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STATE OF ALASKA 1984 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date: _____

REQUEST

Bill/Resolution No.: SB 466
Title: An Act Relating to
Leases by the State
Sponsor: Bennett, Sackett, et al
Requestor: _____
Date of Request: _____

FISCAL DETAIL

Agency Affected: Administration
Program Category Affected: Division of
General Services & Supply
BRU, Program or Subprogram(s) Affected:
Leasing & Facilities

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 84	FY 85	FY 86	FY 87	FY 88	FY 89
OPERATING						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 SUPPLIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS						
800 MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-
CAPITAL	-0-	-0-	-0-	-0-	-0-	-0-
REVENUE	-0-	-0-	-0-	-0-	-0-	-0-

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL	-0-	-0-	-0-	-0-	-0-	-0-

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

*NOTE: Although indicated fiscal impact is -0-, there may be some increase in costs due to Lessor's increased exposure to risk.

ANALYSIS: Attach a separate page for analysis

Prepared By: Anselm Staack *A. Staack* Phone: 465-2200
Division: General Services & Supply Date: 3-36-84
Approved by Commissioner: Lisa Rudd *LJR* Date: 3/27/84
Agency: Administration

Distribution (by Agency preparing fiscal note):

Legislative Finance
Legislative Sponsor
Requestor
Office of Management and Budget
Impacted Agency(ies)

12/1/83

Fiscal Note / Admin 3/27/84

SENATE BILL NO. 466 by Senators Bennett, Sackett, Kerttula, Eliason, Faiks, Moss, Mulcahy, Sturgulewski, Pettyjohn and Halford, entitled:

"An Act relating to leases by the state;
and providing for an effective date."

was read the first time and referred to the State Affairs Committee and the Finance Committee.

The State Affairs Committee considered SENATE BILL NO. 466 (leases by the state; afd) and recommended it be replaced with

CS FOR SENATE BILL NO. 466 (SA)

with a majority do pass. The report was signed by Senator Vic Fischer, Chairman and concurred in by Senators Kelly, Sturgulewski and Rodey.

Department of Administration fiscal note prepared by Anselm Staack, dated March 26, is zero with note "Although indicated fiscal impact is -0-, there may be some increase in costs due to Lessor's increased exposure to risk."

SENATE BILL NO. 466 was referred to the Finance Committee.

Senator Bennett, Co-Chairman, moved and asked unanimous consent that the Finance Committee referral be waived on SENATE BILL NO. 466 (leases by the state; afd). Without objection, it was so ordered.

SENATE BILL NO. 466 was referred to the Rules Committee.

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Alaska State Legislature



Representative Mitch Abood
CHAIRMAN

House Committee on State Affairs

TO: House State Affairs Committee Members
FROM: Roger Poppe, Committee Aide *RP*
DATE: May 14, 1984
SUBJECT: CSSB 466 (am)

There is a companion bill for this Senate Bill: HB 686, sponsored by Adams, et alii, passed through House State Affairs Committee and is currently in House Finance.

The original Senate version, SB 466, has gone through numerous changes. The legislative approval for all leases over \$12,000 annually was thought to be much too low, as it would involve annual approval of over 400 leases. With a limit of \$250,000, this would be reduced to 18 leases. With a limit of \$1,000,000 there are only 4 leases. Even these 4 would be "grandfathered" in under line 28, page 1 of CSSB 466 (SA) am. Additionally, the Anchorage Complex is a lease-purchase agreement that would be exempted under lines 2-4, page 2 of the bill.

Apparently, the state is doing lease-purchase agreements currently with items like its computer equipment, for example. However, this legislation would, if passed, be first-time legislation for the state with lease-purchase involving land.

There are other proposals in the hopper this session dealing with lease-purchase of land. The Anchorage Court Building leasing would not fall under this bill, as it is also being exempted under a separate authorization through CSHB 653 (Fin) by Hayes, et alii. The various bills dealing with a proposed Legislative Hall are also lease-purchase agreements that have been proposed, and would fall under CSSB 466 (am).

Under lease-purchase agreements, the state would lease land to a private developer to build a facility on the land, and then the state would lease the facility from the developer with an option to buy. As an alternative to this and other bills, the Governor's Office has proposed SB 547, which would in effect authorize ASHA to do this instead of a private developer.

This bill attempts to be much more comprehensive in its approach and philosophy than the other bills mentioned above; it would require all lease-purchases by the state in excess of \$1,000,000 to be re-approved annually by the legislature (unless exempted specifically). It has a zero fiscal note and State Affairs Committee is the only referral besides Rules.

Courts want \$60 million from ASHA bonds

by David Postman
Times Writer

Alaska Court System officials are taking a new approach in their attempt to fund a \$60 million expansion project for Anchorage's courthouse.

Art Snowden, court administrator, said a bill introduced by Gov. Bill Sheffield would authorize the Alaska State Housing Authority to issue bonds for construction of the courthouse annex on Fourth Avenue between H and I streets. After construction the state would lease the building from the housing authority.

Sheffield's proposal would fund 12 projects, including a \$110 million office building in Anchorage, a \$75 million Capitol building in Juneau and a \$30 million mental health facility in Fairbanks. The plan has come under fire from lawmakers who maintain using the bonds would be too expensive and perhaps unconstitutional.

If legislators do not like the lease arrangement, "they can go find me \$60 million" cash for the project, Snowden said. The 25,000-square-foot expansion is "desperately needed," he said. The state has been trying to secure funding for the project for almost five years.

If the bonding plan is approved this year, Snowden said

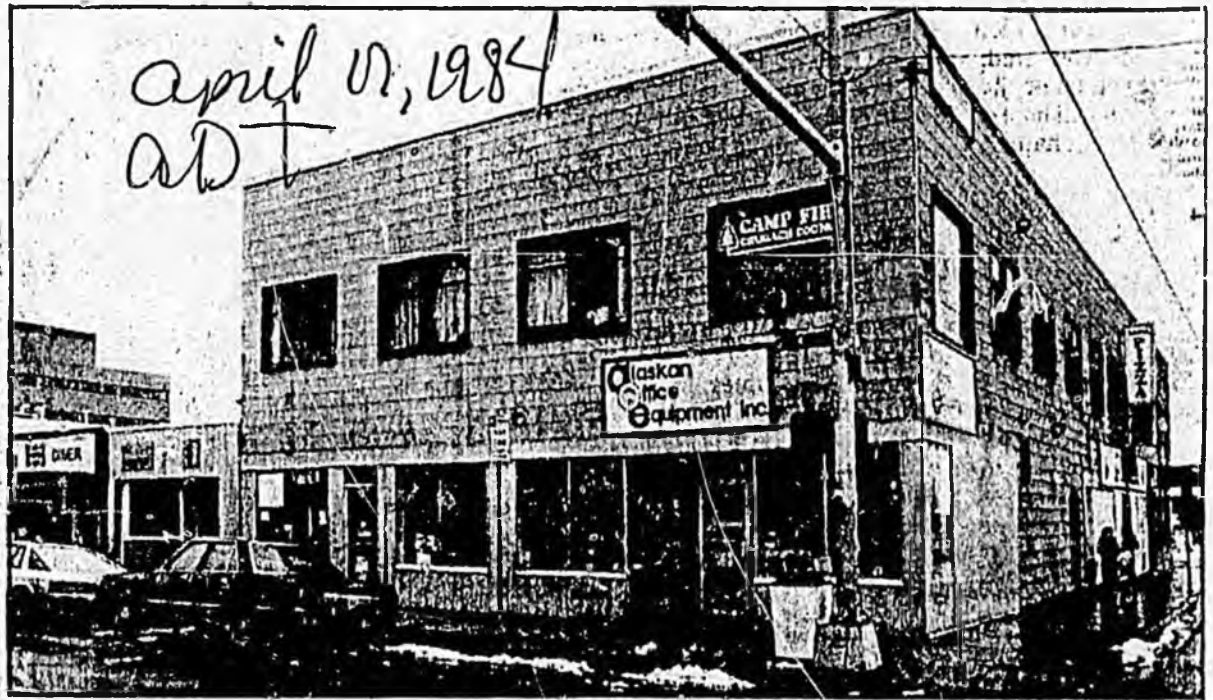
the project could be completed as early as spring of 1985.

Businesses on the block — including Legal Pizza, the Fourth Avenue Diner and several gift shops — will be torn down to make way for the project. The businesses lease the sites from the state on a monthly basis.

The state battled historic preservationists over whether to demolish the Lathrop Building, one of Anchorage's earliest commercial buildings, at the corner of Fourth Avenue and H Street. A recent decision by the Anchorage Assembly cleared the way for the state to tear down the building. The court system was directed to provide retail space along Fourth Avenue in the expansion project.

Supporters of restoring the Lathrop Building at its present site maintain the building is historically significant and rehabilitation is commercially feasible. The Anchorage Historic Landmarks Preservation Commission has estimated restoration of the 67-year-old building would cost \$2 million.

Snowden said the court system would donate the building to any group that wants to restore it at another site. But Ty L. Dilliplane, state Historic Preservation officer, wrote last year, "I strongly recommend that every possible consideration be given



The Lathrop Building, one of the city's oldest buildings, is on the spot where the court system hopes to build

to retaining the structure at its present and original location. Moving the building to a new site could damage it and would, in all probability, place it in an urban context having no historical connection to the building itself.

Dorie Clark, a local real estate broker, approached the state about acquiring the Lathrop Building to restore it at its present site. Clark heads a part-

nership that is moving and restoring the historic Club 25 this summer. Club 25 will be moved, restored and opened for commercial use without any municipal financial assistance.

Clark said the Lathrop Building has more commercial potential than Club 25. "It will be a real loss to the community" if the Lathrop Building is torn down, she said, adding people do

not realize the building has historic significance because the original wooden tongue and groove siding has been covered up with asbestos shingles.

The building is on the National Register of Historic Places. But Mike Carberry, an historian with the city planning department, said the register does not protect the building from being demolished or moved.

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Alaska State Legislature



Representative Mitch Abood
CHAIRMAN

House Committee on State Affairs

MEMORANDUM

TO: State Affairs Committee Members

FROM: Roger Poppe, Committee Aide

DATE: May 6, 1984

SUBJECT: CSSB 466 (am); leases in effect on state buildings

Attached is a copy of a computer print-out dated 2/07/84, which is a 7-page list of all current state of Alaska building and property leases with an annual cost of \$250,000.00 or more. There are 18 such leases in all.

We do have available as back-up for the Committee a second list of some 132 pages, which lists some 414 leases which range in cost from 0 to \$250,000.00 a year. It's length kept us from printing it in it's entirety for the Committee.

Also attached is a list of state of Alaska leases with an annual cost of \$1,000,000.00 or more (which is also contained in the 7-page list above).

EXPLANATION OF COLUMN HEADINGS LEASING REPORT

LEASE NO. First 4 digits are lease #. A letter following the 4 digits indicates a subsidiary lease.

LESSOR'S NAME AND ADDRESS Lines 1 and 2 are Lessor's Name.
Lines 3 and 4 are Lessor's mailing address.
Line 5 is Zip Code; Line 6 is telephone #.
Lines 7 thru 10 are location of lease property.

SVC Type of service included in cost of lease:

H = Heat	C = Clearance of snow
E = Electricity	S = Sewer
W = Water	P = Parking
J = Janitorial	T = Trash

DATES Expire: Expiration date
Review: Review date for renewal
Adjust: Lease cost adjustment due date

MON Not applicable @ this time.

TAX I.D. Tax identification # for federal tax reporting.

PUR. AGENT Initials of purchasing agent for state.

RENEW OPTIONS 1st # is # of renewal options available
2nd # is length of options (in years)

TYP SPC Type of space paid for in lease

O = Office	I = Inside storage	T = Trailer pad
C = Clinic	S = Storage, Other	G = Ground (land)
L = Lab	P = Parking	E = All else
M = Maintenance	H = Housing, employee	

FEET/ACRES # of square feet or acres leased

COST/SQ. FT. Cost per square foot (in dollars)

MONTHLY COST Monthly cost of space

LEASE REPORT - EXPLANATION OF COLUMN HEADINGS
THIS IS LEASING UNIT TO A HOUSE COST OF \$100,000
IF LEASES UNIT FOR 10000 COST LESS THAN \$100,000

LEASE NO.	LESSOR'S NAME AND ADDRESS	SVC	DATES	MON	TAX I.D.	PUR. AGENT	RENEW OPT'N	TYP SPC	FEET/ACRES	COST/SQ.FT.	MONTHLY COST
1106	ROBERT BANNON INVESTMENT BROKERS OF AK 3080 N. STREET SUITE 111 ANCHORAGE AK 99501 000-0000	H E W J S	EXPIRE: 12 27 86	N		ADP	5/01	0		.000 .000 .000 .000 .000	.00 .00 .00 .00 .00
		T	PUBLIC SAFETY ANCHORAGE							.000 .000 .000	.00 .00 .00
	DOWLING SUB. ANCHORAGE AK 00000									.000 .000 .000	.00 .00 .00
									*LEASE TOTAL	154,000	24,435.27
1188	CHARLES BLOMFIELD CHAS. BLOMFIELD & ASSOC. 528 N. ST ANCHORAGE AK 99501 279-7416	H E W J S P T	EXPIRE: 12 31 84	N	04215700331	AWB		0	25,415	1.206 .000 .000 .000 .000 .000 .000	30,650.49 .00 .00 .00 .00 .00 .00 .00
			REVENUE ANCHORAGE							.000 .000 .000	.00 .00 .00
	201 EAST 9TH AVE ANCHORAGE AK 00000									.000 .000 .000	.00 .00 .00
									*LEASE TOTAL	25,415	30,651.23
1201	BLOMFIELD & ASSOCIATES BLOMFIELD & ASSOCIATES 528 N ST. ANCHORAGE AK 99501 279-7416	H E W J S P T	EXPIRE: 10 14 84	N	920048640	AWB	3/01	0	25,404	1.297 .000 .000 .000 .000 .000 .000	32,948.99 .00 .00 .00 .00 .00 .00
			HEALTH AND SOCIAL SERVICES ANCHORAGE							.000 .000 .000	.00 .00 .00
	GAMBLE & 4TH AVE. ANCHORAGE AK 00000									.000 .000 .000	.00 .00 .00
									*LEASE TOTAL	25,404	32,949.22

LEASE NO.	LESSOR'S NAME AND ADDRESS	SVC	DATES	MON TAX I.D.	PUR. AGENT	RENEW OPT'N	TYP SPC	FEET/ACRES	COST/SQ.FT.	MONTHLY COST
1444	CAPITAL OFFICE PARK CAPITAL OFFICE PARK 157 YESLER WAY SUITE 609 SEATTLE WA 98104 206-624-0351	H E W S	EXPIRE: 6 30 87 REVIEW: 87 ADJUST: 7 84	N 911142838	JMD	2/05	0	35,500	2.300 .000 .000 .000 .000 .000	81,650.00 .00 .00 .00 .00 .00
	F&G HEADQTRS. WEST 8TH STREET JUNEAU AK 99801	P	FISH AND GAME JUNEAU				P		.000 .000 .000 .000	.00 .00 .00 .00
								*LEASE TOTAL	35,500	85,078.39
1445A	THE BLOMFIELD CO. BLOMFIELD COMPANY, THE 528 N STREET ANCHORAGE AK 99501 279-7416	H E W J C S	EXPIRE: 10 14 90 REVIEW: 6 90 ADJUST:	N	AWB	5/02	0	47,920	1.125 .000 .000 .000 .000 .000	53,910.00 .00 .00 .00 .00 .00
	3301 EAGLE ANCHORAGE AK 00000	T	LABOR ANCHORAGE						.000 .000 .000	.00 .00 .00
								*LEASE TOTAL	47,920	53,918.65
1504	CBS REAL ESTATE CO. INC CBS REAL ESTATE CO. INC. 3351 ARCTIC BOULEVARD ANCHORAGE AK 99503 337-1548	H E W J S P T	EXPIRE: 8 31 84 REVIEW: 4 84 ADJUST: 7 84	N	ADP	5/01	0	39,151	1.948 .000 .000 .000 .000 .000 .000	76,266.15 .00 .00 .00 .00 .00 .00
	555 COR- DOVA ST. ANCHORAGE AK 00000		NATURAL RESOURCES ANCHORAGE						.000 .000 .000	.00 .00 .00
								*LEASE TOTAL	39,151	76,261.45

LEASE NO.	LESSOR'S NAME AND ADDRESS	SVC	DATES	MON TAX I.D.	PUR. AGENT	RENEW OPT'N	TYP SPC	FEET/ACRES	COST/SQ.FT.	MONTHLY COST
1532	RESOLUTION TOWERS RESOLUTION TOWERS 1341 FAIRBANKS STREET ANCHORAGE AK 99501 276-4470	H E W J C S P T	EXPIRE: 9 24 87	N	AWB	5/01	0	31,345	2.140 .000 .000 .000 .000 .000 .000 .000	67,078.30 .00 .00 .00 .00 .00 .00 .00 .00
	RESOLUTION TWR 1031 WEST 4TH AVENUE ANCHORAGE AK 99501	LAW ANCHORAGE						P P E	.000 .000 .000 .000	.00 .00 .00 .00
					*LEASE TOTAL			31,345		44,450.70 Q
1535A	FRONTIER BUILDING, THE 12400 SE 38TH STREET BELLEVUE WA 99501 206-643-1010		EXPIRE: 9 30 85	N	AWB	4/01	0	30,719	2.257 .000 2.257 .000 .000	69,332.78 .00 .00 .00 .00
	FRONTIER BLDG. 3601 "C" ST. ANCHORAGE AK 99503	HEALTH AND SOCIAL SERVICES ANCHORAGE	REVIEW: 7 84 ADJUST: 7 84					L P	.000 .000 .000 .000 .000	.00 .00 .00 .00 .00
					*LEASE TOTAL			30,719		69,333.00
1535D	FRONTIER BUILDING, THE 12400 SE 38TH STREET BELLEVUE WA 98006 206-643-1010		EXPIRE: 9 30 85	N	AWB	4/01	0	19,213	2.257 .000 .000 .000 .000 .000 .000	43,363.74 .00 .00 .00 .00 .00 .00
	FRONTIER BLDG. 3601 "C" ST. ANCHORAGE AK 99503	MILITARY AFFAIRS ANCHORAGE	REVIEW: 7 84 ADJUST: 7 84						.000 .000 .000 .000 .000	.00 .00 .00 .00 .00
					*LEASE TOTAL			19,213		43,364.38

LEASE NO.	LESSOR'S NAME AND ADDRESS	SVC	DATES	MON TAX I.D.	PUR. AGENT	RENEW OPT'N	TYP SPC	FEET/ACRES	COST/SQ.FT.	MONTHLY COST
1535F	FRONTIER BUILDING, THE 12400 38TH ST. BELLEVUE WA 98006 206-643-1010		EXPIRE: 9 30 85 REVIEW: 7 84 ADJUST: 7 84	N	AWB	4/01	0	16,664	2.257 .000 .000 .000 .000 .000 .000 .000	37,610.65 .00 .00 .00 .00 .00 .00 .00
	FRONTIER BLDG. 3601 "C" ST. ANCHORAGE AK 99503		COMMERCE ANCHORAGE						.000 .000 .000 .000	.00 .00 .00 .00
								*LEASE TOTAL 16,664		37,611.21
1535G	FRONTIER BUILDING, THE 12400 38TH ST. BELLEVUE WA 98006 206-643-1010		EXPIRE: 9 30 85 REVIEW: 7 84 ADJUST: 7 84	N	AWB	4/01	0	54,239	2.257 .000 .000 .000 .000 .000 .000 .000	122,417.42 .00 .00 .00 .00 .00 .00 .00
	FRONTIER BLDG. 3601 "C" ST. ANCHORAGE AK 99503		NATURAL RESOURCES ANCHORAGE						.000 .000 .000 .000 .000	.00 .00 .00 .00 .00
								*LEASE TOTAL 54,239		122,419.22
1607	THE BLOMFIELD CO. BLOMFIELD COMPANY, THE 528 N STREET ANCHORAGE AK 99501 279-7416	H E W J C S P T	EXPIRE: 6 13 87 REVIEW: 87 ADJUST: 6 84	N	SAS	2/01	0	59,463	1.970 .000 .000 .000 .000 .000 .000 .000	117,142.11 .00 .00 .00 .00 .00 .00 .00
	BLOMFIELD BLDG 1107 W 8TH STREET JUNEAU AK 99801		LABOR JUNEAU				P		.000 .000 .000 .000 .000	.00 .00 .00 .00 .00
								*LEASE TOTAL 59,463		117,118.33

STATE OF ALASKA LEASES WITH AN ANNUAL COST OF \$1,000,000.00 OR MORE

LEASE #	LESSOR NAME	LEASE ADDRESS	SQ. FT.	ANNUAL COST
1444	CAPITAL OFFICE PARK (TARU TWIN Bldg)	WEST 8TH STREET JUNEAU, AK.	35,500	\$ 1,020,940.71
1535	FRONTIER BUILDING	3601 C STREET ANCHORAGE, AK.	135,019	\$ 3,628,318.80
1607	BLOMFIELD CO.	1107 W. 8TH STREET JUNEAU, AK.	59,463	\$ 1,405,419.96
162.7	GOLDBELT ENTERPRISE MGT.	WEST 10TH STREET JUNEAU, AK.	40,889	\$ 1,079,469.60

of 10 pages

FEB 03 1984

STATE OF ALASKA
THE LEGISLATURE

POUCH Y - STATE CAPITOL
JUNEAU, ALASKA 99811
907-465-3800

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

February 3, 1984

SUBJECT: Legislative approval of lease agreements

TO: Senator John Sackett
Chairman, Senate Finance Committee

FROM: Billy G. Berrier *BGB*
Director
Division of Legal Services

You have asked whether there is a requirement that the legislature approve lease agreements entered into by the state and a municipality whereby the municipality finances an improvement by revenue bonds and the state enters into a long term lease adequate to retire the bonds.

Approval is required by AS 37.05.280 when the lease requires annual payments in excess of \$12,000. That statute reads:

Sec. 37.05.280.

Leases.

The department shall lease necessary space, and contract for the lease of space for the use of the state or an agency of the state, wherever it is necessary and feasible, subject to compliance with the requirements of AS 37.05.220 - 37.05.280. No lease or contract for a lease may provide for a period of occupancy greater than 40 years. An agency of the state requiring office, warehouse or other space shall lease the space through the department. No contract or lease executed after January 1, 1966, which provides for a payment or payments by the state in excess of \$12,000 annually is valid unless the use of the space to be provided for by such contract or lease has been expressly approved by the legislature by concurrent resolution.

Senator John Sackett

Page 2

February 3, 1984

However on the basis of State v. A.L.I.V.E. Voluntary 606 P.2d 769, which invalidated annulment of regulations by concurrent resolution, and on the prohibition of special and local legislation contained in Sec. 19, Article II of the Constitution of the State of Alaska the Superior Court for the First Judicial District in Juneau in 1981 held this statute unconstitutional. (Marine View Tenants Association V. A.S.H.A. Court case no. 1JU-80-1037 Civ)

The case was not appealed so there is no definitive Supreme Court decision on the point. Nevertheless this decision casts grave doubts on the constitutionality of the statute.

BGB:ojb

J3/045

MEMORANDUM

State of Alaska

TO: Gordon S. Harrison
Associate Director
Office of Management and Budget
Division of Strategic Planning

DATE: March 21, 1984

FILE NO: 84B-11

TELEPHONE NO: 465-3568

FROM: Richard Emerman
Manager

SUBJECT: Leasing, Bonds, and
Cash

Various leasing arrangements are being considered to finance the construction of certain State facilities; for example, the proposed maximum security prison and the proposed Anchorage State Office Building. A number of questions have been raised as a result:

- °What are these financing mechanisms and how do they work?
- °In what way and to what extent do they resemble G.O. debt?
- °Do these mechanisms result in more or less cost to the State than G.O. bond financing or cash acquisition?

These questions are explored in the discussion below. A general description and comparison of the major types of leasing arrangements is followed by a brief discussion of their similarity to debt. The question of relative cost to the State is then addressed beginning with a brief discussion of cash acquisition versus G.O. bond financing, followed by a cost comparison among leasing and bonding alternatives for two specific cases: the proposed maximum security jail and the proposed Anchorage State Office Building.

Lease-Purchase Agreements and Lease Revenue Bonds

In the world of government finance, a lease-purchase agreement is also referred to as a "tax-exempt lease," and is essentially equivalent to an installment purchase of a capital good. At the end of the schedule of lease payments, the lessee can acquire the good for a nominal price, e.g., one dollar. Like all installment purchases, the sum of the installments is greater than the "cash up front" price, since the payment schedule incorporates an interest rate. The interest component of the "lease payments" is identified in the original lease-purchase agreement, and is considered tax-exempt income to the lease payment recipients. This is because the IRS considers the "installments" or "lease payments" analogous to debt service on municipal bonds, the interest component of which is exempt from Federal income taxes.

A lease-purchase agreement used to finance large capital structures can be broken into shares called "certificates of participation." Typically, a financial intermediary such as a bank sells the certificates of participation (CPs) to private investors, and the proceeds of the sale are used to finance project construction. The certificates are rated securities, and entitle the holders to receive specified portions of the lease payments over the term of the agreement. The interest component of the lease payments constitutes tax-exempt income to the CP holders.

The lessor in a lease-purchase agreement can be a private developer. In that event, the developer would not secure debt at taxable interest rates in order to finance construction, but would instead be likely to sell the lease-purchase agreement to one or more investors seeking tax-exempt income. The developer would use the proceeds from the sale to finance construction, and assign receipt of the ensuing lease payments to the investors.

Since lease-purchase agreements are essentially equivalent to installment sales, the "lessee" is considered the owner of the property for Federal tax purposes at the inception of the lease and throughout its term. Since the lessee in our case would be the State, and since the State pays no Federal income tax, there is no way under this arrangement to capture any benefit from the use of depreciation or applicable investment tax credits. These benefits are relevant only through the mechanism of a "true lease," discussed later in this memo.

A tax-exempt revenue bond secured by a State lease is sometimes called a "lease revenue bond." In concept, these are analogous to lease-purchase agreements. In either case, financing for a capital project is obtained at tax-exempt interest rates, with repayment to creditor(s) secured by a long-term lease that is contingent on annual appropriations by the Legislature. The interest rates required by investors are comparable for either instrument, and are somewhat higher than G.O. bond rates due to the added risk implied by the "contingent on appropriation" clause. Underwriting spread is also comparable for lease-purchase and revenue bond financing, and in either case is more costly to the State than it is for G.O. bond financing.

There are various reasons why states might consider using these alternatives instead of G.O. bonds. Revenue bonds are often used as a way to ensure that project beneficiaries pay for the capital cost of a facility through user fees that are pledged to the payment of debt service. However, that purpose is not relevant when the bonds are secured by a State lease that will be paid with the State's unrestricted revenue. Some governments operate under the restriction of legal limits on G.O. debt,

which can be avoided (for better or worse) by resort to these financing techniques. The State of Alaska, however, does not have such a limit on the books. The State does have a limited debt capacity -- if too much debt is issued, the State's bond rating will fall and higher interest rates will result. However, the rating agencies consider lease revenue bonds and lease-purchase agreements in determining the State's remaining debt capacity (see Attachment A: letter to Milt Barker from Standard and Poor's Corporation). The State does not conserve its debt capacity by using these financial instruments.

The effective interest rates for G.O. bonds will always be lower than comparable revenue bond rates. However, revenue bonds can result in certain compensating cost savings, such as avoidance of referendum cost (i.e., the cost of placing a bond proposition before the voters) and possibly some portion of construction cost if the revenue bond mechanism results in time savings (i.e., if there is real inflation in construction costs, and construction can begin sooner by not having to wait for the next general election). In addition, reserve fund requirements applicable to lease revenue bonds may result in the realization of arbitrage income (by investing the reserve fund at taxable interest rates), thus lowering the net cost of debt service. It is commonly assumed, however, that G.O. bond financing will be less costly to the issuer than lease revenue bond financing, an assumption that will be examined in more detail later in this memo.

Why else would the State consider using lease revenue bonds instead of G.O. bonds? There appear to be two basic reasons:

1. There is an unwillingness to accept the risk of rejection of a G.O. bond proposition by the Legislature or by the voters.
2. There is an emergency situation that requires faster response than the G.O. bond process allows.

Since lease-purchase agreements (or tax-exempt leases) are so closely analogous to lease revenue bonds, the reasons for preferring one to the other are not clear. There might be technical considerations in any specific case (such as the availability of an appropriate intermediary) that would tend to favor one option over the other.

True Leases

In a true lease, the lessor maintains ownership of the property throughout the lease and may take advantage of depreciation and

applicable investment tax credit benefits. These benefits can be passed along to the lessee.

If these benefits are to be realized then the lessor must be a tax-paying entity, which would typically rely on taxable debt for its own financing (unless industrial development bonds can be obtained for a particular project). As a result, the required lease payments under a true lease usually must be high enough to cover the lessor's taxable debt service with its higher interest rates. Although such interest is tax deductible to the private lessor, this is offset by the fact that the lease payments constitute fully taxable income to the lessor (i.e., there is no "tax-exempt interest component" of a lease payment made under a true lease).

In addition, the IRS will not permit the lessor to take advantage of depreciation and investment tax credits during the term of the lease and then sell the property to the lessee for a nominal price at the end of the lease. Such sale at a nominal price would indicate that the "lease" was equivalent to an installment purchase all along. A consequence of true leasing is that the lessee cannot acquire the property for less than its market value at the end of the lease. If the property were an office building which the State planned to occupy indefinitely, a true lease arrangement would require either that the State purchase it at market value after the initial lease term, or continue leasing the space after its initial construction cost had been paid off.

In general, the following considerations are important in evaluating the merits of true lease financing:

1. What is the current spread between the interest rates payable on tax-exempt and taxable debt? This differential changes over time in response to various factors, including tax laws and the supply and demand for each type of debt instrument. In addition, interest rates on taxable debt are particularly subject to variation depending on the type of project being financed and the relative ease of finding alternate users should the State pull out of the lease. One would expect that the spread between taxable and tax-exempt rates would be greater for a prison than for an office building in downtown Anchorage. True lease financing becomes more attractive as the size of the spread decreases.
2. Can the private developer obtain financing through tax-exempt industrial development bonds (IDBs)? Presently, Federal regulations allow issuance of IDBs in excess of \$10 million for various specific types of structures, including sports arenas, convention centers, airports,

docks, and several others. However, neither prisons nor office buildings appears on the list. The use of IDBs has come under increasing scrutiny by Congress, particularly as it contemplates ways to reduce the Federal budget deficit. Legislation has been proposed that would severely curtail the issuance of IDBs.

3. Can the private developer make full use of depreciation tax deductions? If the developer does not make a profit in a particular year, those benefits cannot be realized for that year. Will Federal law continue to allow the developer to use accelerated depreciation, or will another method such as straight-line depreciation over a greater number of years be required in the future as has been recently proposed in Congress?
4. Can the investment tax credit (ITC) be used to significant advantage for the project under consideration? The ITC is most significant when the project involves the rehabilitation of an historic structure. Public entities owning such structures have sometimes entered into sale-leaseback arrangements with private firms in order to benefit from the ITC. For new construction, however, the ITC is calculated only on equipment purchases and is generally of only marginal benefit.
5. Will a private developer be able to build a particular structure for less cost than the public sector would incur for building the same structure, perhaps due to the operation of efficiency incentives? If so, some of the cost savings might be passed through to the public lessee.
6. Private property owners are subject to payment of local real estate taxes while public owners are not. The added cost of such taxes constitutes a financial penalty under the true lease alternative. However, if a public owner (e.g., the State) were to make payments to a municipality in lieu of property taxes (e.g., higher revenue sharing), this financial advantage of public ownership would be lost.
7. Under a true lease, the lessee cannot acquire the property at the end of the lease for less than its fair market value. If the State were to plan indefinite occupancy of a facility, it would have to plan either acquisition at such price or indefinite extension of a lease arrangement. There are obviously some problems in estimating the future "market value" of a facility such as a maximum security jail. In general, however, such an estimate is essential to the financial evaluation of a true lease proposal.

8. The interest paid by a private developer can be deducted from the developer's taxable income. However, the rental income received by a private developer under a true lease is fully taxable. These two factors tend to offset each other, but must be explicitly recognized in true lease evaluations.
9. In contrast to lease-purchase agreements or lease revenue bonds, true lease financing does have the advantage of conserving the State's remaining debt capacity. The rating agencies are not likely to consider lease payments made under true leases to be equivalent to debt service obligations. True lease financing can therefore help the State preserve a higher bond rating, though the amount of savings that can be attributed to a specific true lease as a result depends on how important it was in preserving the rating and how much bonding the State undertakes in the future.

Leasing and Debt

Much discussion has taken place on the extent to which leasing resembles debt. Although approval by the Legislature and the voters is necessary before G.O. debt can be incurred, the Executive branch can unilaterally enter into a lease that calls for annual payments over a long term. Such leases always carry the qualification that payment is contingent on annual legislative appropriations, and it is this provision that mainly distinguishes leases from debt. However, for this to be a meaningful distinction, the Legislature must actually be presented with a meaningful annual choice.

To illustrate, assume that a bank sells certificates of participation in a lease to be paid by the State of Alaska, and that the CPs receive an "A" rating by one or more of the rating agencies. The State's name appears on the face of the security. Assume further that the lease is for a facility that would not be used by any other entity; for example, a prison. Even though the certificates state that payment is contingent on annual legislative appropriations, the effect of not appropriating the funds could be severe. Essentially, the investors holding the CPs would now be holding worthless paper with Alaska's name on it. It seems likely that such an event would have a negative impact on the State's credit rating, though there seems to be little consensus as to how serious it would be. If the result were a substantial decline of the State's bond rating along with a jump in the interest rates faced by the State and its subdivisions, the result would be serious indeed. This prospect could force the Legislature to "choose" to appropriate funds for payment of the lease. On the other hand, perhaps the impact of

non-appropriation would be much more tolerable. It is a subject which should be more closely examined.

If the State entered into a true lease with a private developer who obtained private financing at taxable interest rates, then non-payment of the lease would not be likely to affect the State's credit or the credit of any other public entities in Alaska. A key point seems to be: does the name of the State or any of its subdivisions appear on the face of a rated security, and if so, will non-appropriation of a "lease payment" result in the holders of such securities losing their investment? If the answer to these questions is yes, and if the State's credit is seriously affected as a result, then the similarity of leasing and debt for that particular case is striking.

Cash versus G.O. Bonds

The evaluation of cash financing compared, for example, with G.O. bond financing is conceptually difficult. One argument is that Alaska would be financially better off by bonding for capital projects while depositing cash revenues in the Permanent Fund. In so doing, the State would realize earnings at taxable rates of interest while borrowing funds at lower, tax-exempt rates of interest. Ignoring the effect of Permanent Fund dividends (i.e., assuming that the government retained all Permanent Fund earnings), the resulting "arbitrage income" would leave the State financially better off than if cash had simply been paid out to finance capital construction.

However, increases in bonding would probably not, in reality, be accompanied by increases in Permanent Fund deposits or any other type of government saving. It is therefore misleading, one may argue, to assume that earnings at taxable rates of interest constitute an opportunity cost of cash expenditure for capital projects. The available cash will be spent in any event -- bonding for capital projects will simply enable the State to spend more than it otherwise would, increasing future financial obligations in the process.

It does appear that bonding can be said to be "cheaper" than cash only if the cash that is freed up by bonding is invested at a higher rate of return. If the cash that is freed up is simply expended on something else, then it is difficult to see how bonding can serve to improve the State's financial position.

Comparison of Financing Mechanisms -- Maximum Security Jail

Financial advisors to the State from Foster & Marshall/American Express, Inc. (F&M) have provided data that enable rough comparison of certain financing alternatives for the proposed maximum security jail. In the opinion of F&M, the cash flow conse-

quences to the State of the lease revenue bond and lease-purchase alternatives are so nearly the same that they may be considered identical for purposes of rough financial analysis. Thus, one set of figures below reflects the expected costs of either lease revenue bond or lease-purchase financing. The other set of figures displays expected costs for G.O. bond financing. At the bottom of each column are shown the present values of each stream of payments calculated at selected discount rates.

This example incorporates the following assumptions:

1. Construction cost is estimated at \$65 million.
2. G.O. bonds would be rated "AA" while revenue bonds or certificates of participation would be rated "A." G.O. bonds receive the higher rating since, unlike the alternatives, they are formally secured by the State's "full faith and credit." In order for the revenue bonds or CPs to receive an "A" rating, the project evaluators must be reasonably certain either that the Legislature will in fact appropriate the necessary funds throughout the term of the lease, or that alternative users of the facility can readily be found with the capacity to assume the lease payments.
3. As a result of these ratings, the interest rate projected for G.O. bonds is estimated to be 75 basis points (.75%) below the rate for revenue bonds or CPs.
4. For each alternative, general fund outlays for debt service (or "lease payments") are scheduled to occur over a ten year period. The ten year schedule is typical of recent G.O. bond offerings by the State of Alaska. Ten years was selected for revenue bonds and CPs simply for comparison purposes, although shorter repayment periods result in significant reduction of the present value of State cost.
5. The analysis assumes that funds are obtained and construction begins in the summer of 1984, with completion of the facility scheduled for the summer of 1986. The revenue bond/lease-purchase alternative assumes that interest would be capitalized for the construction period, with lease payments beginning only after the facility is completed. (This accounts for the zero net debt service shown in the example during the first two years in the lease revenue bond/lease-purchase column.) The present value of State cost is relatively insensitive in this example to whether or not interest is capitalized for the construction period.

6. Repayment of G.O. bonds assumes level principal payments throughout the term, consistent with the State's current practice.
7. Many other assumptions go into and affect the analysis, including estimated rates of return on investment of fund balances. For example, a debt service reserve fund equal to one year's debt service is typically required for the revenue bond or CP alternatives. This reserve fund is maintained by a trustee until the final year of the repayment schedule, and is typically invested at taxable rates of interest in relatively long-term securities. As a result, a certain amount of arbitrage income is earned by the reserve fund, offsetting the State's annual debt service to some extent. (On the negative side, however, the need to borrow more in order to establish a reserve fund uses up more of the State's remaining debt capacity.) Assumptions made on investment of the reserve fund affect the financial attractiveness of the revenue bond/CP alternatives. No reserve fund is required or established for G.O. bonds.

Maximum Security Jail
State Cash Flow Comparison--Net Debt Service ¹
(\$ Thousands)

<u>Period</u> <u>Ending</u>	Lease-Revenue Bonds or <u>Lease Purchase Agreement</u>	<u>G.O. Bonds</u>
7-1-85	0	7,127
7-1-86	0	9,654
7-1-87	11,180	10,562
7-1-88	11,180	10,122
7-1-89	11,176	9,650
7-1-90	11,179	9,161
7-1-91	11,179	8,659
7-1-92	11,176	8,143
7-1-93	11,177	7,615
7-1-94	11,179	7,074
7-1-95	11,178	
7-1-96	9,890	

Net Present Value:

8% discount rate	63,795	59,579
9% discount rate	59,923	57,043
12% discount rate	50,021	50,356

¹ Net debt service means debt service (or "lease payments") after allowance for payout of capitalized interest, and after allowance for earnings on fund balances (including capitalized interest fund, debt service reserve fund, and construction fund). In other words, it refers to net general fund expenditure.

For this example, the present value of State cost is about \$4.2 million less with G.O. bonds than with the revenue bond/CP alternatives, given an 8% discount rate. The 8% rate is suggested by F&M as perhaps the most meaningful rate, since it roughly approximates the State's cost of funds for G.O. debt. The comparison is sensitive to the selection of a discount rate, however. At 9%, the G.O. bond advantage declines to \$2.9 million. Though a 12% discount rate is uncommonly high for public sector evaluation, the present value of State cost discounted at 12% is slightly higher for G.O. bonds than for the revenue bond/CP alternatives. The reason for displaying a 12% discount rate here is simply to point out that not only the magnitude of the result but the result itself can be changed by altering the discount rate.

The result can be changed by modifying other assumptions as well. For example, the effective interest rate payable by the State is reduced as the repayment term is shortened. Theoretically, at 8% and 9% discount rates, the present value of State cost would be less for lease revenue bond or lease-purchase financing than for G.O. bonds if the former were paid off over an accelerated, three-year term while the latter were paid off over a standard, ten-year term. Further, it should be noted that any benefit from time savings obtainable by using lease revenue bond or lease-purchase financing has not been quantified for this comparison.

This leads to the unsatisfying conclusion that generalizations should be avoided. It does appear in this example that, at generally accepted public sector discount rates and standard repayment terms, G.O. bond financing is less costly to the State than the lease revenue bond/lease-purchase alternatives. But these alternatives can be competitive if favorably structured, and therefore should not be rejected for any specific case on financial grounds before the details and possibilities have been checked out.

F&M rejected the true lease alternative for the maximum security jail without doing any detailed cash flow analysis. The primary reasons for rejecting the true lease alternative in this case appear to be as follows:

1. A private developer would not be able to secure tax-exempt industrial development bonds for the project. Since the jail facility would not be readily adaptable to alternative uses if the State pulled out of the lease, the developer would face a higher risk of non-occupancy than would be faced for a general purpose facility. Thus, the developer might have difficulty obtaining financing in the

taxable market, and would probably have to pay an interest rate premium and/or demand higher rentals from the State that reflected the higher risk.

2. The F&M representative placed considerable weight on the standard disadvantage of true leasing that requires either:
 - a. the State to pay fair market value for the facility at the expiration of the lease in order to acquire ownership; or
 - b. the State to continue leasing the facility indefinitely, long after the initial construction cost has been paid off.
3. There is a question whether the IRS would allow the facility to qualify for true lease tax treatment. If it were classified as limited or special use property that could only be used by the lessee (i.e., the State), then the IRS might consider the arrangement to be essentially a conditional sale and not a true lease.

Comparison of Financing Mechanisms -- Anchorage State Office Building

In early 1983, a financial review of the proposed Anchorage State Office Building was performed by Arthur Young & Company (AY) for the Department of Administration. One purpose of the review was to compare the cost to the State of private (true lease) financing and public (G.O. bond) financing. Arthur Young's conclusion at the time was that G.O. bond financing would be somewhat less costly to the State than private development/true leasing, but that changes in any of several assumptions could tip the balance the other way (see Attachment B: excerpt from AY study). One such assumption was the spread between taxable and tax-exempt interest rates. Another was the probability of construction cost overruns, which would be borne entirely by the State under public financing but by the private developer under private development/financing.

The Department of Administration presently believes that AY's original assumptions should be modified. For example, if the most plausible public financing alternative is revenue bonds issued, perhaps, by ASHA, then the interest rate obtainable for public financing would be somewhat higher than the G.O. bond rate used by Arthur Young. This reduces the spread between the likely public and private interest rates, and makes true leasing more attractive. Overall, the Department believes that current conditions and information warrant the conclusion that State

cost under public or private financing would be roughly the same. In the Department's view, the major reason why private financing is competitive for Anchorage office space but not competitive for a jail facility is that the higher risk of the latter project results in too high a spread between obtainable tax-exempt and taxable interest rates.

There is, however, one other element that has been left out of the Anchorage office building analysis that might be significant. The AY analysis goes out for thirty years and stops without accounting for the cost of continued leasing or acquisition at fair market value. It may be that the present value of such cost thirty years out is too small to affect the analysis. However, it is plausible that the building would be in good condition at that time and constitute a very valuable asset. After the original construction cost had been paid off in thirty years, the true lease alternative would require that the State essentially pay for it again. This aspect of the alternative should be explicitly accounted for in any further comparison of public and private financing of the structure.

Conclusions

1. Lease revenue bond and lease-purchase financing are closely analogous mechanisms with highly similar financial consequences.
2. Typically, G.O. bonds will be less costly to the State than lease revenue bonds or lease-purchase agreements. However, these alternatives might be competitive in specific cases if favorably structured.
3. True leasing is unlikely to be competitive for financing special purpose facilities. It might be competitive for financing general purpose facilities, but does require that continued usage after construction costs have been paid off is possible only through continued leasing or acquisition at fair market value.
4. Bonding or leasing could be considered "cheaper" than cash acquisition only if the cash that would be freed up is invested by the State at higher rates of return.

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ATTACHMENT A

December 29, 1983

RECEIVED

JAN 03 1984

Mr. Milt Barker
Deputy Commissioner
Department of Revenue
11th Floor State Office Bldg.
Pouch, SB
Juneau, Alaska 99811

ALASKA DEPARTMENT OF REVENUE
TREASURY DIVISION
JUNEAU

Dear Mr. Barker:

I would like to respond to your letter of December 13, regarding our views on lease obligations.

Lease Payments are viewed in essentially the same light as debt service on general obligation bonds, regardless of whether the obligation is cancellable due to non-appropriation. In fact, debt obligations secured by lease payments are included in our computations for overall debt burden.

Many states do not consider lease rental debt under debt limitation laws, primarily because legal interpretations view the obligations to pay rent as an annual budget item, and not a long term debt with a continuing appropriation. The fact remains, however, that the debt is still outstanding, and payable for as long as the property is being used by the lessee. While many leases permit non-payment of rent and cancellation of lease obligations, Standard & Poor's would be very concerned about an issuer's general obligation rating, in those cases where leases were cancelled as a ploy to avoid paying debt obligations.

I've enclosed some information regarding our approach to rating lease-rental debt obligations. If you have any further questions, feel free to contact Vladimir Stadnyk or myself at (212) 201-1767.

Very Truly Yours,

Richard P. Larkin
Managing Vice President
Municipal Finance Department

cc: V. Stadnyk
T. Arthur

ATTACHMENT E

(Excerpt from: "Financial Review: Proposed Anchorage State Office Building." , Arthur Young & Co., February 1983, pp. 14 - 15.)

C. FINANCING

A question has been raised as to the appropriate approach for financing a proposed new building. Public financing would have generally lower interest rates (approximately 8% based on the most recent State financing versus an assumed 12%, plus 25% of rental increases, for private financing). However, under public ownership and financing, the State would be responsible for paying operating expenses (excluding real estate taxes), would not receive ground rental income, and would not have rental payment obligations.

Discounting appropriate Alternative III revenue, cost and debt service payments to comparative present values at the State's current 8% cost of capital results in the following comparison.

ANCHORAGE STATE OFFICE BUILDING
COMPARISON OF FINANCING COSTS
PUBLIC VS. PRIVATE FINANCING

	(000's)	
	<u>PUBLIC</u>	<u>PRIVATE</u>
Rental	\$ -	\$295,810
Operating cost, net of RET	86,902	-
Ground lease revenue ^{1/}	-	(34,184)
Debt service cost	<u>144,150</u>	<u>-</u>
Net cost	<u>\$231,052</u>	<u>\$261,626</u>

^{1/} Including investment in interior furnishing and equipment.

Private sector funding would thus likely result in higher cost at the currently proposed rental rates. This difference would be affected by:

1. Achieving the \$3.25 economic 1986 rental rate. If economic rate is achieved, the present value cost of private sector financing/ownership would be reduced by some \$25 million. The two financing alternatives would then have roughly equivalent costs.
2. A change in the relationship of public vs. private sector interest rates. The recent dramatic decrease in State interest costs, used in this analysis, has reduced this expense to less than two-thirds the assumed private sector cost. There is no way readily to determine whether this spread will continue. If it narrows, private sector financing would become less costly.
3. The obtaining of a rental rate for existing space below the indicated \$2.25 (or \$2.00, if the State's site investment cannot be recovered) in 1983. If this occurs, private sector ownership/financing would become more desirable.
4. A decision by the State to make payments in lieu of real estate taxes. Should this occur, up to \$30 million could be added to the cost of public financing.
5. An increase in project construction costs. Because the rental rate under private ownership/financing would presumably be fixed, increased construction costs above estimated levels would adversely affect only the costs of public financing. Should these costs be more than approximately 15% over current estimates, the two financing alternatives would have equal costs.

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PUBLIC FINANCE

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(3) compile statistics necessary for the budget and other statistics required by the governor. (§ 8 art III ch 82 SLA 1955; am § 5 ch 186 SLA 1957; am § 1 ch 11 SLA 1965)

Article 3. Uniform Purchasing.

Section

- 220. Purchasing agent
- 230. Competitive bids
- 231. Estimation of flying hours required
- 240. Award of contracts and purchases
- 250. Delegation of duties

Section

- 260. Preference for Alaska products
- 270. Purchases through General Services Administration
- 280. Leases

Sec. 37.05.220. Purchasing agent. The Department of Administration is the purchasing agent for the state. The department shall

(1) purchase, rent, or otherwise provide for the furnishing of supplies, materials, equipment, or contractual services for all state agencies;

(2) have power to authorize an agency to purchase directly certain specified supplies, materials, equipment, or contractual services under conditions and procedures prescribed in AS 37.05.230;

(3) prescribe the manner in which supplies, materials, and equipment shall be purchased, delivered, stored, and distributed;

(4) prescribe the time, manner, authentication, and form of making requisitions for supplies, materials, equipment, and contractual services;

(5) fix standards of quality and quantity and develop standard specifications after consultation with the several state agencies, and approve or determine final specifications;

(6) have power to transfer to or between agencies or to sell or trade in supplies, materials, and equipment of agencies which are surplus, obsolete, or unused; and the department shall make proper adjustments in the accounts of the agencies concerned;

(7) prescribe the manner of inspecting deliveries of supplies, materials, and equipment and of making tests of samples submitted with bids and samples of deliveries to determine compliance with specifications;

(8) prescribe standard forms for bids and contracts for construction, purchases of supplies, and other purposes, which bids and contracts may contain provisions which the department considers necessary; but all contracts for construction shall require the filing of an acceptable performance bond and a penalty provision for failure to perform the contract according to its terms;

(9) provide for other matters which may be necessary to carry out the provisions of this chapter and the regulations adopted under it. (§ 1 art IV ch 82 SLA 1955; am §§ 6, 7 ch 186 SLA 1957; am § 1 ch 55 SLA 1960)

Sec. 37.05.250. Delegation of duties. The department may delegate the duties imposed by this chapter to an employee of the state normally stationed in a town or location distant from the state capital. Agents so designated shall perform the duties as the department requires and in accordance with regulations established by the department. (§ 5 art IV ch 82 SLA 1955)

Sec. 37.05.260. Preference for Alaska products. This chapter does not modify, amend, or alter AS 36.15.010 and 36.15.020 regarding preference for Alaska forest products, or AS 36.20.010 regarding preference to producers or dealers in Alaska except as provided in AS 37.05.230(1). (§ 6 art IV ch 82 SLA 1955)

Sec. 37.05.270. Purchases through General Services Administration. This chapter does not prevent the department from purchasing through the General Services Administration as provided by law. (§ 7 art IV ch 82 SLA 1955; added by § 11 ch 186 SLA 1957)

Sec. 37.05.280. Leases. The department shall lease necessary space, and contract for the lease of space for the use of the state or an agency of the state, wherever it is necessary and feasible, subject to compliance with the requirements of AS 37.05.220 — 37.05.280. No lease or contract for a lease may provide for a period of occupancy greater than 40 years. An agency of the state requiring office, warehouse or other space shall lease the space through the department. No contract or lease executed after January 1, 1966, which provides for a payment or payments by the state in excess of \$12,000 annually is valid unless the use of the space to be provided for by such contract or lease has been expressly approved by the legislature by concurrent resolution. (§ 8 art IV ch 82 SLA 1955; added by § 1 ch 81 SLA 1959; am § 1 ch 94 SLA 1961; am § 16 ch 99 SLA 1965)

Article 4. General Provisions.

Section	Section
290. Purpose	318. Further regulations prohibited
300. Interpretation of chapter	325. Definitions for AS 37.05.315 — 37.05.317
305. Applicability to University of Alaska	400. Definitions for chapter
310. Fiscal year	410. Short title
315. Grants to municipalities	
315. Grants to named recipients	
317. Grants to unincorporated communities	

Sec. 37.05.290. Purpose. The purpose of this chapter is to provide uniform financial procedures for all state agencies with respect to accounting, purchasing, post auditing, and related financial procedures; and to revise financial procedures to obtain economy, efficiency, and integrity in handling public money. (§ 2 art I ch 82 SLA 1955; am § 2 ch 188 SLA 1970)

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Official Business

Alaska State Legislature

Senate Committee on State Affairs

Vic Fischer, Chair • Pouch V
Juneau, Alaska 99811
(907) 465-4954

LETTER OF INTENT SB 466 (state affairs)

SENATE STATE AFFAIRS COMMITTEE

The legislature has already appropriated over \$11,800,000 toward the acquisition of land and other costs associated with the state office complex in Anchorage. The site of the complex has been cleared and condemned, and the state is on the verge of asking for bids for the new facility. In view of past legislative action in appropriating funds, and in view of the progress already made toward the completion of a state office complex in Anchorage, it is the intent of the legislature that the progress on Anchorage office complex is advanced beyond the stage where the additional approval by law or special appropriation as outlined in CSSB 466 (state affairs) is necessary.

Anchorage Office Complex

General Information

The Anchorage Office Complex Developed around four main guidelines. Consolidate Anchorage office space at a location selected by the State, in a building designed to meet the State's requirements while utilizing private financing.

We determined that the best way to accomplish this was for the state to procure the building site, prepare performance specifications, and then bid for developers to design, build, and then lease the required structure to the State. The State would lease the building site to the developer. At the end of the 40 year ground lease the building would revert to State ownership. I've attached brief outlines of the commercial and ground leases.

Dot/Pf has been involved since the beginning. They selected the consultant who prepared the performance requirements, and have reviewed all work to date.

The bid evaluation was divided into two segments. Our consultant would review the bid documents to assure all the basic requirements were met. All bidders meeting the requirements would be evaluated. Forty percent of the evaluation would be based on aesthetic values of the building. A breakdown of the weighting factors is provided in schedule A of the bidding criteria. The evaluation would be performed by a 5 member panel.

After the aesthetic portion was scored the financial sixty percent of the evaluation would be done. This portion would be based on lowest life-cycle cost with that cost being based on rental rates, operating costs and escalation factors provided by the bidders.

The scores for aesthetic and financial segments would be combined, the bid would be awarded, and contracts would be signed.

The structure would include approximately 350,000 net square feet of office space, 60,000 square feet of commercial space, a 1000 car parking garage and enough systems furniture to furnish the office space. The furniture was included for two primary reasons. The space requirements were based on the utilization of systems furniture so if it were not used we anticipated the need for substantial additional space. Secondly we realized there was little likelihood of securing a capital appropriation for the \$12-\$14 million necessary to buy the furniture.

At present we are completing the bid package in case there is a determination to return to this approach to procuring the structure. The only revision remaining involves clarifying the calculation of operating costs for the purposes of bid evaluation and completing the lease.

The consultant's "good ball-park" estimate of the cost required to construct a building which meets our performance requirements is \$100,000,000 unfurnished, \$114,000,000 furnished.

To convert our package from its present private financing to an ASHA financed approach would take approximately thirty working days if all policy decisions could be handled in a timely manner. Neither lease would be required in their present forms. The bid evaluation would be revised to eliminate life-cycle cost calculations as we would expect ASHA to require some form of "triple net lease". Any revisions could be accomplished under our existing contract with our consultant-William J. King and Assoc.

February 1, 1984

ANCHORAGE OFFICE COMPLEX
DATA SHEET

- The Department of Administration currently manages approximately 903,000 sq. ft. of leased and warehouse office space in Anchorage.
- This space is spread among 71 different locations in Anchorage.
- The Anchorage Office Complex will consolidate 37 of those leases into a new facility of approximately 350,000 square feet of usable office space.
- Only offices which are compatible with location in a general office building are to be located in the AOC.
- Specialized functions such as public health labs, animal carcass incinerators, scientific laboratories, computer centers and so forth are not included in the AOC.
- * ◦ AOC will be built on state owned land which was jointly selected by the Municipality of Anchorage and the State of Alaska, located between "A" and Cordova and between 5th and 6th Avenue in downtown Anchorage.
- AOC will be built by a private developer using private financing and then leased to the State.
- AOC project documents will permit the developer to include a limited amount of retail space in order to enhance the mixed use potential of the project.
- Approximately 1,000 spaces of on-site parking are required in the project.
- The State anticipates shared use of the parking spaces to support after-hours meetings and cultural events held in the nearby vicinity.

* The site has been condemned and cleared. Not all purchases have been settled

December 27, 1983

ABSTRACT OF GROUND LEASE

(State leases its real property to a developer for purpose of having a building built upon it for the States use)

- 40 year term, no renewal option
- States's Option: A. Improvements revert to State at termination of lease at no cost; or
 - B. State can require removal of improvements from our property at no cost.
- Rental rate for land set by State based on current value (rate unsettled yet)
- To be determined by bid - intent is that States land rental rate is escalated same way as commercial lease
- Land rent owed to State is offset against commercial rent owed to developer
- Developer pays all taxes to appropriate taxing authority
- Requires developer to build the AOC² or be in default on the ground lease
- \$100 million performance bond
- Liquidated damages set at 1% of annual rent for each day of delayed occupancy
- Developer will maintain the premises
- Major maintenance, repairs, alterations require States approval
- Developer will insure the premises to State requirements
- Lease may be assigned to others with an equal or better financial standing than that of the developer
- Assignment or sublease requires approval of State

8/RECV/DW.3601

December 27, 1983

ABSTRACT OF COMMERCIAL LEASE

(State leases the commercial office space from the developer)

- 40 year term, no option to renew
- Rental rate for building set by bid process
- Rental rate escalation set by bid process
- Operating cost pass thru set by bid process
- Developer to provide all maintenance, utilities, and services
- State can assign and sublease to others at its discretion
- Developer will keep premises insured to State requirements
- Developer will share proceeds of condemnation
- Developer will periodically renovate premises
- If developer sells or transfers premises to another, the lease shall remain in effect for the new owner

8/RECV/DW.3601

1983 DEC 27 A 9:18
DIVISION OF
GENERAL SERVICES & SUPPLY

LEASES IN EXCESS OF \$1,000,000. — (Rounded)

June ① lease #1444 Capitol Office Park fish & Game

Neg. START: Dec. 1, 1981 \$1,020,941. — year

B.W.

Firm Through 6/30/82 C.P.I. ANNUALLY

June ② lease #1607 Blomfield/Holden Labor

Bid #8867 START: July 1, 1982 \$1,405,420. — year

Firm Through 6/30/84 C.P.I. ANNUALLY

Arch. ③ lease #535 Frontier Bldg. VARIOUS

Neg. START: Oct. 1, 1982 \$3,625,319. — year

Firm Through 6/30/83 Neg. Adj. ANNUALLY

June ④ lease #1627 Goldbelt Ent. EDUCATION

Neg. START: Oct. 1, 1982 \$1,079,470. — year

Firm Through 6/30/85 C.P.I. ANNUALLY



Alaska State Legislature House of Representatives

PO BOX 2716
ANCHORAGE, ALASKA 99510
(907) 276-4506

WHILE IN JUNEAU
PCUCH V
JUNEAU, ALASKA 99811
(907) 465-4939

REPRESENTATIVE JERRY WARD
DISTRICT 13

MEMBER FINANCE COMMITTEE
CHAIRMAN OF SUBCOMMITTEE ON
COMMERCE & ECONOMIC DEVELOPMENT
CHAIRMAN OF SUBCOMMITTEE ON LABOR
MEMBER OF SUBCOMMITTEE ON STATE LOANS

MEMORANDUM

DATE: March 8, 1984

TO: Senator Jan Faiks
Coordinator, Senate Anchorage Caucus

Representative Mae Tischer
Coordinator, House Anchorage Caucus

FROM: Representative Jerry Ward *JW*

RE: Position Paper and Resolution No. 2

Last week the Anchorage Caucus passed a resolution to ask the Governor to cease and desist building of the Legislative Hall in Juneau without the express permission of the the Legislature and that we wanted the Governor to know he did not have authorization and has not received it. A delegation of Representatives Bussell, Liska and myself were appointed to deliver the resolution to the Governor. We are still waiting for 3 appointees from the Senate side.

In light of the recent appointed Attorney General's opinion of March 2, we would hope to deliver the resolution by the end of the day so that the Governor will know the Anchorage Caucus's position.

3/8/84 Position Paper & Resolution # 2 / From Rep. Jerry Ward

ANCHORAGE CAUCUS
POSITION PAPER AND RESOLUTION NO. 2

WHEREAS, the Anchorage Caucus of the Alaska Legislature is made up of 10 members of the Senate and 17 members of the House of Representatives elected from Anchorage Area Districts.

WHEREAS, there are from time-to-time matters of special concern to members of the Anchorage Caucus as to which the Caucus wishes to take a collective position and have that position communicated to those most concerned; and

WHEREAS, one such matter is the construction of a legislative hall in Juneau being proposed by the borough of Juneau and the Governor of the State of Alaska without legislative approval; and

WHEREAS, by an overwhelming vote the House of Representatives has expressed its own disapproval of previously announced plans for construction of a legislative hall in Juneau, and consideration of the subject is scheduled in the Senate State Affairs Committee.

NOW, THEREFORE, BE IT RESOLVED that it is the sense of the Anchorage Caucus that the Governor and officials of the City and Borough of Juneau be, and they hereby are, respectfully requested to cease and desist from previously announced plans for the construction of a new legislative hall in Juneau or at any other location within the State without prior consultation with and express direction from the Legislature.

DRAFT

ANCHORAGE CAUCUS
POSITION PAPER AND RESOLUTION NO. 2

WHEREAS, the Anchorage Caucus of the Alaska Legislature is made up of 10 members of the Senate and 17 members of the House of Representatives elected from Anchorage Area Districts.

WHEREAS, there are from time-to-time matters of special concern to members of the Anchorage Caucus as to which the Caucus wishes to take a collective position and have that position communicated to those most concerned; and

WHEREAS, one such matter is the construction of a legislative hall in Juneau being proposed by the borough of Juneau and the Governor of the State of Alaska without legislative approval; and

WHEREAS, Article IX, Section 9, of our Alaska constitution provides at pertinent part:

"No debt shall be contracted by any political subdivision of the state, unless . . . ratified by a majority vote of those qualified to vote and voting on the question."

and,

WHEREAS, it has come to the attention of the Anchorage Caucus that the borough of Juneau does not intend to conduct a vote permitting its voters to ratify its debt for the construction of the legislative hall within the borough of Juneau; and

WHEREAS, Article IX, Section 8, of the Alaska constitution also states at pertinent part:

"No state debt shall be contracted unless authorized by law and ratified by a majority of the qualified voters of the state."

and,

WHEREAS, the Anchorage Caucus reasonably concludes that the long-term lease/purchase being entered into between the borough of Juneau and the Governor's office, wherein the borough of Juneau is the Seller/Landlord and the Governor's office or State of Alaska is the Purchaser/Tenant, is a debt within the meaning of Article IX, Section 8 of the Alaska constitution; and

WHEREAS, the Anchorage Caucus reasons that the title of the transaction is not controlling, but that all the parameters of the

transaction must be evaluated in determining that the transaction is in fact a debt within the meaning of our constitution. Such factors include, but are not limited to:

Proposed construction of the legislative hall on land owned by the State of Alaska, and the intention of the parties to have the State of Alaska own the land at the expiration of the lease/purchase period.

WHEREAS, the Anchorage Caucus has been advised that the Governor's office does not intend to conduct an election pursuant to Article IX, Section 8 of the constitution, and therefore intends to deny the people of the State of Alaska the opportunity to vote for or against the aforescribed debt; and

WHEREAS, plans are now underway by the city and borough of Juneau to finance and construct a legislative hall to house the legislature of the State of Alaska; and

WHEREAS, it appears to be the intention of the city and borough of Juneau to enter into a long-term lease of the legislative hall with the state; and

WHEREAS, the legislature has not in any manner given its approval to these plans; and

WHEREAS, Article III, Section 22, of the constitution of the State of Alaska provides:

"All executive and administrative . . . functions, powers, and duties shall be allocated by law among and within the principle departments . . ."

and,

WHEREAS, an executive branch which determines the seat of the legislature, without approval of the legislature, disregards the Alaska constitution as aforescribed, the doctrine of powers, and violates the spirit of comity between the branches of government;

IT IS THE SENSE OF the Anchorage Caucus of the Alaska legislature, that the Honorable Bill Sheffield, as well as the city and borough of Juneau, cease and desist from any plan for the construction of a new legislative hall in Juneau or at any other location within the state, without having received the express direction of the legislature of the State of Alaska.



Alaska State Legislature House of Representatives

PO BOX 2716
ANCHORAGE, ALASKA 99510
19071 276-4906

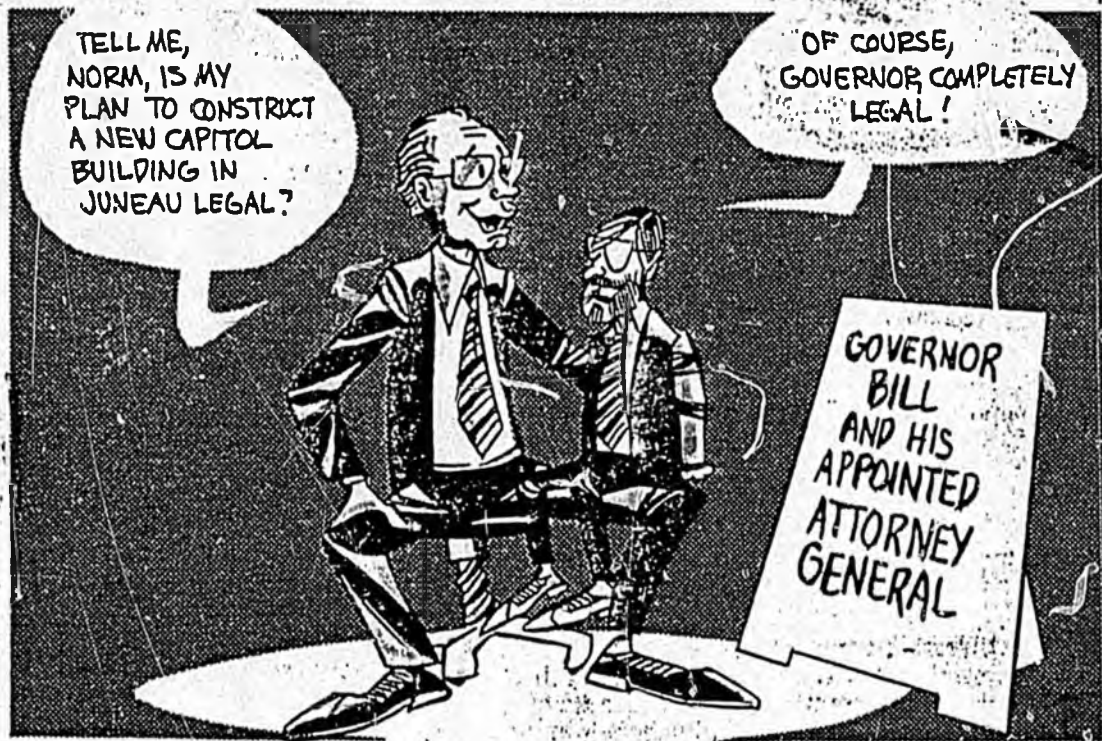
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19071 465-4939

REPRESENTATIVE JERRY WARD
DISTRICT 13

MEMBER FINANCE COMMITTEE
CHAIRMAN OF SUBCOMMITTEE ON
COMMERCE & ECONOMIC DEVELOPMENT
CHAIRMAN OF SUBCOMMITTEE ON LABOR
MEMBER OF SUBCOMMITTEE ON STATE LOANS

ALASKA FEVER

TUES 2/25/84



2-25

JERRY WARD
ANCHORAGE

over

STATE OF ALASKA

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

March 2, 1984

The Honorable Mike Szymanski
Alaska State House of Representatives
Pouch V
Juneau, AK 99811

Re: Questions concerning Alaska
Legislative Hall Facility
Design (project R-10181).
Our file no.: 366-442-84

Dear Representative Szymanski:

This letter responds to your letter of February 9, 1984, in which you asked seven questions concerning the Alaska Legislative Hall. In answering your questions we will set out first your questions, then our responses.

1. By what authority can the Department of Transportation, or the Administration, expend funds to design and construct a facility to be occupied or used by the legislature?

In our opinion of October 14, 1983, (Inf. Op. Att'y Gen.; 366-101-84), we explained that under AS 35.10.010 the Department of Transportation and Public Facilities may construct public buildings of the state. A copy of the opinion is attached. Under AS 35.25.020(5) the term "public building" means: "a building owned or controlled by and held by the state for government or public use."

In section 95, ch. 106, SLA 1983, the legislature enacted an appropriation for the purpose of acquiring land in Juneau for state facilities. That appropriation was supported by a standard form 35a which provides evidence that the purpose of the appropriation was to acquire the site of a legislative hall. These measures taken together provide sufficient authority for DOT/PF to proceed with the design phase of the project.

2. What explicit legislative authorization exists for a "legislative hall?"

See the answer to question (1).

Ray Hill

BILL SHEFFIELD, GOVERNOR

REPLY TO:

1031 W 4th AVENUE
SUITE 200
ANCHORAGE, ALASKA 99501
PHONE: (907) 276-3550

1st NATIONAL CENTER
100 CUSHMAN ST.
SUITE 400
FAIRBANKS, ALASKA 99701
PHONE: (907) 452-1568

POUCH K - STATE CAPITOL
JUNEAU, ALASKA 99811
PHONE: (907) 465-3500

3. Do you feel the Administration can make a commitment to lease or purchase a legislative facility or "legislative hall" without explicit approval by the legislature?

Yes. Ad hoc legislative approval of state leases violates the doctrine of separation of powers. The lease of facilities for public use is not a legitimate part of the law making power.

4. Under AS 37.05.280, can the Administration legally execute a lease for space which is in excess of \$12,000 annually, without legislative approval? In assessing this question, would you please address both administrative and legislative space.

Yes. Under existing law there is no basis for distinguishing between office space occupied by the legislature or the executive.

5. Is the lease purchase arrangement contemplated for this project considered bond indebtedness of the State of Alaska?

No. Lease payments are subject to annual appropriation by the legislature.

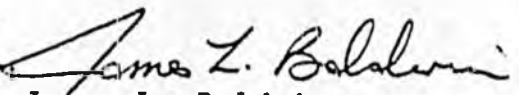
6. Will the full good faith and credit of the state be standing behind the anticipated project bonding on this project? If so, how can this be committed without legislative or voter approval?

No.

We hope this letter answers your questions. Please call if you need further assistance.

Sincerely,

NORMAN C. GORSUCH
ATTORNEY GENERAL

By 
James L. Baldwin
Assistant Attorney General

MEMORANDUM

State of Alaska

TO: Hon. Daniel A. Casey, Commissioner DATE October 14, 1983
Department of Transportation & Public Facilities FILE NO 366-101-84
AND
Hon. Lisa Rudd, Commissioner TELEPHONE NO 465-3600
Department of Administration

FROM: Norman C. Gorsuch SUBJECT Construction financing of a public facility by lease agreement
Attorney General

By: William F. Cummings
Assistant Attorney General
Transportation Section-Juneau

James L. Baldwin
Assistant Attorney General
Governmental Affairs-Juneau

The Department of Administration (DOA) and Department of Transportation and Public Facilities (DOT/PF) have requested our advice whether there is sufficient authority granted by law to permit a state agency to finance the construction of a public facility on state land under a lease agreement with a developer and owner of the facility other than the state. Briefly, the lease agreement consists of a conveyance of a leasehold interest in state land to a developer who constructs a facility on the land which is leased back to the state. Upon expiration of the lease agreement, the facility either reverts to the state or the state has an option to purchase it.

Using this financing technique, DOA proposes to centralize state offices in Anchorage and DOT/PF proposes to construct a legislative hall in Juneau. Under both proposals, facilities owned by others would be located on state land. 1/ The answers to your questions involve consideration of the issues set out below.

1. Does financing a public facility through a lease agreement violate provisions of the Alaska Constitution governing the creation of state debt?

We believe that the financing of construction by lease is valid only if terms and conditions are imposed which provide sufficient evidence that future legislatures are not bound to ap-

1/ We believe that other public facilities are being studied for financing by lease agreement including facilities for the Alaska Vocational Technical Training Center in Seward and a maximum security prison.

Hon. Daniel A. Casey,
Commissioner of Transportation
Hon. Lisa S. Rudd,
Commissioner of Administration

October 14, 1983
Page #2
366-101-84

appropriate money for the rental. 2/ Article IX, section 8 of the Alaska Constitution prohibits the creation of public debt except for capital improvements and then only after authorization by the legislature and a vote of the people. The lease transactions proposed are a means to finance the construction of public facilities without directly appropriating from the general fund for the cost of construction or authorizing the creation of debt by selling general obligation bonds. This makes it imperative that the state's right to possess and use the facility is contingent on annual appropriations from revenue anticipated for the fiscal year in which the lease obligation is incurred. Traditionally, appropriations for lease payments are considered operating appropriations which lapse on June 30 of the fiscal year. A lease agreement which provides for termination of the leasehold if sufficient appropriations to pay rent are not enacted will negate the conclusion that a debt is created. A one-year lease with automatic annual renewal for a maximum number of years upon enactment of an appropriation to finance the annual rent has been approved as a term which negates any possibility that a debt is created. Gude v. City of Lakewood, 636 P.2d 691 (Colo. 1981). See also Glennon Heights, Inc. v. Central Bank and Trust, 658 P.2d 872 (Colo. 1983).

2. Does existing law prevent a state agency from entering into a lease agreement for the construction of a public facility?

The lease of state office space is governed by AS 37.05.220 -- 37.05.280. These statutes require a competitive bidding process with award of the contract by DOA to the lowest responsible bidder for the lease. However, the statutes provide one further requirement for office space leases which is lacking in other state contracts for the purchase of goods or services. AS 37.05.280 provides in relevant part that "no contract or lease executed after January 1, 1966, which provides for a payment or payments by the state in excess of \$12,000 annually is valid unless the use of the space to be provided for by such contract or lease has been expressly approved by the legislature by concurrent resolution." This provision requires legislative approval of virtually all leases which the state executes to procure office and other space. However, we believe that this part of the

2/ The advice given in this memorandum is consistent with the majority of state courts which have considered the question. E.g., Bulman v. McCrane, 312 A.2d 857 (N.J. 1973); State ex rel. Thomson v. Gisel, 72 N.W.2d 577 (Wisc. 1958); but see Opinion of the Justices, 79 A.2d 753 (Me. 1951).

Hon. Daniel A. Casey,
Commissioner of Transportation
Hon. Lisa S. Rudd,
Commissioner of Administration

October 14, 1983
Page #3
360-101-84

statute is invalid for two reasons.

Article II of the Alaska Constitution requires that the legislature exercise the law-making power by the passage of a bill not by the adoption of a concurrent resolution. State v. A.L.I.V.E. Voluntary, 606 P.2d 769 (Alaska 1980). Furthermore, the requirement for legislative approval of a lease is a violation of the doctrine of the separation of powers. Governmental power is allocated among the three branches of government by the Alaska Constitution. Some powers are logically allocated to the executive and others to the legislature. The power to execute the law on behalf of the state is one which falls to the executive. Alaska Const. art. III, § 16. It is the role of the legislature to enact laws which establish the conditions under which the executive may enter into leases. Alaska Const. art. II, § 1. However, it is not appropriate for the legislature to reserve a veto power over the enforcement decisions made by the executive. The legislature may amend or repeal the leasing authority for TOA. However, the legislature may not usurp the executive function to lease facilities without destroying the system of checks and balances inherent in our tripartite system of government. 3/ Bradner v. Hammond, 553 P.2d 1 (Alaska 1976).

DOT/PF has limited authority to dispose of land acquired for public works other than highways. 4/ DOT/PF may "vacate land or part of it, or rights in land acquired for public work purposes" by executing and filing a deed in the appropriate recording district upon vacating. AS 35.20.070. "Title reverts to the persons, heirs, successors, or assigns in whom it was vested at the time of the taking." Id. All other disposals of land acquired for public works are conducted by the Department of Natural Resources (DNR).

Before DNR may lease state land, the public must be informed of the nature and terms of the conveyance. Alaska Const. art. VIII, § 10; AS 38.05.035(a)(14), 38.05.345. DNR, acting in

3/ The cited portion of AS 37.05.280 was held invalid on the basis of separation of powers and improper exercise of the law making power by the superior court in Marine View Tenants' Association v. ASHA, No. 1JU-80-1037 CIV (Nov. 1, 1981). That case was not appealed. However, this decision has limited precedential value until a final decision is rendered by the Alaska Supreme Court.

4/ AS 19.05.070 grants broader discretion to dispose of land acquired for highway purposes.

Hon. Daniel A. Casey,
Commissioner of Transportation
Hon. Lisa S. Rudd,
Commissioner of Administration

October 14, 1983
Page 44
366-101-84

concert with DOA, must prescribe a disposal procedure for state land which provides the safeguards required by law and permits the construction of a facility which the state will lease from the developer. That procedure may include the grant of a lease under AS 38.05.315 to the state agency responsible for the facility. The lease granted by DNR will allow the lessee agency to sublease the land for development of a leased public facility under specified terms which will include prior DNR review and selection of the sublessee according to AS 37.05.230. The sublease of the land will continue in effect long enough to secure financing for the facility. The payment of rent under the lease to the state agency for the facility would be contingent on the enactment of annual appropriations. If the lease is terminated by the failure to appropriate, the lessor would be the successor to the state agency's right to possess the building until reversion or exercise of the option to purchase.

3. Does existing law prevent a state agency from obtaining financing from a municipality to design and construct a state-occupied facility on state-owned property and then enter into an agreement with the municipality for pay-back without competitive bidding?

DOT/PF is proposing to finance the construction of the legislative hall by lease agreement. The City and Borough of Juneau (city) would sell tax exempt municipal revenue bonds, secured by the lease payments to be paid by the state. The state would then supervise the design and construction of the facilities and be the contracting authority.

As a general proposition, DOT/PF has the authority to make contracts with municipalities for public works. AS 35.05.-040(7). The purpose of this form of contract is further defined by AS 35.15.080(c), which provides in relevant part, "[a] municipality may request joint assumption of responsibilities with the department relating to the planning, design, and construction of a public works project." The term "public works" is very broad and includes public buildings. A public building is one which is "owned or controlled and held by the state for government or public use." AS 35.25.020(5) and (6).

We believe that DOT/PF may contract with the city for the planning, design and construction of the legislative hall. We reach this conclusion because under the provisions of the lease agreement, the state will have control over the building which it will hold for government or public use. Additionally, the state will have significant ownership interests in the facility because it holds fee title to the land upon which the build-

Hon. Daniel A. Casey,
Comaissioner of Transportation
Hon. Lisa S. Rudd,
Commissioner of Administration

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ing will be constructed and at the expiration of the lease agreement, will own the building free of the interest of the city. However, a contract may not alter the city's responsibility for repaying the long term debt established to finance the cost of construction of the facility.

Our memorandum of May 9, 1983 indicated that AS 37.05.-230 generally required competitive bidding to award a lease agreement which provides for the construction of a public facility. However, competitive bidding is not required in all instances of public contracting. McKinnon v. Alpetco, 633 P.2d 281 (Alaska 1981). The lease transaction under consideration may present an instance where it is in the best interests of the state to negotiate directly with a municipality rather than offer the contract to the lowest bidder. See AS 37.05.230(2). A decision to negotiate directly requires a detailed finding of fact in writing by DOA. In the finding of fact, the commissioner must justify the conclusion that negotiation is in the best interests of the state. A municipality enjoys a preferred status when dealing with the state. Intergovernmental contracts are not governed by the same considerations applicable to the state when it is participating in the open market place. It is probable that a facility can be financed cheaper with municipal revenue bonds than by private means. It may be futile to obtain any advantage from the competitive bid process. If DOA sets out ultimate facts in the finding which supports the conclusion that negotiation furthers the public's interest, then competitive bidding is not required. Libbv v. City of Dillingham, 612 P.2d 33, 45 (Alaska 1980)(Rabinowitz, J. concurring). However, the award without competitive bidding would be subject to judicial review to determine whether the decision was arbitrary, capricious or an abuse of discretion. McKinnon, 633 P.2d at 287; Hertz Drive-Ur-Self Systems, Inc. v. Tucson Airport Authority, 299 P.2d 1071 (Ariz. 1956); Volume Services Division of Interstate United Corp. v. Canteen Corp., 369 So. 2d 391 (Fla. App. 1979).

4. Does the appropriation to finance the site acquisition and planning for a legislative hall contain defects which prevent DOT/PF from proceeding with the project?

Section 95, ch. 106, SLA 1983 appropriates \$4,500,000 to DOT/PF plus other money received for land acquisition and facilities planning in Juneau. The land acquisition, planning, and preliminary design efforts for the legislative hall will be paid from this appropriation.

This section makes an appropriation from two sources: \$4,500,000 from the general fund and an unspecified amount from

Hon. Daniel A. Casey,
Commissioner of Transportation
Hon. Lisa S. Rudd,
Commissioner of Administration

October 14, 1983
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366-101-84

an unspecified source. 5/ This appropriation is for land acquisition and facility planning in Juneau.

The appropriation contains a unambiguous statement of purpose that DOT/PF is appropriated at least \$4,500,000 for land acquisition and facilities planning in Juneau. There is no specification of the public facility upon which the appropriation may be expended. The use of the \$4,500,000 appropriated for site acquisition, planning, and preliminary design for the legislative hall is within the purpose set out in the appropriation. However, the appropriation of money which may be received from other sources presents a serious legal issue. Because no amount is stated for the appropriation, sufficient authorization may not exist to expend the money beyond the \$4,500,000. 6/ Nonetheless, the unspecified source of the appropriation is presumably severable from the general fund part of the appropriation which is stated with specificity in the amount of \$4,500,000. AS 01.10.-030. Consequently, until you begin receiving amounts from "other sources," whatever they may be, the expenditure of general fund money authorized by the appropriation is not a problem.

CONCLUSION

We believe there is sufficient authority under existing law to finance the construction of a public facility by lease. However, because this financing technique is not specifically authorized by law, we cannot with absolute certainty advise you that a court would agree with our opinion. You should make allowance for this risk when you plan further development of each project to be financed by the lease purchase method.

WFC:ebc:prm/JLB:pjg

cc: Hon. Harold J. Reynolds, Jr.
Commissioner
Department of Education

5/ We presume "the other money received" was intended to include money to be provided under a lease agreement with the city as discussed in section 3, supra.

6/ Each appropriation must state an amount. AS 24.30.030. It is not necessary for the appropriation Act to set out the amount in dollars and cents if the appropriation contains provisions which make the amount capable of mathematical calculation. *Orbison v. Welsh*, 179 N.E.2d 727 (Ind. 1962).



Alaska State Legislature

Senate Committee on State Affairs

Vic Fischer, Chair • Pouch V

Juneau, Alaska 99811

(907) 465-4954

Official Business

MEMORANDUM

TO: Senate State Affairs Committee
FROM: Senate State Affairs Committee Staff
RE: SB 466 Leases by the state
DATE: April 3, 1984

PROPOSED COMMITTEE SUBSTITUTE (version 5)

The proposed CSSB 466 (state affairs) requires approval for the procurement of space by law or specific appropriation before execution of a contract or lease may take place. Leases and contracts affected by this legislation either exceed a cost of either \$1,000,000 annually, or exceed a total consideration of \$1,000,000 where any part of the consideration may be used toward acquisition of the property.

This version of the bill also contains a provision (beginning page 1, line 28) exempting leases executed before the effective date, or leases executed after the effective date where the site has been acquired and the bid document has been prepared.

ORIGINAL VERSION OF THE BILL

The original version of SB 466 requires contracts or leases that fall under either of the two examples below be subject to specific appropriation:

- the annual rental payment is in excess of \$150,000 and the term of the lease exceeds 3 years;
- if any of the consideration for the lease or contract may be applied toward acquisition of the property, and the total acquisition exceeds \$150,000 (in this case, the bill requires that the appropriation be for the total rental payment and all costs of the acquisition).

Fiscal information

The bill has a zero fiscal note

Back-up information

Fiscal note from the Department of Administration

List of state leases exceeding \$1,000,000 a year



Official Business

Alaska State Legislature

Senate Committee on State Affairs

Vic Fischer, Chair • Pouch V
Juneau, Alaska 99811
(907) 465-4954

MEMORANDUM

TO: Senate State Affairs Committee
FROM: Senate State Affairs Committee Staff
RE: SB 466 Leases by the state
DATE: March 29, 1984

PROPOSED COMMITTEE SUBSTITUTE

The proposed CSSB 466 (state affairs) requires approval for the procurement of space by law or specific appropriation before execution of a contract or lease may take place. Leases and contracts affected by this legislation either exceed a cost of either \$1,000,000 annually, or exceed a total consideration of \$1,000,000 where any part of the consideration may be used toward acquisition of the property.

ORIGINAL VERSION OF THE BILL

The original version of SB 466 requires contracts or leases that fall under either of the two examples below be subject to specific appropriation:

- the annual rental payment is in excess of \$150,000 and the term of the lease exceeds 3 years;
- if any of the consideration for the lease or contract may be applied toward acquisition of the property, and the total acquisition exceeds \$150,000 (in this case, the bill requires that the appropriation be for the total rental payment and all costs of the acquisition).

Fiscal information

The bill has a zero fiscal note

Back-up information

Fiscal note from the Department of Administration

List of state leases exceeding \$1,000,000 a year



Alaska State Legislature

Senate Committee on State Affairs

Vic Fischer, Chair • Pouch V
Juneau, Alaska 99811
(907) 465-4954

Official Business

MEMORANDUM

TO: Senate State Affairs Committee
FROM: Senate State Affairs Committee Staff
RE: SB 466 Leases by the state
DATE: March 26, 1984

PROPOSED COMMITTEE SUBSTITUTE

The proposed CSSB 466 (state affairs) would require approval by law for execution of contracts or leases that either exceed \$1,000,000 annually, or where the total consideration is over \$1,000,000 and any part of the consideration may be used toward acquisition of the property.

ORIGINAL VERSION OF THE BILL

The original version of SB 466 requires contracts or leases that fall under either of the two examples below be subject to specific appropriation:

- the annual rental payment is in excess of \$150,000 and the term of the lease exceeds 3 years;
- if any of the consideration for the lease or contract may be applied toward acquisition of the property, and the total acquisition exceeds \$150,000 (in this case, the bill requires that the appropriation be for the total rental payment and all costs of the acquisition).

Fiscal information

The bill has a zero fiscal note.

Back-up information

fiscal note from the Department of Administration.
list of state leases exceeding \$1,000,000 a year.