

**ALASKA STATE LEGISLATURE**  
**HOUSE STATE AFFAIRS STANDING COMMITTEE**

February 28, 2002

8:08 a.m.

**MEMBERS PRESENT**

Representative John Coghill, Chair  
Representative Jeannette James  
Representative Hugh Fate  
Representative Gary Stevens  
Representative Peggy Wilson  
Representative Harry Crawford  
Representative Joe Hayes

**MEMBERS ABSENT**

All members present

**COMMITTEE CALENDAR**

HOUSE BILL NO. 314

"An Act relating to service in the peace corps as an allowable absence from the state for purposes of eligibility for permanent fund dividends; and providing for an effective date."

- MOVED CSHB 314(STA) OUT OF COMMITTEE

HOUSE BILL NO. 331

"An Act relating to appointment of persons to positions that require confirmation by the legislature; and providing for an effective date."

- HEARD AND HELD

HOUSE BILL NO. 498

"An Act expressing legislative intent regarding privately operated correctional facility space and services; relating to the development and financing of privately operated correctional facility space and services; authorizing the Department of Corrections to enter into an agreement for the confinement and care of prisoners in privately operated correctional facility space; and providing for an effective date."

- HEARD AND HELD

HOUSE BILL NO. 223

"An Act relating to the voluntary deduction of the amount of certain annual dues from retirement benefits."

- SCHEDULED BUT NOT HEARD

HOUSE BILL NO. 380

"An Act relating to reimbursement for certain Medicare premium charges for persons receiving benefits from the teachers' retirement system, the judicial retirement system, the elected public officers retirement system, and the public employees' retirement system."

- SCHEDULED BUT NOT HEARD

**PREVIOUS ACTION**

BILL: HB 314

SHORT TITLE: PFD ELIGIBILITY FOR PEACE CORP VOLUNTEERS

SPONSOR(S): REPRESENTATIVE(S) MCGUIRE, DAVIES

Jrn-Date	Jrn-Page		Action
01/14/02	1957	(H)	PREFILE RELEASED 1/11/02
01/14/02	1957	(H)	READ THE FIRST TIME - REFERRALS
01/14/02	1957	(H)	STA, FIN
01/28/02	2086	(H)	JOINT PRIME SPONSOR ADDED: DAVIES
02/07/02		(H)	STA AT 8:00 AM CAPITOL 102
02/07/02		(H)	Heard & Held
02/07/02		(H)	MINUTE(STA)
02/21/02		(H)	STA AT 8:00 AM CAPITOL 102
02/21/02		(H)	<Bill Postponed to 2/28/02>
02/22/02	2369	(H)	COSPONSOR(S): CROFT
02/28/02		(H)	STA AT 8:00 AM CAPITOL 102

BILL: HB 331

SHORT TITLE: PRESENTMENT OF GOVERNOR'S APPOINTEES

SPONSOR(S): REPRESENTATIVE(S) KOTT

Jrn-Date	Jrn-Page		Action
01/16/02	1981	(H)	READ THE FIRST TIME - REFERRALS
01/16/02	1981	(H)	STA
01/16/02	1981	(H)	REFERRED TO STATE AFFAIRS
02/05/02		(H)	STA AT 8:00 AM CAPITOL 102
02/05/02		(H)	<Bill Postponed to 2/12/02>
02/12/02		(H)	STA AT 8:00 AM BUTROVICH 205

02/12/02 (H) <Bill Postponed to 2/19/02> -  
 - Location Change --  
 02/19/02 (H) STA AT 8:00 AM CAPITOL 102  
 02/19/02 (H) Bill Postponed To 2/28/02  
 02/28/02 (H) STA AT 8:00 AM CAPITOL 102

BILL: HB 498

SHORT TITLE:WHITTIER PRIVATE PRISON  
 SPONSOR(S): FINANCE

Jrn-Date	Jrn-Page		Action
02/20/02	2342	(H)	READ THE FIRST TIME - REFERRALS
02/20/02	2342	(H)	STA, FIN
02/20/02	2342	(H)	REFERRED TO STATE AFFAIRS
02/28/02		(H)	STA AT 8:00 AM CAPITOL 102

**WITNESS REGISTER**

REPRESENTATIVE LESIL McGUIRE  
 Alaska State Legislature  
 Capitol Building, Room 418  
 Juneau, Alaska 99801

POSITION STATEMENT: Testified as one of the joint sponsors of  
 HB 314.

REPRESENTATIVE JOHN DAVIES  
 Alaska State Legislature  
 Capitol Building, Room 415  
 Juneau, Alaska 99801

POSITION STATEMENT: Testified as one of the joint sponsors of  
 HB 314.

LINDA WELLS  
 1261 Viewpoint Drive  
 Fairbanks, Alaska 99709

POSITION STATEMENT: Testified as the mother of a Peace Corps  
 volunteer in support of the right of her son and his wife to  
 receive a permanent fund dividend, a provision of HB 314.

TRACEY TOWNSEND  
 120 Pepperdine  
 Fairbanks, Alaska 99709

POSITION STATEMENT: Testified as a former Peace Corps volunteer  
 in favor of HB 314.

RUSSELL WALKER

9730 Arlene Drive  
Anchorage Alaska 99502  
POSITION STATEMENT: Testified in favor of HB 314.

KAREN MASKARINEC  
20030 Upper Greatland Drive  
Chugiak, Alaska 99567  
POSITION STATEMENT: Testified in favor of HB 314 on behalf of  
her daughter in the Peace Corps.

ANN HARRISON  
3270 Rosie Creek Road  
Fairbanks Alaska 99709  
POSITION STATEMENT: Testified in favor of HB 314.

JOE SULLIVAN, Peace Corps Volunteer  
12300 Audubon Drive  
Anchorage, Alaska 99516  
POSITION STATEMENT: Testified in favor of HB 314.

NANCI JONES, Director  
Permanent Fund Dividend Division  
Department of Revenue  
P.O. Box 114060  
Juneau, Alaska 99811-0460  
POSITION STATEMENT: Answered questions relating to HB 314.

DAN BRANCH, Assistant Attorney General  
Commercial Section  
Civil Division (Juneau)  
Department of Law  
P.O. Box 110300  
Juneau, Alaska 99811-0300  
POSITION STATEMENT: Testified on HB 314 on behalf of the  
department.

LINDA SYLVESTER, Staff  
to Representative Pete Kott  
Alaska State Legislature  
Capitol Building, Room 204  
Juneau, Alaska 99801  
POSITION STATEMENT: Presented HB 331 on behalf of  
Representative Kott, sponsor.

REPRESENTATIVE JOHN HARRIS  
Alaska State Legislature  
Capitol Building, Room 513

Juneau, Alaska 99801

POSITION STATEMENT: Testified as a member of the House Finance Committee, the sponsor of HB 498.

BEN BUTLER, Mayor

City of Whittier

P.O. Box 741

Whittier, Alaska 99693

POSITION STATEMENT: Testified on HB 498; discussed steps the City of Whittier has taken towards having a prison and answered questions.

CAROLYN ALLEN, Member

Whittier City Council

P.O. Box 741

Whittier, Alaska 99693

POSITION STATEMENT: Encouraged the committee's support of HB 498.

FRANK SMITH, Citizen Activist

(No address provided)

POSITION STATEMENT: During the hearing on HB 498, testified regarding the infeasibility of the proposed private prison in Whittier.

MARION DYE, Member

Whittier City Council

P.O. Box 741

Whittier, Alaska 99693

POSITION STATEMENT: During the hearing on HB 498, testified regarding the economic state of the City of Whittier and asked for "favorable decisions" from the committee.

MAKO HAGGERTY

P.O. Box 2001

Homer, Alaska 99603

POSITION STATEMENT: Testified in opposition to HB 498.

MATT ROWLEY, City Manager

City of Whittier

P.O. Box 608

Whittier, Alaska 99693

POSITION STATEMENT: Testified regarding HB 498 and described how a prison in Whittier would benefit both the state and the economy of Whittier.

MARGOT KNUTH, Strategic Planning Coordinator

Office of the Commissioner - Juneau  
Department of Corrections  
431 North Franklin Street, Suite 400  
Juneau, Alaska 99801

POSITION STATEMENT: Testified on behalf of the department regarding HB 498; compared the proposed legislation to similar bills and talked about what would be good for the state.

**ACTION NARRATIVE**

TAPE 02-20, SIDE A  
Number 0001

CHAIR JOHN COGHILL called the House State Affairs Standing Committee meeting to order at 8:08 a.m. Members present at the call to order were Representatives James, Fate, Stevens, Wilson, Crawford, Hayes, and Coghill.

HB 314-PFD ELIGIBILITY FOR PEACE CORP VOLUNTEERS

CHAIR COGHILL announced that the first matter before the committee would be HOUSE BILL NO. 314, "An Act relating to service in the peace corps as an allowable absence from the state for purposes of eligibility for permanent fund dividends; and providing for an effective date."

Number 0195

REPRESENTATIVE LESIL MCGUIRE, Alaska State Legislature, one of joint sponsors of HB 314, explained that she and Representative Davies had had similar ideas and decided to merge their bills for the sake of efficiency. She said Peace Corps volunteers provide a valuable contribution to society and to peacekeeping efforts. Representative McGuire explained that much like the military, the Peace Corps is fighting, but fighting to stabilize water systems and economies and to accommodate stable democracies. She made reference to President Bush's call for citizens to contribute 4,000 hours of volunteer time to community service. She suggested that Peace Corps volunteers fall "right in line" with the current list of exemptions for being out of state [and still receiving the permanent fund dividend (PFD)].

Number 0428

REPRESENTATIVE MCGUIRE referred to a proposed committee substitute (CS) [version 22-LS1129\C, Cook, 2/5/02]. She

proffered that if the pool of applicants is expanded, it would be logical to talk about antifraud enforcement mechanisms. She noted that she was told by Larry Persily, Deputy Commissioner of the Department of Revenue, that there have been cases of fraud, and that right now there is no real deterrent to fraudulent application for a dividend. She said it is cost-prohibitive to bring cases to court. She offered her belief that the proposed CS would give the department an administrative remedy to that situation: the standard and finding would still be the same, but the department would be able to issue a forfeiture order regarding a dividend or a civil penalty itself, without going through the courts.

Number 0547

REPRESENTATIVE McGUIRE explained that an individual would still have the right to an appeal under the new design. Representative McGuire expressed her appreciation of those volunteers who live "in abject poverty in order to try to help people who are less fortunate than us." She said the bill would make a statement that Alaska appreciates that its Peace Corps volunteers are Alaskans who want to come back and stay in Alaska.

Number 0654

REPRESENTATIVE JOHN DAVIES, Alaska State Legislature, testified before the committee as the other prime sponsor of HB 314. He said he only wanted to add two points: First, the bill re-establishes an exemption that was in the law before. Second, Alaska should encourage Peace Corps service because of the educational and self-improvement aspects that volunteers bring back to Alaska after they serve.

Number 0722

REPRESENTATIVE FATE asked why the civil fine for fraud was reduced from \$5,000 to \$3,000. He also asked why the exemption was removed in the first place.

REPRESENTATIVE McGUIRE answered that she thought the reduction in the fine was so that the fine would not rise to the level of small claims court.

REPRESENTATIVE DAVIES said he didn't know why the exemption had been removed from statute. He said the House had a "separate bill on this topic that dealt with a whole other issue," but

that when that bill went to [the Senate], many of the exemptions were eliminated at the end of the session, with very little comment.

Number 0843

REPRESENTATIVE JAMES said she'd read something at the national level requesting another group of volunteers. She asked the sponsors if they had more insight on the matter.

REPRESENTATIVE DAVIES said President George W. Bush was trying to encourage volunteerism in general and had cited the Peace Corps as an example. He said the President then was expanding the AmeriCorps operation - with a slightly different name - within the United States.

REPRESENTATIVE JAMES asked if the language would have to be changed in the near future in order to include participants in other volunteer programs.

REPRESENTATIVE McGUIRE made the point that volunteers in the AmeriCorps program "don't have to go outside for their service."

REPRESENTATIVE DAVIES said there was the intention of encouraging people interested in AmeriCorps to do their work in Alaska.

REPRESENTATIVE McGUIRE told the committee that in the Peace Corps, a person is required to leave the country for two years and there is not the option of maintaining a physical residency. She said it was her intent to "keep it really limited."

Number 1036

LINDA WELLS testified via teleconference. She said her son and daughter-in-law are currently in Thailand with the Peace Corps; they make \$139 a month as a stipend. She told the committee that the couple plan to return to Alaska and use their PFD checks as a down payment on a house. She said not allowing them to receive their checks "really puts a crimp in their plans for their future." Ms. Wells reported that the couple just finished their first year in Thailand, where they train teachers to teach English. She said the people in Thailand love her son and daughter-in-law, as well as what they are doing. She characterized their work as an excellent representation of America and Alaska. She said she could not understand why they were not being supported.

Number 1185

TRACY TOWNSEND testified via teleconference. He told the committee he was in the Peace Corps from 1965 to 1967 in Malaysia. He assured the committee that people don't go into the Peace Corps to make money. He agreed with earlier testimony and added that [Peace Corps volunteers] should be put back on the [exemption] list.

Number 1252

RUSSELL WALKER testified via teleconference. He said he has lived in Alaska for 23 years and raised his two children here. He said he had just returned from serving in Africa for two years and six months, but it was more like two and a half years of service when all the training and travel is included. He said he'd lost four dividend checks during his service in the Peace Corps. Mr. Walker gave several examples of how the Peace Corps places people directly in the everyday life of another culture and country.

MR. WALKER told the committee it was still unclear to him why Peace Corps service was dropped as an allowable absence for a dividend check. He said members of the military as well as members of their families are entitled to their checks, and it isn't fair that Peace Corps people straight out of college, with all of their educational debt, are denied a dividend check. He said the Peace Corps is a great representation of the United States and that it is in the best interest of Alaska and the United States to reinstate the exemption.

Number 1600

KAREN MASKARINEC testified via teleconference. She told the committee that her daughter, Gwyneth Crabtree (ph), is a Peace Corps Volunteer in Moldova. Ms. Maskarinec told of her daughter's long-held dream of joining the Peace Corps, and told how her daughter had helped to establish a connection between some people in Moldova and their counterparts in Alaska through establishing pen pals. She quoted President Bush, in his appointment of the most recent head of the Peace Corps two weeks prior:

America has a new kind of force today. ... We are not only a great country, a great economic engine, and obviously a great military - we are a great idea. The

greatness of the country is in the values we believe in: freedom and hope and opportunity. I believe that Americans are still willing to sacrifice for causes greater than themselves, and the Peace Corps offers such a fantastic opportunity to do so.

MS. MASKARINEC said this bill would give Alaska a chance to support its Peace Corps volunteers.

Number 1893

ANN HARRISON testified via teleconference. She urged the committee to reinstate the exemption for Peace Corps volunteers, who enrich the communities they go to and the communities they come home to, here in Alaska.

Number 1878

JOE SULLIVAN, Peace Corps Volunteer, testified via teleconference. He said he had volunteered in Zambia after working for the Alaska Department of Fish & Game (ADF&G). He said he has a Ph.D. in fisheries, and that teaching people to raise fish was a lifelong dream of his. He recounted that when he was in Zambia, he lost a portion of his retirement from ADF&G as well as his permanent fund [dividend].

MR. SULLIVAN agreed with a previous speaker that volunteers represent the U.S. and Alaska as well. He said Alaska should not punish its citizens who go overseas to help others, which taking their PFDS away does. He said there are Alaskans in Zambia right now, like Adrienne Score (ph), who will continue to do what is right, whether they get their dividend checks or not. Mr. Sullivan concluded by saying he didn't know why the exclusion was taken away in the first place and that he supports the bill.

Number 2086

REPRESENTATIVE FATE noted that it was brought to his attention that a claim under small claims court can be up to \$7,500. He asked why the penalty for dividend application fraud should be reduced to \$3,000.

Number 2152

NANCI JONES, Director, Permanent Fund Dividend Division, Department of Revenue, answered that the reason was not about

small claims court. Rather, it was to make a delineation between a civil and criminal action. She said criminal actions begin from a \$5,000 floor. This was lowered to \$3,000 to be sure that it was a civil action.

Number 2173

DAN BRANCH, Assistant Attorney General, Commercial Section, Civil Division (Juneau), Department of Law, added, "We're trying to avoid a situation where a court finds that we have to provide a public defender and a jury trial for somebody who wants to fight the penalties imposed under this section."

REPRESENTATIVE FATE said he appreciated the explanation in times when the state is trying to save money.

Number 2205

CHAIR COGHILL asked why, in Section 3, the language was changed from January 2 to January 1.

MS. JONES said this change relates to when a person dies during the qualifying year, January 2 through March 31. [Currently] if someone dies on the first, that individual isn't eligible. She explained that [the division] was trying to make it so that if a person dies in the new year - January 1 through the application period - then that person's estate would be able to file for his or her dividend. Therefore, the desire is to move the date to January 1.

REPRESENTATIVE WILSON returned to the \$3,000 penalty for dividend application fraud. She asked: If the concern is to not have [the penalty] be over \$5,000, then why didn't the language specify \$4,500? She suggested the message that should be sent is that [dividend application fraud] is serious.

MS. JONES replied that \$3,000 was merely the number that was chosen. She acknowledged that the number could have been \$4999.99, but said [the division] didn't want to be that close [to \$5,000].

MR. BRANCH pointed out that an individual [who attempts dividend application fraud] would face the \$3,000 fine and run the risk of losing the next five dividends, plus the current dividend. Therefore, the \$3,000 penalty is quite significant. Furthermore, if the court feels the overall penalties are criminal in nature, the court will specify that the individual

has a right to a jury trial, and to a public defender at the state's expense if the defendant can't afford an attorney. Mr. Branch explained, "It's not a magic number that the court does; [it's] just that they apply a test. And in the past, ... sometimes things ... \$5,000 and above have been found to be criminal."

REPRESENTATIVE WILSON inquired as to whether the court would question \$4,000.

MR. BRANCH noted that in the past, the court has found less than \$3,000 to be criminal. He commented that [the division feels] it would be easier at \$3,000. "The higher [the penalty] goes, the greater the risk," he pointed out.

Number 2455

REPRESENTATIVE JAMES asked if the court's determination regarding whether the individual should have a public defender or the opportunity for a jury trial is based on the facts of the case rather than on the fines.

MR. BRANCH answered that it is a matter of the penalty itself. If the court views the penalty as criminal in nature, then the constitutional right to a jury trial and to a public defender would apply.

REPRESENTATIVE JAMES asked if that level is usually \$5,000.

MR. BRANCH said in the past the courts have used \$5,000 as a cutoff, although the courts have found lesser [penalties] to be criminal. He noted that adding six PFDs to \$3,000 could add up to more than \$10,000 in punishment. He said it was felt that \$3,000 "would be more defensible."

REPRESENTATIVE JAMES said she understood that argument and could support the \$3,000 as rational, based on collection expenses.

Number 2564

REPRESENTATIVE FATE moved to report CSHB 314 out of committee with individual recommendations and the accompanying fiscal note.

CHAIR COGHILL acknowledged that the committee had not yet adopted Version C as the working document. He asked whether

there was any objection to adopting Version C [22-LS1129\C, Cook, 2/5/02]. There being no objection, it was so ordered.

CHAIR COGHILL asked if there was any objection to reporting CSHB 314, version 22-LS1129\C, Cook, 2/5/02, from committee. There being no objection, CSHB 314(STA) was moved out of the House State Affairs Standing Committee.

CHAIR COGHILL called a brief at-ease at 8:47 a.m. He called the meeting back to order at 8:49 a.m.

HB 331-PRESENTMENT OF GOVERNOR'S APPOINTEES

Number 2609

CHAIR COGHILL announced the next order of business, HOUSE BILL NO. 331, "An Act relating to appointment of persons to positions that require confirmation by the legislature; and providing for an effective date."

Number 2648

LINDA SYLVESTER, Staff to Representative Pete Kott, Alaska State Legislature, presented HB 331 on behalf of Representative Kott, sponsor. She explained that it would eliminate ambiguities in statute that address when the governor presents an appointment to the legislature. She brought attention to a handout supplied for purposes of clarification. She noted that the amended procedures for appointment come from Article III, Section 26, of the [state] constitution.

MS. SYLVESTER paraphrased the sponsor's sectional analysis [included in the committee packet] and added comments, as follows:

First of all, in paragraph one, it directs the governor to present the ... appointed individuals to the legislature, and it stipulates that presentments can only occur while the legislature is in a regular session. ... It also ... makes it clear that this is the only time that an effective presentment can happen.

Within the first 30 days after the legislature convenes in its regular session, the governor presents the names of people that ... have been appointed

during the interim, or else positions that are going to expire on, or before, March 1.

The paragraph reflects the elimination of the five-day period of time in which the governor had to present the individual to the legislature following the appointment. The five-day presentment requirement in paragraph one is problematic, because the fifth day could ... fall outside of the regular session, even if the appointment was made during the regular session.

Number 2727

Moving on to paragraph two, it mandates the legislature to act on the governor's appointment, and the word "regular" is added throughout this paragraph so that it is perfectly clear that the confirmation hearings can only occur during the regular session, not during the special session.

And then paragraph three: the 20-day provision from the governor's presentment, following the initial failed confirmation, is deleted. [A] ... situation arose last session with the game board: the legislature failed to confirm a nominee, and the confirmation hearings happened toward the end of the legislative session. So, the statute authorizes the governor 20 days, but that 20-day period to come up with another appointee fell outside of the end of the legislative session. So, the statute ... becomes unclear as to whether that person is rejected or whether or not the legislature is forced to hold confirmation hearings during the interim, if it holds a special session. ... So, eliminating these two provisions make it clear that the ... governor must do this during the ... regular legislative session.

MS. SYLVESTER noted that one issue involves the word [**simultaneously**]. She referred to page 2, lines 4-8, which read:

If an appointment is made after the first 30 days of the convening of the regular session but while the legislature is in regular session, the governor shall, **simultaneously with making** [WITHIN FIVE CALENDAR DAYS AFTER] the appointment [IS MADE], present to the

legislature for confirmation the name of the person appointed.

MS. SYLVESTER said [Governor Knowles] had expressed his thought that the word "simultaneously" was too confusing and instead had suggested the following wording: "the governor will refrain from making a presentation or appointment to the legislature within the last fourteen days of the ... regular legislative session." She said [the sponsor] prefers to keep the word "simultaneously", however, because the intention is to clearly state that confirmations, presentments, and "filling" boards and commissions will take place during the regular legislative session.

Number 2849

CHAIR COGHILL stated his appreciation of [the sponsor's intent]. He clarified that the issue is that when [the legislature] gets to the last hours of the session, if an appointment is to be made, the legislature would be notified immediately. He asked Ms. Sylvester to confirm that when she says "simultaneously", she interprets that to mean immediately after the announcement of the appointment.

MS. SYLVESTER answered in the affirmative. She noted that this portion of the statute dates back to territorial days, when the five-day provision would have served as a practical necessity for the time and cost involved in overland transportation.

CHAIR COGHILL considered what might be wrong about saying "by the next working day". He noted that if [the governor] made an appointment on a Friday, that appointment would have to be reported by Monday; however, if a 24-hour limit were placed, that would create a problem with a Friday appointment.

Number 2905

REPRESENTATIVE FATE said the use of the word "simultaneously" in that sentence was confusing.

REPRESENTATIVE JAMES offered the following definition of "simultaneous" [source unspecified]: "A word of comparison, meaning that two or more occurrences are happening that are identical in time." She mentioned [the appointment and the report of it]. She said she assumed that when an appointment was made there would have to be an agreement. She indicated it

wouldn't be when the decision was made, but when the person was notified.

TAPE 02-20, SIDE B  
Number 2958

REPRESENTATIVE JAMES said a legislative person would have to be at a telephone, or [at the appointment] in person, in order to get that information [simultaneously], which she believed was problematic.

Number 2928

REPRESENTATIVE HAYES remarked that he thought Chair Coghill had made a good argument regarding the "next working day", but asked Ms. Sylvester what the rationale was behind not wanting to use the language proposed by the governor.

MS. SYLVESTER indicated there was no need to restrict a governor in the period of time in which he or she could make appointments; furthermore, the constitution does not vest the legislature with the authority to limit the governor. She noted that [the legislature] has the authority to confirm and, by law, to remove a commissioner. She asked why the legislature would want to restrict the governor. She noted that in the last 14 days [of regular session], it is possible for the legislature to bring together the confirmation hearings and act upon an appointment.

MS. SYLVESTER mentioned 5-day and 20-day periods and a problem in the original [draft] of the bill regarding the timing of appointments falling outside of the time of a regular session. She added that [the sponsor] had chosen to bring this problem to the House State Affairs Standing Committee for resolution. She said other options regarding the 5-day period might be "the same day" or "concurrently".

Number 2814

CHAIR COGHILL suggested the following amendment: On line 5, after the word "shall", insert the word "immediately" and delete everything up to the word "present". He read the change, as follows: "the governor shall immediately present to the legislature for confirmation the name of the person appointed". Chair Coghill referred to the definition of "immediate" found in Black's Law Dictionary, which read:

Present; at once; without delay; not deferred by any interval of time. In this sense, the word, without any very precise signification, denotes that action is or must be taken either instantly or without any considerable loss of time.

CHAIR COGHILL added his belief that the legislature would be within the legal definition [of the word] to ask [the governor] to immediately "do that." He said he thought that in the possible case of a court battle, it would have to be determined whether [the governor] did delay. He added that it would be defensible.

REPRESENTATIVE JAMES said if that is the case, it would limit [the governor] somewhat regarding when he can make an appointment. She surmised it would need to be done in person; if that weren't the case, perhaps [the governor and the appointee] would already have an agreement, and then [the governor] would make the appointment. She indicated a possible difficulty adhering to this for an appointment made on a Sunday, for instance. Representative James noted that she was simply trying to figure out how this would work.

Number 2740

MS. SYLVESTER offered her understanding that the appointment happens with a hand-delivered letter to the individual; although that is the procedure, nothing in statute dictates how it actually happens. She expressed her belief that "immediate" implies that if [an appointment] happens on a Sunday night, the next practicable moment to present it to the legislature and have it read across [the floor] would be "the next opportunity".

MS. SYLVESTER brought attention to the preamble to the procedure for all appointments. She said the intent of "this course" in the statute is to provide procedural uniformity in the exercise of appointed powers conferred by the legislature to eliminate, insofar as possible, interim appointments, except in the event of death or resignation, for example. She summarized that the intent is to "keep this in a tight timeframe, keep it orderly, and to speed it up." She offered her belief that "immediately" would serve that intent.

CHAIR COGHILL suggested the issue could be challenged by both sides, one saying the other didn't [perform the function immediately], and the other asserting the opposite.

Number 2677

REPRESENTATIVE STEVENS remarked that Representative James's previous question had clarified that an appointment had been made when both parties agree that a letter has been transmitted.

Number 2645

REPRESENTATIVE HAYES offered that he had no issue with the word "immediately"; however, he suggested that if Chair Coghill's amendment did not pass as a conceptual amendment, the committee could ask the drafters to design legal language to clarify the matter. He expressed a desire to have a "clean version" by moving the bill out of committee and having the drafters insert the appropriate language.

CHAIR COGHILL noted that the House State Affairs Standing Committee was the only committee of referral for this bill. He said he would have the amendment drafted with the word "immediate" in it, take a look at it, get a legal opinion, and bring it back to the committee. [HB 331 was held over.]

HB 498-WHITTIER PRIVATE PRISON

[Contains discussion of HB 497, SB 336, and SB 231]

Number 2595

CHAIR COGHILL announced the final order of business, HOUSE BILL NO. 498, "An Act expressing legislative intent regarding privately operated correctional facility space and services; relating to the development and financing of privately operated correctional facility space and services; authorizing the Department of Corrections to enter into an agreement for the confinement and care of prisoners in privately operated correctional facility space; and providing for an effective date."

Number 2580

REPRESENTATIVE JOHN HARRIS, Alaska State Legislature, explained that the House Finance Committee is the sponsor of HB 498, carrying the bill for the City of Whittier, and that he, as a House Finance Committee member, was presenting the bill. He told members that the City of Whittier seems to be "pretty unanimously in support of the private prison in Whittier." He said this bill is similar to one the legislature took up last

year involving the [proposed] Kenai facility and also pertaining to Delta Junction. He noted that both those communities had voted not to support the concept.

REPRESENTATIVE HARRIS informed members that his staff member, John Manly, and the City of Whittier's mayor, Ben Butler, were present to testify and answer technical questions. He also indicated representatives were present from Cornell [Companies].

Number 2472

CHAIR COGHILL said the discussion between private versus public [facilities] was necessary. He told the sponsor that he would like to move the bill out at this hearing, but would allow time for "what happens in the course of discussion."

Number 2458

REPRESENTATIVE HAYES asked Representative Harris if this was a "single-site/source" contract bid, similar to that used in the past.

REPRESENTATIVE HARRIS answered that this bill would authorize the City of Whittier to enter into a competitive bid situation; his understanding was that the city has begun that process already, through its local city council.

REPRESENTATIVE HAYES asked whom the competitive bid is against. Kenai entered into a competitive bid process, he noted, before the law was changed for it to be a single site. He said that again a competitive situation has been initiated [in the case of Whittier] before a law has been passed, to his belief, to allow it.

REPRESENTATIVE HARRIS responded by clarifying his previous statement. He indicated other communities had been given the opportunity to show interest, or disinterest, regarding having a privately operated prison facility. The city council of Whittier adopted an ordinance that authorized them to negotiate with the State of Alaska, and the legislature has "paid attention and listened to what they have to say." Representative Harris said the competitive part of this is being dealt with at the local level, rather than the state level. He suggested that perhaps the [testifiers from] the City of Whittier or Cornell [Companies] could better answer the question.

Number 2283

BEN BUTLER, Mayor, City of Whittier, testified that the City of Whittier began by following the Kenai prison issue fairly closely. When Kenai voted against having a prison, Mr. Butler said, "we" thought it was an excellent opportunity for Whittier to have economic development and, at that point, made phone calls inquiring what steps to take. Public hearings were held and mailings were sent out to inform the residents of Whittier, he told members. He mentioned a resolution made at the beginning, stating that [the city] wanted to do this. He also mentioned an ordinance and entering into negotiations with "an outfit."

MR. BUTLER, regarding the competitive bid process, said four RFQs [requests for qualifications] were sent out; two of them were sent back. He continued as follows:

Instead of the City of Whittier doing it itself, we actually had an outside building consultant look at it, an auditor look at it, and one Whittier resident look at it. And so that kept it out of the council's hands. They reviewed the two responses that we got, and they actually rated one higher than the other one, and the council agreed with them and took that proposal from there.

Number 2215

MR. BUTLER told the committee the City of Whittier had sent around a petition or letter of interest so that the state would know [its residents wanted the prison]. He said there were "110 ballpark votes" in the city's last election, September 2001. Furthermore, he told the committee that he had before them 85 signatures in support of the prison. The previous Tuesday, Mr. Butler said, the city council had adopted an ordinance to enter into a contract with Cornell [Companies], by a vote of 7-0.

MR. BUTLER remarked, "The town is behind this. We need jobs in Whittier. Whittier is slowly drying up. The road has been a nice thing, but the road has allowed access in and out, and some people have moved out." He stated his feeling that having a prison in Whittier would add value back to the road, thereby alleviating Whittier's present economic problems.

CHAIR COGHILL mentioned doing some preliminary reading regarding the number of beds, starting - to his belief - at 820 to 850

beds and jumping to 1,200. He asked how that happened, if there was an economic consideration involved.

MR. BUTLER explained that the lower number of beds was cost-prohibitive; the higher number made more economic sense to justify the project.

CHAIR COGHILL asked Mr. Butler if he felt the process that he'd describe to [the committee] "kind of answers this whole source question."

MR. BUTLER said yes.

CHAIR COGHILL clarified that he had just asked for an answer that would come from Mr. Butler's perspective. He acknowledged Representative Hayes's previous question and said he would address it as well, because "we have to look at it from the state's perspective."

MR. BUTLER continued:

Part of the things that we were very concerned about in the City of Whittier is the fact that this had already been done twice, in two different communities in the state. So we wanted to make sure that everything was above the board, that it was a clean process, and that there was nothing that might concern the state as far as the process we went through.

Number 2082

REPRESENTATIVE HAYES offered his concern that this legislature has tried a single-source bid process twice. He stated that he did not understand how [the City of Whittier] could go through any type of process when the only community authorized to do anything at that time was Kenai.

Number 2063

REPRESENTATIVE JAMES responded that she has looked at "what the plans are." She said it appears to her that whether or not [the prison] is constructed, and who will construct it, is the business of Whittier. She continued:

They're going to sell the bonds to do this, and it will be contingent upon whether they get [an] opportunity for the state to contract, to use it once

you have it. And, of course, it won't go forward, if the state doesn't agree to use that.

I would hesitate to say, from what Representative Hayes's concern is, that we - the state - should initiate this, necessarily, and say, "Does anybody want to build a private prison anyplace in this state? Please come forward and give us your opportunity." I think that if there were someone, they would be here. And this is really Whittier asking us, ... "If we do this, will you do that?" That's just my personal understanding of that.

But there's one thing I wanted to say here that impresses me: ... the writing that I've read, it's even better than Kenai, in the fact that the management of the culturally appropriate treatment of the prisoners - which many will be Alaska Natives - and the support for the Alaska Natives for this facility is very impressive to me. And it was impressive to me in Kenai, but I can understand why they lost that one with the large, boroughwide vote. So I have no discomfort with this process going forward.

I do also share just a little bit of concern. I have a question on this, and my question to you is: Have you considered that or seen any evidence ... that the larger it is, the more or less effective it might be in accomplishing the goals, which we had hoped to do? And I really believe the goal is mostly the culturally sensitive management of this facility, when probably the bulk of these people will be Alaska Natives.

Number 1918

MR. BUTLER indicated he doesn't foresee any problems with a larger facility of 1,200 [beds]. The available land is away from the populated area of town, he noted.

CHAIR COGHILL offered that some of the language is very specific about "culturally sensitive."

Number 1896

REPRESENTATIVE FATE said he, too, had a concern. He explained that he has been questioned about this by other development

authorities who felt that there would be no legislation because of the "noncompetitiveness" - that it didn't go out to bid. They were under the impression the Department of [Public] Safety was going to do an expansion program, he said, and expected that if there were going to be any private prisons in the area, there would be some RFPs [requests for proposals]. Representative Fate said he is not against this [bill], but wants it understood that there may be other [communities] in the state that may have the same interest, but that are under a different impression as to what the process and procedure is.

Number 1838

REPRESENTATIVE WILSON told [Mr. Butler] she appreciated the process that [Whittier] went through, including the amount of information given to everyone in the community. She indicated Ketchikan and Wrangell had been interested in a prison, although the process they went through was "the opposite" of the one Whittier followed. She said [Wrangell] wanted economic development; its process started with the mayor and proceeded before getting input from the community. She said she appreciated the bidding process as well.

REPRESENTATIVE WILSON said she feels strongly that everyone in the state has watched what has happened, and if other communities wanted to step forward, they had sufficient time to do so. She mentioned that both Ketchikan and Wrangell decided against having a prison. She described as "difficult" the process of getting the community involved and supplying it with the pros and cons. She expressed appreciation that [the City of Whittier] had done that before coming before [the legislature].

MR. BUTLER responded that [the City of Whittier] wanted to be sure it had full community support, which he'd understood was one of the major concerns of the state. He specified that [the City of Whittier] did not want it to be an issue that only the council approved of, and that would have to come up to a vote.

Number 1705

REPRESENTATIVE CRAWFORD remarked that he is an ironworker by trade and is interested in construction. He noted that he has been to Whittier a number of times and doesn't think there is much infrastructure there regarding electrical generation and water and sewer systems. Consequently, he said, the city would have to add to its capacity considerably; he asked who would pay

for that. He asked Mr. Butler if [the city] was planning to do a project labor agreement in that regard.

MR. BUTLER answered as follows:

As far as the infrastructure needs of the town goes, we have, of course, [Chugach] Electric that goes to Whittier, so we have plenty of power coming through the tunnel. And I'm more than happy to sell the power, so that's not an issue.

As far as the water and sewer goes, though, ... entering in the contract with Cornell, they will have onsite sanitation and onsite water. We, of course, have plenty of water around Whittier; we have our wells in Whittier that produce more water than we could ever use. They're only at 80 feet deep. And, of course, on the property that's being bought - [that] the prison will be built on - it has the ability to have well water there, too. So it would not be the city paying the bill for that; it would actually come out of the total cost of building the project.

REPRESENTATIVE CRAWFORD said he'd worked on the tunnel and was not aware that [Chugach Electric] had that capacity without having to add to [the existing infrastructure]. He asked, "What's been the discussion?"

MR. BUTLER answered that there hasn't been a lot of discussion with [Chugach Electric] on that note. He mentioned the tunnel being open and the other tunnel attached to "the road to Whittier, ... where the pipelines used to go through for the U.S. government." He said "we" don't foresee that there would be any problem getting more power into Whittier if there were insufficient power.

Number 1555

REPRESENTATIVE CRAWFORD asked about medical care and places for families to stay when they come to visit [prisoners].

MR. BUTLER replied that [the City of Whittier] acknowledges that although there is some housing available, it is probably insufficient; however the city is located close to Girdwood and as close to Anchorage as Wasilla and Eagle River. He also said [a prison] would give Whittier the chance to build additional

housing if there is a need for it. He indicated currently Whittier's housing is a 14-story building that has vacancies because of a decrease in population, from approximately 300 in the 1990 [U.S. Census] to 182, according to the state.

Number 1484

REPRESENTATIVE STEVENS noted that he was in favor of HB 498 but would have to leave this committee hearing, because of another commitment, before a vote was taken. He clarified that he appreciated the efforts of the community of Whittier, saying he believed that it had done "everything right," including attaining the signatures of its residents. He asked about Whittier's prospects for economic development, jobs, and "the impact on keeping that tunnel open."

Number 1405

MR. BUTLER responded as follows:

Right now, with the tunnel opening up, the railroad pulling out, with the government tank farm that we used to have in Whittier that probably supplied 35 family-type jobs, Whittier doesn't really have any jobs besides a tourism-related economy. Of course, during construction it will be union, and so if there's people in there that belong to a [labor] union, ... or other crafts, they'll be able to get onto that - and maybe general laborers.

And as far as once it's actually built and up for operations, of course, there'll be correction officers there that will have to be certified through a state level. ... But there will also be janitorial jobs, ... kitchen jobs, laundry jobs, and things like this. But as long as the citizens of Whittier can qualify for [them], they'll have the opportunity to get those jobs. Truly, Representative [Stevens], that's what we are looking for: we are looking for jobs.

Once the tunnel was open, we kind of thought that that might help spur things on. Actually, it's kind of slowed things down for us over there. The year that we had the free road, we had our best year ever. And the way that the city can gauge that is through the sales tax. The next year, when the road was actually tolled - when we went back down to, basically, pre-

tunnel days, train days - ... it really affected us. ... Unfortunately, the gains that we got from the tunnel were just short-lived: they were for one year.

And, hopefully, right now, for example, there's not the justification of [the Department of Transportation & Public Facilities] to keep the tunnel open for seven months out of the year, more than 68 hours a week. So it's less than 10 hours a day. It's actually hurt us: ... the restaurants have closed this winter; there's no dinner traffic; the people are not coming in because of the hours of operation of the tunnel.

And so we anticipate that with the opening of a privately [run] prison in Whittier, ... that would give the ability to the state to open it longer. In fact, we've been in conversations with Commissioner Joseph L. Perkins of the Department of Transportation & Public Facilities, who stated that we could probably -- right now, during the summertime, it's open 17 hours a day, and he would not see any reason why we could not do the same with the prisoners there, in order to accommodate the three shifts that would work at the prison.

Number 1220

CAROLYN ALLEN, Member, Whittier City Council, testifying via teleconference, told the committee the attitude of the residents and the city council towards building a private prison in Whittier is a positive one. She indicated residents have stated that they depend upon the income generated from Whittier's limited tourist season of approximately 110 days. For example, because of the [terrorist attacks on the East Coast on September 11, 2001], the tourist industry is expecting a decline [in visitors], which does not bode well for Whittier.

MS. ALLEN said the tunnel's opening has not generated the economic stimulus that was projected. She said she believes the citizens of Whittier, as a whole, are excited about the proposal of the prison, which would provide year-round stimulus for Whittier's depressed economy. She explained that it would create year-round employment opportunities, which would provide incentive for new businesses to come to Whittier. Furthermore, Ms. Allen said she believes it would also provide better access to businesses and the homes of Whittier's residents, because of the extended tunnel hours.

MS. ALLEN told the committee she has never seen a community as united on a project as Whittier is regarding [the proposed prison]. She concluded by saying, "I would encourage your positive attitude toward the approval of House Bill 498."

Number 1055

FRANK SMITH, Citizen Activist, testifying via teleconference, said he found the previously stated testimony to be enlightening. He indicated he had spoken to some committee members the previous week and to the City of Wrangell Chamber of Commerce, which had invited him to speak. Mr. Smith stated that he has been involved in criminal justice issues for about 30 years. He explained that he is an Alaskan who is presently living in Kansas because of "elder care issues," but will be back in Juneau "next week."

Number 0968

MR. SMITH mentioned previous testimony [that day on HB 314] regarding permanent fund dividends (PFDs) and the Peace Corps. He said 414 people are registered to vote in Whittier, even though there are only 192 residents, with dozens of those being school children. Mr. Smith stated his concern that [Whittier] is a welfare community. According to the city's web site, he noted, the state has given [Whittier] \$100 million to build a tunnel to draw business to the city.

MS. SMITH said the state, not the city, will be liable for the bonds [necessary to build a prison]. He mentioned "another \$100 million to build this prison - a prison which is logistically infeasible." He opined that it would be impossible to staff the facility. He said prison wages are barely above fast-food wages, and the notion that people would drive all the way from Anchorage or Girdwood to work [in a prison located in Whittier] is ludicrous. He remarked, "The state can't supply workers from Seward, in a much larger and more accessible community."

MR. SMITH reiterated that the big issue is "more welfare." He said the city residents don't want to pay tunnel fare and are comforted by the assumption that if the prison is built, they won't have to pay tolls. Mr. Smith depicted [Whittier] as a small community where everyone lives in the same building.

MR. SMITH suggested the only reason the committee was considering [HB 498] at this hearing was because Cornell

[Companies] had "massaged this in many ways," through [Whittier's] city council as well as other city councils. He referred to Representative Wilson's mention of Wrangell's previous consideration of a prison. He noted that 72 percent of the people in Wrangell voted against it, and 74 percent of people in Kenai voted against one as well. He reiterated that it was not a feasible project. He referred to Mr. Butler's testimony about involving the community and said:

In fact, this wasn't a competitive bid process. On a Freedom of Information Act request, I got documents that indicated Frank Pruitt [consultant for Cornell Companies] massaged this thing all the way from the start, from early October, when Kenai turned it down, to the extent that he even told them on October 30 who they should send their bid proposals to.

MR. SMITH concluded that "this is just immense welfare," worse than the [failed] Delta barley [project], the Point MacKenzie dairy, and the MarkAir air terminals. He stated, "There's no justification for spending this kind of money when, in fact, it costs half as much to keep [Alaskan] people in Arizona [in prisons], and we're about to open 400 beds in Anchorage." He said this is a "take or pay" proposition: if the prison sits empty, without a single prisoner ever being in it, the state is going to "be on the hook for 1,200 beds, for at least five years."

CHAIR COGHILL suggested that Mr. Smith send in written testimony.

Number 0758

MARION DYE, Member, Whittier City Council, testifying via teleconference, said she has lived [in Whittier] for the past several years and has witnessed a steady decline in population, revenues, and economic growth. She said she believes that the building of the private prison would be a stimulus for economic development there. She indicated the opening of the tunnel did not give [Whittier] what it had expected, but has added to the problem of economic growth. She said she hoped for "favorable decisions" from [committee members].

Number 0630

MAKO HAGGERTY, testifying via teleconference, told the committee that he did not have any financial interest in this issue, but

has been "watching the private-prison industry for a number of years." He issued a warning to the City of Whittier that inviting Cornell [Companies] into its community is not a prudent idea. He stated his opposition to HB 498 and to private, for-profit prisons. Mr. Haggerty said the issue was taken to vote in the Kenai area last October, and the private, for-profit prison project was defeated by approximately 3-1. He said he wondered what it would take to get "these guys" [Cornell Companies] out of [Alaska].

MR. HAGGERTY cautioned that this project would be extremely expensive. He agreed with Mr. Smith that there are "too many red flags," such as transportation to Whittier, housing for those working at the prison, and the number of beds for which the state would be responsible. He recommended that the state take a look at the governor's proposal. He also mentioned a proposal by Senator Lyda Green. Both proposals, he said, deserve a fair hearing.

Number 0351

MATT ROWLEY, City Manager, City of Whittier, testifying via teleconference, characterized Whittier as "the gateway of Prince William Sound." He said, "We were afforded a wonderful opportunity with the opening of the Anton Anderson Memorial Tunnel." Regarding the tunnel, he referred to the testimony of Mr. Butler and said tolls and scheduling, for example, have hindered, rather than enhanced, Whittier's ability to develop economically.

MR. ROWLEY said Whittier realizes the importance of bringing Alaska's inmates back into the state, as well as the dollars currently leaving the state to support [those prisoners]. He said "we" see the Whittier prison as being a "win-win" situation because it would benefit both the state and the economy of Whittier. He noted that the City of Whittier is looking at the prison to provide a "stable, long-term anchor tenant of Whittier." He mentioned that employment, increased sales tax and property tax, and development of support industries are benefits that Whittier expects to see over time.

Number 0170

MARGOT KNUTH, Strategic Planning Coordinator, Office of the Commissioner - Juneau, Department of Corrections, pointed out to the committee that the bill would authorize the single largest contract in the State of Alaska's history, with a cost of \$985

million, not including an adjustment for inflation; therefore, she said, it should be carefully considered.

MS. KNUTH stated her appreciation of the legislature's interest and recognition that Alaska needs more prison beds within the state - a message that the administration has been trying to bring forward for several years. She said the recognition this year is timely, because 1,200 beds are needed in Alaska. She noted that the governor has a five-part plan to address corrections issues, which includes whether a measure provides for safety, comprehensively meets statewide and regional needs, is consistent with best correctional practices, involves community participation, and is cost-effective.

TAPE 02-21, SIDE A  
Number 0011

MS. KNUTH, [in regard to expansion of] jails and prisons within the state, mentioned that HB 497 and SB 336 are the governor's bills. She explained, "The big difference between this bill and the governor's proposal is that the governor's proposal recognizes that we need beds regionally, as well as prison beds." She stated that a private or public prison in Whittier that provides 1,200 beds would not alleviate the need for jail beds, especially in Fairbanks and Bethel - both overcrowded facilities. She explained that people need to be close to the court where their judicial proceedings are held; just as inmates can't be transported from Arizona to court hearings in Fairbanks or Bethel, prisoners cannot be transported from Whittier to Fairbanks or Bethel.

Number 0155

MS. KNUTH noted that in addition to the aforementioned bills, Senator Lyda Green [had introduced] SB 231, and a similar bill [introduced by] Representative Harry Crawford recognizes statewide needs. Ms. Knuth encouraged the committee to consider those pieces of legislation. She noted that the Department of Corrections had compiled a new portfolio indicating its needs statewide, which she would make available to committee members.

MS. KNUTH mentioned factors considered by the Department of Corrections when choosing a location for a prison or facility. She distributed a handout to the committee members that included factors shared with all of the communities that have expressed interest in having a prison built. She said Representative Crawford previously "touched on some of the concerns that the

Department of Corrections is going to have." The main [concern], she said, is whether the infrastructure of the community is able to provide the services necessary for the facility.

Number 0348

MS. KNUTH noted that there is a special concern that certain areas of Whittier are within avalanche zones, which should be considered when picking a site. She said she had heard that one area under consideration was within an avalanche zone. She said a feasibility study needs to be done. She told the committee that it took the community of Delta Junction over two years after it had the authorizing legislation to conduct a feasibility study and conclude that [the project] was not financially feasible. She remarked, "The upshot of what happened in Delta Junction was, they were sued by the private provider that they had contracted with, and they finally settled that litigation, and they owe \$1 million because they did not, I think, do their homework upfront." She continued:

Whittier has done some of the first steps in their homework assignments, but they have not gone far enough to know whether it is a feasible site. One needs to know whether it can be done at all, and then whether it can be done cost-effectively. And the state would suggest that that should be done before the authorization is given, because of the amount of money that then gets to be expended after the authorization is granted.

My heart goes out to the citizens of Delta Junction for the amount of pain that they went through and for the amount of expenses that they incurred, only to discover that it wasn't going to happen in their community. The state would just as soon not see that happen to Whittier.

Number 0575

MS. KNUTH cautioned that there are a couple of problems with the legislation, the most pervasive being a lack of specificity. Normally, when proposals are put forward asking to spend millions of dollars, Ms. Knuth explained, a degree of specificity regarding the cost is set out in legislation. She continued as follows:

This bill - as did the Kenai bill and as did the Delta Junction bill - only has an expression of legislative intent that the daily cost of care that the state will pay to the City of Whittier [will] be approximately \$89-91, in current dollars. There's no expression of how much the facility should cost, what the capital costs are. And the idea of this prison has been with us for ... at least four years, and in that time, we still don't know what the proposed capital cost is.

MS. KNUTH noted that HB 53 was the legislation that authorized both a private prison in Delta Junction and the construction of a new jail in Anchorage. She continued:

That new jail in Anchorage is going to open 31 days from today. It's a \$56-million facility. It was planned, it was developed, it was constructed, [and] it's going to open. And we still don't know what the specifics are for this proposal for the private prison. I find that a matter for some concern.

Reality depends upon knowing what the various steps are - what the plan is. And I think ... before the legislature authorizes \$985 million of the state's money to be given to a project that it should know what it's getting for the money.

Number 0705

MS. KNUTH pointed to Section 2, paragraph (b) of [HB 498]. She suggested that the following language be deleted [beginning on line 23, through line 27]:

The procurement requirements of this subsection are satisfied if the City of Whittier in exercising its powers under AS 29.35.010(15) for procurement of land, design, construction, and operation of a facility, follows its municipal ordinances and resolutions and procurement procedures.

MS. KNUTH explained:

If this were a project that the City of Whittier is undertaking at its own financial risk, then I believe it would be appropriate for this body to grant it the freedom and the discretion to select the party that

will be performing the work, in whatever way meets its local needs.

When, however, the State of Alaska is asked to enter into a 25-year contract that secures the payments of all of the bonds and will provide the cost-of-care figure for 25 years, then I think the State of Alaska and the people of ... Alaska have an interest in how that contract is entered into.

Number 0765

And we have a state procurement code that this body has given a great deal of thought to, and has decided is the best way to ensure that the state is getting good value for its money. And so, it would be appropriate for that state procurement code to apply in this situation.

The only alternative that seems viable to me would be to not require the state to enter into that 25-year lease and, instead, as we do in Arizona now with CCA [Corrections Corporation of America] -- we are essentially month-to-month tenants there, and if an issue comes up that we have a concern about how our inmates are treated, we have the freedom to move to a different facility and to go to a different provider. That freedom is what gives the State of Alaska the power to make sure that our prisoners are taken well care of, and that we have oversight of how things are being done.

Number 0923

So, I believe that either one or the other is appropriate: either the state gets to leave and put its prisoners elsewhere - and that gives the private prison the motivation for satisfying our needs and performing at the standards that we need - or else let the state's procurement process, which goes to the value for the money, be abided by.

I think that any inquiry would show that what the City of Whittier has done in its procurement process is, it has satisfied itself that it's found a partner it is happy doing business with. And I support that; I think that's their purview and that's appropriate.

But it doesn't tell us whether it's a partner that will be good for the State of Alaska, and that's the next step. And both of those need to be satisfied: they need to be happy, and the State of Alaska needs to be happy.

Number 0949

CHAIR COGHILL told Ms. Knuth she had given the committee "a lot to chew on." He said Cornell [Companies] had been "raked over the coals" and was a "player working with Whittier," and that he wanted to give them time to testify. He asked if anyone present in the room would be unable to come back to testify at the next hearing to be scheduled for HB 498; there was no response.

Number 1042

SUSAN BURKE, Lawyer, Gross and Burke, told the committee that she was representing Cornell Companies. She indicated Frank Prewitt [a consultant for Cornell Companies] was also in the room to answer questions.

CHAIR COGHILL, in consideration of time, asked Ms. Burke if she would be able to return for the next hearing [on HB 498]. As a follow-up to Ms. Burke's affirmative response, he said he thought it would be good to have a comparison of "what the state said and how Whittier and you have had that discussion."

Number 1126

MS. BURKE addressed Representative Hayes's question regarding how Whittier can do this, when only Kenai is authorized under the existing legislation. She said there are two levels of contracting: the first would be a 25-year contract between the state and the City of Whittier, by which the state would procure a prison facility and operating services from the City of Whittier; the second would be between the City of Whittier and the private prison operator. Ms. Burke remarked, "And those would be for a period of maybe five years each." She explained, "After the first five years, they would have to go out [to] another competitive process to procure the operating services." That contract, she noted, is governed by the City of Whittier's procurement procedures, whereas the first contract is governed by the state's procurement code, which doesn't apply to contracts that the state enters into with municipalities. Therefore, there is no current prohibition against a sole-source contract between the state and any municipality in the state.

REPRESENTATIVE HAYES said he appreciated [Ms. Burke's answer].

Number 1237

MS. BURKE disagreed with testimony regarding the state's being obligated to pay the bonds:

That is absolutely not the case. These are revenue bonds. The statute is absolute on issuing revenue bonds by municipalities. It's crystal clear: the full faith and credit of the State of Alaska is not pledged to repay those bonds. The only source of revenue to pay the bonds off is the revenues that would come to Whittier from the State of Alaska under the contract. But it's not a question of the state being obligated to pay the bonds. And the prospective bondholders are absolutely made aware of this, and they take the risk that something could happen and those revenues might not be forthcoming.

Number 1298

MS. BURKE referred to Ms. Knuth's comment regarding the inability of the state to move to a different provider because there would be a 25-year contract between the state and the City of Whittier. Ms. Burke said there is no question that the state would be obligated to the City of Whittier to use that facility; however, she noted that there is a specific provision in [HB 498] that would provide that if the Department of Corrections is not satisfied with the service of the City of Whittier's provider, at any time during the 25 years, no matter who that provider is at the time, the state can direct the City of Whittier to terminate that contract. The City of Whittier would then have to find a replacement [provider].

Number 1379

REPRESENTATIVE WILSON recalled previous testimony suggesting that pay for the guards would be low. She indicated she had "asked that question the other day," and that the answer was they would start at the same pay [rate] that the regular guards currently starting out receive.

[Because of the lateness of the hour, the testifiers available to answer questions were asked to return at the next scheduled hearing on HB 498. HB 498 was held over.]

**ADJOURNMENT**

There being no further business before the committee, the House State Affairs Standing Committee meeting was adjourned at 10:04 a.m.