

SENATE BILL NO. 2012

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-SECOND LEGISLATURE - SECOND SPECIAL SESSION

BY THE SENATE TRANSPORTATION COMMITTEE

Introduced: 5/20/02

Referred: Transportation, Finance

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

1 to read:

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

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

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

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

1 operation of a facility, follows its municipal ordinances and resolutions and procurement
2 procedures.

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

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

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

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

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

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

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

29 (d) Nothing in secs. 2 and 3 of this Act is intended to prevent the City of Whittier
30 from issuing bonds as permitted for municipalities under state law, including AS 29.47.390,
31 to finance the construction of the facility. The bonds may be secured by and payable from

1 revenues of the facility, including those described in (c) of this section. Revenues of the
2 facility are not revenues of the City of Whittier for purposes of AS 29.47.390.

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

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

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

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

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

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

30 (d) The lease payments owed under a lease-financing agreement executed under this
31 section are subject to annual appropriation by the legislature. The legislature intends that

1 money from the general fund will be sufficient to make all lease payments; however, if that
 2 source of money is insufficient to make the payments, the payments shall be made from any
 3 other valid source, subject to appropriation.

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

7 (1) \$183,300 a bed;

8 (2) \$17,593,700 in capital costs; and

9 (3) \$5,682,000 in increased operating expenditures.

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

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

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

15 OBLIGATION OF COMMISSIONER OF CORRECTIONS. The commissioner of
 16 corrections shall promptly notify the revisor of statutes that construction has begun on the
 17 private prison approved in secs. 1 - 3 of this Act.

18 * **Sec. 7.** Sections 1 - 3, 5, and 6 of this Act take effect July 1, 2002.

19 * **Sec. 8.** Section 4 of this Act takes effect the day after the day that the revisor of statutes is
 20 notified by the commissioner of corrections under sec. 6 of this Act.