

HB

183

SFIN

FILE

SENATE FINANCE COMMITTEE REPORT

DATE: 3/21/95

FURTHER:

DATE TURNED INTO OFFICE: 4-13-95

The Finance Committee considered CS FOR HOUSE BILL NO. 183(FIN)

Authority of the Alaska Housing Finance Corporation to use money or another asset of the corporation to acquire or construct a building for the corporation's use and occupancy; prior legislative approval of certain lease-purchase agreements; efd.

and recommends:

- be replaced with _____ CS _____
- adopt previous _____ CS _____
- attached amendment(s)
- adopt Letter of Intent by _____ Committee
- further referral to the _____ Committee

Senate Bill:
 same title
 new title
House Bill:
 same title
 technical change
 new: SCR# _____

SIGNING DO PASS	DP	OTHER RECOMMENDATIONS	NR	DNP	AM
<i>Rec'd E! Rec'd</i>	✓	<i>Paul P. Zhenoff</i>	✓		
<i>Bob Wang</i>	✓				
<i>Steve Baker</i>	✓				
Co-Chair: <i>Rita Halford</i>	✓				
Co-Chair: <i>[Signature]</i>	✓				

NEW FISCAL NOTE(S):

Department Date Zero Fiscal

PREVIOUS FISCAL NOTE(S):*

Department Date Zero Fiscal

#1 DOA	7/23/95	0	

APPROPRIATION -- no fiscal note

*include fiscal notes accompanying Governor's bill

FISCAL NOTE

STATE OF ALASKA
1995 LEGISLATIVE SESSION

Bill Version: CS HB 183(FIN)
(H) Publish Date: 2/23/95

Revision Date: _____
Title: "An Act extending the requirements of preliminary evaluation, notice, and prior legislative approval of certain..."
Sponsor: Hanley
Requestor: Hanley

Department Affected: Administration
BRU: General Services
Component: Purchasing
COMPONENT SERIAL NO. 50

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING EXPENDITURES	FY 96	FY 97	FY 98	FY 99	FY 00	FY 01
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES	0	0	0	0	0	0
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CHANGE IN REVENUES ()	0	0	0	0	0	0
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FUND SOURCE: (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1006 GF/MHTIA						
OTHER						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY 95) cost: \$ -0-

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary.)

There is no fiscal impact to the Division of General Services.

Prepared by: Vern Jones, Procurement Officer
Division: General Services

Phone: 465-2250
Date: _____

Approved by Commissioner: Mark Bover
Agency: Department of Administration

Date: _____

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Representative Mark Hanley
Alaska State Legislature

MEMORANDUM

DATE: April 4, 1995

TO: Senator Rick Halford, Co-chair, Senate Finance
Senator Steve Frank, Co-chair, Senate Finance

FROM: Mark Hanley *MH*

SUBJECT: Hearing Request for CSHB 183 (FIN)

Please schedule CSHB 183 (FIN) for a hearing in Senate Finance at your earliest convenience.

We thought the Certificates of Participation issue was solved last year, but began hearing rumors about COP's being issued to *build* the new Alaska Psychiatric Hospital. The bill in your committee would close that loophole.

Thank you.



Representative Mark Hanley

Alaska State Legislature

SPONSOR STATEMENT

House Bill No. 183

"Certificates of Participation: Part Trois"

HB 183 is intended to close yet another loophole found in the lease-purchase statute, AS 36.30.085.

As currently written, AS 36.30.085 requires legislative approval for *acquisition* by lease-purchase of real property. It does not, however, prevent issuance of certificates of participation (state debt) for *improvement* or *construction* of a state facility.

During the first session of the 18th Legislature, SB129 was passed to require notification to the Legislature before entering into lease-purchase agreements.

SB 247 became law during the second session of the 18th Legislature, and required legislative approval of all lease-purchase agreements.

Now it has come to my attention that an agency could issue certificates of participation for *construction* of real property. Although technically legal under 36.30.085, non-legislative entities obligating state funds remains contrary to legal intent, and the legislature's constitutional power of the purse.

This bill will hopefully close the final loophole.

ALASKA STATE LEGISLATURE

LEGISLATIVE BUDGET AND AUDIT COMMITTEE

Division of Legislative Audit



P. O. Box 113300
Juneau, AK 99811-3300
(907) 465-3830
FAX (907) 465-2347

MEMORANDUM

TO: The Honorable Mark Hanley
Co-Chair, House Finance Committee

FROM: Randy S. Welker *Randy*
Legislative Auditor

DATE: February 23, 1995

RE: APH Financing

We have had a chance to make further inquiry into who's on first and what's on second concerning the rumors of COP financing for the new Alaska Psychiatric Hospital. The apparent source of this financing approach comes from the Mental Health Board which envisions a 114 bed facility, including a 20 bed forensic unit funded by the Department of Corrections.

It is our understanding that the Board has recommended that the Governor's Office consider this funding approach. However, we have not found anyone who has acknowledged that they are considering pursuing this funding scheme without legislative involvement. No one we talked to had received a response from the Governor's Office.

To further confuse the matter, some view the legislature's mandate of a 72 bed facility to mean only non-criminal mental health treatment beds; forensic beds would be additional facility accommodations (72 + 20 forensic beds equals a 92 bed facility). Others might argue that the legislature's mandate was the maximum capacity of the facility, all beds included.

The Mental Health Board's vision, as contained in their strategic plan, revised in the fall of 1993, has not wavered in light of the conditional language contained in section 11 of Chapter 3, FSSLA 94.

If we become aware of any further "news", we will let you know.

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MEMORANDUM

TO: The Honorable Steve Frank, Co-Chair
The Honorable Drue Pearce, Co-Chair
Senate Finance Committee

FROM: Randy S. Welker *Randy*
Legislative Auditor

DATE: January 19, 1994

RE: Lease-Financing Legislation - SB 247

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

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

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

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

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

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

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

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

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

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

The Honorable Steve Frank
The Honorable Drue Pearce

-3-

January 19, 1994

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

Finally, the bill proposes the repeal of a temporary act, sec. 2, chapter 92, SLA 1986, which gives the court system the authority to enter into a lease-purchase agreement not to exceed \$29.9 million for construction of a court facility in Fairbanks.

We have enclosed a copy of AS 36.30.080 as it is currently written for reference. We have also included a copy of Chapter 92, SLA 86 and a sectional analysis.

Enclosures