

CS FOR HOUSE BILL NO. 53(JUD)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTIETH LEGISLATURE - FIRST SESSION

BY THE HOUSE JUDICIARY COMMITTEE

Offered: 4/4/97

Referred: Finance

Sponsor(s): REPRESENTATIVE MULDER

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 unless the agency demonstrates the qualifications and experience necessary**
10 **to provide a degree of custody, care, and discipline to the extent required by the**
11 **laws of this state;**

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

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

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

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

1 COMMISSIONER MAY NOT ENTER INTO AN AGREEMENT WITH AN
 2 AGENCY UNABLE TO PROVIDE A DEGREE OF CUSTODY, CARE, AND
 3 DISCIPLINE SIMILAR TO THAT REQUIRED BY THE LAWS OF THIS
 4 STATE].

5 * **Sec. 2.** AS 33.30.031(c) is amended to read:

6 (c) An [NOTWITHSTANDING AS 36.30.300, AN] agreement with a private
 7 agency to provide necessary facilities under (a) of this section must, **notwithstanding**
 8 **AS 36.30.300**, be based on competitive bids. **The commissioner may not enter into**
 9 **an agreement with a private agency to provide necessary facilities in this state**
 10 **unless the agency**

11 **(1) posts an adequate performance bond and payment bond;**

12 **(2) demonstrates to the commissioner's satisfaction the capability**
 13 **to provide the necessary qualified personnel to implement the terms of the**
 14 **contract; and**

15 **(3) provides a bond or certificate of insurance sufficient to defend**
 16 **and indemnify the state and a municipality in which the facility is located against**
 17 **claims or liability arising from the operation of correctional facilities by the**
 18 **contractor.**

19 * **Sec. 3.** AS 33.30.031 is amended by adding new subsections to read:

20 (f) The commissioner may not enter into an agreement to provide necessary
 21 facilities under (a) of this section as a correctional facility that is to be constructed in this
 22 state after the effective date of this Act unless the commissioner initiates and completes
 23 a site selection process. The site selection process must provide the public reasonable
 24 opportunity to comment about sites to be considered for the location of the correctional
 25 facility. In addition, if, on the basis of the site selection process, the commissioner
 26 determines to enter into an agreement to contract for provision of necessary facilities at
 27 a correctional facility that is to be located at a site within a municipality of the state, the
 28 correctional facility may not be constructed at the site unless approved by a majority of
 29 the voters within the "affected area" at an election conducted by the municipality. In this
 30 subsection, "affected area" means the area within two miles of the external perimeter of
 31 the proposed correctional facility.

32 (g) In conducting the site selection process required by (f) of this section, the

1 commissioner may solicit proposals from private entities by publishing a request for
2 proposal in a newspaper of general circulation. The commissioner shall accept proposals
3 for six months after initial publication of the request for proposals. Each proposal shall
4 certify in a manner prescribed by the commissioner that

5 (1) the facility to be constructed will meet the department's requirements
6 as described by the commissioner in the request for proposals or other documents;

7 (2) the facility will be operated at a cost to the state below the state's
8 cost to operate a comparable facility, that cost to be described by the commissioner in
9 the request for proposals or other documents; and

10 (3) the entity submitting the proposal owns or has an option to buy at a
11 fixed cost the land on which the proposed facility would be located, and the entity agrees
12 that the state may purchase the land at a price fixed at the time of entering into the
13 contract if the state assumes ownership or control of the facility under a statute or
14 provision of contract.

15 (h) In order for the certification of compliance with (g) of this section to be
16 valid, the approval process must meet the following requirements:

17 (1) not more than one month after initial publication of the request for
18 proposals, the private entity shall publish in a newspaper of general circulation notice of
19 intent to make a proposal, including a description of the location to be proposed;

20 (2) not more than one month after initial publication of the request for
21 proposals, the private entity shall deliver by certified mail to all voters residing within
22 two miles of the proposed site notice of intent to make a proposal, including a
23 description of the location to be proposed;

24 (3) at least three months prior to the bid closure date published on the
25 request for proposals, the municipality of the state conducting the election shall at the
26 expense of the entity deliver by certified mail to all voters residing within two miles of
27 the proposed site a mail-in ballot approved by the commissioner that voters may use to
28 signify approval of the proposed site; and

29 (4) the approval process may not last more than three months from the
30 mailing of the ballots and indication of approval may not be counted after the close of
31 this period.

32 (i) If the proposed site lies within the boundaries of a municipality of the state,

1 the entity making the proposal may, at the expense of the entity, contract with the
 2 administrator of the municipality to count ballots prepared under (h) of this section,
 3 publish the results in a newspaper of general circulation, and make all ballots received
 4 available for inspection by parties with reasonable interest in the proposal. The entity
 5 making the proposal shall pay for the cost to count the ballots, publish the results in a
 6 newspaper of general circulation, and make all ballots received available for inspection
 7 by parties with reasonable interest in the proposal.

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

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

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

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

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

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

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

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

30 * **Sec. 5. AUTHORIZATION TO LEASE, OR FOR USE OF, CORRECTIONAL**
 31 **FACILITY SPACE WITH THIRD-PARTY CONTRACTOR OPERATION.** (a) To relieve
 32 overcrowding of existing correctional facilities, the Department of Corrections may enter into

1 no more than one agreement to lease space or for use of space within a correctional facility
2 that will house persons who are committed to the custody of the commissioner of corrections.
3 The agreement to lease or for use entered into under this section is predicated upon and must
4 provide for an agreement under which a private third-party contractor operates the facility by
5 providing for custody, care, and discipline services for persons held by the commissioner of
6 corrections under authority of state law.

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

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

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

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

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

29 (e) The Department of Corrections may not, under this section, enter into an
30 agreement to lease space or for the use of space in a correctional facility if, under sec. 6 of
31 this Act, the Department of Administration, on behalf of the Department of Corrections, enters

1 into a lease-purchase agreement, use-purchase agreement, or other agreement to use a facility
2 that has a nominal purchase option.

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

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

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

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

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

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

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

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

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

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

1 (c) The lease-purchase or use-purchase agreement entered into under this section must
2 provide for

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

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

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

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

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

23 (e) If required by the commissioner of corrections as a condition of the correctional
24 facility's operation, in the award of a contract for the operation of the correctional facility to
25 be designed, constructed, and operated under the notice and approval given in (a) of this
26 section, the Department of Administration shall require that persons employed by the
27 contractor as correctional officers in the facility meet the requirements of AS 18.65.130 -
28 18.65.290 that are applicable to correctional officers.

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

31 (g) The Department of Administration, on behalf of the Department of Corrections,

1 may not, under this section, enter into a lease-purchase agreement, use-purchase agreement,
2 or other agreement to use a facility that has a nominal purchase option if, under sec. 5 of this
3 Act, the Department of Corrections enters into an agreement to lease space or for the use of
4 space in a correctional facility.

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

11 (b) Notwithstanding any restrictions that may be applicable under AS 36.30, the
12 correctional facility described in sec. 6 of this Act may be constructed only under a public
13 construction project labor agreement between the building construction contractor and one or
14 more building trade unions; the labor agreement must provide

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

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

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

21 * **Sec. 8.** 22 AAC 05.300(e) is annulled.

22 * **Sec. 9. APPLICABILITY.** The provisions of AS 33.30.031(f), added by sec. 3 of this
23 Act, do not apply to construction within the perimeters of correctional facilities, as that term
24 is defined in AS 33.30.901, that are in existence on the effective date of this Act.