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**HOUSE CS FOR CS FOR SENATE BILL NO. 65(FIN)**

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-THIRD LEGISLATURE - SECOND SESSION

BY THE HOUSE FINANCE COMMITTEE

Offered: 5/9/04

Referred: Rules

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

REPRESENTATIVE Lynn

**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.** AS 18.65.290 is amended by adding a new paragraph to read:

21 (8) "correctional facility" means a prison or jail owned, leased, or  
22 operated by the state that is designated by the commissioner of corrections for the  
23 custody, care, security, control, and discipline of prisoners.

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

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

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

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

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

6 (4) Municipality of Anchorage - expansion of Anchorage Jail by up to 200  
7 beds;

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

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

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

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

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

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

31 (5) the commissioner may not enter into an agreement under (a) of this section

1 if any bonds issued for projects under (a) of this section are rated below investment grade.

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

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

7 **AUTHORIZATION TO CONTRACT FOR CORRECTIONAL FACILITY SPACE**  
8 **AND SERVICES WITH THIRD-PARTY CONTRACTOR FOR OPERATION.** (a) To  
9 relieve overcrowding of existing correctional facilities in the state and the extensive use of  
10 out-of-state facilities, the Department of Corrections, not later than July 1, 2007, is authorized  
11 to enter into a lease-purchase agreement with the City of Whittier for the purpose of acquiring  
12 correctional facility space for a term not to exceed 25 years and services for contractual  
13 periods of not greater than five years for persons who are committed to the custody of the  
14 commissioner of corrections. Before entering into an initial contract for correctional space or  
15 services with the City of Whittier under this section, the Departments of Corrections and  
16 Administration shall first contract with an independent entity to conduct a feasibility study to  
17 determine whether the state can provide the same level of services required in state law or  
18 regulation for the same or less cost than a third-party operator. An agreement may be entered  
19 into under this section only if the feasibility study determines that the state cannot provide the  
20 same level of services required in state law or regulation for the same or less cost in a facility  
21 of the same capacity.

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

1 facility design before entering into an agreement.

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

4 (1) the agreement must cover a minimum of 1200 beds and a maximum of  
5 2,251 prison beds, and, subject to (2) of this subsection, the payments by the Department of  
6 Corrections must be sufficient to cover all capital and operating costs, not including inmate  
7 transportation, based on per diem operating charges for a minimum 1,200 prison beds;

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

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

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

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

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

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

31 NOTICE OF THE ISSUANCE OF CERTIFICATES OF PARTICIPATION AND

1 OTHER FINANCING. (a) The state bond committee is authorized to provide for the  
 2 issuance of certificates of participation in one or more series in the aggregate principal  
 3 amount of \$4,000,000, plus costs of required reserves and costs of issuance, to pay for the  
 4 costs for expansion of municipal jails described in sec. 8 of this Act. The estimated total cost  
 5 of construction, acquisition, and equipping the projects is \$4,000,000, which shall be paid  
 6 from the proceeds of the certificates of participation issued under this section. The estimated  
 7 aggregate annual amount of rental obligations under the lease-financing agreements is  
 8 \$400,000. The total payments for the full term of the certificates of participation are  
 9 estimated to be \$6,000,000. In this subsection, "cost of construction" includes credit  
 10 enhancement and underwriting expenses, rating agency fees, bond counsel fees, financial  
 11 advisor fees, printing fees, trustee fees, advertising fees, capitalized interest, interest earnings  
 12 used for lease payments, and other costs of issuance, and costs of required reserves.

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

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

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

22 MUNICIPAL JAIL FACILITIES. (a) Each of the following projects is approved to  
 23 receive \$2,000,000 of the proceeds of the certificates of participation authorized under sec. 7  
 24 of this Act, on condition that the municipality in which the project is located contributes a  
 25 matching share of at least \$1,500,000, to be used for the upgrade, expansion, or replacement  
 26 of the jail facilities:

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

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

31 (b) Subject to appropriation, the Department of Corrections is authorized to pay the

1 annual operating costs associated with the addition of new beds at the municipal jail facilities  
2 to the municipalities listed in (a) of this section. The anticipated annual operating costs for  
3 the new beds authorized in (a) of this section are:

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

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

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

8 APPROVAL. This Act constitutes the notice and approval of the projects described in  
9 secs. 5 - 8 of this Act required by AS 36.30.085.

10 \* **Sec. 10.** Sections 1 - 3, ch. 32, SLA 2001, are repealed.

11 \* **Sec. 11.** This Act takes effect July 1, 2004.