

MINUTES
SENATE FINANCE COMMITTEE
April 26, 2001
6:17 PM

TAPES

SFC-01 # 86, Side A
SFC 01 # 86, Side B

CALL TO ORDER

Co-Chair Pete Kelly convened the meeting at approximately 6:17 PM.

PRESENT

Senator Dave Donley, Co-Chair
Senator Pete Kelly, Co-Chair
Senator Jerry Ward, Vice Chair
Senator Alan Austerman
Senator Lyman Hoffman

Also Attending: SUE WRIGHT, staff to Representative Mike Chenault; MARGO KNUTH, Assistant Attorney General, Office of the Commissioner, Department of Corrections; VERN JONES, Chief Procurement Officer, Division of General Services, Department of Administration; FRANK PRUITT, former Commissioner, Deputy Commissioner and Legal Council, Department of Corrections;

Attending via Teleconference: From Kenai: RONALD ROZAK; Tim Navarre, President, Kenai Peninsula Borough Assembly; MARGE HAYS; RICHARD SEGURA, President, Kenai Native Association; JAMES PRICE; ELSIE HENDRYX; SUSAN WELLS; MIKE CARPENTER; CAROL SEGURA; From the State of California: MARVIN WEIBE, Cornell Companies; From Anchorage: RICHARD VAN HUTTEN, President, Correction Officers Bargaining Unit of the Public Safety Employees Association; DEE HUBBARD; From Kodiak: MICHAEL SLEZAK

SUMMARY INFORMATION

SB 92-REMOVAL OF MEMBERS OF THE PF BOARD

An amendment was considered and adopted. The bill moved from Committee.

SB 193-STUDY: EFFECTS OF PERMANENT FUND DIVIDEND

The Committee adopted a committee substitute and two amendments were considered and adopted. The bill moved from Committee.

HB 149-PRIVATE PRISON IN KENAI

The Committee heard from the sponsor, the Department of Corrections, the Department of Administration and members of the public. A committee substitute was adopted and the bill moved from Committee.

SB 115-EXTEND BD. OF STORAGE TANK ASSISTANCE

This bill was scheduled but not heard.

SB 153-UNDERGROUND STORAGE TANK LOAN FUND

This bill was scheduled but not heard.

#SB92

SENATE BILL NO. 92

"An Act relating to removal of members of the board of trustees of the Alaska Permanent Fund Corporation; and providing for an effective date."

This was the second hearing for this bill in the Senate Finance Committee.

Amendment # 1: This conceptual amendment changes the effective date of the legislation to January 1, 2004, both in the language and in the title of the bill.

Co-Chair Donley moved for adoption.

Senator Austerman objected for an explanation.

Co-Chair Donley explained the delayed effective date gives the public time to review the issue. He stressed this is because Governor Tony Knowles "felt so strongly" against it as reflected in the veto message accompanying earlier legislation passed by the legislature but vetoed by the governor approximately five years prior. Co-Chair Donley surmised, "There must be some good meritorious reason for being so strongly opposed to this."

Co-Chair Kelly opined that Governor Tony Knowles "fought" against the earlier legislation because he wished to replace the existing

trustees with members he chose. Co-Chair Kelly remarked, now that the governor's appointees are seated, the governor supports the current legislation to prevent these trustees from being removed without just cause. Co-Chair Kelly remarked this amendment allows the legislation to "start with a clean slate with a new governor."

Senator Wilken expressed concern, saying this amendment politicizes the matter further, when the intent of the legislation is to remove politics from the process. He remarked that the current board is a "functioning board" by all accounts regardless of the governor who appointed the members.

Co-Chair Kelly commented, "There has never been any way in the history of the State of Alaska that we could have ever predicted a governor so political as this. The use of the statutes to gain his political agenda dealing with the permanent fund board was, I think, very egregious when he vetoed something that I think was in the best interest of the state. Now that it protects the people that he has in place, he wants those people protected." Co-Chair Kelly said he supports the amendment, as it is enacted for a "new governor-new rules". He expressed he did not want the dismissal for just cause provision to apply to "all the people that were in under the old layers of politics with the guy who pushed the envelope at every level." He continued, "This is the guy who put his name/picture on the permanent fund check."

Senator Austerman stated that if the effective date on the bill is to be so far into the future, why the legislation is not voted down. He agreed with Senator Wilken, that this amendment would further politicize the issue. He agreed dismissal for just cause is a worthy issue.

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Senator Hoffman understood the question before the Committee is whether it is good public policy to remove a trustee only for just cause. He stated he supports this concept, which he also supported when the earlier legislation was considered. However, he asserted he opposes the amendment.

Senator Wilken referred to the Board's membership roster and noted the terms of all four public members expire by the effective date of the amendment, thus making the effective date mute.

Co-Chair Donley disagreed and explained that beginning in 2004, removal of trustees for just cause only, would become law.

A roll call was taken on the motion.

IN FAVOR: Senator Green, Senator Leman, Senator Ward, Co-Chair Donley and Co-Chair Kelly.

OPPOSED: Senator Austerman, Senator Hoffman, Senator Olson and Senator Wilken.

The motion PASSED (5-4)

Co-Chair Donley offered a motion to move SB 92, 22-LS0462\A, as amended, from Committee with accompanying zero fiscal note from the Department of Revenue.

Senator Austerman objected, saying he thought the bill as amended is "useless".

A roll call was taken on the motion.

IN FAVOR: Senator Green, Senator Leman, Senator Ward, Senator Wilken, Co-Chair Donley and Co-Chair Kelly

OPPOSED: Senator Hoffman, Senator Olson and Senator Austerman

The motion PASSED (6-3)

The bill MOVED from Committee.

AT EASE 6:27 PM / 6:30 PM

[Note: The following portion of the meeting failed to record on Committee equipment. The Legislative Information Office made an alternate recording; see tapes titled SFC-01 #86/II and SFC-01 #86/III. However, the sound quality of these tapes is poor.]

#SB193

SENATE BILL NO. 193

"An Act relating to a study of the economic and social effects of the permanent fund dividend on the state."

This was the first hearing for this bill in the Senate Finance Committee.

Co-Chair Kelly informed that this bill speaks to a 1990 court decision on Lindly vs. Malone.

Co-Chair Donley gave a history on the issue, beginning in 1988 when he sponsored legislation to change the residency requirement for the permanent fund dividend from six months to two years. He noted a clause was inserted in this bill providing that in the event a court found that two years is too long, the requirement would automatically become one year.

Co-Chair Donley stated that since this time, he has learned the longest length of residency that is acceptable for a benefit qualification, according to the United States Supreme Court, is two years. He detailed the ruling, which found that in certain instances, such as with in-state tuition fees, it is acceptable to stipulate up to two years as the residency requirement to prevent exploitation from a transient population. He opined the Alaska permanent fund is a comparable benefit in its attraction. He surmised that the more lengthily two-year residency requirement could be imposed in Alaska if there was evidence that people were moving to the state for the purpose of receiving the dividend.

Co-Chair Donley continued, saying that when a state court found the 1988 legislation unconstitutional, the decision was not appealed to the state Supreme Court because the state had not yet developed the necessary evidence to show that this benefit was the reason people were moving to Alaska.

Co-Chair Donley pointed out the amount of the dividends are significantly higher than they were in 1988. He noted the residency requirement was doubled through the legislation from six months to one year, but that the matter of a two-year residency requirement remained unresolved.

Co-Chair Donley explained that SB 193 provides that a study would be conducted to learn if it could be determined whether there is a problem with people attracted to the state because of the permanent fund dividend and if a longer residency requirement is justified.

Senator Austerman inquired about the Longevity Bonus Program, which provides subsidies to elderly Alaskan residents, and if this program is in the process of being phased out.

Co-Chair Donley affirmed. He noted the original legislation of 1988 increased the residency requirement for this program as well, but that this is no longer an issue since the program no longer accepts new participants.

Co-Chair Donley moved to adopt CS SB 193, 22-LS0828\J as a working draft.

There was no objection and the committee substitute was ADOPTED.

Amendment #1: This conceptual amendment replaces "general fund" with "permanent fund earnings account" in Section 2 on page 2 line 2 of the committee substitute. The amended language reads as follows.

The sum of \$200,000 is appropriated from the permanent fund earnings account to the Legislative Council for a study of the economic and social effects of the permanent fund dividend on the state.

Senator Lemman commented that a permanent fund account, rather than the general fund, is normally used when addressing legal matters regarding the permanent fund and would be appropriate in this legislation as well.

Senator Lemman moved for adoption of the amendment.

Senator Ward objected.

There was some question as to the specific name of the fund and the Division of Legislative Finance was requested to supply the correct information.

Senator Wilken wanted to ensure the correct fund account was inserted into the language.

The bill was HELD in Committee until later in the meeting.

#HB149

CS FOR HOUSE BILL NO. 149(FIN)(title am)
"An Act expressing legislative intent regarding correctional facility space; relating to correctional facility space; authorizing the Department of Corrections to enter into an agreement to lease facilities for the confinement and care of prisoners within the Kenai Peninsula Borough; and providing for an effective date."

This was the first hearing for this bill in the Senate Finance Committee.

Co-Chair Donley moved to adopt CS HB 149, 22-LS0436\W as a working draft.

SUE WRIGHT, staff to Representative Mike Chenault, testified that

this bill transfers the authority given for construction of a private prison from Delta Junction to the Kenai Peninsula Borough. She detailed the changes to the bill in the committee substitute beginning with deleted language pertaining to the State of Alaska procurement code. She explained this change is in response to an opinion written by the Attorney General warning of a potential conflict of interest.

Ms. Wright relayed a concern raised by the Department of Corrections that the department would be required to begin paying the private operator per diem for the entire 800 beds immediately upon the opening of the facility. Therefore, she noted the committee substitute contains language to provide for a "reasonable period" of time, to allow the prison to reach full capacity in phases. She described the time required to bring the facility to full operation.

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[Note: Audio recording resumes.]

MARGO KNUTH, Assistant Attorney General, Office of the Commissioner, Department of Corrections, testified the bill is an "out-growth" of HB 53 from several years prior, which authorizes both a replacement jail in Anchorage and a private prison in Delta Junction.

Ms. Knuth informed that the Anchorage jail project is about 65 percent complete and is expected to become operational in less than one year.

Ms. Knuth noted the Delta Junction project "became mired in a number of obstacles". She listed one as the selection of Fort Greely by the federal government as a preferred site for an anti-ballistic missile program. She shared that the City of Kenai has since expressed an interest in becoming the location of a private prison.

Ms. Knuth reminded when Governor Knowles signed HB 53 into law he indicated five standards should be considered when planning a correctional facility project. She listed the standards as protecting the public's safety, addressing statewide and regional needs, consistency with best correctional practices, community participation through government-to-government relationships, and cost effectiveness.

Ms. Knuth referenced an October 30, 2000 letter from Governor Knowles addressed to the Honorable Dale Bagley, Mayor of the Kenai

Peninsula Borough. [Copy on file.] She cited the letter as indicating the Kenai private prison project could meet the five objectives. Ms. Knuth pointed out the governor qualified that significant discussion would follow and requested the mayor apprise the commissioner the Department of Corrections of changing developments.

Ms. Knuth acknowledged that the public safety issue and the consistency with best correctional practices could not be determined at this stage of the planning process. She surmised these matters would be the subject of negotiations between the Department of Corrections and the City of Kenai with regards to the type of facility and operation standards. She stressed that because a government sponsors the project, it must involve community participation, thus fulfilling the government-to-government criterion.

Ms. Knuth spoke to the criterion of addressing statewide and regional needs, noting the Administration had introduced legislation that expands the number of prison beds in Alaska and expands the regional jails, which the legislature has not yet acted upon. She defined "jail beds" as accommodations for serving short misdemeanor sentences and for pre-trial purposes, noting the inmate must remain near the court during legal proceedings. She emphasized the urgent need for space in Fairbanks and Bethel stating that while many prison beds could be added in Kenai or Anchorage, the problem would not be addressed in the communities of need. She ascertained the Kenai prison project would satisfy statewide needs, but the regional needs would remain.

Ms. Knuth concluded with the cost-effectiveness criterion. She expressed concerns with the CS HB 149 (FIN)(title am), 22-LS0436\T.a and SCS CS HB 149, 22-LS0436\W working draft versions of the bill. Pointing to the provisions regarding the procurement process on page 2, lines 24 and 25 of version "T.a" and lines 23 and 24 of version "W", she informed that the bill had originally stipulated the Kenai Peninsula Borough procure one or more private third-party operators through a competitive process similar to the procedures established in AS 36.30, the state's procurement code. She asked if the removal of this language relates to intent to not follow the state procurement code. She suggested the Committee hear from Vern Jones of the Department of Law, for additional information on the matter.

Ms. Knuth continued on the subject, reading page 2, lines 24 through 27, "A municipality exercising its powers under AS 29.35.010(15) for procurement of land, design, construction, and operation of a facility, that follows its municipal ordinances and

resolutions and procurement procedures, satisfies the procurement requirements of this subsection." She referred to a letter to Representative Pete Kott, Chair, House Rules Committee, from Assistant Attorney General Marjorie Vandor on April 16, 2001 [Copy not provided], which raised a concern with the language indicating that a certain action satisfies the procurement requirement. Ms. Knuth shared that Ms. Vandor wrote this could violate the separation of powers mandate for the Department of Law.

Ms. Knuth described another concern relating to language on page 2, lines 28 through 31, through page 3, lines 1 through 3 in version "W". This language reads as follows.

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

(1) the lease must have a minimum of 800 prison beds, and the lease payments must be sufficient to cover

(A) the cost for the development and construction of the facility; and

(B) The operating costs for a minimum of 800 prison beds in the facility for a period of five years, less a reasonable period to achieve full occupancy;

Ms. Knuth relayed that the contracts with Corrections Corporation of America (CCA), which operates the private prison on Arizona, are for three-years and stipulate the state pay a per diem rate of \$54 per day per prisoner. She noted the per diem rate fluctuates dependant upon the actual number of prisoners the state houses at the facility. From this money, she explained, the operator covers capital expenses and operating costs and retains a portion as profit. On the contrary, she stressed, HB 149 requires the state to enter into a 20-year lease and guarantees that the state pay the capital costs of the prison.

Ms. Knuth noted that in addition, this legislation requires the Administration pay the operating costs for a minimum of 800 beds for a period of five years. She qualified she appreciated the inclusion of "less a reasonable period to achieve full occupancy" in the language of version "W". She said this recognizes that a prison does not begin operations with a full capacity because it is unsafe to do so. However, she pointed out this legislation obligates the state pay \$89 per day for at least 800 beds, whether occupied or not.

Ms. Knuth told of an outbreak of tuberculosis at the Spring Creek prison, which precipitated a quarantine of the inmates at the facility and suspended the arrival of new prisoners. As a result,

she said, the population of this facility dropped and she cautioned that a similar situation could occur at the proposed Kenai facility. She also stressed that even without such a situation, it is difficult to accurately predict the continuous number of inmates present at a particular facility. She stated the contract with CCA provides that the state pay for the prisoners actually housed at the facility.

Co-Chair Kelly requested further explanation of the separation of powers concerns.

Ms. Knuth deferred to Ms. Vandor of the Department of Law. Ms. Knuth referenced Section 2 (b), page 2, lines 21 through 24 of version "W" and read, "The commissioner of corrections shall require in the agreement with the Kenai Peninsula Borough that the Kenai Peninsula Borough procure one or more private third-party operators through a competitive procurement process." She explained this section directs the commissioner of the Department of Corrections to ensure the Borough conduct a competitive bid process. However, she continued, the following sentence on lines 24 through 27, as quoted earlier, stipulates that the Borough conforms to procurement codes, which could be different than those the legislature employs. She referenced Ms. Vandor's previously mentioned letter, opining that if the legislature directs the executive branch to perform a function, the legislature should then allow the executive branch to actually do so. Ms. Knuth elaborated, "On the one hand the executive branch is asked to do something but then the next part of the legislation directs what the answer is supposed to be." This, she stated, raises a separation of powers issue.

RONALD ROZAK testified via teleconference from Kenai about his concerns that the Kenai Peninsula Borough is "sole-sourcing" a major project on the Peninsula for at least the first stage of the project, with the intent to negotiate the second phase. He did not approve of the partnership between the local government and the proposed private contractor to gain approval from the legislature and to counter any public opposition. He was also concerned with the Borough's activities in fast-tracking the project. He stressed that this type of project should not be rushed given the long-term impacts. He disagreed with the Borough assembly's decision to bypass an election on the project, which he stated is required for capital projects exceeding \$1.5 million. He opined the reason the assembly superceded the voter approval process is because of the lack of information necessary to make an informed decision on the matter. He questioned the 800 bed minimum provision and suggested a lesser amount could be acceptable to local residents. He shared his reservations about a privately operated prison facility.

MARVIN WEIBE, Cornell Companies, testified via teleconference from California, to address the issue of why the state and borough should enter into a contract with an operator such as Cornell that would ensure an occupancy payment for 800 prison beds. He asserted this is not atypical in the private prison industry, noting the Federal Bureau of Prisons has converted to a minimum guarantee of 95 percent occupancy on larger prisons, with incremental payments for any inmates over the minimum. He added that these contracts are for ten years and stressed other states have entered into similar types of agreements.

Mr. Weibe stated the contract proposed in this legislation is different from others in that the prison is to be located in Alaska. Because of this location, he explained, the operator would be unable to transfer inmates from other states as is done with facilities such as the prison in Arizona that houses 2500 prisoners, only 800 of which are Alaskans. He described the various inmates housed in Southwestern United States prisons including immigration violators and those sent by the US Marshall Service. He informed that this allows the operators more flexibility to keep the facilities occupied.

Mr. Weibe told the Committee the per diem equivalency is actually 18-20 percent below the statewide average that is used for federal calculation and does not include all the costs associated with the operation of the facility. Instead, he said, the amount is a "fixed cap" determined to be appropriate for a private operation.

Senator Austerman asked if the witness could further explain the 95 percent occupancy issue.

Mr. Weibe responded that the Federal Bureau of Prisons handles all federal inmates and contracts a significant number of prison beds to private operators. These federal contracts, he explained, are for ten years with a minimum monthly payment that reflects 95 percent occupancy and an incremental per diem rate for additional inmates above the 95 percent rate. He pointed out these payments cover all operational costs of the facility with the incremental per diem covers the cost of food, insurance and utilities. He stressed this is so the private operator is able to maintain the facility fully staffed, fully trained and fully operational.

Senator Austerman clarified that it is not feasible to bring inmates into an Alaskan facility but it is feasible to send Alaskans to facilities outside the state.

Mr. Weibe corrected that it is not likely that another state would

transport inmates to Alaska. He opined that it is not practical and that there are other available resources in the Lower 48 states to locate offenders as needed.

Senator Wilken asked if an 800-bed facility is large or small compared to other facilities operated by Cornell Company.

Mr. Weibe replied the company has facilities that house over 2,000 inmates, but that the Kenai facility is "good sized". He noted that prison facilities of minimum security or higher have 800 or more beds. He listed several facilities the company operates in various states.

Senator Wilken asked if Cornell is a publicly traded company.

Mr. Weibe affirmed and said the company is listed on the New York Stock Exchange (NYSE).

Senator Wilken asked the exchange letters used in the listing.

Mr. Weibe answered: CRN.

Tim Navarre, President, Kenai Peninsula Borough Assembly, testified in Juneau in favor of the committee substitute, version "W". He told of the competitive process the Assembly employed to "pick a team," which he defined as one private company responsible for designing, building and operating the prison. He assured that this minimizes the financial risk to the state and avoids lawsuits over discrepancies about the particular components of the project. He said this approach was chosen because there is not a firm set of plans for the facility, or set criteria for an operating agreement. He remarked that the Assembly does have "the community's willingness to consider a prison in its backyard."

Mr. Navarre detailed the process of selecting the team, based on the necessary security, where employees would come from, how those employees would be trained, whether union labor would be utilized and what wages would be paid. He noted the Assembly intended workers would be paid approximately \$14 per hour rather than \$9 per hour, pointing out the Department of Corrections starting wages for correctional officers is \$14.79 per hour. He continued listing selection criteria of how the facility would be constructed, who would build it and what subcontractors would be used. He inserted that the team ultimately selected has a "comparable" retirement package to the state's plan.

Mr. Navarre continued that the Assembly received four bids in response to the approximate 30 Request for Quotes (RFQ)

distributed. Of the four, he stated, three are the top correctional companies in the country, including the company that operates the facility in Arizona that currently houses Alaskan inmates. He assured the competitive bidding process was open and fair and included all the factors he listed. He said an evaluation committee selected two of the bids and the Assembly chose one during an executive session. The executive session, he asserted, was recommended by the Borough's finance director to prevent any lobbying for a particular contractor.

Mr. Navarre expressed that the successful bidder, Cornell Companies, Inc, has a "good involvement with the Native Association" and with Native programs. He informed that Alaska Natives comprise seven to eight percent of the population in Alaska yet 35 percent are incarcerated.

Mr. Navarre stressed that the Assembly, the Borough's Financial Director and legal staff are of the opinion they could defend the competitive process undertaken. He therefore requested the legislature allow the team that was selected through an involved process to negotiate with the Borough and the Department of Corrections for a private prison facility. He emphasized this legislation only provides for this negotiation and does not guarantee actual construction.

Mr. Navarre spoke of the benefits of housing all inmates in Alaska rather than locating 800 in Arizona, which includes the opportunity for rehabilitation.

Mr. Navarre stated he could not speak to separation of powers issue contained in the committee substitute.

Co-Chair Kelly directed member's attention to and April 17, 2001 memorandum from the Division of Legal and Research Services to Representative Mike Chenault that addresses separation of powers and special legislation issues. [Copy on file.]

Senator Austerman commented that he supports a private prison somewhere in Alaska. However, he stressed, some of the questions raised during the testimony "raised a flag", such as the high cost. He compared the average daily per diem rate for the proposed Kenai facility at \$89 to the \$54 at the Arizona facility. He assumed transportation costs had been taken into account when compiling the per diem rates.

Mr. Navarre conceded the cost would be higher at the Kenai prison, but noted different factors contributing to the higher cost. He listed construction and food as more expensive in Alaska than in

Arizona. He pointed out that the medical costs are calculated and paid separately.

Senator Austerman calculated a 35 to 40 percent difference in the cost of housing prisoners at the two facilities.

Senator Ward clarified \$54 is not the actual daily per diem and that there are other costs incurred with the housing of inmates in the Arizona prison. He gave an example of an additional \$16.5 million appropriated to the Arizona facility during the current budget year.

Co-Chair Kelly asked the true daily cost for Alaskan inmates interned at the Arizona facility.

Senator Ward replied that he has asked the Department of Corrections for this figure but it had not yet been provided. He repeated there are medical expenses in addition to the per diem rate.

Co-Chair Kelly commented that during earlier discussions, he heard the amount to be over \$70, when factoring all the costs.

Senator Austerman stressed this is an important figure to know for informed consideration of this bill.

Senator Ward commented that sometimes inmates are transported to Arizona for 30 days then returned to Alaska. He added that the state Parole Board is sometimes sent to Arizona.

Ms. Knuth referenced a document, offering to provide it to the Committee. [Copy not provided.] She detailed the contract cost per inmate is \$54.57 per day, plus inmate medical of \$2.79 per day, and transportation, \$1.76 per day; totaling \$62.42 per day. She compared this with the \$89 per inmate, per day contract price proposed in this legislation, emphasizing that inmate medical and transportation costs are not included and must be added to determine the total actual cost. She stated medical expenses are more expensive in Alaska. She calculated the total cost per inmate, per day in the proposed Kenai facility to be \$104.88.

Ms. Knuth posed a scenario of a state-constructed 800-bed prison facility in Kenai at an estimated cost of \$110 million, which would incur a per inmate capitalization cost of \$33.48 per day. She qualified the construction cost is an estimate, because no studies have been done to determine the actual costs of building a prison in Kenai. She stated the departmental operating cost of \$65.95 per inmate per day, daily medical and transportation costs, plus the

capitalization cost, equal \$116.79 per day. Therefore, she ensured, the Arizona facility is the least expensive option for housing inmates. She informed it would be less expensive to expand existing facilities in the state than to construct a new facility.

Senator Austerman shared Mr. Navarre had made the statement that the cost would be an additional \$7 to 8 million each year.

Ms. Knuth clarified this is the difference between the total contract price in Arizona of \$16 million and the \$24 million total contract price of the proposed Kenai prison, which she noted is approximately one-third higher.

Senator Ward stated for the record he is a shareholder of the Native Corporation that owns part of the property proposed as the site of the new prison. He also stated that he has inherited stocks in the other Native Corporation involved in the project. Additionally, he disclosed, his wife "does the real estate" for both corporations. He stressed that neither he nor his wife have a "vested interest" in the prison project.

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Senator Ward asked if the commissioner is familiar with a recent Alaska Law Journal, which prescribes that a prisoner has a constitutional right to receive rehabilitation.

Ms. Knuth affirmed she was familiar with the article.

Senator Ward asked if she is familiar with an article determining that incarceration in Arizona is in violation of that right.

Ms. Knuth clarified the article suggests that the Alaska Supreme Court should find as such, but she emphasized the article also acknowledges the court has not done so.

Ms. Knuth addressed Senator Ward's next question regarding the cost savings to the state associated with reduced recidivism, stressing the department "firmly believes in rehabilitation efforts and trying to reduce recidivism. Without a doubt that is the most cost effective approach to correctional practices."

Senator Ward asked if returning Alaskan inmates currently housed in an Arizona facility would reduce recidivism of these offenders.

Ms. Knuth did not have enough information to make such a

determination.

Senator Ward commented on the difficulty for family members to travel to Arizona to visit inmates housed at that facility and asked if the witness thought more interaction between inmates and family, elders and other community members, would reduce recidivism.

Ms. Knuth shared that she recently traveled to Arizona with representatives from Cornell Companies, and the Kenai Peninsula Borough to demonstrate what "the State of Alaska considers good medium-security prison." She stated she is "very impressed" with the programs offered to Alaskan Natives at the Arizona facility. Therefore, she stated, these programs need to be considered and balanced against the disadvantage of not having "ready visitation."

Senator Ward asked if one-fourth of recidivism is "to do with family and community involvement".

Ms. Knuth was unsure.

Senator Ward asserted, "That is the answer." He surmised that one-fourth of the inmates housed in the Arizona are "condemned because they don't have contact with their elders, and their uncles and their wives and their community in Alaska. They're in the desert."

RICHARD VAN HUTTEN, President, Correction Officers Bargaining Unit of the Public Safety Employees Association testified via teleconference from Anchorage representing approximately 670 correctional officers in opposition of the bill. He noted his home is in Kenai. He opined, "this bill is not only bad for the Kenai Peninsula, it's bad for the entire state." He remarked that the bill is too restrictive and only allows for the most expensive of options to be made available to resolve the state's prison space problem. He stated that because the legislature is considering imposing an income tax and other revenue generating measures, it does not make sense that less expensive prison options are eliminated. He asserted this bill "lacks even the most basic protections or guarantees that might insure that the un-recommended privatization of this state service would save money for the State of Alaska." He pointed out that a federal court ruling has found that contracting prison services does not mitigate any liability associated with prison operations.

Mr. Van Hutten continued that "privateers" compare the rate they would charge the state, to the cost of operations in Nome, Bethel or Ketchikan. He remarked that there would be no cost savings in operating a prison in Kenai.

Mr. Van Hutten pointed out that the bill has no guarantee that the people hired for the private prison would meet the current state standards for correctional officers. He informed that currently the Department of Corrections is unable to hire enough qualified workers to fill existing vacancies. He agreed Alaska prisoners should be brought back to Alaska to serve their sentences, he thought they should be in state operated correctional facilities.

Mr. Van Hutten spoke as a Kenai Peninsula resident, saying there is more public support for a state operated prison than a privately operated facility. He told of the growing number of residents speaking out against the proposed project.

MARGE HAYS testified via teleconference from Kenai in opposition to the bill. She took issue with the claim made by a legislator that "everyone on the Kenai Peninsula" wanted this prison. She qualified she did not attend the publicly held hearings on the matter, but noted that there was not unanimous support at these meetings. She preferred no additional prisons on the Peninsula, noting the existence of two prisons and a juvenile detention center project underway. However, she stressed that especially a private prison is "unwise".

Ms. Hays reiterated the previous witness's statement of the shortage of qualified prison guards, the amount of abuse they incur and the notorious low wages paid at private facilities. She listed Arkansas, Oklahoma and Kansas as other states unable to retain qualified prison guards and the alternative steps they must take to operate their prisons. She predicted real estate agents and developers of low-cost housing projects were among the few who would gain monetarily from the project. Ms. Hays asserted Cornell Companies, as with all private prison corporations, is "out to make money". She stated that state-employed correctional officers are not over-paid.

Ms. Hayes listed questions she had about the proposed project. She asked about plans for rehabilitation of inmates housed in the prison. She wanted to know what party is financially liable in the event of "shoddy" construction. She stated that private prison corporations are known for having poor management. Giving an example of six inmates that recently escaped from a private prison in Birmingham, Alabama, she noted that private prisons have a poorer security record then that of government operated facilities.

Ms. Hayes concluded by extolling the virtues of the Kenai Peninsula and expressed that an additional prison, especially a private prison, would changed the culture of the area.

AT EASE 7:34 PM / 7:47 PM

[Note: The following portion of the meeting failed to record on Committee equipment. An alternate recording made by the Legislative Information Office is available, but is of poor sound quality; see tapes titled SFC-01 #86/II and SFC-01 #86/III.]

RICHARD SEGURA, President, Kenai Native Association, testified via teleconference from Kenai in support of the legislation. He stated that the association has a vested interest in the project, which he expressed is more compassionate than fiscal. He told of learning of the high incarceration rate of Alaskan Natives and the association's intent to conduct specialized Native programs. He assured that the intent is not for a Native-only prison, but to incorporate all inmates. He did not think the state does an adequate job meeting the special needs of Native prisoners.

JAMES PRICE, resident on the Kenai Peninsula, testified via teleconference from Kenai that he does not think it proper to award "an enormous public contract" to one company without allowing bids from competitive contractors. He remarked that the decisions were being made before public testimony has been completed. He expressed, "I think it's wrong to award Cornell \$100,000 of our borough's money if we chose not to allow them to build and operate our prison, with our money on their terms." He pointed out the only way to prevent this is if the legislature does not pass enabling legislation, such as this bill. He requested the legislature relieve the borough taxpayers of the obligation the borough has made to Cornell Companies. He questioned what the actual costs of this project and operation would be and stressed the matter should be decided through a vote of the people.

ELSIE HENDRYX testified via teleconference from Kenai in support of the bill saying it would provide a desperately needed economic boost to the area. She stressed the private prison project would directly and indirectly benefit Kenai Peninsula residents. She spoke of the benefits of housing Alaskan offenders in a prison located in the state.

SUSAN WELLS, Kenai resident, testified via teleconference from Kenai that she prefers Alaskan money stays in the state and that Alaskans should be helped in the state. She relayed the story of person incarcerated in Arizona, then released but required to stay in the area. She said he violated parole and is currently in prison in California. She surmised this person would not have re-offended if he had been closer to his family and community.

MIKE CARPENTER testified via teleconference from Kenai in support of the bill and to respond to local concerns about the project. He stated the major concern raised by residents pertains to wages. He opined that the state would succeed in obtaining fair wages for employees of the private prison. He did not understand the opposition of the correctional officers organization.

CAROL SEGURA testified via teleconference from Kenai that all inmates should be incarcerated in the state for economic reasons and to give inmates an opportunity to prepare for their release. She added that parole officers should be located in the villages so parolees and probationers don't have to remain in large cities.

DEE HUBBARD testified via teleconference from Anchorage that while she agreed all inmates should be housed in Alaska, she questioned the sole-source contract method of selecting a private operator. She told the Committee she is building a home in Seward. She referenced reports issued by other state legislatures, including a 1995 report from the State of Washington. She listed recommendations in this report that any privatization should include a requirement for cost savings, set design and construction standards to lower costs, develop a contingency plan in the event a private contractor ceases to operate a facility, should place an on-site monitor at the facility to ensure the contractor provides what the legislation mandates, and should establish comparative efficiency and effective criteria to permit subsequent evaluation of performance.

Ms. Hubbard continued by detailing a report presented to International Conference on Penal Abolitions in May 2000 that found that public officials were "tightening" requirements and monitoring of privately operated prisons. She noted that private providers are being fined and contracts terminated for those operators that fail to comply with the terms of the contract. She also stated that some privately operated prisons reverted to state control after it has been found the private method has caused more problems than provided benefits.

Ms. Hubbard told of discrimination based on race in private prison facilities in the State of Arizona but a statutory rider that reduces funding if more than ten-percent of the offenders from that state are housed in another state. As a result, she said prisons with severe overcrowding are unable or unwilling to transfer inmates.

Ms. Hubbard wanted to know if the Kenai facility would be required to only accept inmates from Alaska.

Co-Chair Kelly requested the witness provide the materials she cited during her testimony.

MICHAEL SLEZAK testified via teleconference from Kodiak in support of the legislation. He opposed the housing of Alaskan Native inmates outside the state and expressed he thought the Department of Corrections should be "ashamed" at the lack of culturally-relevant rehabilitation programs.

DAVID CATHOLIC [last name unverified] testified in Juneau in his native language and in English in support of the bill. He suggested that money is not saved if the state pays \$50 per day per inmate but that inmate is not being rehabilitated because that person remains a burden to society. He spoke of the various economic benefits of a rehabilitated offender who is able to provide for themselves and their family as well as contributing to a safer community by not reoffending. He stated that most Alaskan inmates housed in the private Arizona facility are misdemeanants rather than felons. He suggested the state is a co-dependent when it continues to pay the cost of repeat offenders rather than take active steps to rehabilitate them.

There was a motion on the floor to adopt the committee substitute and it was ADOPTED without objection at this time.

Amendment #1: This amendment inserts language between "facility" and "will bring" in Section 1. LEGISLATIVE INTENT. on page 1 line 13 of the committee substitute. The amended language reads as follows.

The legislature anticipates a privately operated correctional facility procured by competitive bids open to private, for profit or nonprofit contractors will bring competitive management styles and operation to Alaska.

This amendment then replaces "operators" with "contractors" on page 2, line 23 in Section 2. AUTHORIZATION TO LEASE CORRECTIONAL FACILITY SPACE WITH THRID-PARTY CONTRACTOR OPERATOR., subsection (b). The amended language reads as follows.

(b) The agreement to lease entered into under this section is predicated on and must provide for an agreement between the Kenai Peninsula Borough and one or more private third-party contractors under which private, for profit or nonprofit third-party contractors construct and operate the facility by providing for custody, care, and discipline services for persons held by the commissioner of corrections under

authority of state law. The commissioner of corrections shall require in the agreement with the Kenai Peninsula Borough that the Kenai Peninsula Borough procure one or more private third-party contractors through a competitive process similar to the procedures established in AS 36.30 (State Procurement Code). The adoption, by Kenai Peninsula Borough exercising its powers under AS 29.35.010(15), of Ordinance No. 2000-59, for procurement of land, design, construction, and operation of a facility on a request-for-qualification basis satisfies the procurement requirements of this subsection.

Senator Olson moved for adoption.

Senator Ward objected and asked the sponsor to withdraw the amendment because Senator Torgerson planned to offer it on the Senate floor.

Co-Chair Kelly stated this was irrelevant. He instead directed attention to a memorandum from the Division of Legal and Research Services, which addresses the separation of powers constitutional concerns raised by Ms. Knuth.

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Senator Olson shared that after consultation with a representative from the Alaska Federation of Natives (AFN), he recognized their support of the legislation and he WITHDREW his motion to adopt the amendment without objection.

Senator Ward thanked Senator Olson for withdrawing the amendment.

Co-Chair Kelly made reference to an Amendment #2, which was not specified and was not offered.

[Note: Audio recording resumes.]

VERN JONES, Chief Procurement Officer, Division of General Services, Department of Administration testified in Juneau at the request of the Department of Corrections. He spoke to the proposal for the Department of Corrections to make payments of approximately \$89 per day for all of the beds in the facility, whether they are occupied with Department of Corrections prisoners or not. He noted this would be a departure from the state's current practice of paying the contractor for only those beds occupied with Alaska prisoners.

Mr. Jones recalled contracts held, approximately six years ago, with halfway house service providers in which the state was

required to pay for a mandatory minimum number of beds. He shared that the Department of Corrections found that because of several factors beyond the control of the department, the state paid for a significant number of vacant beds. This was rectified, he said with modifications to the contracts to provide payment only for occupied beds.

Mr. Jones relayed the Department of Corrections position that it is good business practice to pay only for the services that are actually provided rather than a set number of beds, as stipulated in this legislation.

FRANK PRUITT, former Commissioner, Deputy Commissioner and Legal Council, Department of Corrections testified in Juneau to offer his assistance in providing information regarding the cost of housing prisoners in Alaska.

Senator Leman referred to language in the committee substitute indicating that the legislature expects the daily cost to be approximately \$89 per inmate, per day, saying he would prefer greater assurance that this amount would be the actual maximum cost. He understood the concerns that were raised during the public testimony and agreed that the cost issue is a valid point.

Mr. Pruitt replied that the outsourcing of prison services to private providers generally realizes a 10-15 percent reduction in the cost of the services provided by a government entity. He qualified it is somewhat different in Alaska.

Mr. Pruitt referenced the handout, "Anchorage Jail Annualized Costs Projected for FY 2003". [Copy on file.] He cited the average operating cost for the Anchorage facility is approximately \$102 per day, per inmate. He then included the debt service of this facility, raising the cost an additional \$34 to \$36, making the total cost approximately \$138 per inmate per day. He listed the "combined daily average cost of care per inmate" in Alaska is \$111, which he noted includes expensive facilities such as one located in Ketchikan. He stated the Ketchikan facility has "limited economies of scale" and that the cost is \$138 for this facility.

Mr. Pruitt noted the existing medium-security state-operated facilities located on the Kenai Peninsula costs \$60 to \$70 per day, but stressed this amount does not include other costs such as statewide programs, which are paid separately.

Mr. Pruitt explained the figure of \$89 per inmate per day was reached through consideration of the \$111 daily average operating rate of facilities operated by the Department of Corrections not

including debt service. This amount, he continued, was then used to "give the private sector a target" of delivering the same services at a rate 18 to 20 percent less.

Mr. Pruitt stated, "The private sector can deliver an 800-bed, medium security prison, meeting American Correctional Association standards and Department of Corrections' standards, for that per diem rate, for both operation and debt service." He pointed out this rate is "tight". He told of attempts over seven years to configure a comparative model of a private delivery of correctional services in Alaska.

Mr. Pruitt pointed out the Department of Corrections has been partnering with the private sector for many other services beginning in the 1980s. However, he noted a prison was different from other services. He stated that a minimum payment for 800 beds is "frankly, what it's going to cost to pencil out." He stressed that without the full amount, "we simply don't have the economies of scale for that particular per diem."

Mr. Pruitt summarized the State of Alaska would benefit with a prison that operates at a cost 25 percent less than a state-operated facility.

Senator Leman understood the witness is fairly confident that an ultimate negotiation, after all negotiations are completed, the actual per inmate per day rate would be less than \$89.

Mr. Pruitt clarified the legislation provides a range of \$89 to \$90 within which the Department of Corrections could negotiate to purchase these prison services, operations and debt services.

Senator Leman disagreed the language interprets as such, "but I hope that's our objective". He stated that the language is not specific. He asked if the witness suggested the limits should be imposed in the legislation.

Mr. Pruitt asked if the committee substitute version "W" provides a per diem rate that is 18 to 20 percent less than the statewide average.

Senator Leman replied this is contained in the intent language and read, "the legislature expects..." and applies only to the "initial per diem" rate. He wanted to know how confident the witness is that the actual contract would provide a per diem rate of between \$89 and 90. He preferred to know a maximum amount, with the expectancy that the actual rate would be lower.

Mr. Pruitt remarked it costs less money to house inmates in Arizona and if the issue were only about money, the state should continue to utilize that facility. He stressed if the issue is about jobs and economic stability to the Kenai Peninsula, the "multiplier effect" of spending additional money must be considered. He asserted that a private prison in Kenai could not operate at a per diem rate less than \$89.

Senator Lemman asked if the services could be delivered for \$89.

Mr. Pruitt answered he believed it could.

Senator Lemman asked "are you quite confident" that it actually would be delivered for \$89.

Mr. Pruitt read the legislation to stipulate that if the services could not be delivered at a rate between the ranges of \$89 to \$91, there is no authorization to the Department of Corrections to purchase the service.

Senator Lemman stated that the legislation does not say this, but that it could be changed.

Senator Wilken asked if the Kenai private prison would house any inmates who were not Alaskans.

Mr. Pruitt could not think of any scenario to indicate this would happen. He stressed the standards of the facility and the inmates who would occupy the facility are controlled by the Department of Corrections. In the contract with the Department of Corrections, he detailed, the commissioner has the responsibility and authority to designate such. He stated that Cornell does not, and should not have the ability to import prisoners. He assured that they would not import prisoners because of the higher cost to deliver the same services as in facilities in the Lower 48 states.

Senator Austerman clarified the facility would need to contain 800 beds to be a viable project.

Mr. Pruitt affirmed.

Senator Austerman quoted Senator Ward as saying there are approximately 900 Alaskan prisoners currently housed in Arizona. Senator Austerman expressed concern about the cost and viability of housing 100 inmates in Arizona after the 800-bed, Kenai facility is completed. He therefore asked why the proposed facility is not larger to accommodate the entire overflow.

Mr. Pruitt responded the legislation specifies the proposed private prison would have a minimum of 800 beds. This, he detailed, gives the opportunity to design and plan for a larger facility if the department has that need. He understood there are only 780 prisoners in Arizona at the present time, and noted the number has fluctuated although he did not know why. He speculated the "extraordinary growth rate in the prison system" during the 1980s and 1990s has slowed. He determined that a minimum of 800 beds would be sufficient. He informed of the intent to design the facility to allow expansions, which would reduce the per inmate per diem rate.

Senator Hoffman noted Senator Ward expressed he is interested in returning Alaskan inmates "back home", but Senator Hoffman pointed out the Bethel facility is overfilled by approximately 50 percent and the Nome facility is overfilled as well. He stated that applying Senator Ward's arguments in favor of a Kenai facility, it actually makes more sense for many rural inmates to be closer to their families in Nome and Bethel. Senator Hoffman asserted less emphasis should be placed on filling the proposed 800 beds and more consideration for addressing the needs in Nome and Bethel. He emphasized that for a rural villager, traveling to Kenai is just as far as Arizona. He suggested the legislature should address the regional needs across the state rather than support one private prison facility.

Mr. Pruitt responded that Alaska has unique correctional needs compared to other states because it is integrated and houses sentenced offenders, misdemeanants, and felons, serves as local jails and provides probation and parole services. He characterized the system as "one size fits all". He agreed the need in Bethel is "extreme", but stressed that much of the regional needs are for short-term sentence accommodations. He doubted the economic scale of many regional locations could support "large sentence" facilities. He instead supported a system of graduated release, where offenders move from higher custody program facilities and transition out to their communities before returning home. He understood that South Central Alaska is still far away from some communities, but stressed it is closer than Arizona.

Senator Ward offered a motion to move SCS CS HB 149, 22-LS0436\W, from Committee with accompanying \$165,500 fiscal note from the Department of Corrections and new \$50,000 fiscal note from the Department of Revenue.

Without objection, the bill MOVED from Committee.

#SB193

SENATE BILL NO. 193

"An Act relating to a study of the economic and social effects of the permanent fund dividend on the state."

[This bill was held earlier in the meeting. A motion to adopt Amendment #1 was on the table.]

Senator Leman moved to amend his amendment to change the funding source from the permanent fund earnings account to permanent fund corporate receipts. The amended language reads as follows.

The sum of \$200,000 is appropriated from the permanent fund corporate receipts to the Legislative Council for a study of the economic and social effects of the permanent fund dividend on the state.

Senator Leman explained the change to the funding source as recommended by the Division of Legislative Finance.

Senator Ward removed his objection to the adoption of the amendment.

The amendment was AMENDED and ADOPTED without objection.

Amendment #2: This conceptual amendment deletes "the preparation of" preceding "a study of" from Section 1. LEGISLATIVE INTENT. On page 1, lines 8 and 9 of the committee substitute. The amended language reads as follows.

The legislature intends that the Legislative Council, in consultation with the Department of Community and Economic Development, the Department of Health and Social Services, and the Department of Labor and Workforce Development, use the appropriation made in sec. 2 of this Act to contract for a study of the economic and social effects of the permanent fund dividend on the state.

Co-Chair Kelly moved for adoption and explained this allows the state to contract with a private organization to complete the study.

Without objection, the amendment was ADOPTED.

Senator Green offered a motion to move CS SB 193, 22-LS0828\J, as amended from Committee with new Legislature fiscal note for \$200,000.

The bill MOVED from Committee without objection.

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ADJOURNMENT

Co-Chair Pete Kelly adjourned the meeting at 08:46 PM.