

**CS FOR HOUSE BILL NO. 498(FIN)**

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-SECOND LEGISLATURE - SECOND SESSION

BY THE HOUSE FINANCE COMMITTEE

Offered: 4/22/02

Referred: Rules

Sponsor(s): HOUSE FINANCE COMMITTEE

**A BILL**

**FOR AN ACT ENTITLED**

1 **"An Act expressing legislative intent regarding privately operated correctional facility**  
2 **space and services; relating to the development and financing of privately operated**  
3 **correctional facility space and services; authorizing the Department of Corrections to**  
4 **enter into an agreement for the confinement and care of prisoners in privately operated**  
5 **correctional facility space in the City of Whittier; giving notice of and approving the**  
6 **entry into and the issuance of certificates of participation for the upgrade, expansion,**  
7 **and replacement of a certain correctional facility in the City of Bethel; giving notice of**  
8 **and approving the entry into lease-financing agreements for that project; and providing**  
9 **for an effective date."**

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

11 \* **Section 1.** The uncodified law of the State of Alaska is amended by adding a new section  
12 to read:

1           LEGISLATIVE INTENT. It is the intent of the legislature in secs. 2 - 3 to secure  
 2 additional correctional facility space and services through a privately operated correctional  
 3 facility in Alaska. The legislature expects the Department of Corrections to contract with the  
 4 City of Whittier for privately operated correctional facility space and services similar to those  
 5 currently acquired for medium-security Alaska prisoners in a privately operated prison outside  
 6 the state. The legislature anticipates a privately operated correctional facility will bring  
 7 competitive management styles and operations to Alaska. The legislature expects that the  
 8 initial per diem cost at a privately operated facility (excluding costs related to major medical,  
 9 prescription medication, and transportation of prisoners and other services excluded in  
 10 contracts for Alaska prisoner care and custody in privately operated facilities outside the state  
 11 but including the capital costs for construction of the facility, including debt service) will be  
 12 18 - 20 percent less than the current average per diem rate for all state facilities as reported to  
 13 the federal government for reimbursement purposes and should be approximately \$89 to \$91  
 14 in current dollars.

15       \* **Sec. 2.** The uncodified law of the State of Alaska is amended by adding a new section to  
 16 read:

17           **AUTHORIZATION TO CONTRACT FOR CORRECTIONAL FACILITY SPACE**  
 18 **AND SERVICES WITH THIRD-PARTY CONTRACTOR OPERATION.** (a) The  
 19 Department of Corrections is authorized to enter into an agreement with the City of Whittier  
 20 for the purpose of acquiring correctional facility space and services for a minimum of 25  
 21 years for persons who are committed to the custody of the commissioner of corrections.

22           (b) The agreement entered into under this section is predicated on and must provide  
 23 for an agreement between the City of Whittier and one or more private third-party contractors  
 24 under which private, for profit or nonprofit third-party contractors construct and operate the  
 25 facility by providing for custody, care, and discipline services for persons committed to the  
 26 custody of the commissioner of corrections under authority of state law. In the agreement  
 27 with the City of Whittier, the commissioner of corrections shall require that the city procure  
 28 one or more private third-party operators through a competitive procurement process. The  
 29 procurement requirements of this subsection are satisfied if the City of Whittier in exercising  
 30 its powers under AS 29.35.010(15) for procurement of land, design, construction, and  
 31 operation of a facility, follows its municipal ordinances and resolutions and procurement

1 procedures.

2 (c) The authorization given by (a) of this section is subject to the following  
3 conditions:

4 (1) the agreement must cover a minimum of 1,000 prison beds, and, subject to  
5 (2) of this subsection, the payments by the Department of Corrections must be sufficient to  
6 cover:

7 (A) a capital component consisting of the cost for the development and  
8 constructions of the facility, including all debt service; and

9 (B) an operating component consisting of the operating costs based on  
10 per diem operating charges for a minimum of 1,000 prison beds; for a period of five  
11 years from initial operation of the facility the operating component must include a  
12 reasonable adjustment for costs not incurred until full occupancy;

13 (2) the agreement must provide that the obligation of the Department of  
14 Corrections to make payments under the agreement is subject to annual appropriations of  
15 funds by the legislature;

16 (3) the agreement must contain terms providing that the commissioner of  
17 corrections may direct the City of Whittier, after notice and reasonable opportunity to cure, to  
18 terminate its contract with a private third-party contractor operating the facility in accordance  
19 with the provisions of (b) of this section, and to procure a replacement third-party contractor,  
20 if the commissioner finds that the private third-party contractor has failed to provide or cause  
21 to be provided the degree of custody, care, and discipline required by terms of the agreement  
22 and that the private third-party contractor has been given notice and reasonable opportunity to  
23 cure as provided in the third-party contractor's agreement with the City of Whittier;

24 (4) the commissioner's authority to enter into the agreement is subject to the  
25 condition that the contract between the city and the operator requires the operator to provide  
26 culturally relevant counseling services to incarcerated Alaska Natives.

27 (d) Nothing in secs. 2 - 3 of this Act is intended to prevent the City of Whittier from  
28 issuing bonds as permitted for municipalities under state law, including AS 29.47.390, to  
29 finance the construction of the facility. The bonds may be secured by and payable from  
30 revenues of the facility, including those described in (c) of this section. Revenues of the  
31 facility are not revenues of the City of Whittier for purposes of AS 29.47.390.

1 \* **Sec. 3.** The uncodified law of the State of Alaska is amended by adding a new section to  
2 read:

3 APPLICABILITY. The provisions of AS 33.30.031(a) do not apply to an agreement  
4 for correctional facility space and services in accordance with the provisions of sec. 2 of this  
5 Act. This applicability section does not affect the authority of the commissioner of  
6 corrections to designate the correctional facility to which a prisoner is assigned.

7 \* **Sec. 4.** The uncodified law of the State of Alaska is amended by adding a new section to  
8 read:

9 NOTICE OF THE ISSUANCE OF CERTIFICATES OF PARTICIPATION AND  
10 OTHER FINANCING. (a) Subject to annual appropriation, the Department of  
11 Administration is authorized to enter into a lease-financing agreement for the project  
12 described in (e) of this section.

13 (b) The state bond committee is authorized to provide for the issuance of certificates  
14 of participation in one or more series in the aggregate principal amount of \$17,895,000, plus  
15 costs of required reserves and costs of issuance, to pay for the costs of upgrade and expansion  
16 and other costs of financing the project described in (e) of this section. The estimated total  
17 cost of construction, acquisition, and equipping the project is \$19,000,000, which shall be  
18 paid from the proceeds of the certificates of participation issued under this section. The  
19 estimated aggregate annual amount of rental obligations under the lease-financing agreements  
20 is \$1,700,000. The total payments for the full term of the certificates of participation are  
21 estimated to be \$25,500,000. In this subsection, "cost of construction" includes credit  
22 enhancement and underwriting expenses, rating agency fees, bond counsel fees, financial  
23 advisor fees, printing fees, trustee fees, advertising fees, capitalized interest, interest earnings  
24 used for lease payments, and other costs of issuance, and costs of required reserves.

25 (c) The state bond committee may contract for credit enhancement, underwriting,  
26 credit ratings, bond counsel, financial advisor, printing, advertising fees, and trustee services  
27 that the committee considers necessary in financing the project described in (e) of this section.

28 (d) The lease payments owed under a lease-financing agreement executed under this  
29 section are subject to annual appropriation by the legislature. The legislature intends that  
30 money from the general fund will be sufficient to make all lease payments; however, if that  
31 source of money is insufficient to make the payments, the payments shall be made from any

1 other valid source, subject to appropriation.

2 (e) The project that may be financed as provided for in this section and the estimated  
3 construction and other costs of financing the project, are as follows: expansion of the Yukon-  
4 Kuskokwim Correctional Center in Bethel by up to 96 new beds at costs not to exceed

5 (1) \$183,300 a bed;

6 (2) \$17,593,700 in capital costs; and

7 (3) \$5,682,000 in increased operating expenditures.

8 (f) This section constitutes the notice and approval of the project required by  
9 AS 36.30.085.

10 \* **Sec. 5.** Sections 1 - 3, ch. 32, SLA 2001, are repealed.

11 \* **Sec. 6.** The uncodified law of the State of Alaska is amended by adding a new section to  
12 read:

13 **CONDITIONAL EFFECT.** Section 4 of this Act takes effect only if construction  
14 begins on the private prison approved in secs. 1 - 3 of this Act.

15 \* **Sec. 7.** Sections 1 - 3 and 5 of this Act take effect July 1, 2002.

16 \* **Sec. 8.** Section 4 of this Act takes effect the day after the day that the revisor of statutes is  
17 notified by the commissioner of corrections that construction has begun on the private prison  
18 approved in secs. 1 - 3 of this Act.