

ALASKA STATE LEGISLATURE  
**SENATE JUDICIARY COMMITTEE**

March 21, 2001  
1:40 p.m.

**MEMBERS PRESENT**

Senator Robin Taylor, Chair  
Senator John Cowdery  
Senator Johnny Ellis

**MEMBERS ABSENT**

Senator Dave Donley, Vice Chair  
Senator Gene Therriault

**COMMITTEE CALENDAR**

SENATE BILL NO. 82

"An Act making corrective amendments to the Alaska Statutes as recommended by the revisor of statutes; and providing for an effective date."

MOVED CSSB 82 (STA) OUT OF COMMITTEE

SENATE BILL NO. 142

"An Act giving notice of and approving a lease-purchase agreement with the City of Seward for the construction of an addition to the Spring Creek Correctional Center for the purpose of providing secure classroom facilities and housing for prisoners committed to the custody of the commissioner of corrections; and setting conditions and limitations on the facility's construction and operation."

HEARD AND HELD

**PREVIOUS COMMITTEE ACTION**

SB 82 - See State Affairs minutes dated 2/20/01 and 3/01/01.

**WITNESS REGISTER**

Ms. Pamela Finley  
Legislative Affairs Agency  
Legislative Legal and Research  
Services  
State Capitol  
Juneau, Alaska 99801-1182

**POSITION STATEMENT:** Revisor of SB 82

Ms. Mary Jackson  
Staff to Senator Torgerson  
Alaska State Capitol  
Juneau, Alaska 99801-1182  
**POSITION STATEMENT:** Introduced SB 142

Mr. Scott Janke  
PO Box 167  
Seward, Alaska 99664  
**POSITION STATEMENT:** Supports SB 142

Mr. Malcolm Fleming  
Spring Creek High School  
PO Box 302  
Seward, Alaska 99664  
**POSITION STATEMENT:** Supports SB 142

Mr. Willard Dunham  
No address furnished  
Seward, Alaska 99664  
**POSITION STATEMENT:** Supports SB 142

Mr. Louis Bencardino  
PO Box 95  
Seward, Alaska 99664  
**POSITION STATEMENT:** Supports SB 142

Ms. Margot Knuth  
Assistant Attorney General  
Department of Corrections  
431 North Franklin, Suite 203  
Juneau, Alaska 99801  
**POSITION STATEMENT:** Supports SB 142

Mr. Deven Mitchell  
Debt Manager  
Department of Revenue  
PO Box 110400  
Juneau, AK 99811-0400  
**POSITION STATEMENT:** Testified on SB 142

**ACTION NARRATIVE**

**TAPE 01-10, SIDE A**  
Number 001

**CHAIRMAN ROBIN TAYLOR** called the Senate Judiciary Committee meeting

to order at 1:40 p.m. He announced the first order of business would be SB 82.

#SB 82

**SB 82-2001 REVISOR'S BILL**

MS. PAMELA FINLEY, Revisor of Statutes, Legislative Legal and Research Services, said SB 82 is prepared pursuant to statute. The purpose of SB 82 is to fix errors in previous legislation if the fix does not involve policy choices.

SENATOR COWDERY asked if SB 82 was just a clean-up bill.

MS. FINLEY replied yes.

SENATOR COWDERY asked about the change of age for a minor.

MS. FINLEY said when the definition of minor at 19 was enacted, the age of majority was 19, which is part of the Uniform Probate Code (UPC). The UPC Model Act says, "Here insert the age of majority," it was done and it was correct in 1972. In 1977, however, the age of majority was lowered to 18, and it was not changed in the UPC.

SENATOR COWDERY asked about the Medicare supplemental policy change.

MS. FINLEY said the defined term does not exist in [42 U.S.C.] 1345ss[(g)(1)]. It is being changed to fit with what the federal law actually says.

SENATOR COWDERY asked for an explanation of, "required to be submitted to [SUBJECT TO APPROVAL BY] the legislature."

MS. FINLEY said under [AS] 23.42.15, subsection (b) the legislature had to approve the monetary terms of an agreement under "23.40," the public employee's agreement. This was changed last year, which caused the approval requirement to no longer make sense in terms of (c). (c) should have been amended last year when (b) went from approval to submission. "This says that the terms do not have to be approved and now it is saying they do not have to be submitted." These are the terms of a school district - the school district in Wasilla does not have to submit its contract terms to the legislature.

Number 386

CHAIRMAN TAYLOR asked if "spousal equivalent" in Sec. 9 is defined again in a different section.

MS. FINLEY explained that it was not defined in AS 39.50.030(g), "this was a bad cross-reference." The definition that applies to AS 39.50.030(g) is found in AS 39.50.200.

CHAIRMAN TAYLOR noted that some of the changes were just grammatical. He asked for an explanation of Sec. 15.

MS. FINLEY referred to the language at the top of page 5, "however, a lessee that owns or operates a natural gas pipeline." She said that (A) was in existing law and (B) was added last year. The problem was the bracketed language on lines 9 through 19 used to be at the end [(B)]. The language that required it to accept "without unreasonable discrimination," used to go at the end of the paragraph, which was acceptable, but when another exception was added, it was put in the middle where it did not belong. This language was subject to negotiation between industry and the attorney general's (AG) office. After the legislation passed, the AG notified Ms. Finley that there was a mistake. Before she added this section to SB 82, industry look at it and approved of the changes.

Number 509

CHAIRMAN TAYLOR said he could not see any substantive changes in SB 82, and without the changes subsection (B) becomes convoluted. He noted, for the record, that there are no substantive or policy changes that are occasioned by the language being moved from one part of the statute to another.

MS. FINLEY replied no.

CHAIRMAN TAYLOR noted that on the top of page 7, the language "[LAND AND WATER MANAGEMENT]" was deleted and replaced with "division of lands." He asked if this was because the division of lands already encompassed land and water management.

MS. FINLEY replied yes, the division of lands is established in statute. The division of land and water management never existed in statute it only existed in fact.

Number 592

MS. FINLEY said it was a subgroup that was never statutorily created. Because it was not legally created under statute, it could very easily be uncreated by changing the name.

SENATOR COWDERY asked for an explanation of the effective dates in Sec. 25 and Sec. 26. He also asked for an explanation of AS 01.10.070(c) [in Sec. 26.].

MS. FINLEY noted that AS 01.10.070(c) is the statutory provision that provides for immediate effective dates if the legislature passes it by the required two thirds vote. The reason for a special effective date for Sec. 23 is that the section being amended, AS 45.29.702(b), does not take effect until July 1. The reason the revisor's bill is given an effective date is so that any changes it makes, if the same section is amended later by the legislature, will override the revisor's bill.

CHAIRMAN TAYLOR asked if a law that was passed last year on liens occasioned Sec. 23.

MS. FINLEY answered yes. This is the redo of Article 9 of the Uniform Commercial Code (UCC). In the Model Act, there was a subsection (c), which was a temporary provision, and was later moved into a temporary law provision. It was deleted because there was no subsection (c).

CHAIRMAN TAYLOR said the bill was a rewrite of the UCC. He asked if a transitional piece was labeled as a regular piece.

MS. FINLEY replied yes.

SENATOR COWDERY moved CSSB 82 with individual recommendations from committee. There being no objection, CSSB 82 moved from committee.  
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#SB 142  
Number 872

**SB 142-LEASE-PURCHASE SPRING CREEK CORRECTIONAL**

MS. MARY JACKSON, staff to Senator Torgerson, said SB 142 authorizes a lease purchase for a facility in Seward at the Spring Creek Correctional Center. The purpose of the facility is to construct educational space, vocational education space, housing for up to 150 inmates, and site and utility improvements. The target population is youth, which will conform to the Department of Correction's (DOC) youth offender program and also to the pilot project being conducted at Spring Creek for educating the youth inmates. SB 142 allocates \$15 million, which does not match the backup materials provided. The information used when drafting SB

142 was incorrect, DOC has provided new information but the amount is still not known. This will be resolved in the finance committee.

MS. JACKSON said the city of Seward built the Spring Creek Correctional Center, and endorses SB 142.

SENATOR COWDERY asked how much vocational training there would be at the Spring Creek center.

MS. JACKSON said the Alaska Vocational Technical Center (AVTEC) is located in Seward and is one of the best vocational facilities in the state. One reason the cost increased was because the vocational education space was added, which would facilitate the rehabilitation of prisoners.

Number 1034

CHAIRMAN TAYLOR said that receiving vocational training while at the center would be important for youth offenders after their release. He asked why the bonding and funding were in this fashion instead of the way harbors have been funded, where the communities were required to bond up-front, build the facilities, repair them, and then after paying for the bonds, the communities would then be reimbursed.

MS. JACKSON said this is different because the state would own the facility on completion.

CHAIRMAN TAYLOR asked if the city of Seward was offering to take over the maintenance.

MS. JACKSON said the city stands ready to facilitate the construction, do the bond work in conjunction with the state, and provide the on site construction. DOC would then operate the facility.

CHAIRMAN TAYLOR asked if the facility would be funded with general obligation (GO) bonds.

MS. JACKSON said the bonds would be revenue bonds that the city would sell with the state.

CHAIRMAN TAYLOR asked if the city would then own the facility.

MS. JACKSON replied no.

CHAIRMAN TAYLOR asked how bonds could be issued without first

having ownership.

MS. JACKSON said she did not know, but it was done when the facility was built. She said she thought it was a lease purchase to the city.

CHAIRMAN TAYLOR said the city would own the facility during the period of time in which it makes the lease payments back to the state, which pays off the city bonds, and then the facility becomes state property when paid off.

CHAIRMAN TAYLOR noted that people in the audience were shaking their heads no.

MS. JACKSON read from page 2, line 27, "(3) at the end of the term of the lease-purchase agreement, the state shall own the correctional facility."

Number 1213

MR. SCOTT JANKE, City of Seward, testifying via teleconference, said the city of Seward passed a resolution in support of SB 142. He said the city would sell a revenue bond to build the facility having executed an agreement with the state to lease it back. The pledged leases would pay the revenue bond off and at the end of the term the state would own the facility.

MR. JANKE commented that a dollar amount was not included in the resolution because the city was aware that the initial amount was a preliminary number and would change over time.

CHAIRMAN TAYLOR asked if SB 142 expanded the amount of beds in the facility.

MR. JANKE said 150 beds would be added as well as classroom space.

CHAIRMAN TAYLOR asked how this would impact Seward's bond capacity.

MR. JANKE said it does not impact the city in a negative way because there is a pledge from the state to make the bond payments. This does not affect the city's GO bonding capacity because this is a revenue bond with an identified revenue source - revenue bonds are usually identified to a specific revenue source.

CHAIRMAN TAYLOR asked if the revenue bond would affect the GO bond capacity for other projects the city might want.

MR. JANKE said no, it would not affect other revenue bonds.

Number 1375

MR. MALCOLM FLEMING, Principal, Seward Middle High School and Spring Creek High School, testifying via teleconference, said he supports SB 142. The current Youth Offender Program (YOP), which includes Spring Creek High School, is housed in a single mod, which is one large room. The room includes the inmate's cells, leisure area, eating area, as well as the instructional class area for three teachers. There are currently 40 students, with expansion for 50 students. Currently, the school is being conducted in what resembles a gymnasium - three classes are being taught simultaneously in a single area, and the distractions are almost insurmountable. The YOP is set up in phases and the classes are set up by skill level. The current facility does not allow students to be segregated for optimum programming. They are also squeezed into the adult facility. This project would allow the youth offenders to be segregated from the adult population, which would enable the program to do something for the students. All of the students were juvenile when they committed a crime and they were sentenced as an adult. A large percent of the students would be out of prison at age 25, effectively missing their educational career.

Number 1495

SENATOR COWDERY asked for Mr. Fleming's opinion about the conduct of the youths at Spring Creek.

MR. FLEMING noted that the student's conduct had been fairly good, but there are some problems because there are 40 teenagers all living in the same room and tempers do flare.

MR. WILLARD DUNHAM, testifying via teleconference, said he was chairman of the first project to build Spring Creek. Mr. Dunham said this was a simple way to do the expansion. He hoped the legislature would give SB 142 serious consideration and then pass the bill.

CHAIRMAN TAYLOR asked what the cost per day is for a prisoner at Spring Creek.

MR. DUNHAM said he did not know the cost.

CHAIRMAN TAYLOR said his concern would be whether there would be a cost benefit ratio in reducing the overall cost on a per prisoner basis through the expansion. He said he was not sure 150 beds were enough. He thought the facility should be completed as originally

designed so it could house some of Alaska's out-of-state prisoners.

MR. DUNHAM said the city had offered to do this but was snubbed by the state.

MR. LOUIS A. BENCARDINO, speaking via teleconference, said expanding Spring Creek Correctional Center was a smart move because a lot of people were being sent out of state because Alaska does not have adequate facilities to house them.

CHAIRMAN TAYLOR said 1,500 additional beds were needed within the state, Alaska should be planning for the future.

MR. MALCOM FLEMING said there is an economy of scale for bringing the students together in one place rather than trying to educate them in a series of small schools across the state. There are about 400 inmates that fit the criteria for the school and if these students could be brought together the school would be more economical to run.

CHAIRMAN TAYLOR said DOC could do this by reclassification.

Number 2057

MS. MARGOT KNUTH, Strategic Program Coordinator, Department of Corrections (DOC), noted that several years ago Governor Knowles set out a five-part test for consideration when looking at building or expanding prisons and jails. The five parts are: 1) Public safety protection, 2) Proposals needs to fit within statewide or regional needs for correction space, 3) Best correctional practices must be met, 4) Community participation achieved through government-to-government transactions, and 5) Proposals must be cost effective. Measured against these five standards, SB 142 is a good piece of legislation. There is a need for education for the growing population of youthful offenders. A large component of the proposed education program is vocational, which DOC believes is the right direction to go in.

MS. KNUTH said that Spring Creek is Alaska's only maximum-security facility. Running a maximum-security facility costs more than running a minimum-security facility. In terms of the most cost effective manner for bringing on new beds for prison expansion, the medium security facility at Palmer would be the most cost effective. A maximum-security facility needs a higher staff ratio and there are also higher construction costs involved. The prison population needs to be put in a facility that matches its needs. Spring Creek is the largest in-state facility and by having a school there, further economies of scale would be created for the

cost of care.

MS. KNUTH said that DOC has had ambivalent feelings about Spring Creek ever since the facility opened. Alaska needs the maximum-security facility, and Seward has been enthusiastic about having the facility, but Seward has been a difficult place to find housing for the officers and support staff. It is also a difficult place for secondary employment. But Seward is recognizing the importance housing for DOC's needs and is trying to do more about affordable housing for staff. This has made a significant impression on DOC and is part of the reason DOC is in support of SB 142.

MS. KNUTH noted the cost for the Anchorage jail project is \$56 million. The project will house a large number of people but it will definitely function as a jail, which means it will house short-term people. The Anchorage jail is the first place where steps have been taken to meet DOC's statewide and regional needs. There are pressing needs for the expansion of the Fairbanks and Bethel jail. Inmates at Fairbanks and Bethel could not effectively be transferred to places like Spring Creek and Arizona because of the transportation costs. DOC needs more prison and regional beds especially in Bethel and Fairbanks.

Number 2302

CHAIRMAN TAYLOR asked why the youths are being run through the only recreational area of the top maximum-security prison in the state.

MS. KNUTH replied that the youthful population is a special needs population. The under 25 population tops the list for needing a secure facility. Teenagers who have been convicted of a felony offense are very out of control. Therefore, correctional practices say that when dealing with a youthful offender, a secure environment is the best placement for them.

CHAIRMAN TAYLOR said he thought there was a vocational education program in Palmer.

MS. KNUTH said Point McKenzie is the vocational farm. She did not know how many youthful offenders were there but it is a minimum-security placement. It is not listed as one of DOC's institutions and it requires the best inmates rather than the most troubled. Ms. Knuth said there are good vocational education programs in the state but more are needed, especially for the under 25 age group.

## **SIDE B**

CHAIRMAN TAYLOR said he was glad to hear that Alaska had a policy

on prisons. But it seemed odd to him that there would be a vocational education program at Palmer and also at Spring Creek.

MS. KNUTH said there are 42 students in the program at Spring Creek and there is capacity for 50. DOC has identified 400 inmates who are 25 and under who have a sentence long enough to serve, making it appropriate for them to go through the program. If SB 142 passed, not all of the 400 inmates would be qualified for the vocational education program. Out of the 400, a 150 bed program could be filled. Corrections is a developing growth industry in Alaska and DOC is always looking at what is the most efficient allocation of resources and Spring Creek seems to be an efficient allocation.

CHAIRMAN TAYLOR asked if 150 youth offenders would be moved to Spring Creek for the program.

MS. KNUTH said there are 150 there at any given moment.

CHAIRMAN TAYLOR noted that the fiscal note indicated the cost would be \$4.25 million per year. He asked if this was just the lease cost.

MS. KNUTH said she thought the \$4.25 million was for the new operating expenses of the school, and the lease cost would be \$23.2 million.

CHAIRMAN TAYLOR said the lease cost would be paid over a 20-year period.

MS. KNUTH said that was correct.

CHAIRMAN TAYLOR asked if that was for the cost of running the prison or for the educational program within the prison.

MS. KNUTH said it was for the number of new positions required - 31 new correctional officers, 2 probation officers, another nurse and another kitchen staff would also be needed, and a mental health clinician - this would be pro-rata growth for the number of new beds. Funding for new teachers would come from the Department of Education's Education Foundation Formula.

CHAIRMAN TAYLOR noted that a fiscal note from the Department of Education was missing.

MS. KNUTH said DOC is planning on a 150 student enrollment. The 50 bed spaces that are now being devoted to this program would revert back to the general population. The way education costs are borne

in the state is that the money follows the student and funding would follow students to Spring Creek.

CHAIRMAN TAYLOR asked if the funding would follow a student to age 25.

MS. KNUTH said she did not know. She said there were several restrictions and methods for structuring a program to access funds.

CHAIRMAN TAYLOR said he would like this information.

Number 2053

SENATOR COWDERY asked what is anticipated for class size.

MS. KNUTH said there would be three different pods - breakdown of groups. There would be 50 youthful offenders in three separate programs, but she was not sure how the programs would be broken down into classroom sizes. She said she would furnish the committee with this information.

SENATOR COWDERY asked her to include a little detail with this information.

CHAIRMAN TAYLOR said most vocational education requires a higher level of teacher participation because of the smaller class size.

CHAIRMAN TAYLOR said he was curious about the costs and whether the legislature should be making SB 142 more than a policy call as to where in the state prisoners should be focused. He asked why there are not more than 40 youthful offenders at Spring Creek.

MS. KNUTH said there are space constraints and Spring Creek is a maximum-security facility. DOC is trying to balance the desire to have youthful offenders in one place but there are only a finite number of maximum-security beds available. The Spring Creek expansion would help meet these needs.

CHAIRMAN TAYLOR said that still leaves the state with 650 to 700 offenders in Arizona.

Number 1948

MS. KNUTH replied yes. Prisoners are a growth industry for Alaska, gaining in population of 100 to 150 each year and the state has not been building capacity to keep up with that.

CHAIRMAN TAYLOR said a prison could not be built in Alaska without

it being operated by DOC. In other states some prisons are privately operated, and "the big problems are one of unions." "The administration will not allow the expansion of any of Alaska's facilities without a union running it."

MS. KNUTH said Spring Creek is a state facility. Most of the program providers are private, their services are procured through contract but the correctional officers are part of DOC. HB 53, which passed in 1998, authorized the state to negotiate for a private prison in Delta Junction and the state has been working toward that, but there have been a number of obstacles to prevent this from happening. Governor Knowles's signed HB 53 and DOC has been trying to make it a reality.

CHAIRMAN TAYLOR asked if the Delta Junction facility might be built.

MS. KNUTH said a cost effective study has been completed on this. HB 53 required that the prison be built on the Fort Greely base, using the existing facilities. DOC believes this would not be cost effective. It would be cheaper to build a new facility off base than to use the existing facilities. The facilities at Fort Greely have asbestos and the barracks' are rectangular. The latest thinking in prison development is to use circular structures, which gives the greatest line of sight for staffing, reduces staff numbers, and is more efficient. Also, the federal government has not ruled out using this base for a missile defense program.

Number 1767

MR. DEVEN MITCHELL, Department of Revenue (DOR), said he had listened to the people from Seward testifying and he would like to talk with them about the prospective financing. He envisioned this being structured similar to the original financing that built the Spring Creek Correctional Facility, which was a state sold certificate of participation with the city of Seward's involvement in facilitating the lease.

CHAIRMAN TAYLOR asked if SB 142 was different from HB 53 with regards to financing.

MR. MITCHELL said he thinks the legislation allows the same structure - it is similar HB 53. It is a matter of how DOR works with the city in enacting it. Either way, the credit of the state would be on the line. The city does not want to incur liability, and due to the outstanding obligations of the Spring Creek facility, an investor could not be given the facility if the state quit making the lease payments. The lease payments of the state

are the security.

CHAIRMAN TAYLOR asked if the only constraint on the lease purchase was legislative approval.

MR. MITCHELL said yes. For real property there is a \$1 million limit on the ability to get a lease purchase without legislative authority.

SENATOR COWDERY asked a question but the tape malfunctioned and the question was not recorded.

MR. MITCHELL said, "and that was after a particular facility was financed with a combination of lease purchases, where the limit was \$5 million and they had two financings. One to acquire property, one to provide improvements, just under \$5 million."

CHAIRMAN TAYLOR said, "They became very creative in not having to come to the legislature to do it. This would not impact because it is revenue bonds backed by the state. This would not impact the overall bonding capacity of the community of Seward."

MR. MITCHELL said it would impact the state of Alaska rather than Seward.

CHAIRMAN TAYLOR said any community could do the same thing as long as they had bonding capacity. He said as long as they were revenue bonds, backed by the state, there would be no impact on Ketchikan, Thorn Bay, or Wrangell, who have been lobbying for a prison.

CHAIRMAN TAYLOR said he would hold SB 142 in committee until the Department of Education furnished the committee with the requested information.

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There being no further business to come before the committee, CHAIRMAN TAYLOR adjourned the meeting at 2:47 p.m.