separate from the agreement described in (1) of this
8 subsection, under which a private third-party contractor or agency operates the facility by
9 providing for custody, care, and discipline services for persons held by the commissioner of
10 corrections under authority of state law; the operating agreement described in this paragraph
11 shall

12 (A) for its initial period, not to exceed five years, be entered into with
13 a private third-party contractor that is the same person as the third-party contractor
14 described in (1) of this subsection; and

15 (B) for the duration of the period of the lease-purchase agreement, be
16 rebid or reoffered at intervals of not more than five years and may be entered into with
17 a contractor or agency other than the person described in (A) of this paragraph.

18 (d) In the evaluation of a bid submitted to construct and operate the correctional
19 facility described in this section, the Department of Administration may provide incentive to
20 the maker of a bid that pledges to employ state residents as far as practicable.

21 (e) If required by the commissioner of corrections as a condition of the correctional
22 facility's operation, in the award of a contract for the operation of the correctional facility to
23 be designed, constructed, and operated under the notice and approval given in (a) of this
24 section, the Department of Administration shall require that persons employed by the
25 contractor as correctional officers in the facility meet the requirements of AS 18.65.130 -
26 18.65.290 that are applicable to correctional officers.

27 (f) In the award of a contract for the operation of the correctional facility to be
28 constructed and operated under the notice and approval given in (a) of this section, the
29 Department of Administration shall require the contractor to seek, obtain, and maintain
30 accreditation of the correctional facility by the American Correctional Association.

31 (g) Subsection (a) of this section constitutes the notice and approval required by

1 AS 36.30.085.

2 * **Sec. 3.** CONSTRUCTION OF CORRECTIONAL FACILITY UNDER PROJECT
3 LABOR AGREEMENT. (a) The purpose of this section is to enable the state to meet its
4 obligation to improve the care and custody of the prisoners for which it is responsible at an
5 early date through the completion of construction of a major correctional facility by structuring
6 labor relations at the job site of the correctional facility in the interests of industrial harmony
7 and in a way that makes optimal use of construction resources.

8 (b) Notwithstanding any restrictions that may be applicable under AS 36.30, the
9 correctional facility described in sec. 2 of this Act may be constructed only under a public
10 construction project labor agreement between the building construction contractor and one or
11 more building trade unions; the labor agreement must provide

12 (1) a no-strike and no-slowdown pledge by the union or unions;

13 (2) a commitment on the part of the construction contractor to hire through
14 local union hiring halls; and

15 (3) a provision allowing not more than 15 percent of the construction
16 contractor's workforce on the public construction project to be composed of persons who are
17 not members of the union or unions.

18 * **Sec. 4.** Nothing in sec. 2 of this Act precludes operation of the correctional facility
19 described in sec. 2(a) of this Act by a private third-party contractor comprised of persons who
20 are members of labor organizations.

21 * **Sec. 5.** 22 AAC 05.300(e) is annulled.