

**HB**

**428/429**

## Sponsor Statement

### CS for House Bill 428 (Jud)

by  
The House Finance Committee

HB 428, by the House Finance Committee, allows the Commissioner of the Department of Corrections to pursue the use of private facilities for any prisoner as long as security at the facility is consistent with the classification of the prisoners housed at the facility. It provides that the department may enter into a lease purchase agreement with a private party to construct and operate a prison in the Third Judicial District. A group of employees from the Department of Corrections could be the private contractor if they bid competitively for the construction and operation of the facility.

Legislative Counsel advised us in an October 20, 1995 memorandum, "while the statutory basis for authorizing use of private facilities for state prisoners is **probably adequate, albeit barely**, the regulations cited -- particularly 22 AAC 05.300(e) -- impose real obstacles to extensive use of privately-contracted facilities, whether in state or outside." [emphasis added]

This bill makes clear the legal authority of the Department of Corrections to house any prisoners in private facilities. This will reduce the possibility of litigation to resolve what might be considered an open question by some people.

HB 428 also annuls 22 AAC 05.300(e) that may act to limit the Commissioner's ability to use private facilities for prisoners other than those in furlough status or in correctional restitution centers. This could be done by administrative action, but a statute will make legislative intent crystal clear.

The facility authorized by this legislation will

- include a maximum of 1000 beds
- be designed to allow expansion
- include housing for female prisoners
- not exceed construction costs of \$100,000,000
- be constructed under a project labor agreement
- be accredited if state facilities are accredited
- will have correctional officers with the same training as state correctional officers

We need additional prison capacity in Alaska. The Department of Corrections reports that it is regularly exceeding the maximum and emergency capacity under the Cleary Agreement by over 100 prisoners. It also has 206 prisoners in a contract facility in Arizona. This proposal will address those needs and at a lower cost to the state, both in the operating and capital budget. It will also bring almost \$6 million we spend outside back to Alaska, providing jobs for Alaskans and improving our economy.

The state has a need to improve its facilities for female prisoners. We have females housed in Lemon Creek, Fairbanks, Sixth Avenue, and Highland Mountain and are constantly over crowded at the Mat-Su Pretrial Facility. Only Highland Mountain was designed to house both males and females. The state needs to address this problem, and HB 428 does that by requiring that the new facility be designed to house women.

The House Finance Subcommittee on Corrections held interim hearings on the topic of privatization. It found that many states have entered into agreements with the private sector to construct and operate prisons. They have been successful in reducing the costs of incarceration and have maintained security for residents of the state.

Since February of 1995, Alaska has had 206 prisoners in a private facility in Arizona. We have had a positive experience. The facility has operated without any significant negative incidents. The savings have been significant. The daily cost at the Arizona facility is \$59.00 per day per inmate. Alaskan facilities average \$107.00 per day per inmate, not including the cost of construction or other capital appropriations.

The advantage of a private facility is significant. There is a strong possibility that the per day cost of a private facility in Alaska will be within \$10.00 of the cost of the Arizona facility. In other states where private prisons have been built, there has been a very positive effect on state facilities. The entry of competition has reduced the cost of many state operated prisons.

A new contractor can bring new ideas to our state. If it happens to end up a national chain, it will bring the experience it gains in many other states and many other facilities. If a national chain teams up with local contractors, we will get the benefit of designs that work in prisons and construction techniques that fit the Alaska environment. We are told that a private sector contractor can begin serving prisoners as soon as 18 months after contract award and securing property for the facility.

Sponsor Statement  
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HB 428 responds to concerns raised by public employees at the interim hearings. It requires that the correctional officers in the private institution will be trained to the same standards as state correction officers. It also requires the private facility will be accredited by any standards required of state facilities. We believe that these two provisions will protect the integrity of the prison system while taking advantage of the lower costs and innovative management techniques.

HB 428 requires the construction contractor build the facility under a project labor agreement, to assure the maximum possible Alaska hire.

HB 428

- Addresses the prison capacity problem
- Creates construction jobs
- Creates on going prison jobs for Alaskans
- Brings Alaskan money back into Alaska's economy
- Provides an innovative opportunity to address Alaska's needs



ALASKA STATE LEGISLATURE  
HOUSE OF REPRESENTATIVES



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REPRESENTATIVE ELDON MULDER  
DISTRICT 23 MULDOON-Ft. RICHARDSON

# MEMORANDUM

DATE: November 2, 1995

TO: Representative Mulder                      Representative Brown  
Representative G. Davis                  Representative Navarre  
Representative Rokeberg                  Senator Green

FROM: Denny DeWitt  
Phone 465-2647

RE: Information on Tennessee Audit of CCA Facility

Mr. Don Valesko, Business Manager, Public Employees Local 71 provided written testimony to the committee at the October 19 hearing. In it he offered criticism of the safety record of facilities operated by Corrections Corporation of America. He referred to a study released by the state of Tennessee. He stated,

"However, the privately run CCA facility ranked lower on safety in the Tennessee audit ..."

I enclosed the Executive Summary of the referenced report, dated February 1, 1995. Please note the bottom of page ix, where you will find the following comment from the authors,

"We do not believe there was a significant security and safety performance difference among the three facilities during the rated evaluation period."

I will be happy to copy the entire report at your request.

cc: Office of Management and Budget  
Legislative Finance  
Department of Corrections

# ALASKA STATE LEGISLATURE

## News

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Juneau, AK 99801-1182  
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Actuality line: 1-800-478-6540

### House Finance Committee Introduces Prison Privatization Bills

For Immediate Release: January 17, 1996

Contact: Ken Freeman (907) 465-3804

JUNEAU -- Legislation to allow the construction and operation of a private prison in Alaska was introduced by the House Finance Committee Wednesday. The two bills facilitating this process are part of the Legislative Leadership's Renewed Commitment.

The first, HB 428, directs the Department of Corrections (DOC) to contract with a private party to construct and operate a prison in Southcentral Alaska, the Third Judicial District. The second, HB 429, gives DOC legal authority to house prisoners in private facilities.

"Our state facilities are full and regularly exceed maximum capacity. We have double bunked, used cots, and shipped 206 prisoners to Arizona. We need a facility to house female prisoners in an appropriate manner. These bills will address those problems at a lower cost than we could by constructing more state facilities," said Representative Eldon Mulder.

During the interim, the House Finance Subcommittee on Corrections, Chaired by Rep. Mulder, held hearings on the topic of privatization.

"The Committee found that there are many opportunities for the state to save on its cost of incarceration and provide the same level of protection to the public," said Mulder.

"Many other states are currently contracting with private vendors to provide prison service, including Texas, Oregon, as well as the Federal Government. Alaska has also had success with private contracting. We currently have 206 prisoners in a private prison in Arizona at a cost of \$59.00 per day, compared to the average cost of incarceration in Alaska of \$107.00 per day," said Representative Norm Rokeberg, who serves on the Subcommittee on Corrections.

Representative Gary Davis, who is also a member of the Subcommittee, noted public employees expressed concerns that correctional officer standards be maintained in every prison holding Alaskan prisoners.

"HB 428 requires correctional officers in a private prison to meet the State of Alaska training requirements. The proposed legislation also requires any private facility to maintain the same national accreditation standards required of state facilities," said Representative Davis.

HB 428 requires a project labor agreement for the construction of the new facility. Mulder noted this will help assure the maximum possible Alaska hire.

"Construction and operation of the new facility in Alaska will create new jobs for Alaskans," said Mulder.

**Broadcast Note:** An audio actuality is available from Rep. Eldon Mulder by calling 1-800-478-6540.

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# LEGAL SERVICES

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## MEMORANDUM

January 26, 1996

**SUBJECT:** CSHB 428(JUD), "O" version, relating to authority of the Department of Corrections to contract for operation of correctional facilities and to lease-purchase agreement for construction and operation of a new correctional facility -- sectional analysis (Work Order No. 9-LS1338\O)

**TO:** Representative Brian Porter, Chair  
House Judiciary Committee  
Attn: Tom Meyer

**FROM:** Jack Chenoweth   
Legislative Counsel

CSHB 428(JUD ) combined HB 428 and HB 429. House Bill 428 was prepared and offered as uncodified law authorizing use of a lease-purchase agreement for the construction and operation of a new correctional facility, to be located in southcentral Alaska.

Current state law authorizes the commissioner of corrections to enter into an agreement with a third party for the latter to provide correctional facilities. House Bill 429 revises that authority and annuls an administrative regulation that limits the use of private third party correctional facility contractors.

**Bill section 1:** The bill section amends AS 33.30.031(a)

(1) to restate and expand the existing requirement that, when the commissioner proposes to enter into an agreement with a third party for the latter's provision of correctional facility services, the commissioner may do so only if the degree of custody, care, and discipline to be offered by the third party provider meets the standards required by state law, including those imposed by court order;

(2) to authorize use of contracted third party provider services without limitation by the nature of the prisoners' offenses--felony or misdemeanor--or by reference to prisoner custody classifications unless the security of the facility is inconsistent with prisoner custody classifications, and to prohibit an administrative determination that restricts or limits use of third party provider services under contract to rehabilitative or treatment purposes authorized by law.

Representative Brian Porter

January 26, 1996

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**Bill section 2: The bill section**

(1) in its subsection (a), gives the notice and approval necessary for a lease-purchase agreement to initiate the project and sets out, in general terms, parameters applicable to the project's financing;

(2) in its subsection (b), sets out particulars applicable to other facets of the project including population housing perspectives, a requirement that the project be constructed under a project labor agreement, and a prohibition on direct state operation of the correctional facility with specific exceptions;

(3) in its subsection (c), describes the circumstances under which persons employed by the contractor as correctional officers may be required to meet the requirements of the Alaska Police Standards Council (AS 18.65) that are applicable to correctional officers employed by the state and its municipalities;

(4) in its subsection (d), describes the circumstances and limitations on the circumstances under which the state may require that the correctional facility gain accreditation; and

(5) in its subsection (e), declares that the measures section 1(a) "constitutes the notice and approval required by AS 36.30.085" for lease-purchase agreements that are entered into by the state.

**Bill section 3:** The bill section declares that the Act is not intended to preclude or prevent operation of the correctional facility by a private third-party contractor composed of persons employed by the Department of Corrections.

**Bill section 4:** The regulation proposed to be annulled, 22 AAC 05.300(c), limits the use of contract facilities to contract housing for confinement of prisoners convicted of misdemeanors. Since amendment of AS 33.30.031(a)(3)(B) made by bill section 1 would allow for use of contracted facilities for convicted felons, the regulation would be inconsistent with the relevant statute.

JBC:glc:pl

96-049.glc

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MEMORANDUM

October 20, 1995

**SUBJECT:** Private prisons (Work Order No. 9-LS1323A)  
**TO:** Representative Eldon Mulder  
**FROM:** John B. Chenoweth  
Legislative Counsel

This is by way of response to your inquiry concerning the use of privately-operated correctional facilities. The statutes and Department of Corrections' regulations usually refer to these as "contract facilities."

I

I am satisfied that the current set of statutes provides a minimally sufficient basis for Department of Corrections officials to house inmates in private contract facilities.<sup>1/</sup> The

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<sup>1/</sup> Under AS 33.30.031,

(a) The commissioner shall determine the availability of state correctional facilities suitable for the detention and confinement of persons held under authority of state law or under agreement entered into under (e) of this section. If the commissioner determines that suitable state correctional facilities are not available, the commissioner may enter into an agreement with a public or private agency to provide necessary facilities. Correctional facilities provided through agreement with a public agency for the detention and confinement of persons held under authority of state law may be in this state or in another state. Correctional facilities provided through agreement with a private agency must be located in this state unless the commissioner finds in writing that (1) there is no other reasonable alternative for detention in the state; and (2) the agreement is necessary because of health or security considerations involving a particular prisoner or class of prisoners, or because an emergency of prisoner overcrowding is imminent. The commissioner may not enter into an agreement with an agency unable to provide a degree of custody, care, and discipline similar to that required by the laws of this state.

(continued...)

Representative Eldon Mulder

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specific limitations imposed on private contract facilities should have your review to ascertain whether the constraints are too demanding. So, for example, AS 33.30.031(a) favors use of in-state private contract facilities over those located outside Alaska. AS 33.30.031(c) requires that the services of a private contract facility provider be obtained by competitive bid. Other constraints are imposed by department regulation. Under 22 AAC 05.252(a), a prisoner will be transferred to a private contract facility outside Alaska if "a determination is made that the prisoner's rehabilitation or treatment would not be substantially impaired by the transfer," while, under 22 AAC 05.300(e),

[c]orrectional facilities provided through agreement with a private agency will be in this state, and will only be used to involve a prisoner in a program established under AS 33.30.091 - 33.30.131 or 33.30.151 - 33.30.181, or to confine a prisoner convicted of a misdemeanor.

My instincts tell me that, while the statutory basis for authorizing use of private facilities for state prisoners is probably adequate, albeit barely, the regulations cited--particularly 22 AAC 05.300(e)--impose real obstacles to extensive use of privately-contracted facilities, whether in state or outside.

## II

To your second question, relating to encouraging use of private construction and operation of prisons:

I don't have any particular insight into this matter. I can share with you the benefit of some reading and research on the topic as related to contracts relating to state, as distinguished from county or local government, correctional facilities.

New Mexico was among the first of the states to call for construction and operation of a prison facility under contract. A 1985 law authorizes its corrections department to contract for the construction of a private facility to house that state's "special incarceration alternative program" and a separate provision authorizes the department to contract for the operation of a facility to house adult female inmates. Apparently in an effort to get its corrections department to move in the area of privately contracted construction and operation, in 1988, the New Mexico legislature appropriated one million dollars for expenditure "to contract for the operation of a two-hundred bed facility for housing female inmates . . . ." So, having given the department private facility contracting authority, New Mexico legislators used the

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"(...continued)

(c) Notwithstanding AS 36.30.300, an agreement with a private agency to provide necessary facilities under (a) of this section must be based on competitive bids.

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appropriation process in an effort to secure operation of at least one facility by a private contractor.

The State of Tennessee adopted, in 1986, a comprehensive "Private Prison Contracting Act."

Subsequent amendment of the Act assured a substantial amount of legislative branch oversight of requests for proposals and contracts for contracted prisons. Looking only at the text of that Act, it appears that Tennessee legislators were prepared to work with persons in the state's executive branch who had responsibility or authority for private contract operation in the field of corrections, but wanted to try to assure at key stages that state responsibility was not, in effect, surrendered.

The experience of these two jurisdictions is useful. First, my sense is that, if you really want to shift some responsibility for corrections operations to the private sector, Alaska probably needs to consider and enact a comprehensive private prison contracting measure. The Tennessee Act may be a useful model, but the Alaska measure ought also to address a host of problems such as the degree of delegation, responsibility for programs, liability, employment security, dispute resolution, performance monitoring, sanctions, and the employees' working conditions, including, particularly, the right of employees of the contractor to strike. That measure needs to take into consideration, as well, the state's existing obligations under the Final Settlement Agreement and Order in the principal decision in this state relating to conditions of incarceration, Cleary v. Smith.

New Mexico's use of an appropriation measure to "force" or require state action in the area of private contracting is also deserving of consideration. I would guess that, by withholding an appropriation to the Department of Corrections on a line-by-line basis for wages and benefits and other appropriations objects, and placing an amount in the contractual line with accompanying language indicating the intent to use the money for contracted purposes, you would send a sufficient message to the administration that the operation of a particular facility or facilities should be made the subject of a contract.

Finally, as to private construction of a prison facility, consider--as the last two administrations have done in other fields--the use of certificates of participation or similar form of lease financing arrangement, for which the legislature retains substantial approval authority under AS 36.30.085. As you no doubt know, in the quite recent past the initiative for lease financing arrangements has rested with the administration. But I can think of no reason why the legislature could not take advantage of the lease-financing provisions and use them to require the Department of Corrections to shift to private contractors for the construction and operation of new facilities, as the legislature may direct.

JBC:pl

95-170.plm

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## MEMORANDUM

February 2, 1996

**SUBJECT:** Project labor agreement component of draft CSHB 428( )  
(Work Order No. 9-LS1338\R)

**TO:** Representative Brian Porter, Chair  
House Judiciary Committee

**FROM:** Jack Chenoweth  
Legislative Council

Our Thursday conversation touched on the project labor agreement language of sec. 2(b)(3) of CSHB 428. After that conversation, you provided me copies of two 1990 opinions of Assistant Attorney General Carolyn Jones. The opinions raised objections to proposed project labor agreement language by the Alaska Energy Authority. Ms. Jones' objections were based on (1) perceived inconsistencies with the state's Procurement Code, AS 36.30, and (2) objections of constitutional magnitude based on the decision in State v. Enserch Alaska Construction, Inc., 787 P.2d 624 (Alaska 1989), wherein the Alaska Supreme Court struck down the state's regional preference law (AS 36.10.160) as a violation of the equal protection clause of the Alaska Constitution.

The decision in Enserch relied on an earlier decision, Lynden Transport, Inc. v. State, 532 P.2d 700 (Alaska 1975). In Lynden Transport, the Alaska Supreme Court determined that discrimination between state residents and state nonresidents based solely on the object of assisting the one class over the other economically could not be upheld under the state equal protection clause. However, since Lynden Transport, the legislature and the voters have enacted article I, section 23 as part of the Alaska Constitution, permitting the giving of preferences to residents over non-residents. Adoption of article I, section 23 arguably undercuts the court's reliance on the state constitutional equal protection provision as the basis to invalidate a residence preference over non-residents. It does not invalidate or set aside the equal protection provision as the basis to invalidate a preference among state residents who are also residents of economically distressed zones, nor does it avoid application of the alternative federal constitutional provision, the federal privileges and immunities clause.

CSHB 428 is silent on resident/nonresident distinctions, though it does require the project labor agreement to include a provision that hiring for the correctional facility's construction is to proceed under a local union hiring hall requirement.

Representative Brian Porter

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As to project labor agreements, the leading decision apparently is Building and Construction Trades Council of the Metropolitan District v. Associated Builders and Contractors of Mass. R.I., Inc., -- U.S. --, 122 L.Ed.2d 565, 113 S.Ct. 1190 (1993). Because of the length of the caption, the decision is often called the "Boston Harbor" case. In that decision, the court approved the legality of a union-only pre-hire agreement for the Boston Harbor cleanup project against a pre-emption challenge that cited the National Labor Relations Act. The court determined that, when the state acts as the owner of a construction project, it is free to implement that kind of a pre-hire agreement entered into by the parties. The project labor agreement in CSHB 428 is differently structured. If it survives at all, it will surely survive only if the state can show that it is, as in the "Boston Harbor" decision, the owner of the construction project. Of course, as CSHB 428 is structured, the state is not the project owner at the outset: it becomes the owner at some future point. Whether that is enough to fulfill the "state-as-project-owner" rationale on which the "Boston Harbor" decision turned remains to be seen. So that a court does not lose sight of the eventuality of state ownership of the correctional facility to be constructed, I have so noted in the extended "project labor agreement" provision as redrafted.

JBC:klb

96-054.klb

# LEGAL SERVICES

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## MEMORANDUM

January 22, 1996

**SUBJECT:** House Bill 428, lease-purchase agreement for construction and operation of a new correctional facility -- sectional analysis (Work Order No. 9-LS1338\K)

**TO:** Representative Eldon Mulder, Vice-Chair  
House Finance Committee  
ATTN: Dennis DeWitt

**FROM:** Jack Chenoweth  
Legislative Counsel 

House Bill 428 is prepared and offered as uncodified law authorizing use of a lease-purchase agreement for the construction and operation of a new correctional facility, to be located in southcentral Alaska.

### **Bill section 1: The bill section**

(1) in its subsection (a), gives the notice and approval necessary for a lease-purchase agreement to initiate the project and sets out, in general terms, parameters applicable to the project's financing;

(2) in its subsection (b), sets out particulars applicable to other facets of the project including population housing perspectives, a requirement that the project be constructed under a project labor agreement, and a prohibition on direct state operation of the correctional facility with specific exceptions;

(3) in its subsection (c), describes the circumstances under which persons employed by the contractor as correctional officers may be required to meet the requirements of the Alaska Police Standards Council (AS 18.65) that are applicable to correctional officers employed by the state and its municipalities;

(4) in its subsection (d), describes the circumstances and limitations on the circumstances under which the state may require that the correctional facility gain accreditation; and

Representative Eldon Mulder

January 22, 1996

Page 2

(5) in its subsection (e), declares that the measures section 1(a) "constitutes the notice and approval required by AS 36.30.085" for lease-purchase agreements that are entered into by the state.

**Bill section 2:** The bill section declares that the Act is not intended to preclude or prevent operation of the correctional facility by a private third-party contractor composed of persons employed by the Department of Corrections.

JBC:klb

96-017.klb

# LEGAL SERVICES

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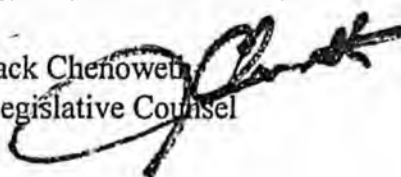
130 Seward Street, Suite 409  
Juneau, Alaska 99801-2105

## MEMORANDUM

January 22, 1996

**SUBJECT:** House Bill 429, relating to authority of the Department of Corrections to contract for operation of correctional facilities -- sectional analysis (Work Order No. 9-LS1337\C)

**TO:** Representative Eldon Mulder, Vice-Chair  
House Finance Committee  
ATTN: Dennis DeWitt

**FROM:** Jack Chenoweth   
Legislative Counsel

Current state law authorizes the commissioner of corrections to enter into an agreement with a third party for the latter to provide correctional facilities. House Bill 429 revises that authority and annuls an administrative regulation that limits the use of private third party correctional facility contractors.

**Bill section 1:** The bill section amends AS 33.30.031(a)

(1) to restate and expand the existing requirement that, when the commissioner proposes to enter into an agreement with a third party for the latter's provision of correctional facility services, the commissioner may do so only if the degree of custody, care, and discipline to be offered by the third party provider meets the standards required by state law, including those imposed by court order;

(2) to authorize use of contracted third party provider services without limitation by the nature of the prisoners' offenses--felony or misdemeanor--or by reference to prisoner custody classifications unless the security of the facility is inconsistent with prisoner custody classifications, and to prohibit an administrative determination that restricts or limits use of third party provider services under contract to rehabilitative or treatment purposes authorized by law.

**Bill section 2:** The regulation proposed to be annulled, 22 AAC 05.300(c), limits the use of contract facilities to contract housing for confinement of prisoners convicted of misdemeanors. Since amendment of AS 33.30.031(a)(3)(B) made by bill section 1 would allow for use of contracted facilities for convicted felons, the regulation would be inconsistent with the relevant statute.

JBC:klb  
96-016.klb

# STATE OF ALASKA

## DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

JAY S. HAMMOND, GOVERNOR

POUCH K - STATE CAPITOL  
JUNEAU, ALASKA 99011  
PHONE: (907) 465-3600

J66-159-82

November 3, 1981

Gerald Wilkerson  
Legislative Auditor  
Division of  
Legislative Audit  
Pouch W  
Juneau, Alaska 99811

Dear Mr. Wilkerson:

You have requested an opinion from this office concerning an agreement between the State of Alaska and Phillips Petroleum Company for the sale of royalty gas produced from the North Cook Inlet field. On April 11, 1977, the commissioner of the Department of Natural Resources entered into separate agreements with Phillips Petroleum Company and the Alaska Pipeline Company for the sale of Cook Inlet royalty gas to the Alaska Pipeline Company. Alaska Pipeline Company agreed to take as much of the State's royalty share of gas as it could sell to its customers. Under the other agreement, Phillips agreed to:

[P]urchase from the State from time to time those volumes which APC is unable to take. For such volumes which it purchases from the State, Lessee will pay the State a price equal to that amount which Lessee would have otherwise paid to the State as royalty if the State had not elected to receive its royalty gas in-kind and Lessee will not charge the State for gathering or compressing such volumes of gas or for other charges under this Agreement.

Both agreements include provisions which, in effect, preclude adjustments to billings more than two years after the date of payment.

On April 22, 1977, the governor transmitted a resolution to the legislature requesting approval of the sale of royalty natural gas from the North Cook Inlet field

to the Alaska Pipeline Company. The governor's letter to the legislature did not request approval of the Phillips Petroleum Company agreement because "it does not involve a sale of royalty gas." The 1977 legislative session approved Legislative Resolve 104 for the sale of royalty gas to the Alaska Pipeline Company. The legislature did not address the agreement between Phillips and the State. You have asked two questions:

1. Phillips Petroleum, despite the governor's statement, did acquire royalty gas during the period April 11, 1977 through December 31, 1979. Should these acquisitions be considered under the April 11, 1977 contract and therefore subject to the provisions of AS 38.06.050 and AS 38.06.055 or should the acquisitions be considered as in-value transactions subject to the provisions of the standard lease entered into between the producer (Phillips) and the State?
2. Assuming the contract prevails, does the inclusion in the contract of Article 10.3, restricting the adjustment of prices for royalty gas to two years following payment, violate AS 09.01.120, thus making the contract void?

Despite any contrary advice we may have given to the governor, we believe that the Phillips agreement is an agreement or other disposition within the meaning of AS 38.06.055(a), which at the time of the agreement provided:

No sale, exchange, or other disposition of oil or gas or of the rights or waiver of the rights to receive future production of royalty oil or gas need be made by the commissioner of natural resources under AS 38.05.183 without the prior approval of the legislature by a concurrent resolution concurred in by a majority of the members of each house . . .

Recent amendments to AS 38.06.055 have, among other items, changed the requirement of approval by concurrent resolution to approval by enacting legislation.

Even though the price term is nominally the same as if the State had taken the gas in-value, the obligations assumed by Phillips under the agreement differ in material ways from the obligations Phillips would be subject to if the State took that gas in-value. The significantly shorter audit and adjustment period noted in your request is one such difference. The broad language of AS 38.06.055(a) indicates that significant changes from a straight in-value taking are subject to the statutory provisions. We believe that there are significant differences between an in-value taking and the arrangement set forth in the Phillips agreement.

We do not believe, however, that the Phillips agreement is invalid. It is our opinion that AS 38.06.055 was unconstitutional, and that the failure to secure legislative approval did not invalidate an otherwise valid agreement. We would note, however, that the Alaska Supreme Court has not ruled on this question.<sup>1/</sup>

In approving individual contracts, the legislature does not exercise a lawmaking function. Consequently, in the absence of a constitutional grant of such power or some unique circumstance that we cannot presently contemplate, a statute requiring legislative approval of an individual contract is a violation of the separation of powers.<sup>2/</sup> See Chadha v. Immigration and Naturalization Service, 634 F.2d

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1/ Although briefed and argued, the Alaska Supreme Court declined to address this issue in McKinnon v. Alpetco, \_\_\_\_\_ P.2d \_\_\_\_\_, Slip Opinion No. 2413 (Alaska, September 19, 1981).

2/ Although the administration has taken the position that the requirement of subsequent approval violates separation of powers, as a matter of comity it has usually made such approvals a requirement as a matter of contract. Cf. Continental Insurance Co. v. Bayless & Roberts, Inc., 548 P.2d 398, 411 (Alaska 1976).

408 (9th Cir. 1980) ("Chadha").<sup>3/</sup> In Public Defender Agency v. Superior Court, Third Judicial District, 534 P.2d 947 (Alaska 1975), the Alaska Supreme Court held that the doctrine of separation of powers, though not expressly set out in the Alaska Constitution, is clearly implied. See also Minutes of the Alaska Constitutional Convention 1955-56, at 2228-29. Furthermore, the court has expressly recognized that it was a purpose of the framers of the Alaska Constitution to create a strong executive branch of government. Bradner v. Hammond, 553 P.2d 1 (Alaska 1976).

Generally, the legislature's duty is to make laws, not to enforce them. In Springer v. Philippine Islands, 227 U.S. 198 (1928), the United States Supreme Court defined legislative powers as follows:

Legislative power, as distinguished from executive power is the authority to make laws, but not to enforce them or appoint agents charged with such enforcement.

27 U.S. at 202. In Mitchell Coal & Co. v. Pennsylvania Railroad Co., 230 U.S. 247 (1913), Justice Pitney dissenting stated:

Legislation consists in laying down laws or rules for the future; administration has to do with the carrying out of these laws into effect, their practical application to current affairs by way of management and oversight including investigation, regulation and control, in accordance with, and in execution of, the principles prescribed by the law-maker . . .

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<sup>3/</sup> The United States Supreme Court has recently agreed to review the decision of the 9th Circuit in Chadha. Even if the Court reverses Chadha under the United States Constitution, however, we believe that the analysis still holds under the Alaska Constitution, with its design for a strong executive. E.g., Bradner v. Hammond, 533 P.2d 1, 3, n.3 (Alaska 1976).

In Stockman v. Leddy, 129 P. 220 (Colo. 1912) the Supreme Court of Colorado declared:

In other words, the General Assembly not only passed an act -- that is, made a law -- but it made a joint committee of the Senate and the House as its executive agent to carry out that law. This is a clear and conspicuous attempt by the General Assembly to confer executive power upon a collection of its own members.

129 P. at 223. See also, 1976 Op. Att'y Gen. No. 28 (July 22, 1976).

The legislature has established a procedure and a set of criteria applicable to sales of royalty oil and gas (AS 38.05.183, AS 38.06.070), and the executive is carrying out those laws when it sells royalty oil and gas. However, the legislature is also attempting to carry out the law it has enacted, that is, exercise executive power, when it reserves to itself the ultimate authority to enter into individual contracts for the sale of royalty oil or gas.

There are several ways to illustrate why the retention of final approval constitutes the exercise of executive power. For example, there would be little doubt that it would be unconstitutional if the legislature appointed one of its own members to negotiate such a contract and place final approval of that contract with the legislature. Stockman v. Leddy, supra. There is no real difference when the legislature assigns the responsibility to the commissioner of Natural Resources but retains to itself the final power to approve or disapprove the contract. — The commissioner becomes as much the agent of the legislature as would be any legislator designated to negotiate.

Legislative approval of a sales contract also frustrates the constitutional objective of making the executive branch accountable to the people.<sup>4/</sup> If it is the

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<sup>4/</sup> Accountability was one of the reasons for Mr. Ralph River's opposition to an elected attorney general:

Now then, if we want to be sure that the strong executive who is going to have

legislature, rather than the commissioner or governor, who controls the final destiny of a sales contract, then accountability for the contract is spread among the members of the legislature, rather than with the executive.

Also, requiring final legislative approval limits, if not destroys, the very law that the legislature enacted. With the legislative veto, there are no real criteria for sales of royalty oil. The legal and practical standard for executing and reviewing the law would not be the standards specified in AS 38.06.070, but rather the contract terms which will command at least 11 votes in the senate and 21 votes in the house. This problem is even more apparent under the new AS 38.05.055, which requires legislative approval by enactment, not concurrent resolution. Under the new statute, it is only the thoughts and feelings of the legislature on that contract which are the criteria. The passage (and signing) of legislation to approve the individual contract, because it is a new statute, would be valid whether or not there was a violation of the previous legislation containing the general standards. There would be no fixed standards or criteria.

This opinion should not be misunderstood as an opinion that the legislature can have no role in the sale of the state's royalty oil. Indeed, there are few limits on the legislature's power to legislate in this (or for that matter any other) area. The legislature, if it wishes, can restrain the discretion of the executive in innumerable constitutionally permissible ways. For example, it can prevent the commissioner from selling royalty oil altogether. Or it can place limits on the types of sales he makes (e.g., not more than 5 years long, or not greater than X% of royalty from a particular reservoir, etc.). The legislature could specify the terms it wants included in a contract in a law requiring that

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4/ (continued)

the responsibility of carrying out a successful administration is going to get the blame if he doesn't have a successful administration, let us not give him any outs. Let's not take him off the hook by giving him an attorney general that he can put the blame on.

those terms be included. E.g., AS 38.05.180(z).5/ The legislature could even go so far as to enact the entire sales contract as a law and permit the commissioner to sell gas only under that law. It is our opinion however, that the legislature exceeds constitutional bounds when it reserves to itself the right to carry out the laws it enacts, by retaining the right of final approval.6/

As the court in Chadha concluded, such a reservation of authority introduces a flexibility that is equivalent to having no law at all:

Congress holds all legislative powers.  
We do not think that that body would  
confess itself unable to formulate . . .  
rules or policies applicable to indi-  
vidual cases that are sufficiently

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5/ AS 38.05.180(z) provides:

No leases may be issued under this section without the inclusion of the following language: "The landowners' royalty share of the unit production allocated to each separately owned tract shall be regarded as royalty to be distributed to and among, or the proceeds of it paid to, the landowners, free and clear of all unit expense and free of any lien for it." Leases issued in violation of this subsection shall, for all purposes, be construed as containing the language required by this subsection.

See also AS 38.05.125 (reservation of minerals in land disposal).

6/ Cf. A.L.I.V.E., supra, 606 P.2d at 770 (citation omitted):

This statute encompasses a variant of what has come to be called the legislative veto. The question in this case is whether this device violates article II of the Alaska Constitution. We hold that it does.

A.L.I.V.E. was cited as supporting authority in Chadha, supra, 634 F.2d at 420, n.10.

clear for compliance by the Executive and for ascertainment by the Judiciary. We cannot accept that definite, uniform and sensible criteria governing the conferral of government burdens and benefits on individuals should be replaced by a species of nonlegislation, wherein the Executive Branch becomes a sort of referee in making an initial determination which has no independent force or validity, even after review and approval by the Judiciary. . . . In such a world, the Executive's duty of faithful execution of the law becomes meaningless, as the law to be executed in a given case remains tentative until after action by the Executive has ceased. The role of judicial review in determining the procedural or substantive fairness of administrative action becomes equally nugatory because ex parte influence on administrative decisionmakers, once condemned, now is made the norm. Such flexibility is but the structural twin of lawless rule.

Chadha, supra, 634 F.2d at 435-436. The same principle and rule apply here.

Therefore, it is our opinion that the legislative veto in AS 38.06.055 was unconstitutional. If statutorily required legislative approval was unconstitutional, it follows that the Phillips agreement met all legal requirements for its approval.

Your second question involves AS 09.10.120, which provides:

An action brought in the name of or for the benefit of the state, any political subdivision, or public corporation may be commenced only within six years of the date of accrual of the cause of action.

This provision is a standard statute of limitations applying to a state or municipal government. It does not affect the

Gerald Wilkerson  
J-66-159-82

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ability of the state to enter into an agreement to reduce the period of time under which an action may be brought. Although there are some exceptions to this rule, usually involving whether the time stipulated in the contract is a reasonable period of time, we do not see how those exceptions apply to the general freedom to contract on a shorter time limit. See, generally, Annotation, "Validity of Contractual Time Period, Shorter than Statute of Limitations, for Bringing Action," 6 ALR 3d 1197. Therefore, we do not believe that the two-year time period agreed to in the Phillips contract voids that particular agreement.

If you have any questions, please do not hesitate to call.

Sincerely,

WILSON L. CONDON  
ATTORNEY GENERAL

By:   
Robert M. Maynard  
Assistant Attorney General

RMM:mr

# MEMORANDUM

State of Alaska

Department of Law

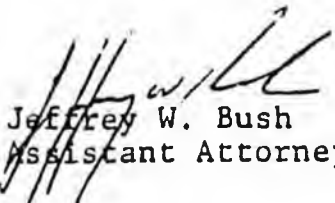
J. Anthony Smith, Commissioner  
Department Commerce & Economic  
Development

DATE August 26, 1988

FILE NO 663-89-0052

TEL NO 465-3600

SUBJECT LB&A Committee authority  
over Tourism  
Appropriation

  
Jeffrey W. Bush  
Assistant Attorney General

*Separation of  
Powers Issue*

You have asked our advice concerning the effect of a clause in the FY 89 Budget Act which purports to condition an appropriation to the Division of Tourism upon approval of the division's proposed program by the Legislative Budget and Audit Committee (LB&AC). The language in question provides:

\$490,000 is appropriated for international tourism marketing. None of these funds shall be expended until the department has reassessed its program and presented its plan for legislative budget and audit committee approval.

Section 27, ch. 154, SLA 1988 at 51. Briefly, we conclude that this language is invalid and of no effect for two reasons: 1) the language constitutes an improper attempt by the legislature to perform an executive function, in violation of the separation of powers doctrine; and 2) even if this oversight of the division's work were to be deemed a law-making function, this function could only be exercised by the legislature acting as a whole and could not be delegated to the LB&AC.

## DISCUSSION

The Office of Legislative Auditor is established by article IX, section 14, of the Alaska Constitution. Under section 14, the auditor has the power to conduct post-audits as prescribed by law. The Constitutional provision has been implemented by the enactment of AS 24.20.151, which establishes the LB&AC to supervise the work of the legislative auditor. Members of the committee come equally from the two houses of the legislature. AS 24.20.161. The powers of that interim committee are specifically enumerated in AS 24.20.201(a)(1) - (12). In general, the committee is given the authority to review the state's fiscal policies and make recommendations to the governor and the legislature concerning appropriations, their expenditure, and the fiscal policies of the state.

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Separation of powers:

The separation of powers doctrine forbids one branch of government from encroaching upon the functions of another. This doctrine has been recognized in Alaska. In Public Defender Agency v. Superior Court, Third Judicial District, 534 P.2d 947 (Alaska 1975), the Alaska Supreme Court held that the doctrine of separation of powers, though not expressly set out in the Alaska Constitution, is clearly implied. See also Minutes of the Alaska Constitutional Convention 1955-56, at 2228-29. Furthermore, the court has expressly recognized that it was a purpose of the framers of the Alaska Constitution to create a strong executive branch of government. Bradner v. Hammond, 553 P.2d 1 (Alaska 1976).

Generally, the legislature's duty is to make laws, not to enforce them. In Springer v. Philippine Islands, 227 U.S. 198 (1928), the United States Supreme Court defined legislative powers as follows:

Legislative power, as distinguished from executive power is the authority to make laws, but not to enforce them or appoint agents charged with such enforcement.

227 U.S. at 202.

The Alaska Supreme Court has never addressed the limits of the legislature's authority with respect to supervision over state expenditures. However, it is well established in other jurisdictions that once an appropriation is made, the legislature's duty is completed, and it is then up to the executive branch to execute and administer the legislatively created program. Attempts by legislatures to condition appropriations on obtaining the prior approval of a particular program plan by a legislative committee invariably violate the separation of powers doctrine.

One of the leading cases in this area is People v. Tremaine, 168 N.E. 817 (N.Y. 1929), where the New York Court of Appeals struck down a statute granting certain legislative committee chairmen the authority to disapprove of the allocation of lump sum appropriations. In a well-reasoned concurring opinion, Justice Crane stated the basic rule that prohibits the legislature from attaching as a condition to an appropriation the approval of a legislative body:

[T]he Legislature has absolute control over appropriations. It may make appropriations also

upon such conditions and with such restrictions as it pleases. It can create or limit the power of administrative offices. There is one thing, however, it cannot do, and that is implied, if not expressed, in our Constitution. It cannot exercise the functions of the executive. It cannot administer the money after it has been once appropriated. If it makes lump sum appropriations, whatever conditions it may attach to the expenditure, it cannot make one of those conditions the approval by one of its own members; that is, to confer upon him the duties of an administrative office.

Id. at 828.

In 1976, the South Carolina legislature created a Joint Appropriation Review Committee, composed of 12 legislators, to review and approve any expenditure of funds by the state not otherwise subject to appropriation; these funds primarily consisted of unanticipated program receipts from the federal government. \*/ In State v. McInnis, 295 S.E.2d 633 (S.C. 1982), the state supreme court held that this grant of authority was an unconstitutional infringement upon the executive branch by the legislature, in violation of the separation of powers doctrine. The court held that although the legislature certainly may control state spending through the appropriation process, it may not do so

through the administration of appropriations which is the function of the executive department. The desirability of the General Assembly's "getting a handle" on these matters is understandable and appropriate but its effort to control these matters through a committee composed of twelve of its members is constitutionally impermissible.

Id. at 637. See also, Advisory Opinion in re Separation of Powers, 295 S.E.2d 589 (N.C. 1982).

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\*/ In Alaska, an agency may expend unanticipated program receipts only after submitting a revised program to the LB&AC. The LB&AC, however, does not have the authority to veto the expenditure. AS 37.07.080(h).

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In a case involving the same question you have asked, the Colorado Supreme Court held that various provisions in an appropriations bill violated the separation of powers doctrine. Anderson v Lamm, 579 P.2d 620 (Colo. 1978). Of particular note, the court held not only that a requirement of prior legislative Joint Budget Committee approval of an executive expenditure was unconstitutional (Id. at 627), but also that conditioning an appropriation on an agency's prior preparation of a report and a five-year plan, where committee approval was not required, was invalid.

This particular requirement of a cost-benefit report and a five-year plan in effect gives the Joint Budget Committee a close supervisory role over the administration of the appropriated funds. As such, the requirement impermissibly infringes upon the executive's administrative authority.

Id.

Although there are no reported decisions in Alaska over the appropriate role of the LB&AC, in 1978 the Juneau Superior Court dealt with this issue in the case of Kelley v. Hammond, Case No. 77-4 (Order on motion for summary judgment, dated April 12, 1978). Kelley involved a challenge to a legislative enactment that required the LB&AC to approve any transfer between appropriations. The court held that the grant of this approval/veto authority to the LB&AC constituted a violation of the separation of powers doctrine and was therefore invalid. Id., Transcript of Order at 3; see also, 1976 Op. Att'y Gen. #28 (July 22). Numerous opinions of this office have also concluded that attempts by the LB&AC to exercise authority in areas traditionally under the province of the executive were invalid. 1984 Inf. Op. Att'y Gen. (July 3; 661-84-0440); 1981 Inf. Op. Att'y Gen. (Nov. 3; 663-82-0159); 1980 Inf. Op. Att'y Gen. (Oct. 8; 663-81-0019).

We find the reasoning in these cases and opinions persuasive, and we believe the Alaska Supreme Court would do the same. We do not know, and decline to predict, whether the Alaska court would adopt the position taken by the Colorado court prohibiting the legislature from requiring agency reports as a precondition for expending appropriations. Also, we believe the legislature can require the Division of Tourism to answer questions and cooperate in investigations performed by the LB&AC, under the committee's constitutional and statutory authority. However, we conclude that the language purporting to condition

the division's appropriation on prior LB&AC approval of the division's program violates the separation of powers doctrine.

Delegation of legislative authority:

Although the legislature may not invade the functions of the executive, the legislature does have the authority to control agency expenditures through the appropriations process. Thus, although it cannot condition an appropriation on subsequent LB&AC approval of the details of a program's administration, and it also cannot too closely supervise an agency's use of appropriated funds, the legislature can control an agency's programs by controlling the amount of various appropriations and putting reasonable restrictions on them. However, this is a law-making function, which may be performed only by the legislature acting as a whole.

Assuming arguendo that the LB&AC approval authority contained in this appropriation were considered to be a legislative act and therefore constitutional under the separation of powers doctrine, this authority could not be delegated to a committee. In State v. Legislative Finance Committee, 543 P.2d 1317 (Mont. 1975), relied on by the Alaska Supreme Court in State v. A.L.I.V.E., 606 P.2d 769, 778 (Alaska 1980), the court struck down a legislative enactment that granted an interim legislative committee the authority to review and approve budget amendments, i.e., expenditures by state agencies in excess of appropriations. After recognizing that the authority to approve such expenditures was certainly a proper legislative function, the court nonetheless held that the grant of this authority to a committee was an unconstitutional delegation of legislative power.

[T]he 1975 Montana Legislature in its enactment of S.B. 401 and H.B. 1 (Special session) empowering the Finance Committee to approve budget amendments delegated a power properly exercisable only by either the entire legislature or an executive officer or agency, to one of its interim committees. Such a hybrid delegation does not pass constitutional muster. The power in question here resides in either the entire legislative body while in session or, if properly delegated, in an executive agency.

Id. at 1321. Other cases reaching a similar conclusion include State v. McInnis, 295 S.E.2d at 639 and Advisory Opinion, 295 S.E.2d 589.

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The particular provision in the FY 89 Budget Act constitutes a significant encroachment into the exclusive province of the executive branch by the legislature, unlike the act at issue in the Montana case. However, in the unlikely event that a court were to find this provision to be constitutional under the separation of powers doctrine, the rationale used by the Montana court would apply, and we conclude that the provision would certainly fail as an improper delegation of legislative authority.

We hope this answers your questions.

JWB:jf

cc: Legislative Budget & Audit Committee

pretative approach of the unusually distinguished panel of Circuit Judges who, shortly after the FTCA was passed, wrote:

"When after many years of discussion and debate Congress has at length established a general policy of governmental generosity toward tort claimants, it would seem that that policy should not be set aside or hampered by a niggardly construction based on formal rules made obsolete by the very purpose of the Act itself. Particularly should this be true as to the broad terms of coverage employed in the basic grant of liability itself." *Speklar v United States*, 171 F2d 208, 209 (CA2 1948).<sup>16</sup>

The wisdom that prompted the Court's grant of certiorari is not reflected in its interpretation of the

16. The members of the panel were Learned Hand, Chief Judge, and Augustus N. Hand and Charles E. Clark, Circuit Judges.

1946 Act. Rather, it reflects a vision that would exclude electronic eavesdropping from the coverage of the Fourth Amendment and satellites from the coverage of the Commerce Clause. The international community includes sovereignless places but no places where there is no rule of law. Majestic legislation like the Federal Tort Claims Act should be read with the vision of the judge, enlightened by an interest in justice, not through the opaque green eyeshade of the cloistered bookkeeper. As President Lincoln observed in his first State of the Union Message:

"It is as much the duty of Government to render prompt justice against itself, in favor of citizens, as it is to administer the same between private individuals."<sup>17</sup>

I respectfully dissent.

17. *Cong Globe*, 37th Cong., 2d Sess., App (1861).

BUILDING AND CONSTRUCTION TRADES COUNCIL OF THE METROPOLITAN DISTRICT, Petitioner

v

ASSOCIATED BUILDERS AND CONTRACTORS OF MASSACHUSETTS/RHODE ISLAND, INC., et al. (No. 91-261)

MASSACHUSETTS WATER RESOURCES AUTHORITY, et al., Petitioners

v

ASSOCIATED BUILDERS AND CONTRACTORS OF MASSACHUSETTS/RHODE ISLAND, INC., et al. (No. 91-274)

507 US —, 122 L Ed 2d 565, 113 S Ct 1190

[Nos. 91-261 and 91-274]

Argued December 9, 1992. Decided March 8, 1993.

**Decision:** National Labor Relations Act (29 USCS §§ 151 et seq.) held not to pre-empt enforcement by Massachusetts agency, acting as owner of construction project, of prehire collective bargaining agreement.

SUMMARY

An independent government agency charged by the Massachusetts Legislature with providing water-supply services, sewage collection, and treatment and disposal services for eastern Massachusetts was ordered by the United States District Court for the District of Massachusetts to build sewage treatment facilities for the cleaning of Boston Harbor. Under the agency's enabling statute and Massachusetts' public bidding laws, the agency was to (1) provide funds for construction, (2) own the facilities to be built, (3) establish all bid conditions, (4) decide all contract awards, (5) pay the contractors, and (6) generally supervise the project. An engineering firm, hired as the agency's project manager, negotiated a labor agreement which, among other items, (1) recognized a particular union as the exclusive bargaining agent for all craft employees, and (2) established a 10-year no-strike commitment. The agency approved the agreement and adopted a bid specification, which required each contractor and subcontractor to agree to

abide by the agreement and to be bound by the agreement's provisions. In response to a charge by a contractors' association that the agreement violated the National Labor Relations Act (NLRA) (29 USCS §§ 151 et seq.), the general counsel of the National Labor Relations Board found that (1) the agreement was a valid prehire agreement under § 8(f) of the NLRA (29 USCS § 158(f)), and (2) the agreement's provisions limiting work on the project to contractors who agreed to abide by the agreement were lawful under a construction-industry proviso to § 8(e) of the NLRA (29 USCS § 158(e)). An organization representing nonunion construction industry employers—seeking, among other items, to enjoin enforcement of the bid specification as pre-empted under the NLRA—brought suit in the District Court against the agency, the engineering firm, and the union. The District Court denied the organization's motion for a preliminary injunction. On appeal, the United States Court of Appeals for the First Circuit reversed, expressing the view that the bid specification was pre-empted under the NLRA (135 BNA LRRM 2713, 117 CCH LC ¶ 10392, 1990-2 CCH Trade Cases ¶ 69229). The Court of Appeals subsequently vacated this opinion, but on rehearing en banc, the Court of Appeals again reversed the District Court, expressing the view that (1) the agency's intrusion into the bargaining process was pervasive and was not a permissible sort of peripheral regulation; and (2) the bid specification was pre-empted, because the agency was regulating activities that Congress intended to be unrestricted by governmental power (935 F2d 345).

On certiorari, the United States Supreme Court reversed and remanded. In an opinion by BLACKMUN, J., expressing the unanimous view of the court, it was held that (1) the NLRA does not pre-empt enforcement by a state agency, acting as the owner of a construction project, of an otherwise lawful prehire collective bargaining agreement negotiated by private parties; (2) under the circumstances, the agency's enforcement of the bid specification was not government regulation and was therefore not subject to NLRA pre-emption, as the agency was the proprietor of the construction project under state law and was acting as a purchaser of construction services; (3) permitting the state to participate freely in the marketplace under such circumstances promoted the legislative goals that animated the passage of the §§ 8(e) and 8(f) provisions regarding construction-industry prehire agreements; and (4) thus, a preliminary injunction against enforcement of the bid specification was improper.

## HEADNOTES

Classified to United States Supreme Court Digest, Lawyers' Edition

Commerce § 129.5 — National Labor Relations Act — pre-emption — state agency's construction project — prehire collective bargaining agreement  
 1a-1c. The National Labor Relations Act (NLRA) (29 USCS §§ 151 et seq.) does not pre-empt enforcement by a state agency, acting as the owner of a construction project, of an otherwise lawful prehire collective bargaining agreement negotiated by private parties; in connection with a state agency's construction of sewage treatment facilities

## TOTAL CLIENT-SERVICE LIBRARY® REFERENCES

48 Am Jur 2d, Labor and Labor Relations § 1313; 48A Am Jur 2d, Labor and Labor Relations § 2003  
 10A Am Jur Legal Forms 2d, Labor and Labor Relations §§ 159:184, 159:285-159:287, 159:1164  
 USCS, Constitution, Art VI, cl 2; 29 USCS §§ 158(e), 158(f)  
 Employment Coordinator ¶¶ LR-12,261, LR-12,262, LR-12,265—LR-12,267, LR-31,020—LR-31,022  
 L Ed Digest, Commerce § 129.5  
 L Ed Index, Collective Bargaining; Hiring Employees; Labor and Employment  
 ALR Index, Collective Bargaining; Labor and Employment; Pre-emption  
 Auto-Cite®: Cases and annotations referred to herein can be further researched through the Auto-Cite® computer-assisted research service. Use Auto-Cite to check citations for form, parallel references, prior and later history, and annotation references.

## ANNOTATION REFERENCES

State court jurisdiction as pre-empted by National Labor Relations Act as amended (29 USCS §§ 141 et seq.)—Supreme Court cases. 75 L Ed 2d 988.  
 National Labor Relations Act and Labor Management Relations Act as excluding state action—federal cases. 93 L Ed 470, 94 L Ed 984, 95 L Ed 384, 98 L Ed 245, 99 L Ed 559, 100 L Ed 1174.  
 Municipal ordinance or other enactment as pre-empted by National Labor Relations Act (29 USCS §§ 151 et seq.). 110 ALR Fed 879.  
 Validity, construction, and application of the construction industry proviso to NLRA hot cargo provision (29 USCS § 158(e)). 39 ALR Fed 18.  
 Rights of collective action by employees as declared in § 7 of National Labor Relations Act (29 USCS § 157). 6 ALR2d 416.

for the cleaning of a harbor, the agency's enforcement of a bid specification requiring each contractor and subcontractor to agree to abide by a prehire collective bargaining agreement negotiated by the agency's hired project manager—which agreement, among other items, recognizes a particular union as the exclusive bargaining agent for all craft employees and establishes a 10-year no-strike commitment—is not government regulation and is therefore not subject to NLRA pre-emption, where (1) the agency is the proprietor of the construction project under state law and is acting as a purchaser of construction services, (2) the agency, in adopting the bid specification, is attempting to insure an efficient project that is completed as quickly and effectively as possible at the lowest cost, (3) enforcement of the bid specification is specifically tailored to the one particular project in question, and (4) it is undisputed that the prehire agreement is a valid labor contract under the provisions of §§ 8(e) and 8(f) of the NLRA (29 USCS §§ 158(e), 158(f)) regarding prehire agreements in the construction industry; permitting the state to participate freely in the marketplace under such circumstances promotes the legislative goals that animated the passage of the §§ 8(e) and 8(f) provisions, even though those provisions are not made specifically applicable to the state in such circumstances; thus, a preliminary injunction against enforcement of the bid specification is improper.

**Commerce § 129 — National Labor Relations Act — pre-emption of state law**

2. Because the National Labor Relations Act (29 USCS §§ 151 et seq.) contains no express pre-emption pro-

vision, the United States Supreme Court should not find a state labor provision federally pre-empted unless (1) the provision conflicts with federal law or would frustrate the federal scheme, or (2) the court discerns from the totality of the circumstances that Congress sought to occupy the field to the exclusion of the states.

**States, Territories, and Possessions § 22 — federal pre-emption**

3. Consideration of a state law under the Federal Constitution's supremacy clause (Art. VI, cl. 2) starts with the basic assumption that Congress did not intend to displace state law; the United States Supreme Court is reluctant to infer pre-emption of state law.

**Commerce § 129 — National Labor Relations Act — pre-emption of state regulation**

4a, 4b. The National Labor Relations Act (NLRA) (29 USCS §§ 151 et seq.) pre-empts state law in that the NLRA prevents a state from regulating within a zone that is protected and reserved for (1) National Labor Relations Board (NLRB) jurisdiction, or (2) market freedom; the first pre-emption principle, forbidding state and local regulation of activities that are protected by § 7 of the NLRA (29 USCS § 157), or that constitute an unfair labor practice under § 8 of the NLRA (29 USCS § 158), (1) prohibits regulation even of activities that the NLRA only arguably protects or prohibits, and (2) is designed to prevent conflict between, on the one hand, state and local regulation and, on the other, Congress' integrated scheme of regulation, embodied in §§ 7 and 8, which scheme includes the choice of the NLRB, rather than state or federal courts, as the appro-

private body to implement the NLRA; the second pre-emption principle, which prohibits state and municipal regulation of areas that have been left to be controlled by the free play of economic forces, preserves Congress' intentional balance between the uncontrolled power of management and labor to further their respective interests; however, such pre-emption doctrines apply only to state regulation, and a state does not regulate simply by acting within one of the protected areas.

**Commerce § 129 — National Labor Relations Act — pre-emption — action of state as proprietor**

5a-5c. A state, acting as a proprietor, may manage state-owned property without offending the pre-emption principles of the National Labor Relations Act (29 USCS §§ 151 et seq.), given that such state acts, which involve the state's interaction with private participants in the marketplace, are not tantamount to regulation or policymaking; in the absence of any express or implied indication by Congress that a state may not manage the state's own property when the state pursues purely proprietary interests, the United States Supreme Court will not infer a restriction on such state conduct.

**Commerce § 129; States, Territories, and Possessions § 11 — National Labor Relations Act — pre-emption — private actors — supremacy clause**

6. The fact that a private actor may "regulate" does not mean that the private actor may be "pre-empted" by the National Labor Relations Act (NLRA) (29 USCS §§ 151 et seq.), as the Federal Constitution's supremacy clause (Art. VI, cl. 2) does not require pre-emption of private

conduct; therefore, private actors may "regulate" as they please, as long as their conduct does not violate the law; thus, a private actor, unlike a state actor, may—without violating the NLRA—participate in a boycott of a supplier on the basis of a labor policy concern rather than a profit motive, even though the private actor, under such circumstances, would be attempting to "regulate" the suppliers and would not be acting as a typical proprietor.

**Labor § 114 — construction industry proviso — prehire agreements**

7. The construction-industry proviso to § 8(e) of the National Labor Relations Act (29 USCS § 158(e))—setting forth an exception from § 8(e)'s prohibition against "hot-cargo" agreements that require an employer to refrain from doing business with any person not agreeing to be bound by a prehire agreement—permits a general contractor's prehire collective bargaining agreement to require an employer not to hire other contractors performing work on a particular project site unless such contractors agree to become bound by the terms of that agreement.

**Labor §§ 37, 45 — construction industry — changes to prehire agreement**

8. The final proviso to § 8(f) of the National Labor Relations Act (NLRA) (29 USCS § 158(f)) permits construction industry employees, once hired, to utilize the National Labor Relations Board election process under §§ 9(c) and 9(e) of the NLRA (29 USCS §§ 159(c), 159(e)) if such employees wish to reject the bargaining representative or to cancel the union security provisions of a prehire agreement.

**Labor § 40 — construction industry agreements**

9. The intent of Congress, in enacting exemptions in §§ 8(e) and 8(f) of the National Labor Relations Act (NLRA) (29 USCS §§ 158(e), 158(f)) authorizing certain kinds of project labor agreements in the construction industry, is to accommodate conditions specific to that industry, such conditions including (1) the short-term nature of employment, which makes posthire collective bargaining difficult; (2) the contractor's need for predictable costs and a steady supply of skilled labor; and (3) a longstanding custom of prehire bargaining in the industry.

**Appeal § 1339.5 — certiorari —****SYLLABUS BY REPORTER OF DECISIONS**

Following a lawsuit over its failure to prevent the pollution of Boston Harbor, petitioner Massachusetts Water Resources Authority (MWRA)—the state agency that provides, inter alia, sewage services for eastern Massachusetts—was ordered to clean up the Harbor. Under state law, MWRA provides the funds for construction, owns the sewage-treatment facilities to be built, establishes all bid conditions, decides all contract awards, pays the contractors, and generally supervises the project. Petitioner Kaiser Engineers, Inc., the project manager selected by MWRA, negotiated an agreement with petitioner Building and Construction Trades Council and affiliated organizations (BCTC) that would assure labor stability over the life of the project, and MWRA directed in Specification 13.1 of its solicitation for project bids that each successful bidder must agree to abide by the labor agreement's

**Federal Court of Appeals decision — what reviewable**

10a, 10b. On certiorari to review a Federal Court of Appeals' decision as to whether the National Labor Relations Act (NLRA) (29 USCS §§ 151 et seq.) pre-empts enforcement by a state authority, acting as the owner of a construction project, of an otherwise lawful prehire collective bargaining agreement negotiated by private parties, the United States Supreme Court will decline to address the application, if any, of § 8(d) of the NLRA (29 USCS § 158(d)) to the agreement, where (1) the Court of Appeals did not rely on that section of the NLRA, and (2) the Supreme Court did not grant certiorari on that question.

terms. Respondent organization, which represents nonunion construction industry employers, filed suit against petitioners, seeking, among other things, to enjoin enforcement of Bid Specification 13.1 on the grounds that it is pre-empted under the National Labor Relations Act (NLRA). The District Court denied the organization's motion for preliminary injunction, but the Court of Appeals reversed, holding that MWRA's intrusion into the bargaining process was pervasive and not the sort of peripheral regulation that would be permissible under *San Diego Building Trades Council v Garmon*, 359 US 236, 3 L Ed 2d 775, 79 S Ct 773, and that Bid Specification 13.1 was pre-empted under *Machinists v Wisconsin Employment Relations Comm'n*, 427 US 132, 49 L Ed 2d 396, 96 S Ct 2548, because MWRA was regulating activities that Congress intended to be unrestricted by governmental power.

**Held:** The NLRA does not pre-empt enforcement by a state authority, acting as the owner of a construction project, of an otherwise lawful prehire collective-bargaining agreement negotiated by private parties. This Court has articulated two distinct NLRA pre-emption principles: "Garmon pre-emption" forbids state and local regulation of activities that are protected by § 7 of the NLRA or constitute an unfair labor practice under § 8, while "Machinists pre-emption" prohibits state and municipal regulation of areas that have been left to be controlled by the free play of economic forces. These pre-emption doctrines apply only to state labor regulation, see, e.g., *Machinists*, 427 US, at 144, 49 L Ed 2d 396, 96 S Ct 2548. A State may act without offending them when it acts as a proprietor and its acts therefore are not tantamount to regulation or policymaking. Permitting States to participate freely in the marketplace is not only consistent with NLRA pre-emption princi-

ples generally but also, in this case, promotes the legislative goals that animated the passage of the NLRA's § 8(e) and § 8(f) exceptions regarding prehire agreements in the construction industry. It is undisputed that the Agreement between Kaiser and BCTC is a valid labor contract under §§ 8(e) and (f). In enacting the exceptions, Congress intended to accommodate conditions specific to the construction industry, and there is no reason to expect the industry's defining features to depend upon the public or private nature of the entity purchasing contracting services. Absent any express or implied indication by Congress that a State may not manage its own property when pursuing a purely proprietary interest such as MWRA's interest here, and where analogous private conduct would be permitted, this Court will not infer such a restriction.

935 F2d 345, reversed and remanded.

Blackmun, J., delivered the opinion for a unanimous Court.

**APPEARANCES OF COUNSEL**

Charles Fried argued the cause for petitioners.

Maureen E. Mahoney argued the cause for the United States, as amicus curiae, by special leave of court.

Maurice Baskin argued the cause for respondents.

**OPINION OF THE COURT**

Justice Blackmun delivered the opinion of the Court.

[1a] The issue in this case is whether the National Labor Relations Act, 49 Stat 449, as amended, 29 USC § 151 et seq. [29 USCS §§ 151 et seq.], pre-empts enforcement by a state authority, acting as the owner of a construction project, of an otherwise lawful prehire collective-bargaining agreement negoti-

ated by private parties.

**I**

The Massachusetts Water Resources Authority (MWRA) is an independent government agency charged by the Massachusetts Legislature with providing water-supply services, sewage collection, and treatment and disposal services for the eastern half of Massachusetts.

Mass Gen Laws, ch 92 App, §§ 1-1 et seq. (Supp 1992). Following a lawsuit arising out of its failure to prevent the pollution of Boston Harbor, in alleged violation of the Federal Water Pollution Control Act, 86 Stat 816, as amended, 33 USC § 1251 et seq. [33 USCS §§ 1251 et seq.], MWRA was ordered to clean up the Harbor. See *United States v Metropolitan Dist. Comm'n*, 757 F Supp 121, 123 (Mass 1991). The cleanup project was expected to cost \$6.1 billion over 10 years. 935 F2d 345, 347 (CA1 1991). The District Court required construction to proceed without interruption, making no allowance for delays from causes such as labor disputes. App 71 (Affidavit of Richard D. Fox, Director of the Program Management Division of MWRA). MWRA has primary responsibility for the project. Under its enabling statute and the Commonwealth's public-bidding laws, MWRA provides the funds for construction (assisted by state and federal grants), owns the sewage-treatment facilities to be built, establishes all bid conditions, decides all contract awards, pays the contractors, and generally supervises the project. See 935 F2d, at 347 (citing Mass Gen Laws, ch 92 App §§ 1-1 et seq. (Supp 1992), ch 149, §§ 44A to 44I, and ch 30, § 39M) (1991).

In the spring of 1988, MWRA selected Kaiser Engineers, Inc., as its project manager. Kaiser was to be primarily in charge of managing and supervising construction activity.

Kaiser also was to advise MWRA on the development of a labor-relations policy that would maintain worksite harmony, labor-management peace, and overall stability throughout the duration of the project. To that end, Kaiser suggested to MWRA that Kaiser be permitted to negotiate an agreement with the Building and Construction Trades Council and affiliated organizations (BCTC) that would assure labor stability over the life of the project. App to Pet for Cert. in No. 91-274, p 75a (MWRA Pet App). MWRA accepted Kaiser's suggestion, and Kaiser accordingly proceeded to negotiate the Boston Harbor Wastewater Treatment Facilities Project Labor Agreement. *Ibid.* The Agreement included: recognition of BCTC as the exclusive bargaining agent for all craft employees; use of specified methods for resolving all labor-related disputes; a requirement that all employees be subject to union-security provisions compelling them to become union members within seven days of their employment; the primary use of BCTC's hiring halls to supply the project's craft labor force; a 10-year no-strike commitment; and a requirement that all contractors and subcontractors agree to be bound by the Agreement. 935 F2d, at 348. See generally MWRA Pet App 107a (full text of Agreement). MWRA's Board of Directors approved and adopted the Agreement in May 1989 and directed that Bid Specification 13.1 be incorporated into its solicitation of bids for work on the project.<sup>1</sup> 935

1. Massachusetts competitive-bidding laws require MWRA to state its preference for a contract term, such as a project labor agreement, in the form of a bid specification. These laws, which MWRA's Enabling Act explicitly incorporates, see Mass Gen Laws, ch 92 App, § 1-8(g) (Supp 1992) (incorporating Mass Gen

Laws ch 30, § 39M, and ch 149, §§ 44A to 44H (1991)), require that the competitive-bidding process be carried out by the awarding authority. See *Modern Continental Constr. Co. v Lowell*, 391 Mass 829, 836, 465 NE2d 1173, 1177-1178 (1984).

F2d, at 347. Bid Specification 13.1 provides in pertinent part:

"Each successful bidder and any and all levels of subcontractors, as a condition of being awarded a contract or subcontract, will agree to abide by the provisions of the Boston Harbor Wastewater Treatment Facilities Project Labor Agreement as executed and effective May 22, 1989, by and between Kaiser . . . on behalf of [MWRA], and [BCTC] . . . and will be bound by the provisions of that agreement in the same manner as any other provision of the contract." MWRA Pet App 141a-142a.

In March 1990, a contractors' association not a party to this case filed a charge with the National Labor Relations Board contending that the Agreement violated the NLRA. The NLRB General Counsel refused to issue a complaint, finding: (1) that the Agreement is a valid prehire agreement under § 8(f) of the NLRA, 29 USC § 158(f) [29 USCS § 158(f)], which authorizes such agreements in the construction industry, and (2) that the Agreement's provisions limiting work on the project to contractors who agree to abide by the agreement are lawful under the construction-industry proviso to § 8(e), 29 USC § 158(e) [29 USCS § 158(e)]. This proviso sets forth an exception from § 8(e)'s prohibition against "hot cargo" agreements that require an employer to refrain from doing business with any person not agreeing to be bound by a prehire agreement. *Building & Trades Council (Kaiser Engineers, Inc.)*, Case 1-CE-71, NLRB Advice Memo, June 25, 1990, MWRA Pet App 88a.

Also in March 1990, respondent Associated Builders and Contractors

of Massachusetts/Rhode Island, Inc. (ABC), an organization representing nonunion construction industry employers, brought this suit against MWRA, Kaiser, and BCTC, seeking, among other things, to enjoin enforcement of Bid Specification 13.1. ABC alleged pre-emption under the NLRA, pre-emption under § 514(c) of the Employee Retirement Income Security Act, 88 Stat 897, 29 USC § 1144(c) [29 USCS § 1144(c)] (ERISA), violations of the Equal Protection and Due Process Clauses of the Fourteenth Amendment, conspiracy to reduce competition, in violation of the Sherman Act, 26 Stat 209, as amended, 15 USC § 1 [15 USCS § 1], and various state-law claims. Only NLRA pre-emption is at issue here.

The United States District Court for the District of Massachusetts rejected each of ABC's claims and denied its motion for a preliminary injunction. MWRA Pet App 76a-83a. The Court of Appeals for the First Circuit reversed and directed entry of a preliminary injunction restraining the use of Bid Specification 13.1, reaching only the issue of NLRA pre-emption. 135 LRRM 2713 (1990). The Court of Appeals subsequently granted a petition for rehearing en banc, vacating the panel opinion. MWRA Pet App 84a. Upon rehearing en banc, the Court of Appeals, by a 3-2 vote, again reversed the judgment of the District Court, once more reaching only the pre-emption issue. 935 F2d, at 359-360. The court held that MWRA's intrusion into the bargaining process was pervasive and not the sort of peripheral regulation that would be permissible under *San Diego Building Trades Council v Garmon*, 359 US 238, 3 L Ed 2d 775, 79 S Ct 773 (1959). See 935 F2d, at 353. It also held that Bid Specifi-

cation 13.1 was pre-empted under *Machinists v Wisconsin Employment Relations Comm'n*, 427 US 132, 49 L Ed 2d 396, 96 S Ct 2548 (1976), because MWRA was regulating activities that Congress intended to be unrestricted by governmental power. Because of the importance of the issue, we granted certiorari, 504 US —, 118 L Ed 2d 541, 112 S Ct 1936 (1992).

## II

[2, 3] The NLRA contains no express pre-emption provision. Therefore, in accordance with settled pre-emption principles, we should not find MWRA's bid specification preempted " . . . unless it conflicts with federal law or would frustrate the federal scheme, or unless [we] discern from the totality of the circumstances that Congress sought to occupy the field to the exclusion of the States." *Metropolitan Life Ins. Co. v Massachusetts*, 471 US 724, 747-748, 85 L Ed 2d 728, 105 S Ct 2380 (1985) (citations omitted). We are reluctant to infer pre-emption. See *Cippolone v Liggett Group, Inc.*, 504 US —, —, 120 L Ed 2d 407, 112 S Ct 2608 (1992); *Rice v Santa Fe Elevator Corp.*, 331 US 218, 230, 91 L Ed 1447, 67 S Ct 1146 (1947). "Consideration under the Supremacy Clause starts with the basic assumption that Congress did not intend to displace state law." *Maryland v Louisiana*, 451 US 725, 746, 69 L Ed 2d 156, 101 S Ct 3075 (1981). With these general principles in mind, we turn to the particular pre-emption doctrines that have developed around the NLRA.

[4a] In *Metropolitan Life Ins. Co. v Massachusetts*, 471 US, at 748, 85 L Ed 2d 728, 105 S Ct 2380, we noted:

"The Court has articulated two distinct NLRA pre-emption principles." The first, "Garmon pre-emption," see *San Diego Building Trades Council v Garmon*, supra, forbids state and local regulation of activities that are "protected by § 7 of the [NLRA], or constitute an unfair labor practice under § 8." 359 US, at 244, 3 L Ed 2d 775, 79 S Ct 773. See also *Garner v Teamsters*, 346 US 485, 498-499, 98 L Ed 228, 74 S Ct 161 (1953) ("[W]hen two separate remedies are brought to bear on the same activity, a conflict is imminent"). Garmon pre-emption prohibits regulation even of activities that the NLRA only arguably protects or prohibits. See *Wisconsin Dept. of Industry v Gould Inc.*, 475 US 282, 286, 89 L Ed 2d 223, 106 S Ct 1057 (1986). This rule of pre-emption is designed to prevent conflict between, on the one hand, state and local regulation and, on the other, Congress' "integrated scheme of regulation," *Garmon*, 359 US, at 247, 3 L Ed 2d 775, 79 S Ct 773, embodied in §§ 7 and 8 of the NLRA, which includes the choice of the NLRB, rather than state or federal courts, as the appropriate body to implement the Act. *Metropolitan Life Ins. Co. v Massachusetts*, 471 US, at 748-749, and n 26, 85 L Ed 2d 728, 105 S Ct 2380.

In *Garmon*, this Court held that a state court was precluded from awarding damages to employers for economic injuries resulting from peaceful picketing by labor unions that had not been selected by a majority of employees as their bargaining agent. 359 US, at 246, 3 L Ed 2d 775, 79 S Ct 773. The Court said: "Our concern is with delimiting areas of conduct which must be free from state regulation if national policy is to be left unhampered." *Ibid.* In *Gould*, we held that the NLRA

pre-empt a statute that disqualifies from doing business with the State persons who have violated the NLRA three times within a 5-year period. We emphasized there that "the Garmon rule prevents States not only from setting forth standards of conduct inconsistent with the substantive requirements of the NLRA, but also from providing their own regulatory or judicial remedies for conduct prohibited or arguably prohibited by the Act." 475 US, at 286, 89 L Ed 2d 223, 106 S Ct 1057 (citing 359 US, at 247, 3 L Ed 2d 775, 79 S Ct 773).

A second pre-emption principle, "Machinists pre-emption," see *Machinists v Wisconsin Employment Relations Comm'n*, 427 US, at 147, 49 L Ed 2d 396, 96 S Ct 2548, prohibits state and municipal regulation of areas that have been left "to be controlled by the free play of economic forces." *Id.*, at 140, 49 L Ed 2d 396, 96 S Ct 2548 (citation omitted). See also *Golden State Transit Corp. v Los Angeles*, 475 US 608, 614, 89 L Ed 2d 616, 106 S Ct 1395 (1986) (*Golden State I*); *Golden State Transit Corp. v Los Angeles*, 493 US 103, 111, 107 L Ed 2d 420, 110 S Ct 444 (1989) (*Golden State II*). *Machinists* pre-emption preserves Congress' "intentional balance . . . between the uncontrolled power of management and labor to further their respective interests." *Id.*, at 140, 49 L Ed 2d 396, 96 S Ct 2548 (citations omitted).

In *Machinists*, we held that the Wisconsin Employment Relations Commission could not designate as an unfair labor practice under state law a concerted refusal by a union and its members to work overtime, because Congress did not mean such

self-help activity to be regulable by the States. 427 US, at 148-150, 49 L Ed 2d 396, 96 S Ct 2548. We said that it would frustrate Congress' intent to "sanction state regulation of such economic pressure deemed by the federal Act desirably] . . . left for the free play of contending economic forces . . ." *Id.*, at 150, 49 L Ed 2d 396, 96 S Ct 2548 (citation omitted). In *Golden State I*, we applied the *Machinists* doctrine to hold that the city of Los Angeles was pre-empted from conditioning renewal of a taxicab operating license upon the settlement of a labor dispute. 475 US, at 618, 89 L Ed 2d 616, 106 S Ct 1395. We reiterated the principle that a "local government . . . lacks the authority to . . . introduce some standard of properly 'balanced' bargaining power" . . . or to define "what economic sanctions might be permitted negotiating parties in an 'ideal' or 'balanced' state of collective bargaining." *Id.*, at 619, 89 L Ed 2d 616, 106 S Ct 1395 (quoting *Machinists*, 427 US, at 149-150, 49 L Ed 2d 396, 96 S Ct 2548) (*Internal citation omitted*). In *Golden State II*, 493 US 103, 107 L Ed 2d 420, 110 S Ct 444 (1989), we determined that the taxicab employer who was challenging the city's conduct in *Golden State I* was entitled to maintain an action under 42 USC § 1983 (42 USC § 1983) for compensatory damages against the city. In so holding, we stated that the *Machinists* rule created a zone free from all regulations, whether state or federal. 493 US, at 112, 107 L Ed 2d 420, 110 S Ct 444.

## III

[4b, 5a] When we say that the NLRA pre-empt state law, we mean that the NLRA prevents a State

from regulating within a protected zone, whether it be a zone protected and reserved for market freedom, see *Machinists*, or for NLRB jurisdiction, see *Garmon*. A State does not regulate, however, simply by acting within one of these protected areas. When a State owns and manages property, for example, it must interact with private participants in the marketplace. In so doing, the State is not subject to pre-emption by the NLRA, because pre-emption doctrines apply only to state regulation.

Our decisions in this area support the distinction between government as regulator and government as proprietor. We have held consistently that the NLRA was intended to supplant state labor regulation, not all legitimate state activity that affects labor. In *Machinists*, for example, we referred to Congress' pre-emptive intent to "leave some activities unregulated," 427 US, at 144, 49 L Ed 2d 396, 96 S Ct 2548 (emphasis added), and held that the activities at issue—workers deciding together to refuse overtime work—were not "regulable by States." *Id.*, at 149, 49 L Ed 2d 396, 96 S Ct 2548 (emphasis added). In *Golden State I*, we held that the reason Los Angeles could not condition renewal of a taxicab franchise upon settlement of a labor dispute was that "Machinists pre-emption . . . precludes state and municipal regulation concerning conduct that Congress intended to be unregulated." 475 US, at 614, 89 L Ed 2d 616, 106 S Ct 1395 (emphasis added) (quoting *Metropolitan Life Ins. Co. v Massachusetts*, 471 US, at 749, 85 L Ed 2d 728, 105 S Ct 2380). We refused to permit the city's exercise of its regulatory power of license nonrenewal to restrict Golden State's right to use lawful economic

weapons in its dispute with its union. See 475 US, at 616-619, 89 L Ed 2d 616, 106 S Ct 1395. As petitioners point out, a very different case would have been presented had the city of Los Angeles purchased taxi services from Golden State in order to transport city employees. Brief for Petitioners 35. In that situation, if the strike had produced serious interruptions in the services the city had purchased, the city would not necessarily have been pre-empted from advising Golden State that it would hire another company if the labor dispute were not resolved and services resumed by a specific deadline.

In *Gould*, we rejected the argument that the State was acting as proprietor rather than regulator for purposes of *Garmon* pre-emption when the State refused to do business with persons who had violated the NLRA three times within five years. We noted in doing so that in that case, "debarment . . . serves plainly as a means of enforcing the NLRA." 475 US, at 287, 89 L Ed 2d 223, 106 S Ct 1057. We said there that "[t]he State concedes, as we think it must, that the point of the statute is to deter labor law violations"; we concluded that "[n]o other purpose could credibly be ascribed." *Ibid.*

Respondents quote the following passage from *Gould*, arguing that it stands for the proposition that the State as proprietor is subject to the same pre-emption limitations as the State as regulator:

"Nothing in the NLRA, of course, prevents private purchasers from boycotting labor law violators. But government occupies a unique position of power in our

society, and its conduct, regardless of form, is rightly subject to special restraints. Outside the area of Commerce Clause jurisprudence, it is far from unusual for federal law to prohibit States from making spending decisions in ways that are permissible for private parties . . . . The NLRA, moreover, has long been understood to protect a range of conduct against state but not private interference . . . . The Act treats state action differently from private action not merely because they frequently take different forms, but also because in our system States simply are different from private parties and have a different role to play." *Id.*, at 290, 89 L Ed 2d 223, 106 S Ct 1057.

The above passage does not bear the weight that respondents would have it support. The conduct at issue in *Gould* was a state agency's attempt to compel conformity with the NLRA. Because the statute at issue in *Gould* addressed employer conduct unrelated to the employer's performance of contractual obligations to the State, and because the State's reason for such conduct was to deter NLRA violations, we concluded: "Wisconsin 'simply is not functioning as a private purchaser of services,' . . . [and therefore,] for all practical purposes, Wisconsin's debarment scheme is tantamount to regulation." *Id.*, at 289, 89 L Ed 2d 223, 106 S Ct 1057. We emphasized that we were "not say[ing] that state purchasing decisions may never be influenced by labor considerations." *Id.*, at 291, 89 L Ed 2d 223, 106 S Ct 1057.

[6] The conceptual distinction between regulator and purchaser exists to a limited extent in the private

sphere as well. A private actor, for example, can participate in a boycott of a supplier on the basis of a labor policy concern rather than a profit motive. See *id.*, at 290, 89 L Ed 2d 223, 106 S Ct 1057. The private actor under such circumstances would be attempting to "regulate" the suppliers and would not be acting as a typical proprietor. The fact that a private actor may "regulate" does not mean, of course, that the private actor may be "pre-empted" by the NLRA; the Supremacy Clause does not require pre-emption of private conduct. Private actors therefore may "regulate" as they please, as long as their conduct does not violate the law. As the above passage in *Gould* makes clear, however, States have a qualitatively different role to play from private parties. *Id.*, at 290, 89 L Ed 2d 223, 106 S Ct 1057. When the State acts as regulator, it performs a role that is characteristically a governmental rather than a private role, boycotts notwithstanding. Moreover, as regulator of private conduct, the State is more powerful than private parties. These distinctions are far less significant when the State acts as a market participant with no interest in setting policy.

[5b] In *Gould*, we did not address fully the implications of these distinctions. We left open the question whether a State may act without offending the pre-emption principles of the NLRA when it acts as a proprietor and its acts therefore are not "tantamount to regulation," or policy-making. As explained more fully below, we now answer this question in the affirmative.

## IV

[1b, 7, 8] Permitting the States to

participate freely in the marketplace is not only consistent with NLRA pre-emption principles generally but also, in this case, promotes the legislative goals that animated the passage of the §§ 8(e) and 8(f) exceptions for the construction industry. In 1959, Congress amended the NLRA to add § 8(f) and modify § 8(e). Section 8(f) explicitly permits employers in the construction industry—but no other employers—to enter into prehire agreements. Prehire agreements are collective-bargaining agreements providing for union recognition, compulsory union dues or equivalents, and mandatory use of union hiring halls, prior to the hiring of any employees. 935 F.2d, at 356; *Jim McNeef, Inc. v Todd*, 461 US 260, 265-266, 75 L Ed 2d 830, 103 S Ct 1753 (1983). The 1959 amendment adding a proviso to subsection (e) permits a general contractor's prehire agreement to require an employer not to hire other contractors performing work on that particular project site unless they agree to become bound by the terms of that labor agreement. See *Woelke & Romero Framing, Inc. v NLRB*, 456 US 645, 657, 72 L Ed 2d 398, 102 S Ct 2071 (1982). Section 8(f) contains a final proviso that permits employees, once hired, to utilize the NLRB election process under §§ 9(c) and 9(e) of the Act, 29 USC §§ 159(c) and (e) [29 USCS §§ 159(c) and (e)], if they wish to reject the bargaining representative or to cancel the union security provisions of the prehire agreement. See *NLRB v Iron Workers*, 434 US 335, 345, 54 L Ed 2d 586, 98 S Ct 651 (1978).

It is undisputed that the Agreement between Kaiser and BCTC is a valid labor contract under §§ 8(e) and (f). As noted above, those sec-

tions explicitly authorize this type of contract between a union and an employer like Kaiser, which is engaged primarily in the construction industry, covering employees engaged in that industry.

Of course, the exceptions provided for the construction industry in §§ 8(e) and 8(f), like the prohibitions from which they provide relief, are not made specifically applicable to the State. This is because the State is excluded from the definition of the term "employer" under the NLRA, see 29 USC § 152(2) [29 USCS § 152(2)], and because the State, in any event, is acting not as an employer but as a purchaser in this case. Nevertheless, the general goals behind passage of §§ 8(e) and 8(f) are still relevant to determining what Congress intended with respect to the State and its relationship to the agreements authorized by these sections.

[9] It is evident from the face of the statute that in enacting exemptions authorizing certain kinds of project labor agreements in the construction industry, Congress intended to accommodate conditions specific to that industry. Such conditions include, among others, the short-term nature of employment which makes post-hire collective bargaining difficult, the contractor's need for predictable costs and a steady supply of skilled labor, and a long-standing custom of prehire bargaining in the industry. See 3 Rep No. 187, 86th Cong., 1st Sess., 28, 55-56 (1959); HR Rep No. 741, 86th Cong., 1st Sess., 19-20 (1959).

[5c, 10a] There is no reason to expect these defining features of the construction industry to depend upon the public or private nature of

the entity purchasing contracting services. To the extent that a private purchaser may choose a contractor based upon that contractor's willingness to enter into a prehire agreement, a public entity as purchaser should be permitted to do the same. Confronted with such a purchaser, those contractors who do not normally enter such agreements are faced with a choice. They may alter their usual mode of operation to secure the business opportunity at hand, or seek business from purchasers whose perceived needs do not include a project labor agreement. In the absence of any express or implied indication by Congress that a State may not manage its own property when it pursues its purely proprietary interests, and where analogous private conduct would be permitted, this Court will not infer such a restriction. See, e.g., *Maryland v Louisiana*, 451 US, at 746, 68 L Ed 2d 576, 101 S Ct 2114 ("Consideration under the Supremacy Clause starts with the basic assumption that Congress did not intend to displace state law").<sup>2</sup> Indeed, there is some force to petitioners' argument, Brief for Petitioners 25, that denying an option to public owner-developers that is available to private owner-developers itself places a restriction on Congress' intended free play of economic forces identified in *Machinists*.

## V

[1c] In the instant case, MWRA acted on the advice of a manager

<sup>2</sup> [10b] Respondents suggest in their brief, Brief for Respondents 22, n 12, that under *H.K. Porter Co. v NLRB*, 397 US 99, 103, 25 L Ed 2d 148, 90 S Ct 821 (1970), § 8(d) of the NLRA expressly prohibits the conduct of MWRA at issue in this case. The Court of

Appeals did not rely on this section of the statute, nor did we grant certiorari on this question. We therefore decline the invitation to address the application, if any, of § 8(d) to Bid Specification 13.1.

hired to organize performance of a clean-up job over which, under Massachusetts law, MWRA is the proprietor. There is no question but that MWRA was attempting to ensure an efficient project that would be completed as quickly and effectively as possible at the lowest cost. As petitioners note, moreover, Brief for Petitioners 26, the challenged action in this case was specifically tailored to one particular job, the Boston Harbor clean-up project. There is therefore no basis on which to distinguish the incentives at work here from those that operate elsewhere in the construction industry, incentives that this Court has recognized as legitimate. See *Woelke & Romero Framing Co. v NLRB*, 456 US, at 662, and n 14, 72 L Ed 2d 398, 102 S Ct 2071.

We hold today that Bid Specification 13.1 is not government regulation and that it is therefore subject to neither Garmon nor *Machinists* pre-emption. Bid Specification 13.1 constitutes proprietary conduct on the part of the Commonwealth of Massachusetts, which legally has enforced a valid project labor agreement. As Chief Judge Breyer aptly noted in his dissent in the Court of Appeals, "when the MWRA, acting in the role of purchaser of construction services, acts just like a private contractor would act, and conditions its purchasing upon the very sort of labor agreement that Congress explicitly authorized and expected frequently to find, it does not 'regulate' the workings of the market forces

that Congress expected to find; it exemplifies them." 935 F2d, at 361.

Because we find that Bid Specification 13.1 is not pre-empted by the NLRA, it follows that a preliminary injunction against enforcement of

this bid specification was improper. We therefore reverse the judgment of the Court of Appeals and remand the case for further proceedings consistent with this opinion.

It is so ordered.

JOSE ANTONIO ORTEGA-RODRIGUEZ, Petitioner

v

UNITED STATES

507 US —, 122 L Ed 2d 581, 113 S Ct 1199

[No. 91-7749]

Argued December 7, 1992. Decided March 8, 1993.

**Decision:** Dismissal of appeal of accused whose postconviction flight and recapture occurred before filing of appeal, held improper without sufficient connection between fugitive status and appellate process.

SUMMARY

A 1982 decision by the United States Court of Appeals for the Eleventh Circuit ruled to the effect that a criminal defendant who fled after conviction, but before sentencing, waived the right to appeal from the conviction unless the defendant could establish that the defendant's absence was due to matters completely beyond the defendant's control. After being tried and convicted in the United States District Court for the Southern District of Florida for violations of federal drug laws, an accused failed to appear for sentencing in 1989 and was sentenced in his absence to a prison term. Although the accused's two codefendants appealed their convictions and sentences, no appeal was filed on behalf of the accused. Following the arrest of the accused 11 months after the original sentencing date, the accused was indicted and found guilty of contempt of court and failure to appear, and was sentenced by the District Court to a prison term to be served after completion of the sentence for the drug offenses. (Meanwhile, the United States Court of Appeals for the Eleventh Circuit affirmed the conviction of one of the accused's codefendants, but reversed the second codefendant's conviction on the basis of insufficient evidence.) With respect to the accused's drug offenses, the District Court denied the accused's motion for a judgment of acquittal, but granted his motion for resentencing. The accused filed an appeal after the resentencing, and argued that the same insufficiency-of-the-evidence rationale underlying the reversal of the second codefendant's conviction ought apply with respect to the accused's drug conviction. The Court of Appeals, however, granted the government's motion to

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**Sec. 36.30.085. Lease-purchase agreements.** (a) To perform its duties and statutory functions, the department, the Board of Regents of the University of Alaska, the legislative council, or the supreme court may enter into lease-purchase agreements. The department, the Board of Regents, the legislative council, or the supreme court may enter into a lease-purchase agreement only if the department, the Board of Regents, the legislative council, or the supreme court is the lessee under the agreement.

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

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

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

(c) A lease-purchase agreement

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

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

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

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

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

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

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

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

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

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

(g) In this section,

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

(2) "lease-purchase agreement" includes a lease-financing agreement. (§ 7 ch 75 SLA 1994; am §§ 2, 3 ch 36 SLA 1995)

**Effect of amendments.** — The 1995 amendment, effective May 25, 1995, inserted "or improve" in subsections (b) and (e) and "or improvement" in paragraphs (b)(1) and (b)(2).

**Effective dates.** — Section 13, ch. 75, SLA 1994 makes this section effective June 7, 1994, in accordance with AS 01.10.070(c).

**Sec. 36.30.095. Procurement of paper.** Except as otherwise required under AS 36.15.050 or AS 36.30.322 — 36.30.338, when a state agency purchases paper, at least 25 percent of the quantity purchased must be recycled paper unless the commissioner of the department in which the agency is located makes a written finding that recycled paper is not available for the purchase or that, after application of the procurement preference under AS 36.30.339, the recycled paper is more expensive than the nonrecycled paper. If the agency is not located in a department, the procurement officer for the agency shall make the written finding. If the agency is located in the Office of the Governor, the governor shall make the written finding. (§§ 1, 2 ch 175 SLA 1990)

**Effect of amendments.** — The 1990 amendment, effective July 1, 1994, substituted "25 percent" for "15 percent" in the first sentence.

**Editor's notes.** — Section 9, ch. 175, SLA 1990 provides that this section ap-

plies to procurements that begin on or after September 19, 1990. Section 10, ch. 175, SLA 1990 provides that the amendments to this section that are effective July 1, 1994, apply to procurements that begin on or after July 1, 1994.

## Article 2. Competitive Sealed Bidding.

### Section

130. Public notice of invitation to bid  
150. Bid acceptance and bid evaluation

### Section

170. Contract award after bids

**Sec. 36.30.130. Public notice of invitation to bid.** (a) [Effective until August 22, 1998.] The procurement officer shall give adequate public notice of the invitation to bid at least 21 days before the date for the opening of bids. If a determination is made in writing that a shorter notice period is necessary for a particular bid, the 21-day period may be shortened. The determination shall be made by the chief procurement officer for bids for supplies, services, or professional services. The determination shall be made by the commissioner of transportation and public facilities for bids for construction or acquisition of property for the state equipment fleet. Notice shall be published in the Alaska Administrative Journal. The time and manner of notice must

(4) United States Public Health Service, the Indian Health Service, or any affiliated group or agency if the prisoner is a Native American and is entitled to medical care from those agencies or groups; and  
(5) parent or guardian of the prisoner if the prisoner is under the age of 18.

(b) The commissioner shall require prisoners who are without resources under (a) of this section to pay the costs of medical, psychological, and psychiatric care provided to them by the department. At a minimum, the prisoner shall be required to pay a portion of the costs based upon the prisoner's ability to pay. (§ 13 ch 70 SLA 1995)

**Effective dates.** — Section 13, ch. 70, SLA 1995, which enacted this section, took effect on September 3, 1995.

*Sec. 33.30.030. Commissioner to adopt regulations. [Repealed, § 12 ch 88 SLA 1986.]*

**Sec. 33.30.031. Contracts for confinement and care of prisoners.** (a) The commissioner shall determine the availability of state correctional facilities suitable for the detention and confinement of persons held under authority of state law or under agreement entered into under (e) of this section. If the commissioner determines that suitable state correctional facilities are not available, the commissioner may enter into an agreement with a public or private agency to provide necessary facilities. Correctional facilities provided through agreement with a public agency for the detention and confinement of persons held under authority of state law may be in this state or in another state. Correctional facilities provided through agreement with a private agency must be located in this state unless the commissioner finds in writing that (1) there is no other reasonable alternative for detention in the state; and (2) the agreement is necessary because of health or security considerations involving a particular prisoner or class of prisoners, or because an emergency of prisoner overcrowding is imminent. The commissioner may not enter into an agreement with an agency unable to provide a degree of custody, care, and discipline similar to that required by the laws of this state.

(b) *[Repealed, § 37 ch 2 FSSLA 1992.]*

(c) Notwithstanding AS 36.30.300, an agreement with a private agency to provide necessary facilities under (a) of this section must be based on competitive bids.

(d) A person employed outside the facility while confined in a privately operated correctional facility established under (a) of this section is subject to the provisions of AS 33.30.131.

(e) The commissioner may enter into an agreement with the United States, another state, a municipality of this state, or another state

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agency, to provide a correctional facility for the custody, care, and discipline of a person held under authority of the law of that jurisdiction. (§ 6 ch 88 SLA 1986; am § 49 ch 138 SLA 1986; am § 55 ch 14 SLA 1987; am § 14 ch 90 SLA 1991; am §§ 5, 37 ch 2 FSSLA 1992)

**Cross references.** — For interstate compacts concerning the confinement of inmates, see AS 33.36.

**Effect of amendments.** — The 1991 amendment, effective July 3, 1991, in subsection (e), deleted the former last two sentences.

The 1992 amendment, effective July 1,

1992, rewrote subsection (e) and repealed subsection (b).

**Opinions of attorney general.** — On September 4, 1986, the commissioner of corrections obtained authority to contract for the placement of prisoners found guilty but not mentally ill into privately operated treatment facilities. July 8, 1986 Op. Att'y Gen.

#### NOTES TO DECISIONS

**Annotator's notes.** — The Department of Corrections was created from the Division of Corrections of the Department of Health and Social Services by E.O. No. 55 (1984). Earlier cases refer to the executive administration then in effect.

**Authority granted.** — The legislature has authorized the commissioner of health and welfare to designate an appropriate facility for service of a sentence by an Alaskan prisoner whether or not such facility is in another state, territory, or possession of the United States. *Dwyer v. State*, 449 P.2d 282 (Alaska 1969), decided under former AS 33.30.060.

Alaska's legislature authorized the commissioner of health and welfare to enter into agreements with the proper United States authorities for the placement of Alaskan prisoners in federal facilities. *Dwyer v. State*, 449 P.2d 282 (Alaska 1969), decided under former AS 33.30.060.

Judicial precedent has supported the validity of contractual arrangements entered into under statutory provisions similar to those found in former AS 33.30.060 and former AS 33.30.100. *Dwyer v. State*, 449 P.2d 282 (Alaska 1969).

**Incarceration in federal facility.** — Defendant's incarceration upon a sentence for violation of Alaska's burglary statute in a federal facility located in the State of California is not unlawful. *Dwyer v. State*, 449 P.2d 282 (Alaska 1969), decided under former AS 33.30.060.

The Congress of the United States has authorized the Attorney General of the United States to contract with proper state officials for the care of state prisoners in federal facilities. *Dwyer v. State*, 449 P.2d 282 (Alaska 1969), decided under former AS 33.30.060.

**Collateral references.** — Liability of private operator of "halfway house" or group home housing convicted prisoners

before final release, for injury to third person caused by inmate. 9 ALR5th 969, § 4.

**Sec. 33.30.035. Notice to sex offenders of registration requirement.** The department shall provide written notice to a sex offender of the registration requirements of AS 12.63.010, and shall obtain a signed acknowledgement of receipt of notice from the sex offender

(1) at the time of the sex offender's release from a state correctional facility;

(2) immediately after taking supervision of a sex offender under the Interstate Corrections Compact or AS 33.36.110. (§ 8 ch 41 SLA 1994)

the appropriate security level of a correctional facility. The security level of a correctional facility will be maximum, medium, minimum, or multi-level, based on the security features and staffing ratio of the facility. (Eff. 11/3/84, Register 92; am 1/9/87, Register 101)

Authority: AS 33.30.011  
AS 33.30.021  
AS 44.28.030

### Article 5. Programs

Section	Section
300. Contract facilities	331. Furlough or restitution center placement involving employment
305. (Repealed)	335. Violation of furlough conditions
310. Furlough for prisoners outside Alaska	340. Academic education
315. (Repealed)	345. Vocational and work opportunities
316. Furlough	350. Restitution centers
320. (Repealed)	352. Restitution center consideration
321. Prerelease furlough	355. Return from a restitution center or contract misdemeanor housing; discipline
325. (Repealed)	
326. Short-duration furlough	
330. (Repealed)	

**22 AAC 05.300. CONTRACT FACILITIES.** (a) The commissioner will, in his or her discretion, contract for residential correctional facilities and programs under AS 33.30.031 to supplement the resources of the department for the care, custody, and rehabilitation of prisoners meeting the eligibility criteria set out in this chapter.

(b) Community residential centers will, in the commissioner's discretion, be contracted for and used for the placement of prisoners on a prerelease furlough in accordance with 22 AAC 05.321.

(c) Contract misdemeanor housing will, in the commissioner's discretion, be contracted for and used for the confinement of prisoners convicted of a misdemeanor.

(d) Restitution centers will, in the commissioner's discretion, be contracted for and used for the placement of certain non-violent prisoners in accordance with 22 AAC 05.350.

(e) Correctional facilities provided through agreement with a public agency will, in the commissioner's discretion, be in this state or another state. Correctional facilities provided through agreement with a private agency will be in this state, and will only be used to involve a prisoner in a program established under AS 33.30.091 — 33.30.131 or AS 33.30.151 — 33.30.181, or to confine a prisoner convicted of a misdemeanor.

(f) Contract facilities must provide a degree of custody, care, and discipline for prisoners similar to that required by the laws of this state, consistent with the security and custody status of the prisoners who have been placed there under contract.

(g) A prisoner incarcerated in a contract facility in the state is subject to the provisions of 22 AAC 05.400 — 22 AAC 05.480 unless informed in writing of other disciplinary provisions approved by the commissioner as applicable to prisoners in contract facilities. (Eff. 1/9/87, Register 101)

Authority: AS 33.30.011 AS 33.30.031  
AS 33.30.021 AS 44.28.030

**22 AAC 05.305. INSTITUTION FROM WHICH A PRISONER IS FURLOUGHED.** Repealed 1/9/87.

**22 AAC 05.310. FURLOUGH FOR PRISONERS OUTSIDE ALASKA.** Alaska prisoners incarcerated outside Alaska under contract with another jurisdiction may not participate in a furlough program unless approved by the commissioner. Before being considered by the commissioner, a prisoner requesting furlough must (1) first meet the eligibility criteria for a furlough established by the contract facility, (2) have served at least a third of the sentence and be within three years or less of release, and (3) be recommended for furlough by officials of the contract facility. (Eff. 9/10/77, Register 63; am 1/9/87, Register 101)

Authority: AS 33.30.011 AS 33.30.111  
AS 33.30.021 AS 44.28.030  
AS 33.30.031

**22 AAC 05.315. REHABILITATION FURLOUGHS.** Repealed 1/9/87.

**22 AAC 05.316. FURLOUGH.** A prisoner may be granted a prerelease or short-duration furlough for a purpose listed in AS 33.30.101(a), after consideration of the factors in AS 33.30.101(b) and after meeting the criteria set out in 22 AAC 05.321 or 22 AAC 05.326, as appropriate. (Eff. 1/9/87, Register 101)

Authority: AS 33.30.011 AS 33.30.111  
AS 33.30.021 AS 33.30.121  
AS 33.30.101 AS 44.28.030

**22 AAC 05.320. WORK FURLOUGHS.** Repealed 1/9/87.

**22 AAC 05.321. PRERELEASE FURLOUGH.** (a) A prerelease furlough is an authorized leave of absence from a correctional facility designed to facilitate the reintegration of a prisoner into society.

(b) The regional director may grant an eligible sentenced prisoner a prerelease furlough in accordance with (c) of this section. If a request for prerelease furlough is denied, the prisoner must be provided a

**Comparative Evaluation  
of  
Privately-managed CCA Prison  
(South Central Correctional Center)  
and  
State-managed Prototypical Prisons  
(Northeast Correctional Center, Northwest Correctional Center)**

**Executive Summary**

**February 1, 1995**

## Executive Summary

This summary answers key questions about the Comparative Evaluation purpose, process and results. The question and answer format and numbers follow the major sections of the report. This summary provides the reader with an overview of the evaluation process, results and conclusions.

### 1. What is the Comparative Evaluation?

In 1991, because of the State's interest in improving the quality of prison operation and to learn, if possible, from the private sector, the State decided to enact legislation allowing a private company to operate one of its prototypical medium-security facilities. The objective was to compare public and private operation at basically the same type of physical plants. This legislation required a comparison of the performance and cost of the private operation to that of the State operation. This report is the performance comparison.

### 2. Why was a comparative evaluation conducted?

This evaluation was conducted and a report submitted in response to the requirements of TCA 41-24-105, which directs the Select Oversight Committee on Corrections to compare the quality of services provided by a private contractor to the quality of services provided by the State at prisons which are comparable in size, population, and physical plant. This statute also mandates that the Fiscal Review Committee conduct a comparison of the costs of the State and private operations at the three prototypical prisons. The law requires that contract renewal be based on the results of these two studies.

*TCA 41-24-105 (d) The contract may be renewed only if the contractor is providing at least the same quality of services as the state at a lower cost, or if the contractor is providing services superior in quality to those provided by the state at essentially the same cost.*

### 3. How was the comparative evaluation conducted?

As a means of satisfying the statutory requirement, the Select Oversight Committee on Corrections brought together leaders of the Department of Correction and executives of Corrections Corporation of America for the purpose of agreeing upon the method to be used for comparing the performance and quality of services provided by the three prisons. Department of Correction and CCA representatives met over five times with the Oversight Committee director and consultant as all parties joined together in developing a strategy to fairly compare all three prisons given the limited resources to undertake such a difficult task. A consensus was reached on the methodology as all parties agreed upon the measures or indicators to be used, the collection methods, the means of validation, the

value and weighting of indicators, and the process for conducting the evaluation. In October of 1992, the Oversight Committee adopted a resolution confirming the methodology endorsed by all parties.

- The first step in organizing the comparative evaluation was to identify the measures or indicators to be used. The object was to identify indicators that would reveal the most relevant information about the operational performance of the facilities being compared.
- The second step was to identify the source of those measures. Where would the data and information come from and how would it be collected.
- The third step was to define how the information would be validated or verified to be true and accurate.
- The fourth step was to define the value of each indicator or what the measure was worth.
- The fifth step was to define how the actual comparison would be made.

The specific indicators to determine the nature of inmates in each facility were:

Age  
Race  
Custody Level or Classification  
Medical Classification  
Education Level

#### Audit

An operational audit was conducted at each of the three facilities. This audit was very similar to the annual inspection process conducted by the TDOC Office of Compliance. The purpose was to conduct an inspection of programs and operations at the three facilities.

#### Security and Safety Index

The security and safety evaluation considered a wide variety of factors. Some of the factors considered included:

Disciplinary Reports  
The Use Of Force  
Assaults  
Deaths  
Injuries  
Escapes

### Program and Activity Index

The program and activity index measured inmate assignments, and activity or idleness.

### Source

The source of the indicators and measures came from existing records, reporting procedures, and inspection processes. The primary sources were:

- 1 TDOC and CCA records
- 2 TDOC and CCA weekly, monthly, quarterly, and annual reports.
- 3 The Performance Audit Inspection
- 4 The Program and Activities Records and Jobs Audit

In addition to the records and reporting processes and the audits, the SOCC staff and consultant made site observations and conducted interviews with staff and inmates.

### Validation

The primary process of validating or verifying the data and information routinely reported by TDOC and CCA was the Performance Compliance Audit and the Program and Activities and Jobs Audit.

### Value or Weight

The value or numerical weight given to each indicator or measure previously discussed was agreed-to by TDOC and CCA as follows:

<u>Element</u>	<u>Value</u>
Nature of Inmates	0
Professional Standards	0
Audit	60
Security and Safety Index	25
Program and Activity Index	15
Survey	0

The nature of inmates, and the professional standards, were control measures. They were given no score. The performance audit consisted of nearly 200 elements. Each element was worth one point. The total performance audit was worth sixty (60) percent of the aggregate comparison score.

The security and safety index is worth twenty five (25) percent of the total comparison score. The program and activity index is worth fifteen (15) percent of the total score

## Comparison

Describing what is a "comparable, superior, or poorer-than" quality of performance for correctional services is subjective. The risks associated with giving a numerical score to the quality of correctional performance is high. There are very few outcome measures that are either easily quantified or are very meaningful in judging quality of performance. There are many variables to consider when making a judgment about the quality of correctional services. This approach was designed to be as objective, fair, and comprehensive as was practical.

During the development of this design approach, it was clear the parties were concerned about a process that concludes with a numerical score. They were concerned about being given a score that may be misunderstood or misinterpreted. Since this project did not attempt to have scientific rigor, it would be misleading and imply a sense of false precision to rely on a numerical score. On the other hand, it was essential to give some weight and value to indicators and measures used. We have tried to avoid the limits of heavy reliance on a numerical score. The audit, security and safety, and program and activities measures were given a numerical score. They are supported by interpretations and explanations.

In each area where deficiencies are noted or comments are made by the SOCC staff or consultant, an opportunity was given to TDOC or CCA to present facts or evidence to clarify any misunderstandings and correct any misrepresentations.

## LIMITATIONS

The methodology described above was sufficient to conduct the comparative evaluation. However, there are limitations and factors that were beyond the control of the State or the private contractor, and the evaluation methodology, that could affect the quality of the data described and the interpretation of that data.

It is important to point out those limitation factors, so they can be given consideration when reviewing or interpreting the data and findings in this comparative evaluation report.

- The first limiting factor was that each of the three institutions opened at different times. There was nearly a 1 1/2 year difference between the opening of Northeast and Northwest Correctional Centers. The methodology attempted to account for this starting time discrepancy by picking points in time that were consistent for data collection and evaluation. However, the fact remains that one institution had more than a year's experience over the other two institutions.

- There was an initial apparent lack of clarity regarding authority and responsibility, as it related to "care, custody, and control" by the private operator. This report was not an attempt to discuss or describe contractual language or responsibilities between the State and the private operator. However, the complexities in operational practices with regard to disciplinary authority and responsibility between the State and the private operator took several months to resolve. This critical period of opening and operating a new prison usually sets the tone for the operation, for a long time. This was not a quantifiable observation, but was based on the experience of opening prisons and jails and observing the impact of an organized transition and activation process, and the first year of operation of a new prison.
- The quality of data used in any evaluation is critical. The initial plan for the methodology was to use the State's Tennessee Offender Management Information System, (TOMIS) as the primary data source. The TOMIS system was being developed as the comparative evaluation data was being collected. This resulted in an inability to obtain certain data, a change in data reporting formats, and an agreement by the State and the private contractor to use certain data collection and verification efforts. It should be noted that the State, particularly the Department of Correction's Planning and Research Division, did an excellent job in controlling, managing, and reporting on the quality and quantity of data used throughout this comparative evaluation.
- The demands placed on the Office of Compliance, Tennessee Department of Correction, were not fully anticipated. The workload and tasks associated with contract monitoring, compliance monitoring, liaison and communication responsibilities were substantial. The TDOC Office of Compliance assumed these additional responsibilities and did an excellent job in coordinating and reporting compliance issues for the comparative evaluation process.
- The corrections system must be flexible and meet the demands of a constantly changing inmate population. A limiting factor in this comparative evaluation was some of the demand for change on the system. For example, during some of the evaluation period, the Northwest Correctional Center was partly used as a reception center because of system demands.
- A primary focus of the programs and activities associated with the correctional system was inmate jobs and work assignments. The industry component at each of the three facilities that was anticipated to supply substantial jobs, did not meet expectations.

In spite of these limitations and factors that could affect the quantity and quality of data, or the interpretation of the findings, it did not have a significant affect on the comparative evaluation approach. In fact, the State and the private contractor, particularly the wardens at the three institutions, used administrative prerogatives, creativity, and good judgment in mitigating many of the limitations.

4. What were the findings of the annual audits?

The following table represents the second annual inspection of each facility by the special comparative evaluation inspection team.

Second Inspection <u>Element</u>	NECC		SCCC		NWCC	
	<u>Comp.</u>	<u>Non-C.</u>	<u>Comp.</u>	<u>Non-C.</u>	<u>Comp.</u>	<u>Non-C.</u>
Administration	87.7	12.3	97.9	2.1	97.6	2.4
Safety & Conditions	95.6	4.4	88.1	11.9	94.5	5.5
Health Services	96.7	3.3	100.0	0.0	97.8	2.2
Mental Health	96.3	3.7	100.0	0.0	100.0	0.0
Treatment	95.9	4.1	99.35	.6	95.1	4.9
Security	99.5	.5	99.5	.5	98.4	1.6
AVERAGE (**)	95.28	4.72	97.48	2.52	97.23	2.77

\*\* Does not include Correctional Enterprises

Compare Two Insp. <u>Element</u>	NECC		SCCC		NWCC	
	<u>Comp.</u>	<u>Non-C.</u>	<u>Comp.</u>	<u>Non-C.</u>	<u>Comp.</u>	<u>Non-C.</u>
First Inspection	90.67	9.35	84.53	15.47	90.08	9.92
Second Inspection	95.28	4.72	97.48	2.52	97.23	2.77
Percent Improvement	5.08		15.32		7.94	

For evaluation purposes, the second inspection score was counted in the overall rated comparison. After each audit the ratings were reviewed with the facility. It is interesting to note the substantial improvement for all three facilities between the first and second inspections. SCCC made the biggest improvement. It is also interesting to note the very high levels of compliance and the closeness of the scores. This is all the more impressive since it was done independently by a bi-partisan team from TDOC and CCA. Also, the scores are consistent with the ACA accreditation ratings.

## ACA Accreditation Ratings

Facility	Date	Score
NECC	June 7-9, 1993	98.78
-SCCC	October 4-6, 1993	99.29
NWCC	June 6-8, 1994	98.88

### 5. What were the findings of the Security and Safety review?

A wide range of security and safety factors were reviewed. The review included reports on serious incidents for a fifteen-month period from July 1993 through September 1994, and a review of Disciplinary Classification reports and Dispositions for different periods in 1993 and 1994.

It is very difficult to say that one facility is more or less secure or safe than another facility. There are many variables that constitute safe and secure. Nearly everyone has an opinion. Our opinions were based on observations, data, and our best professional judgment. We started with some assumptions and we referred to data from TDOC and CCA reports for most of our comments

Our first assumption was that there was full compliance with security and safety practices, and that our observations and comments would describe deficiencies in security, or safety compliance, or practices. Our second assumption was that we would refer to serious incident and disciplinary reports, because they have been accepted by the parties, and are the parties' reports.

### Statement of Qualifications

Before we discuss specific security and safety issues it is important to remind the reader of the need to qualify and condition the interpretation, use, and referencing of a single number or set of numbers, or narrow specific statements in this report. We recognize the wide and varied interests in the results of this evaluation. We have attempted to present information in text and tables that are clear and concise in form and style.

However, we are very conscious that information can be taken out of context and appear to be much more than it is. Or worse, what it is not. The reporting of events described as "serious incidents" in a prison report can have unintended consequences. We urge the reader to read the full report before reaching conclusions or quoting things out of context.

One measure of security and safety is the number and type of assaults that occur in a facility. During the fifteen-month period, NWCC had significantly more assaults than either NECC or SCCC. NWCC reported 165 assaults.

NECC reported 69 and SCCC reported 80. 62 of NWCC's assaults resulted in minor injuries to staff. Assaults reported for the three facilities include serious and minor assaults involving staff, inmates and visitors.

Disturbances, or the loss or threat of a loss of control is a measure of the security and safety of a facility. NWCC reported 7 temporary losses of control and NECC and SCCC each reported 2. A review of the 7 incidents at Northwest reflect the differences in reporting as the incidents were very minor, for example; a disruptive student in a classroom, a disruptive inmate in line to receive clothes, an inmate refusing to enter his cell and being escorted.

Escapes are an obvious measure of security for a prison. During the fifteen-month period, NECC had two, NWCC had one, and SCCC had no escapes from secure supervision. SCCC had 2 attempted escapes from secure supervision.

The number of injuries to staff and prisoners is a measure of the security and safety of a facility. During the fifteen-month period, SCCC reported significantly more injuries to prisoners and staff than either NECC or NWCC, with 214 injuries reported at SCCC, 21 and 51 at NECC and NWCC respectively.

The use of force is also reviewed when looking at the security and safety of a prison. The facilities have significantly different reported incidents of the use of force. SCCC had 30 reported incidents, NECC 4 and NWCC 6.

Both the injury and use of force data is as reported on TOMIS and does not necessarily reflect a higher incidence of injury or use of force at SCCC or NWCC. Rather, the data may be indicative of the focus of the facilities in reporting and the discretionary nature of the reporting requirements.

The use of a disciplinary system, and the writing of charges and disposition of those charges is a measure of the security and safety of a prison. There was not much difference in the issuing of disciplinary tickets among facilities. SCCC appears to write more minor infractions and NWCC appears to write more serious infractions.

The disposition of disciplinary charges is also a very good measure of the security and safety of a prison. It is an indication of how the facility manages its problems, and can be an indicator of facility safety. During the fifteen-month period, NECC reported 500 dispositions to verbal reprimand, while NWCC and SCCC reported seven and 13, respectively.

Each of the institutions met the security and safety requirements of two annual inspections and an ACA audit. Their respective scores were exceptionally high, in fact, almost identical. There were differences in certain indicators. However, in reviewing the entire period, in our

judgment, there was very little difference in the performance of security and safety among the three facilities.

6. What were the findings of the Program and Activities Review?

The following table summarizes the first and second years of operation at the three facilities regarding the percent of inmates inactive or idle due to job waiting.

This category depicts inmates who are eligible for a work or program assignment but remain idle and unassigned.

<u>Compare First and Second Years</u>	<u>Job Waiting Percent</u>		
	<u>NECC</u>	<u>SCCC</u>	<u>NWCC</u>
First Year	11	19	21
Second Year	4	11	12

The tables reflect the high rate of inmates in the "job waiting" category during the first year of operation. This is a critical time when inmates should be assigned to programs and work because the facility is setting its operational tone.

The tables also reflect the substantial improvement at each facility in reducing the amount of job waiting in the second year of operation.

The primary reason the job-waiting numbers and percents were so high was because the facilities had no industry program. The facilities were constructed but the program was not operational. SCCC and NWCC have had no real industry program during the evaluation period. NECC had a small industry program during the second year of operation.

The State recognized the prisoner "job waiting" and industry problem. In 1994 the SOCC initiated efforts that led to legislation creating a new prison industry board and a renewed focus to develop work opportunities and prisoner jobs.

7. What conclusions were reached from the comparative evaluation?

There were elements within each area that was reviewed where one facility received a higher rating than another facility. However, there were also elements within each area where one facility received a lower rating. In total, the facilities all rated very high and are nearly identical in their overall performance. The closest objective numerical rating to support this conclusion was the second annual inspection reports and the ACA audit.

We do not believe there was a significant security and safety performance difference among the three facilities during the rated evaluation period.

We do believe there was a significant "job-waiting" difference among the three facilities during the evaluation period. However, as TDOC and CCA agreed during the development of the methodology, adjustments could be made to the Program and Activity Index rating based on the jobs audit and verification of program and activity assignments. It is difficult to penalize SCCC and NWCC for not assigning inmates to an industry program that was not provided. On the other hand, the State was responsible for providing the industry program at all three facilities.

It was our judgment to rate all three facilities the same for the program and activity index.

Overall Rating

The overall Comparative Evaluation rating is depicted in the following table. It includes the second Annual Audit, worth 60 %, the Security and Safety Index, worth 25 %, and the Program and Activity and Jobs Index, worth 15 %.

<u>Evaluation Rating</u>	<u>NECC</u>	<u>SCCC</u>	<u>NWCC</u>
Audit (60 %)	57.17	58.49	58.34
Security and Safety Index (25 %)	25.00	25.00	25.00
Program and Activity Index (15 %)	15.00	15.00	15.00
	97.17	98.49	98.34

In reviewing the ratings we considered the range of difference of up to 3 % among the three facilities, as essentially comparable. Therefore, our conclusion was that all three facilities were operated at essentially the same level of performance.

8. What recommendations are being made?

The following recommendations were developed from information learned and opinions formed during the evaluation process. They are intended to guide State policy makers as they look for ways to improve the correctional system. They are intended to guide State policy makers in their decision making process, if the State decides to continue this contract or contracts for correctional services in the future. We recommend the following:

- Establish an independent contract monitoring and operational compliance capability for corrections contracts where a comparative evaluation will be conducted. The potential conflict and the complexities require a separate contract monitor.
- Review State restrictions and TDOC policy to provide maximum flexibility to allow corrections operational contractors to use their business and marketplace creativity; obviously, with appropriate legal safeguards.

- Allow the private contractor the authority and opportunity to privatize the industry program at SCCC. This could take several different forms. This should not preclude a contract with the TRAIL Board.
- Review the "start-up" needs and provide TDOC with adequate resources to service the operational demands of a new private prison contract. The need for transitioning into the new facility and the prison activation process require commitment of time and resources.
- Review the needs and establish clearer lines of authority, accountability, and communication, between the State and a private contractor. Set policy and establish more formal and documented procedure.

*Private Adult Correctional Facility Census*  
*Seventh Edition*

*prepared by*

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*June 30, 1994*

## Preface

Established in 1988 for the purpose of conducting policy-relevant research on correctional privatization, the Private Corrections Project at the University of Florida is now internationally recognized as the most authoritative source of information about this innovative means of providing correctional services. The core research goals of the Project require timely and accurate information about contract awards. Originally an informal by-product of meeting this requirement, today the semi-annual publication of the *Private Adult Correctional Facility Census* attracts more interest from the academic, corporate, financial, and political communities than does any other single Project-based initiative.

Those who are or who have been associated with the Private Corrections Project are gratified by so much interest being focused on the *Census* by so large and diverse a group of readers. At the same time, however, the fact that so many readers rely on the *Census* as the authoritative source of information about correctional privatization gives rise to a pressing need to guarantee that the information presented in the *Census* is both comprehensive and valid. It also establishes a responsibility to assure that readers fully understand both what the *Census* contains and what, in effect, it consciously ignores. Thus, in addition to reviewing the key findings of the 7th Edition of the *Census* and describing some significant expansions in the coverage this and future editions of the *Census* will provide, I will use this preface as an opportunity to review some definitional and methodological features of the *Census* that readers should carefully take into account.

### The Census Format & Methodology

First, the *Census* contains information only about the privatization of secure adult correctional facilities. This intentionally narrow focus sometimes has caused previous editions of the *Census* to be misinterpreted by readers for whom "secure adult correctional facilities" is an unfamiliar concept. As used here the concept refers to detention and correctional facilities within which adult prisoners are, with the exception of some relatively isolated work

assignments they may have outside the security perimeter of facilities, confined on a twenty-four hour a day basis. Such prisoners may or may not have been convicted on criminal charges. For example, pre-trial detainees housed in local jails prior to their trials and prisoners housed in facilities being operated under contract with the Immigration and Naturalization Service and the U.S. Marshals Service have not been convicted.

Perhaps more importantly, this focus ignores both secure facilities for juvenile offenders and non-secure facilities for adults (e.g., community corrections centers, halfway houses, work-release centers, and restitution centers) that are operated by private firms. Contracting with the private sector for the management of non-secure correctional facilities was common long before the privatization of secure adult facilities began in the early 1980s. *Census* results, however, have never and do not now indicate the fraction of pre-trial detainees, adjudicated delinquents, and sentenced offenders who are housed in non-secure facilities for which private firms are responsible.

Second, the methodology and reporting format adopted for the *Census* must be fully appreciated. Regarding the methodological issue, data are collected on an international basis toward the end of December and June of each year. This is generally accomplished by my personally contacting one or more top executives of each private corrections management firm, questioning them about recent corporate developments, reviewing data regarding each secure facility their firm operates, and obtaining information from them about developments in other firms they believe would be of relevance to the *Census*. When I have any reservations about the completeness or accuracy of the information those senior executives have provided, I can and do contact facility-level administrators and/or government officials in an effort to assure that what is published in the *Census* is valid. Sometimes it is also possible to cross-validate the information provided by comparing it with various other sources (e.g., corporate press releases, media reports, analyses I receive from brokerage firm analysts, and documents a growing number of firms are obliged to file with the Securities and Exchange Commission).

Regarding the reporting of data, those who review the *Census* data with special care—a group that always includes but is certainly not limited to financial analysts—sometimes report what they perceive to be inconsistencies. Looked at in some ways, these readers are absolutely correct, but the core problem is that they are assuming a bit more by way of exhaustive data analysis than the *Census* is designed to provide. Specifically, each edition of the *Census* depicts where the private corrections management firms are regarding secure adult correctional facility contracts at a particular point in time and how that point in time differs from where they were at an earlier point in time. What the *Census* does not expressly address, however, is a narrow range of adjustments that can take and have taken place within the private corrections industry.

This potential problem is well-illustrated by the fate of Prigor, Inc., a firm that is no longer a component of the industry. At one time the *Census* reported that Prigor would assume management responsibility for six 500-bed minimum security facilities in Texas once their construction was completed. Later it became clear that only one of the six would receive prisoners. The *Census* was revised accordingly. Still later the State of Texas purchased all six facilities and made a policy decision that all six would be publicly rather than privately managed. The *Census* was again revised accordingly, but the *Census* did not overtly direct attention toward the diminishing fortunes of Prigor—although a careful comparison of Prigor's position in the private corrections industry across several editions of the *Census* certainly did document its demise.

The same problem has materialized in a less extreme form in other editions of the *Census*. Indeed, a careful comparison of the results reported here with those of the 6th Edition, for example, will reveal that Capital Correctional Resources no longer operates the parish-level facility it previously operated in Louisiana and that the GRW Corporation has both gained and lost one facility in Texas.

This ebb and flow of activity can be monitored by readers of the *Census*. The monitoring, however, requires a careful consideration of more than a single edition of the *Census*.

## Changes in the Content of the Census

Turning now to adjustments in the scope of the coverage provided by the *Census*, readers will find four changes.

First, many readers have asked that more historical data be provided. The inclusion of what appears here as Figure 1 reflects an effort to respond to that request. Based on a combination of statistical information drawn from prior editions of the *Census* and comparable information published in the 1993 *Annual Report* of the Corrections Corporation of America, Figure 1 graphically depicts historical growth in the private corrections industry as measured by the total number of secure beds for which private firms were responsible.

Second, readers have encouraged more emphasis on adjustments that have been made or are about to be made in the rated capacity of existing facilities. This has been done by printing information on all new contract awards in bold-faced type and by printing information on existing facilities whose size changed by ten percent or more since the last *Census* in italics.

Third, several of the private management firms—Cornell Cox, Inc., the Corrections Corporation of America, Corrections Partners, Inc., Esmor Correctional Services, Inc., the GRW Corporation, and the Wackenhut Corrections Corporation—provide management services for types of correctional facilities that fall beyond the scope of the *Census*. This has resulted in some misinterpretations of *Census* results by, for example, government agencies and more than a few representatives of the financial industry. An effort to clarify the broader roles being played by these firms is provided by the narrative that appears in Appendix B.

Finally, a particularly troublesome problem for those working within as well as those observing developments in correctional privatization is linked to questions regarding the jurisdictions within which full-scale privatization of secure adult facilities is permitted by law. Framing complete and authoritative answers for such questions is exceedingly difficult. To be sure, sometimes the state of existing law can be determined in quite a matter-of-fact manner. In Florida, for instance, one statute expressly authorizes contracting

by the management of county-level facilities, one statute expressly authorizes contracting by the Florida Department of Corrections, and yet another statute expressly authorizes state-level contracting by the Florida Correctional Privatization Commission. All three statutes have been exercised. None of the three has ever been successfully challenged on constitutional or legal grounds.

Suffice it to say that life is not always so simple as it is in Florida. There are isolated jurisdictions that expressly prohibit contracting. There are jurisdictions that expressly authorize contracting by one level of government (e.g., the relevant state agency) but that do not expressly authorize contracting by other governmental entities (e.g., counties). There are jurisdictions where positive or negative assessments of existing legal authority are provided by attorney general opinions rather than by statutes. There are jurisdictions whose statutes are silent with regard to local- and/or state-level contracting. There are many jurisdictions that impose one or more limitations on contracting authority (e.g., limiting contract awards to prisoners with a particular security classification).

Even though a thorough understanding of this issue is of critical importance both to those who would like to make or receive contract awards, there is no authoritative source of up-to-date information on where the private management of one or more types of secure correctional facilities is lawful. Thus, the Private Corrections Project has initiated an on-going research initiative aimed at providing the necessary information. Much of the research was conducted by Mr. Kevin Mayeux, a graduate research assistant with the Project who is also a student at the College of Law of the University of Florida. Importantly, the findings summarized in Appendix C of the *Census* are preliminary. Comments from readers of the *Census* would be both welcomed and greatly appreciated.

### Key Census Survey Findings

The first half of 1993 witnessed unprecedented changes within as well as rapid growth of the private corrections industry. No period in the brief history of correctional privatization comes even remotely close to matching what has transpired since the 6th Edition was published in January.

Regarding changes within the industry, at least five events are especially noteworthy. Several of them are likely to have multiple implications for the future of the correctional privatization industry.

- *In February Esmor Correctional Services, Inc. became a publicly-held company and began trading on the NASDAQ exchange under the symbol ESMR. The warm reception accorded Esmor's initial public offering (IPO) rather clearly demonstrates a perception on the part of individual and institutional investors that correctional privatization is becoming an increasingly attractive means of providing for the delivery of correctional services. The same perception clearly contributed to major upward movement in market evaluations of the common stock of the Corrections Corporation of America (CCA). (Prior to the Esmor IPO, CCA, which trades on the NASDAQ under the symbol CCAX, was the only publicly-traded private corrections management firm.)*
- *In March The Cornell Cox Group was transformed into Cornell Cox, Inc. and announced its acquisition of Eclectic Communications, Inc. (ECI). ECI, the oldest company in the private corrections industry, is now operating as a wholly-owned subsidiary of Cornell Cox, Inc.*
- *In May the Wackenhut Corrections Corporation (WCC), a wholly-owned subsidiary of The Wackenhut Corporation, filed an S-1 Registration Statement with the Securities and Exchange Commission. The S-1 filing is a prerequisite to the issuance of an IPO by WCC. Presupposing the success of the IPO, WCC, which should begin trading soon on the NASDAQ under the symbol WCCX, will become the third publicly-held private corrections management firm.*
- *In June the Corrections Corporation of America announced the formation of what it described as "an international strategic alliance" with Sodexo, S.A., a multi-national French firm that, among its many other business involvements, provides a broad array of contract services in five French prisons. The formation of this relationship between CCA and Sodexo is but one of multiple indicators of the growing interest in and attractiveness of correctional privatization on the international scene.*

- Also in June there were additional signs of a strengthening of the corporate ties between Correction Management Affiliates, Inc. (CMA) and Correctional Services Group, Inc. It continues to seem likely that the two companies will merge to form Correctional Partners, Inc. (CPI). In anticipation of that corporate development, this edition of the Census identifies facilities previously shown as being operated by CMA as being operated by CPI.

Regarding contract and contract-related developments that have taken place since the 6th Edition of the *Census* was published in January, the changes have been significant and the growth has exceeded what many perceived to be the aggressive projections I made in the preface to the 6th Edition. Key illustrations of those developments would certainly include the following items.

- Between 12/31/93 and 6/30/94 the number of secure private facilities rose by 15.07% to 84 and the rated capacity of all secure private facilities rose by 33.64% to 43,508.
- Between 12/31/93 and 6/30/94 the rated capacity of secure private facilities already in operation rose by 6.87% to 26,445 and the actual prisoner population in those facilities rose by 10.77% to 24,677.
- Between 12/31/93 and 6/30/94 the capacity utilization for secure private facilities already in operation rose by 3.64% to 93.31%.
- Between 12/31/93 and 6/30/94 planned expansions, which includes both the construction of new facilities and the expansion of existing facilities, moved upward more sharply than in any previous report. The number of new facilities projected to receive prisoners within the coming 12-18 months rose by 61.54% to 21. Industry-wide capacity increases attributable to both new construction and expansions of existing facilities leaped forward by 118.45% to 17,063 beds.
- The size and number of new contract awards in some jurisdictions are especially noteworthy. In particular, since 12/31/93 Texas has awarded contracts for 5 new state facilities that will have an aggregate rated capacity of 5,500 prisoners (contracts for three 1,000-bed facilities were awarded to the Wackenhut Corrections Corporation, a 1,500-bed contract was awarded to Management and Training Corporation, and

a 1,000-bed contract was awarded to Concept, Inc.).

- At least two jurisdictions that previously had awarded no contracts for the design, construction, and management of secure facilities began doing so rather aggressively. Since 12/31/94 Puerto Rico has awarded a 1,500-bed and a 1,000-bed contract to the Corrections Corporation of America. During the same time period, corporate sources report two 400-bed contract awards in Virginia to Corrections Partners, Inc.
- Florida, which for many years chose not to act on the expressed statutory authority to contract granted to it by the Florida Legislature in the mid-1980s, awarded contracts for two 750-bed state facilities. (One contract was awarded to the Corrections Corporation of America and one contract was awarded to the Wackenhut Corrections Corporation.) Significantly, both Florida contract awards were made by the Florida Correctional Privatization Commission, which was created by the Florida Legislature in 1993, rather than by the Florida Department of Corrections. It is altogether possible that this statutory means of brushing agency resistance to contracting aside will provide a model for legislation in other jurisdictions whose legislative bodies are confronting comparable public agency opposition.

#### Implications for the Future of Correctional Privatization

Six months ago I predicted that "the number of privately managed facilities will increase to between 85-90 by the end of the year" and that "the rated capacity of facilities under contract will increase to between 42,500-45,000." Several representatives of the financial community and more than a few of the private corrections management firms swiftly advanced the opinion that my forecast was too aggressive. I, of course, am so polite and diplomatic that I will refrain from putting too much emphasis on the fact that six months into the calendar year covered by my forecast already finds us with 84 privately managed facilities with a rated capacity of 43,508.

The more interesting questions shift the focus of attention from what already has happened to what

the balance of the year and beyond are likely to bring. Looked at on quite a general level, the only possible conclusion would appear to be that the alternative created by correctional privatization has moved well beyond the "interesting experiment" status it had in the mid-1980s to the proven option position it now enjoys. As I and others have documented in various published studies, the evidence unequivocally demonstrates that---presupposing it exercises reasonable judgment in the preparation of procurement documents, contract preparation, and contract monitoring---government can realistically anticipate operating cost savings in the range of 10-20 percent by contracting with the added benefit of an improvement in the caliber of services it receives.

This general conclusion is easily illustrated by a recent set of contract awards. In December of 1993, the Florida Correctional Privatization Commission issued a request for proposals providing for the private design, financing, construction, and management of two 750-bed medium security state prisons. The controlling statute mandated a cost savings of at least 7 percent below a benchmark price established by the Florida Auditor General. The benchmark price was determined by full-scale audit of costs for the construction and operation of substantially similar facilities constructed and operated by the Florida Department of Corrections.

Each private firm was allowed to submit proposals for one or both of the two facilities. Eight firms submitted a total of twelve proposals. All twelve proposals yielded cost savings of at least the required 7 percent. The contract awards to the Corrections Corporation of America and the Wackenhut Corrections Corporation will yield cost savings to Florida modestly above 10 percent. Further, language in both contracts is such that cost savings equal to or greater than those realized during the initial year of contract performance will persist for the three-year term of the base contracts. Further still, the contracts require prompt award of accreditation by the American Correctional Association, basic services that are at least the equivalent of those provided by the Florida Department of Corrections, and programs in the areas of education, vocational training, and substance abuse education/treatment that are more elaborate than

those presently provided by the Florida Department of Corrections.

Examples like that provided by Florida's recent experience has spawned a growing interest in correctional privatization both within and beyond the boundaries of the United States. Still, it would be unrealistic to expect that the torrid pace of new contract awards witnessed during the past six months will persist in an uninterrupted fashion indefinitely.

My best judgment is that the immediate future will bring more modest numbers of new contract awards coupled with sizable increases in the number of private facilities that are in operation. Those increases are essentially guaranteed by the number of new facilities that are presently under construction.

Importantly, this does not mean that the immediate future will yield no opportunities for significant growth. During the balance of 1994, for example, there are good reasons to anticipate significant contract awards in, on the international scene, Australia and Great Britain and in such American jurisdictions as Arizona, California, Colorado, Florida, Louisiana, Mississippi, Utah, and Virginia. Thus, were I asked to provide a more precise year-end forecast, I would have to estimate that the end of 1994 will reveal 90-95 private facilities with a rated prisoner capacity of 48,000-50,000 prisoners. Even if this upward adjustment of my December 31, 1993 projections proves to be too optimistic, there already is no question whatsoever about 1994 bringing a record increase in all statistical categories monitored by the *Private Adult Correctional Facility Census*.

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June 30, 1994

## Private Adult Facility Census Summary for June 30, 1994

Management Firm	Rated Capacity of All Facilities Under Contract*	# Facilities Under Contract	Rated Capacity of Facilities Now In Operation	Prisoner Populations on 6/30/94	% Occupancy for Facilities in Operation	New Facilities to Open within 12-18 months	Expansion Anticipated Within 12-18 Months
Alternative Programs, Inc.	240	1	240	240	100.00%	0	0
The Bobby Ross Group	872	1	872	868	99.54%	0	0
Capital Correctional Resources	836	1	836	796	95.22%	0	0
Concept, Inc.	4,426	8	1,926	1,876	97.40%	3	2,500
Cornell Cox, Inc.	794	3	794	752	94.71%	0	0
Corrections Corporation of America	13,056	23	8,593	8,251	96.02%	4	4,463
Corrections Partners, Inc.	1,672	4	584	562	96.23%	2	1,088
Corrections Services, Inc.	32	1	32	29	90.63%	0	0
Dove Development Corporation	762	2	762	633	83.07%	0	0
Eden Detention Center	699	1	499	565	113.23%	0	200
Esmor Correctional Services, Inc.	1,170	4	870	845	97.13%	1	300
Group 4 - ICS	300	1	300	300	100.00%	0	0
The GRW Corporation	244	2	244	244	100.00%	0	0
Management & Training Corporation	2,400	3	450	425	94.44%	2	1,950
Mid-Tex Detention, Inc.	1,236	3	736	744	101.09%	1	500
North American Corrections	633	1	489	489	100.00%	0	144
U.S. Corrections Corporation	2,918	6	1,650	1,465	88.79%	2	1,268
The Villa at Greeley, Inc.	400	1	0	0	N/A	1	400
Wackenhut Corrections Corporation	10,818	18	6,568	5,593	85.16%	5	4,250
<b>TOTALS</b>	<b>43,508</b>	<b>84</b>	<b>26,445</b>	<b>24,677</b>	<b>93.31%</b>	<b>21</b>	<b>17,063</b>
<b>% Changes Since 12/31/93</b>	<b>33.64%</b>	<b>15.07%</b>	<b>6.87%</b>	<b>10.77%</b>	<b>3.64%</b>	<b>61.54%</b>	<b>118.48%</b>

\*Capacity Figures Include New Facilities and Expansions of Existing Facilities.

## Private Adult Correctional Facility Census, United States Facilities

Management Company	Alternative Programs, Inc.	<i>Bobby Ross Group</i>	<i>Capital Correctional Resources, Inc.</i>	Concept, Inc.	Concept, Inc.
Facility Location	Bakersfield, CA	<i>Newton Co., TX</i>	<i>Groesbeck, TX</i>	Tuscaloosa, AL	Eloy, AZ
Facility Name	Mesa Verde Community Correction Facility	<i>Newton County Detention Facility</i>	<i>Limestone County Detention Facility</i>	Tuscaloosa Metro Detention Facility	FBOP/INS Detention Center
Primary Source of Prisoners	*State of California	<i>*State of Texas</i>	<i>*State of Texas</i>	Tuscaloosa County	Federal Bureau of Prisons
Secondary Source of Prisoners	N/A	<i>N/A</i>	<i>N/A</i>	City of Tuscaloosa City of Northport	Immigration and Naturalization Service
Rated Capacity	240	<i>872</i>	<i>836</i>	176	1,000
Present Population	240	<i>868</i>	<i>796</i>	176	N/A
Occupancy Percentage	100.00%	<i>99.54%</i>	<i>95.22%</i>	100.00%	N/A
Security Level	minimum	<i>minimum/medium</i>	<i>minimum/medium</i>	minimum	medium
Ownership of Facility	private	<i>public</i>	<i>public</i>	public	public
First Received Prisoners	May-89	<i>Jun-93</i>	<i>Apr-93</i>	Dec-92	Jul-94
ACA Accreditation?	no	<i>no</i>	<i>no</i>	no	will be sought
Facility Construction	new construction	<i>take-over</i>	<i>new construction</i>	new construction	new construction
Facility Expansion Planned?	no	<i>no</i>	<i>no</i>	no	no
* Notes	*Parole Division	<i>*TDCJ Institutional Division See Appendix A, Notes 1 &amp; 2</i>	<i>*TDCJ Institutional Division See Appendix A, Notes 1 &amp; 3</i>	<i>See Appendix A, Note 4</i>	

*Facilities not reported in the 12/31/93 Census appear in bold. Facilities whose size has changed significantly since the 12/31/93 Census appear in italics.*

## Private Adult Correctional Facility Census, United States Facilities

Management Company	Concept, Inc.	Concept, Inc.	<i>Concept, Inc.</i>	Concept, Inc.	Concept, Inc.
Facility Location	Bridgeport, TX	Brownfield, TX	<i>Mineral Wells, TX</i>	Overton, TX	Sweetwater, TX
Facility Name	Bridgeport Pre-Parole Transfer Facility	Brownfield Intermediate Sanction Facility	<i>Mineral Wells Pre-Parole Transfer Facility</i>	TBA	Sweetwater Pre-Parole Transfer Facility
Primary Source of Prisoners	*State of Texas	*State of Texas	<i>*State of Texas</i>	*State of Texas	*State of Texas
Secondary Source of Prisoners	N/A	N/A	<i>N/A</i>	N/A	N/A
Rated Capacity	200	200	<i>1,100</i>	500	250
Present Population	200	200	<i>1,050</i>	N/A	250
Occupancy Percentage	100.00%	100.00%	<i>95.45%</i>	N/A	100.00%
Security Level	minimum	minimum/medium	<i>minimum</i>	minimum	minimum
Ownership of Facility	private	public	<i>private</i>	public	public
First Received Prisoners	Nov-87	Jul-92	<i>Jul-89</i>	Feb-95	Mar-92
ACA Accreditation?	no	no	<i>no</i>	will be sought	no
Facility Construction	renovation	new construction	<i>renovation</i>	new construction	take-over
Facility Expansion Planned?	no	no	<i>no</i>	no	no
* Notes	*TDCJ Board of Pardons & Paroles	*TDCJ Board of Pardons & Paroles	<i>*TDCJ Board of Pardons &amp; Paroles See Appendix A, Note 5</i>	*TDCJ Institutional Division	*TDCJ Board of Pardons & Paroles See Appendix A, Note 6

Facilities not reported in the 12/31/93 Census appear in bold. Facilities whose size has changed significantly since the 12/31/93 Census appear in italics.

## *Private Adult Correctional Facility Census, United States Facilities*

<b>Management Company</b>	<b>Concept, Inc.</b>	<b>Cornell Cox, Inc.</b>	<b>Cornell Cox, Inc.</b>	<b>Cornell Cox, Inc.</b>	<b>Corrections Corporation of America</b>
<b>Facility Location</b>	Williamson County, TX	Baker, CA	Live Oak, CA	Central Falls, RI	Florence, AZ
<b>Facility Name</b>	TBA	Baker Community Correction Facility	Leo Chesney Community Correction Facility	Central Falls Detention Facility	Pinal County Detention Facility
<b>Primary Source of Prisoners</b>	*State of Texas	*State of California	*State of California	U.S. Marshals Service	U.S. Marshals Service
<b>Secondary Source of Prisoners</b>	N/A	N/A	N/A	*State of North Carolina	N/A
<b>Rated Capacity</b>	1,000	272	220	302	500
<b>Present Population</b>	N/A	262	200	290	N/A
<b>Occupancy Percentage</b>		96.32%	90.91%	96.03%	N/A
<b>Security Level</b>	minimum	minimum/medium	minimum/medium	maximum	medium
<b>Ownership of Facility</b>	public	private	private	public	private
<b>First Received Prisoners</b>	Feb-95	Jan-88	May-89	Oct-93	Nov-95
<b>ACA Accreditation?</b>	will be sought	yes - 8/90	yes - 1/91	will be sought	will be sought
<b>Facility Construction</b>	new construction	renovation	new construction	new construction	new construction
<b>Facility Expansion Planned?</b>	no	no	no	no	no
<b>* Notes</b>	*TDCJ Institutional Division See Appendix A, Note 7	*Parole Division See Appendix A, Note 8	*Parole Division See Appendix A, Note 8	*North Carolina Department of Corrections	

*Facilities not reported in the 12/31/93 Census appear in bold. Facilities whose size has changed significantly since the 12/31/93 Census appear in italics.*

*Private Adult Correctional Facility Census, United States Facilities*

<b>Management Company</b>	Corrections Corporation of America	Corrections Corporation of America	Corrections Corporation of America	Corrections Corporation of America	Corrections Corporation of America
<b>Facility Location</b>	Panama City, FL	Panama City, FL	Bay County, FL	Brooksville, FL	Winnfield, LA
<b>Facility Name</b>	Bay County Jail Annex	Bay County Jail	TBA	Hernando County Jail	Winn Parish Correction Center
<b>Primary Source of Prisoners</b>	Bay County	Bay County	*State of Florida	Hernando County	*State of Louisiana
<b>Secondary Source of Prisoners</b>	U.S. Marshals Service & INS	U.S. Marshals Service	N/A	U.S. Marshals Service	N/A
<b>Rated Capacity</b>	257	276	750	252	1,282
<b>Present Population</b>	237	255	N/A	260	1,274
<b>Occupancy Percentage</b>	92.22%	92.39%	N/A	103.17%	99.38%
<b>Security Level</b>	all levels	all levels	medium	all levels	medium
<b>Ownership of Facility</b>	private	public	public	public	public
<b>First Received Prisoners</b>	May-86	Oct-85	Sep-95	Oct-88	Mar-90
<b>ACA Accreditation?</b>	yes - 8/88	yes - 8/88	will be sought	yes - 8/91	yes - 5/91
<b>Facility Construction</b>	new construction	take-over	new construction	take-over	new construction
<b>Facility Expansion Planned?</b>	yes, 48 beds	no	no	yes, 50 beds	no
<b>* Notes</b>			*Florida Correctional Privatization Commission		*Louisiana Department of Corrections

*Facilities not reported in the 12/31/93 Census appear in bold. Facilities whose size has changed significantly since the 12/31/93 Census appear in italics.*

*Private Adult Correctional Facility Census, United States Facilities*

<b>Management Company</b>	<b>Corrections Corporation of America</b>	<b>Corrections Corporation of America</b>	<b>Corrections Corporation of America</b>	<b>Corrections Corporation of America</b>	<b>Corrections Corporation of America</b>
<b>Facility Location</b>	Leavenworth, KS	Estancia, NM	Grants, NM	Santa Fe, NM	Guayama, Puerto Rico
<b>Facility Name</b>	Leavenworth Detention Center	Torrance County Detention Facility	NM Women's Correction Facility	Santa Fe Detention Center	TBA
<b>Primary Source of Prisoners</b>	U.S. Marshals Service	U.S. Marshals Service	*State of New Mexico	Santa Fe County/ U.S. Marshals Service	*Commonwealth of Puerto Rico
<b>Secondary Source of Prisoners</b>	N/A	Federal Bureau of Prisons	N/A	City of Santa Fe City of Moriarty	N/A
<b>Rated Capacity</b>	256	256	204	201	1,000
<b>Present Population</b>	186	204	214	233	N/A
<b>Occupancy Percentage</b>	72.66%	79.69%	104.90%	115.92%	N/A
<b>Security Level</b>	maximum	minimum/medium	all levels	all levels	medium
<b>Ownership of Facility</b>	private	private	public	public	public
<b>First Received Prisoners</b>	Jun-92	Dec-90	Aug-89	Aug-86	Jan-96
<b>ACA Accreditation?</b>	yes - 8/93	no	yes - 5/91	yes - 8/88	will be sought
<b>Facility Construction</b>	new construction	new construction	new construction	take-over	new construction
<b>Facility Expansion Planned?</b>	no	no	yes, 25 beds	no	no
<b>* Notes</b>			*New Mexico Department of Corrections		*Puerto Rico Administration of Corrections

*Facilities not reported in the 12/31/93 Census appear in bold. Facilities whose size has changed significantly since the 12/31/93 Census appear in italics.*

## *Private Adult Correctional Facility Census, United States Facilities*

Management Company	Corrections Corporation of America	Corrections Corporation of America	Corrections Corporation of America	Corrections Corporation of America	Corrections Corporation of America
Facility Location	Ponce, Puer.o Rico	Nashville, TN	Clifton, TN	Chattanooga, TN	Mason, TN
Facility Name	TBA	Metro-Davidson Co. Detention Center	South Central Correctional Center	Silverdale Facilities	West Tennessee Detention Facility
Primary Source of Prisoners	*Commonwealth of Puerto Rico	*Davidson County	*State of Tennessee	Hamilton County	U.S. Marshals Service
Secondary Source of Prisoners	N/A	N/A	N/A	U.S. Marshals Service	Washington, D.C.
Rated Capacity	1,500	870	1,336	414	416
Present Population	N/A	664	1,287	414	432
Occupancy Percentage	N/A	76.32%	96.33%	100.00%	103.85%
Security Level	medium	medium	medium	minimum	all levels
Ownership of Facility	public	public	public	public	private
First Received Prisoners	Sep-96	Feb-92	Mar-92	Sep-84	Oct-90
ACA Accreditation?	will be sought	yes - 1/94	yes - 1/94	no	yes - 8/92
Facility Construction	new construction	new construction	new construction	take-over	new construction
Facility Expansion Planned?	no	no	no	no	no
* Notes	*Puerto Rico Administration of Corrections	*Houses state prisoners	*Tennessee Department of Corrections		

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***Private Adult Correctional Facility Census, United States Facilities***

<b>Management Company</b>	<b>Corrections Corporation of America</b>	<b>Corrections Corporation of America</b>	<b>Corrections Corporation of America</b>	<b>Corrections Corporation of America</b>	<b>Corrections Corporation of America</b>
<b>Facility Location</b>	Cleveland, TX	Laredo, TX	Houston, TX	Venus, TX	Venus, TX
<b>Facility Name</b>	Cleveland Pre-Release Center	Laredo Processing Center	Houston Processing Center	Venus Pre-Release Center	TBA
<b>Primary Source of Prisoners</b>	*State of Texas	Immigration and Naturalization Service	Immigration and Naturalization Service	*State of Texas	*State of Texas
<b>Secondary Source of Prisoners</b>	N/A	Federal Bureau of Prisons	*State of Texas	N/A	N/A
<b>Rated Capacity</b>	520	258	350	520	500
<b>Present Population</b>	520	261	397	520	500
<b>Occupancy Percentage</b>	100.00%	101.16%	113.43%	100.00%	100.00%
<b>Security Level</b>	minimum	minimum	minimum	minimum	minimum
<b>Ownership of Facility</b>	public	private	private	public	public
<b>First Received Prisoners</b>	Sep-89	Mar-85	May-84	Aug-89	Oct-94
<b>ACA Accreditation?</b>	yes - 7/90	no	yes - 1/86	yes - 10/90	will be sought
<b>Facility Construction</b>	new construction	new construction	new construction	new construction	new construction
<b>Facility Expansion Planned?</b>	no	no	no	no	no
<b>* Notes</b>	*TDCJ Institutional Division		*TDCJ Board of Pardons & Paroles	*TDCJ Institutional Division	*TDCJ Institutional Division

*Facilities not reported in the 12/31/93 Census appear in bold. Facilities whose size has changed significantly since the 12/31/93 Census appear in italics*

*Private Adult Correctional Facility Census, United States Facilities*

<b>Management Company</b>	<b>Corrections Partners, Inc.</b>	<b>Corrections Partners, Inc.</b>	<b>Corrections Partners, Inc.</b>	<b>Corrections Partners, Inc.</b>	<b>Corrections Services, Inc.</b>
<b>Facility Location</b>	Oswego, KS	Hinton, OK	Chesapeake, VA	TBA	Seal Beach, CA
<b>Facility Name</b>	Labette County Conservation Camp	Great Plains Correctional Facility	TBA	TBA	Seal Beach Detention Facility
<b>Primary Source of Prisoners</b>	*State of Kansas	*State of North Carolina	*State of Virginia	*State of Virginia	City of Seal Beach
<b>Secondary Source of Prisoners</b>	N/A	Federal Bureau of Prisons	N/A	N/A	Adjoining localities
<b>Rated Capacity</b>	104	480	400	400	32
<b>Present Population</b>	90	472	N/A	N/A	29
<b>Occupancy Percentage</b>	86.54%	98.33%	N/A	N/A	90.63%
<b>Security Level</b>	minimum	medium	minimum	minimum	pre-arraignment
<b>Ownership of Facility</b>	public	public	public	public	public
<b>First Received Prisoners</b>	Feb-91	Oct-91	Jul-95	Jul-95	Jul-94
<b>ACA Accreditation?</b>	in progress	yes - 8/93	will be sought	will be sought	will be sought
<b>Facility Construction</b>	new construction	new construction	new construction	new construction	renovation
<b>Facility Expansion Planned?</b>	will be sought	yes, 288 beds	no	no	no
<b>* Notes</b>	*Commitments ordered Kansas District Courts	*North Carolina Department of Corrections	*Virginia Department of Corrections	*Virginia Department of Corrections	

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**Private Adult Correctional Facility Census, United States Facilities**

<b>Management Company</b>	<i>Dove Development Corporation</i>	<i>Dove Development Corporation</i>	<b>Eden Detention Center, Inc.</b>	<b>Esmor Correctional Services, Inc.</b>	<b>Esmor Correctional Services, Inc.</b>
<b>Facility Location</b>	<i>Crystal City, TX</i>	<i>Pearsall, TX</i>	Eden, TX	Elizabeth, NJ	Tarrant Co., TX
<b>Facility Name</b>	<i>Crystal City Detention Center</i>	<i>Frio Detention Center</i>	Eden Detention Center	Elizabeth Processing Center	Tarrant County Community Correction Facility
<b>Primary Source of Prisoners</b>	<i>*State of Texas</i>	<i>*State of Texas</i>	Federal Bureau of Prisons	Immigration and Naturalization Service	Tarrant County
<b>Secondary Source of Prisoners</b>	<i>N/A</i>	<i>Frio County</i>	Immigration and Naturalization Service	N/A	N/A
<b>Rated Capacity</b>	<i>467</i>	<i>295</i>	499	300	320
<b>Present Population</b>	<i>321</i>	<i>312</i>	565	N/A	310
<b>Occupancy Percentage</b>	<i>68.74%</i>	<i>105.76%</i>	113.23%	N/A	96.88%
<b>Security Level</b>	<i>medium</i>	<i>minimum/medium</i>	minimum/medium	minimum/medium	minimum
<b>Ownership of Facility</b>	<i>private</i>	<i>public</i>	private	private	public
<b>First Received Prisoners</b>	<i>Jul-93</i>	<i>Dec-92</i>	Jan-89	Jul-94	Feb-92
<b>ACA Accreditation?</b>	<i>being considered</i>	<i>being considered</i>	no	will be sought	yes - 8/93
<b>Facility Construction</b>	<i>take-over</i>	<i>take-over</i>	new construction	renovation	new construction
<b>Facility Expansion Planned?</b>	<i>no</i>	<i>no</i>	yes, 200 beds	no	no
<b>* Notes</b>	<i>*TDCJ Institutional Division See Appendix A, Note 1 &amp; 9</i>	<i>*TDCJ Institutional Division See Appendix A, Note 1</i>			

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*Private Adult Correctional Facility Census, United States Facilities*

<b>Management Company</b>	<b>Esmor Correctional Services, Inc.</b>	<b>Esmor Correctional Services, Inc.</b>	<b>GRW Corporation</b>	<b>GRW Corporation</b>	<b>Management &amp; Training Corporation</b>
<b>Facility Location</b>	Houston, TX	Seattle, WA	<b>Ector County, TX</b>	Odessa, TX	Marana, AZ
<b>Facility Name</b>	State of Texas Intermediate Sanction Facility	Seattle Processing Center	<b>Ector County Detention Annex</b>	Odessa Detention Center	Marana Community Treatment Facility
<b>Primary Source of Prisoners</b>	*State of Texas	Immigration and Naturalization Service	<b>Ector County</b>	City of Odessa	*State of Arizona
<b>Secondary Source of Prisoners</b>	N/A	N/A	N/A	*State of Texas	N/A
<b>Rated Capacity</b>	400	150	<b>144</b>	100	450
<b>Present Population</b>	390	145	<b>144</b>	100	N/A
<b>Occupancy Percentage</b>	97.50%	96.67%	<b>100.00%</b>	100.00%	N/A
<b>Security Level</b>	minimum	minimum/medium	<b>medium</b>	all levels	minimum
<b>Ownership of Facility</b>	public	public	<b>public</b>	public	private
<b>First Received Prisoners</b>	Dec-93	Jul-89	<b>Jun-94</b>	Oct-93	Sep-94
<b>ACA Accreditation?</b>	will be sought	yes - 9/91	<b>no</b>	no	no
<b>Facility Construction</b>	renovation	renovation	<b>new construction</b>	take-over	new construction
<b>Facility Expansion Planned?</b>	no	no	<b>no</b>	no	no
<b>* Notes</b>	*TDCJ Board of Pardons & Paroles			*TDCJ Institutional Division <i>See Appendix A, Note 1</i>	*Arizona Department of Corrections

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**Private Adult Correctional Facility Census, United States Facilities**

<b>Management Company</b>	<b>Management &amp; Training Corporation</b>	<b>Management &amp; Training Corporation</b>	<b>Mid-Tex Detention, Inc.</b>	<b>Mid-Tex Detention, Inc.</b>	<b>Mid-Tex Detention, Inc.</b>
<b>Facility Location</b>	Desert Center, CA	Henderson County, TX	Big Spring, TX	Big Spring, TX	Big Spring, TX
<b>Facility Name</b>	Eagle Mountain Return-to-Custody Facility	Texas State Jail Facility, Henderson	City of Big Spring Correctional Center (Interstate)	City of Big Spring Correctional Center (Airpark)	TBA
<b>Primary Source of Prisoners</b>	*State of California	*State of Texas	Federal Bureau of Prisons	Federal Bureau of Prisons	Federal Bureau of Prisons
<b>Secondary Source of Prisoners</b>	N/A	N/A	Immigration and Naturalization Service	Immigration and Naturalization Service	Immigration and Naturalization Service
<b>Rated Capacity</b>	450	1,500	360	376	500
<b>Present Population</b>	425	N/A	368	376	N/A
<b>Occupancy Percentage</b>	94.44%	N/A	102.22%	100.00%	N/A
<b>Security Level</b>	minimum	minimum	minimum/medium	minimum/medium	minimum/medium
<b>Ownership of Facility</b>	private	public	public	public	public
<b>First Received Prisoners</b>	Sep-88	Jun-95	May-89	Feb-91	Jan-95
<b>ACA Accreditation?</b>	yes - 6/93	will be sought	no	no	no
<b>Facility Construction</b>	renovation	new construction	renovation	renovation	new
<b>Facility Expansion Planned?</b>	no	no	no	no	no
<b>* Notes</b>	*Parole Division	*TDCJ Institutional Division <i>See Appendix A, Note 7</i>			

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## Private Adult Correctional Facility Census, United States Facilities

Management Company	<i>North American Corrections</i>	U.S. Corrections Corporation	U.S. Corrections Corporation	U.S. Corrections Corporation	U.S. Corrections Corporation
Facility Location	<i>Spur, TX</i>	Gretna, FL	Beattyville, KY	Louisville, KY	St. Marys, KY
Facility Name	<i>Dickens Detention Center</i>	Gadsden County Correctional Facility	Lee Adjustment Center	River City Correctional Center	Marion Adjustment Center
Primary Source of Prisoners	<i>*State of Texas</i>	*State of Florida	*Commonwealth of Kentucky	Jefferson County	*Commonwealth of Kentucky
Secondary Source of Prisoners	<i>N/A</i>	N/A	N/A	N/A	N/A
Rated Capacity	<i>489</i>	768	500	350	500
Present Population	<i>489</i>	N/A	450	325	450
Occupancy Percentage	<i>100.00%</i>	N/A	90.00%	92.86%	90.00%
Security Level	<i>maximum</i>	minimum/medium	minimum	minimum	minimum
Ownership of Facility	<i>private</i>	public	private	private	private
First Received Prisoners	<i>Jul-91</i>	Feb-95	Aug-90	Jan-90	Jan-86
ACA Accreditation?	<i>no</i>	will be sought	yes - 1/94	no	yes - 8/92
Facility Construction	<i>new construction</i>	new construction	new construction	renovation	new construction
Facility Expansion Planned?	<i>yes, 144 beds</i>	no	no	no	no
* Notes	<i>*TDCJ Institutional Division See Appendix A, Note 1</i>	*Florida Department of Corrections	*Kentucky Department of Corrections		*Kentucky Department of Corrections

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*Private Adult Correctional Facility Census, United States Facilities*

<b>Management Company</b>	<b>U.S. Corrections Corporation</b>	<b>U.S. Corrections Corporation</b>	<b>The Villa at Greeley, Inc.</b>	<b>Wackenhut Corrections Corporation</b>	<b>Wackenhut Corrections Corporation</b>
<b>Facility Location</b>	Wheelwright, KY	Diboll, TX	Del Camino, CO	McFarland, CA	San Diego, CA
<b>Facility Name</b>	Otter Creek Correctional Center	TBA	TBA	McFarland Return-to-Custody Facility	San Diego City Jail
<b>Primary Source of Prisoners</b>	*Commonwealth of Kentucky	*State of Texas	*State of Colorado	*State of California	City of San Diego
<b>Secondary Source of Prisoners</b>	N/A	N/A	N/A	N/A	N/A
<b>Rated Capacity</b>	300	500	400	224	200
<b>Present Population</b>	240	N/A	N/A	215	88
<b>Occupancy Percentage</b>	80.00%	N/A	N/A	95.98%	44.00%
<b>Security Level</b>	minimum	minimum/medium	minimum	minimum	minimum
<b>Ownership of Facility</b>	private	public	private	private	public
<b>First Received Prisoners</b>	Oct-93	Mar-95	May-95	Jan-89	May-92
<b>ACA Accreditation?</b>	will be sought	will be sought	will be sought	no	will be sought
<b>Facility Construction</b>	new construction	new construction	new construction	new construction	new construction
<b>Facility Expansion Planned?</b>	no	no	no	no	no
<b>* Notes</b>	*Kentucky Department of Corrections	*TDCJ Institutional Division	*Colorado Department of Corrections	*Parole Division	

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*Private Adult Correctional Facility Census, United States Facilities*

<b>Management Company</b>	Wackenhut Corrections Corporation	Wackenhut Corrections Corporation	Wackenhut Corrections Corporation	Wackenhut Corrections Corporation	Wackenhut Corrections Corporation
<b>Facility Location</b>	Aurora, CO	Glades County, FL	Kinder, LA	Jamaica/Queens	Bridgeport, TX
<b>Facility Name</b>	Aurora/INS Processing Center	TBA	Allen Correctional Center	New York INS Processing Center	Bridgeport Pre-Release Center
<b>Primary Source of Prisoners</b>	Immigration and Naturalization Service	*State of Florida	*State of Louisiana	Immigration and Naturalization Service	*State of Texas
<b>Secondary Source of Prisoners</b>	N/A	N/A	N/A	N/A	N/A
<b>Rated Capacity</b>	300	750	1,282	105	520
<b>Present Population</b>	199	N/A	1,275	100	519
<b>Occupancy Percentage</b>	66.33%	N/A	99.45%	95.24%	99.81%
<b>Security Level</b>	minimum	medium	medium	medium	minimum
<b>Ownership of Facility</b>	private	public	public	private	public
<b>First Received Prisoners</b>	May-87	Jun-95	Dec-90	Oct-89	Aug-89
<b>ACA Accreditation?</b>	yes - 9/89	will be sought	yes - 1/93	no	yes - 5/91
<b>Facility Construction</b>	new construction	new construction	new construction	renovation	new construction
<b>Facility Expansion Planned?</b>	no	no	no	no	no
<b>* Notes</b>		*Florida Correctional Privatization Commission	*Louisiana Department of Corrections		*TDCJ Institutional Division

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**Private Adult Correctional Facility Census, United States Facilities**

<b>Management Company</b>	<b>Wackenhut Corrections Corporation</b>	<b>Wackenhut Corrections Corporation</b>	<b>Wackenhut Corrections Corporation</b>	<b>Wackenhut Corrections Corporation</b>	<b>Wackenhut Corrections Corporation</b>
<b>Facility Location</b>	Fort Worth, TX	Jack County, TX	Kyle, TX	Lockhart, TX	Lockhart, TX
<b>Facility Name</b>	North TX Intermediate Sanctions Facility	TBA	Kyle Pre-Release Center	Lockhart Work Program Facility	Lockhart Pre-Release Center
<b>Primary Source of Prisoners</b>	*State of Texas	*State of Texas	*State of Texas	City of Lockhart	*State of Texas
<b>Secondary Source of Prisoners</b>	N/A	N/A	N/A	*State of Texas	N/A
<b>Rated Capacity</b>	400	1,000	520	500	500
<b>Present Population</b>	397	N/A	520	499	N/A
<b>Occupancy Percentage</b>	99.25%	N/A	100.00%	99.80%	N/A
<b>Security Level</b>	minimum	minimum	minimum	minimum	minimum
<b>Ownership of Facility</b>	public	public	public	public	public
<b>First Received Prisoners</b>	Aug-91	Jul-95	Jun-89	Jan-93	Oct-94
<b>ACA Accreditation?</b>	no	will be sought	yes - 9/90	will be sought	will be sought
<b>Facility Construction</b>	renovation	new construction	new construction	new construction	new construction
<b>Facility Expansion Planned?</b>	no	no	possible	no	no
<b>* Notes</b>	*TDCJ Board of Pardons & Paroles	*TDCJ Institutional Division <i>See Appendix A, Note 7</i>	*TDCJ Institutional Division	*TDCJ Board of Pardons & Paroles	*TDCJ Institutional Division

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***Private Adult Correctional Facility Census, United States Facilities***

<b>Management Company</b>	<b>Wackenhut Corrections Corporation</b>	<b>Wackenhut Corrections Corporation</b>	<b>Wackenhut Corrections Corporation</b>
<b>Facility Location</b>	San Antonio, TX	Travis County, TX	Willacy County, TX
<b>Facility Name</b>	Central Texas Parole Violator Facility	TBA	TBA
<b>Primary Source of Prisoners</b>	*State of Texas	*State of Texas	*State of Texas
<b>Secondary Source of Prisoners</b>	U.S. Marshals Service	N/A	N/A
<b>Rated Capacity</b>	623	1,000	1,000
<b>Present Population</b>	611	N/A	N/A
<b>Occupancy Percentage</b>	98.07%	N/A	N/A
<b>Security Level</b>	minimum/medium	minimum	minimum
<b>Ownership of Facility</b>	public	public	public
<b>First Received Prisoners</b>	Jan-89	Jul-95	Jul-95
<b>ACA Accreditation?</b>	no	will be sought	will be sought
<b>Facility Construction</b>	take-over	new construction	new construction
<b>Facility Expansion Planned?</b>	no	no	no
<b>* Notes</b>	*TDCJ Board of Pardons & Paroles	*TDCJ Institutional Division <i>See Appendix A, Note 7</i>	*TDCJ Institutional Division <i>See Appendix A, Note 7</i>

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## Private Adult Correctional Facility Census, International Facilities

<b>Management Company</b>	<b>*Australasian Correctional Management Property Limited</b>	<b>*Australasian Correctional Management Property Limited</b>	<b>*Corrections Corporation of Australia</b>	<b>Group 4 International Corrections Services</b>
<b>Country</b>	Australia	Australia	Australia	England
<b>Facility Location</b>	New South Wales	Queensland	Queensland	Hull
<b>Facility Name</b>	Junce Correctional Centre	Arthur Gorrie Correctional Centre	Borallon Correctional Centre	Wolds Remand Prison
<b>Primary Source of Prisoners</b>	New South Wales Department of Corrective Services	Queensland Department of Correctional Services	Queensland Department of Correction Services	Home Office Remands Contract Unit
<b>Secondary Source of Prisoners</b>	N/A	N/A	N/A	N/A
<b>Rated Capacity</b>	600	518	276	300
<b>Present Population</b>	597	400	241	300
<b>Occupancy Percentage</b>	99.50%	77.22%	88.41%	100.00%
<b>Security Level</b>	minimum/medium	minimum/medium	all levels	medium
<b>Ownership of Facility</b>	private	public	N/A	public
<b>Received Prisoners</b>	Apr-93	Jun-92	Jan-90	Apr-92
<b>Facility Construction</b>	new construction	new construction	new construction	new construction
<b>Expansion Plans?</b>	none	none	yes, 90 beds	none
<b>* Notes</b>	*a subsidiary of the Wackenhut Corrections Corporation	*a subsidiary of the Wackenhut Corrections Corporation	*a Corrections Corporation of America joint venture company	

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## *Private Adult Correctional Facility Census, International Facilities*

<b>Management Company</b>	<b>*Premier Prison Services, Ltd. Corporation</b>	<b>*UK Detention Services, Ltd.</b>
<b>Country</b>	England	England
<b>Facility Location</b>	Middlesex	Redditch
<b>Facility Name</b>	HM Prison Doncaster	HM Prison Blackenhurst
<b>Primary Source of Prisoners</b>	Prison Minister's Office	Prison Minister's Office
<b>Secondary Source of Prisoners</b>	N/A	N/A
<b>Rated Capacity</b>	776	649
<b>Present Population</b>	173	649
<b>Occupancy Percentage</b>	22.29%	100.00%
<b>Security Level</b>	all levels	medium
<b>Ownership of Facility</b>	public	public
<b>Received Prisoners</b>	Jun-94	Apr-93
<b>Facility Construction</b>	new construction	new construction
<b>Expansion Plans?</b>	none	none
<b>* Notes</b>	*a Wackenhut Corrections Corporation joint venture company <i>See Appendix A, Note 10</i>	*a Corrections Corporation of America joint venture company

\*Facilities not reported in the 12/31/93 Census appear in bold. Facilities whose size has changed significantly since the 12/31/93 Census appear in italics.

*Table 1: American, International, and Overall Corporate Market Share Comparisons*

<i>Management Firm</i>	<i>Capacity of All American Facilities Under Contract*</i>	<i>Capacity of All International Facilities Under Contract*</i>	<i>American Market Share</i>	<i>International Market Share</i>	<i>Overall Market Share</i>
Alternative Programs, Inc.	240	0	0.60%	N/A	0.55%
The Bobby Ross Group	872	0	2.16%	N/A	2.00%
Capital Correctional Resources	836	0	2.07%	N/A	1.92%
Concept, Inc.	4,426	0	10.98%	N/A	10.17%
Cornell Cox, Inc.	794	0	1.97%	N/A	1.82%
Corrections Corporation of America	12,041	1,015	29.88%	31.63%	30.01%
Corrections Partners, Inc.	1,672	0	4.15%	N/A	3.84%
Corrections Services, Inc.	32	0	0.08%	N/A	0.07%
Dove Development Corporation	762	0	1.89%	N/A	1.75%
Eden Detention Center	699	0	1.73%	N/A	1.61%
Esmor Correctional Services, Inc.	1,170	0	2.90%	N/A	2.69%
Group 4 - ICS	0	300	N/A	9.35%	0.69%
The GRW Corporation	244	0	0.61%	N/A	0.56%
Management & Training Corporation	2,400	0	5.96%	N/A	5.52%
Mid-Tex Detention, Inc.	1,236	0	3.07%	N/A	2.84%
North American Corrections	633	0	1.57%	N/A	1.45%
U.S. Corrections Corporation	2,918	0	7.24%	N/A	6.71%
The Villa at Greeley, Inc.	400	0	0.99%	N/A	0.92%
Wackenhut Corrections Corporation	8,924	1,894	22.14%	59.02%	24.86%
<i>Totals</i>	40,299	3,209	100.00%	100.00%	100.00%

\*Capacity Figures Include New Facilities and Expansions of Existing Facilities.

*Figure 1: Secure Private Correctional Facility Beds Under Management Trend, 1983 Thru June 30, 1994*

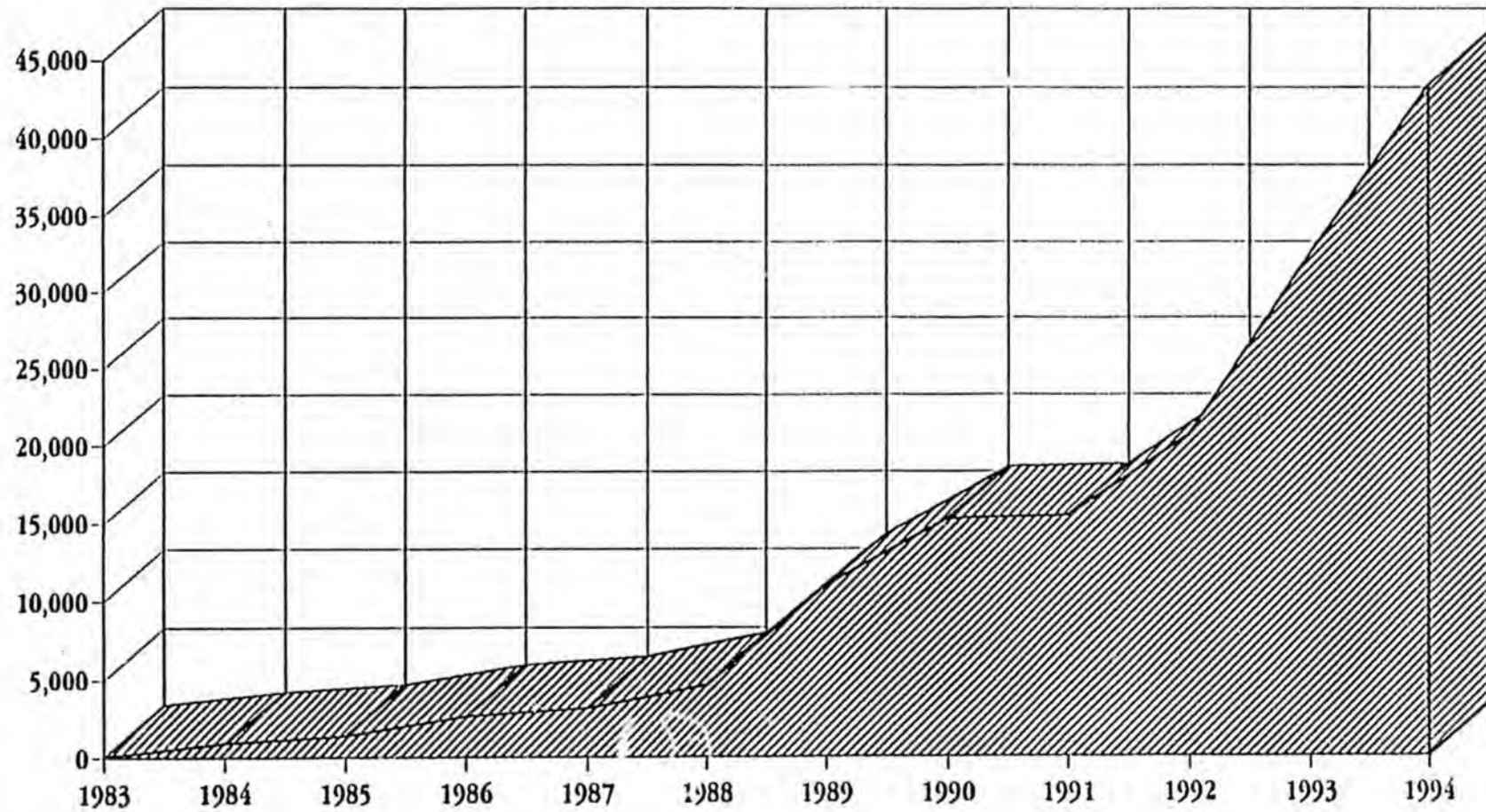
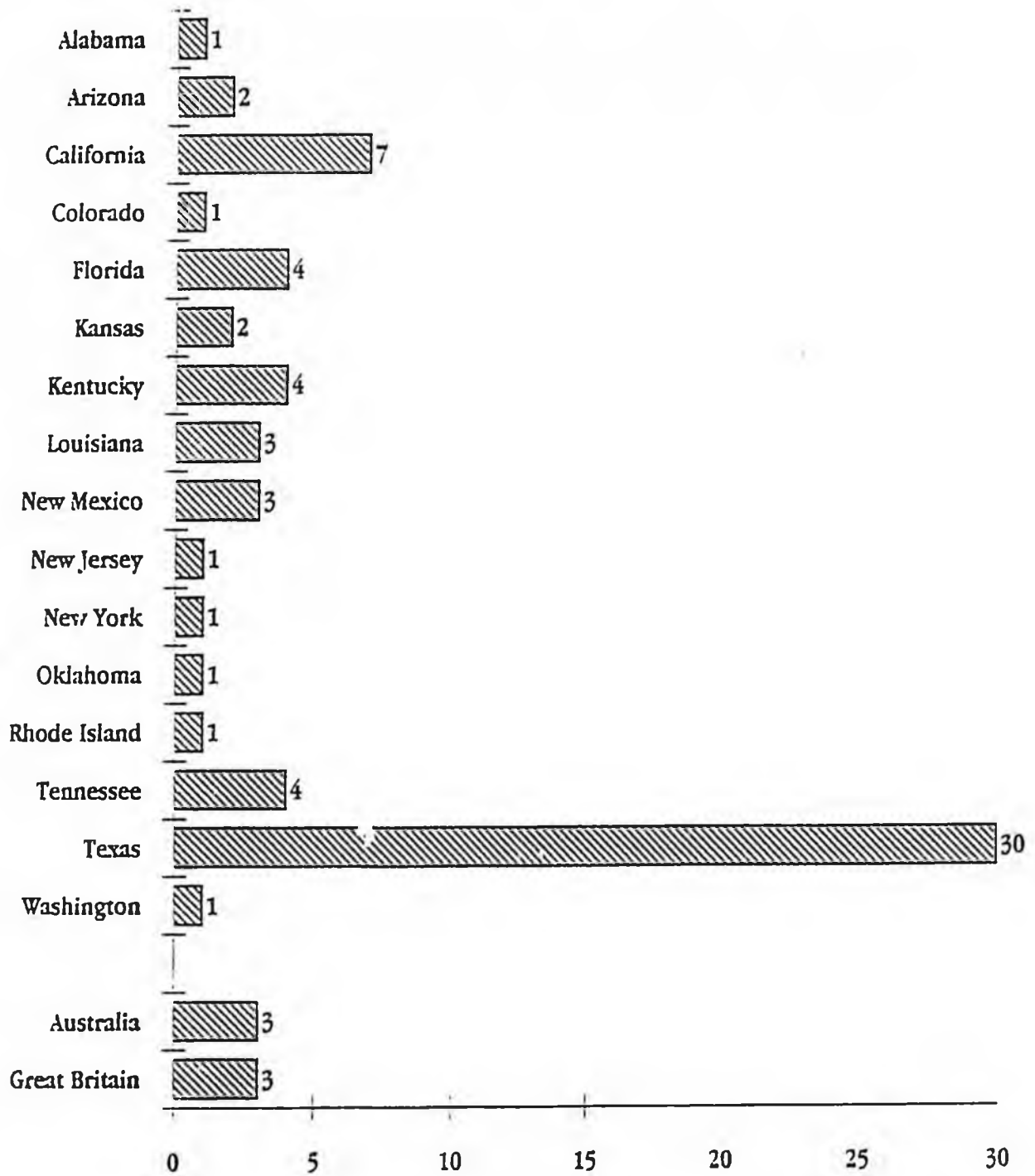
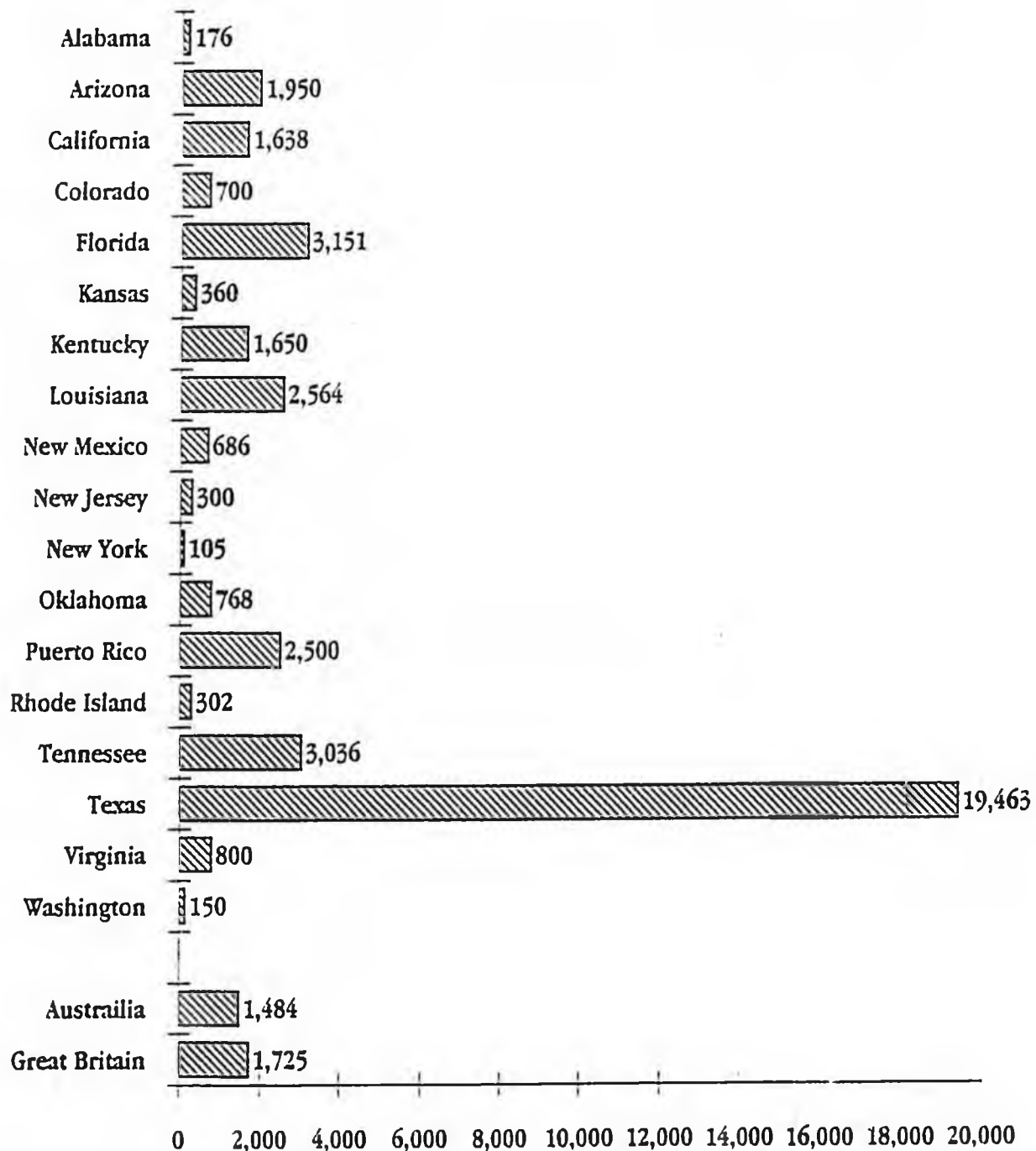


Figure 2: Geographical Locations of Private Facilities (Including Facilities Under Construction)



*Figure 3: Rated Capacities of Private Facilities by Geographical Location (Including Facilities Under Construction & Planned Expansions)*



## *Notes to Clarify Data for Individual Facilities*

### APPENDIX A

Note 1: The Institutional Division of the Texas Department of Criminal Justice (TDCJ) is now or in the immediate future will be responsible for at least four distinctively different types of correctional facilities: (1) traditional state prisons, (2) facilities for prisoners who were successfully prosecuted for offenses categorized as "state jail felonies," (3) pre-release centers operated by private firms working under contract with the TDCJ, and (4) a special set of privately-managed facilities which house sentenced offenders for whom no suitable space is available in other categories of TDCJ facilities. This note identifies facilities whose prisoner populations fall in whole or substantial part in the fourth category. These prisoners are commonly referred to as "backlog" or as "paper-ready" inmates.

Note 2: This facility was previously operated by Concept, Inc. and, before that, by Texas Detention Management, Inc. Texas Detention Management, Inc. no longer operates any secure adult correctional facilities.

Note 3: This facility was previously operated by Detention Services, Inc. Detention Services, Inc. no longer operates any secure adult correctional facilities.

Note 4: This facility was previously operated by Pricor, Inc. Pricor, Inc. no longer operates any secure adult correctional facilities.

Note 5: This facility was previously described as having a rated capacity of 1,800 prisoners. The rated capacity now indicated more accurately reflects the existing capacity of the facility. Significant renovation would on existing structures would be required prior to the facility being suitable for the housing of 1,800 prisoners.

Note 6: This facility was previously operated by Pricor, Inc.

Note 7: This note identifies facilities intended to house state jail felons. Also see Note 1.

Note 8: This note identifies facilities operated by Eclectic Communications, Inc. (ECI). As indicated in the Preface, ECI is now a wholly-owned subsidiary of Cornell Cox, Inc.

Note 9: This facility was previously operated by Detention Services, Inc.

Note 10: The low occupancy level reported for this facility is an artifact of its opening soon before the completion of the Census. An occupancy percentage substantially equal to the average reported in the summary statistical data is anticipated by August 1, 1994.

*An Overview of Relevant Information on Juvenile and Non-Secure Facility Management by Management Firms Included in the 7th Edition*

Appendix B

***Cornell Cox, Inc.*** Cornell Cox, Inc., via the efforts of Eclectic Communications, Inc., which is now a subsidiary of Cornell Cox, Inc., also operates a 50-bed non-secure facility in San Francisco, California under a contract with the California Department of Corrections, a 47-bed facility in Inglewood, California under a contract with the California Department of Corrections, a 40-bed facility in Los Angeles, California under a contract with the California Department of Corrections, a 50-bed facility in Oakland, California under a contract with the Federal Bureau of Prisons, a 50-bed facility in San Diego, California under a contract with the Federal Bureau of Prisons, a 66-bed facility in San Francisco, California under a contract with the Federal Bureau of Prisons, a 15-bed facility in Goleta, California under a contract with the California Department of Corrections, a 25-bed facility in Inglewood, California under a contract with the California Department of Corrections, and a 43-bed facility in El Monte, California under a contract with the Federal Bureau of Prisons.

***Corrections Corporation of America*** The Corrections Corporation of America also operates the Shelby Training Center, a 175-bed secure juvenile training school in Memphis, Tennessee, and Tall Trees, a 63-bed non-secure juvenile residential facility in Memphis, Tennessee

***Corrections Partners, Inc.*** Corrections Partners, Inc. also operates the 80-bed Davidson County Juvenile Detention Facility in Nashville, Tennessee and has begun construction of the Southwest Indiana Regional Youth Village, a 140-bed juvenile facility located in Vincennes, Indiana.

***Esmor Correctional Services, Inc.*** Esmor Correctional Services, Inc. also operates the 72-bed Brooklyn Correctional Center for Men in Brooklyn, New York under a contract with the Federal Bureau of Prisons, the 101-bed LeMarquis Correctional Center for Men in New York, New York under a contract with the Federal Bureau of Prisons, the 36-bed LeMarquis Correctional Center for Women in New York, New York under a contract with the Federal Bureau of Prisons, the 150-bed New York Community Correctional Program under a contract with the New York State Department of Corrections, and the 200-bed Fort Worth Community Corrections Facility under a contract with the Texas Board of Pardons and Paroles.

***The GRW Corporation*** The GRW Corporation also will begin operating a 400-bed secure juvenile facility in October, 1994 in Tallulah, Louisiana under a contract with the Louisiana Office of Youth Development.

***Wackenhut Corrections Corporation*** The Wackenhut Corrections Corporation will begin operating a 96-bed secure juvenile facility in Coke County, Texas on October 1, 1994 under a contract with the Texas Youth Commission.

## *Preliminary Findings Regarding Legal Authority to Contract*

### Appendix C

The materials presented in this appendix summarize preliminary research conducted by the Private Corrections Project regarding the existing status of law in American jurisdictions. As a general rule, the scope of contracting authority is established by expressed statutory provisions. The applicability of this general rule, however, is determined by interpretations of individual constitutions and of general statutes that define the rights and obligations of public correctional authorities.

Reasonable care was taken to assure the validity of the information provided here. All statutes were reviewed both manually and via computerized scans. An effort also was made to identify relevant Attorney General opinions. Representatives of the Attorney General in each jurisdiction were asked to confirm the accuracy of the initial research findings. Nonetheless, the results reported here should be viewed as preliminary rather than final. They certainly do not represent any effort to provide a legal opinion regarding the present status of contracting authority in any jurisdiction.

Readers are solicited to comment on these preliminary results and, where possible, to refer us to specific statutory materials or attorney general opinions they feel we should take into account in our preparation of future summaries of this area of law.

*Preliminary Research Findings Regarding Legal Authority to Contract for Secure Adult Facilities*

Jurisdiction	Source of Local-Level Contracting Authority	Local-Level Contract(s) Awarded?	Source of State-Level Contracting Authority?	State-Level Contract(s) Awarded?
Alabama	Statutory Interpretation	Yes	None Identified	No
Alaska	Expressed Statutory	No	Expressed Statutory	No
Arizona	Expressed Statutory	No	Expressed Statutory	Yes
Arkansas	Expressed Statutory	No	Expressed Statutory	No
California	Expressed Statutory	Yes	Expressed Statutory	Yes
Colorado	Expressed Statutory	No	Expressed Statutory	Yes
Connecticut	None Identified	No	None Identified	No
Delaware	N/A	N/A	No	No
District of Columbia	Statutory Interpretation	Yes	N/A	N/A
Florida	Expressed Statutory	Yes	Expressed Statutory	Yes
Georgia	None Identified	No	None Identified	No
Hawaii	N/A	No	None Identified	No
Idaho	None Identified	No	None Identified	No
Illinois	Statutory Prohibition	No	Statutory Prohibition	No
Indiana	Expressed Statutory	No	Expressed Statutory	No
Iowa	Statutory Interpretation	No	Statutory Interpretation	No
Kansas	None Identified	Yes	None Identified	No
Louisiana	Expressed Statutory	Yes	Expressed Statutory	Yes
Kentucky	Expressed Statutory	Yes	Expressed Statutory	Yes
Maine	Negative Attorney General Opinion	No	None Identified	No
Maryland	Statutory Interpretation	No	Statutory Interpretation	No
Massachusetts	None Identified	No	None Identified	No
Michigan	Negative Attorney General Opinion	No	None Identified	No
Minnesota	Expressed Statutory	No	Statutory Interpretation	No
Mississippi	Expressed Statutory	No	Expressed Statutory	No
Missouri	Negative Attorney General Opinion	No	Negative Attorney General Opinion	No

*Preliminary Research Findings Regarding Legal Authority to Contract for Secure Adult Facilities*

Montana	Expressed Statutory	No	Expressed Statutory	No
Nebraska	Expressed Statutory	No	Expressed Statutory	No
Nevada	Expressed Statutory	No	None Identified	No
New Hampshire	Expressed Statutory	No	None Identified	No
New Jersey	None Identified	No	None Identified	No
New Mexico	Expressed Statutory	Yes	Expressed Statutory	Yes
New York	None Identified	No	Statutory Prohibition	No
North Carolina	None Identified	No	None Identified	Yes, for out-of-state facilities
North Dakota	Expressed Statutory	No	Expressed Statutory	No
Ohio	Negative Attorney General Opinion	No	None Identified	No
Oklahoma	Expressed Statutory	No	Expressed Statutory	No
Oregon	None Identified	No	None Identified	No
Pennsylvania	None Identified	No	None Identified	No
Puerto Rico	None Identified	No	Expressed Statutory	Yes
Rhode Island	None Identified	No	None Identified	No
South Carolina	Statutory Interpretation	No	None Identified	No
South Dakota	None Identified	No	Expressed Statutory	No
Tennessee	Expressed Statutory	Yes	Expressed Statutory	Yes
Texas	Expressed Statutory	Yes	Expressed Statutory	Yes
Utah	Expressed Statutory	No	Expressed Statutory	Award Pending
Vermont	None Identified	No	None Identified	No
Virginia	Negative Attorney General Opinion	No	Expressed Statutory	Yes
Washington	None Identified	No	None Identified	No
West Virginia	Expressed Statutory	No	Expressed Statutory	No
Wisconsin	None Identified	No	None Identified	No
Wyoming	Expressed Statutory	No	Expressed Statutory	No

## *Management Firm Addresses*

### **Alternative Programs, Inc.**

Wendy Jones  
425 Golden State Avenue  
Bakersville, CA 93301  
(805) 326-0411

### **The Bobby Ross Group**

Bobby Ross  
1021 Ranch Road 620 South, Suite D  
Austin, TX 78734  
(512) 263-9480

### **Capital Correctional Resources, Inc.**

Mr. Mike Brewer  
P.O. Box 10681  
Jackson, MS 39209  
(601) 922-4333

### **Concept, Inc.**

Bill Sandbach  
325 West Main Street, Suite 1802  
Louisville, KY 40202  
(502) 585-5023

### **Cornell Cox, Inc.**

Norm Cox  
8023 Vantage Drive, Suite 970  
San Antonio, TX 78230  
(210) 525-8201

### **Correctional Partners, Inc.**

Michael Shmerling  
Loews Vanderbilt Plaza  
2100 West End Avenue, Suite 725  
Nashville, TN 37203  
(615) 320-9800

### **Corrections Corporation of America**

John D. Rees  
102 Woodmont Blvd.  
Nashville, TN 37205  
(615) 292-3100

### **Corrections Services, Inc.**

Bud Grossman  
85 Argonaut, Suite 120  
Alliso Viejo, CA 92656  
(714) 472-5852

### **Dove Development Corporation**

Ron Greiner  
502 South Cedar Street  
Pearsall, TX 78061  
(210) 334-3320

### **Eden Detention Center, Inc.**

Don Zimmerman  
P.O. Box F, Highway East  
Eden, TX 76837  
(915) 869-2704

### **Esmor Correctional Services, Inc.**

Dick Staley  
275 Broadhollow Road  
Melville, New York  
(516) 694-7161

### **Group 4 International Correctional Services**

Halle H. Williams  
1225 "I" Street, N.W., Suite 500  
Washington, D.C. 20005  
(202) 789-2798

**GRW Corporation**

Gil R. Walker  
P.O. Box 1403  
Brentwood, TN 37204  
(615) 373-5703

**Management and Training Corporation.**

Ron Russell  
P.O. Box 9935  
Ogden, UT 84403  
(801) 626-2000

**Man Care, Ltd. Institutional Management Services**

Roger Kendrick  
St. James Court  
Wilderspool Causeway  
Warrington  
England  
(44) 92-524-2939

**Mid-Tex Detentions, Inc.**

Chuck Haugh  
Route 2, P.O. Box 7  
Big Spring, TX 79729  
(915) 264-0060

**North American Corrections**

Travis McPherson  
Route 1, Box 222  
Spur, TX 79370  
(806) 271-3421

**TASC, Inc.**

Sonny Emerson  
731 West Wadley, Building "M"  
Midland, TX 79705  
(915) 682-6852

**U.S. Corrections Corporation**

Robert McQueen  
2500 7th St. Rd.  
Louisville, KY 40208  
(502) 635-5444

**The Villa at Greeley**

Michael Brand  
1750 6th Avenue  
Greeley, CO 80631  
(303) 353-9512

**Wackenhut Corrections Corporation**

Jeff Spoon  
1500 San Remo Avenue  
Coral Gables, FL 33146-3009  
(305) 666-5656

**Private Facility Addresses**

**Alternative Programs, Inc.**

Mesa Verde Community Correction Facility  
Maurice Nadal  
425 Golden State Avenue  
Bakersfield, CA 93301  
(805) 326-0411

**The Bobby Ross Group**

Newton County Detention Facility  
Lester Beard  
Route 1, Box 22  
Newton, TX 75966  
(409) 379-3000

**Capital Correctional Resources**

Limestone County Detention Center  
Tony Sewell  
910 Tytus Road  
Groesbeck, TX 76642  
(817) 729-8616

**Concept, Inc.**

Bridgeport Pre-Parole Transfer Facility  
James Eddington  
P.O. Box 98  
Bridgeport, TX 76426  
(817) 683-2162

Brownfield Intermediate Sanction Facility  
George Fry  
P.O. Box 188  
Brownfield, TX 79316  
(806) 637-4032

Mineral Wells Pre-Parole Transfer Facility  
Harvey Cox  
Route 4, Building 780  
Mineral Wells, TX 76067  
(817) 325-6933

Sweetwater Pre-Parole Transfer Facility  
Jody Bradley  
Route 3, Avenger Village  
Sweetwater, TX 79556  
(915) 235-1751

Tuscaloosa Metropolitan Detention Facility  
J. B. Hopkins  
1616 26th Ave.  
Tuscaloosa, AL 35401  
(205) 349-4511

**Cornell Cox, Inc.**

Baker Community Correction Facility  
Harlan Hanson  
P.O. Box 560  
Baker, CA 92309  
(619) 733-4356

Leo Chesney Community Correction Facility  
Jacqueline Hildebrand  
P.O. Box 66  
Live Oak, CA 95953  
(916) 695-1846

Wright Detention Facility  
Joseph Ponte  
950 High Street  
Central Falls, RI 02863  
(401) 729-1190

**Correctional Partners, Inc.**

Great Plains Correctional Facility  
Tom Martin  
P.O. Box 1018  
Hinton, OK 73047  
(405) 542-3711

Labette County Conservation Camp  
Walter Wharton  
Oswego, KS 67356  
(316) 795-2925

*Corrections Corporation of America*

Bay County Jail  
Denny Durbin  
314 1/2 Harmon Avenue  
Panama City, FL 32401  
(904) 785-5245

Bay County Jail Annex  
Denny Durbin  
5600 Nehl Road  
Panama City, FL 32404  
(904) 785-3007

Cleveland Pre-Release Facility  
Joe Ross Driskell  
901 Fifth Street  
Cleveland, TX 77328  
(713) 592-9559

Hernando County Jail  
L.T. Brown  
16425 Spring Hill Drive  
Brooksville, FL 34609  
(904) 799-7379

Houston Processing Center  
Pam Fugazzi  
15850 Export Plaza Road  
Houston, TX 77032  
(713) 449-1481

Laredo Processing Center  
Jose Hinojosa  
RR#4, Box 125-A  
Laredo, TX 78041  
(512) 727-4118

Leavenworth Detention Center  
Butch Jordon  
100 Highway Terrace  
Leavenworth, KS 66048  
(913) 727-3246

Metro-Davidson County Detention Center  
Jimmy Turner  
P.O. Box 17427  
Nashville, TN 37217  
(615) 831-7088

New Mexico's Women's Correction Facility  
Tom Newton  
1700 East Old Highway 66  
Grants, NM 87020  
(505) 287-2941

Santa Fe Detention Center  
Joe V. Gutierrez  
4250 Airport Road  
Santa Fe, NM 87505  
(505) 473-4164

Silverdale Facilities  
Tim Baltz  
7609 Standifer Gap Road  
Chattanooga, TN 37421  
(615) 892-0921

South Central Correctional Center  
Kevin Myers  
P.O. Box 279  
Clifton, TN 38425  
(615) 676-5372

Torrance County Detention Facility  
Daniel P. Moriarty  
P.O. Box 837  
Estancia, NM 87016  
(505) 384-2711

Venus Pre-Release Center  
Sandy Estes  
P.O. Box 361  
Venus, TX 76084  
(214) 366-3334

West Tennessee Detention Facility  
Thomas C. Ruffino  
P.O. Box 487  
Mason, TN 38049  
(901) 294-3060

Winn Parrish Correction Center  
Mike Gilliam  
P.O. Box 1260  
Winnfield, LA 71483  
(318) 628-3971

***Dove Development Corporation***

Frio Detention Center  
Darrell Woods  
502 South Cedar Street  
Pearsall, TX 78061  
(210) 334-3320

Crystal City Detention Center  
Larry Young  
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Crystal City, Texas 78839  
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***Eden Detention Center, Inc.***

Eden Detention Center  
Don Zimmerman  
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Eden, TX 76657  
(915) 869-2704

***Esmor Correctional Services, Inc.***

Seattle Processing Center  
William Paul  
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Seattle, WA 98134  
(206) 467-6030

South Texas Intermediate Sanction Facility  
Fred Bagley  
1511 Preston Avenue  
Houston, TX 77002  
(713) 223-0601

Tarrant County Community Corrections Facility  
Ron King  
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Mansfield, TX 76063  
(817) 473-1324

***GRW Corporation***

Odessa Detention Center  
Richard Tessaro  
203 North Grant  
Odessa, TX 79761  
(915) 332-6033

Ector County Detention Annex  
Wallace Brucker  
102 Reed Avenue  
Odessa, TX 79761  
(915) 332-2800

***Management & Training Corporation***

Eagle Mountain Return-to-Custody Facility  
Gary Bryant  
P.O. Box 96  
Desert Center, CA 92239  
(619) 392-4324

***Mid-Tex Detention, Inc.***

City of Big Spring Correctional Center (Interstate Unit)  
Fran Roberts  
Route 2, P.O. Box 7  
Big Spring, TX 79720  
(915) 263-8532

City of Big Spring Correctional Center (Airport Unit)  
Bill Scanlon  
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Big Spring, TX 79720  
(915) 263-8806

***North American Corrections***

Dickens Detention Center  
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Spur, TX 79370  
(806) 271-3421

***U.S. Corrections Corporation***

Lee Adjustment Center  
Don Stewart  
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Marion Adjustment Center  
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St. Mary, KY 40063  
(502) 692-9622

Otter Creek Correctional Center  
P. O. Box 500  
Wheelwright, KY 41669-0500  
(606) 452-9700

River City Correctional Center  
Beverly Heiney  
Eighth and Market St.  
Louisville, KY 40202  
(502) 587-6506

***Wackebut Corrections Corporation***

Allen Correctional Center  
Terry L. Terrell  
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Kinder, LA 70648  
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Aurora / INS Processing Center  
Craig Dobson  
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Aurora, CO 80010  
(303) 361-6612

Bridgeport Pre-Release Center  
Don Houston  
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Bridgeport, TX 76426  
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Central Texas Parole Violator Facility  
Paul Bailey  
218 South Laredo Street  
San Antonio, TX 78207  
(210) 227-5600

Lockhart Work Program Correctional Facility  
Scott Comstock  
P.O. Box 1170  
Lockhart, TX 78644-1170  
(512) 398-3480

McFarland Return-to-Custody Facility  
Larry Brinkman  
120 Taylor Road  
McFarland, Ca 93250  
(805) 792-3001

New Vision Chemical Dependency Treatment Facility  
Jackie Noles  
P.O. Box 1300  
Kyle, TX 78640  
(512) 268-0079

New York / INS Processing Center  
Arthur Cinotti  
145-55 226th Street  
Jamaica (Queens), NY 11413  
(718) 949-4209

North Texas Intermediate Sanction Facility  
Sandra Thacker  
4700 Blue Mound Road  
Fort Worth, TX 76106  
(817) 740-0180

San Diego City Jail  
Rob Roberts  
P.O. Box 12630  
San Diego, CA 92112  
(619) 661-7205

**International Facility Addresses**

***Australasian Correctional Management Property Limited / Wackebut Corrections Corporation***

Arthur Gorme Correctional Centre  
Kevin Lewis  
P.O. Box 1300  
Darra, Queensland  
4076 Australia  
(61) 7271-9711

June Correctional Centre  
George Grigas  
Park Lane  
June, New South Wales  
2665 Australia  
(011) 616-924-3113

*CCA International/Corrections Corporation of  
America*

Borallon Correctional Centre  
Brian Dickson  
P.O. Box 782  
Ipswich, Queensland  
4305 Australia  
(67) 677-870-0133

*Group 4 ICS*

Wolds Remand Prison  
Steven Twinn  
Brough, Humberside  
United Kingdom HU152JZ  
(44) 386-858-585

*Premier Prison Services, Ltd./Wackenbut  
Corrections Corporation*

Doncaster Prison  
Kevin Rodgers  
c/o PPS, Ltd.  
Sunbury-On-Thames  
Middlesex  
United Kingdom TW167HW  
(44) 932-770-519

*UK Detention Services, Ltd., Corrections  
Corporation of America*

Blakenhurst Prison  
David Brook  
Hewell Lane  
Redditch  
Worshestershire  
United Kingdom B97Q3  
(44) 527-543-348

**PUBLIC OFFICIAL OF THE YEAR**

**STEPHEN GOLDSMITH**

# Busting the Government Monopoly



The New Yorks and the Los Angeleses of this country don't usually turn to smaller Midwestern cities for advice on how to run their mammoth municipalities. But these days, they're looking to the heartland city of Indianapolis to learn about the power of competition: how Mayor Stephen Goldsmith is using it to cut costs, motivate city employees and

pare down government.

Goldsmith believes that "competing out" services—letting city agencies compete with the private sector for city contracts—is the way to make government work better. That wasn't his view during his 1991 election campaign, when he touted outright privatization as a panacea. That got him the support of his party, but left union workers fearing for their jobs and opposing his election.

What turned things around was Goldsmith's decision, about six months after taking office, to not only allow the city's own employees to compete for the work but to encourage them to do so. The city even provided them with a consultant.

And competitive activity has certainly revved up in the past two years. Indianapolis has moved more than 60 municipal services into the marketplace for bid. As a result, the city has cut its work force by one-third—mostly middle managers—and reduced its budget by \$24 million. Additional money saved in various departments has gone toward critical needs such as infrastructure improvement in neighborhoods and putting more police officers on the street. All this was done without raising taxes but by "breaking up the government monopoly," as Goldsmith puts it.

Each time services are competed out, the aim is to make them more efficient and less costly, whether or not they are privatized. City departments recently lost the contracts for information services, parking meter enforcement and overseeing the operations of the Indianapolis International Airport. But about half of the services that have faced competition from private bids have remained with city workers. One of those was Indi-

**'I've been stealing everyone's ideas for 15 years and put them all together.'**



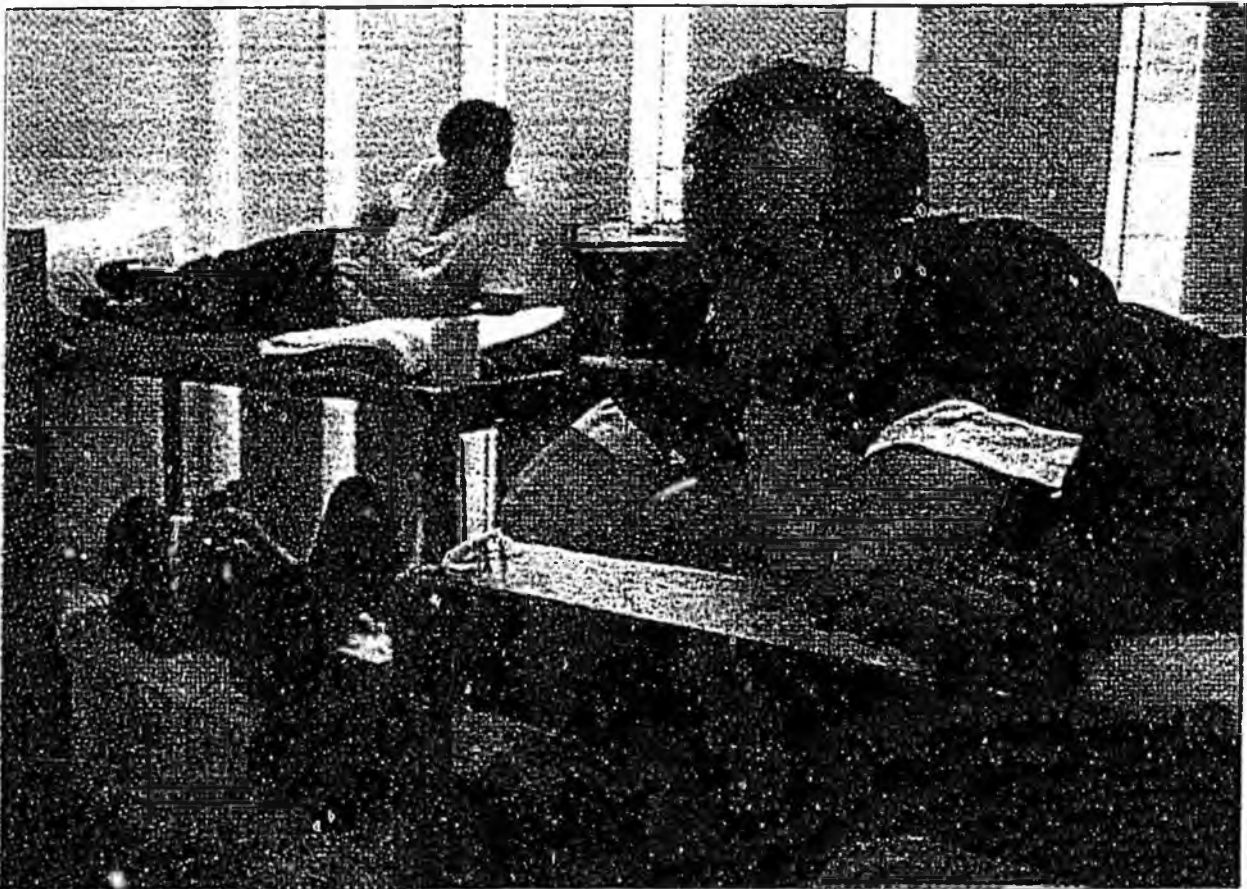
anapolis Fleet Services, which manages and repairs city vehicles.

The department was already considered well run. But in the race to beat out three national private competitors, IFS dramatically cut costs, slashed overhead and improved service. Spending was down \$2 million in 1994 from 1991, and the work force was reduced from 117 to 86. Yet the number of written complaints dropped to five last year, from 149 in 1990. "Competition and risk are good motivators," Goldsmith says.

The 48-year-old Goldsmith insists that he's not doing anything that hasn't been done elsewhere. But he's fashioned the much-talked-about idea of running government as a business into a coherent management strategy. "I've been stealing everyone's ideas for 15 years and put them all together," he says. "We developed an approach that's working at a time when people are desperate for non-conventional answers."

He now has the backing of the city's major public-employee unions, whose members have been energized by competition. It helps that no union workers have lost their jobs, although some are now in the private sector. But public employees also enjoy more input in department decisions. They get incentive bonuses for saving the city money—this year public works employees got bonuses ranging from \$600 to \$1,700. And they have direct e-mail access to the mayor, who responds to their comments and questions. That pleases Steven Quick, president of AFSCME Local 725: "We've never had a mayor do that before."  
—Ellen Perlman

## Tight quarters break the law



MICHAEL PENN / THE JUNEAU EMPIRE

Bret Hodges, right, along with Craig Allen, top left, and Chris Roger, all convicted felons, spend most of their time in E Dorm at the Lemon Creek Correctional Center. The dormitory holds twice as many inmates than originally built for.

# Prison population grows as Alaska's fines mount

■ Friday, state prisons held 2,739 inmates, which exceeds court-ordered emergency capacity of 2,665

By JEANINE POHL

THE JUNEAU EMPIRE

The fines are more than half a million dollars and growing almost daily, but the state of Alaska says it still can't pay the court-ordered penalties in the case it lost against inmates in a prison-rights lawsuit more than a year ago.

And part of the problem that created the class-action lawsuit known as the Cleary case - overcrowded prisons - is expected to continue growing as prison populations increase in the fall and winter months, when unemployment increases and so does the crime rate.

As of Friday, the state prison population was 2,739 which is over its court-ordered emergency capacity of 2,665.

State Corrections Commissioner Margaret Pugh said she will again ask the Legislature when it convenes in January for funds to pay more than \$650,000 in fines the state has accumulated since a court order then imposed in September 1994.

The Cleary case was first filed

in 1981; the 1994 agreement came out of a court determination that the state was in contempt of earlier orders regarding prison overcrowding.

Every day one of the state's 15 prisons is over capacity the state is fined \$300, and if the total prison population statewide exceeds capacity there is an additional \$300 daily fine.

The state's funding request was turned down during the last legislative session because Republican majority lawmakers said at the time they didn't want to use general fund money to be transferred from one state agency to another, from prisons to the courts.

"It was a paper exercise," said Rep. Brian Porter, R-Anchorage, of the state's request.

Porter is chairman of the House Judiciary Committee, which he said will look at measures to lower the prison population, including alternative sentencing and sharing the responsibility for misdemeanor offenses with local governments.

Porter stopped short, however, of advocating for more prevention programs - a goal of the Knowles administration - saying he's not yet convinced that prevention works to keep people out of jail as well as traditional penalties and sentences.

Building more prisons is another  
Please turn to Fines, Page A6

## Inmates shipped to Arizona are subject of appeal

By JEANINE POHL

THE JUNEAU EMPIRE

The state of Alaska and attorneys for prison inmates continue to wrangle in court over the fate of 206 Alaska inmates doing time in a private Arizona jail.

The first contract with Central Arizona Detention Center in Florence, Ariz., ended June 30, but the state extended it through June 1996, Department of Corrections Commissioner Margaret Pugh said Friday.

When prisoners were first shipped south in January, the state called it a stop-gap measure to relieve overcrowding and slow the fines the state accumulates each day one or more of its 15 prisons exceeds its capacity.

The fines are part of a settlement of the Cleary case, a class-action lawsuit first filed in 1981 on behalf of Alaska prisoners over prison-crowding conditions and other complaints.

Lawyers for the inmates tried to stop the transfer from taking place, arguing that some inmates were moved south against their will, or were separated from families.  
Please turn to Appeal, Page A6

## Fines . . .

Continued from A1

er option Porter said he would consider, but cautiously.

Pugh also said that expanding state prisons is an option, although she is working more toward less expensive alternatives to jail time and to preventing crime in the first place.

"We can't build our way out of the social problems that create criminal behavior," she said.

An attorney for the inmate plaintiffs said he expects the Legislature may be more forthcoming with funding this coming session,

because a plan will be submitted on behalf of the inmates with specific suggestions on how the fines would be spent.

Anchorage attorney Scott Taylor said when the Department of Corrections asked the Legislature for money last session to pay the fines, it was an arbitrary number, based on what the department thought the fines might be.

Taylor said Anchorage Superior Court Judge Karen Hunt asked both sides in the case last spring to estimate the fines accumulated, and how the money should be spent.

Once that's been determined,

Taylor believes Hunt will approve such a plan, which can then be submitted to the Legislature for funding.

"I have no reason to believe they won't ultimately pay this," Taylor said of legislators.

However Michael Stark, assistant attorney general for Corrections at the Alaska Department of Law, said it doesn't make sense to determine how money can be spent until the Legislature appropriates it.

Taylor responded that the state's position is a chicken-and-egg argument, which will ultimately be decided by Judge Hunt.

## Appeal . . .

Continued from A1

lies, and that some of the prisoners' rights and benefits as Alaskans have not been carried through in Arizona.

While inmate attorney Scott Taylor said he is asking that the transfer plan be rejected, he also realizes that it may not be practical to ask that inmates be returned to Alaska.

Some are satisfied serving time in Arizona, Taylor said Friday, but others were pulled out of Alaska while in the midst of training or

education programs that aren't being offered at the private prison.

"Some should be given the opportunity to come back," Taylor said from Anchorage. . . .

The Department of Corrections maintains that prisoners' rights haven't be compromised by the move south.

Michael Stark, assistant attorney general for the Corrections Department, said the state maintains that the Cleary settlement agreement only covers inmates in prisons owned or operated by the state.

The Corrections Department

did include many parts of the Cleary settlement agreement into its contract with the Arizona prison, Stark said.

Under state law, he said, the department may contract out with a private corporation providing "a similar degree of custody and care" to what inmates would have experienced in an Alaska prison.

Although initial appeals on behalf of inmates to the Alaska Supreme Court were rejected, hearings on the appeal were held earlier this month by Anchorage Superior Court Judge Karen Hunt.

Oral arguments in the case are scheduled for Nov. 20.

# National Report

The New York Times

SATURDAY, AUGUST 19, 1995

## Private Tennessee Prison Is Praised in State Studies

### Officials Nationwide Are Paying Notice

By FOX BUTTERFIELD

CLIFTON, Tenn. — Except for the corporate shoulder patch on the guards' uniforms, the South Central Correctional Center could be mistaken for any other modern prison, a campus of squat concrete structures surrounded by a double chain-link fence topped with coils of razor wire glinting under the sun.

But two recent studies by a special committee of the Tennessee Legislature have concluded that the prison here, run by the Corrections Corporation of America, is operating at a lower cost and providing better and safer services than comparable prisons administered by the State Department of Corrections.

The studies, while limited to one state, are drawing attention among prison officials nationwide because they provide the strongest evidence yet that private, for-profit prisons, after a decade of occasional blunders and persistent criticism from opponents, can work. And, while the studies show only slightly better performance by the private prisons, they come at a time when governments across the country, including New York City's, are increasingly turning to private prisons as a way to cut costs.

The number of inmates in privately managed or owned prisons is expected to leap to 65,000 by this year's end from 1,345 in 1985, with a projected annual growth of 35 percent over the next few years, said Charles W. Thomas, a criminologist and director of the Private Prisons Project at the University of Florida. Indeed, the prison business has become one of the fastest-growing industries in the nation.

On Aug. 11, aides to Mayor Rudolph W. Giuliani of New York said they had begun soliciting proposals from private companies to take over the management of some of the city's jails.



Kevin Myers, warden of the South Central Correctional Center, the private prison that studies by two Tennessee Legislature committees said was operating at a lower cost and providing better and safer services than similar prisons run by the State Corrections Department.

And the Clinton Administration has said that for the first time the Federal Bureau of Prisons would turn over to private companies four newly built minimum- and low-security prisons. Australia, Britain and New Zealand have recently copied the American private-prison lead, while Canada, France, the Netherlands and the Czech Republic are negotiating with American concerns to build private prisons.

Even a critic of such privatization, John J. DiIulio Jr., professor of poli-

tics and public affairs at Princeton University, said he was impressed with the results in Tennessee and several other private prisons. "This success comes as a surprise," he said. Because of widespread corruption and the exploitation of inmate labor when private prisons were in vogue in the 18th and 19th centuries, he said he had expected more abuses when for-profit prisons were first revived in the Reagan Administration.

"I remain against private prisons for philosophical reasons," Professor DiIullo said. "People would not be happy with private police or private executions. But I have to concede that the evidence so far is favorable."

Even some inmates who have been in the South Central prison agree it is well-run. "I should have never left," Samuel Mitchell, a 21-year-old convicted robber, said of South Central, which is tucked in an isolated green hollow just above the point where Tennessee, Alabama and Mississippi meet.

But critics and nettlesome questions remain. Professor DiIullo pointed out that the private prison companies have largely confined themselves to managing smaller, lower-security institutions and have yet to tackle any of the big maximum security prisons that require more staffing and are therefore more expensive to run. He calls this practice "creaming" and says it "leaves a cloud over the evidence."

The industry has attracted some companies with little experience and more interest in the bottom line than in administering a prison.

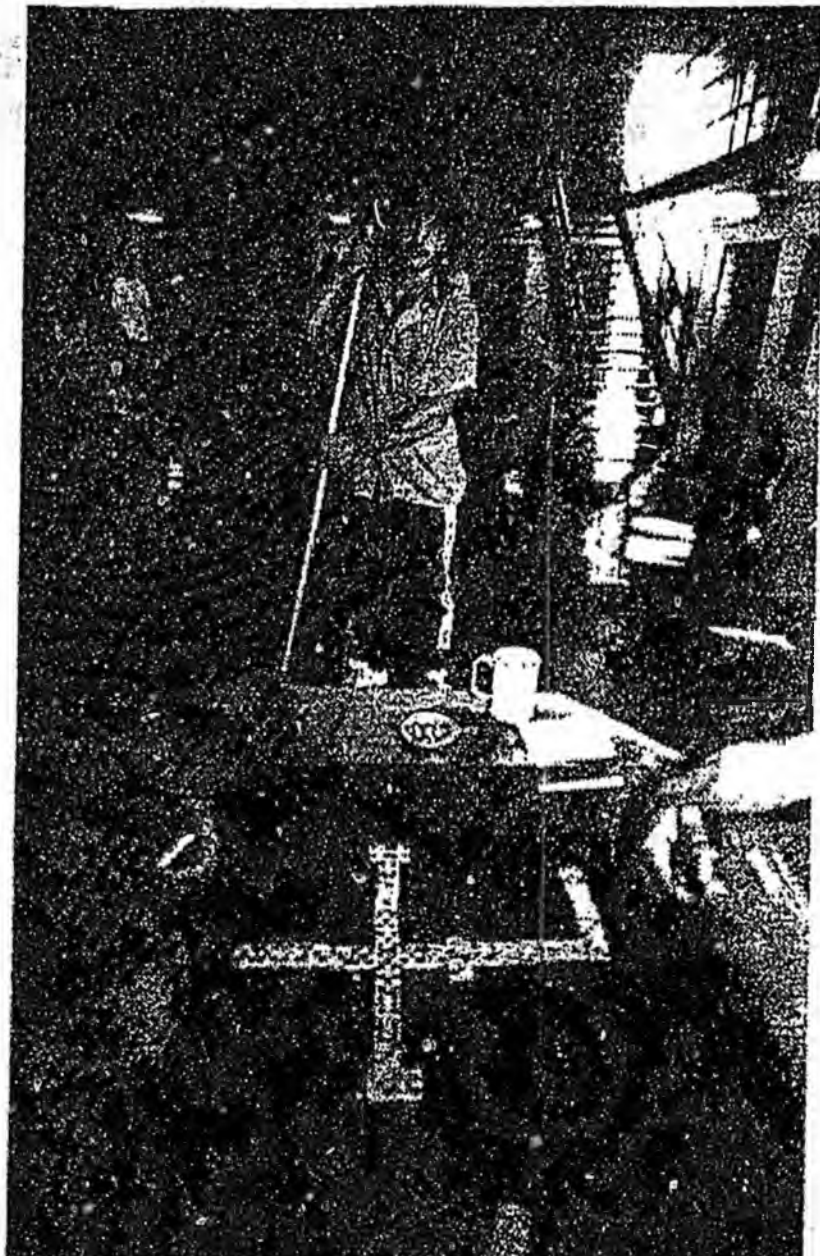
The Immigration and Naturalization Service recently canceled the contract of the Esmor Correctional Services Corporation after an uprising in its immigration detention center in Elizabeth, N.J. An investigation by the service found that Esmor, in cutting costs, had failed to train guards and that they abused detainees by beating them or putting them in leg irons.

J. Michael Quinlan, a former director of the Federal Bureau of Prisons and now director of strategic planning for Corrections Corporation of America, said some government agencies needed to be more watchful. Some agencies, Mr. Quinlan said, look to private prisons simply as a way "to do something on the cheap."

Prison costs are the fastest growing budgetary item for many government agencies, as the number of inmates held by Federal, state and local governments has tripled over the past two decades, to 1.5 million.

"They are just warehousing," Mr. Quinlan said, "when they should be looking at the full range of education programs, job training and recreation to keep the inmates from being idle."

Texas, for example, which has more than 30 private prisons, the most in the country, requires that private concerns guarantee a cost that is at least 10 percent below that of the State Department of Criminal Justice Services prisons. As a result, Professor Thomas of the University of Florida said, Texas pays too little to allow for good educational and jobs programs in its private prisons.



Photographs by Alan G. Weiner for The New York Times

Two Tennessee studies provide the strongest evidence yet that private, for-profit prisons can work. Phillip Phillips, 25, serving 10 years at the South Central Correctional Center at Clifton, Tenn., a private prison studied, said it was the best of the half dozen prisons he has been in.

Norval Morris, a penologist and professor of law and criminology emeritus at the University of Chicago, said: "This is simply selling a prisoner into servitude. Obviously, you can build a dungeon and throw people in it and throw food down to them very cheaply. The question is what services you provide them."

The boom in private prisons has also led to criticism from inmates' families, as convicts have been shipped to private prisons in distant states.

Bobby Ross, a former sheriff and president of the Bobby Ross Group, estimates that more than 3,000 inmates from Colorado, Missouri, North Carolina, Utah and Virginia are in private prisons outside their own state. Mr. Ross recently imported 735 inmates from Virginia to fill his company's Newton Correctional

Facility, on the Louisiana border near Beaumont, Tex.

"It's just making real efficient use of beds," Mr. Ross said. "It has its downside," he acknowledged. "Their families resent the distance. But it may be better for the inmates. They were sleeping on the floor where they were before."

So far, despite several lawsuits by these transported inmates, no court has ruled the practice illegal.

Comparing the quality of prisons, even among state-run prisons within the same state, has long been a tricky business because of the different characteristics of the prisons and their inmates. But the two recent reports by a special joint committee of the Tennessee Legislature compare the privately run South Central prison with two state prisons that were built at the same time and

have an identical design and size, with just over 1,000 inmates each. Because of this, experts say the comparative studies are the most accurate and comprehensive evaluation available.

Based on the findings, the Legislature gave the South Central prison run by the Corrections Corporation a score of 97.48, compared with scores of 87.23 and 95.28 for the two state prisons.

One report measured a long list of factors including escapes, assaults, disciplinary write-ups and the availability of medical care, jobs and education programs. During the two-year study, South Central prison had no escapes while one of the state prisons had one and the other had two. As for prisoner assaults, one of the state prisons recorded 165 on guards and other inmates and the other had 89 while South Central had 80.

A second study by the committee found that the Corrections Corporation's prison cost an average of \$35.18 per inmate per day, compared with an average of \$35.76 in the two state prisons. This means that the privately run prison saves the state about \$150,000 a year. The state renewed Corrections Corporation's contract.

Doctor R. Crants, the chairman of the Corrections Corporation of Nashville, the oldest and by the far the largest company in the business, said an open competition between the prison run by his concern and the two state institutions forced all three to find ways to reduce costs. The costs at other state prisons in Tennessee normally run more than \$40 per prisoner per day.

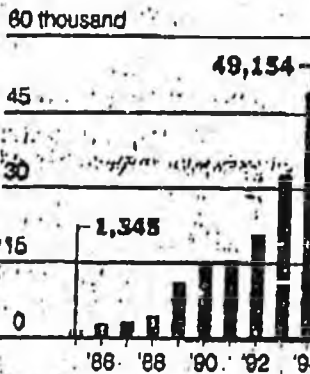
The Corrections Corporation, like other private companies, hires non-union guards, offering employees stock option programs rather than a pension plan. And some public officials point out that taxpayers may gain in the long run because private prison guards will not be on public pensions when they retire.

But Mr. Crants insists that the real secret to success for private prisons is in reducing labor costs by making prisons a better place in which to work. Up to 25 percent of

## KEEPING COUNT

### The Growth Of Private Prisons

Number of prison beds under private management available for occupancy or under construction



Source: Professor Charles Thomas, director of the Private Corrections Project at the University of Florida

state prison budgets go for overtime pay, he said, a result of guards' calling in sick.

"What this is all about is to make the corrections officer think he is coming to work in a nice place," Mr. Crants said. "So don't overcrowd the inmates, give them lots of programs to keep them busy and keep the walls painted and the grass green."

At South Central, Phillip Phillips, 25, serving a 10-year term for armed robbery, says the Corrections Corporation prison is the best of the half dozen where he has been spent time. "It's cleaner, you get more choice of food and the staff is more patient and willing to take time," he said as he mopped the floor.

Mr. Mitchell, the 21-year-old robber, would certainly back Mr. Phillips. To be near his brother, Mr. Mitchell requested a transfer this spring to North West Correctional Center, one of the state-run prisons studied.

The food in the private prison was better, Mr. Mitchell said ruefully, with a Pepsi machine and a salad bar in the food line. The Corrections Corporation counselors were more willing to talk with him, he said, and there were more jobs available to occupy otherwise idle days.

"If you ask me," Mr. Mitchell said in an interview, "I think all penitentiaries should be privately run."

# Business

## Privatizing America's Prisons, Slowly

Despite a checkered past, the future is looking brighter for the private prison industry.

By ANTHONY RAMIREZ

NASHVILLE

**E**RNEST ANDERSON, his biceps straining his blue prison fatigues, cocks back his shining bald head and smiles his gap-toothed smile as he talks about crime, punishment and private enterprise.

"I am a career criminal," Mr. Anderson said. Then, the 35-year-old convict goes on to describe the last decade of his life, years filled with gun play, drug dealing and struggling, often unsuccessfully, with what he calls "my anger problem." He has spent most of those years in prison, five different ones.

Mr. Anderson's story is more or less typical of repeat offenders, and seasoned criminals like him account for the majority of the million people locked up in state and Federal prisons today—five times the number two decades ago.

A typical American prisoner perhaps. But Mr. Anderson is one of a growing number of inmates who are being guarded, fed and put through rehabilitation programs run not by government, but by private companies.

So far, less than 2 percent of inmates are in such facilities and only 13 states, including Texas and Florida, allow private prisons. But this veteran consumer of prison ser-

vices sounds satisfied. "Until this facility, with this facility's programs, I have not been given the opportunity to turn my life around," Mr. Anderson said.

His current residence, the Metro-Davidson Detention Facility in Nashville, is managed by the Corrections Corporation of America, the largest company in the business of for-profit prisons.

The private-prison industry has no shortage of critics, from public-sector unions out to protect their jobs to civil liberties advocates who warn that company-run prisons are less accountable.

Private prisons are not new; they date back to colonial times. But by the 1950's, prisoner-abuse scandals at private operations led to the public administration of prisons. The private-prison movement revived in the early 1980's, but grew slowly for years.

But while the private-prison business has critics and a checkered past, its future seems bright. True, the \$33 billion crime bill that is stalled, for now, in Congress would have accelerated the industry's growth even more with over \$10 billion for prison construction, some of which would have gone to private prisons. Still, the industry's optimism remains unshaken, and it is explained mainly by a familiar, if dreary, litany: the unchecked national problems of crime, and overcrowded state and Federal prisons. The need to control Government spending makes privately managed prisons look increasingly attractive.

**A Better Image, Too**

The reputation of the \$250

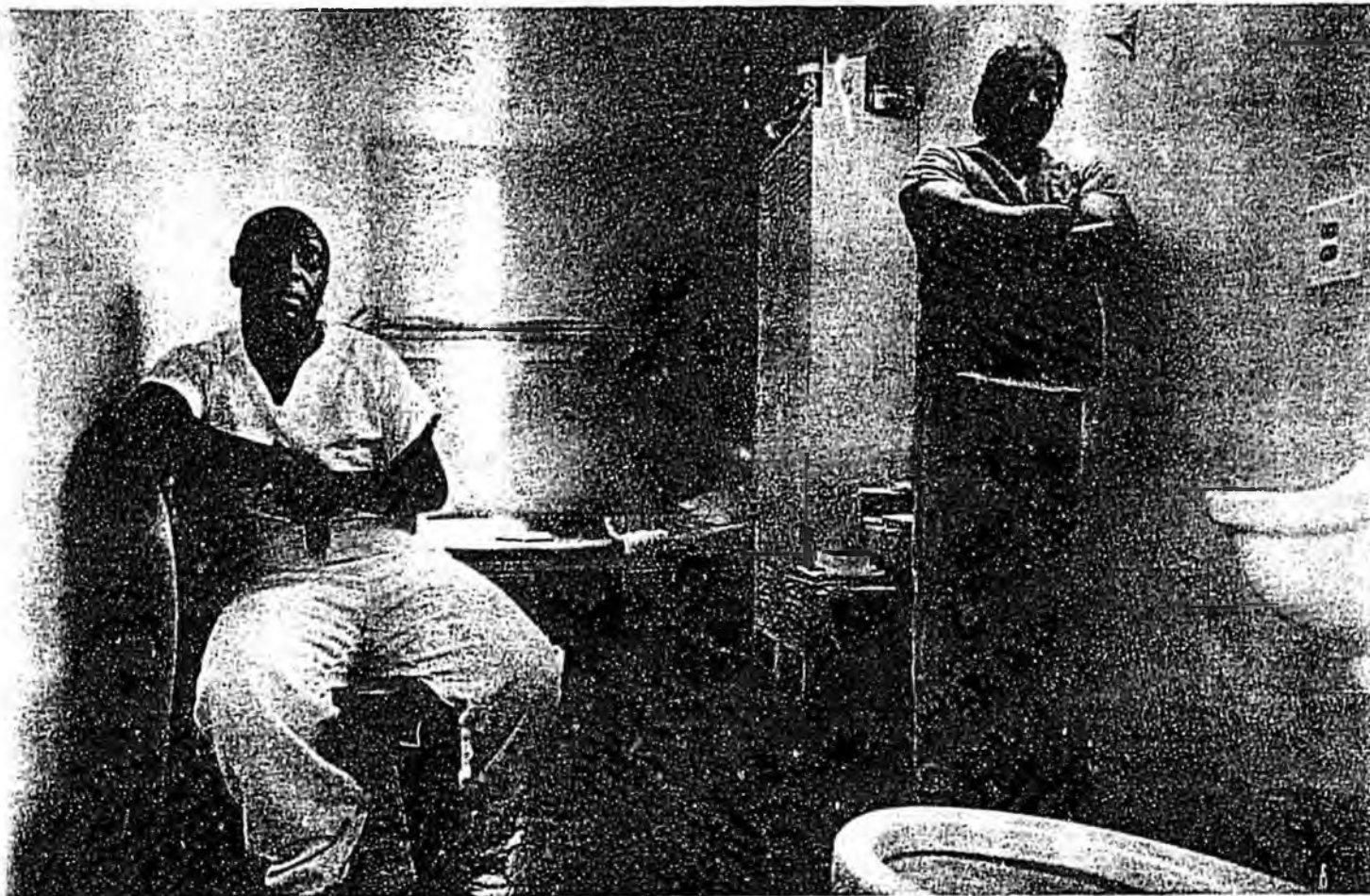


Alan S. Weiner for The New York Times

Doctor R. Crants, chairman of Corrections Corporation, in his company's Nashville prison.

million-a-year private prison business has also improved lately. The industry is still small, with nearly a score of little companies in the field. But the two largest companies, Corrections Corporation of

America and Wackenhut Corrections Corporation, which went public last month, hold more than half of the private-prison population. Policy experts say these companies manage a wide range of facilities,



Alan S. Weiner for The New York Times

Ernest Anderson, left, and Broderick Smith, who says the prison "ain't no Holiday Inn."

and are developing innovative drug-rehabilitation, educational and job-training programs.

Leading the industry's surge is the Corrections Corporation of America, based in Nashville. Its 23 prisons under contract in seven states house about a third of the prisoners in the United States who are now held in private prisons. Last year, the company's profits rose 57 percent to \$4 million on revenues of \$100 million.

This year, Corrections Corporation's income rose 30 percent during the first half, and analysts predict further growth. Over the next two years, the company's 13,000 beds under contract should increase by 85 percent and profits should more than double, said William Oliver, an analyst at Equitable Securities in Nashville. Corrections Corporation's share price more

than doubled in the last year, closing Friday at \$15.75.

Equally impressive, the company has been able to win over some former critics with its ability to both cut costs and offer ample prison services. Policy analysts and prisoner advocates worry that private contractors like Corrections Corporation will run bare-bones prisons to maximize profits. After all, they reasoned, private operators are paid a per-day fee for each prisoner.

**S**o far, however, these experts say that Corrections Corporation has surprised them and prompted them to rethink at least the Nashville company's version of prison privatization. William C. La Rowe, director of the Texas Center for Correctional Services, a prisoners' rights group, says he was once an opponent of prison privatization and of Corrections Corpora-

tion. But Mr. La Rowe, who has made unannounced visits to Texas prisons for years, likes what he has seen.

"At Corrections Corporation prisons you don't have the atmosphere of impending violence that you have in a state prison," Mr. La Rowe said. "If Corrections Corporation ran more prisons, I am sure you'd see an increase in savings and a decrease in violence."

Even prison experts who remain skeptical about privatization in general seem impressed by Corrections Corporation. "Not everybody is Corrections Corporation," said John J. DiIulio Jr., a professor at Princeton University. "I'm worried about the fly-by-night companies."

The praise is welcome indeed to Doctor R. Crants, the 49-year-old, white-haired chairman and chief executive of Corrections Corporation, who led the often difficult

struggle to build the business.

A West Point graduate, Mr. Crants founded Corrections Corporation in 1983 along with Thomas W. Beasley, an insurance executive, and T. Don Hutto, a former Virginia corrections commissioner. Mr. Beasley, the former chairman, is now a director of the firm, and Mr. Hutto is international projects manager, including prison ventures in Australia and Britain.

Its founders and financial backers wanted to bring prisons into the wider movement to "privatize" services that were once the exclusive province of government, including public schools, mass transit systems and municipal hospitals. In fact, Corrections Corporation got some of its venture capital from the Massey Burch Investment Group, which also backed HCA Hospital Corporation of America, the nation's largest for-profit op-

erator of hospitals.

But for years, Corrections Corporation seemed to falter. It underestimated the political resistance to the concept of private prisons, and time needed to create a profitable business. Overreaching, it failed in an ambitious bid to persuade the Tennessee legislature to let the company run the entire state prison system in the mid-1980's. The company went public in 1986 with high hopes, but it did not report a yearly profit until 1989. It lost money again in 1991, recovering steadily thereafter.

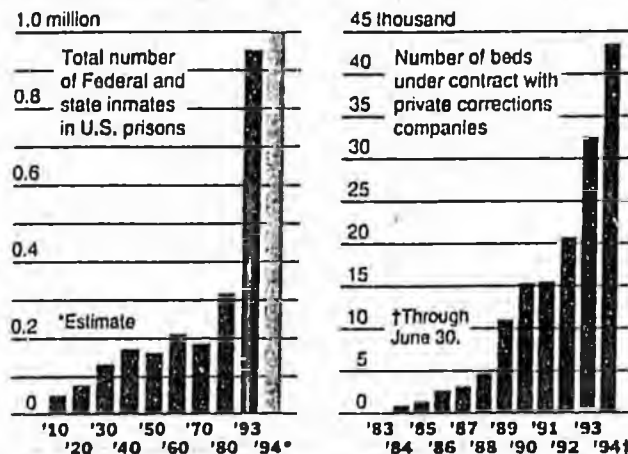
Today, however, Mr. Crants sounds confident that Corrections Corporation has fine-tuned its private-prison formula. The company's biggest customers are the United States Marshals Service, which is responsible for Federal prisoners up to their sentencing, and the prison systems of Texas, Tennessee and Louisiana. If the door to private prisons should open nationally, Mr. Crants says, his company is ready to expand.

Perhaps, but Corrections Corporation's growth and profits depend on the company being able to run prisons less expensively than states or the Federal Government. In Texas, for example, where it runs four prisons, the company's contract specifies that it manage prisons for 10 percent less than those of the state.

Corrections Corporation does own 9 of the 25 prisons it manages or is now building, but in each case the company constructed these smaller operations as a condition of its contract. In short, Corrections Corporation does not risk its money in the construction business. Its profit depends on managing its prisons so that its costs are less than the contracted "per diem" fee it receives for each prisoner. Every contract varies, but last year the company collected just

## More Inmates, More Private Prisons

As the American prison population rises sharply, some states have turned to private companies to operate and manage prisons to curb costs.



Sources: Corrections Corporation of America; Charles W. Thomas/University of Florida at Gainesville

The New York Times

under \$40 a day on average for each prisoner.

How does Corrections Corporation cut costs? It pays the prevailing wage in the states where it operates, but its prisons are not unionized. The company offers its 2,300 employees a stock-option program, but it does not have a pension plan. According to union officials, pension costs can add up to 15 percent of compensation costs for public-sector prison workers.

The no-pensions approach saves some, but Corrections Corporation executives and wardens insist that the far larger gains come from changing the unhealthy environment found in so many prisons. Part of the formula is to keep potentially quarrelsome prisoners like Mr. Anderson at Metro-Davidson so busy with drug rehabilitation, recreational and educational programs that trouble will not tempt them. These prisoner programs add to costs at the outset, but company officials believe they more than pay for themselves, though the savings are hard to measure.

It is a truism that there are no perfect days in prison. Yet anything that makes prisoners

less dissatisfied reduces the tension between the inmates and prison staff, making costly disturbances less likely. That means attention to detail and quality control in basic services like food and mail delivery to inmates, and communicating regularly with prisoners.

"In this environment, little problems become big monsters real fast," said Jimmy Turner, warden of Metro-Davidson.

"In a state prison," Mr. Turner continued, "if a prisoner said, 'I'm going to tear this cell up if you don't talk to me.' Well, the attitude of the state employee was, 'Go ahead and tear it up. We'll repair that \$1,000 commode, but you're not going to threaten us to talk to you.'"

Mr. Turner paused. "I can tell you right now, as a shareholder in this company, if an inmate wants to talk to me, he can talk to me."

In the prison environment, small changes can make a big difference. David Myers, who is now the company's president, was warden at Bay County Jail, a Panama City, Fla., operation taken over by Corrections Corporation in 1985 after a series

of disturbances. Once there, Mr. Myers found that the prisoners' breakfast consisted of a hard-boiled egg and a stale piece of bread. He ordered the fare changed the next day to scrambled eggs and bacon. The new breakfast menu helped calm the inmates, and disturbances subsided.

The real day-to-day savings from easing the inmate-staff tension in prison life come from reducing labor costs, which represent up to two-thirds of the cost of running a prison. Though salaries vary widely state by state, corrections officers are not highly paid, with a typical salary estimated at \$20,000 or less. But it is a high-stress job, with notoriously high levels of absenteeism, or "blue flu."

That adds to overtime costs, swelling the expense of running a prison. If, for example, one corrections officer calls in sick, he is still paid \$10 an hour for his day. But his absence may well mean two other officers have to fill in, working eight hours of straight time and four hours each being paid at time and a half. The salary for those three that day becomes \$360, or a 50 percent increase because one person called in sick.

Stress is hard to measure, but it also leads to costly staff turnover, which can lead to prison problems.

"A better work environment means you are less likely to have tired, short-tempered, confrontational people who become violent," said Mr. Crants, the company chairman. "And I am talking about the guards."

And spending more at the outset might save money in the long run. For example, the company buys costly \$40 chairs made from hard-to-destroy plastic. In a state-run prison, wardens might be required to buy cheaper wooden chairs or benches.

Cheaper might even be more dangerous. In Texas, prisoners would shatter wooden benches into four-foot-long planks with rusty nails.

The ideal situation for Corrections Corporation is when it can help design and build a prison from scratch as it did with Metro-Davidson, an \$18 million, nearly 900-bed facility that opened in February 1992. The prison holds locally sentenced felons serving one to six years.

**T**HE prison employs a "wheel-and-spoke design," where one or two corrections officers in an electronic command post constantly monitor prison cells circled around the post. The arrangement reduces blind spots, company officials say.

"What you want to avoid is the telephone-pole design," said Robert Britton, vice-president for operations. "That's the long, traditional cell block you see in old Jimmy Cagney movies. You can't see. It isn't secure for guards or prisoners."

To keep inmates busy and to prepare them for life after prison, Metro-Davidson has an unusually large number of educational and rehabilitation programs for an operation in which the average stay is 12 months. Inmates not only can get a high-school equivalency degree, but also attend programs that teach marketable skills like computer data processing.

An especially innovative program, called Lifeline, is a six-month drug rehabilitation and psychological counseling program designed to bring brooding loners out of their self-destructive cycle of drug addiction and anger. The program, developed by Corrections Corporation, was not a requirement of the state contract.

Yet the company says there is room for improvement — and cost savings—at state

prisons it takes over but had no hand in designing.

The Winn Correctional Center in Winn Parish, La., is an example. It is a classic Jimmy Cagney prison out in the middle of rural nowhere. When Corrections Corporation took over management of the 1,300-bed facility in 1990, it became the first privately operated medium-security prison in the United States.

Small things tell. At the commissary, where prisoners can buy personal items like candy bars, the store once opened onto a long corridor. A guard had to stand there and observe the prisoners. By caging the commissary, a guard could now roam the corridor, enhancing security.

Perhaps the biggest innovation at Winn is the continuing experimentation with programs to try to give prisoners marketable skills. Besides the usual computer and "culinary arts" classes, Corrections Corporation is starting a 60-worker garment factory using standard single- and double-needled tailoring machines to make disposable hazardous waste suits. "These are real skills," said Michael Phillips, assistant warden.

The prisoners show a qualified enthusiasm for the job training. Ricky Temple, 36, is serving a 40-year sentence at Winn for rape and forcible assault. Mr. Temple says he has already learned some things in prison, like "how to be a better burglar, a better bank robber." But, he added, "I want to have a legitimate skill when I get out."

Other inmates, however, are impressed by other advantages that they say the Corrections Corporation prison seems to offer.

"You don't have to sleep with one eye open here," said Jesse Howard, 37, who is serving a 30-year sentence for armed robbery. "You don't

have to carry two or three knives with you because the guards are always looking at everybody." ■

**Construction And Management Of Correction Facilities  
For  
The State Of Alaska.**

HB 428/HB 429

Anchorage AK, January 31, 1996

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My name is John Christensen and I am Chairman of Chugach Alaska Corporation, one of the thirteen Alaska Native Regional Corporations. At the table with me today is Roger Endell, a past Commissioner of Corrections for the State and now Education Services Manager at the Palmer Job Corps Center, which is managed by Chugach Development Corporation (CDC), Chugach Alaska's main operating subsidiary.

We are here today to speak in support of HB428 and HB429.

The Federal Government made the determination some years ago that in many areas, the private sector could provide the same quality of service as government agencies, but at lower cost. For example, Chugach has been awarded a number federal contracts to provide Base Operations Support services at military establishments including King Salmon AFB, Adak NAS, and Wake Island Army Base. Recently we have been awarded the contract to provide Base Operations Support services at one of the Navy's largest facilities on the West Coast, Whidbey Island NAS.

It is not just the military who look to the private sector for this type of service. We have contracts with the Department of Labor (for the management of the Alaska Job Corps Center), the Patent Office, the Department of Energy, and the Department of Transportation. The concept of moving from government operated services to private sector operations is accepted and proven. In the field of corrections, it has been reported that the five new prisons being built by the Federal Bureau of Prison will be managed by the private companies.

Chugach Alaska sees HB428 and HB429 as the first of many steps to be taken by the State of Alaska as we follow the lead of the Federal Government in reducing the cost of Government. During a time when the Administration is considering imposing new taxes on the people of Alaska, it is important that the State be seen to be exploring all possible ways of reducing cost. It is not just a new corrections facility that should be considered for privatization. The Administration and Legislature should examine the entire bureaucracy, to find areas or even whole departments that could be operated more efficiently by the private sector.

The only question that has to be asked is "Can the private sector provide the required standard of service at a lower cost?" To make this determination, all costs have to be considered, including capital and other costs that are often hidden. When all the information is available, we believe the citizens of Alaska will see, that in many cases, the private sector can provide equal or better services at lower cost.

As you are well aware, it is not only cost that is important, but skills and dedication. Chugach recognized this, and has been working very closely with Correction Corporation of America (CCA) to develop a first class team to design, finance, construct and operate new corrections facilities. The two companies make a very strong team. CCA has extensive experience and skills in the corrections industry, while Chugach has considerable experience in managing complex facilities and providing education services.

**CHUGACH ALASKA CORPORATION**

It is obvious that some State employees are not too happy with the concept of the private sector encroaching on their turf. I have read statements from state employees accusing the private sector of being anti-union, of sending profits out of state, of employing people who are unskilled and who lack the devotion to duty of the state employee.

It is necessary for me to set the record straight as far as Chugach is concerned, and to correct these deliberate misstatements.

First of all I would point out that Chugach is definitely not anti-union. Chugach has an excellent working relationship with the Laborers Union, with the Teamsters and with the Operating Engineers. All three unions have members working for Chugach subsidiaries, and they recognize, as do we, that to survive in this world, we all have to be competitive.

Secondly, it has been claimed that a private prison operator will take Alaska's money Outside. All profits earned by Chugach go to a Corporation wholly owned by Alaskan Natives. Many Chugach employees are Chugach shareholders. Others have spent their whole lives in Alaska. The award of a contract to Chugach will result in more Alaskans being employed.

As for dedication of service, it is hypocritical to suggest that people in the private sector do not have the same dedication as those in government service. The performance of Chugach employees working on federal contracts demonstrates the inaccuracies of those statements.

The final charge levied against the private sector by some state employees is that private companies do not have the necessary skills. I challenge them to fault the qualifications of the Chugach/CCA team.

As Roger Endell can tell you, the Job Corps Center in Palmer, was rated in the top five out of 111 Centers in the US. We are specialists in providing basic education and teaching work skills. We provide drug and substance abuse counseling, and we teach social and life skills to those who missed out on the normal educational opportunities. We also operate the medical and dental facilities at the center.

Chugach has received commendations from the Navy and the Air Force for the quality of its work at bases around the world. This work consists of maintaining isolated bases in inhospitable environments. We will operate and maintain correction facilities in a similar professional manner.

I will let our partners from CCA speak for themselves. However I do know that many CCA employees came into the private corrections industry after long careers in the public corrections industry.

In conclusion we believe all Alaskans will benefit if private companies are allowed to compete against State Agencies. The competitive market process will determine whether the private or public sector is best qualified to design build and operate a new correction facility for Alaska.

I urge you to support these bills.

Thank you.

**CHUGACH ALASKA CORPORATION**



Corrections  
Corporation of  
America

102 Woodmont Boulevard  
Nashville, Tennessee 37205  
Phone: (615) 292-3100  
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November 1, 1995

The Honorable Eldon Mulder  
Alaska State Legislature  
House of Representatives  
Alaska State Capitol  
Juneau, AK 99801-1182

Dear Representative Mulder:

Once again, thank you for inviting me to testify last week before the Alaska's House Finance Subcommittee on Corrections. It was an honor and privilege to speak to committee members about privatization and Corrections Corporation of America. I hope that I was able to inform and further educate you and your legislative colleagues about private sector corrections.

As you know, there were some viewpoints expressed at the hearing that were opposed to privatization. Those opinions were submitted by Don Valesko, business manager for Public Employees Local 71. For the purposes of accuracy and the legislative record, I wanted to take this opportunity to address the issues that Mr. Valesko mentioned in his written material.

Since its founding in 1983, CCA has experienced its share of criticism and scrutiny. Special political interest groups, labor unions, lobbyists and long-time bureaucratic thinkers are among our most staunch critics. The fact is that the corrections industry itself has and always will be a controversial and highly regulated one.

Whenever I hear opposing or critical statements made about CCA, the first question I ask the individual is "have you ever visited a CCA facility?" Not surprisingly, the answer typically is "no." So for the record, I extend an invitation to Mr. Valesko or any other members of Public Employees Local 71 to visit a CCA facility, talk to our staff, speak with the inmates, and look at our programs and services at Florence, AZ, and at other facilities across the country. Opinions usually can be better formed based on the first-hand knowledge and observation that are gained during such a visit.

It is also CCA's experience that private sector companies often are held to higher standards than public sector operators. We have found that the general public and lawmakers are most concerned with efficient use of tax dollars by government. CCA has repeatedly been able to provide cost savings to government, which has resulted in those dollars being used for other public services, such as roads, schools, etc. In fact, many of our contracts require that certain cost criterion be met, such as operating a facility for a specified percentage (from 7 to 10%) less than it has been or would be if operated by the public sector. We consistently have been able to meet that requirement.

For each facility we operate, CCA has a detailed contract with the contracting government agency. Contractual examples include the ratio of staff to inmates, square footage per inmate, number and type of educational/vocational programs and emergency plans. The contract, which is renegotiated and renewed based on terms and provision of quality of service, also documents the per diem cost to be paid to CCA by the government agency. Each per diem varies, depending upon whether or not financing or construction was involved, classification and size of facility, type of inmates, programs and services, etc.

To ensure that we adhere to the contract, the government agency appoints a Contract Monitor. That person is responsible for making sure that we are complying with the contract. The purpose of this monitoring system is to provide greater accountability on our part to make sure that government dollars are used effectively and efficiently. We welcome that accountability.

Accountability also can be measured by independent sources. CCA takes pride in its American Correctional Association (ACA) accreditation achievements. To become ACA accredited, a facility and its management must pass a comprehensive and intensive audit that includes nearly 500 mandatory and non-mandatory standards. These standards deal with management and personnel procedures, physical layout, training programs and delivery of services. The facility must make a perfect score (100%) on the mandatory portion of the inspection and a high score on the non-mandatory part to receive accreditation. All of CCA's facilities operate according to ACA standards and those facilities that are eligible are ACA accredited. This accreditation status, in many cases, is deemed more critical to privately run institutions than others.

As I stated in my testimony, we invest in our employees, especially in training them and training them well. We follow and often exceed the training requirements of the jurisdiction in which we are doing business. In our staff orientation and training, we emphasize interpersonal communication skills, problem solving, risk management and defense tactics. All of this training is designed to promote communication, to address inmate questions and problems

when they are small issues and to prevent incidents. We are keenly aware of the responsibilities of on-line staff, and we invest in them as people, realizing that they are the most important resource we have. It would be irresponsible of us, as the industry leader, not to invest in initial and ongoing staff training.

In regard to pay and benefits of CCA employees, our compensation package is very competitive with public sector employment and the market place. If it wasn't, we would not be able to effectively retain qualified staff.

There are additional reasons that make CCA employment attractive to people interested in the corrections profession. For the purpose of retirement savings, CCA has an Employee Stock Ownership Plan (ESOP), which means that employees literally have ownership in the company. They have a vested interest in doing a quality job. Also, CCA believes in employee recognition and promotion. Entry-level corrections professionals can and do advance. Employees also can transfer to other CCA facilities to pursue career advancement. We strongly advocate promoting from within the company.

In regard to the analysis done by the state of Tennessee comparing the operations and costs of three identical state institutions, one of which is managed by CCA, the concluding point is clear. It is correct to say that the report showed that all three facilities were similar in daily operational costs. However, keep in mind that all three institutions were operating at around \$20.00 less per day than comparable state-run facilities, whose is around \$55.00. By including the private sector into the equation for the study, all three facilities dramatically reduced their daily operational costs, saving taxpayers hundreds of thousands of dollars. That is the conclusion and true outcome of the study. In addition, the state of Tennessee recently renewed its contract with CCA for the operation of South Central Correctional Center.

As I stated earlier, CCA emphasizes training that is designed to promote communication and to prevent incidents. Unfortunately, all the communication and preventive tactics in the world sometimes cannot stop determined inmates who don't want to be incarcerated for their crimes. As such, escapes and attempted escapes are a fact of the corrections field. CCA's security record is a good one. In its 13-year history, the company has the equivalent of more than 15 million days of housing prisoners and inmates, yet has experienced only a handful of escapes.

Specifically in regard to South Central, it is an accurate statement to say that we experienced some challenges when the facility opened in March, 1992. Some inmates who were sent to the facility, based upon their offense(s) and classification, should have been housed in higher level security prisons, but were

assigned (by the state) to South Central to be housed in lower level security areas. Following several inmate incidents, CCA immediately submitted and implemented an enhanced management and security plan in October, 1992. Since that time, there have been no escapes from inside the secure perimeter. The facility was accredited by ACA in January, 1994, and again, the state renewed its contract with CCA earlier this year for the operation of South Central.

At the multi-security level Hernando County Jail in Florida and the Silverdale Facilities in Tennessee, we also experienced some challenges. Those challenges were directly related to the design and construction of the facility, for which we were not responsible. Escapes did occur during the initial management assumption; however, corrective action immediately was taken. That action included CCA's investment in redesigning and building certain areas of the institutions. Hernando County Jail was accredited by the ACA in January 1992.

At Silverdale, CCA is not nor ever has been responsible for the management of road crews. Silverdale inmates are supplied to the Hamilton County Highway Department for its oversight and management of those inmates. At both Hernando County and Silverdale, CCA's contracts with both government entities have continually been renewed. We also are in the process of negotiating with Hamilton County to expand the Silverdale Facilities to accommodate the need for more county beds.

In response to Mr. Valesko's reference to privately operated facilities in Texas, there were initial differences of opinion between the private sector providers (CCA and Wackenhut) and the state regarding educational and vocational services. CCA and the Texas Department of Criminal Justice discussed action steps and plans to address those differences. There were three results to be observed. First, by July 1990, two months after the private companies were purported to be in such bad shape, the board publicly declared them to be satisfactory. Subsequently, the Office of Texas Comptroller John Sharp issued a report declaring that the state's own prison education system that was held out as exemplary, needs "swift and fundamental restructuring." Test results in 1992 reveal a 78% passing rate in academic classes and a 76% passing rate in vocational training in the Texas prisons. In addition, Comptroller Sharp stated, "Private prisons are cost effective, saving governmental entities from five to 15 percent based on cited studies...A mix of public and private prisons is healthy for competition and experimentation of new programs." Both CCA pre-release centers in Texas are accredited by the ACA. The contracts between CCA and the TDCJ for our operations have continually been renewed. In fact, to meet Texas' need for more pre-release beds, CCA expanded last year the Venus facility from 520 to 1040 beds.


Finally, regarding our Santa Fe operations, the state of Oregon in 1990 had an immediate need for bed space. Corrections officials asked us to house on a short-term basis inmates at our Santa Fe Detention Center. With the permission of the Santa Fe county government, an agreement was reached to house Oregon inmates of appropriate classification (nonviolent) in the jail. Upon inmate arrival, it was quickly discovered through CCA's reclassification system that some of the inmates did not meet the agreed upon criteria. CCA's allegiance was first to Santa Fe County. Therefore, the process to immediately return the inmates to Oregon was initiated. Through this entire process, Santa Fe county officials were kept abreast of all transactions.

I hope this information is helpful. As I said, I wanted to state it for the record. Please understand that responding to historical allegations and incomplete information puts CCA in a defensive position. It is not my intent to be perceived that way. However, it is my intent to provide clarification of our business approach, as well as address specific incidents cited by Mr. Valesko.

We, at CCA, are very proud of our accomplishments, including our operations, security record and employees. As anyone in the corrections field knows and understands, this business is not an easy one. However, we have been successful and effective in working with numerous government entities at all levels to do what we do best — provide quality corrections services, in partnership with government, at less cost to the taxpayer.

Thank you for your interest. Please contact me if you have further questions.

Regards,



John D. Rees

Mr. Chairman, members of the Judiciary Committee. My name is Russell Clemens. I am a Labor Economist for the American Federation of State, County, and Municipal Employees (AFSCME) in Washington, D.C. Our union, which numbers 1.3 million members, includes over 75,000 correctional officers who work in some of the largest and most volatile state correctional systems in the United States. I appreciate your giving us the opportunity to be here today.

The issue of prison privatization is one that concerns us because of its implication for public policy. The appeal of prison privatization is an alluring, yet beguiling one. In theory, it is a relatively simple proposition--fill cells, cut costs, and pass the savings on to government. The reality, however, belies the simplicity of the theory. The twin imperatives of cutting costs and filling cells translates into cutting corners in the operation of prisons both of which have severe consequences that have manifested themselves in several ways that should be of concern to you as a legislature.

Problems with security and escapes have plagued privately-operated prisons from the beginning. AFSCME has not been the only one questioning the consequences for prison security of introducing the profit motive into the management and operation of prisons. After five men, including one charged with stabbing a woman to death, escaped from the privately-operated Bay County, Florida Jail, the editors of the St. Petersburg Times raises these questions about privately-operated prisons: "Will a private company supply adequate staff to maintain institutional security? Will it have enough manpower to prevent escapes?"

Others have expressed concern about the wisdom of privately-operated prisons, especially when it comes to security. In fact, a much awaited audit of the privately-operated South Central Tennessee Correctional Center (SCCC) comparing it with two state-operated prisons found that 214 incidents of injuries occurred at SCCC during a 15 month period whereas 72 such incidents occurred at the two state operated facilities combined. Actually, security problems characterized SCCC from its opening. Between

March, 1992 and April, 1992 eight escapes occurred at the prison, which also had other security problems ranging from finding an inmate with a handgun during a routine search to inmates being inebriated in their cells. These experiences prompted the Memphis Commercial Appeal to comment as follows: "Tennessee's experiment with a privately operated medium security prison looked lean and clean when reporters and officials toured the new South Central Corrections Center. ... The problems arrived with the prisoners."

In view of the imperatives driving prison privatization, these problems ought to come as no surprise since among the costs that private corporations seek to cut are staffing, which accounts for approximately 60% of the operating costs of operating a prison. The Corrections Corporation of America slashed staffing by 17% at the Hernando County, Florida Jail when it assumed control of the facility. Inmate escapes in 1990 prompted the County Commission to request an inspection by the National Institute of Corrections, an agency within the United States Department of Justice. The NIC identified understaffing as a major problem at the jail and commended that additional correctional officers be hired. However, the comments of the company's jail administrator, which is comparable to a warden or superintendent, offer a valuable insight into a corporation's perspective regarding staffing a prison. "The county can agree with (adding the guards) if they want to," the administrator asserted. "but that means the price of poker goes up as far as you're concerned."

Viewed from that perspective, it ought not to be surprising when one of the players folds and walks away from the game. Shortly after Wackenhut Corrections Corporation assumed control of the Monroe County, Florida jail in 1990, the county and a state inspector informed the corporation that the state had previously ordered 11 security posts staffed. Served with a deficiency notice, the company increased its manpower, but to a level that remained below state requirements. The company then billed the county for an extra \$780,000 and demanded it to pay an additional \$2.6 million over the four-year

term of its contract. The county refused, insisting that the corporation should have known about the state's staffing requirements. Wackenhut then terminated the contract.

Loss of control is a danger when any public service is privatized. With a function as essential to public safety as the corrections system, the consequences are potentially ominous. Yet the drive to fill cells, which is the other imperative by which private corporations make money, can have such consequences. A few years after having been awarded a contract to manage and operate the Hamilton County, Tennessee penal farm, the Corrections Corporation of America notified county officials that, because of overcrowding at the facility, it would no longer indemnify (or insure) the county against lawsuits. "We must speculate," the County Attorney responded, "that your action is a ploy to coerce Hamilton County officials into constructing additional facilities for the housing of the overflowing state prison population so that CCA may continue to reap monies for housing these prisoners. If this position of the company is not reversed or clarified without exception, we will have no recourse but to consider this an act of default and consider remedies, including contract termination." Neither the Santa Fe County Commission nor the County Sheriff were notified when the corporation operating the county jail imported 54 inmates from the State of Oregon to fill cells at the facility. As things turned out, their backgrounds were not what the community had been led to believe. None of the inmates were supposed to have been convicted of a crime more serious than armed robbery. In reality, the group included 11 murderers, 17 rapists, and 2 kidnapers. County officials asked that the inmates be returned to Oregon, but only when threatened with the loss of its contract did the company operating the prison agree to do so.

I would be remiss in my responsibilities if I did not address the impact of prison privatization upon employees. Available information indicates that corporations pay wages that are 6%-19% lower and provide fewer benefits to correctional officers than public jurisdictions? But isn't this a good idea, since it means lower costs and thus savings for taxpayers? Not necessarily, for at least a few reasons. John Donahue, who has been a

professor of public policy at Harvard University notes in *Prisons for Profit: Public Justice, Private Interests* that low wages compromise the quality of the correctional officer labor force: "Public (correctional officers) are more likely to be high school graduates, to work full-time and year-round at their jobs, and to be of prime working age. Employers who hire the private-guard labor pool pay less mostly because they get less; lower labor costs mean a lower quality workforce." A study by the Urban Institute comparing a privately-operated and publicly-operated prison in the State of Kentucky confirms that staff of the state-directed institution were significantly older, better educated, had worked at the facility longer, and had wider correctional experience than the personnel at the privately-managed prison. Staff qualifications, the report concluded, "... favor better performance from the publicly managed facility." And perhaps you might wish to consider this. As fashionable as it may be to bash public employees, we are also citizens and taxpayers. We spend our earnings in the community where we work: we purchase homes there; we bank there providing a pool of money with which to lend to others; we buy our cars there; and we support the numerous small businesses that constitute the fabric of community life throughout Alaska. Put another way, our money stays in the community. It doesn't go out of state to contribute toward the profits of others.

Secondly, after all is said and done, after corners have been cut, staff reduced, accountability jeopardized, and paying lower wages and fewer benefits, has prison privatization really saved money for public jurisdictions? After reviewing the literature on the issue, the U.S. Government General Accounting Office (GAO, an independent agency that analyzes federal programs for Congress, found that the evidence is inconclusive--hardly a resounding endorsement. In fact, the 1995 Tennessee audit comparing the privately-operated medium security prison with two of the state's publicly-operated prisons found negligible savings. Impartial observers have begun to question whether privately-operated prisons save money. "It's not easy to make a profit in that business, so they've got to cut corners any way they can," Dennis Palumbo, a criminal justice professor

at Arizona State University, has asserted. "Private prisons may well cost more in the long run, not only in terms of taxpayer money, but also in the health and safety of prison staff and other law enforcement officers."

At the very least, the serious doubts regarding the efficacy of privately-operated prisons ought to be of sufficient concern to require a feasibility study pertaining to the applicability of this idea to Alaska. Such a study, it seems, would be essential before a policy decision is made to send over \$100 million of the taxpayer's money out of state. Yet, the proposed legislature contains no provision for such a study.

The failure to privatize does not preclude the state from addressing its problems regarding overcrowding. The construction of a mega-facility as proposed in the bill may not necessarily meet the needs of the entire state in this regard. In view of a system that has been developed around the idea of regionalization, it may make more sense to consider the expansion of existing facilities, which may also prove less expensive.

# Kenai Natives Association, Inc.

215 Fidalgo St., Suite 203

Tangent Building

Kenai, Alaska 99611

January 24, 1998

Governor Tony Knowles  
State of Alaska  
P.O. Box 110001  
Juneau, AK 99811-0001

Re: Privatization Concept for Corrections

Dear Governor Knowles,

This letter will advise of the intention of the Kenai Natives Association, Inc. (KNA) to explore the possibility of constructing and operating a private correctional facility on KNA lands adjacent to the existing Wildwood Correctional Center, and leasing it to the State. We would like to work with your office, the Department of Corrections, and the Legislature to study and develop a plan to address inmate overcrowding that exists throughout the State's correctional system. Naturally, we are very concerned with Native issues that are involved.

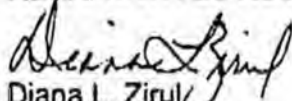
KNA has a previous track record with the State of Alaska, having served as landlord to the State at the Wildwood Correctional Center from 1983 until the State exercised its option to purchase the facility in 1992. During that time we enjoyed an excellent rapport with the Department of Corrections, and believe that relationship could continue in the best interests of all concerned. We have been a strong supporter of the correction's industry, and would hope that KNA would be given serious consideration should the State determine to pursue any agreement with a third party private entity to provide correctional services.

We are in the early stages of fact gathering, and it is likely that feasibility studies will be necessary to determine the exact nature of our anticipated involvement. However, KNA wanted to let you know of our interest and to request that we be kept advised of any significant event involving planning for the Department of Corrections that would impact our potential involvement.

Thank you for your continued support of Native involvement in the government, and for giving KNA consideration and support as a participant in our effort to explore how we might be able to assist the Department of Corrections with the inmate overcrowding and budget issues. Please advise if I can be of further assistance in this matter.

Sincerely,

KENAI NATIVES ASSOCIATION, INC.

  
Diana L. Zirul  
President

DLZ:pa

cc: Margaret Pugh, Commissioner, Dep't. of Corrections  
Brian Porter, Chairman, House Judiciary Committee  
Mark Hanley, Co-Chairman, House Finance Committee

*MTNT, Limited*

*P.O. Box 309  
McGrath, Alaska 99627  
Office (907)524-3391  
Fax (907)524-3701*

January 29, 1996

Rep. Eldon Mulder  
House of Representatives  
Juneau, AK 99801

Dear Rep. Mulder:

Please accept the following brief testimony from me on HB 428 and 429. Unfortunately, I will not be able to be present at your teleconference scheduled for Wednesday, January 31<sup>st</sup>. I would appreciate it if you would enter the attached testimony in the record.

Please contact me if I can be of any further assistance to you. Your assistant Denny DeWitt has been exceptionally helpful in keeping me informed of your efforts in the area of prison privatization.

Sincerely,

MTNT, LIMITED



Carl A. Propes Jr., CEO

**TESTIMONY ON HB 428 AND 429****January 31, 1996****Carl A. Propes Jr.**

My name is Carl Propes. I am the CEO of MTNT, Limited, a merged village corporation for the villages of McGrath, Takotna, Nikolai and Telida. We are located in McGrath, Alaska, and we are a member of the Doyon Region and the Alaska Federation of Natives. Aside from management of our lands and natural resources and our investment portfolio, MTNT's principal activity is the operation of McGrath Light and Power, a regulated utility in McGrath, Alaska.

I have personally been interested in and an advocate of private correctional facilities in Alaska for quite some time now - perhaps for several years. Here is why.

First, crime is not going to disappear anytime soon. As we all know, it is on the increase. Also, the American public will demand more severe punishment for offenders. This is true in Alaska as well as in the Lower 48 states.

Secondly, it is a travesty to send 206 inmates outside to be housed in a facility in Arizona. From the standpoint of simple economics it is a travesty not to have the benefit of that state money circulating within the Alaskan economy. From a social standpoint it is a travesty for Alaskan offenders, a large percentage of whom are Alaska Natives, to be transported far from their homes, their loved ones, and their base of support, to be incarcerated in an unfamiliar area.

Thirdly, as the largest city and the commercial hub of Alaska, it makes sense to build the new correctional facilities that Alaska needs now and will need more of in the future in the greater Anchorage area. This will also be the most cost-effective location in Alaska to house inmates. It is also the headquarters for our transportation, medical and food service industries, all of which are an integral part of the prison business.

Anchorage also has suitable sites for locating an institution such as a 1000-bed prison, away from most residential neighborhoods and schools. The mayor of Anchorage has indicated his interest in and support of a new prison facility in this community.

Fourthly, one must accept the concept that competition, free enterprise and the marketplace are good things. Many activities which were formerly the sole domain of the government have been privatized, most with encouraging results. Many more can be in the future as well, as we come to realize that government cannot be all things to all people. Let industry in to compete to show us how something can be done faster, better and cheaper. In the long run this will restore the public's faith that they are getting the best results for their tax dollars from their government.

In conclusion, if a private company is willing to take the risk and invest in the construction and operation of a multi-million dollar prison in southcentral Alaska, I say let them do it. Government's proper role should be to administer the contract with this company to make sure that they meet the necessary standards, that their employees are properly trained and certified, and that their institution is accredited. I would like to have MTNT, my company, have the opportunity to joint venture in the bidding on such an enterprise. Just think of all of the direct as well as indirect employment and services which would be created as a result. If it works in about half the other states, private corrections can work in Alaska as well. At the very least, it should be given the opportunity to try.

January 30, 1996

TO: Brian Porter

FROM: Tom Meyer 

RE: HB 428 Lease/Purchase for DOC facilities

This bill amends AS 33.30.031 which is the statute that authorizes the commissioner of DOC to enter into contracts for the detention and confinement of prisoners.

**Section 1:** Adds to the general provisions permitting contracting for facilities that (1) commissioner cannot enter into an agreement when the private/public agency cannot provide the custody, care and discipline required by state law and order of court; (2) when contracting with private agency, the agreement may provide for the detention and confinement of all prisoners held under state laws regardless of their custody classification unless inconsistent with the facility's security; (3) the private facility's use cannot be restricted to only prisoners in rehabilitative or treatment programs.

**Section 2:** This will be an uncodified section. This section is enacted per AS 36.30.085 which authorizes lease-purchase agreements and notice thereof.

The notice states that Dept. of Administration on behalf of DOC can enter into a lease-purchase agreement for construction and operation of a correctional facility in the Third Judicial District that will house prisoners. This section also sets ceilings for the "total construction and related costs" of establishing the facility and a ceiling for total lease payments. It states that at the end of the lease term, the state owns the facility.

This section goes on to say that females must be housed separately from males in the facility and that male maximum security prisoners may not be housed in such facility.

This section appears to set a ceiling of 1,000 prisoners for the facility but then requires that it be expandable past 1,000.

This section requires that the facility be constructed under a "public construction project labor agreement" between the construction contractor

and one or more trade union. The labor agreement must provide that there be a no-strike or slowdown pledge by the union(s) and a commitment to hire through local union halls and that no more than 15 percent of the laborers be non-union.

Subsection (b) goes on to provide that the state may not operate the facility during the lease term unless the contractor defaults in performance.

Subsection (c) states that if required by the DOC commissioner, the guards should meet standards made by the Alaska Police Standards Council.

Subsection (d) states that if required by the DOC commissioner, the facility must be accredited as a corrections facility.

Subsection (e) states that (a) of *this section constitutes the notice and approval required under AS 36.30.085.*

Section 3: Says that the third-party private contractor can consist of employees of DOC.

Section 4: Annuls 22 AAC 05.300(e).

### **Problems:**

Section 2 has a number of potential problems both in drafting and meeting the legal requirements of AS 36.30.085. As set forth in (e) of section 2, this bill is supposed to meet the notice and approval requirements of AS 36.30.085. If so, then some matters need to be addressed.

1. There is no indication of how long the lease term will be between the State and the contractor running the facility. It is unspecified. Per AS 36.30.085(c)(1), the lease-purchase agreement may not provide for a period of occupancy under the full term of lease-purchase agreement that is greater than 40 years. To comply with AS 36.30.085(c)(1), it may be prudent to insert the 40 year cap language into this bill.

2. AS 36.30.085(d) tells us what must be in the "notice". So, section 2 (a) of the bill must include (1), anticipated total construction, acquisition, or other costs of the project; (2) anticipated annual amount of the rental obligation; and (3) total lease payments for the full term of the lease-purchase agreement. For the reasons below, I think the notice is deficient.

This bill gives us a "cap" on the total construction costs. Is this really the *anticipated* total construction costs? This bill does not specify the annual amount of the rental obligation, only the total rental amount over the unspecified lease term. Finally, while the bill gives us the maximum total lease payments for the full term of the lease-purchase agreement, I don't believe that it meets the notice requirements since (a) we still don't know the full term of the lease-purchase agreement and (b) we only know that the total lease payments can't *exceed* \$200,000,000.

**An ambiguity:** Section 2(b)(1)(A) and (B) address housing females separately from males and that males who are classified maximum custody may not be housed in the facility. What about maximum custody females? I think that the bill ought to clarify what level custody of female prisoners are allowed in the prison. The way this bill is written now, there is no restriction on females custody-wise. Why the distinction between males and females re: their custody level? Max custody females can be just as dangerous or as much a flight risk as max custody males.

**Legality of conditions for hiring labor:** As you know, this bill requires that 85% of the labor be union and hired locally. Furthermore, that the laborers agree to not strike or slow-down. This is a red-flag for me. I am checking into whether its possible for the State to require such labor conditions in its contracts with private contractors who build facilitys used by the State.

House Committee on the Judiciary

Hearing on HB 428 and HB 429

January 31, 1996

Statement of Lawrence J. Nelson.

Mr. Chairman, thank you for the opportunity to participate in today's hearing. I am the General Manager of Purcell Services, a subsidiary of NANA Development Corporation. As you know, NANA is the native corporation headquartered in Kotzebue whose shareholders are the Inupaiq people of northwest Alaska.

Purcell Services supports the concepts embodied in HB 428 and HB 429. The fact that approximately 200 Alaska prisoners are currently incarcerated in Arizona clearly demonstrates the need for additional correctional facilities within Alaska. Housing our prisoners outside Alaska imposes significant financial burdens upon several agencies of State government, as well as creating obvious hardship for prisoners, and more particularly, the families of prisoners.

At the same time, testimony taken in the recent interim by the House Finance Subcommittee on Corrections demonstrated that the cost of housing Alaska prisoners at the privately operated facility in Arizona is nearly 50% less per inmate per day than the cost of custody in the institutions operated by the Department of Corrections here at home. It certainly appears that a new institution, located in Southcentral Alaska, built and operated by

competent private entities, presents a real prospect for keeping our prisoners in the State, and at less cost than we are now incurring.

The construction and operation of additional correctional facilities in Alaska would be beneficial to Alaska business and the Alaska worker. NANA has several operating business units that could readily be integrated into the corrections field. Purcell Services is a leading provider of security services to Alaska business. Purcell is for example, the security contractor for both ARCO and British Petroleum at Prudhoe Bay. Purcell ranks include a large number of people who formerly held command and management positions in Alaska law enforcement and corrections agencies. The establishment of a top quality work force from such a base of knowledge and experience would be, in our view, a very manageable task.

Another NANA entity that could provide services in a corrections setting is NANA/Marriott, our joint venture with the Marriott Corporation. NANA/Marriott is a premier services management contractor, with a diverse clientele that includes urban and remote site service to the oil industry, the Alaska Railroad, and many other facilities. NANA Marriott provides housekeeping, maintenance and food services. We believe the purchasing power that Marriott Corporation brings to the marketplace would help contain costs of operation.

Whether or not NANA is involved in the private corrections field, we believe this is a concept clearly worth exploring. I

should add that we well know Alaska Natives are represented in disproportionate numbers in the State's inmate population. NANA will support any legitimate effort to keep our prisoners not only in Alaska, but as close to traditional home areas as is possible. This might well necessitate the establishment of additional innovative corrections programs in rural Alaska.

I thank the committee for this opportunity to voice support for HB 428 and HB 429.



LEGISLATIVE INFORMATION OFFICE  
119 N. CUSHMAN, SUITE 101  
FAIRBANKS, AK 99701  
452-4448

DATE: 2/1/96

Please accept the enclosed original(s) of written  
testimony for the

House Judiciary (HB 428/429) teleconference scheduled on  
1/31/96.

A copy of this testimony was  
transmitted to your committee via fax.

Thank you,



# ALASKA STATE LEGISLATURE

PLEASE ENTER INTO THE RECORD MY TESTIMONY TO THE H. JUDICIARY  
COMMITTEE NAME

COMMITTEE ON HB 428/429 DATED 1-31-96  
BILL/SUBJECT

while I found these two bills interesting reading at best, I do want to address several key concerns that this legislation fails to address.

\* Public Safety & Liability The State of Alaska remains liable for all aspects of the operations of Correctional facilities/responsibilities. The public needs to be aware that this legislation does reduce the current requirements/training held by State Correctional Officers - Any contractor should be required to fully inform the public of their history and record in this field.  
\* Liability - Other language needs to be included.

\* Cost Savings & Economic Stability  
This legislation does not include a requirement to ensure a cost savings to the state. It <sup>could not</sup> can be devastating to the economy of other areas of the state.

\* State Employees While I applaud the sponsor for the inclusion of a job project labor agreement which is meant to secure decent working conditions and wages for the employees working on this  
(over)

SIGNED Kelly & Brown  
TESTIFIER

ASEA / AFSCME Local 52  
REPRESENTING (OPTIONAL)

315 BARNETTE, Fairbanks AK 99701  
ADDRESS/PHONE NUMBER

Construction of the facilities I find it disturbing and an insult to the 800 Alaskans, across the state, currently working within correctional facilities that the sponsor did not offer the same conditions on their behalf.

While some may think public employee bashing is appropriate on the campaign trail, it is totally inappropriate to be incorporated in legislation for the State of Alaska.

offer an alternative  
your review.

l  
ju

Legislation allowing for funding of feasibility studies of expansion possibilities to existing facilities across the state.

Thank you.

P.O. Box 1587  
Kenai, AK 99611  
January 31, 1996

House Judiciary Committee  
Alaska State Legislature  
State Capitol (MS 3100)  
Juneau, AK 99801-1162

Rep. Brian Porter, Chair

Dear Rep. Porter

We have reviewed HB 428 and 429 and feel that the communities of this State need a comprehensive explanation of what the Bills are expected to accomplish; what the true costs will be; what the impact upon the smaller prisons will be; if there are any long-term family impacts; and what the general emphasis of the State of Alaska is and will continue to be. The House Concurrent Resolution 19 dealing with the establishment of a TASK FORCE on CORRECTIONS must fit in somewhere.

Please schedule a hearing on this proposal (HB 428 & 429) in communities on the Kenai Peninsula so that our people will be able to give a fair judgement on whether or not to support these efforts.

Thank you,

*Joan Bennett Schrader*  
Joan Bennett Schrader  
State Vice President  
Coalition of Labor Union Women  
(907) 283-4359



cc: CLUW  
KFCUC



# Alaska State Legislature

Please enter into the record my testimony to the House Judiciary Committee  
 committee name  
 committee on HB 428/429 . dated 31 Jan 96  
 bill/subject

I am totally against any privatization  
 of Correctional facilities. The housing  
 and care of prisoners should remain in  
 full control of the state. Many other  
 states have tried private jails and it has  
 failed over and over. This is not the type  
 of job field that can or should be run for profit.

Signed: Sanger Bush  
 Testifier  
Self  
 Representing (Optional)  
P.O. Box 471 Kenai, Alaska 99611  
 Address  
262-4029  
 Phone No.



# Alaska State Legislature

Please enter into the record my testimony to the House Judiciary Committee  
committee name  
 committee on HB 128/429 . dated Jan 31, 1996  
bill/subject

I have been a correctional officer for 18 years, and I do not think privatization is a good idea. Especially from the stand point of the officers, and the private sector.

Signed: Philip Q. Harrison  
Testifier  
myself  
Representing (Optional)  
P.O. Box 3353 Kenai, Ak 99611  
Address  
907-283-9002  
Phone No.

My name is Mary Culter, I am a nurse at Smoky Creek Correctional Center. I have also worked at the Sitka Pioneer Home and have come to this hearing during my vacation because I honestly feel privatizing correctional facilities would be a mistake for some of the following reasons:

① Public safety would be at risk. Currently, the security personnel are a high quality individual, many with degrees, past experience in law enforcement or the military. Lower paid security personnel may be less intelligent than the criminals they are controlling.

② Privatization would not decrease costs, other institutions that have privatized have not realized decreased cost.

Mary Culter, RN



# Alaska State Legislature

Please enter into the record my testimony to the Judiciary  
committee name

committee on HB 428, dated 2/2/96  
bill/subject:

As has been stated previously private corporations have a historically bad reputation for reliability. What has not ~~been~~ brought up is the fact that however many beds facility is built the corp. is going to fill the beds either with prisoners from here or outside.

IT A lot of talk has been made on the salaries of training that has to happen if the staff of inmates is to continue, this is an expensive & not necessarily cost effective in the short range. I can not see anyone interested in profits, investing in any thing that was not ~~indirectly~~ directed towards this end.

Signed: A Mitchell  
Testifier

SELF  
Representing (Optional)

5 Chugach Ave Kenai Ak. 99611  
Address

Phone No.



# Alaska State Legislature

Please enter into the record my testimony to the House Judiciary  
committee name

committee on 428/429 dated 02/02/96

bill/subject

All Pretrial Facilities must be treated as Maximum Security because Arresting officers do bring in dangerous people and to think that Pretrial people are less dangerous shows a lack of understanding of the term "Pretrial".

The Arresting officer could pick up a simple DWI get him/her to pretrial and later we find out we have a Mass/serial Murder with multiple escape/assault history.

The "no-strike" portion seems only to apply to the construction and says nothing about operation.

Signed: William R. Parker

Testifier

Self

Representing (Optional)

Hc 1 Box 1418 Soldotna AK 99669

Address

907-262-7677

Phone No.



# Alaska State Legislature

Please enter into the record my testimony to the House Judiciary  
 committee name  
 committee on 428/429 dated 02/02/96  
 bill/subject

Part of the comments of feed back was that some correctional officers earn far above the base rate. This is logical when one considers that the staffing levels are short and many officers can learn/work much overtime. We in DOC have been short staffed for years and are now being condemned for the Legislatures past practice of not funding corrections. It makes as much sense as the Nazis condemning the Jews who survived at Buchenwald for surviving when the Nazis knew they were not providing enough food for a human being to live. Stab us in the back and wonder why we have a pained look on our faces.

Signed: [Signature]

Testifier

Self

Representing (Optional)

Ho 1 Box 1418 Soldotna AK 99689

Address

907-262-7677

Phone No.



# Alaska State Legislature

Please enter into the record my testimony to the HJUD  
 committee name

committee on HB 428 . dated 2-2-96  
 bill/subject

02-02-96

TO WHOM IT MAY CONCERN:

I JUST WANTED TO LET YOU KNOW THAT I AM TOTALLY AGAINST  
 PRIVATIZATION OF ALASKA'S PRISONS. I WAS BORN AND RAISED HERE IN  
 ALASKA AND I AM ONE OF THE FEW FROM MY HIGHSCHOOL CLASS THAT  
 RETURNED TO ALASKA TO LIVE AFTER COLLEGE. I HAVE A JOB THAT I  
 ENJOY WITH GOOD BENEFITS AND NOW YOU ARE TRYING TO LET SOME  
 PRIVATE ORGANIZATION COME IN AND TAKE OVER FOR HORRIBLE WAGES AND  
 BENEFITS, INSTEAD OF CUTTING THE BUDGET IN PLACES AND LEAVING US  
 ALONE. I DON'T SEE YOU TAKING MONEY OUT OF YOUR POCKETS. THANK  
 YOU FOR YOUR TIME.

SINCERELY,

SHERRIE BARLOW  
 CORRECTIONAL OFFICER II  
 WILDWOOD PRE-TRIAL

\_\_\_\_\_  
Representing (Optional)

\_\_\_\_\_  
Address

\_\_\_\_\_  
Phone No.



# Alaska State Legislature

Please enter into the record my testimony to the HOUSE JUDICIARY  
committee name

committee on HB 428, HB 429, dated 1-31-96  
bill/subject

I WOULD LIKE TO VOICE MY OPPOSITION TO THE ABOVE BILL YOU ARE NOW CONSIDERING. I WOULD LIKE TO POINT OUT SOME ITEMS OF INTEREST PRODUCED FROM WORKING PAPERS FROM MY UNION.

DOES IT REALLY SAVE MONEY: THE US GAO REVIEWED LITERATURE ON PRIVATIZATION. IT FOUND EVIDENCE REGARDING COST SAVINGS TO BE INCONCLUSIVE. A CCA OPERATION IN TENNESSEE WAS ONLY ABOUT 1% CHEAPER THAN ITS TWO STATE-RUN COMPETITORS. IN ONE INSTANCE IN TENNESSEE THE PRIVATE PRISON WAS FOUND TO OPERATE AT A 10% HIGHER COST THAN ITS STATE-RUN COMPETITOR. A US NEWS AND WORLD REPORT ASSERTS THAT OPERATORS OF PRIVATE PRISONS MAY END UP CHARGING MORE MONEY ON THEIR CONTRACTS TO COVER COSTS.

DO PRIVATE PRISONS PROVIDE BETTER SERVICE: IN A SEVEN MONTH PERIOD ENDING IN JANUARY 1990, SEVEN INMATES ESCAPED FROM CCA-OPERATED HERNANDO COUNTY, FLORIDA JAIL. CCA OPENED A NEW STATE PRISON IN TENNESSEE AND HAD EIGHT ESCAPES. IN 1985 AND 1986 CCA HAD MORE THAN FIFTY INMATES ESCAPE ONE OF ITS TENNESSEE WORK FARMS. THERE ARE MORE EXAMPLES, BUT WHY BOTHER.

STAFFING: CCA SLASHED STAFFING AT HERNANDO COUNTRY FLORIDA JAIL. THE ESCAPE OF SEVEN INMATES PROMPTED AN INVESTIGATION THAT IDENTIFIED DECREASED STAFFING AS A MAJOR REASON. AN INSPECTION OF A WACKENHUT-OPERATED MONROE COUNTY, FLORIDA JAIL FOUND THE CORPORATION IN VIOLATION OF STATE STANDARDS ON STAFFING. SERVED WITH A DEFICIENCY NOTICE WACKENHUT INCREASED STAFFING TO A LEVEL STILL BELOW STATE STANDARDS. WACKENHUT THEN BILLED THE COUNTY \$780,000 AND DEMANDED THE COUNTY PAY AN ADDITIONAL \$2.6 MILLION OVER THE FOUR-YEAR CONTRACT.

Signed: LARRY BROWN

Testifier

Representing (Optional)

PO BOX 1317, KENAI, AK 99611

Address

283-7164

Phone No.



# Alaska State Legislature

Please enter into the record my testimony to the HOUSE JUDICIARY  
 committee name  
 committee on HB 428, HB 429 . dated 1-31-96

**bill/subject:**

STAFFING CONTINUED: MONROE COUNTY RESUMED OPERATION OF THE PRISON. TURNOVERS OF NEWLY-HIRED CCA STAFF IS AS HIGH AS 56%. SOME CCA PRISONS ROUTINELY HAVE TURNOVER RATES OF 50 TO 90% OF NEWLY HIRED SECURITY FORCE. WHEN YOUR CUTTING CORNERS TO MAKE A PROFIT, MCDONALDS WAGES DO NOT FEED THE FAMILY OR DRAW LONG TERM DEDICATED EMPLOYEES. JOHN DONAHUE SUGGESTS IN PRISONS FOR PROFIT "EMPLOYERS WHO HIRE FROM THE PRIVATE-GUARD LABOR POOL PAY LESS MOSTLY BECAUSE THEY GET LESS: LOWER LABOR COSTS MEAN A LOWER-QUALITY WORKFORCE." A 1995 AUDIT COMPARED CCA RUN CLIFTON PRISON WITH TWO TENNESSEE STATE-RUN PRISONS. 214 INCIDENTS OF INJURIES OCCURRED OVER A FIFTEEN MONTH PERIOD AT THE CCA-OPERATED PRISON. THE TWO STATE-RUN PRISONS OF SIMILAR SIZE AND POPULATION REPORTED 72 INJURIES FOR THE SAME PERIOD. STAFF AT THE CCA PRISON APPLIED USE OF FORCE IN 30 INCIDENTS COMPARED TO 10 INCIDENTS FOR THE TWO STATE PRISONS OVER THE SAME TIME PERIOD. IS THE STATE READY TO PAY THOSE LAW SUITS? INVESTIGATORS IN KENTUCY FOUND THAT, "STATE OPERATED STAFF ARE SIGNIFICANTLY OLDER, BETTER EDUCATED, WORKED AT THE FACILITY LONGER, AND HAD WIDER EXPERIENCE THAN WAS THE CASE AT PRIVATELY-MANAGED PRISONS."

THERE IS MUCH MORE THAT NEEDS TO BE LOOKED INTO. PROGRAMS, EDUCATION, HEALTH SERVICES, ETC. FINDINGS IN THOSE AREAS WERE NOT SO GREAT FOR CCA OR WACKENHUT.

BUT IN CLOSING I WOULD LIKE TO ASK THE MEMBERS OF THE LEGISLATURE IF THEY HAVE THOUGHT ABOUT THE ALASKANS ALREADY WORKING IN STATE CORRECTIONS. OVER THE LAST SEVERAL YEARS THESE ALASKANS AND THEIR FAMILYS HAVE BEEN USED AS PAWNS IN LAY-OFFS, FACILILTY CLOSURES, BUDGET CUTS, ETC. WHAT ABOUT THEIR FUTURES, THEIR LIVES? IS ANYONE IN JUNEAU LISTENING? DOES ANYONE IN JUNEAU CARE ABOUT THESE ALASKANS!

Signed: LARRY BROWN

Testifier

Representing (Optional)  
 PO BOX 1317 KENAI AK 99611

Address

283-7164

Phone No.



# Alaska State Legislature

Please enter into the record my testimony to the JUDICIARY COMMITTEE  
 committee name  
 committee on CSHB428, dated 2-2-96  
 bill/subject

I would like to point out a single item that seems to be the most overlooked. I continue to hear the comparison of \$107<sup>00</sup> per bed in Alaska, and \$59<sup>00</sup> per bed in the private prison in Arizona.

Please note that this is not Arizona, nor any other state in the lower 48. - it is Alaska. Just living here costs more than in Arizona.

Also, the \$107<sup>00</sup> is, I believe, averaged across the entire Department of Corrections, not for specific facilities. As mentioned by Ken Brown, a sentenced bed at Wildwood is at \$69<sup>00</sup>, not \$107<sup>00</sup>. Much of it has to do with location, as it is the smaller facilities in places like Bethel, Nome etc. that drive the costs up. Even at the higher prices ~~there~~ there, they are needed. The private sector does not wish to operate in the higher cost locations, nor deal with the higher cost prisoners such as pre-trial, pre-sentencing and maximum custody. I do not believe the state facilities will be any more expensive than private.

Signed: Dale Long  
 Testifier

SELF  
 Representing (Optional)

# 5 CHALGACH AVE.  
 Address

282-9874  
 Phone No.

Ken Brown  
My mailing address is: 10 Chugach Avenue  
Kenai, Alaska 99611 776-8979

COPY OF ORAL  
TESTIMONY GIVEN  
TO HJUD ON 2-2  
TELECONFERENCE

RE: HB428 & HB429

I have worked for the Corrections Department in Alaska for more than 24 years. I am a member of the American Correctional Association since 1982 and a certified auditor for ACA since 1990.

- I am only speaking for myself and not the Department of Corrections.

The first thing that needs to be said is that Alaska has one of the safest corrections systems in the country. Every study we've ever had has come to that conclusion. We've never had an officer or an inmate killed in prison. The number of escapes is small compared to other state systems. Prison violence, while increasing, is still minimal compared to other states. The few hostage situations we've had were concluded without injury. Over the years we have developed an effective and professional work force in our prison system. We've never had a prison riot. To even mention the possibility of prison riot or hostage taking is received by some as a scare tactic, and yet riots and prison disturbances are a part of the corrections landscape in many systems. We have been fortunate. Maybe we're doing something right. This state needs to give a lot of serious thought before making major, and perhaps irrevocable changes, to a system that has proven itself to be a good one. If building a 1,000 bed private prison turned out to be a mistake, it would be a mistake that would be difficult to correct. You really need to think about that.

- Many of you are aware that the private sector already plays a significant role in government, including Corrections. The Department is presently spending millions of dollars for half-way house beds, medical services, guard hire, materials and supplies, food, substance abuse treatment, etc. This is one type of private sector spending, but making the leap from contracting for services to privatizing prisons is a radical change. Ultimately we would be privatizing the ability to use lethal force against inmates. This is analogous to a private police force and represents dramatic change in public policy. Such a step should not be taken lightly. The consequences could be profound.

Those promoting prison privatization can show you examples of well run private prisons, and those opposed can cite examples of failure, including cases that required the government to take over the prison after major problems, including riot. But there are State and Federal institutions that have gone up in smoke also. What the Committee needs to think about, however, is what is the State realistically prepared to do if a 1,000 inmate prison doesn't work, if there are major problems. If I'm dissatisfied with the quality of the potatoes I'm buying, I can switch vendors. If I'm dissatisfied with my contract substance abuse counselor, I can get a new one.

Buying and contracting for services, as we are doing now, can not compare to privatizing a 1,000 bed prison. The difference between what is being proposed in Alaska and what is happening in some other states, is the pure magnitude of the proposal. We presently have approximately 2,600 sentenced inmates in our system, and this bill is proposing a private prison to add 1,000 beds for a total of 3,600 and with room for expansion. Do we really want 1,000 out of 3,600 to be operated by the private sector? That's close to 30% of the sentenced beds. No other state that I'm aware of does it that way. I can understand a state like California with 50,000 inmates looking to the private sector for some small percentage of its beds, but it would be unlikely that they would want 15,000 beds in the private sector. From a percentage stand point that is what we would be looking at. Is our system big enough to warrant a private prison of this size? If this 1,000 prisoner unit failed in a way that threatened public safety or staff safety, there is no way this department could muster a corrections force to take over and run the prison. We wouldn't have the staff. We are having difficulty finding qualified staff right now.

Surely the State should wade into the private prison waters slowly and carefully. This bill, as crafted, would be like jumping in the ocean without a life raft. According to the bill the State would only be able to take over the prison on a temporary basis, no matter what happened. I think you have to think about worse case scenarios in this business because corrections is very serious. If this prison failed this state would not be prepared to take it over, even temporarily. It would be too big and require too many staff.

Remember what Sgt. Antrim said two days ago - the bill does not provide for maximum security space, in fact prohibits it, and therefore is not intended for pre-trial inmates. Any pre-trial facility must have maximum security space because police arrest dangerous people who must be housed in maximum security space. One of the big needs in the Alaska correctional system is pre-trial space and this prison would do nothing to help.

I am not sophisticated in matters of public finance but we all know that whoever builds a private prison expects to get their money back. And we are talking huge money, \$100,000,000 that the State will pay back through a rental obligation of no more than \$200,000,000. Isn't that a little like responding to the car dealer who says "Come on down, no payment or interest until next year"? This is not free. The State will pay, one way or another. Maybe the private sector is putting up the money, but only because the State will pay them back plus a profit. Why not ask the Department of Corrections what they think they need and what they could do with 100 million dollars? We've paid good money for some excellent studies showing what kind of beds are needed and where they are needed.

Whatever happened to the Master Plan of just a few years ago?

Nothing in this bill states that the cost of running the private prison must be less than

what it costs to run prisons under government control. WCC prison is operating at a cost of about \$69.00/day/prisoner. Many of the Department's prisons operate very efficiently. Some don't because they are small and isolated or have a large number of high security inmates. Shouldn't there be something in this bill that requires the private prisons to save money? How are they going to do that? The only significant category in which money can be saved is in personnel costs, because that's about 80% of the budget. Here are some Correctional Officer starting salaries:

Recruit (range 9)	\$12.35/hour
Correctional Officer I (range 11)	\$14.46/hour
Correctional Officer II (range 13)	\$16.37/hour

That doesn't include benefits, but we are having a hard time filling all of our positions with qualified people right now. How could the private sector do any better at a lower wage? If you think that's too much money I challenge you to spend 3 or 4 hours on a Friday night at the 6th Avenue jail and see if you'd like to do what these officers do for what they get paid.

I note that "nothing in this Act precludes operation of the correctional facility by a private third party contractor composed of persons employed by the Department of Corrections". Wouldn't it be a monstrous conflict of interest for a Corrections employee to be involved in contracting as a private prison contractor?

I hope I've given you some issues to think about. There might be a place for privately run jails or prisons in Alaska, but surely not at the magnitude being suggested.



ALASKA STATE EMPLOYEES ASSOCIATION  
AFSCME Local 52, AFL-CIO

January 31, 1996

Representative Brian Porter, Chair  
JUDICIARY COMMITTEE  
State Capitol, Room 118  
Juneau AK 99801-1182

RE: HB428 and 429, January 31, 1996, ASEA/AFSCME Local 52  
Testimony

Dear Representative Porter:

Thank you for the time and opportunity to present ASEA/AFSCME Local 52's considerations and concerns at today's Judiciary Committee hearing. We appreciate your efforts at allowing us to testify on this very important policy shift being considered by your committee.

Enclosed you will find a copy of the testimony of Mr. Russ Clemmons, an AFSCME International Labor Economist who is a recognized specialist in the area of government privatization; similarly, you will find a copy of the testimony of Mr. Marc Antrim, a Correctional Officer III at the Lemon Creek Correctional Facilities; and, finally, you will find a copy of the testimony of Mr. Gary Sampson, a Correctional Officer II at the Spring Creek Correctional Center in Seward.

We thank you for your attention and consideration and stand ready to provide you with any information that the Committee would like to have regarding the issue of building a private prison in Southcentral Alaska.

Sincerely,

Charles L. O'Connell  
Business Manager  
ASEA/AFSCME Local 52

CLO/bhc  
enclosures (3)

ANCHORAGE OFFICE

3510 Spenard Road, Suite 201  
Anchorage, AK 99503  
(907) 277-5200 FAX (907) 277-5206  
TOLL free: 800-478-ASEA

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FAIRBANKS OFFICE

315 Barnette Street, Suite 104  
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## EXCERPTS OF TESTIMONY

LEGISLATIVE TELECONFERENCE 1/31/96 and 2/2/96

RE: HB428 AND HB429

DAY 1

(Tape 1, R0770, 2:40 p.m.)

## TESTIMONY OF RUSSELL CLEMMONS, AFSCME INTERNATIONAL

CHAIRMAN PORTER: I would like to go next to Juneau here and ask a couple of people at the top of the list to testify perhaps another point of view. Could we ask if Russ Clemmons is available to come forward.

Russ, welcome. Could you give us your name and affiliation for the record and your testimony, please.

CLEMMONS: My name is Russell Clemmons. I work as a Labor Economist for the Department of Research and Collective Bargaining Services for the American Federation of State, County, and Municipal Employees (AFSCME), which is the national union for ASEA Local 52 here in Alaska.

Mr. Chairman, Members of the Judiciary Committee, I want to thank you on behalf of the one million members of AFSCME and the 75,000 State Correctional Officers that we represent, for the opportunity to speak here today on this proposed legislation.

The issue of prison privatization, as you may suspect, is one that concerns us because of its implication for public policy. The appeal of prison privatization is an alluring yet beguiling one. In theory, it is a relatively simple proposition: "build cells, cut costs, and we pass the savings on to government." In reality, however, belies the simplicity of the theory.

The twin imperatives of cutting costs and filling cells translates, most often, into cutting corners in the operation of a prison, both of which has severe consequences that have manifested themselves in several ways, and which ought to be of concern to you

1 as members of this committee, as a Legislature as a whole.

2 The problems with security and escapes have characterized  
3 private-operated prisons from the beginning. AFSCME has not been  
4 the only one that has questioned the consequences of prison  
5 security of introducing the profit motive into the management and  
6 operation of prisons. Five men, including one charged with  
7 stabbing a woman to death, escaped from the privately operated Bay  
8 County, Florida, Jail. The reporters at the St. Petersburg Times  
9 raised concern about privately operated prisons: Will a private  
10 company supply adequate staff to maintain institutional security.  
11 Will it have enough manpower to prevent escapes?

12 Others have expressed concern about the wisdom of  
13 privately operated prisons, especially when it comes to security.  
14 In fact, a much weighted audit of the privately operated South  
15 Central Tennessee Correctional Center (SCCC), comparing it with two  
16 state-operated prisons, found that 214 incidents of injuries  
17 occurred at SCCC during a 15-month period; whereas, 72 such  
18 incidents occurred at the two state-operated facilities combined.  
19 Actually, security problems characterized this prison from its  
20 beginning.

21 Between March of 1992 and April of that year, eight  
22 escapes occurred at the prison, which also had other security  
23 problems, ranging from finding an inmate with a handgun during a  
24 routine search, and inmates begin inebriated in their cells. These  
25 experiences prompted the Memphis Commercial Appeal to comment as  
26 follows, "Tennessee's experiment with a privately operated medium  
27 security prison looked lean and clean when reporters and officials  
28 toured the new South Central Correctional Center. The problems  
29 arrived with the prisoners. In view of the imperatives driving  
30 prison privatization, these problems ought to come to no surprise,  
31 since among the costs private corporations seek to cut are  
32 staffing, which accounts for approximately 60 percent of the

1 operating costs of a prison."

2           Corrections Corporation of America slashed staffing by 17  
3 percent of the Hernando County, Florida, Jail when it assumed  
4 control of the facility. Inmate escapes in 1990 prompted the  
5 County Commissioner to a cost and inspection by the national  
6 Institute of Corrections, an agency within the United States  
7 Department of Justice. The NIC identified understaffing as the  
8 major problem at the jail and recommended that additional  
9 Correctional Officers be hired. However, the comments of the Jail  
10 Administrator (which is comparable to a warden or a superintendent)  
11 officer, I think, a valuable insight into a corporation's  
12 perspective regarding staffing a prison: "The County can agree  
13 with adding guards, if they want to," the Administrator asserted,  
14 "but that means the price of poker goes up, as far as you are  
15 concerned."

16           Viewed from that perspective, it ought not be surprising  
17 when one of the players folds and walks away from the game.  
18 Shortly after Wackenhut Corrections Corporation assumed control of  
19 the (inaudible) County, Florida, Jail in 1990, the county and the  
20 state inspector informed the corporation that the state had  
21 previously ordered eleven security posts staffed. Served with a  
22 deficiency notice, the company increased its manpower to a level  
23 that remained below state requirements. The company then billed  
24 the county for an extra \$780,000 and demanded it would take an  
25 additional \$2.6 million to perform the four-year term to contract.  
26 The county refused, insisting that the corporation should have  
27 known about the state's staffing requirements. Wackenhut  
28 terminated the contract.

29           The loss of control is a danger when any public service  
30 is privatized. When the function is essential to public safety, as  
31 the Corrections System, the consequences are potentially ominous.  
32 Yet, the drive to fill cells -- which is the other imperative by

1 which private corporations make money -- can have such  
2 consequences.

3 A few years after having been awarded a contract to  
4 manage and operate the Hamilton County, Tennessee, Penal Farm, the  
5 Corrections Corporation of America notified county officials that,  
6 because of overcrowding at the facility, it would no longer  
7 indemnify or insure the county against lawsuits. We must speculate  
8 the county attorney responded that, "Your action is a ploy to  
9 coerce Hamilton County officials into constructing additional  
10 facilities for the housing of the overflowing state prison  
11 population, so that CCA may continue to reap monies for housing  
12 these prisoners. If this position of the company is not reversed  
13 or clarified without exception, we will have no recourse but to  
14 consider this an act of default and consider remedies, including  
15 contract termination."

16 Neither the Sante Fe County Commission nor the County  
17 Sheriff were notified when the corporation operated the county jail  
18 imported 54 inmates from the State of Oregon, to fill cells at that  
19 facility. As things turned out, their backgrounds were not quite  
20 what the community had been led to believe. None of the inmates  
21 were supposed to have been convicted of a crime more serious than  
22 armed robbery. In reality, the group included 11 murderers, 17  
23 rapists, and 2 kidnappers. County officials asked that the inmates  
24 be returned to Oregon. But only when threatened with the loss of  
25 its contract did the company operating the prison agree to do so.

26 I would be remiss in my responsibilities as a  
27 representative of AFSCME if I did not address the impact of prison  
28 privatization upon employees.

29 Available information indicates that corporations pay  
30 wages that are 6 to 19 percent lower and provide fewer benefits to  
31 Correctional Officers than public jurisdictions.

32 "But isn't this a good idea?" you may wonder, because it

1 means lower costs and thus savings for taxpayers. Not necessarily,  
2 for at least a few reasons.

3 John Donahue, who has been a Professor of Public Policy  
4 at Harvard University notes in Prisons for Profit: Public Justice,  
5 Private Interests that "Low wages comprises the quality of the  
6 Correctional Officer labor force. Public Correctional Officers,"  
7 John Donahue writes, "are more likely to be high school graduates  
8 who work full-time, year-round in their jobs and to be of prime  
9 working age. The employers who hire the private guard labor will  
10 pay less, mostly, because they get less. The lower the labor cost,  
11 the lower quality of labor force."

12 A study by the Urban Institute, comparing a privately  
13 operated and a publicly operated prison in the State of Kentucky  
14 confirms that staff of the state-directed institution were  
15 significantly older, better educated, had worked with the facility  
16 longer, and had wider correctional experience than the personnel of  
17 the privately managed prison. Staff qualifications, the report  
18 concluded, favor better performance from the publicly managed  
19 facility. So perhaps you might wish to consider this.

20 Public employees are also citizens and taxpayers. We  
21 spend our earnings in the communities where we work, we purchase  
22 homes there, we bank there providing a pool of money with which to  
23 lend others, we buy our cars there, and we support the numerous  
24 small businesses that constitute the fabric of community life  
25 throughout Alaska. Put another way: Our money stays in the  
26 community; it doesn't go out of state and contribute to the profits  
27 of others.

28 Secondly, after all is said and done, after corners have  
29 been cut, staff reduced, accountability jeopardized, and paying  
30 lower wages and fewer benefits, has prison privatization really  
31 saved money for public jurisdictions?

32 After reviewing the literature on this issue, the United

1 States Government General Accounting Office (the GAO), an  
2 independent agency that analyzes federal programs for Congress,  
3 found that the evidence is inconclusive. Hardly a resounding  
4 endorsement. In fact, a 1995 Tennessee audit, comparing the  
5 privately operate medium-security prison with two of the state's  
6 publicly operated prisons, found negligible savings. Impartial  
7 observers have begun to question whether privately operated prisons  
8 actually save money. "It is not easy to make a profit in that  
9 business, so they have got to cut corners any way they can " says  
10 Dennis Colombo, Criminal Justice Professor at Arizona State  
11 University. "Private prisons may well cost more in the long run,  
12 not only in terms of taxpayer money but also in the health and  
13 safety of prison staff and other law enforcement officers."

14 At the very least, the serious doubts regarding the  
15 efficacy of privately operated prisons ought to be of sufficient  
16 concern, requiring a feasibility study pertaining to the  
17 applicability of this idea to the State of Alaska. Such a study,  
18 it would seem, would be essential before a policy decision is made  
19 to privatize a prison; yet, the proposed legislation that you have  
20 before you contains no provision for such a study.

21 The failure to privatize does not necessarily preclude  
22 the state from addressing its problems regarding overcrowding. The  
23 construction of a mega-facility is proposed in the bill may not  
24 necessarily meet the needs of the entire state in this regard, as  
25 some of our members can probably tell you, when they have the  
26 opportunity to speak before you this afternoon. In view of a  
27 system that has been developed around the idea of regionalization,  
28 it may make more sense to consider the expansion of existing  
29 facilities, which may also prove less expensive.

30 Thank you very much, Mr. Chairman, for the opportunity to  
31 speak.

32 CHAIRMAN PORTER: Any questions?

1           REP. TOOHEY: If you had your druthers, would you  
2 rather send the overcrowding outside or would you rather build --  
3 have a private development?

4           I mean, supposing those were the only two issues.

5           CLEMMONS: The way you state the question,  
6 Representative Toohey, is an interesting one. I think there are  
7 some possible alternatives between each extreme that you state.  
8 One of them, I think, as I have suggested: It may be possible to  
9 construct on to additional facilities.

10          REP. TOOHEY: That wasn't the question.

11          CLEMMONS: I know, ma'am, but --

12          REP. TOOHEY: The question was, if you had your  
13 druthers?

14          CLEMMONS: I guess I don't accept the two extremes  
15 by which you state that.

16          CHAIRMAN PORTER: Representative Green.

17          REP. GREEN: Thank you, Mr. Chairman.

18          You indicated that one of the ways it might ultimately be  
19 cheaper would be to segment the funds to expand existing  
20 facilities, rather than have one facility?

21          CLEMMONS: I didn't use the word "segment,"  
22 Representative Green.

23          REP. GREEN: Would that be what it does, if you  
24 break up the funds to various places?

25          CLEMMONS: I'm saying --

26          REP. GREEN: Perhaps I should use some other word.

27          CLEMMONS: Perhaps.

28          REP. GREEN: In other words, you are suggesting,  
29 though, that it would be better, perhaps, to expand the existing  
30 facilities --

31          CLEMMONS: Maybe. It may be something that you  
32 might want to consider.

1           REP. GREEN:   What I am getting at is, we keep  
2 hearing the reason that we spend so much here, one of the reasons,  
3 that prison inmates cost so much here is because of the economy of  
4 scale. And it seems to me that what you are suggesting would be in  
5 opposition to that. Do you care to comment on that?

6           Is that a viable alternative, to expand existing  
7 facilities?

8           CLEMMONS:   It may be. We would be more than willing  
9 to work with you and look at the numbers.

10          REP. DAVIS:   I have a question.

11          CHAIRMAN PORTER:   Representative Davis.

12          REP. DAVIS:   Thank you very much.

13           I don't know if you can answer this, but I guess in your  
14 experiences, because of your traveling all over the United States,  
15 you must go and testify a lot on issues that have to do with  
16 privatization of institutions. And can you tell me, when you go to  
17 these places, is it usually to testify on an existing bill that is  
18 already there or is it something that you go to try to help them  
19 set up, looking at where they should go private or should they  
20 remain the way they are, and what is the time line when you are  
21 dealing with that?

22           I know that at some point we have to look at some of  
23 these things. I'm not really sure what the Administration is doing  
24 and where they are on the scheme of things, of trying to find out  
25 what we are going to do about new facilities.

26           But can you just sort of sum of for me some of your  
27 experiences?

28           CLEMMONS:   Usually, Representative Davis, it's the  
29 former; that is, we are asked to testify on a piece of proposed  
30 legislation. And the process of doing that, we would like to  
31 suggest perhaps some alternatives, suggest --

32           I think the way the debate is usually framed on this

1 issue is that, "We've got a problem; therefore, we must privatize."  
2 And I guess what I am trying to say here is, I think there may be  
3 a range of alternatives, that privatization very often is a knee-  
4 jerk reaction, quite candidly. And I think there is a range of  
5 alternatives, including, you know, let's keep -- if you are going  
6 to build -- if it is necessary to build an existing facility, then  
7 let's look at ways we can keep that facility public.

8 I don't necessarily subscribe to the idea that efficiency  
9 and cost savings are the sole prerogative of the private sector.  
10 I think public management can be as innovative -- I think I heard  
11 a term described by one of the previous commentators or presenters  
12 about innovation and creativity. Well, public management and  
13 public employees can also be creative and innovative. That is not  
14 the sole prerogative of the private sector.

15 CHAIRMAN PORTER: Thank you, Russ.

16 CLEMMONS: Thank you.

17 (end of excerpt/bhc)

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## EXCERPTS OF TESTIMONY

LEGISLATIVE TELECONFERENCE 1/31/96 and 2/2/96

RE: HE428 AND HB429

DAY 1

CHAIRMAN PORTER: Could I ask -- Marc Antrim?

TESTIMONY OF MARC ANTRIM, COIII, ASEA/AFSCME Local 52

(Tape 1, R1309, 2:55 p.m.)

CLEMMONS: Marc, welcome.

ANTRIM: Thank you very much, Chairman Porter, for allowing me the opportunity to speak.

My name is Marc Antrim. I am a Correctional Officer III, a Sergeant at Lemon Creek Correctional Center. I have been a Sergeant for about six years, a Correctional Officer for 13.

I want to start by saying that Correctional Officers across the state applaud the Legislators' efforts the last few years, passing stronger laws with stiffer sentencing. We collectively believe that, you know, these laws are going to have a very positive effect on public safety in the state, and basically make Alaska a safer place for everybody to live.

However, I've got to tell you, House Bills 428 and 429 we see as a mistake. What we have here is a collision, a head-on collision, of two very basic values in our society: private enterprise and public safety. The big value, the most prime value in private enterprise is, really, "What is the bottom line?" Unfortunately, you are talking public safety. The bottom line is a very tough thing to get at.

These bills, as I see them anyway, are kind of a fiscal shell game. It costs the Department of Corrections \$105 per day, Representative Mulder just testified it was \$107 -- and I will take him at that. That is a large amount of money, a lot of money. However, it is also a pretty honest figure as we see it.

1           House Bill 429 states that it will only hold male and  
2 female prisoners that have been classified. Okay, so basically  
3 here is what you're not going to get for your \$100 million: This  
4 new prison won't be a booking facility. That is what Anchorage is  
5 screaming for. This won't do it. Booking facilities processing  
6 people into our system is very expensive. You've got all kinds of  
7 unknown factors that contribute to that expense. You've got to be  
8 finger-printed. These people have got all kinds of drug problems,  
9 diseases, people detoxing, fighting. I mean, go down to Sixth  
10 Avenue sometime and just spend the evening down there and you will  
11 see exactly what I am talking about. This affects the bottom line  
12 in a very big way. You know, CCA or Wackenhut, they are not going  
13 to want to get into this. This is not what their intent is here.

14           Conversely, too, this new prison probably is not going to  
15 handle anything that has anything remotely to do with pre-trial  
16 operations, like Cook-Inlet or like any of the other facilities  
17 around the state that handle this function. Pre-trial people, they  
18 break into the system, their lives are over for an extensive period  
19 of time; they need special services. They need a lot more  
20 visiting time. They need a lot of visits with their attorneys.  
21 After every visit with their family members or after an attorney  
22 visit, they need to be strip-searched. This is a very work-  
23 intensive kind of thing.

24           These folks, they are not going to be interested in  
25 providing this service to us. Again, it affects the bottom line.

26           House Bill 429 stipulates directly that this is not going  
27 to house maximum security prisoners. Well, there is pretty sound  
28 reasoning behind that. These people break a lot of things. There  
29 is assault of the staff, there is assault of the other prisoners.  
30 We have to house them in single cells at Lemon Creek, and they have  
31 to do the same thing down at Spring Creek in Seward because they  
32 are so dangerous to be around; hence the term, "maximum security."

1 Well, these folks aren't going to be interested in doing  
2 that, either.

3 This facility probably won't house any prisoners that  
4 require any special services. So our wing at Cook-Inlet, for  
5 example, it houses prisoners of special needs; for instance, mental  
6 health. You are not going to see something like here because,  
7 again, it is very, very expensive.

8 The bills say they are going to house female offenders;  
9 but, I think when they really take a look at that, they are going  
10 to try to get away from that as quickly as they can. Because, what  
11 we've found at Lemon Creek (now being designated as the long-term  
12 sentence female facility for the state), women have got a very  
13 different set of needs than do long-term male offenders; and we've  
14 found it is very expensive to manage those needs. So I think you  
15 will probably find them dumping this very quickly, if they even get  
16 into it at all.

17 The facility -- one aspect I think you will find, too,  
18 that's very unique (as we found with Arizona that was operated by  
19 CCA), anybody that gets out of line or is for any reason  
20 unmanageable, well, guess what they do? They go back to "the real  
21 prison." Okay? They ship them back. I think the figure is at 25  
22 to 30 people right now that they shipped back for a variety of  
23 reasons.

24 So basically what we have here, probably in addition to  
25 along the way, all the medical expenses are being picked up by the  
26 state, all the transportation expenses (to and from the Arizona  
27 facility, for example) are being picked up by the state or the U.S.  
28 Marshall Service.

29 And imagine, if you will -- at Lemon Creek, which is  
30 where my experience has been, we run two to three medicals per day  
31 from that facility. using our Prisoner Transportation Officers, to  
32 local medical service providers in the city -- imagine, if you

1 will, how many medicals are going to have to be run for a thousand-  
2 bed facility. You are talking probably close to 100 a day, maybe  
3 50 a day, for x-rays, these kinds of things. It's staggering.

4 Basically what this will do is just shift all these  
5 costs. All these things have to be done. People have got to be  
6 booked, there is going to be maximum security prisoners. All these  
7 costs are going to be shifted off of this new private facility,  
8 right back onto the state. So what is going to happen to our cost-  
9 per-day figure? It is going to go higher. It's a losing  
10 proposition.

11 So what we end up with here is basically a facility with  
12 1000 beds in downtown Anchorage that doesn't do anything we need it  
13 to do.

14 What we would like to propose, I think, is several  
15 smaller capital construction projects, site-managed, I guess, if  
16 you will, the construction at existing facilities around the state  
17 that put the beds where they need to be. Because, part of the  
18 reason we have to transfer people around all the time is for  
19 release, and this kind of thing. Your savings in doing that is  
20 lower overhead: you only have to build one kitchen. Your kitchen  
21 already exists at Lemon Creek. If you add another 30 or 40 beds,  
22 that is an expense you don't need to deal with; and staff can  
23 absorb those kinds of increases very easily.

24 I guess all this is really secondary, though. I guess  
25 the fiscal impact of these proposed bills are secondary, to me, in  
26 terms of the risk to public safety that this facility poses. All  
27 the concrete, razor wire, bars, electric gates, we've got  
28 spotlights, searchers, electric sensor systems, all these things,  
29 are really secondary to a good staff.

30 A good staff working inside your prisons keeps things  
31 from getting out of hand inside. It keeps escapes from happening.  
32 What this bill does is allow a private corporation to staff a

1 prison with private security guards. Private security guards do a  
2 real good job of patrolling the shopping malls; but, as I am sure  
3 it not too big a stretch of your imagination to understand,  
4 shoppers and kids running through a mall are a whole lot different  
5 than prisoners walking down a security hallway, convicted felons.  
6 I mean, it's apples and oranges there.

7 As I understand it, these private security guards, as  
8 Representative Mulder says, are going to meet the Police Standards  
9 Council, they will have the same standards we do currently. I  
10 don't see how it is possible, frankly. I don't see it.

11 We've got a number of open positions right now we  
12 couldn't fill if we wanted to. We've got, I think, 30 to 40  
13 positions, something in that neighborhood. I know our facilities  
14 are all grossly understaffed right now, and it is not because we  
15 don't want to fill the positions. People are just not there. We  
16 start out with a group of 150 people when we decide to have an  
17 academy, and we will be lucky if we can get 25 to actually qualify  
18 to go through this thing; because, right now new COs are -- a  
19 person wanting to be a CO has the same standards as a person  
20 wanting to be a police officer. They have to undergo an extensive  
21 background check, they've got to pass a mental health screen --  
22 well, a whole battery of psychological testing. Then, they get to  
23 do an interview. If they pass the interview, we recommend them to  
24 go to the academy. They get through the six-weeks basic academy,  
25 they are sent to a facility where they have to go through a three-  
26 month Field Training Officer Program. If they get through that,  
27 they have to go on and complete a one-year probationary period.

28 We got to this system for a reason. What we are talking  
29 about in this bill is going back to something where we are  
30 basically hiring people off the street. Although the bill says  
31 that the standards will be the same, we cannot find people that  
32 meet those standards now and I don't know where we are going to

1 find another 300 people to staff a 1000-bed facility. I just don't  
2 see it.

3           Essentially, I guess behind all these, too, is the State  
4 assume all the liability for this place. I've got a good friend  
5 who is in insurance; he's an insurance adjuster here in town. He  
6 did a scan on the data base around the country and found that none  
7 of these places are currently underwritten by a major insurance  
8 operation. They are all self-insured, using their own assets; or,  
9 which is generally the case, the government agency they work for  
10 assumes the liability for them. That is something we need to  
11 consider here. Because, when you pay less, you do get less.  
12 Turnover is going to be high.

13           I guess we have to ask: Are these private security  
14 guards going to jump in and break up fights inside the facilities?  
15 And if they don't, is the state going to be sued because they  
16 don't?

17           Are they going to be willing to terminate escapes?  
18 Really think about what that means. Are these people going to  
19 shoot somebody that is trying to get over the fence? I mean, are  
20 they really willing to do that for eight bucks an hour, ten bucks  
21 an hour, fifteen bucks an hour with no benefits? I don't know. I  
22 mean, what kind of people are you going to attract to do this job?

23           I guess in closing, you've got a lot of staff members to  
24 work for you on this committee. Please ask them to do some  
25 research. Okay? Don't just -- Wackenhut and CCA will paint a  
26 very, very good picture of these facilities. They will do a good  
27 selling job on you, and I know they've got a lot of good  
28 information out there. They do have a lot to offer. But what I  
29 would ask you to do is to do some research through the periodical  
30 indexes, check out the newspapers of towns where these facilities  
31 exist right now and see what these people have to say. I think you  
32 will find what I've read so far -- and I've read just a little bit

1 -- is that the citizens in these places are very, very concerned.  
2 They are concerned about staffing, they're concerned about escapes.  
3 These aren't just concerns about what if, what might happen. These  
4 things have happened there. They have had a lot of violence in  
5 these places because they are understaffed, experience is lacking.  
6 I guess this is all I can ask.

7 Thanks very much for your time. Do you have any  
8 questions?

9 CHAIRMAN PORTER: Marc, thank you very much.  
10 Representative Bunde?

11 REP. BUNDE: Thank you.

12 Just correct my assumption if it is wrong. I understand  
13 your concerns about not booking and pre-trial and about women and  
14 this raising the costs. Did I understand, then, that if you as a  
15 state employee worked at a state facility that didn't do those  
16 things, that then that cost would come down?

17 ANTRIM: Absolutely, absolutely. You bet, you bet.  
18 Because, what you're looking at is, a \$107-figure is an average of  
19 what it costs all our facilities. Obviously, it is more expensive  
20 out in Bethel to operate.

21 At Lemon Creek, for example, we just did a recent study  
22 as part of a new program we started out there. We found it was \$77  
23 a day to house at Lemon Creek, and that is totally inclusive of all  
24 these various things, medical costs being probably the largest  
25 component, and transportation. You know, these expenses are  
26 static. This \$59 a day that we're paying in Arizona, that doesn't  
27 cover it. Okay? It does not cover it.

28 CHAIRMAN PORTER: If that all, Representative Bunde?

29 REP. BUNDE: You also mentioned, eight, ten, fifteen  
30 dollars an hour and that you have a gap. What would you have to  
31 offer as a wage to fill that gap?

32 ANTRIM: I would have to offer -- I don't want to

1 slide out of the question. I would have to say you would have to  
2 offer whatever it would take to get people of caliber, of quality.  
3 I mean -- I guess I have to look to the people we turn down to fill  
4 the positions we have now. I mean, apparently the idea here is  
5 that we are so grossly overpaid that we're just a big white  
6 elephant that needs to be eliminated. Why do we have so many open  
7 positions? I guess that is kind of the rhetorical thing I want to  
8 ask here. I mean, it's not because we don't want to fill these  
9 positions. Believe me, our staffs are so overworked. I mean, we  
10 want to get people into these spots, but the folks are just not  
11 there in the community.

12 And I think it is responsible for us to have this --  
13 people around the state like these standards because it eliminates  
14 a lot of things, the potential for prisoner abuse. I mean, we've  
15 got gun towers at our facility. You don't want somebody that is  
16 less than totally stable handling a .38 rifle. I'm sorry, that's  
17 just not a good picture. Okay?

18 So I guess I would want to pay whatever it would pay. I  
19 think we're there right now. I think we're there right now.

20 REP. BUNDE: I certainly don't want your job; I  
21 understand. They would have to pay me a great deal to do that.  
22 But again, the positions are unfilled, but yet you say you are at  
23 that level now. So does it need another \$5 an hour? What does it  
24 need?

25 ANTRIM: I don't know. I honestly can't answer.  
26 Sorry.

27 CHAIRMAN PORTER: Representative Toohey?

28 REP. TOOHEY: Thank you.

29 Would you give the approximate salary of a level-entry  
30 guard at one of the facilities -- at Lemon Creek, after training.  
31 What is the base entry salary?

32 ANTRIM: Uh --

1 REP. TOOHEY: Please answer my question. Nobody  
2 seems to want to today.

3 (Laughter)

4 ANTRIM: I want to, okay?

5 (Laughter)

6 I want to answer.

7 It's a Range 13, is what it is.

8 REP. TOOHEY: Range 13.

9 FROM THE COMMITTEE: You can look it up in the  
10 salary schedule.

11 REP. TOOHEY: That's what I say, I don't have the  
12 book.

13 ANTRIM: It's a Range 13 on the Correctional Officer  
14 schedule.

15 REP. TOOHEY: A Range 13.

16 FROM THE COMMITTEE: It's a different scale from  
17 ours.

18 FROM THE COMMITTEE: Oh, it is a different scale  
19 than ours?

20 ANTRIM: It's a Range 13, and it is on an 84-hour  
21 workweek. So it is --

22 FROM THE COMMITTEE: It's different, the workweek?

23 ANTRIM: Yes.

24 FROM THE COMMITTEE: You're not talking about a  
25 whole lot of money.

26 ANTRIM: I think it's about 13 or 14 bucks an hour.

27 CHAIRMAN PORTER: Maybe you guys can come up with  
28 that information and pass it along?

29 ANTRIM: Oh, absolutely. I can forward that to all  
30 your offices.

31 CHAIRMAN PORTER: Let me -- before we have anymore  
32 questions -- let me just tell the audience and the people on the

1 teleconference that it is past the time this committee runs  
2 already, and I have convinced my members to stay here till 3:30,  
3 which is a half an hour into other commitments, including mine and  
4 Representative Green's; but we will do that. But that is far as we  
5 can go today. We will continue Friday with this one, since we are  
6 on such a roll. And, hopefully, anybody that can be with us on  
7 Friday that isn't able to testify today can do that.

8 Representative Green, go ahead and ask one more question.  
9 But what I am going to ask after that is, if there is anybody here  
10 in Juneau that is here from out-of-town to testify on this bill --  
11 after this question -- please raise your hand and I will try to get  
12 you in and out so that you can go.

13 REP. GREEN: You mentioned -- and I am sure this can  
14 be accomplished -- the difference between the cost that is being  
15 shown for incarceration now out-of-state and what the additional  
16 medical and transportation, what that boils down to. Was that like  
17 a five-dollar or a fifteen-dollar bid, some rational number that we  
18 could add onto shipping them outside?

19 I know you may not have it now, but can you get that for  
20 us?

21 ANTRIM: I can probably get that for you, yes, I  
22 could. Yes, Representative Green.

23 REP. GREEN: We've been doing it, so --

24 ANTRIM: Yeah, okay. I will try to get that to you  
25 as soon as I can.

26 REP. GREEN: Okay.

27 ANTRIM: Thank you again.

28 CHAIRMAN PORTER: Marc, thank you very much.

29 (end of excerpt/bhc)  
30  
31  
32

## EXCERPTS OF TESTIMONY

LEGISLATIVE TELECONFERENCE 1/31/96 and 2/2/96

RE: HB428 AND HB429

DAY 1

(Tape 1, R2587, 3:25 p.m.)

CHAIRMAN PORTER: Okay. We've got ten minutes. What I will try to do is ask -- go around the state here, and in ten minutes ask if you could just keep your comments to about two minutes. And we will first start just at the top of my list, we have Gary Sampson in Seward.

Gary, are you still there?

SAMPSON: Yes, I am.

CHAIRMAN PORTER: Gary, could we have your testimony and your affiliation, please.

## TESTIMONY OF GARY SAMPSON, COII, ASEA/AFSCME Local 52

SAMPSON: Yes. My name is Gary Sampson. I am the Corrections Representative for the Alaska State Employees Association.

The introduction of these bills is a cause of great alarm for us, and should be for all citizens of the state. As we see the costs of prisons' operations rising everywhere across the country, we realize that there is no quick, cheap fix for correctional problems. The desire to cut costs, however, should not be, cannot be the primary concern of Corrections. Quality of service, safety and security must be the primary concerns.

I've traveled throughout the country talking to Correctional officials and I am confident to state that the quality of service provided by the Alaska Department of Corrections is the best in the country. They operate a safe, secure prison system, which is free of corruption, and treat the prisoners humanely, and has a very high caliber employee. It is doubtful that this

1 standard will be matched by any private company. Incidents in  
2 private facilities across the country require that you look beyond  
3 the pie-in-the-sky sales pitches of private corporations. You need  
4 to look at the facts.

5 Throughout the country it has been noted that privately  
6 run facilities are frequently compromised on security in an effort  
7 to maximize profit. Since labor makes up about 60 percent of the  
8 operational costs of a correctional facility, reducing staff and  
9 limiting training seems to be a vital part of the strategy of  
10 private corporations that operate prisons. There are often  
11 dramatic increases in escapes and assaults in privately run  
12 facilities. This is caused by the lack of sufficient, well-trained  
13 and competent employees, again in an attempt to increase profits at  
14 the public expense. It is not possible to reduce labor cost  
15 without debasing the quality of the workforce and, with it, the  
16 conditions of confinement for prisoners. In an effort to reduce  
17 costs, inmates services are cut, often in violation of the  
18 contracts which they have made with the state. These programs are  
19 often essential for the reformation of prisoners. Many times,  
20 inmate medical services have been cut, which have led to many  
21 lawsuits.

22 On top of all this is the basic fact that there is little  
23 evidence that a privately run facility saves any money over a  
24 publicly run facility. Numerous studies by the National Institute  
25 of Justice, the National Institute of Corrections, the General  
26 Accounting Office among others, have concluded that there were no  
27 significant savings in going private. And in fact, many private  
28 prisons may well cost more in the long run, not only in dollars but  
29 also in the health and safety of prison staff and other law  
30 enforcement officers.

31 Remember that the primary purpose of Corrections is to  
32 provide a public service and to provide for the public security.

1 The primary purpose of a private company is to make a profit; and  
2 these two purposes are contradictory. The one has served our  
3 citizens well; the other will put our society in jeopardy.

4 As we have indicated, our organization, ASEA and AFSCME,  
5 will be happy to work with you in providing alternatives that may  
6 be a more viable solution to the problem than looking to private  
7 companies.

8 Thank you very much.

9 CHAIRMAN PORTER: Thank you, Gary.

10 (end of excerpt/bhc)

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ALASKA STATE EMPLOYEES ASSOCIATION  
AFSCME Local 52, AFL-CIO

FAX COVER

(11) PAGES INCLUDING COVER 465-3834

To: Rep. Brian Porter, Chair Fax: 258-5511  
House Judiciary Committee

From: Chuck O'Connell, Business Manager  
ASEA/AFSCME Local 52

Date: 2-3-96 Time: 11:30 (a.m./p.m.)

Re: HB 428 - Gary Dameron Testimony

Message: As promised yesterday this  
is Correctional Officer Dameron's  
testimony.

Please share with the rest  
of your committee.

Chuck O'Connell

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TESTIMONY  
OF  
GARY DAMRON, COIII

before the  
House Judicial Committee  
February 2, 1996  
Re: HB428 and HB429

1     **Testimony presented via**  
2     **Legislative Teleconference**  
3     **February 2, 1996**  
4

5                   OFFICER DAMRON:   My name is Gary Damron.   I am  
6     currently a Correctional Officer III at Hiland Mountain  
7     Correctional Center.   I am the shift supervisor there.   I have ten  
8     years with the Department of Corrections, and today I am here on  
9     behalf of the 800 members of ASEA, and nearly 75,000 Correctional  
10    Officers of AFSCME in AFSCME Corrections United.

11                   If you will indulge me for a few minutes, I would like to  
12    give the Committee a brief history lesson on privatization in the  
13    Corrections arena.   It has a long history of failure.   And as  
14    someone spoke on Wednesday, we either have to remember history or  
15    we are doomed to repeat it.

16                   In 1780 the Walnut Street Jail in Philadelphia was opened  
17    by the Church of Pennsylvania.   Then about 1810 it had to be taken  
18    over by the city because of abuses against prisoners.

19                   Louisiana was the first state in the mid-1800s to  
20    privatize a prison.   It is now known as Angola and, as you know, it  
21    is run by the State of Louisiana.

22                   New York's most prominent prisons, both Auburn and Sing-  
23    Sing were once private facilities run by companies.   In the late  
24    1880s private prisons were so popular, they were the norm, not the  
25    exception.   But around 1900, due to the abuse complaints from the  
26    private sector, both business and labor, the states were forced to  
27    accept responsibility from the private companies to manage and  
28    operate these facilities.   That's our history lesson; we know that.  
29    We also know that we're thinking about doing it again.

30                   Some of the things about privatization that I would like  
31    to point out is (1) there is a very substantial conflict of  
32    interest for a private company to run a public prison.   The first

*Testimony of Gary Damron  
before the Judiciary Committee  
Re: HB428 and 429*

1 is that the state is charged by the Alaska Constitution with the  
2 reformation of the offender and deterrence. The private companies  
3 want to keep the cells full, to keep profits up. What incentive is  
4 there for them to run quality rehabilitation programs? Well,  
5 there's not. Because, if you reform the offender, he or she  
6 becomes a productive member of society and you lose your revenue.  
7 The other thing is, rehabilitation programs are very expensive.

8 Another conflict of interest comes to disciplinary  
9 problems inside of prisons. One of our best management tools that  
10 we have today is the forfeiture of statutory good time. If I were  
11 running a private prison and I thought I could take a few days or  
12 a few months away from a prisoner and keep him in my jail, I would  
13 jump on it in a heartbeat. It means more money.

14 I would like to talk to you a little bit, too, about the  
15 two companies that seem to be at the forefront of Alaska's  
16 privatization efforts, Wackenhut and CCA.

17 Wackenhut runs the Savannah River and Rock Flats Nuclear  
18 Test Facilities. The employees there have been used to repress  
19 peaceful demonstrations and gather intelligence, quote/unquote, on  
20 U.S. citizens. And we all know about their reputation in Alaska.  
21 Unlicensed investigators in Alaska were used to quiet Alyeska  
22 Pipeline Service Company critics. They broke the law in three  
23 states, and they even went so far to investigate a U.S.  
24 Congressman.

25 CCA, on the other hand, while not doing this kind of  
26 activity, was linked to possible corruption over its relationship  
27 to state and local officials in its home state of Tennessee. A  
28 U.S. Attorney in Nashville is currently investigating charges of a  
29 bribery kick-back surrounding a \$1 million contract to CCA to  
30 operate the Southcentral Correctional Center in Pipeville,  
31 Tennessee.

32 CHAIRMAN PORTER: Gary, can you hear me?

1 OFFICER DAMRON: Yes, sir.

2 CHAIRMAN PORTER: I am going to have to ask you to  
3 summarize. You are little over the three minutes already.

4 OFFICER DAMRON: Well, basically, my presentation  
5 today is that this is major public policy shift; there is no safe  
6 public interest in privatizing our facilities.

7 Thank you.

8 CHARLES L. O'CONNELL (Business Manager for  
9 ASEA/AFSCME Local 52): Chairman Porter, we will give you the  
10 remainder of his testimony in writing tomorrow.

11 CHAIRMAN PORTER: That will be fine. We have -- the  
12 fax number should be there for you to obtain. Just send it to the  
13 Judiciary Committee fax number here in Juneau --

14 O'CONNELL: Thank you.

15 CHAIRMAN PORTER: -- your testimony and anyone  
16 else's that had it in writing, that would like it to be part of the  
17 record.

18 (Follows is written testimony "in progress,"  
19 to complete Officer Damron's presentation  
20 to the Judiciary Committee)

21 OFFICER DAMRON: In 1992 the State of Tennessee  
22 awarded a \$60 million contract for a prison in Wayne County,  
23 Tennessee. This was \$10 million higher than the other bidder. The  
24 Tennessee-based company received the contract through a process  
25 that allows a favored business to score high enough on the proposal  
26 to win a contract, even if it offers the highest bid.

27 And now I would like to get into private prison  
28 performance. The cost savings of private prisons is negligible at  
29 best, if there is any at all. In 1985 the National Institute of  
30 Corrections and the American Correctional Association audited two  
31 Florida youthful offender prisons. One was run by the Eckerd  
32 Foundation, as private for-profit corporation, and one was run by

1 the State of Florida. The results of the NIC and ACA audit were  
2 that there was, "No significant reduction in costs."

3 And in 1989 the National Institute of Justice and the  
4 Urban Institute studied the Blackburn, Kentucky, Corrections  
5 Complex and the Marion Adjustment Center run by the U. S.  
6 Corrections Corporation. Costs were the same, despite the fact  
7 that Marion received only model prisoners. This was also despite  
8 of the fact that Marion paid staff less and gave fewer benefits.

9 The CCA in the State of Tennessee audit in 1995 reported  
10 that the cost savings was only about 1% between the CCA facility  
11 (Marion) and the state-operated facility (Blackburn).

12 Dennis Colombo, Criminal Justice Professor of Arizona  
13 State University states, "Private prisons may well cost more in the  
14 long run, not only in terms of taxpayer but also in the health and  
15 safety of prison staff and other law enforcement officers." This  
16 is from The Christian Science Monitor.

17 Now, to security, escapes, and public safety. The CCA  
18 Hamilton County, Tennessee, Penal Farm in 1985 to 1986 had 64  
19 prisoners escape from the facility and road crews. In 1989 the CCA  
20 Hernando County, Florida, Jail, from June 1989 to January 1990 had  
21 7 escapes. The CCA Bay County, Florida, Jail in 1989 had 5  
22 escapes, including 1 maximum security prisoner, leaving the  
23 St. Petersburg Times to remark, "The Bay County episode has yet  
24 another question mark about prisons and profits." 1992, in the  
25 Southcentral Correctional Center, Wayne County, Tennessee (a medium  
26 security facility, and that's what they want to build here), there  
27 was one stabbing which killed one prisoner and seriously injured  
28 two others. A handgun was found during a routine search, and they  
29 had eight escapes between March and October of 1992.

30 A 1995 audit of the Clifton Prison, versus two state  
31 facilities in Tennessee, there were 214 incidents of injury over a  
32 15-month period versus 72 in the two other facilities combined.

1 The report also stated that the CCA staff used force more often:  
2 30 incidents in the CCA facility versus 10 in the other two  
3 facilities combined.

4 And just recently in Elizabethtown, New Jersey, at the  
5 Immigration Detention Center, there was a riot. The GAO laid the  
6 cause of the riot to poor staffing, abuse and mistreatment by the  
7 rent-a-guards, and cost-cutting in basic human services, such as  
8 quality food service and poor health care.

9 Alaska Correctional Officers are Class I employees and  
10 have no right to strike. We have to come to work, regardless of  
11 the circumstances. Is that going to be applicable to private  
12 employees? I heard about a no-strike clause in their contract, but  
13 I don't see how under the National Labor Relations Act someone can  
14 implement that.

15 And what happens in an adverse job action for a riot in  
16 Alaska? Who is going to respond? It is going to be other State  
17 COs from around the state; the National Guard; the Troopers; and,  
18 if this facility is built in Anchorage, the Anchorage Police  
19 Department. Do they have such a training contingent? I don't  
20 believe so.

21 I want to move on to some comments about staffing private  
22 facilities, and some audits and things like that that were brought  
23 to my attention.

24 In 1990 an audit by the State of Texas of four  
25 correctional corporations of American and Wackenhut facilities  
26 stated, "Understaffing is a major problem." At the Hernando County  
27 Jail, when Corrections Corporation of America took over, they  
28 slashed staff by 17%, cutting the staff of 94 Correctional Officers  
29 to 78. The National Institute of Corrections stated that a minimum  
30 of 10 new Correctional Officers needed to be hired to meet even the  
31 minimum standard.

32 On Wednesday you heard Sgt. Antrim, of the Lemon Creek

1 Correctional Center, talk about what you are not going to get; and  
2 I will briefly touch on those, and I have some more to add to that.

3 ● You are not going to have mental health prisoners  
4 needing treatment going to this facility because it is  
5 too cost-prohibitive.

6 ● You are not going to have pre-trial prisoners for  
7 two reasons: (1) It's too expensive, and (2) they are  
8 not yet classified. (And by Bill 428, they are not  
9 classified yet when they are pre-trial.)

10 ● You are not going to have misdemeanants simply  
11 because they are too expensive and they are too short-  
12 term. There are many different things that need to be  
13 taken care of in terms of misdemeanants. One of those is  
14 time-accounting, and that is a very time-consuming task.

15 ● You are not going to have booking. You are not  
16 going to have geriatric patients, which is the second-  
17 largest growing offender population that we have right  
18 now.

19 ● You are not going to have chronically ill people,  
20 people with cancer, people with asthma, things like that  
21 because the medical treatment is so expensive.

22 ● You are not going to have prisoners who need  
23 detoxification, because that is expensive and it is  
24 dangerous. People coming off drugs and alcohol do weird  
25 things, they fight, etc.

26 ● You are not going to have maximum security  
27 prisoners. That's been ruled out by this bill  
28 specifically. Many prisoners just coming into this  
29 system are also going to be classified maximum security  
30 for several reasons.

31 ● You are not going to have females. When I left my  
32 shift Thursday morning at Hiland Mountain Correctional

1 Center, there were 65 female prisoners housed there.  
2 Twelve are pregnant, and of these all were high-risk  
3 pregnancies due to the lifestyle of the prisoner  
4 population.

5 ● You are not going to have sex offender treatment at  
6 this plant, because sex offender treatment is very, very  
7 expensive.

8 The impact upon employees is great. You have reduced  
9 salaries and benefits for private prisons, and you are comprising  
10 on the quality of employees.

11 I would like to tell you some things that AFSCME, ASEA,  
12 and our members feel that Alaska does not need, and these are also  
13 my personal views -- take them as you will.

14 What Alaska doesn't need is a 1000-bed facility that  
15 won't serve the needs of the Bush and outlying communities. It  
16 won't house prisoners that need booking, intake, mental health  
17 treatment, detoxification, long-term medical care, or sex offender  
18 treatment; and it won't hold prisoners that are pre-trial,  
19 misdemeanants, geriatric, maximum security, or female. What you  
20 will have is a 1000-bed empty prison.

21 What Alaska does need, however, is expansion of existing  
22 facilities. This leads to several cost reductions, including  
23 reduced capital costs, reduced transportation costs, better use of  
24 current staffing, and it brings about an economy of scale.

25 The second thing we need is a new pre-trial detention  
26 center in Anchorage to replace the Sixth Avenue Jail.

27 And here are some things that I feel that Alaska already  
28 has. Alaska has a model system for the rest of the nation. We  
29 have very few escapes. We have overcrowding, but it is still not  
30 to the extent of other systems. We have a well-trained, educated,  
31 and motivated staff, both in Correctional Staff and Administrative  
32 Support. We have an excellent rehabilitation program. We have the

1 sex offender treatment programs at Hiland Mountain and Lemon Creek  
2 Correctional Centers, for which the Hiland program is the model for  
3 the rest of the nation. We have drug and alcohol treatment that  
4 are second to none. These are also provided by contractors. We  
5 have vocational educational training. We have several  
6 apprenticeship programs, including a bakery in Palmer, metal  
7 working and furniture-making shops in Seward and Kenai, and we have  
8 sewage treatment plants where prisoners are learning how to handle  
9 waste water at both Palmer and Hiland Mountain Correctional Center.

10 We also have a model prison industry program. Several of  
11 the industries included there are meatpacking, laundry, clothing  
12 manufacturing in Fairbanks, and metal and furniture-making in  
13 Seward and Kenai.

14 We have a safe system. We had no homicides by prisoner-  
15 on-prisoner, prisoner-on-staff, and we've had no staff terminate  
16 prisoner life in our history. We have very few prisoner assaults  
17 on other prisoners, and we have very few prisoner assaults on  
18 staff.

19 In conclusion, I would like to say that privatization is  
20 not the answer, despite the rush to that arena. One thousand beds  
21 in Anchorage will still not solve our problem; it will be empty.  
22 Transportation costs from the Bush for sentenced prisoners to the  
23 Anchorage area is exorbitant and needs to be considered.

24 It will not reduce the liability of the State. When we  
25 incarcerate someone, it doesn't matter whether it is a private  
26 facility or a public facility. The state is still liable for the  
27 care and custody of that prisoner.

28 What is needed is a new state jail in Anchorage. It is  
29 cost-effective. It will accept all prisoners, and it is  
30 considerably smaller than 1000 beds. We desperately need expansion  
31 of existing facilities, to meet the regional needs of the State,  
32 specifically in Bethel, Nome, Mat-Su, and the Anchorage area.

*Testimony of Gary Damron  
before the Judiciary Committee  
Re: HB429 and 429*

10

1                   Thank you for this opportunity to present this testimony  
2 before you.  
3 (end of testimony/GD:bhc)

*Testimony of Gary Damron  
before the Judiciary Committee  
Re: HB428 and 429*

Revision Date: \_\_\_\_\_ Dept. Affected: Revenue  
 Title: Lease Purchase Correctional Facility BRU: Revenue Operations  
 Component: Treasury Management  
 Sponsor: House Finance Committee  
 Requestor: (H) JUD COMPONENT SERIAL NO. 121

Expenditures/Revenues: (Thousands of Dollars)

OPERATING EXPENDITURES	FY 97	FY 98	FY 99	FY 00	FY 01	FY 02
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

CAPITAL EXPENDITURES						
----------------------	--	--	--	--	--	--

CHANGE IN REVENUES ( )						
------------------------	--	--	--	--	--	--

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other						
<b>TOTAL</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

Estimate of any current year (FY96) cost \$ \_\_\_\_\_

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

(See Attached Analysis)

Prepared by: Forrest Browne, Debt Manager  
 Division: Treasury  
 Approved by Commissioner: [Signature]  
 Agency: Department of Revenue

Phone: 465-3750  
 Date: 1/25/96  
 Date: 1/25/96

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House Bill No. 428 approves a lease-purchase agreement for the financing, construction, and operation of a correctional facility.

#### Operating Budget

The legislation would have no impact on the Treasury Division's operating budget.

#### Debt Financing Issues

Our comments are based on several assumptions. First, the lease will be long-term. Second, the lease-purchase agreement terms will be in part based on the contractor borrowing up to \$100,000,000 for designing, constructing, and equipping the facility. And finally, the financing, construction, and operation of the facility will be bundled into a single contract.

If the assumptions are correct, several issues come to mind that may need to be considered.

- 1) This lease-purchase will be considered debt from a bond rating perspective and will be recorded as such in the State's financial statements.
- 2) The contractor may want to securitize the State's lease and offer this debt in the domestic or international financial markets in order to obtain the funds necessary for construction. This process raises several more questions.
- 3) Securitizing the lease over a period of time beyond the expected Prudhoe Bay Curve may have an effect on the State's current bond rating. We are working with our financial advisor to convince the market that the State is working on a plan to fill the fiscal gap and reduce our dependence on oil revenues.
- 4) Consideration should be given to an overall strategy dealing with infrastructure and capital needs of the State. Agreements as outlined in HB No. 428 are only a portion of the total picture. This agreement will reduce the State's debt capacity as we offer our credit to a private contractor and at the same time give up the right to have any control over the debt issuing process.

Can a private contractor issue securitized state leases cheaper than the State? The answer is probably not. We can access tax exempt markets using our existing contracts with our own financial advisor and bond counsel and borrow money at very competitive rates.

Advantages of securing our own financing include the ability to refinance at any time favorable market conditions provide savings. Also, we eliminate the need to unbundle the lease-purchase from the construction and operating contracts should problems arise due to non-performance or default on the part of the contractor.

FISCAL NOTE

STATE OF ALASKA  
1996 LEGISLATIVE SESSION

BILL NO. HB 428

Revision Date: \_\_\_\_\_  
Title: "...lease purchase agreement for construction and operation of a correctional facility...."  
Sponsor: Mulder  
Requestor: \_\_\_\_\_

Department Affected: Administration  
BRU: General Services  
Component: Purchasing  
COMPONENT SERIAL NO. 60

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING EXPENDITURES	FY 97	FY 98	FY 99	FY 00	FY 01	FY 02
PERSONAL SERVICES		50.0	100.0	50.0	90.0	90.0
TRAVEL						
CONTRACTUAL		75.0	150.0			
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>125.0</b>	<b>250.0</b>	<b>50.0</b>	<b>90.0</b>	<b>90.0</b>

CAPITAL EXPENDITURES	375.0					
----------------------	-------	--	--	--	--	--

CHANGE IN REVENUES ( )						
------------------------	--	--	--	--	--	--

FUND SOURCE: (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	375.0					
1005 GF/Program Receipts						
1037 GF/Mental Health						
OTHER *		125.0	250.0	50.0	90.0	90.0
<b>TOTAL</b>	<b>375.0</b>	<b>125.0</b>	<b>250.0</b>	<b>50.0</b>	<b>90.0</b>	<b>90.0</b>

Estimate of any current year (FY 96) cost: \$ 0.0

POSITIONS:

FULL-TIME					1	1
PART-TIME		1	2	1		
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary.)  
 \* FY 98 - 99 Costs are funded from CIP receipts from capital appropriation in FY 97  
 \* FY 00- 02 costs are funded from proceeds of lease purchase financing  
**See Continuation Page**

Prepared by: Dugan Petty, Director  
Division: General Services

Phone: 465-2250  
Date: \_\_\_\_\_

Approved by Commissioner: Mark Boyer  
Agency: Department of Administration *M. Boyer*

Date: 1/31/96

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FISCAL NOTE

STATE OF ALASKA  
 1996 LEGISLATIVE SESSION  
 ANALYSIS: (continued)

BILL NO. HB 428

1. ASSUMPTIONS:

- 1.1. Dept. of Corrections will furnish requirements for the number of beds and location criteria.
- 1.2. Dept. of Corrections will establish operational criteria for the facility.
- 1.3. DOT&PF will identify potential sites for the facility, and will develop a building space program, conceptual design and performance specifications suitable for use in the design/construction RFP.
- 1.4. A site will be made available by a political subdivision, at no cost to the state. In the event that a suitable site is not made available, additional funding will need to be appropriated to acquire a sufficient interest in a site.
- 1.5. An agency of the state is granted authority in law to conduct the issuance of financial instruments as tax exempt financing.
- 1.6. DOT&PF will provide construction administration and inspection services from award to occupancy.
- 1.7. Lease payments will begin in the first year of operation (estimated to be 2003). Based on a 20 year term, \$100 million principal, and 6% interest (based on discussion with the Dept. of Revenue), the approximate annual payment is estimated to be \$8.7 million.
- 1.8. Time schedule for performance is per Dept. of Correction draft schedule.

2. DEPARTMENT OF ADMINISTRATION RESPONSIBILITIES AND COSTS:

2.1. Site Acquisition

2.1.1. Prepare acquisitic agreement, site survey \$25,000

2.2. Prepare RFP for construction of the facility

2.2.1. Prior to award - \$225,000 (FY 98 - 99).

Legal:	\$50,000
Financial:	\$25,000
Develop RFP:	\$50,000
1/2 Project Manager, R 21 for 24 mo.	\$100,000

2.3. Prepare RFP for the operation of the facility. Assumes 9 months to reach an award.

2.3.1. Prior to award - \$125,000 (FY 99 - 00)

Legal:	\$25,000
RFP development & preparation:	\$50,000
1/2 Project Manager, R 21 for 24 months:	\$100,000

2.3.2. After award - 2 years startup effort (FY 01 & 02).

1 Contracting Officer for contract administration	\$180,000
---	-----------

2.4. Annual cost to administer the lease-purchase agreement, and the operation agreement after occupancy. Begin in FY 03

1/8 Contracting Officer for life of lease:	\$11,250
--	----------

See attached spreadsheet for allocation of costs by fiscal year and fund source

Allocate Fiscal Note HB 428

	GF Capital Funds			Bond Proceed Funds			Total Capital Funds	Annual Operating Funds FY 03
	FY 97	FY 98	FY 99	FY 00	FY 01	FY 02		
2.1 Site Acquisition		25.0					25.0	
2.2 Prepare RFP for construction of the facility								
			Legal:				50.0	
			Financial:				25.0	
			Develop RFP:				50.0	
			1/2 Project Manager R21 for 24 months				100.0	
2.3 Prepare RFP for the operation of the facility.								
2.31 <u>Prior to award</u>								
			Legal:				25.0	
			RFP development & preparation:				50.0	
			1/2 Project Manager, R 21 for 24 months:			50.0	100.0	
2.32 <u>After award</u>								
			1 Contracting Officer for 2 years startup effort:			90.0	90.0	
2.4 Annual cost to administer the lease-purchase agreement, and the operation agreement. Begin in FY 03								
			1/4 Contracting Officer for life of lease:					11.3
			<b>Sub-total</b>				<b>605.0</b>	<b>11.3</b>
Personal Services		50.0	100.0	50.0	90.0	90.0		11.3
Contractual		75.0	150.0					

**Corrections Expansion Program  
House Bill 428**

ID	Name	1996	1997	1998	1999	2000	2001	2002	2003
1	Legislative Authorization								
2	Prepare & Solicit Master Plan RFP	■							
3	Prepare Master Plan Update		■						
4	Draft Operational Standards		■						
5	Finalize Operational Standards			■					
6	Solicit A/E Professional Services Agreement	■							
7	Site Selection/Approval		■						
8	Land Acquisition			■					
9	Functional Space Programming	■							
10	Conceptual Design			■					
11	Draft Lease Purchase RFP	■							
12	Finalize Lease Purchase RFP				■				
13	Advertise/Award Lease Purchase RFP					■			
14	Prepare Operational RFP						■		
15	Solicit/Award Operational RFP						■		
16	Construction					■	■	■	■
17	Commence Operations								■
18	Bond Committee Preparatory Work	■							
19	Obtain Financing	■							

Project: \_\_\_\_\_ Date: 1/22/98  
 Critical  Noncritical  Progress  Milestone  Summary  Rolled Up 

AMENDMENT

BY REPRESENTATIVE FINKELSTEIN /#1

OFFERED IN HOUSE JUDICIARY  
TO: CSHB 428 (JUD)

Page 1, line 1 following "Act" through page 4, line 30:  
Delete all material

Insert the following:

"requiring the Department of Corrections to consider a lease-purchase option for the construction and operation of a correctional facility.

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

Section 1. The Department of Corrections shall consider a lease-purchase option for the construction and operation of a new correctional facility in order to relieve overcrowding of existing correctional facilities."

AMENDMENT

BY REPRESENTATIVE FINKELSTEIN /#2

OFFERED IN HOUSE JUDICIARY  
TO: CSHB 428 (JUD)

Page 2, line 9 following "in this state":  
Delete "or in another state"

AMENDMENT

BY REPRESENTATIVE FINKELSTEIN / #3

OFFERED IN HOUSE JUDICIARY  
TO: CSHB 428 (JUD)

Page 2, line 22 following "misdemeanors":

Delete ", without regard to the custody classifications for prisoners as determined by the commissioner, unless the security of the facility is inconsistent with those custody classifications"

AMENDMENT

BY REPRESENTATIVE FINKELSTEIN / #4

OFFERED IN HOUSE JUDICIARY  
TO: CSHB 428 (JUD)

Page 3, following line 26:

Insert a new subsection: "(3) may not be used to house prisoners not convicted in an Alaskan court;"

Renumber the following subsections accordingly.

AMENDMENT

BY REPRESENTATIVE FINKELSTEIN #5

OFFERED IN HOUSE JUDICIARY  
TO: CSHB 428 (JUD)

Page 3, line 30:

Delete "a no-strike and no-slowdown pledge by the union or unions;

Adjust the following subsections accordingly.

AMENDMENT

BY REPRESENTATIVE FINKELSTEIN /#6

OFFERED IN HOUSE JUDICIARY  
TO: CSHB 428 (JUD)

Page 4, line 5 following "except":  
Delete "temporarily"

A M E N D M E N T

OFFERED IN THE HOUSE

BY REPRESENTATIVE FINKELSTEIN / # 7

TO: Draft CSHB 428( )

1 Page 4, line 5:

2 Delete "temporarily"

3 Page 4, line 8:

4 Delete "or"

5 Page 4, line 9, after "contractor":

6 Insert "; or

7 (C) the state is able to operate the correctional facility at less  
8 cost than a third-party contractor"

A M E N D M E N T

OFFERED IN THE HOUSE

BY REPRESENTATIVE FINKELSTEIN / #8

TO: Draft CSHB 428( )

1 Page 4, line 5:

2 Delete "except temporarily"

3 Insert "or by a political subdivision or public corporation of the state except"

4 Page 4, line 8:

5 Delete "or"

6 Page 4, line 9, after "contractor":

7 Insert "; or

8 (C) the state determines that it is in the best interests of the  
9 state for the correctional facility to be operated by the state or by the political  
10 subdivision or public corporation of the state"

AMENDMENT

BY REPRESENTATIVE FINKELSTEIN /#9

OFFERED IN HOUSE JUDICIARY  
TO: CSHB 428 (JUD)

Page 4, following line 15:

Insert new subparagraph:

"(1) The Department of Corrections shall establish procedures for background and records checks on any personnel hired to staff the correctional facility and shall establish new regulations for verifying that guards and other corrections' staff have received proper training consistent with AS 18.65.130 - 18.65.290 to work with incarcerated felons."

AMENDMENT

BY REPRESENTATIVE FINKELSTEIN /#10

OFFERED IN HOUSE JUDICIARY  
TO: CSHB 428 (JUD)

Page 4, line 23 following "facilities":  
Delete "not more stringent than"  
Insert "equal to"

## CS FOR HOUSE BILL NO. 428(JUD)

IN THE LEGISLATURE OF THE STATE OF ALASKA

NINETEENTH LEGISLATURE - SECOND SESSION

BY THE HOUSE JUDICIARY COMMITTEE

Offered:

Referred:

Sponsor(s): HOUSE FINANCE COMMITTEE

## A BILL

## FOR AN ACT ENTITLED

1 "An Act relating to the authority of the Department of Corrections to contract  
2 for facilities for the confinement and care of prisoners, and annulling a regulation  
3 of the Department of Corrections that limits the purposes for which an agreement  
4 with a private agency may be entered into; and giving notice of and approving  
5 a lease-purchase agreement for construction and operation of a correctional facility  
6 in the Third Judicial District, and setting conditions and limitations on the  
7 facility's construction and operation."

8 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

9 \* Section 1. AS 33.30.031(a) is amended to read:

10 (a) The commissioner shall determine the availability of state correctional  
11 facilities suitable for the detention and confinement of persons held under authority of  
12 state law or under agreement entered into under (e) of this section. If the  
13 commissioner determines that suitable state correctional facilities are not available, the

1 commissioner may enter into an agreement with a public or private agency to provide  
2 necessary facilities, subject to the following:

3 (1) the commissioner may not enter into an agreement with a  
4 public or private agency that is unable to provide a degree of custody, care, and  
5 discipline to the extent required by the laws of this state, including the standards  
6 of custody, care, and discipline that are required by order of a court;

7 (2) correctional [. CORRECTIONAL] facilities provided through  
8 agreement with a public agency for the detention and confinement of persons held  
9 under authority of state law may be in this state or in another state;

10 (3) correctional [. CORRECTIONAL] facilities provided through  
11 agreement with a private agency

12 (A) must be located in this state unless the commissioner finds  
13 in writing that

14 (i) [(1)] there is no other reasonable alternative for  
15 detention in the state; and

16 (ii) [(2)] the agreement is necessary because of health  
17 or security considerations involving a particular prisoner or class of  
18 prisoners, or because an emergency of prisoner overcrowding is  
19 imminent;

20 (B) may provide for the detention and confinement of all  
21 persons held by the commissioner under authority of state law, whether  
22 charged with or convicted of felonies or misdemeanors, without regard to  
23 the custody classifications for prisoners as determined by the  
24 commissioner, unless the security of the facility is inconsistent with those  
25 custody classifications; and

26 (C) may not be administratively restricted or limited by the  
27 commissioner to use only for prisoners involved in certain rehabilitative or  
28 treatment programs authorized by law. [THE COMMISSIONER MAY  
29 NOT ENTER INTO AN AGREEMENT WITH AN AGENCY UNABLE TO  
30 PROVIDE A DEGREE OF CUSTODY, CARE, AND DISCIPLINE SIMILAR  
31 TO THAT REQUIRED BY THE LAWS OF THIS STATE.]

1 \* Sec. 2. NOTICE AND APPROVAL OF LEASE-PURCHASE AGREEMENT. (a) To  
2 provide for the construction and operation of a new correctional facility in order to relieve  
3 overcrowding of existing correctional facilities, the Department of Administration, on behalf  
4 of the Department of Corrections, may enter into a lease-purchase agreement with a private  
5 third-party contractor under AS 33.30.031 for the construction and operation of a correctional  
6 facility in the Third Judicial District that will house persons who are committed to the custody  
7 of the commissioner of corrections. The project approval given by this subsection is subject  
8 to the conditions of (b) of this section and to the following limitations:

9 (1) the total construction and related costs of establishing the correctional  
10 facility may not exceed \$100,000,000;

11 (2) the total lease payments for the full term of the agreement may not exceed  
12 \$200,000,000 and the anticipated annual amount of the rental obligation to be paid by the  
13 Department of Corrections under the lease must be reasonably commensurate with that total;  
14 and

15 (3) at the end of the term of the lease-purchase agreement, the state shall own  
16 the correctional facility.

17 (b) The correctional facility to be constructed and operated under the notice and  
18 approval given in (a) of this section

19 (1) must be designed and constructed so as to house, in separate housing,

20 (A) female prisoners; and

21 (B) male prisoners held under conditions that are appropriate for  
22 prisoners who have been classified under AS 33.30.011(2) as other than maximum  
23 custody; the correctional facility may not be constructed to house prisoners who are  
24 classified as maximum custody;

25 (2) may not contain a total population of more than 1,000 prisoners, but must  
26 be designed and constructed so as to allow expansion of the facility to a greater capacity; and

27 (3) may not be operated by the state except temporarily when

28 (A) the private third-party contractor with whom the state has entered  
29 into an agreement to operate defaults in performance under the contract and state  
30 operation is reasonably necessary to ensure the facility's continued operation; or

31 (B) the state is unable to contract with a private third-party contractor.

1 (c) If required by the commissioner of corrections as a condition of the correctional  
2 facility's operation, in the award of a contract for the operation of the correctional facility to  
3 be constructed and operated under the notice and approval given in (a) of this section, the  
4 Department of Administration shall require that persons employed by the contractor as  
5 correctional officers in the facility meet the requirements of AS 18.65.130 - 18.65.290 that are  
6 applicable to correctional officers.

7 (d) If directed by the commissioner of corrections as a condition of the correctional  
8 facility's operation, in the award of a contract for the operation of the correctional facility to  
9 be constructed and operated under the notice and approval given in (a) of this section, the  
10 Department of Administration shall require the contractor to seek, obtain, and maintain  
11 accreditation of the correctional facility. This requirement is effective only when, as a matter  
12 of policy, the commissioner of corrections seeks and obtains accreditation of state correctional  
13 facilities. Accreditation under this subsection shall be under standards of accreditation  
14 applicable to correctional facilities that are not more stringent than those applicable to state  
15 correctional facilities operated by the Department of Corrections.

16 (e) Subsection (a) of this section constitutes the notice and approval required by  
17 AS 36.30.085.

18 \* Sec. 3. CONSTRUCTION OF CORRECTIONAL FACILITY UNDER PROJECT  
19 LABOR AGREEMENT. (a) The purpose of this section is to enable the state to meet its  
20 obligation to improve the care and custody of the prisoners for which it is responsible at an  
21 early date through the completion of construction of a major correctional facility by structuring  
22 labor relations at the job site of the correctional facility in the interests of industrial harmony  
23 and in a way that makes optimal use of construction resources.

24 (b) Notwithstanding any restrictions that may be applicable under AS 36.30, the  
25 correctional facility described in sec. 2 of this Act may be constructed only under a public  
26 construction project labor agreement between the building construction contractor and one or  
27 more building trade unions; the labor agreement must provide

28 (1) a no-strike and no-slowdown pledge by the union or unions;

29 (2) a commitment on the part of the construction contractor to hire through  
30 local union hiring halls; and

31 (3) a provision allowing not more than 15 percent of the construction

1 contractor's workforce on the public construction project to be composed of persons who are  
2 not members of the union or unions.

3 \* Sec. 4. Nothing in sec. 2 of this Act precludes operation of the correctional facility  
4 described in sec. 2(a) of this Act by a private third-party contractor comprised of persons  
5 employed by the Department of Corrections.

6 \* Sec. 5. 22 AAC 05.300(e) is annulled.

# Alaska State Legislature



House of Representatives  
House Judiciary Committee

State Capitol, Room 120  
Juneau, Alaska 99801-1182  
(907) 465-4990

February 1, 1996

TO: House Judiciary Committee members

FROM: Tom Meyer, aide

RE: Materials for 2/2/96 meeting

Attached are materials for your consideration on HB 428 and HB 154.

9-LS1338R ✓  
Chenoweth  
2/2/96

**CS FOR HOUSE BILL NO. 428(JUD)**

**IN THE LEGISLATURE OF THE STATE OF ALASKA**

**NINETEENTH LEGISLATURE - SECOND SESSION**

**BY THE HOUSE JUDICIARY COMMITTEE**

**Offered:  
Referred:**

**Sponsor(s): HOUSE FINANCE COMMITTEE**

**A BILL**

**FOR AN ACT ENTITLED**

1 "An Act relating to the authority of the Department of Corrections to contract  
2 for facilities for the confinement and care of prisoners, and annulling a regulation  
3 of the Department of Corrections that limits the purposes for which an agreement  
4 with a private agency may be entered into; and giving notice of and approving  
5 a lease-purchase agreement for construction and operation of a correctional facility  
6 in the Third Judicial District, and setting conditions and limitations on the  
7 facility's construction and operation."

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

9 \* Section 1. AS 33.30.031(a) is amended to read:

10 (a) The commissioner shall determine the availability of state correctional  
11 facilities suitable for the detention and confinement of persons held under authority of  
12 state law or under agreement entered into under (c) of this section. If the  
13 commissioner determines that suitable state correctional facilities are not available, the

1 commissioner may enter into an agreement with a public or private agency to provide  
2 necessary facilities, subject to the following:

3 (1) the commissioner may not enter into an agreement with a  
4 public or private agency that is unable to provide a degree of custody, care, and  
5 discipline to the extent required by the laws of this state, including the standards  
6 of custody, care, and discipline that are required by order of a court:

7 (2) correctional [. CORRECTIONAL] facilities provided through  
8 agreement with a public agency for the detention and confinement of persons held  
9 under authority of state law may be in this state or in another state;

10 (3) correctional [. CORRECTIONAL] facilities provided through  
11 agreement with a private agency

12 (A) must be located in this state unless the commissioner finds  
13 in writing that

14 (i) [(1)] there is no other reasonable alternative for  
15 detention in the state; and

16 (ii) [(2)] the agreement is necessary because of health  
17 or security considerations involving a particular prisoner or class of  
18 prisoners, or because an emergency of prisoner overcrowding is  
19 imminent;

20 (B) may provide for the detention and confinement of all  
21 persons held by the commissioner under authority of state law, whether  
22 charged with or convicted of felonies or misdemeanors, without regard to  
23 the custody classifications for prisoners as determined by the  
24 commissioner, unless the security of the facility is inconsistent with those  
25 custody classifications; and

26 (C) may not be administratively restricted or limited by the  
27 commissioner to use only for prisoners involved in certain rehabilitative or  
28 treatment programs authorized by law. [THE COMMISSIONER MAY  
29 NOT ENTER INTO AN AGREEMENT WITH AN AGENCY UNABLE TO  
30 PROVIDE A DEGREE OF CUSTODY, CARE, AND DISCIPLINE SIMILAR  
31 TO THAT REQUIRED BY THE LAWS OF THIS STATE.]

1 \* Sec. 2. NOTICE AND APPROVAL OF LEASE-PURCHASE AGREEMENT. (a) To  
2 provide for the construction and operation of a new correctional facility in order to relieve  
3 overcrowding of existing correctional facilities, the Department of Administration, on behalf  
4 of the Department of Corrections, may enter into a lease-purchase agreement with a private  
5 third-party contractor under AS 33.30.031 for the construction and operation of a correctional  
6 facility in the Third Judicial District that will house persons who are committed to the custody  
7 of the commissioner of corrections. The project approval given by this subsection is subject  
8 to the conditions of (b) of this section and to the following limitations:

9 (1) the total construction and related costs of establishing the correctional  
10 facility may not exceed \$100,000,000;

11 (2) the total lease payments for the full term of the agreement may not exceed  
12 \$200,000,000 and the anticipated annual amount of the rental obligation to be paid by the  
13 Department of Corrections under the lease must be reasonably commensurate with that total;  
14 and

15 (3) at the end of the term of the lease-purchase agreement, the state shall own  
16 the correctional facility.

17 (b) The correctional facility to be constructed and operated under the notice and  
18 approval given in (a) of this section

19 (1) must be designed and constructed so as to house, in separate housing,

20 (A) female prisoners; and

21 (B) male prisoners held under conditions that are appropriate for  
22 prisoners who have been classified under AS 33.30.011(2) as other than maximum  
23 custody; the correctional facility may not be constructed to house prisoners who are  
24 classified as maximum custody;

25 (2) may not contain a total population of more than 1,000 prisoners, but must  
26 be designed and constructed so as to allow expansion of the facility to a greater capacity; and

27 (3) may not be operated by the state except temporarily when

28 (A) the private third-party contractor with whom the state has entered  
29 into an agreement to operate defaults in performance under the contract and state  
30 operation is reasonably necessary to ensure the facility's continued operation; or

31 (B) the state is unable to contract with a private third-party contractor.

1 (c) If required by the commissioner of corrections as a condition of the correctional  
2 facility's operation, in the award of a contract for the operation of the correctional facility to  
3 be constructed and operated under the notice and approval given in (a) of this section, the  
4 Department of Administration shall require that persons employed by the contractor as  
5 correctional officers in the facility meet the requirements of AS 18.65.130 - 18.65.290 that are  
6 applicable to correctional officers.

7 (d) If directed by the commissioner of corrections as a condition of the correctional  
8 facility's operation, in the award of a contract for the operation of the correctional facility to  
9 be constructed and operated under the notice and approval given in (a) of this section, the  
10 Department of Administration shall require the contractor to seek, obtain, and maintain  
11 accreditation of the correctional facility. This requirement is effective only when, as a matter  
12 of policy, the commissioner of corrections seeks and obtains accreditation of state correctional  
13 facilities. Accreditation under this subsection shall be under standards of accreditation  
14 applicable to correctional facilities that are not more stringent than those applicable to state  
15 correctional facilities operated by the Department of Corrections.

16 (e) Subsection (a) of this section constitutes the notice and approval required by  
17 AS 36.30.085.

18 \* **Sec. 3. CONSTRUCTION OF CORRECTIONAL FACILITY UNDER PROJECT**  
19 **LABOR AGREEMENT.** (a) The purpose of this section is to enable the state to meet its  
20 obligation to improve the care and custody of the prisoners for which it is responsible at an  
21 early date through the completion of construction of a major correctional facility by structuring  
22 labor relations at the job site of the correctional facility in the interests of industrial harmony  
23 and in a way that makes optimal use of construction resources.

24 (b) Notwithstanding any restrictions that may be applicable under AS 36.30, the  
25 correctional facility described in sec. 2 of this Act may be constructed only under a public  
26 construction project labor agreement between the building construction contractor and one or  
27 more building trade unions; the labor agreement must provide

28 (1) a no-strike and no-slowdown pledge by the union or unions;

29 (2) a commitment on the part of the construction contractor to hire through  
30 local union hiring halls; and

31 (3) a provision allowing not more than 15 percent of the construction

1 contractor's workforce on the public construction project to be composed of persons who are  
2 not members of the union or unions.

3 \* Sec. 4. Nothing in sec. 2 of this Act precludes operation of the correctional facility  
4 described in sec. 2(a) of this Act by a private third-party contractor comprised of persons  
5 employed by the Department of Corrections.

6 \* Sec. 5. 22 AAC 05.300(e) is annulled.

AMENDMENT

BY REPRESENTATIVE FINKELSTEIN /#1

OFFERED IN HOUSE JUDICIARY  
TO: CSHB 428 (JUD)

Page 1, line 1 following "Act" through page 4, line 30:  
Delete all material

Insert the following:

"requiring the Department of Corrections to consider a lease-purchase option for the construction and operation of a correctional facility.

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

Section 1. The Department of Corrections shall consider a lease-purchase option for the construction and operation of a new correctional facility in order to relieve overcrowding of existing correctional facilities."

F

AMENDMENT

BY REPRESENTATIVE FINKELSTEIN /#2

OFFERED IN HOUSE JUDICIARY  
TO: CSHB 428 (JUD)

Page 2, line 9 following "in this state":  
Delete "or in another state"

F

AMENDMENT

BY REPRESENTATIVE FINKELSTEIN / #3

OFFERED IN HOUSE JUDICIARY  
TO: CSHB 428 (JUD)

Page 2, line 22 following "misdemeanors":

Delete ", without regard to the custody classifications for prisoners as determined by the commissioner, unless the security of the facility is inconsistent with those custody classifications"

AMENDMENT

BY REPRESENTATIVE FINKELSTEIN / #4

OFFERED IN HOUSE JUDICIARY  
TO: CSHB 428 (JUD)

Page 3, following line 26:

Insert a new subsection: "(3) may not be used to house prisoners not convicted in an Alaskan court;"

Renumber the following subsections accordingly.

AMENDMENT

BY REPRESENTATIVE FINKELSTEIN #5

OFFERED IN HOUSE JUDICIARY  
TO: CSHB 428 (JUD)

Page <sup>28</sup> 3, line 30:  
Delete "a no-strike and no-slowdown pledge by the union or unions;

Adjust the following subsections accordingly.

AMENDMENT

BY REPRESENTATIVE FINKELSTEIN / #6

OFFERED IN HOUSE JUDICIARY  
TO: CSHB 428 (JUD)

Page <sup>3</sup> ~~4~~, line <sup>27</sup> ~~5~~ following "except":  
Delete "temporarily"

AMENDMENT

OFFERED IN THE HOUSE

BY REPRESENTATIVE FINKELSTEIN /# 7

TO: Draft CSHB 428( )

1 <sup>3 27</sup> Page 4, line 5:

2 Delete "temporarily"

3 <sup>3 30</sup> Page 4, line 8:

4 Delete "or"

5 <sup>3</sup> Page 4, line 9, after "contractor":

6 Insert "; or

7 (C) the state is able to operate the correctional facility at less

8 cost than a third-party contractor"

A M E N D M E N T

OFFERED IN THE HOUSE  
TO: Draft CSHB 428( )

BY REPRESENTATIVE FINKELSTEIN / #8

1 Page 4, line 5:

2 Delete "except temporarily"

3 Insert "or by a political subdivision or public corporation of the state except"

4 Page 4, line 8:

5 Delete "or"

6 Page 4, line 9, after "contractor":

7 Insert "; or

8 (C) the state determines that it is in the best interests of the  
9 state for the correctional facility to be operated by the state or by the political  
10 subdivision or public corporation of the state"

AMENDMENT

BY REPRESENTATIVE FINKELSTEIN /#9

OFFERED IN HOUSE JUDICIARY  
TO: CSHB 428 (JUD)

Page 4, following line 15:

Insert new subparagraph:

"(1) The Department of Corrections shall establish procedures for background and records checks on any personnel hired to staff the correctional facility and shall establish new regulations for verifying that guards and other corrections' staff have received proper training consistent with AS 18.65.130 - 18.65.290 to work with incarcerated felons."

AMENDMENT

BY REPRESENTATIVE FINKELSTEIN /#10

OFFERED IN HOUSE JUDICIARY  
TO: CSHB 428 (JUD)

Page 4, line <sup>14</sup>23 following "facilities":  
Delete "~~not more stringent than~~<sup>apparent as</sup>"  
Insert "equal to"

# Alaska State Legislature



## House of Representatives House Judiciary Committee

State Capitol, Room 120  
Juneau, Alaska 99801-1182  
(907) 465-4990

3.

### COMMITTEE SCHEDULE, WEEK OF FEBRUARY 5, 1996

MEETING TIME: 1:00

MEETING PLACE: ROOM 120, CAPITOL BUILDING

#### MONDAY, FEBRUARY 5, 1996

- + HB 419 Firearms Disposal by Public Agencies
- + HJR 52 12th Circuit Court of Appeals
- + HB 75 Increased Penalties for Joyriding

Bills held from previous calendars

#### WEDNESDAY, FEBRUARY 7, 1996

Appointment considerations: Barbara Miklos to Board of Governors of the Alaska Bar Ass'n.; Vicki A. Otte to Alaska Judicial Council

- \*+ HB 446 Nuisance Injunctions by Home Rule Muni's.

Bills held from previous calendars

#### FRIDAY, FEBRUARY 9, 1996

- \*+ HB 459 Trusts and Property Transfers in Trusts
- + HB 293 Use of Force in Defending Person/Property

Bills held from previous calendars

(+ Teleconference)

(\* First public hearing)

CS FOR HOUSE BILL NO. 428(JUD)

IN THE LEGISLATURE OF THE STATE OF ALASKA

NINETEENTH LEGISLATURE - SECOND SESSION

BY THE HOUSE JUDICIARY COMMITTEE

Offered:  
Referred:

Sponsor(s): HOUSE FINANCE COMMITTEE

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to the authority of the Department of Corrections to contract  
2 for facilities for the confinement and care of prisoners, and annulling a regulation  
3 of the Department of Corrections that limits the purposes for which an agreement  
4 with a private agency may be entered into; and giving notice of and approving  
5 a lease-purchase agreement for construction and operation of a correctional facility  
6 in the Third Judicial District, and setting conditions and limitations on the  
7 facility's construction and operation."

8 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

9 \* Section 1. AS 33.30.031(a) is amended to read:

10 (a) The commissioner shall determine the availability of state correctional  
11 facilities suitable for the detention and confinement of persons held under authority of  
12 state law or under agreement entered into under (e) of this section. If the  
13 commissioner determines that suitable state correctional facilities are not available, the

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commissioner may enter into an agreement with a public or private agency to provide necessary facilities, subject to the following:

(1) the commissioner may not enter into an agreement with a public or private agency that is unable to provide a degree of custody, care, and discipline to the extent required by the laws of this state, including the standards of custody, care, and discipline that are required by order of a court;

(2) correctional [ CORRECTIONAL] facilities provided through agreement with a public agency for the detention and confinement of persons held under authority of state law may be in this state or in another state;

(3) correctional [ CORRECTIONAL] facilities provided through agreement with a private agency

(A) must be located in this state unless the commissioner finds in writing that

(i) [(1)] there is no other reasonable alternative for detention in the state; and

(ii) [(2)] the agreement is necessary because of health or security considerations involving a particular prisoner or class of prisoners, or because an emergency of prisoner overcrowding is imminent;

(B) may provide for the detention and confinement of all persons held by the commissioner under authority of state law, whether charged with or convicted of felonies or misdemeanors, without regard to the custody classifications for prisoners as determined by the commissioner, unless the security of the facility is inconsistent with those custody classifications; and

(C) may not be administratively restricted or limited by the commissioner to use only for prisoners involved in certain rehabilitative or treatment programs authorized by law. [THE COMMISSIONER MAY NOT ENTER INTO AN AGREEMENT WITH AN AGENCY UNABLE TO PROVIDE A DEGREE OF CUSTODY, CARE, AND DISCIPLINE SIMILAR TO THAT REQUIRED BY THE LAWS OF THIS STATE.]

1 \* Sec. 2. NOTICE AND APPROVAL OF LEASE-PURCHASE AGREEMENT. (a) To  
2 provide for the construction and operation of a new correctional facility in order to relieve  
3 overcrowding of existing correctional facilities, the Department of Administration, on behalf  
4 of the Department of Corrections, may enter into a lease-purchase agreement with a private  
5 third-party contractor under AS 33.30.031 for the construction and operation of a correctional  
6 facility in the Third Judicial District that will house persons who are committed to the custody  
7 of the commissioner of corrections. The project approval given by this subsection is subject  
8 to the conditions of (b) of this section and to the following limitations:

9 (1) the total construction and related costs of establishing the correctional  
10 facility may not exceed \$100,000,000;

11 (2) the total lease payments for the full term of the agreement may not exceed  
12 \$200,000,000 and the anticipated annual amount of the rental obligation to be paid by the  
13 Department of Corrections under the lease must be reasonably commensurate with that total;  
14 and

15 (3) at the end of the term of the lease-purchase agreement, the state shall own  
16 the correctional facility.

17 (b) The correctional facility to be constructed and operated under the notice and  
18 approval given in (a) of this section

19 (1) must be designed and constructed so as to house, in separate housing,

20 (A) female prisoners; and

21 (B) male prisoners held under conditions that are appropriate for  
22 prisoners who have been classified under AS 33.30.011(2) as other than maximum  
23 custody; the correctional facility may not be constructed to house prisoners who are  
24 classified as maximum custody;

25 (2) may not contain a total population of more than 1,000 prisoners, but must  
26 be designed and constructed so as to allow expansion of the facility to a greater capacity; and

27 (3) may not be operated by the state except temporarily when

28 (A) the private third-party contractor with whom the state has entered  
29 into an agreement to operate defaults in performance under the contract and state  
30 operation is reasonably necessary to ensure the facility's continued operation; or

31 (B) the state is unable to contract with a private third-party contractor.

1 (c) If required by the commissioner of corrections as a condition of the correctional  
2 facility's operation, in the award of a contract for the operation of the correctional facility to  
3 be constructed and operated under the notice and approval given in (a) of this section, the  
4 Department of Administration shall require that persons employed by the contractor as  
5 correctional officers in the facility meet the requirements of AS 18.65.130 - 18.65.290 that are  
6 applicable to correctional officers.

7 (d) If directed by the commissioner of corrections as a condition of the correctional  
8 facility's operation, in the award of a contract for the operation of the correctional facility to  
9 be constructed and operated under the notice and approval given in (a) of this section, the  
10 Department of Administration shall require the contractor to seek, obtain, and maintain  
11 accreditation of the correctional facility. This requirement is effective only when, as a matter  
12 of policy, the commissioner of corrections seeks and obtains accreditation of state correctional  
13 facilities. Accreditation under this subsection shall be under standards of accreditation  
14 applicable to correctional facilities that are not more stringent than those applicable to state  
15 correctional facilities operated by the Department of Corrections.

16 (e) Subsection (a) of this section constitutes the notice and approval required by  
17 AS 36.30.085.

18 \* Sec. 3. CONSTRUCTION OF CORRECTIONAL FACILITY UNDER PROJECT  
19 LABOR AGREEMENT. (a) The purpose of this section is to enable the state to meet its  
20 obligation to improve the care and custody of the prisoners for which it is responsible at an  
21 early date through the completion of construction of a major correctional facility by structuring  
22 labor relations at the job site of the correctional facility in the interests of industrial harmony  
23 and in a way that makes optimal use of construction resources.

24 (b) Notwithstanding any restrictions that may be applicable under AS 36.30, the  
25 correctional facility described in sec. 2 of this Act may be constructed only under a public  
26 construction project labor agreement between the building construction contractor and one or  
27 more building trade unions: the labor agreement must provide

28 (1) a no-strike and no-slowdown pledge by the union or unions;

29 (2) a commitment on the part of the construction contractor to hire through  
30 local union hiring halls; and

31 (3) a provision allowing not more than 15 percent of the construction

1 contractor's workforce on the public construction project to be composed of persons who are  
2 not members of the union or unions.

3 \* Sec. 4. Nothing in sec. 2 of this Act precludes operation of the correctional facility  
4 described in sec. 2(a) of this Act by a private third-party contractor comprised of persons  
5 employed by the Department of Corrections.

6 \* Sec. 5. 22 AAC 05.300(e) is annulled.

CS FOR HOUSE BILL NO. 428(JUD)  
IN THE LEGISLATURE OF THE STATE OF ALASKA  
NINETEENTH LEGISLATURE - SECOND SESSION

BY THE HOUSE JUDICIARY COMMITTEE

Offered:  
Referred:

Sponsor(s): HOUSE FINANCE COMMITTEE

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to the authority of the Department of Corrections to contract  
2 for facilities for the confinement and care of prisoners, and annulling a regulation  
3 of the Department of Corrections that limits the purposes for which an agreement  
4 with a private agency may be entered into; and giving notice of and approving  
5 a lease-purchase agreement for construction and operation of a correctional facility  
6 in the Third Judicial District, and setting conditions and limitations on the  
7 facility's construction and operation."

8 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

9 \* Section 1. AS 33.30.031(a) is amended to read:

10 (a) The commissioner shall determine the availability of state correctional  
11 facilities suitable for the detention and confinement of persons held under authority of  
12 state law or under agreement entered into under (e) of this section. If the  
13 commissioner determines that suitable state correctional facilities are not available, the

1 commissioner may enter into an agreement with a public or private agency to provide  
2 necessary facilities, subject to the following:

3 (1) the commissioner may not enter into an agreement with a  
4 public or private agency that is unable to provide a degree of custody, care, and  
5 discipline to the extent required by the laws of this state, including the standards  
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8 agreement with a public agency for the detention and confinement of persons held  
9 under authority of state law may be in this state or in another state;

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15 detention in the state; and

16 (ii) [(2)] the agreement is necessary because of health  
17 or security considerations involving a particular prisoner or class of  
18 prisoners, or because an emergency of prisoner overcrowding is  
19 imminent;

20 (B) may provide for the detention and confinement of all  
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22 charged with or convicted of felonies or misdemeanors, without regard to  
23 the custody classifications for prisoners as determined by the  
24 commissioner, unless the security of the facility is inconsistent with those  
25 custody classifications; and

26 (C) may not be administratively restricted or limited by the  
27 commissioner to use only for prisoners involved in certain rehabilitative or  
28 treatment programs authorized by law. [THE COMMISSIONER MAY  
29 NOT ENTER INTO AN AGREEMENT WITH AN AGENCY UNABLE TO  
30 PROVIDE A DEGREE OF CUSTODY, CARE, AND DISCIPLINE SIMILAR  
31 TO THAT REQUIRED BY THE LAWS OF THIS STATE.]

1 \* Sec. 2. NOTICE AND APPROVAL OF LEASE-PURCHASE AGREEMENT. (a) To  
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13 Department of Corrections under the lease must be reasonably commensurate with that total;  
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27 (3) may be constructed only under a public construction project labor  
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30 (A) a no-strike and no-slowdown pledge by the union or unions;

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1 through local union hiring halls; and

2 (C) a provision allowing not more than 15 percent of the construction  
3 contractor's workforce on the public construction project to be composed of persons  
4 who are not members of the union or unions; and

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7 into an agreement to operate defaults in performance under the contract and state  
8 operation is reasonably necessary to ensure the facility's continued operation; or

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21 of policy, the commissioner of corrections seeks and obtains accreditation of state correctional  
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23 applicable to correctional facilities that are not more stringent than those applicable to state  
24 correctional facilities operated by the Department of Corrections.

25 (e) Subsection (a) of this section constitutes the notice and approval required by  
26 AS 36.30.085.

27 \* Sec. 3. Nothing in sec. 2 of this Act precludes operation of the correctional facility  
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29 employed by the Department of Corrections.

30 \* Sec. 4. 22 AAC 05.300(e) is annulled.

FEB. -01' 96 (THU) 12:21 AK. JOB CORPS CENTER

TEL: 9077468810

P. 002

# ALASKA JOB CORPS CENTER

## MEMORANDUM

DATE: February 1, 1996

TO: Mike Williams  
Business Advisor, Chugach Alaska Corporation

FROM: Roger Erdell, Manager, Educational Services  
Alaska Job Corps Center, Phone: 746-8881

SUBJECT: Legislative Hearings, CS for HB 428 and 429

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1. On January 31, several individuals testified during Judiciary Committee hearings on the above bill, that they believed it would be wise to expand existing state correctional centers rather than build a major new facility. Unfortunately perhaps, the expansion of existing state correctional centers would be a very expensive proposition. In fact, most of the infrastructures of existing facilities will not support expansion.

Simply adding on to existing correctional centers by adding a wing here or there is neither wise from a correctional management perspective, nor from an infrastructural perspective. Sewer, heating, ventilation, food service, library, classroom, shop and all other spaces have to be sized to handle expansion. For example, the sewer treatment plant at the Hiland Mountain/Meadow Creek complex near Eagle River is at maximum capacity; the Juneau, Cook Inlet Pretrial (Anchorage), Hiland Mountain, Palmer and Fairbanks correctional centers have already been previously expanded, Juneau and Fairbanks a couple different times. Further expansions at these sites will likely require totally new "stand alone" facilities in order to function safely.

Only the Spring Creek facility at Seward and the Palmer Pre-trial facility were designed for relatively easy expansion with utilities and layouts anticipating the doubling of population space.

2. Secondly, several individuals testified that they had strong doubts or concerns about whether the state correctional system should contract with the private sector for the provision of space and supervision for Alaska's criminal offender population. In fact, the state has a long history of such contracts.

The Alaska Department of Corrections currently has 455 prisoners held in-state under private sector contracts and 205 held out-of-state under private management services contracts.

Mike Williams  
February 1, 1996  
Page 2

The total of 660 Alaska prisoners now in privately operated space is not a new concept in Alaska, or elsewhere. The proposed legislation merely clarifies that larger facilities can also be utilized under contracts with private sector service providers.

3. A third and final point should be addressed. The largest single category of prisoners that continue to clog the Alaska correctional systems' chain of small local and regional jails is the male sentenced felony population. This is the group which must be targeted in order to unclog the entire system.

There are currently 1,501 sentenced male felons held in-state and 247 out-of-state for a total of 1,748 sentenced male felons. If even half of these prisoners were removed from the existing facilities where they now reside, the state correctional system would be uncrowded overnight! The local and regional jail facilities would then be able to manage unsentenced local misdemeanants and felons awaiting trial and local sentenced misdemeanants serving short sentences. Until the long-term sentenced male felon population is properly housed, there cannot be any viable solution to uncrowding the states' correctional system. The C.S. for HB 148 and 149 could provide a substantial step toward the correct solution.

428 429

AMENDMENT

V. 2

BY REPRESENTATIVE FINKELSTEIN

OFFERED IN HOUSE JUDICIARY  
TO: CSHB 428 (JUD)

Page 1, line 1 following "Act" through page 4, line 30:  
Delete all material

Insert the following:

"requiring the Department of Corrections to consider a lease-purchase option for the construction and operation of a correctional facility.

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

**Section 1.** The Department of Corrections shall consider a lease-purchase option for the construction and operation of a new correctional facility in order to relieve overcrowding of existing correctional facilities."

Sponsor Statement  
**House Bill 428**  
by  
The House Finance Committee

HB 428, by the House Finance Committee, allows the Department of Corrections to contract with a private party to construct and operate a prison in the Third Judicial District. The Department of Corrections is authorized to enter into a lease purchase agreement and own the facility after 20 years. A group of employees from the Department of Corrections could be the private contractor if they bid competitively for the construction and operation of the facility.

The facility will

- include a maximum of 1000 beds
- be designed to allow expansion
- include housing for female prisoners
- not exceed a cost of \$100,000,000
- be constructed under a project labor agreement
- be accredited if state facilities are accredited
- will have correctional officers with the same training as state correctional officers

It is obvious that we need additional prison capacity in Alaska. The Department of Corrections reports that it is regularly exceeding the maximum and emergency capacity under the Cleary Agreement by over 100 prisoners. It also has 206 prisoners in a contract facility in Arizona. This proposal will address those needs and at a lower cost to the state, both in the operating and capital budget. It will also bring over \$6 million we spend outside back to Alaska, providing jobs for Alaskans and improving our economy.

The state has a need to improve its facilities for female prisoners. We have them housed in Lemon Creek, Fairbanks, Sixth Avenue, and Highland Mountain. Only Highland Mountain was designed to house both males and females. The state needs to address this problem, and HB 428 does that by requiring that the new facility be designed to house women.

The House Finance Committee on Corrections held interim hearings on the topic of privatization. It found that many states have entered into agreements with the private sector to construct and operate prisons. They have been successful in reducing the costs of incarceration and have maintained the level of security for residents of the state.

Sponsor Statement

HB 428

Page 2

Since February of 1995, Alaska has had 206 prisoners in a private facility in Arizona. We have had a very positive experience. The facility has operated without any negative incidents. The savings have been significant. The daily cost at the Arizona facility is \$59.00 per day per inmate. Alaskan facilities average \$107.00 per day per inmate, not including the cost of construction or other capital appropriations.

The advantage of a private facility is significant. There is a strong possibility that the per day cost of a private facility in Alaska will be within \$10.00 of the cost of the Arizona facility. In other states where private prisons have been built, there has been a very positive effect on state facilities. The entry of competition has reduced the cost of many state operated prisons.

A new contractor can bring new ideas to our state. If it happens to end up a national chain, it will bring the experience it gains in many other states and many other facilities. If a national chain teams up with local contractors, we will get the benefit of designs that work in prisons and construction techniques that fit the Alaska environment. We are told that a private sector contractor can begin serving prisoners as soon as 18 months after contract award and securing property for the facility.

HB 428 responds to concerns raised by public employees at the interim hearings. It requires that the correctional officers in the private institution will be trained to the same standards as state correction officers. It also requires the private facility will be accredited by any standards required of state facilities. We believe that these two provisions will protect the integrity of the prison system while taking advantage of the lower costs and innovative management techniques.

HB 428 requires the construction contractor build the facility under a project labor agreement, to assure the maximum possible Alaska hire.

HB 428

- Addresses the prison capacity problem
- Creates construction jobs
- Creates on going prison jobs for Alaskans
- Brings Alaska money back into Alaska's economy
- Provides an innovative opportunity to address Alaska's needs

HB 428/HB 429  
Probable Support and Opposition

Probable Supporters

Private Prison Operators

Construction Trades Unions

Native Corporations involved in construction and management operations,  
such as ASRC, Chugach, Ahtna, etc.

Alaskan Construction Companies

Business community Chamber of Commerce, Common Sense for Alaska, etc.

Municipality of Anchorage

Probable Opponents

Public Employee Unions

9-LS1338M ✓  
Chenoweth  
1/24/96

**CS FOR HOUSE BILL NO. 428( )**  
**IN THE LEGISLATURE OF THE STATE OF ALASKA**  
**NINETEENTH LEGISLATURE - SECOND SESSION**

**BY**

**Offered:**  
**Referred:**

**Sponsor(s): HOUSE FINANCE COMMITTEE**

**A BILL**

**FOR AN ACT ENTITLED**

1 **"An Act relating to the authority of the Department of Corrections to contract**  
2 **for facilities for the confinement and care of prisoners, and annulling a regulation**  
3 **of the Department of Corrections that limits the purposes for which an agreement**  
4 **with a private agency may be entered into; and giving notice of and approving**  
5 **a lease-purchase agreement for construction and operation of a correctional facility**  
6 **in the Third Judicial District, and setting conditions and limitations on the**  
7 **facility's construction and operation."**

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

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24 commissioner, unless the security of the facility is inconsistent with those  
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26 (C) may not be administratively restricted or limited by the  
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