

SB

247

HFIN

FILE

HOUSE COMMITTEE REPORT

(11)

Date Referred: February 11, 1994

FURTHER REFERRALS:

Date of Committee Action: 4/20/94

The FINANCE Committee considered:

SB 247

CS FOR SENATE BILL NO. 247(2d FIN)

STATE LEASES & LEASE-PURCHASE FINANCING

"An Act making subject to prior legislative approval contracts entered into or renewed by the executive branch of state government, the legislative council, the Alaska Court System, and the University of Alaska for the lease of real property if the lease has an annual rent payable that is anticipated to exceed \$500,000 or has total (over for remainder of title)

RECOMMENDATIONS:

be replaced with HCS CSSB 247 (FIN) the same title a new title

have attached amendments(s)

do pass

do not pass

no recommendations

individual recommendations

additional referral to the _____ Committee

ADOPTS: _____ letter of Intent

ATTACHES NEW FISCAL NOTE(S): _____ (Dept)

APPROVES PREVIOUS: _____ (Dept/Date)

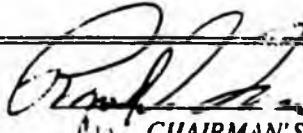
fiscal impact _____

fiscal note(s) _____ LAA 112194

zero fiscal note _____

zero fiscal note(s) DOA, 1124194

SIGNING DO PASS	DP	OTHER RECOMMENDATIONS	DNP	NR	AM
Ronald J. Hanson	x	EP Maclean			
Mark Hanley	x	Jan Brown			
Terry Martin	x	Tom Thurland			x
Sean Parnell	x	Sam Hoff			
Ben Grunwald	x	Mike Navarre			
EP Maclean	x	Richard Foster			x
EP Maclean					


 EP Maclean
 CHAIRMAN'S SIGNATURE

LANSUN
 Maclean

STATE OF ALASKA
1994 LEGISLATIVE SESSION

2
Bill Version: SB 247
(S) Publish Date: 1-24-94

Revision Date: _____
Title: "An Act relating to state leases and to state lease-purchase and lease-financing agreements. ..."
Sponsor: Senate Rules by Request of LB & A
Requestor: Senate Finance

Department Affected: Legislative Affairs Agency
BRU: Legislative Council
Component: All

COMPONENT SERIAL NO:

Expenditures/Revenues: (Thousands of Dollars)

OPERATING	FY 95	FY 96	FY 97	FY 98	FY 99	FY 00
PERSONAL SERVICES	0	0	0	0	0	0
TRAVEL	0	0	0	0	0	0
CONTRACTUAL	0	0	0	0	0	0
SUPPLIES	0	0	0	0	0	0
EQUIPMENT	0	0	0	0	0	0
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0	0	0	0	0	0

CAPITAL	0	0	0	0	0	0
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REVENUE FUND SOURCE	0	0	0	0	0	0
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FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER FUND SOURCE						
TOTAL	0	0	0	0	0	0

POSITIONS:

FULL-TIME	0	0	0	0	0	0
PART-TIME	0	0	0	0	0	0
TEMPORARY	0	0	0	0	0	0

Estimate of current year impact: _____

ANALYSIS: (Attach a separate page if necessary)

Changes in CS5B247 (20/5/94)
have no fiscal impact. This
fiscal note is appropriate.

1-28-94 kl
date Comte Aide (initial)

Changes in CS5B 247 (FIN)
have no fiscal impact. This
fiscal note is appropriate.

1-24-94 Amel J. M.
date Comte Aide (initial)

Prepared By: Karla Schofield
Division: Administrative Services

Phone: 465-3852
Date: 1/19/94

Approved By: Pamela A. Stoops
Agency: Legislative Affairs Agency

Date: 1/19/94

Distribution (by preparer): Leg. Finance, Legislative Sponsor, Requestor, OMB, Gov., & Impacted Agency(ies).

FISCAL NOTE

lg. 3

Bill Version: CS 38 247(2) F.

STATE OF ALASKA
1994 LEGISLATIVE SESSION

(S) Publish Date: _____

Revision Date: _____ Dept. Affected: Administration
 Title: An Act relating to state leases and to state BRU: Leasing & Facilities
lease-purchase and lease-financing agreements... Component: Leases
 Sponsor: Senate Rules Committee
 Requestor: Senate Finance COMPONENT SERIAL NO. 81

Expenditures/Revenues: (Thousands of Dollars)

OPERATING	FY 95	FY 96	FY 97	FY 98	FY 99	FY 00
PERSONAL SERVICES	0	0	0	0	0	0
TRAVEL	0	0	0	0	0	0
CONTRACTUAL	0	0	0	0	0	0
SUPPLIES	0	0	0	0	0	0
EQUIPMENT	0	0	0	0	0	0
LAND & STRUCTURES	0	0	0	0	0	0
GRANTS, CLAIMS	0	0	0	0	0	0
MISCELLANEOUS	0	0	0	0	0	0
TOTAL OPERATING	0	0	0	0	0	0

CAPITAL	0	0	0	0	0	0
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REVENUE FUND SOURCE:	0	0	0	0	0	0
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FUNDING:

1002 Federal Receipts	0	0	0	0	0	0
1003 GF Match	0	0	0	0	0	0
1004 GF	0	0	0	0	0	0
1005 GF/Progran. Receipts	0	0	0	0	0	0
1006 GF/MHTIA	0	0	0	0	0	0
Other	0	0	0	0	0	0
TOTAL	0	0	0	0	0	0

POSITIONS

FULL TIME	0	0	0	0	0	0
PART-TIME	0	0	0	0	0	0
TEMPORARY	0	0	0	0	0	0

Estimate of current year (FY94) impact: \$ 0

ANALYSIS: (attach a separate page if necessary.)

This bill has minimal fiscal impact to the leasing budget.

Prepared By: Dugan Pettv, Director
 Division: General Services

Phone: 465-2250
 Date: _____

Approved by Commissioner: Nancy Bear Usora
 Agency: Department of Administration

Date: 1/25/94

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HOUSE CONCURRENT RESOLUTION NO.
IN THE LEGISLATURE OF THE STATE OF ALASKA
EIGHTEENTH LEGISLATURE - SECOND SESSION

BY THE HOUSE FINANCE COMMITTEE

Introduced:
Referred:

A RESOLUTION

1 **Suspending Uniform Rules 24(c), 35, 41(b), and 42(e) of the Alaska State**
2 **Legislature concerning Senate Bill No. 247, relating to state leases and to state**
3 **lease-purchase and lease-financing agreements.**

4 **BE IT RESOLVED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

5 That under Rule 54 of the Uniform Rules of the Alaska State Legislature, the
6 provisions of Rules 24(c), 35, 41(b), and 42(e) of the Uniform Rules, regarding changes to the
7 title of a bill, are suspended in consideration of Senate Bill No. 247, so that the title is "An
8 Act making subject to prior legislative approval contracts entered into or renewed by the
9 executive branch of state government, the legislative council, the Alaska Court System, and,
10 with certain exceptions, the University of Alaska for the lease of real property if the lease has
11 an annual rent payable that is anticipated to exceed \$500,000 or has total payments that
12 exceed \$2,500,000 for the term of the lease, including any renewal options that are defined
13 in the lease; prohibiting these entities from entering into or renewing a lease of real property
14 if any or all renewal periods in the lease exceed the original term of the lease; making subject
15 to prior legislative approval lease-purchase agreements that may be entered into by these
16 entities to acquire real property, other than lease-purchase agreements to refinance outstanding

8-LS1905A
Chenoweth
4/21/94

HOUSE CONCURRENT RESOLUTION NO.
IN THE LEGISLATURE OF THE STATE OF ALASKA
EIGHTEENTH LEGISLATURE - SECOND SESSION

BY

Introduced:
Referred:

A RESOLUTION

1 **Suspending Uniform Rules 24(c), 35, 41(b), and 42(e) of the Alaska State**
2 **Legislature concerning Senate Bill No. 247, relating to state leases and to state**
3 **lease-purchase and lease-financing agreements.**

4 **BE IT RESOLVED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

5 That under Rule 54 of the Uniform Rules of the Alaska State Legislature, the
6 provisions of Rules 24(c), 35, 41(b), and 42(e) of the Uniform Rules, regarding changes to the
7 title of a bill, are suspended in consideration of Senate Bill No. 247, so that the title is "An
8 Act making subject to prior legislative approval contracts entered into or renewed by the
9 executive branch of state government, the legislative council, the Alaska Court System, and,
10 with certain exceptions, the University of Alaska for the lease of real property if the lease has
11 an annual rent payable that is anticipated to exceed \$500,000 or has total payments that
12 exceed \$2,500,000 for the term of the lease, including any renewal options that are defined
13 in the lease; prohibiting these entities from entering into or renewing a lease of real property
14 if any or all renewal periods in the lease exceed the original term of the lease; making subject
15 to prior legislative approval lease-purchase agreements that may be entered into by these
16 entities to acquire real property, other than lease-purchase agreements to refinance outstanding

1 balances on existing lease-purchase agreements and lease-purchase agreements secured by
2 University of Alaska student fees and university receipts; authorizing these entities to enter
3 into lease-purchase agreements only in the capacity of lessee under the proposed lease-
4 purchase agreement; defining procedures that these entities must follow when considering
5 whether or not to enter into lease-purchase agreements, and setting limits on the duration of
6 these agreements; providing definitions for applicable terms; and providing for an effective
7 date."

and repealing ~~the~~^a legislative ~~act~~ authorization
~~already taken~~
previously given for
acquisition of a facility
through a lease-purchase
agreement.

Adopted

2
Amendment to SB247

Page 6, line 25 add after "renewal options"

except, the Board of Regents' may, when leases are to be paid for with federal grant funds, recovery of indirect costs of university activities, or other university receipts as defined by AS 14.40.491, and the grant or other commitment is firm for two years or less, enter into a lease with an initial term equal to the term of the firm commitment, and with optional renewal periods for up to five years.

The University of Alaska frequently receives federal or other contracts for one to two year firm commitments with the government reserving the possibility of further extension of the grant if they like the initial results, etc. Some one year commitments have run 6 years in the past. If the government renews its commitment, they anticipate continuity, not down time for an interm move or relocation. Under these circumstances, the university bids space on a one year fir. with five one year renewal options, with rent increases tightly controlled.

A M E N D M E N T |

Adopted

Offered in the House
CSSB 247 (2d FIN)

By Rep. MacLean

Page 8, line 23 :

Delete : "is repealed."

Insert : "and sec. 2, ch. 92, SLA 1986 are repealed."

Title
Change
Requires

Adopted

8-LS1447N
Chenoweth
4/19/94

**HOUSE CS FOR CS FOR SENATE BILL NO. 247(FIN)
IN THE LEGISLATURE OF THE STATE OF ALASKA
EIGHTEENTH LEGISLATURE - SECOND SESSION**

BY THE HOUSE FINANCE COMMITTEE

**Offered:
Referred:**

**Sponsor(s): SENATE RULES COMMITTEE BY REQUEST OF THE LEGISLATIVE BUDGET AND
AUDIT COMMITTEE**

A BILL

FOR AN ACT ENTITLED

1 "An Act making subject to prior legislative approval contracts entered into or
2 renewed by the executive branch of state government, the legislative council, the
3 Alaska Court System, and the University of Alaska for the lease of real property
4 if the lease has an annual rent payable that is anticipated to exceed \$500,000
5 or has total payments that exceed \$2,500,000 for the term of the lease, including
6 any renewal options that are defined in the lease; prohibiting these entities from
7 entering into or renewing a lease of real property if any or all renewal periods
8 in the lease exceed the original term of the lease; making subject to prior
9 legislative approval lease-purchase agreements that may be entered into by these
10 entities to acquire real property, other than lease-purchase agreements to refinance
11 outstanding balances on existing lease-purchase agreements and lease-purchase
12 agreements secured by University of Alaska student fees and university receipts;

1 authorizing these entities to enter into lease-purchase agreements only in the
 2 capacity of lessee under the proposed lease-purchase agreement; defining
 3 procedures that these entities must follow when considering whether or not to
 4 enter into lease-purchase agreements, and setting limits on the duration of these
 5 agreements; providing definitions for applicable terms; and providing for an
 6 effective date."

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

8 * Section 1. AS 14.40.040 is amended to read:

9 Sec. 14.40.040. GENERAL POWERS OF THE UNIVERSITY. There is
 10 created and established a corporation to be called the University of Alaska. It may in
 11 that name

12 (1) sue and be sued;

13 (2) receive and hold real and personal property;

14 (3) contract and be contracted with; a contract entered into by the

15 University of Alaska for the

16 (A) rent or lease of premises for use and occupancy by the

17 University of Alaska is subject to AS 36.30.030(c);

18 (B) acquisition of property by a lease-purchase or lease-

19 financing agreement for the benefit of the University of Alaska is subject

20 to AS 36.30.085;

21 (4) adopt, use, and alter a corporate seal;

22 (5) borrow money, issue debt, or enter into long-term obligations [,] for
 23 the purchase of facilities, goods, or services; the obligations may secure, in whole or
 24 in part, debt issued by another party;

25 (6) do and have done all matters necessary for the purpose of any
 26 function set out in this chapter.

27 * Sec. 2. AS 22.05.025(a) is amended to read:

28 (a) The [SUBJECT TO AS 36.30.080, THE] supreme court has authority over

29 (1) all matters relating to the

1 (A) [PLANNING, DESIGN, CONSTRUCTION,] maintenance,
2 occupancy, [LEASING,] and operation of all court facilities;

3 (B) rent or lease of facilities for court system purposes.
4 subject to AS 36.30.080(c); and

5 (C) acquisition of facilities for court system purposes by
6 lease-purchase or lease-financing agreements, subject to AS 36.30.085; and

7 (2) the planning, design, and construction of court facilities but, in
8 the exercise of its authority under this paragraph, the supreme court shall
9 cooperate and coordinate with the Department of Transportation and Public Facilities
10 so that court facility construction projects are carried out in accordance with the
11 statutes and regulations applicable to state public works projects.

12 * Sec. 3. AS 24.20.060 is amended to read:

13 Sec. 24.20.060. POWERS. The legislative council has the power

14 (1) to organize and adopt rules for the conduct of its business;

15 (2) to hold public hearings, administer oaths, issue subpoenas, compel
16 the attendance of witnesses and production of papers, books, accounts, documents, and
17 testimony, and to have the deposition of witnesses taken in a manner prescribed by
18 court rule or law for taking depositions in civil actions when consistent with the
19 powers and duties assigned to the council by AS 24.20.010 - 24.20.140;

20 (3) to call upon all state officials, agencies, and institutions to give full
21 cooperation to the council and its executive director by collecting and furnishing
22 information, conducting studies, and making recommendations;

23 (4) in addition to providing the administrative services required for the
24 operation of the legislative branch,

25 (A) to provide the technical staff assistance in research,
26 reporting, drafting, and counseling requested by standing, interim, and special
27 committees and spot research and drafting services for individual members in
28 conformity with law and legislative rules;

29 (B) to conduct a continuing program for the revision and
30 publication of the acts of the legislature;

31 (C) to execute a program for the oversight of the administration

1 and construction of laws by state agencies and the courts through regulations,
2 opinions, and rulings;

3 (D) to operate and maintain the state legislative reference
4 library;

5 (E) to do all things necessary to carry out legislative directives
6 and law, and the duties set out in the uniform rules of the legislature;

7 (F) to sue in the name of the legislature during the interim
8 between sessions if authorized by majority vote of the full membership of the
9 council;

10 (5) to exercise control and direction over all legislative space, supplies,
11 and equipment and permanent legislative help between legislative sessions; the
12 exercise of control over legislative space is subject to AS 36.30.080(c) if the
13 exercise involves the rent or lease of facilities, and to AS 36.30.085 if the exercise
14 involves the acquisition of facilities by lease-purchase or lease-financing
15 agreement;

16 (6) to produce, publish, distribute, and to contract for the printing of
17 reports, memoranda, and other materials it finds necessary to the accomplishment of
18 its work;

19 (7) to take appropriate action for the preconvener and post-session
20 work of each legislative session including the employment one week in advance of
21 each session of not more than 10 temporary legislative employees; the continuing
22 employment of the temporary legislative employees is subject to legislative approval
23 when the session convenes;

24 (8) to establish a legislative internship program on a cooperative basis
25 with the University of Alaska that will provide for the assignment of interns to
26 standing committees of each house of the legislature during regular sessions of the
27 legislature; [,] and

28 (9) to establish reasonable fees for services and materials provided by
29 the Legislative Affairs Agency to entities outside of the legislative branch of state
30 government and charges for collecting the fees; all fees and charges collected under
31 this paragraph shall be deposited into the general fund.

1 * Sec. 4. AS 36.30.020 is amended to read:

2 Sec. 36.30.020. LEGISLATURE. The Legislative Council shall adopt and
3 publish procedures to govern the procurement of supplies, services, professional
4 services, and construction by the legislative branch. The procedures must be based on
5 the competitive principles consistent with this chapter and must be adapted to the
6 special needs of the legislative branch as determined by the Legislative Council. The
7 procedures must be consistent with the provisions of AS 36.30.080(c) - (e) and
8 36.30.075 [AS 36.30.080(b) - (e)].

9 * Sec. 5. AS 36.30.030 is amended to read:

10 Sec. 36.30.030. COURT SYSTEM. The administrative director of courts shall
11 adopt and publish procedures to govern the procurement of supplies, services,
12 professional services, and construction by the judicial branch. The procedures must
13 be based on the competitive principles consistent with this chapter and must be adapted
14 to the special needs of the judicial branch as determined by the administrative director
15 of courts. The procedures must be consistent with the provisions of AS 36.30.080(c) -
16 (e) and 36.30.085 [AS 36.30.080(b) - (c)].

17 * Sec. 6. AS 36.30.080(c) is amended to read:

18 (c) If the department, the Board of Regents of the University of Alaska, the
19 legislative council [BRANCH], or the supreme court [JUDICIAL BRANCH] intends
20 to enter into or renew a lease of real property with an annual rent to the department,
21 University of Alaska, legislative council [BRANCH], or supreme court [JUDICIAL
22 BRANCH] that is anticipated to exceed \$500,000 [\$1,000,000], or with total lease
23 payments that exceed \$2,500,000 [\$10,000,000] for the full term of the lease,
24 including any renewal options that are defined in the lease, the department, the
25 Board of Regents, the legislative council [BRANCH], or supreme court [JUDICIAL
26 BRANCH] shall provide notice to the legislature. [IF THE DEPARTMENT,
27 LEGISLATIVE BRANCH, OR JUDICIAL BRANCH INTENDS TO ENTER INTO
28 OR RENEW A LEASE-PURCHASE OR LEASE-FINANCING AGREEMENT FOR
29 REAL PROPERTY, OTHER THAN (1) AN AGREEMENT RELATED TO THE
30 REFINANCING OF AN OUTSTANDING BALANCE OWING OR (2) A
31 LEASE-PURCHASE OR LEASE-FINANCING AGREEMENT BY THE

1 UNIVERSITY OF ALASKA THAT IS SECURED BY STUDENT FEES OR
 2 UNIVERSITY RECEIPTS AS DEFINED IN AS 14.40.491, THAT HAS ANNUAL
 3 LEASE PAYMENTS OF LESS THAN \$1,000,000, AND FOR WHICH THE TOTAL
 4 LEASE PAYMENTS FOR THE FULL TERM WILL NOT EXCEED \$10,000,000,
 5 THE DEPARTMENT, LEGISLATIVE BRANCH, OR JUDICIAL BRANCH SHALL
 6 PROVIDE NOTICE TO THE LEGISLATURE.] The notice must include the
 7 anticipated annual lease obligation amount [, THE ANTICIPATED TOTAL
 8 CONSTRUCTION, ACQUISITION, OR OTHER COSTS OF THE PROJECT,] and
 9 the total lease payments for the full term of the lease [, IF THE AGREEMENT IS A
 10 LEASE-PURCHASE OR LEASE-FINANCING AGREEMENT, OR IF THE
 11 AGREEMENT IS A LEASE OTHER THAN A LEASE-PURCHASE OR
 12 LEASE-FINANCING AGREEMENT AND THE TOTAL LEASE PAYMENTS FOR
 13 THE FULL TERM OF THE LEASE EXCEED \$10,000,000]. The department, the
 14 Board of Regents, the legislative council, and the supreme court may not enter into
 15 or renew a lease of real property

16 (1) [AN AGREEMENT] requiring notice under this subsection unless
 17 the proposed lease or renewal of a lease [PROJECT] has been approved by the
 18 legislature by law; an [. AN] appropriation for the rent payable during the initial
 19 period of the lease or the initial period of lease renewal [PROJECT] constitutes
 20 approval of the proposed lease or renewal of a lease [PROJECT] for purposes of this
 21 paragraph [SUBSECTION];

22 (2) [. THE DEPARTMENT MAY NOT ENTER INTO AN
 23 AGREEMENT] under this subsection if the total of all optional renewal periods
 24 provided for in [PERIOD ALLOWED UNDER] the lease [AGREEMENT] exceeds
 25 the original term of the lease exclusive of the total period of all renewal options
 26 [TWO YEARS. IN THIS SUBSECTION, "TERM" INCLUDES DEFINED
 27 RENEWAL OPTIONS].

28 * Sec. 7. AS 36.30 is amended by adding a new section to read:

29 Sec. 36.30.085. LEASE-PURCHASE AGREEMENTS. (a) To perform its
 30 duties and statutory functions, the department, the Board of Regents of the University
 31 of Alaska, the legislative council, or the supreme court may enter into lease-purchase

1 agreements. The department, the Board of Regents, the legislative council, or the
2 supreme court may enter into a lease-purchase agreement only if the department, the
3 Board of Regents, the legislative council, or the supreme court is the lessee under the
4 agreement.

5 (b) When evaluating proposals to acquire real property under a lease-purchase
6 agreement, the department, the Board of Regents, the legislative council, or the
7 supreme court shall consider

8 (1) in addition to lease costs, the life cycle costs, function, indoor
9 environment, public convenience, planning, design, appearance, and location of the real
10 property proposed for acquisition; and

11 (2) whether acquisition of the real property by lease-purchase
12 agreement is likely to be the least costly means to provide the space.

13 (c) A lease-purchase agreement

14 (1) may not provide for a period of occupancy under the full term of
15 the lease-purchase agreement that is greater than 40 years;

16 (2) must provide that lease payments made by the department, the
17 Board of Regents, the legislative council, or the supreme court are subject to annual
18 appropriation.

19 (d) If the department, Board of Regents, legislative council, or supreme court
20 intends to enter into or renew a lease-purchase agreement for real property, the
21 department, Board of Regents, legislative council, or supreme court shall provide
22 notice to the legislature. The notice must include the

23 (1) anticipated total construction, acquisition, or other costs of the
24 project;

25 (2) anticipated annual amount of the rental obligation; and

26 (3) total lease payments for the full term of the lease-purchase
27 agreement.

28 (e) The department, the Board of Regents, the legislative council, or the
29 supreme court may not enter into a lease-purchase agreement to acquire real property
30 unless the agreement has been approved by the legislature by law.

31 (f) The provisions of (d) and (e) of this section do not apply to a lease-

1 purchase agreement

2 (1) related to the refinancing of an outstanding balance owing on an
3 existing lease-purchase agreement; or

4 (2) by the University of Alaska if the lease-purchase agreement is
5 secured by student fees or university receipts as defined in AS 14.40.491.

6 (g) In this section,

7 (1) "full term of the lease-purchase agreement" includes all renewal
8 options that are defined within the lease-purchase agreement;

9 (2) "lease-purchase agreement" includes a lease-financing agreement.

10 * Sec. 8. AS 36.30.850(b)(5) is amended to read:

11 (5) acquisitions or disposals of real property or interest in real property,
12 except as provided in AS 36.30.080 and 36.30.085;

13 * Sec. 9. AS 36.30.850(c) is amended to read:

14 (c) Except for AS 36.30.085 and 36.30.700 - 36.30.790 [AS 36.30.700 -
15 36.30.790], this chapter does not apply to contracts between two or more agencies, the
16 state and its political subdivisions, or the state and other governments.

17 * Sec. 10. AS 38.05.030 is amended by adding a new subsection to read:

18 (g) This chapter does not authorize the commissioner or any employee of the
19 department to acquire title to real property through the use of lease-purchase
20 agreements or lease-financing agreements in which the department is the lessor. For
21 purposes of this section, "lease-purchase agreement" and "lease-financing agreement"
22 have the meanings given those terms in AS 36.30.990.

23 * Sec. 11. AS 36.30.080(b) is repealed.

24 * Sec. 12. APPLICABILITY TO ALASKA COURT SYSTEM AND DEPARTMENT OF
25 NATURAL RESOURCES. (a) Notwithstanding the amendments of AS 22.05.025(a) made
26 by sec. 2 of this Act, AS 36.30.030 made by sec. 5 of this Act, and AS 36.30.080(c) made
27 by sec. 6 of this Act, the addition of AS 36.30.085 made by sec. 7 of this Act, and the repeal
28 of AS 36.30.080(b) made by sec. 11 of this Act, after the effective date of this section and
29 until December 31, 1994, the Alaska Supreme Court may continue to enter into lease-purchase
30 or lease-financing agreements for the judicial branch under the provisions of AS 22.05.025(a),
31 AS 36.30.030, 36.30.080(b), and 36.30.080(c) as they read before their amendment or repeal

1 by this Act.

2 (b) Notwithstanding the amendments of AS 36.30.080(c) made by sec. 6 of this Act,
3 AS 36.30.850(b)(5) made by sec. 8 of this Act, and AS 36.30.850(c) made by sec. 9 of this
4 Act, the addition of AS 36.30.085 made by sec. 7 of this Act and of AS 38.05.030(g) made
5 by sec. 10 of this Act, and the repeal of AS 36.30.080(b) made by sec. 11 of this Act, after
6 the effective date of this section and until December 31, 1994, the Department of Natural
7 Resources may continue to enter into lease-purchase or lease-financing agreements under the
8 provisions of AS 36.30.080(b), 36.30.080(c), 36.30.850(b)(5), 36.30.850(c), and AS 38.05 as
9 they read before their amendment or repeal by this Act, but only if the Department of Natural
10 Resources is the lessor of the property and the judicial branch is lessee.

11 * Sec. 13. This Act takes effect immediately under AS 01.10.070(c).

AN ACT

Relating to a court facility in Fairbanks, and providing for an effective date.

* Section 1. The legislature finds that a need exists for a new court facility in Fairbanks and that the needed facility must be acquired in as economical manner as possible. In acquiring the necessary court facility the supreme court should

(1) investigate the feasibility of using state land in the Fairbanks area as a site for a court facility;

(2) investigate the feasibility of contracting with the Alaska State Housing Authority or with a local government utilizing municipal revenue bonds to provide the space necessary for a Fairbanks court facility; and

(3) coordinate space acquisition in Fairbanks with other state agencies.

* Sec. 2. The supreme court may enter into a lease-purchase agreement not to exceed a cost of \$29,900,000 for construction and all other related costs of a court facility in Fairbanks, if

(1) a private licensed day-care facility for the use of employees, jurors, witnesses and the public is included in the project, and the space is rented to the private licensed day-care provider at a market rate;

(2) 15 percent of parking spaces for the court facility are reserved for the public.

DIVISION OF LEGAL SERVICES

LEGISLATIVE AFFAIRS AGENCY STATE OF ALASKA

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MEMORANDUM

April 20, 1994

SUBJECT: HCS CSSB 247 (Finance) (Work Order No. 8-LS1447M)

TO: Representative Ron Larson, Co-Chair
Representative Eileen MacLean, Co-Chair
House Finance Committee
ATTN: Louanne

FROM: Jack Chenoweth
Legislative Counsel



This draft incorporates only the committee-adopted amendment # 2 and incorporates it at a place different from where the committee's instructions specified. Since the exception made by amendment # 2 only applies to activity by the Board of Regents of the University of Alaska, I slipped it in to the bill's section 1.

The exception described in the amendment was not a model of clarity. For example, I have no idea what is involved in a "firm commitment." The suggested text of the amendment mentioned "grant or other commitment"--implying a different meaning for the word commitment--but the explanatory statement mentioned only "federal or other contracts"; since "contract" has a clearer meaning, I opted to substitute it. "University receipts" covers "recovery of indirect costs," so I used only the "university receipts" reference. Things paid for from university receipts would not seem to me to have a "firm commitment" period, so I had to make adjustments to take that into consideration. Someone who better understands where the University is going with this needs to review my language to determine whether or not I am on target.

On reflection, I am satisfied that **both amendments -- amendment # 1 terminating a prior approved project and this amendment -- require a bill title change.** The content of the new exception made by this amendment # 2 is not now covered by the current bill title. The title should incorporate, on page 1, line 3, after "and", the additional words ", with certain exceptions,". Amendment # 1 was included in an earlier draft of the bill with appropriate title language, but was removed early in the history of the measure's consideration. Per your instruction, I am holding on amendment # 1 and would also ask guidance on how to handle the title change necessitated by the addition of this amendment.

JBC:pl
94-326.plm

Enclosure

8-LS1447M
Chenoweth
4/20/94

**HOUSE CS FOR CS FOR SENATE BILL NO. 247(FIN)
IN THE LEGISLATURE OF THE STATE OF ALASKA
EIGHTEENTH LEGISLATURE - SECOND SESSION**

BY THE HOUSE FINANCE COMMITTEE

**Offered:
Referred:**

**Sponsor(s): SENATE RULES COMMITTEE BY REQUEST OF THE LEGISLATIVE BUDGET AND
AUDIT COMMITTEE**

A BILL

FOR AN ACT ENTITLED

**1 "An Act making subject to prior legislative approval contracts entered into or
2 renewed by the executive branch of state government, the legislative council, the
3 Alaska Court System, and the University of Alaska for the lease of real property
4 if the lease has an annual rent payable that is anticipated to exceed \$500,000
5 or has total payments that exceed \$2,500,000 for the term of the lease, including
6 any renewal options that are defined in the lease; prohibiting these entities from
7 entering into or renewing a lease of real property if any or all renewal periods
8 in the lease exceed the original term of the lease; making subject to prior
9 legislative approval lease-purchase agreements that may be entered into by these
10 entities to acquire real property, other than lease-purchase agreements to refinance
11 outstanding balances on existing lease-purchase agreements and lease-purchase
12 agreements secured by University of Alaska student fees and university receipts;**

1 authorizing these entities to enter into lease-purchase agreements only in the
 2 capacity of lessee under the proposed lease-purchase agreement; defining
 3 procedures that these entities must follow when considering whether or not to
 4 enter into lease-purchase agreements, and setting limits on the duration of these
 5 agreements; providing definitions for applicable terms; and providing for an
 6 effective date."

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

8 * Section 1. AS 14.40.040 is amended to read:

9 Sec. 14.40.040. GENERAL POWERS OF THE UNIVERSITY. There is
 10 created and established a corporation to be called the University of Alaska. It may in
 11 that name

- 12 (1) sue and be sued;
- 13 (2) receive and hold real and personal property;
- 14 (3) contract and be contracted with; a contract entered into by the

15 University of Alaska for the

16 (A) rent or lease of premises for use and occupancy by the
 17 University of Alaska is subject to AS 36.30.080(c); however,
 18 notwithstanding the limitation imposed by AS 36.30.080(c)(2), the Board
 19 of Regents of the University of Alaska

20 (i) may enter into a lease with a term described in (ii)
 21 of this subparagraph if the rent under the lease will be paid solely
 22 from a grant or contract made by the federal government or an
 23 agency of the federal government, and the grant or contract
 24 contains a firm commitment of not more than two years, or if the
 25 rent payable under the lease will be paid solely from university
 26 receipts as that term is defined in AS 14.40.491; and

27 (ii) when authorized by (i) of this subparagraph, may
 28 enter into a lease with an initial term equal to the period of the
 29 firm commitment of the grant or contract, or with an initial term

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not to exceed two years when the rent is payable from university receipts; the lease may contain one or more optional renewal periods, but the total of all optional renewal periods may not exceed an additional five years;

(B) acquisition of property by a lease-purchase or lease-financing agreement for the benefit of the University of Alaska is subject to AS 36.30.085;

(4) adopt, use, and alter a corporate seal;

(5) borrow money, issue debt, or enter into long-term obligations [,] for the purchase of facilities, goods, or services; the obligations may secure, in whole or in part, debt issued by another party;

(6) do and have done all matters necessary for the purpose of any function set out in this chapter.

* Sec. 2. AS 22.05.025(a) is amended to read:

(a) The [SUBJECT TO AS 36.30.080, THE] supreme court has authority over

(1) all matters relating to the

(A) [PLANNING, DESIGN, CONSTRUCTION,] maintenance, occupancy, [LEASING,] and operation of all court facilities;

(B) rent or lease of facilities for court system purposes, subject to AS 36.30.080(c); and

(C) acquisition of facilities for court system purposes by lease-purchase or lease-financing agreements, subject to AS 36.30.085; and

(2) the planning, design, and construction of court facilities but, in the exercise of its authority under this paragraph, the supreme court shall cooperate and coordinate with the Department of Transportation and Public Facilities so that court facility construction projects are carried out in accordance with the statutes and regulations applicable to state public works projects.

* Sec. 3. AS 24.20.060 is amended to read:

Sec. 24.20.060. POWERS. The legislative council has the power

(1) to organize and adopt rules for the conduct of its business;

(2) to hold public hearings, administer oaths, issue subpoenas, compel

1 the attendance of witnesses and production of papers, books, accounts, documents, and
2 testimony, and to have the deposition of witnesses taken in a manner prescribed by
3 court rule or law for taking depositions in civil actions when consistent with the
4 powers and duties assigned to the council by AS 24.20.010 - 24.20.140;

5 (3) to call upon all state officials, agencies, and institutions to give full
6 cooperation to the council and its executive director by collecting and furnishing
7 information, conducting studies, and making recommendations;

8 (4) in addition to providing the administrative services required for the
9 operation of the legislative branch,

10 (A) to provide the technical staff assistance in research,
11 reporting, drafting, and counseling requested by standing, interim, and special
12 committees and spot research and drafting services for individual members in
13 conformity with law and legislative rules;

14 (B) to conduct a continuing program for the revision and
15 publication of the acts of the legislature;

16 (C) to execute a program for the oversight of the administration
17 and construction of laws by state agencies and the courts through regulations,
18 opinions, and rulings;

19 (D) to operate and maintain the state legislative reference
20 library;

21 (E) to do all things necessary to carry out legislative directives
22 and law, and the duties set out in the uniform rules of the legislature;

23 (F) to sue in the name of the legislature during the interim
24 between sessions if authorized by majority vote of the full membership of the
25 council;

26 (5) to exercise control and direction over all legislative space, supplies,
27 and equipment and permanent legislative help between legislative sessions; the
28 exercise of control over legislative space is subject to AS 36.30.080(c) if the
29 exercise involves the rent or lease of facilities, and to AS 36.30.085 if the exercise
30 involves the acquisition of facilities by lease-purchase or lease-financing
31 agreement;

1 (6) to produce, publish, distribute, and to contract for the printing of
2 reports, memoranda, and other materials it finds necessary to the accomplishment of
3 its work;

4 (7) to take appropriate action for the preconvening and post-session
5 work of each legislative session including the employment one week in advance of
6 each session of not more than 10 temporary legislative employees; the continuing
7 employment of the temporary legislative employees is subject to legislative approval
8 when the session convenes;

9 (8) to establish a legislative internship program on a cooperative basis
10 with the University of Alaska that will provide for the assignment of interns to
11 standing committees of each house of the legislature during regular sessions of the
12 legislature; [,] and

13 (9) to establish reasonable fees for services and materials provided by
14 the Legislative Affairs Agency to entities outside of the legislative branch of state
15 government and charges for collecting the fees; all fees and charges collected under
16 this paragraph shall be deposited into the general fund.

17 * Sec. 4. AS 36.30.020 is amended to read:

18 Sec. 36.30.020. LEGISLATURE. The Legislative Council shall adopt and
19 publish procedures to govern the procurement of supplies, services, professional
20 services, and construction by the legislative branch. The procedures must be based on
21 the competitive principles consistent with this chapter and must be adapted to the
22 special needs of the legislative branch as determined by the Legislative Council. The
23 procedures must be consistent with the provisions of AS 36.30.080(c) - (e) and
24 36.30.085 [AS 36.30.080(b) - (e)].

25 * Sec. 5. AS 36.30.030 is amended to read:

26 Sec. 36.30.030. COURT SYSTEM. The administrative director of courts shall
27 adopt and publish procedures to govern the procurement of supplies, services,
28 professional services, and construction by the judicial branch. The procedures must
29 be based on the competitive principles consistent with this chapter and must be adapted
30 to the special needs of the judicial branch as determined by the administrative director
31 of courts. The procedures must be consistent with the provisions of AS 36.30.080(c) -

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(e) and 36.30.085 [AS 36.30.080(b) - (c)].

* Sec. 6. AS 36.30.080(c) is amended to read:

(c) If the department, the Board of Regents of the University of Alaska, the legislative council [BRANCH], or the supreme court [JUDICIAL BRANCH] intends to enter into or renew a lease of real property with an annual rent to the department, University of Alaska, legislative council [BRANCH], or supreme court [JUDICIAL BRANCH] that is anticipated to exceed \$500,000 [\$1,000,000], or with total lease payments that exceed \$2,500,000 [\$10,000,000] for the full term of the lease, including any renewal options that are defined in the lease, the department, the Board of Regents, the legislative council [BRANCH], or supreme court [JUDICIAL BRANCH] shall provide notice to the legislature. [IF THE DEPARTMENT, LEGISLATIVE BRANCH, OR JUDICIAL BRANCH INTENDS TO ENTER INTO OR RENEW A LEASE-PURCHASE OR LEASE-FINANCING AGREEMENT FOR REAL PROPERTY, OTHER THAN (1) AN AGREEMENT RELATED TO THE REFINANCING OF AN OUTSTANDING BALANCE OWING OR (2) A LEASE-PURCHASE OR LEASE-FINANCING AGREEMENT BY THE UNIVERSITY OF ALASKA THAT IS SECURED BY STUDENT FEES OR UNIVERSITY RECEIPTS AS DEFINED IN AS 14.40.491, THAT HAS ANNUAL LEASE PAYMENTS OF LESS THAN \$1,000,000, AND FOR WHICH THE TOTAL LEASE PAYMENTS FOR THE FULL TERM WILL NOT EXCEED \$10,000,000, THE DEPARTMENT, LEGISLATIVE BRANCH, OR JUDICIAL BRANCH SHALL PROVIDE NOTICE TO THE LEGISLATURE.] The notice must include the anticipated annual lease obligation amount [, THE ANTICIPATED TOTAL CONSTRUCTION, ACQUISITION, OR OTHER COSTS OF THE PROJECT,] and the total lease payments for the full term of the lease [, IF THE AGREEMENT IS A LEASE-PURCHASE OR LEASE-FINANCING AGREEMENT, OR IF THE AGREEMENT IS A LEASE OTHER THAN A LEASE-PURCHASE OR LEASE-FINANCING AGREEMENT AND THE TOTAL LEASE PAYMENTS FOR THE FULL TERM OF THE LEASE EXCEED \$10,000,000]. The department, the Board of Regents, the legislative council, and the supreme court may not enter into or renew a lease of real property

1 **(1)** [AN AGREEMENT] requiring notice under this subsection unless
 2 the proposed lease or renewal of a lease [PROJECT] has been approved by the
 3 legislature by law; an [. AN] appropriation for the rent payable during the initial
 4 period of the lease or the initial period of lease renewal [PROJECT] constitutes
 5 approval of the proposed lease or renewal of a lease [PROJECT] for purposes of this
 6 paragraph [SUBSECTION];

7 **(2)** [. THE DEPARTMENT MAY NOT ENTER INTO AN
 8 AGREEMENT] under this subsection if the total of all optional renewal periods
 9 provided for in [PERIOD ALLOWED UNDER] the lease [AGREEMENT] exceeds
 10 the original term of the lease exclusive of the total period of all renewal options
 11 [TWO YEARS. IN THIS SUBSECTION, "TERM" INCLUDES DEFINED
 12 RENEWAL OPTIONS].

13 * Sec. 7. AS 36.30 is amended by adding a new section to read:

14 Sec. 36.30.085. LEASE-PURCHASE AGREEMENTS. (a) To perform its
 15 duties and statutory functions, the department, the Board of Regents of the University
 16 of Alaska, the legislative council, or the supreme court may enter into lease-purchase
 17 agreements. The department, the Board of Regents, the legislative council, or the
 18 supreme court may enter into a lease-purchase agreement only if the department, the
 19 Board of Regents, the legislative council, or the supreme court is the lessee under the
 20 agreement.

21 (b) When evaluating proposals to acquire real property under a lease-purchase
 22 agreement, the department, the Board of Regents, the legislative council, or the
 23 supreme court shall consider

24 (1) in addition to lease costs, the life cycle costs, function, indoor
 25 environment, public convenience, planning, design, appearance, and location of the real
 26 property proposed for acquisition; and

27 (2) whether acquisition of the real property by lease-purchase
 28 agreement is likely to be the least costly means to provide the space.

29 (c) A lease-purchase agreement

30 (1) may not provide for a period of occupancy under the full term of
 31 the lease-purchase agreement that is greater than 40 years;

1 (2) must provide that lease payments made by the department, the
2 Board of Regents, the legislative council, or the supreme court are subject to annual
3 appropriation.

4 (d) If the department, Board of Regents, legislative council, or supreme court
5 intends to enter into or renew a lease-purchase agreement for real property, the
6 department, Board of Regents, legislative council, or supreme court shall provide
7 notice to the legislature. The notice must include the

8 (1) anticipated total construction, acquisition, or other costs of the
9 project;

10 (2) anticipated annual amount of the rental obligation; and

11 (3) total lease payments for the full term of the lease-purchase
12 agreement.

13 (e) The department, the Board of Regents, the legislative council, or the
14 supreme court may not enter into a lease-purchase agreement to acquire real property
15 unless the agreement has been approved by the legislature by law.

16 (f) The provisions of (d) and (e) of this section do not apply to a lease-
17 purchase agreement

18 (1) related to the refinancing of an outstanding balance owing on an
19 existing lease-purchase agreement; or

20 (2) by the University of Alaska if the lease-purchase agreement is
21 secured by student fees or university receipts as defined in AS 14.40.491.

22 (g) In this section,

23 (1) "full term of the lease-purchase agreement" includes all renewal
24 options that are defined within the lease-purchase agreement;

25 (2) "lease-purchase agreement" includes a lease-financing agreement.

26 * Sec. 8. AS 36.30.850(b)(5) is amended to read:

27 (5) acquisitions or disposals of real property or interest in real property,
28 except as provided in AS 36.30.080 and 36.30.085;

29 * Sec. 9. AS 36.30.850(c) is amended to read:

30 (c) Except for AS 36.30.085 and 36.30.700 - 36.30.790 [AS 36.30.700 -
31 36.30.790], this chapter does not apply to contracts between two or more agencies, the

1 state and its political subdivisions, or the state and other governments.

2 * **Sec. 10.** AS 38.05.030 is amended by adding a new subsection to read:

3 (g) This chapter does not authorize the commissioner or any employee of the
4 department to acquire title to real property through the use of lease-purchase
5 agreements or lease-financing agreements in which the department is the lessor. For
6 purposes of this section, "lease-purchase agreement" and "lease-financing agreement"
7 have the meanings given those terms in AS 36.30.990.

8 * **Sec. 11.** AS 36.30.080(b) is repealed.

9 * **Sec. 12.** APPLICABILITY TO ALASKA COURT SYSTEM AND DEPARTMENT OF
10 NATURAL RESOURCES. (a) Notwithstanding the amendments of AS 22.05.025(a) made
11 by sec. 2 of this Act, AS 36.30.030 made by sec. 5 of this Act, and AS 36.30.080(c) made
12 by sec. 6 of this Act, the addition of AS 36.30.085 made by sec. 7 of this Act, and the repeal
13 of AS 36.30.080(b) made by sec. 11 of this Act, after the effective date of this section and
14 until December 31, 1994, the Alaska Supreme Court may continue to enter into lease-purchase
15 or lease-financing agreements for the judicial branch under the provisions of AS 22.05.025(a),
16 AS 36.30.030, 36.30.080(b), and 36.30.080(c) as they read before their amendment or repeal
17 by this Act.

18 (b) Notwithstanding the amendments of AS 36.30.080(c) made by sec. 6 of this Act,
19 AS 36.30.850(b)(5) made by sec. 8 of this Act, and AS 36.30.850(c) made by sec. 9 of this
20 Act, the addition of AS 36.30.085 made by sec. 7 of this Act and of AS 38.05.030(g) made
21 by sec. 10 of this Act, and the repeal of AS 36.30.080(b) made by sec. 11 of this Act, after
22 the effective date of this section and until December 31, 1994, the Department of Natural
23 Resources may continue to enter into lease-purchase or lease-financing agreements under the
24 provisions of AS 36.30.080(b), 36.30.080(c), 36.30.850(b)(5), 36.30.850(c), and AS 38.05 as
25 they read before their amendment or repeal by this Act, but only if the Department of Natural
26 Resources is the lessor of the property and the judicial branch is lessee.

27 * **Sec. 13.** This Act takes effect immediately under AS 01.10.070(c).



Official Business

Alaska State Senate

Senate Finance Committee

Mail Stop 3100
State Capitol
Juneau, Alaska 99801-1182

FIN

**SENATE FINANCE COMMITTEE
LETTER OF INTENT
FOR
CSSB 247 (FINANCE)
CSSB 247 (2d FINANCE)**

It is the intent of the legislature that future legislation authorizing the lease-purchase or lease-financing of real property should designate the Department of Transportation and Public Facilities as the appropriate agency to hold title to, and operate and maintain state facilities.

Adopted

ALASKA STATE LEGISLATURE

LEGISLATIVE BUDGET AND AUDIT COMMITTEE

Division of Legislative Audit



P. O. Box 113300
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MEMORANDUM

TO: The Honorable Ronald L. Larson, Co-Chair
The Honorable Eileen MacLean, Co-Chair
House Finance Committee

FROM: Randy S. Welker *Randy*
Legislative Auditor

DATE: April 9, 1994

RE: Lease-Financing Legislation - SB 247

We have prepared the following to assist in your deliberations on the proposed amendments to statutes governing lease-financing acquisitions of real property by the State. This legislation is in response to our ongoing review and concern over lease-purchases of the Wildwood Correctional Center and the Court Plaza Building and the proposed purchase of the Anchorage Times Complex.

AS 36.30.080 permits the Department of Administration (DOA) to lease space for the use of the State. It also provides DOA, the legislature, and the judicial branch the authority to enter lease-purchase or lease-financing agreements for the acquisition of real property. AS 36.30.080(c), before SLA 1993 amendments became effective, required that for planned leases or lease-financing that exceed payments of \$1,000,000 annually or \$10,000,000 over the life of the lease or lease-financing notice must be provided to the legislature and a planned lease or lease-financing acquisition by the **department** must be approved by the legislature by law. Leases or lease-purchases less than \$1,000,000 annually or \$10,000,000 over the life of the lease did not require notice to, or approval by, the legislature.

After numerous failed attempts to obtain capital appropriations to acquire the leased Wildwood Correctional Center, in December 1992 the administration exercised its option under the lease, and acquired the facility under the authority of AS 36.30.080(c) by issuing Certificates of Participation (COP). However, the purchase price exceeded the dollar limitations requiring legislative approval imposed by statute. To circumvent legislative approval, the administration "split" the COP issue into two - each one falling below the \$10,000,000 ceiling, thereby not requiring approval. The deal was also structured so that the annual debt service requirements under each COP debt issue would be slightly below the \$1,000,000 limitation - again avoiding the need for legislative approval, and resulting in the

legislature having to consider annual appropriations for the next eight years until debt service of approximately \$13 million is paid. Non-appropriation - which is an option under this type of arrangement - would result in a detrimental impact to the State's general obligation credit rating.

A Division of Legislative Audit review of the Wildwood acquisition raised serious questions regarding the legality of the financing scheme employed to acquire the facility and the legality of the role of the Department of Natural Resources (DNR) in the process.

In the opinion of Legislative Counsel, the funds raised through the issuance of COPs are subject to legislative appropriation and were of a governmental and public purpose which under the Constitution requires legislative sanction before disbursement. Additionally, both Legislative Counsel and independent counsel engaged by the Legislative Budget and Audit Committee are of the opinion that DNR does not have the authority to issue debt to acquire real property.

Because of the purchase of the Wildwood facility in this manner, intentionally avoiding legislative approval - particularly at a time when the continuance of the facility itself was subject to intense legislative debate - legislation was adopted last session to specifically mandate legislative involvement in this debt issuance/property acquisition process.

Chapter 37, SLA 93 (SB 129) amended AS 36.30.080(c) requiring that "*if the department, legislative branch, or judicial branch intends to enter into or renew a lease-purchase or lease-financing agreement for real property . . .*" then "*. . . the department, legislative branch, or judicial branch shall provide notice to the legislature.*" The statute also requires that "*the department may not enter into or renew an agreement requiring notice under this subsection unless the project has been approved by the legislature.*" (emphasis added).

In the most recent attempt to utilize lease-purchase COP financing to purchase the Anchorage Times Complex, the Court System did provide notice to the legislature of its intentions, however, under the wording of the statute the Court System was not required to obtain legislative approval. SB 247 amends statute to require legislative approval **by law** for any real property acquisitions via lease-financing by the executive branch, the board of regents of the University of Alaska, the legislative council, and the supreme court.

Senate Bill 247 also amends AS 38.05.030 to specifically prohibit DNR from acquiring real property through the use of lease-purchase agreements or lease-financing agreements in which DNR is the lessor. We believe that there is clear authority under the statutory provisions of the Alaska Housing Finance Corporation to issue lease-backed revenue bonds in accordance with the Housing Project and Public Building Assistance Act (AS 18.55.010-.290) for the acquisition of public buildings. These statutes were previously Alaska State Housing Authority laws but were amended with the merger of ASHA with AHFC.

We have also included language in this bill to clearly **include** the University. If the legislature agrees with us that the provisions of leasing should apply to the University, I also recommend that legislature reconsider an exemption placed in statute last session which we have kept in this bill. Specifically, on page 7, lines 15 and 16, exempt University lease-purchase agreements secured by student fees or other university receipts from the legislative notification and approval requirements of the legislation.

We have attached a copy of AS 36.30.080 as it is currently written for reference and a sectional analysis.

Attachments

Sec. 36.30.080. Leases. (a) The department shall lease space for the use of the state or an agency wherever it is necessary and feasible, subject to compliance with the requirements of this chapter. A lease may not provide for a period of occupancy greater than 40 years. An agency requiring office, warehouse, or other space shall lease the space through the department.

(b) The department, legislative branch, or judicial branch may enter into lease-purchase agreements, including lease-financing agreements. A lease-purchase agreement must provide that lease payments are subject to annual appropriation.

(c) If the department, legislative branch, or judicial branch intends to enter into or renew a lease of real property with an annual rent to the department, legislative branch, or judicial branch that is anticipated to exceed \$1,000,000, or with total lease payments to exceed \$10,000,000 for the full term of the lease, the department, legislative branch, or judicial branch shall provide notice to the legislature. If the department, legislative branch, or judicial branch intends to enter into or renew a lease-purchase or lease-finance agreement for real property, other than (1) an agreement related to the refinancing of an outstanding balance owing or (2) a lease-purchase or lease-financing agreement by the University of Alaska that is secured by student fees or university receipts as defined in AS 14.40.491, that has annual lease payments of less than \$1,000,000, and for which the total lease payments for the full term will not exceed \$10,000,000, the department, legislative branch, or judicial branch shall provide notice to the legislature. The notice must include the anticipated annual lease obligation amount, the anticipated total construction, acquisition, or other costs of the project, and the total lease payments for the full term of the lease, if the agreement is a lease other than a lease-purchase or lease-financing agreement and the total lease payments for the full term of the lease exceed \$10,000,000. The department may not enter into or renew an agreement requiring notice under this subsection unless the project has been approved by the legislature. An appropriation for the project constitutes approval of the project for purposes of this subsection. The department may not enter into an agreement under this subsection if the optional renewal period allowed under the agreement exceeds two years. In this subsection, "term" includes defined renewal options.

(d) When the department is evaluating proposals for a lease of space, the department shall consider, in addition to lease costs, the life cycle costs, function, indoor environment, public convenience, planning, design, appearance, and location of the proposed building.

(e) When the department is considering leasing space, the department should consider whether leasing is likely to be the least costly means to providing space. (§ 2 ch 106 SLA 1986; am § 1 ch 58 SLA 1990; am §§ 2, 3 ch 181 SLA 1990; am §§ 2, 3 ch 73 SLA 1992; am § 3 ch 37 SLA 1993)

SECTIONAL ANALYSIS OF CSSB NO. 247 (2d FIN)

- Section 1.** Clarifies university statutes to show that leases, lease-purchases, and lease-financing of property by the university is subject to the provisions of the procurement code being revised by this bill.
- Section 2.** Clarifies the supreme court's statutes to show that leases, lease-purchases, and lease-financing of property by the court system is subject to the provisions of the procurement code being revised by this bill.
- Section 3.** Clarifies the legislative council's statutes to show that leases, lease-purchases, and lease-financing of property by the legislature is subject to the provisions of the procurement code being revised by this bill.
- Section 4.** Amends the section of the Procurement Code for the Legislature to specify that the procurement procedures adopted by the Council for the legislature must be consistent with the provisions being revised by this bill.
- Section 5.** Amends the section of the Procurement Code for the court system to specify that the procurement procedures adopted by the court system must be consistent with the provisions being revised by this bill.
- Section 6.** Amends the current provisions by deleting provisions dealing with lease-purchases and lease-financing. After discussion with legal counsel, we decided it would be preferable to have two distinct sections of the leasing statute; one dealing exclusively with leases, and the other dealing only with lease-purchases (section 7 of this bill). This section addresses leasing and lowers the threshold for required notification to and approval by the legislature.
- This language also adds the provision of prior legislative approval by law for leases of the Board of Regents, the legislative council and the supreme court. It also provides that, for leases, an appropriation for the lease is approval for the purpose of this section.
- Section 7.** This section adds a new section to the procurement code. It basically contains the lease-purchase and lease-financing language deleted from the previous section. In addition it provides that the department, Board of Regents, the legislative council, or the supreme court may only enter lease-purchase or lease-financing agreements as the lessee. Like the leasing section above, this section adds the prior legislative approval by law requirement to lease-purchases and lease-financing by the Board of Regents, the legislative council and the supreme court.

- Section 8.** Makes a technical amendment to the procurement code to recognize the addition of the new section of the procurement code provided in Section 7 above.
- Section 9.** Makes a technical amendment to the procurement code to recognize the addition of the new section of the procurement code provided in Section 7 above.
- Section 10.** This section specifically prohibits the Department of Natural Resources from acquiring title to real property through lease financing in which the department is the lessor.
- Section 11.** Repeals the a paragraph of the procurement code that has been included as a part of the new section added in Section 7.
- Section 12.** Effective date clause.

Prepared by the Division of Legislative Audit on 4/9/94.