

HOUSE BILL NO. 53

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTIETH LEGISLATURE - FIRST SESSION

BY REPRESENTATIVE MULDER

Introduced: 1/13/97

Referred: State Affairs, Finance

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 regulation
3 of the Department of Corrections that limits the purposes for which an agreement
4 with a private agency may be entered into; authorizing an agreement by which
5 the Department of Corrections may, for the benefit of the state, enter into one
6 lease of, or similar agreement to use, space within a correctional facility that is
7 operated by a private contractor, and setting conditions on the operation of the
8 correctional facility affected by the lease or use agreement; and giving notice of
9 and approving a lease-purchase agreement or similar use-purchase agreement for
10 the design, construction, and operation of a correctional facility, and setting
11 conditions and limitations on the facility's design, construction, and operation."

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

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

2 (a) The commissioner shall determine the availability of state correctional
3 facilities suitable for the detention and confinement of persons held under authority of
4 state law or under agreement entered into under (e) of this section. If the
5 commissioner determines that suitable state correctional facilities are not available, the
6 commissioner may enter into an agreement with a public or private agency to provide
7 necessary facilities, **subject to the following:**

8 **(1) the commissioner may not enter into an agreement with an**
9 **agency that is unable to provide a degree of custody, care, and discipline to the**
10 **extent required by the laws of this state;**

11 **(2) correctional** [. CORRECTIONAL] facilities provided through
12 agreement with **an** [A PUBLIC] agency for the detention and confinement of persons
13 held under authority of state law may be in this state or in another state;

14 **(3) correctional** [. CORRECTIONAL] facilities provided through
15 agreement with **an** [A PRIVATE] agency

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

22 **(B) may not by regulation be restricted or limited by the**
23 **commissioner to use only for prisoners involved in certain rehabilitative or**
24 **treatment programs authorized by law** [MUST BE LOCATED IN THIS
25 STATE UNLESS THE COMMISSIONER FINDS IN WRITING THAT (1)
26 THERE IS NO OTHER REASONABLE ALTERNATIVE FOR DETENTION
27 IN THE STATE; AND (2) THE AGREEMENT IS NECESSARY BECAUSE
28 OF HEALTH OR SECURITY CONSIDERATIONS INVOLVING A
29 PARTICULAR PRISONER OR CLASS OF PRISONERS, OR BECAUSE AN
30 EMERGENCY OF PRISONER OVERCROWDING IS IMMINENT. THE
31 COMMISSIONER MAY NOT ENTER INTO AN AGREEMENT WITH AN

1 AGENCY UNABLE TO PROVIDE A DEGREE OF CUSTODY, CARE, AND
2 DISCIPLINE SIMILAR TO THAT REQUIRED BY THE LAWS OF THIS
3 STATE].

4 * **Sec. 2.** AS 33.30 is amended by adding a new section to article 1 to read:

5 **Sec. 33.30.043. Lease of or agreement to use space within municipal**
6 **correctional facility.** (a) If the commissioner determines that it would be in the best
7 interest of the state, the commissioner may enter into an agreement with a municipality
8 of the state for the lease by the state of a correctional facility or a part of it or for the
9 use and operation of a correctional facility or a part of it for the benefit of the state.

10 (b) An agreement executed by the commissioner under (a) of this section must
11 provide that

12 (1) the state has the right to detain or confine a prisoner held under
13 authority of law in the correctional facility;

14 (2) the administrator of the correctional facility agrees to implement an
15 order concerning a prisoner issued by a court of the state;

16 (3) the administrator of the correctional facility shall comply with the
17 law and with regulations adopted by the commissioner relating to the custody, care,
18 and discipline of a prisoner detained or confined in the correctional facility; and

19 (4) the commissioner may inspect the correctional facility at any time
20 to determine the conditions under which a prisoner is detained or confined.

21 (c) The agreement executed by the commissioner under (a) of this section may
22 require the administrator of the correctional facility to comply with requirements that
23 the commissioner considers necessary for the protection of the public or for the quality
24 of care and programs for prisoners required by this chapter and regulations adopted by
25 the commissioner.

26 * **Sec. 3. AUTHORIZATION TO LEASE, OR FOR USE OF, CORRECTIONAL**
27 **FACILITY SPACE WITH THIRD-PARTY CONTRACTOR OPERATION.** (a) To relieve
28 overcrowding of existing correctional facilities, the Department of Corrections may enter into
29 no more than one agreement to lease space or for use of space within a correctional facility
30 that will house persons who are committed to the custody of the commissioner of corrections.
31 The agreement to lease or for use entered into under this section is predicated upon and must

1 provide for an agreement under which a private third-party contractor operates the facility by
2 providing for custody, care, and discipline services for persons held by the commissioner of
3 corrections under authority of state law.

4 (b) The authorization given by (a) of this section is subject to the conditions of (c)
5 - (e) of this section and to the further limitation that the total payments for the full term of
6 the agreement to lease or for use may not exceed \$150,000,000 and the anticipated annual
7 amount of the rental obligation to be paid by the Department of Corrections under the
8 agreement to lease or for use must be reasonably commensurate with that total.

9 (c) A lease of space or agreement for use of space authorized by (a) of this section
10 may not involve a correctional facility that

11 (1) contains a total population of less than 500 or more than 800 prisoners; or

12 (2) is to be operated by the state or a municipality except that the state or a
13 municipality may operate the correctional facility temporarily if, in a correctional facility that
14 is to be operated by a third-party contractor with whom the state or a municipality has entered
15 into an agreement to operate the correctional facility, the private third-party contractor with
16 whom the state or a municipality has entered into the agreement to operate the correctional
17 facility defaults in performance under the contract and operation of the correctional facility
18 by the state or the municipality is reasonably necessary to ensure the facility's continued
19 operation.

20 (d) If required by the commissioner of corrections as a condition of the correctional
21 facility's operation, in the award of a contract for the operation of the correctional facility to
22 be operated under the authorization set out in (a) of this section, the Department of
23 Corrections shall require that persons employed by the contractor as correctional officers in
24 the facility meet the requirements of AS 18.65.130 - 18.65.290 that are applicable to
25 correctional officers.

26 (e) The Department of Corrections may not, under this section, enter into an
27 agreement to lease space or for the use of space in a correctional facility if, under sec. 4 of
28 this Act, the Department of Administration, on behalf of the Department of Corrections, enters
29 into a lease-purchase agreement, use-purchase agreement, or other agreement to use a facility
30 that has a nominal purchase option.

31 * **Sec. 4. NOTICE AND APPROVAL OF LEASE-PURCHASE AGREEMENT OR**

1 SIMILAR USE-PURCHASE AGREEMENT. (a) To provide for the design, construction, and
2 operation of a new correctional facility in order to relieve overcrowding of existing
3 correctional facilities, the Department of Administration, on behalf of the Department of
4 Corrections, may enter into an agreement under AS 33.30.031, in the form of a lease-purchase
5 agreement, use-purchase agreement, or other agreement to use a facility that has a nominal
6 purchase option, for the design, construction, and operation of a correctional facility that will
7 house persons who are committed to the custody of the commissioner of corrections. The
8 project approval given by this subsection is subject to the conditions of (b) - (e) and (g) of
9 this section and to the following limitations:

10 (1) the anticipated total construction, acquisition, and related costs of
11 establishing the correctional facility may not exceed \$90,000,000;

12 (2) the total lease or use payments for the full term of the agreement may not
13 exceed \$180,000,000 and the anticipated annual amount of the rental obligation to be paid by
14 the Department of Corrections under the lease or use agreement must be reasonably
15 commensurate with that total; and

16 (3) at the end of the term of the lease-purchase agreement or use-purchase
17 agreement, the state shall own the correctional facility.

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

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

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

24 (3) may not be operated by the state except temporarily when

25 (A) the private third-party contractor with whom the state has entered
26 into an agreement to operate defaults in performance under the contract and state
27 operation is reasonably necessary to ensure the facility's continued operation; or

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

29 (c) The lease-purchase or use-purchase agreement entered into under this section must
30 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 AS 36.30.085,
4 and is exclusive of one or more agreements for the custody, care, and discipline of prisoners
5 housed in the facility as may be authorized by AS 33.30.031(a)(1) and (3);

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

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

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

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

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

26 (f) Subsection (a) of this section constitutes the notice and approval required by
27 AS 36.30.085.

28 (g) The Department of Administration, on behalf of the Department of Corrections,
29 may not, under this section, enter into a lease-purchase agreement, use-purchase agreement,
30 or other agreement to use a facility that has a nominal purchase option if, under sec. 3 of this
31 Act, the Department of Corrections enters into an agreement to lease space or for the use of

1 space in a correctional facility.

2 * **Sec. 5.** 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. 4 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. 6.** 22 AAC 05.300(e) is annulled.