

CS FOR SENATE BILL NO. 65(FIN) am
IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-THIRD LEGISLATURE - SECOND SESSION

BY THE SENATE FINANCE COMMITTEE

Amended: 5/1/04

Offered: 5/1/04

Sponsor(s): SENATORS GREEN, Therriault, Seekins, Guess, Hoffman, Ellis, French, Gary Stevens, Dyson, Cowdery, Bunde, Stedman, Davis, Lincoln

A BILL

FOR AN ACT ENTITLED

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

1 **effective date."**

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

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

4 (2) "correctional officer" means a person

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

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

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

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

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

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

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

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

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

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

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

2 (4) Municipality of Anchorage - expansion of Anchorage Jail by up to 200
3 beds;

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

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

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

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

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

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

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

29 (c) The authorization given by (a)(4) of this section is subject to the following
30 condition: expansion of the facility may only occur if the expansion is funded by up to
31 \$30,000,000 in federal receipts.

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

3 AUTHORIZATION TO CONTRACT FOR CORRECTIONAL FACILITY SPACE
4 AND SERVICES WITH THIRD-PARTY CONTRACTOR FOR OPERATION. (a) The
5 Department of Corrections, not later than July 1, 2006, is authorized to enter into a lease-
6 purchase agreement with the City of Whittier for the purpose of acquiring correctional facility
7 space for a term not to exceed 25 years and services for contractual periods of not greater than
8 five years for persons who are committed to the custody of the commissioner of corrections.
9 Before entering into any contract for correctional space or services with the City of Whittier
10 under this section, the Departments of Corrections and Administration shall first conduct a
11 feasibility study to determine whether the state can provide the same level of services required
12 in state law or regulation for the same or less cost than a third-party operator. An agreement
13 may be entered into under this section only if the feasibility study determines that the state
14 cannot provide the same level of services required in state law or regulation for the same or
15 less cost.

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

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

29 (1) the agreement must cover a minimum of 1200 beds and a maximum of
30 2,251 prison beds, and, subject to (2) of this subsection, the payments by the Department of
31 Corrections must be sufficient to cover all capital and operating costs, not including inmate

1 transportation, based on per diem operating charges for a minimum 1,200 prison beds;

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

5 (3) the agreement must contain terms providing that the commissioner of
6 corrections may direct the City of Whittier, after notice and reasonable opportunity to cure, to
7 terminate its contract with a private third-party contractor operating the facility in accordance
8 with the provisions of (b) of this section, and to procure a replacement third-party contractor
9 if the commissioner finds that the private third-party contractor has failed to provide or cause
10 to be provided the degree of custody, care, and discipline required by terms of the agreement
11 and that the private third-party contractor has been given notice and reasonable opportunity to
12 cure as provided in the third-party contractor's agreement with the city;

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

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

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

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

25 NOTICE OF THE ISSUANCE OF CERTIFICATES OF PARTICIPATION AND
26 OTHER FINANCING. (a) The state bond committee is authorized to provide for the
27 issuance of certificates of participation in one or more series in the aggregate principal
28 amount of \$4,000,000, plus costs of required reserves and costs of issuance, to pay for the
29 costs for expansion of municipal jails described in sec. 7 of this Act. The estimated total cost
30 of construction, acquisition, and equipping the projects is \$4,000,000, which shall be paid
31 from the proceeds of the certificates of participation issued under this section. The estimated

1 aggregate annual amount of rental obligations under the lease-financing agreements is
 2 \$400,000. The total payments for the full term of the certificates of participation are
 3 estimated to be \$6,000,000. In this subsection, "cost of construction" includes credit
 4 enhancement and underwriting expenses, rating agency fees, bond counsel fees, financial
 5 advisor fees, printing fees, trustee fees, advertising fees, capitalized interest, interest earnings
 6 used for lease payments, and other costs of issuance, and costs of required reserves.

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

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

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

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

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

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

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

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

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

31 * **Sec. 8.** The uncodified law of the State of Alaska is amended by adding a new section to

1 read:

2 APPROVAL. This Act constitutes the notice and approval of the projects described in
3 secs. 1 - 5 of this Act required by AS 36.30.085.

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

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