

CS FOR SENATE BILL NO. 65(FIN)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-THIRD LEGISLATURE - SECOND SESSION

BY THE SENATE FINANCE COMMITTEE

Offered: 5/1/04

Referred: Today's Calendar

Sponsor(s): SENATORS GREEN, Therriault, Seekins, Guess, Hoffman, Ellis, French

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to correctional officers, parole officers, and probation officers;
2 authorizing the Department of Corrections to enter into agreements with municipalities
3 for new or expanded public correctional facilities in the Fairbanks North Star Borough,
4 the Matanuska-Susitna Borough, Bethel, the Municipality of Anchorage, and the City of
5 Seward; relating to the development and financing of privately operated correctional
6 facility space and services; authorizing the Department of Corrections to enter into an
7 agreement with the City of Whittier for the confinement and care of prisoners in
8 privately operated correctional facility space if the state cannot provide those services
9 for the same or less cost; giving notice of and approving, and authorizing the entry into
10 and issuance of certificates of participation for, the upgrade, expansion, and
11 replacement of certain jails in Dillingham and Kodiak; and providing for an effective
12 date."

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

2 * **Section 1.** AS 18.65.290(2) is amended to read:

3 (2) "correctional officer" means a person

4 (A) appointed by the commissioner of corrections whose
5 primary duty under AS 33.30 is to provide custody, care, security, control, and
6 discipline of persons charged or convicted of offenses against the state or held
7 under authority of state law; **or**

8 **(B) employed in a correctional facility in this state whose**
9 **primary duty is to provide custody, care, security, control, and discipline**
10 **of persons charged or convicted of offenses or held under authority of law;**

11 * **Sec. 2.** AS 18.65.290(5) is amended to read:

12 (5) "parole officer" means a person appointed by the commissioner of
13 corrections **or employed by a correctional facility in this state** to perform the duties
14 of supervising the parole of prisoners under AS 33.16;

15 * **Sec. 3.** AS 18.65.290(7) is amended to read:

16 (7) "probation officer" means a person appointed by the commissioner
17 of corrections **or employed by a correctional facility in this state** to perform the
18 duties of a probation officer under AS 33.05.

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

21 **AUTHORIZATION TO LEASE CORRECTIONAL FACILITY SPACE WITH**
22 **MUNICIPALITIES.** (a) To relieve overcrowding of existing correctional facilities in the
23 state and the extensive use of out-of-state correctional facilities, the Department of
24 Corrections, not later than July 1, 2009, may enter into agreements with the following
25 municipalities for new or expanded correctional facilities:

26 (1) Fairbanks North Star Borough - expansion of existing facility by up to 80
27 beds;

28 (2) Matanuska-Susitna Borough - construction of new facility with a minimum
29 of 1,200 beds up to a maximum of 2251 beds;

30 (3) Bethel - expansion of existing facility by up to 120 beds;

31 (4) Municipality of Anchorage - expansion of Anchorage Jail by up to 200

1 beds;

2 (5) City of Seward - expansion of existing Spring Creek Correctional Center
3 by up to 144 beds.

4 (b) The authorizations given by (a) of this section are subject to the following
5 conditions:

6 (1) the average capital cost for all beds may not exceed \$135,000 a bed for
7 (a)(1), (2), (4), and (5) of this section and \$155,000 a bed for (a)(3) of this section, adjusted
8 for inflation each year at a rate equal to the percentage increase in the Consumer Price Index
9 for urban wage earners and clerical workers for Anchorage, Alaska, during the previous
10 calendar year as determined by the Bureau of Labor Statistics, United States Department of
11 Labor;

12 (2) if construction of a new facility is authorized, the municipality shall own
13 the facility, and the state may enter into a long-term lease not to exceed 25 years with the
14 municipality to operate the facility; the annual lease payment for a new facility may not
15 exceed \$11,600 a bed;

16 (3) if expansion of an existing facility is authorized, the state shall enter into a
17 joint ownership agreement with the municipality of the expanded facility, enter into a long-
18 term lease not to exceed 25 years of the municipality's interest in the facility, and operate the
19 facility; payments under the lease may not exceed \$16,700 a bed for the Bethel facility and
20 \$14,600 a bed for the Fairbanks, Anchorage, and Seward facilities;

21 (4) the agreement to lease must contain terms providing that the commissioner
22 of corrections may terminate for cause any contract for operating the facility;

23 (5) the commissioner may not enter into an agreement under (a) of this section
24 if any bonds issued for projects under (a) of this section are rated below investment grade.

25 (c) The authorization given by (a)(4) of this section is subject to the following
26 condition: expansion of the facility may only occur if the expansion is funded by up to
27 \$30,000,000 in federal receipts.

28 * **Sec. 5.** The uncodified law of the State of Alaska is amended by adding a new section to
29 read:

30 **AUTHORIZATION TO CONTRACT FOR CORRECTIONAL FACILITY SPACE**
31 **AND SERVICES WITH THIRD-PARTY CONTRACTOR FOR OPERATION.** (a) The

1 Department of Corrections, not later than July 1, 2006, is authorized to enter into an
2 agreement with the City of Whittier for the purpose of acquiring correctional facility space for
3 a term not to exceed 25 years and services for contractual periods of not greater than five
4 years for persons who are committed to the custody of the commissioner of corrections.
5 Before entering into any contract for correctional space or services with the City of Whittier
6 under this section, the Departments of Corrections and Administration shall first conduct a
7 feasibility study to determine whether the state can provide these services for the same or less
8 cost than a third-party operator. An agreement may be entered into under this section only if
9 the feasibility study determines that the state cannot provide these services for the same or
10 less cost.

11 (b) The agreement entered into under this section is predicated on and must provide
12 for an agreement between the City of Whittier and one or more private third-party contractors
13 under which private, for profit or nonprofit third-party contractors construct and operate the
14 facility by providing for custody, care, and discipline services for persons committed to the
15 custody of the commissioner of corrections under authority of state law. In an agreement with
16 the City of Whittier, the commissioner of corrections shall require that the city procure one or
17 more private third-party operators through a competitive bid process. The City of Whittier
18 shall follow state procurement procedures for procurement of land, design, construction, and
19 operation of a facility. The commissioner of corrections shall approve the facility design
20 before entering into an agreement.

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

23 (1) the agreement must cover a minimum of 1200 beds and a maximum of
24 2,251 prison beds, and, subject to (2) of this subsection, the payments by the Department of
25 Corrections must be sufficient to cover all capital and operating costs, not including inmate
26 transportation, based on per diem operating charges for a minimum 1,200 prison beds;

27 (2) the agreement must provide that the obligation of the Department of
28 Corrections to make payments under the agreement is subject to annual appropriation of funds
29 by the legislature;

30 (3) the agreement must contain terms providing that the commissioner of
31 corrections may direct the City of Whittier, after notice and reasonable opportunity to cure, to

1 terminate its contract with a private third-party contractor operating the facility in accordance
 2 with the provisions of (b) of this section, and to procure a replacement third-party contractor
 3 if the commissioner finds that the private third-party contractor has failed to provide or cause
 4 to be provided the degree of custody, care, and discipline required by terms of the agreement
 5 and that the private third-party contractor has been given notice and reasonable opportunity to
 6 cure as provided in the third-party contractor's agreement with the city;

7 (4) the commissioner's authority to enter into the agreement is subject to the
 8 condition that the contract between the City of Whittier and the operator requires the operator
 9 to provide culturally relevant reformation services to incarcerated Alaska Natives;

10 (5) the commissioner may not enter into the agreement if any bonds issued for
 11 the project are rated below investment grade.

12 (d) Nothing in this section is intended to prevent the City of Whittier from issuing
 13 bonds as permitted for municipalities under state law, including AS 29.47.390, to finance
 14 construction of the facility. The bonds may be secured by and payable from revenues of the
 15 facility, including those described in (c) of this section. Revenues of the facility are not
 16 revenues of the City of Whittier for purposes of AS 29.47.390.

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

19 NOTICE OF THE ISSUANCE OF CERTIFICATES OF PARTICIPATION AND
 20 OTHER FINANCING. (a) The state bond committee is authorized to provide for the
 21 issuance of certificates of participation in one or more series in the aggregate principal
 22 amount of \$4,000,000, plus costs of required reserves and costs of issuance, to pay for the
 23 costs for expansion of municipal jails described in sec. 7 of this Act. The estimated total cost
 24 of construction, acquisition, and equipping the projects is \$4,000,000, which shall be paid
 25 from the proceeds of the certificates of participation issued under this section. The estimated
 26 aggregate annual amount of rental obligations under the lease-financing agreements is
 27 \$400,000. The total payments for the full term of the certificates of participation are
 28 estimated to be \$6,000,000. In this subsection, "cost of construction" includes credit
 29 enhancement and underwriting expenses, rating agency fees, bond counsel fees, financial
 30 advisor fees, printing fees, trustee fees, advertising fees, capitalized interest, interest earnings
 31 used for lease payments, and other costs of issuance, and costs of required reserves.

1 (b) The state bond committee may contract for credit enhancement, underwriting,
2 credit ratings, bond counsel, financial advisor, printing, advertising fees, and trustee services
3 that the committee considers necessary in financing the projects described in sec. 7 of this
4 Act.

5 (c) The state bond committee may not authorize the issuance of certificates of
6 participation as provided in (a) of this section if the issuance lowers the state's credit and the
7 certificates are rated below investment grade.

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

10 MUNICIPAL JAIL FACILITIES. (a) Each of the following projects is approved to
11 receive \$2,000,000 of the proceeds of the certificates of participation authorized under sec. 6
12 of this Act, on condition that the municipality in which the project is located contributes a
13 matching share of at least \$1,500,000, to be used for the upgrade, expansion, or replacement
14 of the jail facilities:

15 (1) Dillingham Community Jail in the Municipality of Dillingham to replace
16 the existing 8-bed facility with a new 25-bed facility;

17 (2) Kodiak Community Jail in the Municipality of Kodiak to replace the
18 existing 16-bed facility with a new 22-bed facility.

19 (b) Subject to appropriation, the Department of Corrections is authorized to pay the
20 annual operating costs associated with the addition of new beds at the municipal jail facilities
21 to the municipalities listed in (a) of this section. The anticipated annual operating costs for
22 the new beds authorized in (a) of this section are:

23 (1) Dillingham Community Jail - \$750,000 (17 new beds);

24 (2) Kodiak Community Jail - \$188,000 (6 new beds).

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

27 APPROVAL. This Act constitutes the notice and approval of the projects described in
28 sec. 6 of this Act required by AS 36.30.085.

29 * **Sec. 9.** Sections 1 - 3, ch. 32, SLA 2001, are repealed.

30 * **Sec. 10.** This Act takes effect July 1, 2004.