HB

53

(7)

Date Referred to Committee: February 21, 1997 **FURTHER REFERRALS:** **Finance**

Date of Committee Action: 4/2/97

The JUDICIARY Committee considered: **HB 53**

HOUSE BILL NO. 53 **LEASE-PURCHASE CORRECTIONAL FACILITY**

"An Act relating to the authority of the Department of Corrections to contract for facilities for the confinement and care of prisoners, and annulling a regulation of the Department of Corrections that limits the purposes for which an agreement with a private agency may be entered into; authorizing an agreement by which the Department of Corrections may, for the benefit of the state, enter into one lease of, or similar agreement to use, space within a correctional facility that is operated by a private contractor, and setting conditions on the operation of the correctional facility affected by the lease or use agreement; and giving notice of and approving a lease-purchase agreement or similar use-purchase agreement for the design, construction, and operation of a correctional facility, and setting conditions and limitations on the facility's design, construction, and operation."

recommends it be replaced [ ] the same title
with the following committee substitute CS HB 53 (JUD) [ ] a new title

[ ] additional referral to _____ Committee
[ ] attached amendment(s)

ADOPTS: _____ Letter of Intent

ATTACHES NEW FISCAL NOTE(s): (Dept) APPROVES PREVIOUS: (Dept/Date)

[3] fiscal note(s) REVENUE, DOT&PF [ ] fiscal note(s) _____

& CORRECTIONS

[ ] zero fiscal note(s) ADMIN. [ ] zero fiscal note(s) _____

SIGNING WITH RECOMMENDATIONS		DP	DNP	NR	AM
	GREEN			—	
	JAMES			✓	
	CROFT		✓		
	BUNDE			✓	
	BERKOWITZ		✓		
	PORTER			✓	

CHAIR'S SIGNATURE _____

STATE OF ALASKA
1997 LEGISLATIVE SESSION

FISCAL NOTE

BILL NO: HB 53

Revision Date:
Dept. Affected: Revenue
Title: Lease-Purchase Correctional Facility
BRU: Revenue Operations
Component: Treasury
Sponsor: Representative Mulder
Requestor: (H) JUD
COMPONENT SERIAL NO. 121

Expenditures/Revenues: (Thousands of Dollars)

OPERATING EXPENDITURES	FY 98	FY 99	FY 00	FY 01	FY 02	FY 03
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS - LEASE PAYMENTS		9,841.5	9,842.3	9,844.1	9,842.5	9,841.0
TOTAL OPERATING	0.0	9,841.5	9,842.3	9,844.1	9,842.5	9,841.0
CAPITAL EXPENDITURES						
CHANGE IN REVENUES ( )						

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	0.0	9,841.5	9,842.3	9,844.1	9,842.5	9,841.0
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other						
TOTAL	0.0	9,841.5	9,842.3	9,844.1	9,842.5	9,841.0

Estimate of any current year (FY 97) cost $ 0.0

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

Lease-Purchase payments are based on the following assumptions: Total project costs of $90.0 million, current taxable interest rates plus 75bp (3/4% per annum), eighteen year lease term, and approximately equal annual payments of principal and interest. See attached debt service schedule.

Because a private, third-party contractor will operate the correctional facility, tax-exempt lease-purchase financing is not permitted under existing U.S. Treasury / IRS regulations. Thus it is estimated that the State will pay additional interest costs of approximately $1.4 million per year or $25.6 million over the term of the lease through the use of taxable vs tax-exempt financing. See attached debt service schedule for tax-exempt financing. (Continued on the attached page.)

Prepared by: Forrest Browne Forrest Browne
Phone: 465-3750
Division: Treasury
Date: March 3, 1997
Approved by Commissioner: Ross Kinney, Deputy Commissioner
Date: March 3, 1997
Agency: Revenue

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HB53 N (3

House Bill No. 53 approves a lease-purchase agreement for the financing, construction and operation of a correctional facility. The projected lease payments are shown above.

Debt Financing and Long-Range Planning Issues

The Department of Revenue recommends that the legislation be modified to "unbundle" the lease/purchase financing from the construction and operation of the proposed facility and to require that the State own the facility and all real estate appurtenant to the facility at the end of the lease term.

That is, the state bond committee would be authorized to issue certificates of participation for up to $90.0 million and to make cash payments to the selected third-party contractor for project costs upon progress and completion of the construction of the facility. The reasons for this recommendation are:

1. The lease-purchase agreement will be considered debt from a bond rating perspective, will affect the State's debt capacity and will be recorded as debt in the State's financial statements. It would be poor public policy for a third-party contractor to represent the State in the national financial markets, to negotiate credit on behalf of the State and, in the event of the contractor's default anytime over the term of the lease, to taint the State's excellent credit rating.
2. Most likely, the State can obtain lower cost lease/purchase financing than any third-party contractor. The state bond committee has direct access to the highly efficient, national financial markets at the most competitive interest rates.
3. The State would lose future debt management flexibility if a third-party contractor controls the financing. The interest cost penalties could total tens of millions of dollars over the term of the lease, depending on future interest rates. For example, the State refinances its debt periodically when interest rates drop. The Spring Creek Correctional lease/purchase financing has been refinanced twice for significant interest cost savings to the State. The State's G.O. bonds and International Airport bonds were both refinanced at lower interest rates in recent years. Such cost savings from future refinancings of the proposed corrections facility would accrue to the third-party contractor as the bill is currently written.
4. In terms of long-range planning, the State has maximum flexibility for future expansion or renovation of the correctional facility if the State controls the lease financing directly. That is, the facility's debt outstanding could simply be restructured to fund additional capital costs for future expansion or renovation if required.
5. At the end of the lease term when the financing has been paid off, the State should own the $90.0 million facility and the land. The bill should be revised to include eventual State ownership of the land as well as the facility.

Dated: 2/1/98
Delivered: 2/1/98

Sizing Debt Services Schedule
Private Prison Project
TAXABLE RATES + 75bp

Yr	Fiscal M	Fiscal YY	Coupon Date	Zer Cpn	Coupon Rate	Maturing Principal	Periodic Interest	Gross Semi-Annl Dbt Svc	Capitalized Interest	Debt Svc Rsv Int & Prin	Cntgncy Fnd Int & Prin	Net Semi-Annl Dbt Svc	Net Fiscal Dbt Svc
	2	99	8/1/98				3,685,766.25	3,685,766.25				3,685,766.25	
	8	99	2/1/99	N	6.650	2,470,000.00	3,685,766.25	6,155,766.25				6,155,766.25	9,841,532.5
1	2	0	8/1/99				3,603,638.75	3,603,638.75				3,603,638.75	
	8	0	2/1/00	N	6.950	2,635,000.00	3,603,638.75	6,238,638.75				6,238,638.75	9,842,277.5
2	2	1	8/1/00				3,512,072.50	3,512,072.50				3,512,072.50	
	8	1	2/1/01	N	7.150	2,820,000.00	3,512,072.50	6,332,072.50				6,332,072.50	9,844,145.0
3	2	2	8/1/01				3,411,257.50	3,411,257.50				3,411,257.50	
	8	2	2/1/02	N	7.500	3,020,000.00	3,411,257.50	6,431,257.50				6,431,257.50	9,842,515.0
4	2	3	8/1/02				3,298,007.50	3,298,007.50				3,298,007.50	
	8	3	2/1/03	N	7.700	3,245,000.00	3,298,007.50	6,543,007.50				6,543,007.50	9,841,015.0
5	2	4	8/1/03				3,173,075.00	3,173,075.00				3,173,075.00	
	8	4	2/1/04	N	7.750	3,495,000.00	3,173,075.00	6,668,075.00				6,668,075.00	9,841,150.0
6	2	5	8/1/04				3,037,643.75	3,037,643.75				3,037,643.75	
	8	5	2/1/05	N	7.900	3,765,000.00	3,037,643.75	6,802,643.75				6,802,643.75	9,840,287.5
7	2	6	8/1/05				2,888,926.25	2,888,926.25				2,888,926.25	
	8	6	2/1/06	N	8.000	4,065,000.00	2,888,926.25	6,953,926.25				6,953,926.25	9,842,852.5
8	2	7	8/1/06				2,726,326.25	2,726,326.25				2,726,326.25	
	8	7	2/1/07	N	8.100	4,390,000.00	2,726,326.25	7,116,326.25				7,116,326.25	9,842,652.5
9	2	8	8/1/07				2,548,531.25	2,548,531.25				2,548,531.25	
	8	8	2/1/08	N	8.150	4,745,000.00	2,548,531.25	7,293,531.25				7,293,531.25	9,842,062.5
10	2	9	8/1/08				2,355,172.50	2,355,172.50				2,355,172.50	
	8	9	2/1/09	N	8.250	5,130,000.00	2,355,172.50	7,485,172.50				7,485,172.50	9,840,345.0
11	2	10	8/1/09				2,143,560.00	2,143,560.00				2,143,560.00	
	8	10	2/1/10	N	8.300	5,555,000.00	2,143,560.00	7,698,560.00				7,698,560.00	9,842,120.0
12	2	11	8/1/10				1,913,027.50	1,913,027.50				1,913,027.50	
	8	11	2/1/11	N	8.350	6,015,000.00	1,913,027.50	7,928,027.50				7,928,027.50	9,841,055.0
13	2	12	8/1/11				1,661,901.25	1,661,901.25				1,661,901.25	
	8	12	2/1/12	N	8.450	6,520,000.00	1,661,901.25	8,181,901.25				8,181,901.25	9,843,802.5
14	2	13	8/1/12				1,386,431.25	1,386,431.25				1,386,431.25	
	8	13	2/1/13	N	8.550	7,070,000.00	1,386,431.25	8,456,431.25				8,456,431.25	9,842,862.5
15	2	14	8/1/13				1,084,188.75	1,084,188.75				1,084,188.75	
	8	14	2/1/14	N	8.600	7,675,000.00	1,084,188.75	8,759,188.75				8,759,188.75	9,843,377.5
16	2	15	8/1/14				754,163.75	754,163.75				754,163.75	
	8	15	2/1/15	N	8.650	8,335,000.00	754,163.75	9,089,163.75				9,089,163.75	9,843,327.5
17	2	16	8/1/15				393,675.00	393,675.00				393,675.00	
	8	16	2/1/16	N	8.700	9,050,000.00	393,675.00	9,443,675.00				9,443,675.00	9,837,350.0

Prepared by: FORREST BROWNE, DOR - TREASUR
Prepared on: 3/1/97 11:03 8.05 Rpt 14
Record ID: DOC-1998-I :MUNIDB

Dated: 2/1/98
Delivered: 2/1/98

Sizing Debt Services Schedule
Private Prison Project
TAXABLE RATES + 75bp

Yr	Fiscal M YY	Coupon Date	Zer Cpn	Coupon Rate	Maturing Principal	Periodic Interest	Gross Semi-Annl Dbt Svc	Capitalized Interest	Debt Svc Rsv Int & Prin	Cntgncy Fnd Int & Prin	Net Semi-Annl Dbt Svc	Net Fiscal Dbt Svc
					90,000,000.00	87,154,730.00	177,154,730.00				177,154,730.00	177,154,730.0

True Interest Cost (TIC)	8.4429016
Net Interest Cost (NIC)	8.4539708
Arbitrage Yield Limit (AYL)	8.3567809
Arbitrage Net Interest Cost (ANIC)	8.4019136

Prepared by: FORREST BROWNE, DOR - TREASURY
Prepared on: 3/1/97 11:03 8.05 Rpt 14
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Delivered: 2/1/98

Sizing Debt Services Schedule
Private Prison Project
TAX-EXEMPT + 75bp

Yr	Fiscal M	YY	Coupon Date	Zer Cpn	Coupon Rate	Maturing Principal	Periodic Interest	Gross Semi-Annl Dbt Svc	Capitalized Interest	Debt Svc Rsv Int & Prin	Cntgncy Fnd Int & Prin	Net Semi-Annl Dbt Svc	Net Fiscal Dbt Svc
	2	99	8/1/98				2,694,207.50	2,694,207.50				2,694,207.50	
	8	99	2/1/99	N	4.650	3,035,000.00	2,694,207.50	5,729,207.50				5,729,207.50	8,423,415.0(
1	2	0	8/1/99				2,623,643.75	2,623,643.75				2,623,643.75	
	8	0	2/1/00	N	4.950	3,175,000.00	2,623,643.75	5,798,643.75				5,798,643.75	8,422,287.5(
2	2	1	8/1/00				2,545,062.50	2,545,062.50				2,545,062.50	
	8	1	2/1/01	N	5.150	3,330,000.00	2,545,062.50	5,875,062.50				5,875,062.50	8,420,125.0(
3	2	2	8/1/01				2,459,315.00	2,459,315.00				2,459,315.00	
	8	2	2/1/02	N	5.300	3,505,000.00	2,459,315.00	5,964,315.00				5,964,315.00	8,423,630.0(
4	2	3	8/1/02				2,366,432.50	2,366,432.50				2,366,432.50	
	8	3	2/1/03	N	5.450	3,690,000.00	2,366,432.50	6,056,432.50				6,056,432.50	8,422,865.0(
5	2	4	8/1/03				2,265,880.00	2,265,880.00				2,265,880.00	
	8	4	2/1/04	N	5.600	3,890,000.00	2,265,880.00	6,155,880.00				6,155,880.00	8,421,760.0(
6	2	5	8/1/04				2,156,960.00	2,156,960.00				2,156,960.00	
	8	5	2/1/05	N	5.700	4,105,000.00	2,156,960.00	6,261,960.00				6,261,960.00	8,418,920.0(
7	2	6	8/1/05				2,039,967.50	2,039,967.50				2,039,967.50	
	8	6	2/1/06	N	5.800	4,340,000.00	2,039,967.50	6,379,967.50				6,379,967.50	8,419,935.0(
8	2	7	8/1/06				1,914,107.50	1,914,107.50				1,914,107.50	
	8	7	2/1/07	N	5.900	4,595,000.00	1,914,107.50	6,509,107.50				6,509,107.50	8,423,215.0(
9	2	8	8/1/07				1,778,555.00	1,778,555.00				1,778,555.00	
	8	8	2/1/08	N	6.000	4,865,000.00	1,778,555.00	6,643,555.00				6,643,555.00	8,422,110.0(
10	2	9	8/1/08				1,632,605.00	1,632,605.00				1,632,605.00	
	8	9	2/1/09	N	6.100	5,155,000.00	1,632,605.00	6,787,605.00				6,787,605.00	8,420,210.0(
11	2	10	8/1/09				1,475,377.50	1,475,377.50				1,475,377.50	
	8	10	2/1/10	N	6.200	5,470,000.00	1,475,377.50	6,945,377.50				6,945,377.50	8,420,755.0(
12	2	11	8/1/10				1,305,807.50	1,305,807.50				1,305,807.50	
	8	11	2/1/11	N	6.200	5,810,000.00	1,305,807.50	7,115,807.50				7,115,807.50	8,421,615.0(
13	2	12	8/1/11				1,125,697.50	1,125,697.50				1,125,697.50	
	8	12	2/1/12	N	6.300	6,170,000.00	1,125,697.50	7,295,697.50				7,295,697.50	8,421,395.0(
14	2	13	8/1/12				931,342.50	931,342.50				931,342.50	
	8	13	2/1/13	N	6.400	6,560,000.00	931,342.50	7,491,342.50				7,491,342.50	8,422,685.0(
15	2	14	8/1/13				721,422.50	721,422.50				721,422.50	
	8	14	2/1/14	N	6.400	6,980,000.00	721,422.50	7,701,422.50				7,701,422.50	8,422,845.0(
16	2	15	8/1/14				498,062.50	498,062.50				498,062.50	
	8	15	2/1/15	N	6.500	7,420,000.00	498,062.50	7,918,062.50				7,918,062.50	8,416,125.0(
17	2	16	8/1/15				256,912.50	256,912.50				256,912.50	
	8	16	2/1/16	N	6.500	7,905,000.00	256,912.50	8,161,912.50				8,161,912.50	8,418,825.0(

Prepared by: FORREST BROWNE, DOR - TREASURY
Prepared on: 3/1/97 11:47 8.05 Rpt 14
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FISCAL NOTE

STATE OF ALASKA
1997 LEGISLATIVE SESSION

BILL NO. HB 53

Revision Date:
Title: "Lease-Purchase Correctional Facility
Sponsor: Representative Mulder
Requester: House Judiciary

Dept. Affected: DOT&PF
BRU: Central Region Design and Construction
Component: Central Region CIP Program
COMPONENT SERIAL NO. 563

Expenditures/Revenues (Thousands of Dollars)

OPERATING EXPENDITURES	FY 98	FY 99	FY 00	FY 01	FY 02	FY 03
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	1,120.0	0.0	0.0	0.0	0.0	0.0
CHANGE IN REVENUES ( )	0.0	0.0	0.0	0.0	0.0	0.0

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	1,120.0					
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other						
TOTAL	1,120.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY97) cost: $ 0.0

POSITIONS

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

ANALYSIS: (Attach a separate page if necessary)

See Attached

Prepared by: Sam Kito III — Phone: 465-3900
Special Assistant
Division: Office of the Commissioner — Date:
Approved by: Joseph L. Perkins — Date: 3/7/97
Commissioner
Agency: Department of Transportation and Public Facilities

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ATTACHMENT TO
Department of Transportation & Public Facilities
Fiscal Note For House Bill 53

House Bill 53 is an act to provide for design, construction, and operation of a new correctional facility by the private sector. The Department of Transportation & Public Facilities (DOT&PF) would act on behalf of the Department of Corrections (DOC) to procure the design-build-operate contract(s) for the facility.

DOT&PF, with significant DOC participation and consultant assistance, will develop a bidding document to which the private sector contractors can respond in competition with each other but on equal footing. The bidding document will establish "Site Criteria", define the required "Facility Criteria" (in terms of the scope of the proposed facility and the applicable design/construction requirements) and "Operational Standards". It will attempt to define the intended product of the contract with a minimum of prescriptive specification, using instead a descriptive method of specification. In this manner the innovation of the private contractor's design and construction team can best be utilized, while still maintaining some control so as to ensure that all bidders are proposing similar offerings and that the offerings meet the needs of the State.

DOT&PF will develop the bidding document, solicit bids, evaluate offers, award the contract(s), and followup during design and construction of the facility to ensure compliance with the terms of the contract. (DOC will develop and ensure compliance with the "Operating Standards" portion of the contract(s).) DOT&PF estimates the cost of its services, and those of its consultants, as shown below:

DOT&PF Personnel and Incidentals	
Project Manager	$ 115,000
Technical and Support Staff	$ 20,000
Reproduction and Advertising Expenses	$ 10,000
Construction Phase Compliance Monitoring	$ 100,000
Consultant Costs	
Facility Criteria	$ 840,000
Site Criteria	$ 35,000
Combined Total	$1,120,000

FISCAL NOTE

STATE OF ALASKA
1997 LEGISLATIVE SESSION

BILL NO. HB 53

Revision Date:
Dept. Affected: Corrections
Title: "An Act relating to the authority of the Department of Corrections to contract for facilities for the confinement and care..."
BRU: All
Component:
Sponsor: Representative Mulder
Requester: House Judiciary
COMPONENT SERIAL NO. #0694

Expenditures/Revenues (Thousands of Dollars)

OPERATING EXPENDITURES	FY 98	FY 99	FY 00	FY 01	FY 02	FY 03
PERSONAL SERVICES	174.4	174.4	174.4	73.7	73.7	73.7
TRAVEL						
CONTRACTUAL	300.0					
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS	20.0	20.0	20.0	10,200.0	10,200.0	10,200.0
TOTAL OPERATING	494.4	194.4	194.4	10,273.7	10,273.7	10,273.7
CAPITAL EXPENDITURES						
CHANGE IN REVENUES ( )						

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	494.4	194.4	194.4	10,273.7	10,273.7	10,273.7
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other						
TOTAL	494.4	194.4	194.4	10,273.7	10,273.7	10,273.7

Estimate of any current year (FY97) cost: $ 0.0

POSITIONS

FULL-TIME	3	3	3	1	1	1
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

Please see attached explanation.

Prepared by: Bruce Richards
Division: Commissioner's Office
Phone: 465-3307
Date: 3/6/97

Approved by Commissioner: Margaret M. Pugh
Date: 3/6/97
Agency: Department of Corrections

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To implement this bill, the Department of Corrections would be required to secure consultant services to develop three distinct studies:

(1) a feasibility study to determine the potential costs and benefits that would result from contracting facility operations, as required by the state's union contracts;

(2) a feasibility study to determine the statewide impact of utilizing a centralized facility; and

(3) a staffing and operational plan, including operational standards.

It is estimated that these three studies will cost a total of $300.0.

It will be necessary for the Department of Corrections, as well as the Department of Transportation and Public Facilities, to be intimately involved in the planning and oversight of this project throughout its construction phase, which will take between two and three years, depending on the size of the facility. DOC estimates it will need three new positions to perform the necessary functions associated with this project.

Criminal Justice Planner (73.7): The planner will initially assist in preparing the RFP for consulting services and then insure that the lessor meets its contractual obligations throughout the course of the lease term. This position will also be responsible for prisoner movement, programming, staffing and operational contractor start-up. This will be a full-time position.

Facilities Manager I (68.7) The manager will serve as DOC's first line of oversight for facility design and construction. The position will continue through final acceptance of the facility.

Administrative Clerk I (34.1) This position is required throughout the project to complete research, maintain files and records, and provide support to the Criminal Justice Planner and the Facilities Manager. $20.0 annually is included to pay for office space, equipment, supplies, travel, etc.

Assuming that the facility can be constructed in three years, operational costs would be inccurred beginning in FY 02. Assuming that the prisoners in the facility would be classified medium custody, and assuming that the facility housed 660 prisoners, and further assuming a operating cost of $60 per day per prisoner, the Department of Corrections calculates an annual operating cost of $14.5 million. If the construction of this facility permitted closure of the Anchorage 6th Avenue jail, this would result in an annual savings of $4.3 million in operating costs. This would produce a net operating cost of $10.2 million for the new facility.

FISCAL NOTE

STATE OF ALASKA **BILL NO. HB 53**

1997 LEGISLATIVE SESSION

Revision Date: _____

Title: "...lease purchase agreement for construction and operation of a correctional facility....."

Sponsor: Mulder

Requestor: (H) Jud

Department Affected: Administration

BRU: General Services

Component: Purchasing

COMPONENT SERIAL NO. 60

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING EXPENDITURES	FY 98	FY 99	FY 00	FY 01	FY 02	FY 03
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	0.0	0.0	0.0
CHANGE IN REVENUES ( )	0.0	0.0	0.0	0.0	0.0	0.0

FUND SCURCE: (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
OTHER *						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY 97) cost: $ 0.0

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary.)

The bill would authorize financing and construction of a new correctional facility under a lease-purchase agreement in Anchorage. The Department of Administration's role in this project is to execute a lease agreement on behalf of the state.

No costs for design, construction, contract compliance, building maintenance or lease payments are anticipated from the Department of Administration budget. See attached assumptions.

Prepared by: Dugan Petty, Director

Division: General Services

Phone: 465-2250

Date: _____

Approved by Commissioner: Mark Boyer

Agency: Department of Administration

Date: 3/6/97

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ANALYSIS: (continued)

ASSUMPTIONS:

The bill provides for 3 possible alternatives for providing additional correctional beds, including a lease with a political subdivision, a lease with a third party and a lease-purchase agreement with a third party. These assumptions are based on the lease-purchase option.

1. Dept. of Corrections will furnish requirements for facility capacity.
2. Dept. of Corrections will establish operational criteria for the facility for use in the RFP.
3. DOT&PF will develop a building space program, design and construction standards, performance criteria and specifications suitable for use in the design and construction RFP.
4. DOT&PF will manage the RFP process to include both the operational agreement and the lease-purchase agreement.
5. A lease-purchase agreement will be prepared by the Department of Law.
6. DOT&PF will provide construction administration and inspection services from award to occupancy.
7. Lease payments will begin in the first year of operation and will be budgeted in the Dept. of Revenue.
8. Payment for the operating agreement will be budgeted by the Department of Corrections.

Post-it® Fax Note 7671	Date	# of pages ▶ 11
To LISA DEMER	From LISA KIRSCH	
Co./Dept. DAILY NEWS	Co. HOUSE JUD.	
Phone # 257 4390	Phone # 465 4990	
Fax # 258 2157	Fax # " 4316	

0-LS0194\L

CS FOR HOUSE BILL NO. 53(JUD)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTIETH LEGISLATURE - FIRST SESSION

BY THE HOUSE JUDICIARY COMMITTEE

Offered:
Referred:

Sponsor(s): REPRESENTATIVE MULDER

A BILL

FOR AN ACT ENTITLED

"An Act relating to the authority of the Department of Corrections to contract for facilities for the confinement and care of prisoners, and annulling a regulation of the Department of Corrections that limits the purposes for which an agreement with a private agency may be entered into; authorizing an agreement by which the Department of Corrections may, for the benefit of the state, enter into one lease of, or similar agreement to use, space within a correctional facility that is operated by a private contractor, and setting conditions on the operation of the correctional facility affected by the lease or use agreement; and giving notice of and approving a lease-purchase agreement or similar use-purchase agreement for the design, construction, and operation of a correctional facility, and setting conditions and limitations on the facility's design, construction, and operation."

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

L

* **Section 1.** AS 33.30.031(a) is amended to read:

(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**, subject to the following:**

(1) the commissioner may not enter into an agreement with an agency unless the agency demonstrates the qualifications and experience necessary to provide a degree of custody, care, and discipline to the extent required by the laws of this state;

(2) correctional [. CORRECTIONAL] facilities provided through agreement with **an** [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 **an** [A PRIVATE] agency

(A) 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

(B) may not by regulation be restricted or limited by the commissioner to use only for prisoners involved in certain rehabilitative or treatment programs authorized by law [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].

* **Sec. 2.** AS 33.30.031(c) is amended to read:

(c) **An** [NOTWITHSTANDING AS 36.30.300, AN] agreement with a private agency to provide necessary facilities under (a) of this section must**, notwithstanding AS 36.30.300,** be based on competitive bids. **The commissioner may not enter into an agreement with a private agency to provide necessary facilities in this state unless the agency**

(1) posts an adequate performance bond and payment bond;

(2) demonstrates to the commissioner's satisfaction the capability to provide the necessary qualified personnel to implement the terms of the contract; and

(3) provides a bond or certificate of insurance sufficient to defend and indemnify the state and a municipality in which the facility is located against claims or liability arising from the operation of correctional facilities by the contractor.

* **Sec. 3.** AS 33.30.031 is amended by adding new subsections to read:

(f) The commissioner may not enter into an agreement to provide necessary facilities under (a) of this section as a correctional facility that is to be constructed in this state after the effective date of this Act unless the commissioner initiates and completes a site selection process. The site selection process must provide the public reasonable opportunity to comment about sites to be considered for the location of the correctional facility. In addition, if, on the basis of the site selection process, the commissioner determines to enter into an agreement to contract for provision of necessary facilities at a correctional facility that is to be located at a site within a municipality of the state, the correctional facility may not be constructed at the site unless approved by a majority of the voters within the "affected area" at an election conducted by the municipality. In this subsection, "affected area" means the area within two miles of the external perimeter of the proposed correctional facility.

(g) In conducting the site selection process required by (f) of this section, the

commissioner may solicit proposals from private entities by publishing a request for proposal in a newspaper of general circulation. The commissioner shall accept proposals for six months after initial publication of the request for proposals. Each proposal shall certify in a manner prescribed by the commissioner that

(1) the facility to be constructed will meet the department's requirements as described by the commissioner in the request for proposals or other documents;

(2) the facility will be operated at a cost to the state below the state's cost to operate a comparable facility, that cost to be described by the commissioner in the request for proposals or other documents; and

(3) the entity submitting the proposal owns or has an option to buy at a fixed cost the land on which the proposed facility would be located, and the entity agrees that the state may purchase the land at a price fixed at the time of entering into the contract if the state assumes ownership or control of the facility under a statute or provision of contract.

(h) In order for the certification of compliance with (g) of this section to be valid, the approval process must meet the following requirements:

(1) not more than one month after initial publication of the request for proposals, the private entity shall publish in a newspaper of general circulation notice of intent to make a proposal, including a description of the location to be proposed;

(2) not more than one month after initial publication of the request for proposals, the private entity shall deliver by certified mail to all voters residing within two miles of the proposed site notice of intent to make a proposal, including a description of the location to be proposed;

(3) at least three months prior to the bid closure date published on the request for proposals, the municipality of the state conducting the election shall at the expense of the entity deliver by certified mail to all voters residing within two miles of the proposed site a mail-in ballot approved by the commissioner that voters may use to signify approval of the proposed site; and

(4) the approval process may not last more than three months from the mailing of the ballots and indication of approval may not be counted after the close of this period.

(i) If the proposed site lies within the boundaries of a municipality of the state,

the entity making the proposal may, at the expense of the entity, contract with the administrator of the municipality to count ballots prepared under (h) of this section, publish the results in a newspaper of general circulation, and make all ballots received available for inspection by parties with reasonable interest in the proposal. The entity making the proposal shall pay for the cost to count the ballots, publish the results in a newspaper of general circulation, and make all ballots received available for inspection by parties with reasonable interest in the proposal.

* **Sec. 4.** AS 33.30 is amended by adding a new section to article 1 to read:

Sec. 33.30.043. Lease of or agreement to use space within municipal correctional facility. (a) If the commissioner determines that it would be in the best interest of the state, the commissioner may enter into an agreement with a municipality of the state for the lease by the state of a correctional facility or a part of it or for the use and operation of a correctional facility or a part of it for the benefit of the state.

(b) An agreement executed by the commissioner under (a) of this section must provide that

(1) the state has the right to detain or confine a prisoner held under authority of law in the correctional facility;

(2) the administrator of the correctional facility agrees to implement an order concerning a prisoner issued by a court of the state;

(3) the administrator of the correctional facility shall comply with the law and with regulations adopted by the commissioner relating to the custody, care, and discipline of a prisoner detained or confined in the correctional facility; and

(4) the commissioner may inspect the correctional facility at any time to determine the conditions under which a prisoner is detained or confined.

(c) The agreement executed by the commissioner under (a) of this section may require the administrator of the correctional facility to comply with requirements that the commissioner considers necessary for the protection of the public or for the quality of care and programs for prisoners required by this chapter and regulations adopted by the commissioner.

* **Sec. 5.** AUTHORIZATION TO LEASE, OR FOR USE OF, CORRECTIONAL FACILITY SPACE WITH THIRD-PARTY CONTRACTOR OPERATION. (a) To relieve overcrowding of existing correctional facilities, the Department of Corrections may enter into

no more than one agreement to lease space or for use of space within a correctional facility that will house persons who are committed to the custody of the commissioner of corrections. The agreement to lease or for use entered into under this section is predicated upon and must provide for an agreement under which a private third-party contractor operates the facility by providing for custody, care, and discipline services for persons held by the commissioner of corrections under authority of state law.

(b) The authorization given by (a) of this section is subject to the conditions of (c) - (e) of this section and to the further limitation that the total payments for the full term of the agreement to lease or for use may not exceed $150,000,000 and the anticipated annual amount of the rental obligation to be paid by the Department of Corrections under the agreement to lease or for use must be reasonably commensurate with that total.

(c) A lease of space or agreement for use of space authorized by (a) of this section may not involve a correctional facility that

(1) contains a total population of less than 500 or more than 800 prisoners; or

(2) is to be operated by the state or a municipality except that the state or a municipality may operate the correctional facility temporarily if, in a correctional facility that is to be operated by a third-party contractor with whom the state or a municipality has entered into an agreement to operate the correctional facility, the private third-party contractor with whom the state or a municipality has entered into the agreement to operate the correctional facility defaults in performance under the contract and operation of the correctional facility by the state or the municipality is reasonably necessary to ensure the facility's continued operation.

(d) If required by the commissioner of corrections as a condition of the correctional facility's operation, in the award of a contract for the operation of the correctional facility to be operated under the authorization set out in (a) of this section, the Department of Corrections shall require that persons employed by the contractor as correctional officers in the facility meet the requirements of AS 18.65.130 - 18.65.290 that are applicable to correctional officers.

(e) The Department of Corrections may not, under this section, enter into an agreement to lease space or for the use of space in a correctional facility if, under sec. 6 of this Act, the Department of Administration, on behalf of the Department of Corrections, enters

into a lease-purchase agreement, use-purchase agreement, or other agreement to use a facility that has a nominal purchase option.

* Sec. 6. NOTICE AND APPROVAL OF LEASE-PURCHASE AGREEMENT OR SIMILAR USE-PURCHASE AGREEMENT. (a) To provide for the design, construction, and operation of a new correctional facility in order to relieve overcrowding of existing correctional facilities, the Department of Administration, on behalf of the Department of Corrections, may enter into an agreement under AS 33.30.031, in the form of a lease-purchase agreement, use-purchase agreement, or other agreement to use a facility that has a nominal purchase option, for the design, construction, and operation of a correctional facility that will house persons who are committed to the custody of the commissioner of corrections. The project approval given by this subsection is subject to the conditions of (b) - (e) and (g) of this section and to the following limitations:

(1) the anticipated total construction, acquisition, and related costs of establishing the correctional facility may not exceed $90,000,000;

(2) the total lease or use payments for the full term of the agreement may not exceed $180,000,000 and the anticipated annual amount of the rental obligation to be paid by the Department of Corrections under the lease or use agreement must be reasonably commensurate with that total; and

(3) at the end of the term of the lease-purchase agreement or use-purchase agreement, the state shall own the correctional facility.

(b) The correctional facility to be designed, constructed, and operated under the notice and approval given in (a) of this section

(1) must be designed and constructed so as to house, in separate housing, female prisoners and male prisoners;

(2) may not contain a total population of more than 1,000 prisoners, but must be designed and constructed so as to allow expansion of the facility to a greater capacity; and

(3) may not be operated by the state except temporarily when

(A) the private third-party contractor with whom the state has entered into an agreement to operate defaults in performance under the contract and state operation is reasonably necessary to ensure the facility's continued operation; or

(B) the state is unable to contract with a private third-party contractor.

(c) The lease-purchase or use-purchase agreement entered into under this section must provide for

(1) an agreement under which the correctional facility is designed, constructed, and, except for services to prisoners described in (2) of this subsection, operated by a private third-party contractor; the agreement described in this subsection is made for the purpose of acquiring, improving, and maintaining the correctional facility structure under AS 36.30.085, and is exclusive of one or more agreements for the custody, care, and discipline of prisoners housed in the facility as may be authorized by AS 33.30.031(a)(1) and (3);

(2) an operating agreement, separate from the agreement described in (1) of this subsection, under which a private third-party contractor operates the facility by providing for custody, care, and discipline services for persons held by the commissioner of corrections under authority of state law; the operating agreement described in this paragraph shall

(A) for its initial period, not to exceed five years, be entered into with a private third-party contractor that is the same person as the third-party contractor described in (1) of this subsection; and

(B) for the duration of the period of the lease-purchase or use-purchase agreement, be rebid or reoffered at intervals of not more than five years and may be entered into with a private third-party contractor other than the person described in (A) of this paragraph.

(d) In the evaluation of a bid submitted to construct and operate the correctional facility described in this section, the Department of Administration may provide incentive to the maker of a bid that pledges to employ state residents as far as practicable.

(e) If required by the commissioner of corrections as a condition of the correctional facility's operation, in the award of a contract for the operation of the correctional facility to be designed, constructed, and operated under the notice and approval given in (a) of this section, the Department of Administration shall require that persons employed by the contractor as correctional officers in the facility meet the requirements of AS 18.65.130 - 18.65.290 that are applicable to correctional officers.

(f) Subsection (a) of this section constitutes the notice and approval required by AS 36.30.085.

(g) The Department of Administration, on behalf of the Department of Corrections,

may not, under this section, enter into a lease-purchase agreement, use-purchase agreement, or other agreement to use a facility that has a nominal purchase option if, under sec. 5 of this Act, the Department of Corrections enters into an agreement to lease space or for the use of space in a correctional facility.

* Sec. 7. CONSTRUCTION OF CORRECTIONAL FACILITY UNDER PROJECT LABOR AGREEMENT. (a) The purpose of this section is to enable the state to meet its obligation to improve the care and custody of the prisoners for which it is responsible at an early date through the completion of construction of a major correctional facility by structuring labor relations at the job site of the correctional facility in the interests of industrial harmony and in a way that makes optimal use of construction resources.

(b) Notwithstanding any restrictions that may be applicable under AS 36.30, the correctional facility described in sec. 6 of this Act may be constructed only under a public construction project labor agreement between the building construction contractor and one or more building trade unions; the labor agreement must provide

(1) a no-strike and no-slowdown pledge by the union or unions;

(2) a commitment on the part of the construction contractor to hire through local union hiring halls; and

(3) a provision allowing not more than 15 percent of the construction contractor's workforce on the public construction project to be composed of persons who are not members of the union or unions.

* **Sec. 8.** 22 AAC 05.300(e) is annulled.

* **Sec. 9.** APPLICABILITY. The provisions of AS 33.30.031(f), added by sec. 3 of this Act, do not apply to construction within the perimeters of correctional facilities, as that term is defined in AS 33.30.901, that are in existence on the effective date of this Act.

Alaska State Legislature

House of Representatives

House Judiciary Committee

State Capitol, Room 120
Juneau, Alaska 99801-1182
(907) 465-4990

Date: April 3, 1997

To: Representatives Mark Hanley and Gene Therriault,
Co-Chairs of the House Finance Committee

From: Representative Joseph Green,
Chair, House Judiciary Committee

Yesterday the House Judiciary Committee passed HB53 out of committee with amendments. We considered many amendments including two, designated 0-LS0194\K.35 and 36, that concerned financial matters. However, the committee did not act on those two amendments because the House Judiciary members felt they were best addressed in the House Finance Committee.

Accordingly, I have attached those two amendments, and we strongly encourage the House Finance Committee to give them due consideration.

AMENDMENT #3B ADOPTED

OFFERED IN THE HOUSE CROFT/GREEN

TO: HB 53

Page 3, following line 3:

Insert a new bill section to read:

"*Sec. 2. AS 33.30.031 is amended by adding a new subsection to read:

(f) The commissioner may not enter into an agreement to provide necessary facilities under (a) of this section as a correctional facility that is to be constructed in this state after the effective date of this Act unless the commissioner initiates and completes a site selection process. The site selection process must provide the public reasonable opportunity to comment about sites to be considered for the location of the correctional facility. In addition, if, on the basis of the site selection process, the commissioner determines to enter into an agreement to contract for provision of necessary facilities at a correctional facility that is to be located at a site within a municipality of the state, the correctional facility may not be constructed at the site unless approved by a majority of the voters within the "affected area" at an election conducted by the municipality or legal subdivision of the state. For the purpose of this subsection, "affected area" means the area within 2 miles of the external perimeter of the proposed correctional facility. This restriction does not apply to construction within the perimeter of correctional facilities in existence before the effective date of this act.

(g) In conducting the site selection process required by (f) of this section, the commissioner may solicit proposals from private entities by publishing a request for proposal in a newspaper of general circulation. The commissioner shall accept proposals for six months after initial publication of the request for proposals. Any such proposal shall certify in a manner prescribed by the commissioner that

(1) the facility to be constructed will meet the department's requirements as described by the commissioner in the RFP or other document;

(2) the facility will be operated at a cost to the state below the state's cost to operate a comparable facility, that cost to be described by the commissioner in the RFP or other documents;

(3) the entity owns or has an option to buy at a fixed cost the land on which the proposed facility would be located, and the entity agrees that the state may purchase the land at a price fixed at the time of contracting if the state assumes ownership or control of the facility pursuant to statute or provision of contract;

(h) in order for the certification of compliance with subsection (g) to be valid, the approval process must meet the following requirements:

(1) not more than one month after initial publication of the RFP, the private entity shall publish in a newspaper of general circulation notice of intent to make a proposal, including a description of the location to be proposed;

(2) not more than one month after initial publication of the RFP, the private entity shall deliver by certified mail to all voters residing within two miles of the proposed site notice of intent to make a proposal, including a description of the location to be proposed;

(3) at least three months prior to the bid closure date published on the RFP, the municipality of the state conducting the election shall deliver by certified mail to all voters residing within two miles of the proposed site a mail-in ballot approved by the commissioner that ~~residential landowners~~ VOTERS may use to signify approval of the proposed site;

(4) the approval process shall last not more than three months from the mailing of the ballots and no indication of approval shall be counted after the close of this period;

(i) If the proposed site lies within the boundaries of a municipality of the state, the entity making the proposal may, at the expense of the entity, contract with the administrator of the municipality to count ballots prepared under (h) of this section, publish the results in a newspaper of general circulation, and make all ballots received available for inspection by parties with reasonable interest in the proposal. The entity making the proposal shall pay for the cost to count the ballots, publish the results in a newspaper of general circulation, and make all ballots received available for inspection by parties with reasonable interest in the proposal.

Renumber the following bill sections accordingly.

Page 4, line 27:
Delete "sec. 4"
Insert "sec. 5"

Page 6, line 30:
Delete "sec. 3"
Insert "sec. 4"

Page 7, line 9:
Delete "sec. 4"
Insert "sec. 5"

AMENDMENT #7

OFFERED IN THE HOUSE

TO: HB 53

Page 5, line 8:

Delete "(b) - (e) and (g)"

Insert "(b) - (g)"

Page 6, lines 26 - 27:

Delete all material and insert:

"(f) With respect to the operation of a correctional facility constructed under a lease-purchase agreement, use-purchase agreement, or other agreement to use a facility approved under this section, the Department of Administration may not enter into a management contract or similar agreement containing a condition relating to the operation of the correctional facility that does not comply with 26 U.S.C. 145(a)(2)(B) and 26 CFR 1.145 - 2, as set out in Rev. Proc. 97 - 13, 5 I.R.B. 18, setting out the conditions under which a management contract does not result in taxable private business use of the facility under 26 U.S.C. 141(b)."

Page 7, following line 1:

Insert a new subsection to read:

"(h) Subsection (a) of this section constitutes the notice and approval required by AS 36.30.085."

0-LS0194\K.35
Chenoweth
3/13/97

AMENDMENT #6

OFFERED IN THE HOUSE

TO: HB 53

Page 1, line 8:

Delete "**and giving notice of**"

Insert "**giving notice of, authorizing,**"

Page 1, line 10:

Delete "**, construction, and**"

Insert "**and construction of a correctional facility, authorizing an agreement for the**"

Page 1, line 11, following "**operation**":

Insert "**; and amending the duties and responsibilities of the state bond committee in conjunction with lease-purchase agreements, use-purchase agreements, and other agreements to use a facility as those agreements relate to correctional facilities**"

Page 2, line 9:

Delete "**that**"

Insert "**for the operation of a correctional facility if the agency**"

Page 3, following line 25:

Insert a new bill section to read:

"* **Sec. 3.** AS 37.15.140 is amended to read:

Sec. 37.15.140. Duties of state bond committee. The state bond committee shall

(1) adopt the resolution and prepare the documents necessary for the issuance, sale, and delivery of bonds;

(2) manage the interim and long-term financing and refinancing of correctional facilities acquired by the state through lease-purchase agreements; exercise of authority under this paragraph shall be in accordance with lease-purchase agreements authorized by law under AS 36.30.085."

Renumber the following bill sections accordingly.

Page 4, line 27:

Delete "sec. 4"

Insert "sec. 5"

Page 5, line 3, following "facilities,":

Insert "the state, acting through"

Page 5, line 6, following "design":

Delete ", construction, and operation"

Insert "and construction"

Page 5, line 7, following "corrections":

Insert ", and, in conjunction with the design and construction of the correctional facility, may enter into a separate agreement to operate the correctional facility. Under this subsection, the Department of Administration may act as the lessee under the lease-purchase agreement of the correctional facility and may represent the state in obtaining and entering into the agreement to operate the correctional facility"

Page 5, line 8:

Delete "(b) - (e) and (g)"

Insert "(b) - (h)"

Page 5, line 12:

Delete "agreement"

Insert "lease-purchase agreement, use-purchase agreement, or other agreement to use

a facility"

Page 5, line 14:

Delete "Department of Corrections under the lease or use"

Insert "state under the"

Page 5, line 29:

Delete "lease-purchase or use-purchase agreement"

Insert "agreement to operate the correctional facility"

Page 5, line 31, through page 6, line 1:

Delete "designed, constructed, and"

Page 6, lines 2 - 4:

Delete "the agreement described in this subsection is made for the purpose of acquiring, improving, and maintaining the correctional facility structure under AS 36.30.085, and is exclusive of one or more agreements"

Insert "the agreement described in this paragraph is made for the purpose of operating and maintaining the correctional facility under AS 36.30.085 and may include provisions, or may be exclusive of one or more agreements, as authorized by (2) of this subsection,"

Page 6, line 6:

Delete "operating"

Page 6, lines 26 - 27:

Delete all material and insert:

"(f) With respect to a correctional facility, the design and construction of which is described in (a) of this section,

(1) the state shall make lease payments under the lease-purchase, use-purchase, or other agreement to use a facility only from currently appropriated funds, and all payments are subject to appropriation;

(2) notwithstanding AS 36.30.085(c)(1), the term of the agreement may not

exceed 30 years;

(3) the agreement may include other terms and conditions agreed upon by the parties;

(4) the state may enter into contracts for credit enhancement of the agreement in order to limit the recourse of the provider of credit enhancement solely to the security provided under the agreement;

(5) the state may grant a security interest in property acquired under the agreement; the security interest may be perfected as provided by AS 45.01 - AS 45.09 or as otherwise provided by law for perfecting liens on real estate;

(6) the agreement and contracts for credit enhancement entered into under the limitations set out in (4) and (5) of this subsection do not constitute a debt or the contracting of indebtedness under a statute limiting debt of the state or under art. IX, sec. 8, of the state constitution;

(7) the state bond committee

(A) may provide for the issuance of certificates of participation in financing the design and construction of the correctional facility authorized by this section; if the state bond committee authorizes issuance of certificates of participation and if payment is conditioned upon payment by the state under the agreement with respect to which the certificates relate, the certificates of participation in payments to be made under the agreement do not constitute a debt or the contracting of an indebtedness under a statute limiting the debt of the state or under art. IX, sec 8, of the state constitution;

(B) may give the state approval to enter into agreements with trustees relating to the agreement and the issuance of certificates of participation with respect to it.

(g) For the purposes of financing or refinancing a correctional facility described in this section, the lessor may assign all or a part of the lessor's interest in the lease-purchase, use-purchase, or other agreement to use a correctional facility described in this section. The lessor may assign the lessor's interest to an investor or to a trustee for the purpose of issuing certificates of participation. The assignment authorized by this subsection may be for the purpose of providing interim financing preparatory to long-term financing for the correctional facility or for long-term financing for the correctional facility. Under this subsection,

(1) the lessor may not make an assignment of the agreement unless the lessor first obtains the approval of the commissioner of administration; and

(2) when the lessor has made an assignment of the agreement,

(A) the lessee's obligation to pay rent is independent of any requirement of this section with respect to the design, construction, or operation of the correctional facility;

(B) the lessee's obligation is subject to failure by the state to appropriate money to make the payments required by the lease obligation;

(C) except as provided in (B) of this paragraph, the obligation of the lease is not subject to abatement, set-off, or reduction of any kind by reason of a requirement of this section or by reason of a breach, failure of performance, or another act or omission by the contractor, lessor, the state, or a state agency or officer; and

(D) the agreement may be modified for purposes of refunding it and any certificates of participation issued with respect to it."

Reletter the following subsection accordingly.

Page 6, line 30:

Delete "sec. 3"

Insert "sec. 4"

Page 7, following line 1:

Insert a new subsection to read:

"(i) Subsection (a) of this section constitutes the notice and approval required by AS 36.30.085."

Page 7, line 9:

Delete "sec. 4"

Insert "sec. 5"

0-LS0194\K.30
Chenoweth
3/10/97

AMENDMENT

OFFERED IN THE HOUSE

TO: HB 53

#1

Page 2, line 9:

Delete "**that is unable**"

Insert "**unless the agency demonstrates the qualifications and experience necessary**" adopted

withdrawn

Page 2, line 10, following "**state**":

Insert "**and by regulations that are adopted by the commissioner**"

#1A

AMENDMENT #2

OFFERED IN THE HOUSE

TO: HB 53

Page 3, following line 3:

Insert a new bill section to read:

"* **Sec. 2.** AS 33.30.031(c) is amended to read:

(c) **An** [NOTWITHSTANDING AS 36.30.300, AN] agreement with a private agency to provide necessary facilities under (a) of this section must**, notwithstanding AS 36.30.300,** be based on competitive bids. **The commissioner may not enter into an agreement with a private agency to provide necessary facilities in this state unless the agency**

(1) posts an adequate performance bond and payment bond;

(2) demonstrates to the commissioner's satisfaction the capability to provide the necessary qualified personnel to implement the terms of the contract; and

(3) provides a bond or certificate of insurance sufficient to defend and indemnify the state and a municipality in which the facility is located against claims or liability arising from the operation of correctional facilities by the contractor."

Renumber the following bill sections accordingly.

Page 4, line 27:

Delete "sec. 4"

Insert "sec. 5"

Page 6, line 30:

Delete "sec. 3"

Insert "sec. 4"

Page 7, line 9:

Delete "sec. 4"

Insert "sec. 5"

0-LS0194\K.32
Chenoweth
3/10/97

AMENDMENT

OFFERED IN THE HOUSE

TO: HB 53

revised

Page 3, following line 3:

Insert a new bill section to read:

"* **Sec. 2.** AS 33.30.031 is amended by adding a new subsection to read:

(f) The commissioner may not enter into an agreement to provide necessary facilities under (a) of this section at a correctional facility that is to be constructed in this state after the effective date of this Act unless the commissioner initiates and completes a site selection process. The site selection process must provide the public reasonable opportunity to comment about sites to be considered for the location of the correctional facility. In addition, if, on the basis of the site selection process, the commissioner determines to enter into an agreement to contract for provision of necessary facilities at a correctional facility that is located at a site within a municipality, the correctional facility may not be constructed at the site in the municipality unless approved by a majority of the voters voting in the municipality affected on the question of locating the correctional facility at the site."

Renumber the following bill sections accordingly.

Page 4, line 27:

Delete "sec. 4"

Insert "sec. 5"

Page 6, line 30:

Delete "sec. 3"

Insert "sec. 4"

Page 7, line 9:

Delete "sec. 4"

Insert "sec. 5"

LEGAL SERVICES

DIVISION OF LEGAL AND RESEARCH SERVICES
LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA

(907) 465-3867 or 465-2450
FAX (907) 465-2029
Mail Stop 3101

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

MEMORANDUM April 3, 1997

SUBJECT: Contracting authority of the Department of Corrections (CSHB 53(JUD)Work Order No. 20-LS0194\L)

TO: Representative Joe Green, Chair
House Judiciary Committee
ATTN: Lisa Kirsch

FROM: Jack Chenoweth
Legislative Counsel

I've pretty much kept "hands off" the material inserted in bill section 3. Since I earlier had an opportunity to comment and some changes were made, I didn't feel I was in a position to make further changes.

Now that bill sec. 2 and bill sec. 3 are both included in the committee-adopted version, I would raise a question whether the contracting process produced under AS 33.30.031 is internally inconsistent. Under proposed AS 33.30.031(c), amended by bill section 2, the commissioner, when entering into arrangements to provide necessary facilities under AS 33.30.031(a), must proceed by "competitive bid." Under proposed AS 33.30.031(g), the process outlined is one that asks the commissioner to "solicit proposals." I'm no expert on procurement, but I don't think these two ideas fit together.

JBC:jdr
97-240.jdr

0-LS0194\K.34
Chenoweth
3/13/97

AMENDMENT

OFFERED IN THE HOUSE

TO: HB 53

Page 3, following line 3:

Insert a new bill section to read:

"* **Sec. 2.** AS 33.30.031 is amended by adding new subsections to read:

NEW

(f) The commissioner may not enter into an agreement to provide necessary facilities under (a) of this section at a correctional facility that is to be constructed in this state after the effective date of this Act unless the commissioner initiates and completes a site selection process. The site selection process must provide the public reasonable opportunity to comment about sites to be considered for the location of the correctional facility.

(g) If, on the basis of the site selection process completed under (f) of this section, the commissioner determines to enter into an agreement to contract for provision of necessary facilities at a correctional facility that is located at a site within a municipality, in addition to the requirement of (f) of this section, the correctional facility may not be constructed at the site in the municipality unless approved by a majority of the voters voting at an election conducted by the municipality in the area affected on the question of locating the correctional facility at the site; for purposes of this subsection,

(1) the municipality may conduct the election in the area affected on the question of locating the correctional facility at the site by mail; if the municipality determines to conduct the election by mail and has not adopted an ordinance providing for an election by mail, the clerk of the municipality shall conduct the election under AS 15.20.800 except that, for purposes of this paragraph, the duties of the director of elections set out in AS 15.20.800 shall be performed by the clerk of the municipality; and

(2) to determine the "area affected" for purposes of an election,

(A) if the proposed site of the facility is in a city within a borough or is within the unorganized borough, "area affected" means the city;

(B) if the proposed site of the facility is within a borough outside a city or is within a unified municipality, "area affected" means the area determined by drawing a circle with a radius of two miles around the site of the proposed facility and thereafter selecting the one of the following areas that most nearly approximates the area included within that circle without omitting any part of the area included within that circle, as the legislative body of the municipality determines:

(i) an existing service area of the borough or unified municipality;

(ii) the boundary of one or more areas of the borough or unified municipality subject to the jurisdiction of a community council, neighborhood association, or similar subordinate geographical area that has recognition in the ordinances of the borough or unified municipality;

(iii) an assembly district, but only if the assembly of the borough or unified municipality is elected on the basis of separate election districts;

(iv) an election district as that term is defined in AS 15.60.010;

(v) a senate district as that term is defined in AS 15.60.010; or

(vi) any other determination by the legislative body of the municipality that reasonably approximates the area within the circle, but only if a determination made under (i) - (v) of this subparagraph would not describe an area that approximates the area included within that circle without omitting any part of the area included within the circle."

Renumber the following bill sections accordingly.

Page 4, line 27:

Delete "sec. 4"

Insert "sec. 5"

Page 6, line 30:

Delete "sec. 3"

Insert "sec. 4"

Page 7, line 9:

Delete "sec. 4"

Insert "sec. 5"

0-LS0194\K.2
Chenoweth
3/5/97

AMENDMENT

Amend 1-29 Not effected

OFFERED IN THE HOUSE

TO: HB 53

Page 5, line 23, following "capacity;":

Delete "and"

Page 5, line 24, following "(3)":

Insert "may not be used to house prisoners not convicted in a court of this state; and

(4)"

0-LS0194\K.3
Chenoweth
3/5/97

AMENDMENT

OFFERED IN THE HOUSE

TO: HB 53

Page 7, line 12:

Delete all material.

Renumber the following paragraphs accordingly.

AMENDMENT

OFFERED IN THE HOUSE

TO: HB 53

Page 5, line 24:

Delete "temporarily"

AMENDMENT

OFFERED IN THE HOUSE

TO: HB 53

Page 5, line 24:

Delete "temporarily when"

Page 5. line 25, following "(A)":

Insert "temporarily when"

Page 5, line 27:

Delete "or"

Page 5, line 28, following "(B)":

Insert "temporarily when"

Page 5, line 28, following "contractor":

Insert "; or

(C) for the usual period of operation of a facility under a contract, not to exceed five years, but only if the state

(i) initiates direct operation of the facility at the conclusion of a contract that has expired or that is, by its terms, expiring; and

(ii) has issued an invitation to bid, request for proposal, or other procurement notice, and did not receive a bid, response, or other reply that was less than five percent below the estimated cost of the facility's operation by the Department of Corrections"

AMENDMENT

OFFERED IN THE HOUSE

TO: HB 53

Page 5, line 27:

Delete "or"

Page 5, line 28, following "contractor":

Insert "; or

(C) the state determines that it is in the best interests of the state for the correctional facility to be operated by the state or by the political subdivision or public corporation of the state"

AMENDMENT

OFFERED IN THE HOUSE

TO: HB 53

Page 5, line 8:

Delete "and (g)"

Insert ", (g), and (h)"

Page 7, following line 1:

Insert a new subsection to read:

"(h) In the award of a contract for the construction or operation of the correctional facility to be constructed and operated under the notice and approval given in (a) of this section, the Department of Administration shall require the contractor to pay not less than the current prevailing rate of wages for work of a similar nature in the region in which the work is done."

0-LS0194\K.8
Chenoweth
3/5/97

AMENDMENT

OFFERED IN THE HOUSE

TO: HB 53

Page 7, following line 17:

Insert a new bill section to read:

"* Sec. 6. CONSTRUCTION OF CORRECTIONAL FACILITY IS A PUBLIC CONSTRUCTION PROJECT. Construction of the correctional facility to be constructed and operated under sec. 4 of this Act is a project within the meaning of the term "public construction" set out in AS 36.95.010. The provisions of AS 36.05.010 apply to work performed on construction of the correctional facility."

Renumber the following bill section accordingly.

0-LS0194\K.9
Chenoweth
3/5/97

AMENDMENT

OFFERED IN THE HOUSE

TO: HB 53

Page 5, following line 19:

Insert a new paragraph to read:

"(1) may not be constructed under the authority given in this Act unless

(A) before construction planning is begun, the commissioner of corrections first conducts a feasibility study, including a cost-benefit analysis, that examines various methods available to the state for relieving or eliminating the state's prison overcrowding; and

(B) the feasibility study conducted under (A) of this paragraph demonstrates that construction and operation of the correctional facility described in (a) of this section

(i) offers a positive cost-benefit ratio when compared to alternative methods considered; and

(ii) is otherwise feasible to relieve or eliminate overcrowding of existing correctional facilities;"

Renumber the following paragraphs accordingly.

0-LS0194\K.10
Chenoweth
3/5/97

AMENDMENT

OFFERED IN THE HOUSE

TO: HB 53

Page 5, following line 21:

Insert a new paragraph to read:

"(2) may not be constructed unless the building construction contractor posts a performance bond equal to the amount of the state's entire lease payment obligation for the full term of the lease-purchase agreement; liability under the performance bond must be for the duration of the lease-purchase agreement;"

Renumber the following paragraphs accordingly.

AMENDMENT

OFFERED IN THE HOUSE

TO: HB 53

Page 5, following line 19:

Insert a new paragraph to read:

"(1) may not be constructed under the authority given in this Act unless, before construction planning is begun, the commissioner of corrections first conducts a study, and the study demonstrates that construction of the correctional facility described in (a) of this section will result in a saving to the state of at least 25 percent when compared to construction of the facility by the state using the usual and customary state construction practices;"

Renumber the following paragraphs accordingly.

AMENDMENT

OFFERED IN THE HOUSE

TO: HB 53

Page 5, following line 19:

Insert a new paragraph to read:

"(1) may not be constructed under the authority given in this Act unless, before construction planning is begun, the commissioner of corrections first conducts a study, and the study demonstrates that construction of the correctional facility described in (a) of this section will result in a saving to the state of at least 30 percent when compared to construction of the facility by the state using the usual and customary state construction practices;"

Renumber the following paragraphs accordingly.

AMENDMENT

OFFERED IN THE HOUSE

TO: HB 53

Page 5, following line 19:

Insert a new paragraph to read:

"(1) may not be constructed under the authority given in this Act unless, before construction planning is begun, the commissioner of corrections first conducts a study, and the study demonstrates that construction of the correctional facility described in (a) of this section will result in a saving to the state of at least 35 percent when compared to construction of the facility by the state using the usual and customary state construction practices;"

Renumber the following paragraphs accordingly.

AMENDMENT

OFFERED IN THE HOUSE

TO: HB 53

Page 5, following line 19:

Insert a new paragraph to read:

"(1) may not be constructed under the authority given in this Act unless, before construction planning is begun, the commissioner of corrections first conducts a study, and the study demonstrates that construction of the correctional facility described in (a) of this section will result in a saving to the state of at least 40 percent when compared to construction of the facility by the state using the usual and customary state construction practices;"

Renumber the following paragraphs accordingly.

0-LS0194\K.16
Chenoweth
3/5/97

AMENDMENT

OFFERED IN THE HOUSE

TO: HB 53

Page 5, following line 19:

Insert a new paragraph to read:

"(1) may not be constructed under the authority given in this Act unless, before construction planning is begun, the commissioner of corrections first conducts a study, and the study demonstrates that construction of the correctional facility described in (a) of this section will result in a saving to the state of at least 45 percent when compared to construction of the facility by the state using the usual and customary state construction practices;"

Renumber the following paragraphs accordingly.

0-LS0194\K.17
Chenoweth
3/5/97

AMENDMENT

OFFERED IN THE HOUSE

TO: HB 53

Page 5, following line 19:

Insert a new paragraph to read:

"(1) may not be constructed under the authority given in this Act unless, before construction planning is begun, the commissioner of corrections first conducts a study, and the study demonstrates that construction of the correctional facility described in (a) of this section will result in a saving to the state of at least 50 percent when compared to construction of the facility by the state using the usual and customary state construction practices;"

Renumber the following paragraphs accordingly.

0-LS0194\K.18
Chenoweth
3/6/97

AMENDMENT

OFFERED IN THE HOUSE

TO: HB 53

Page 5, line 23, following "capacity;":

Insert a new paragraph to read:

"(3) may not be constructed for operation by a contractor under the authority given in this Act unless, before construction planning is begun, the commissioner of corrections first conducts a study, and the study demonstrates that operation of the correctional facility described in (a) of this section will achieve a saving to the state of at least 20 percent when compared to operation of the correctional facility by the Department of Corrections;"

Renumber the following paragraph accordingly.

0-LS0194\K.19
Chenoweth
3/6/97

AMENDMENT

OFFERED IN THE HOUSE

TO: HB 53

Page 5, line 23, following "capacity;":

Insert a new paragraph to read:

"(3) may not be constructed for operation by a contractor under the authority given in this Act unless, before construction planning is begun, the commissioner of corrections first conducts a study, and the study demonstrates that operation of the correctional facility described in (a) of this section will achieve a saving to the state of at least 18 percent when compared to operation of the correctional facility by the Department of Corrections;"

Renumber the following paragraph accordingly.

AMENDMENT

OFFERED IN THE HOUSE

TO: HB 53

Page 5, line 23, following "capacity;":

Insert a new paragraph to read:

"(3) may not be constructed for operation by a contractor under the authority given in this Act unless, before construction planning is begun, the commissioner of corrections first conducts a study, and the study demonstrates that operation of the correctional facility described in (a) of this section will achieve a saving to the state of at least 16 percent when compared to operation of the correctional facility by the Department of Corrections;"

Renumber the following paragraph accordingly.

0-LS0194\K.21
Chenoweth
3/6/97

AMENDMENT

OFFERED IN THE HOUSE

TO: HB 53

Page 5, line 23, following "capacity;":

Insert a new paragraph to read:

"(3) may not be constructed for operation by a contractor under the authority given in this Act unless, before construction planning is begun, the commissioner of corrections first conducts a study, and the study demonstrates that operation of the correctional facility described in (a) of this section will achieve a saving to the state of at least 14 percent when compared to operation of the correctional facility by the Department of Corrections;"

Renumber the following paragraph accordingly.

0-LS0194\K.22
Chenoweth
3/6/97

AMENDMENT

OFFERED IN THE HOUSE

TO: HB 53

Page 5, line 23, following "capacity;":

Insert a new paragraph to read:

"(3) may not be constructed for operation by a contractor under the authority given in this Act unless, before construction planning is begun, the commissioner of corrections first conducts a study, and the study demonstrates that operation of the correctional facility described in (a) of this section will achieve a saving to the state of at least 12 percent when compared to operation of the correctional facility by the Department of Corrections;"

Renumber the following paragraph accordingly.

0-LS0194\K.23
Chenoweth
3/6/97

AMENDMENT

OFFERED IN THE HOUSE

TO: HB 53

Page 5, line 23, following "capacity;":

Insert a new paragraph to read:

"(3) may not be constructed for operation by a contractor under the authority given in this Act unless, before construction planning is begun, the commissioner of corrections first conducts a study, and the study demonstrates that operation of the correctional facility described in (a) of this section will achieve a saving to the state of at least 10 percent when compared to operation of the correctional facility by the Department of Corrections;"

Renumber the following paragraph accordingly.

0-LS0194\K.24
Chenoweth
3/6/97

AMENDMENT

OFFERED IN THE HOUSE

TO: HB 53

Page 5, line 23, following "capacity;":

Insert a new paragraph to read:

"(3) may not be constructed for operation by a contractor under the authority given in this Act unless, before construction planning is begun, the commissioner of corrections first conducts a study, and the study demonstrates that operation of the correctional facility described in (a) of this section will achieve a saving to the state of at least 8 percent when compared to operation of the correctional facility by the Department of Corrections;"

Renumber the following paragraph accordingly.

0-LS0194\K.25
Chenoweth
3/6/97

AMENDMENT

OFFERED IN THE HOUSE

TO: HB 53

Page 5, line 23, following "capacity;":

Insert a new paragraph to read:

"(3) may not be constructed for operation by a contractor under the authority given in this Act unless, before construction planning is begun, the commissioner of corrections first conducts a study, and the study demonstrates that operation of the correctional facility described in (a) of this section will achieve a saving to the state of at least 6 percent when compared to operation of the correctional facility by the Department of Corrections;"

Renumber the following paragraph accordingly.

0-LS0194\K.26
Chenoweth
3/6/97

AMENDMENT

OFFERED IN THE HOUSE

TO: HB 53

Page 5, line 23, following "capacity;":

Insert a new paragraph to read:

"(3) may not be constructed for operation by a contractor under the authority given in this Act unless, before construction planning is begun, the commissioner of corrections first conducts a study, and the study demonstrates that operation of the correctional facility described in (a) of this section will achieve a saving to the state of at least 4 percent when compared to operation of the correctional facility by the Department of Corrections;"

Renumber the following paragraph accordingly.

0-LS0194\K.27
Chenoweth
3/6/97

AMENDMENT

OFFERED IN THE HOUSE

TO: HB 53

Page 1, line 9:

Delete "a lease-purchase agreement"

Insert "lease-purchase agreements"

Delete "use-purchase agreement"

Insert "use-purchase agreements"

Page 1, line 10:

Delete "a correctional facility"

Insert "correctional facilities"

Page 1, line 11:

Delete "facility's"

Insert "facilities'"

Page 4, line 31:

Delete "AGREEMENT"

Insert "AGREEMENTS"

Page 5, line 1:

Delete "AGREEMENT"

Insert "AGREEMENTS"

Page 5, line 2:

Delete "a new correctional facility"

Insert "new correctional facilities"

Page 5, line 4:

Delete "an agreement"

Insert "one or more agreements"

Page 5, lines 4 - 5:

Delete "a lease-purchase agreement, use-purchase agreement, or other agreement to use a facility that has"

Insert "one or more lease-purchase agreements, use-purchase agreements, or other agreements to use facilities that have"

Page 5, line 6:

Delete "a correctional facility"

Insert "correctional facilities"

Page 5, lines 7 - 8:

Delete "The project approval given by this subsection is"

Insert "Project approvals given by this subsection are"

Page 5, line 11:

Delete "the correctional facility"

Insert "all the correctional facilities"

Page 5, line 12:

Delete "the agreement"

Insert "all the agreements"

Page 5, line 13:

Delete "obligation"

Insert "obligations"

Page 5, line 14:

Delete "lease or use agreement"

Insert "agreements"

Page 5, line 16, following "term of":

Delete "the"

Insert "a"

Page 5, line 18:

Delete "The"

Insert "A"

Page 5, line 29:

Delete "The"

Insert "A"

Page 6, line 17:

Delete "the correctional"

Insert "a correctional"

Page 6, line 21:

Delete "the correctional"

Insert "a correctional"

Page 7, line 2:

Delete "FACILITY"

Insert "FACILITIES"

Page 7, line 3:

Delete "AGREEMENT"

Insert "AGREEMENTS"

Page 7, line 5:

Delete "a major correctional facility"

Insert "correctional facilities"

Page 7, line 6:

Delete "site of the correctional facility"

Insert "sites of the correctional facilities"

Page 7, line 8:

Delete "the"

Insert "each"

AMENDMENT

OFFERED IN THE HOUSE

TO: HB 53

Page 5, line 15:

Delete "and"

Page 5, line 17, following "facility":

Insert "; and

(4) in case of default by a private third-party contractor with whom the state has entered into an agreement described in (c) of this section, the state may procure goods or services from another source and hold the defaulting contractor accountable for reasonable costs and may use other remedies."

0-LS0194\K.29
Chenoweth
3/6/97

AMENDMENT

OFFERED IN THE HOUSE

TO: HB 53

Page 4, line 5, following "this section":

Insert "and sec. 6 of this Act"

Page 5, line 9, following "this section":

Insert "and sec. 6 of this Act"

Page 7, following line 17:

Insert a new bill section to read:

"* **Sec. 6.** GEOGRAPHICAL LIMITATION. The Department of Administration or the Department of Corrections, as appropriate, may not enter into an agreement under secs. 3 or 4 of this Act concerning a correctional facility that is located or to be located north of the south boundary of Township 13 North, Seward Meridian, and within the corporate boundaries of a municipality having a population of more than 100,000."

Renumber the following bill section accordingly.

AMENDMENT

OFFERED IN THE HOUSE

TO: HB53

Page 2, lines 22-24

Delete "; and

(B) 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"

AMENDMENT

OFFERED IN THE HOUSE

TO: HB53

Page 5, line 13, after $180,000,000:

Delete "and the anticipated"

Insert ", the"

Page 5, line 15, after "total":

Insert "and must not exceed annual appropriations for that purpose"

LEGAL SERVICES

DIVISION OF LEGAL AND RESEARCH SERVICES
LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA

(907) 465-3867 or 465-2450
FAX (907) 465-2029
Mail Stop 3101

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

MEMORANDUM March 11, 1997

SUBJECT: Amendment K.32 to House Bill 53 (Work Order No. 20-LS0194\K.32)

TO: Representative Joe Green
ATTN: Lisa Kirsch

FROM: Jack Chenoweth
Legislative Counsel

To the points of your inquiry of earlier today --

1. From the original work order request, I omitted "or political subdivision"--in the context of local government, the political subdivisions of the state are its cities and boroughs. Since "municipality" already covers both, adding "political subdivision" adds nothing.

2. In the state's Municipal Code, provision for dual majorities is not unknown. Look, for example, at AS 29.06.280(a), 29.35.330(c), and 29.35.450(a)(2).

In this amendment, if you want a dual majority to have to approve the facility, the majorities to be of all residents of the municipality and all residents within the immediate area, consider the following:

-- using a two-mile (or three-mile, or five-mile) radius and requiring that the majority of the residents of the area shall also approve the proposed facility; this is the process used for votes on issuance or suspension of issuance of liquor licenses in small towns, but it has obvious drawbacks if it is to be applied in an urban area; or

-- using, for a facility to be located in a borough and within a city of that borough, a dual majority consisting of a majority of all voters of the borough and also all voters of the city; or

-- using, for a facility to be located in a borough outside of any city or in a unified municipality, a dual majority consisting of a majority of all voters of the borough and also a majority of all voters of the affected service area; in the case of a municipality that has designated community councils, consider substituting the area subject to the jurisdiction (if that is the proper term) of the appropriate community council; in an urban area having

multiple election (or senate) districts for purposes of electing members of the state legislature, the concurrent majority could be of the voters within the election (or senate) district in which the facility may be constructed; in municipalities using single- or dual-member (i.e. not "at-large") assembly district to elect members to the borough assembly, the concurrent majority could be of the voters within the appropriate assembly district.

Who will pay for the election(s) at which all of this will be determined? The bill and the amendment do not specify.

3. The assertion in testimony that there are very few municipalities in Alaska is incorrect. There are, at present, on the order of 16 boroughs and unified municipalities and in excess of 140 cities. All of these are municipalities.

JBC:glc
97-162.glc

is AK. Does "municipality" as used in the AS have a meaning that includes villages, boroughs. etc., or does it literally mean municipalities? I know in HB 22 we used language that Mike Ford suggested which I believe was "and political subdivisions of the state."

Could you please let me know whether you think these changes will have the desired effect? Chairman Green was particularly concerned whether or not the legislature could give a community the power to override the municipality's decision to locate a prison at a particular site.

One final minor word change. Chairman Green thought that the use of the word "at" on lines 5 and 11(first appearance) of amendment 0-LS0194\K.32 was akward since the "correctional facility" does not yet exist. He will defer to your drafting expertise if this is the only way to convey our intent.

Thanks for your help.

0-LS0194\K.35
Chenoweth
3/13/97

AMENDMENT

OFFERED IN THE HOUSE

TO: HB 53

Page 1, line 8:

Delete "**and giving notice of**"

Insert "**giving notice of, authorizing,**"

Page 1, line 10:

Delete "**, construction, and**"

Insert "**and construction of a correctional facility, authorizing an agreement for the**"

Page 1, line 11, following "**operation**":

Insert "**; and amending the duties and responsibilities of the state bond committee in conjunction with lease-purchase agreements, use-purchase agreements, and other agreements to use a facility as those agreements relate to correctional facilities**"

Page 2, line 9:

Delete "**that**"

Insert "**for the operation of a correctional facility if the agency**"

Page 3, following line 25:

Insert a new bill section to read:

"* **Sec. 3.** AS 37.15.140 is amended to read:

Sec. 37.15.140. Duties of state bond committee. The state bond committee shall

(1) adopt the resolution and prepare the documents necessary for the issuance, sale, and delivery of bonds;

(2) manage the interim and long-term financing and refinancing of correctional facilities acquired by the state through lease-purchase agreements; exercise of authority under this paragraph shall be in accordance with lease-purchase agreements authorized by law under AS 36.30.085."

Renumber the following bill sections accordingly.

Page 4, line 27:

Delete "sec. 4"

Insert "sec. 5"

Page 5, line 3, following "facilities,":

Insert "the state, acting through"

Page 5, line 6, following "design":

Delete ", construction, and operation"

Insert "and construction"

Page 5, line 7, following "corrections":

Insert ", and, in conjunction with the design and construction of the correctional facility, may enter into a separate agreement to operate the correctional facility. Under this subsection, the Department of Administration may act as the lessee under the lease-purchase agreement of the correctional facility and may represent the state in obtaining and entering into the agreement to operate the correctional facility"

Page 5, line 8:

Delete "(b) - (e) and (g)"

Insert "(b) - (h)"

Page 5, line 12:

Delete "agreement"

Insert "lease-purchase agreement, use-purchase agreement, or other agreement to use

a facility"

Page 5, line 14:

Delete "Department of Corrections under the lease or use"

Insert "state under the"

Page 5, line 29:

Delete "lease-purchase or use-purchase agreement"

Insert "agreement to operate the correctional facility"

Page 5, line 31, through page 6, line 1:

Delete "designed, constructed, and"

Page 6, lines 2 - 4:

Delete "the agreement described in this subsection is made for the purpose of acquiring, improving, and maintaining the correctional facility structure under AS 36.30.085, and is exclusive of one or more agreements"

Insert "the agreement described in this paragraph is made for the purpose of operating and maintaining the correctional facility under AS 36.30.085 and may include provisions, or may be exclusive of one or more agreements, as authorized by (2) of this subsection."

Page 6, line 6:

Delete "operating"

Page 6, lines 26 - 27:

Delete all material and insert:

"(f) With respect to a correctional facility, the design and construction of which is described in (a) of this section,

(1) the state shall make lease payments under the lease-purchase, use-purchase, or other agreement to use a facility only from currently appropriated funds, and all payments are subject to appropriation;

(2) notwithstanding AS 36.30.085(c)(1), the term of the agreement may not

exceed 30 years;

(3) the agreement may include other terms and conditions agreed upon by the parties;

(4) the state may enter into contracts for credit enhancement of the agreement in order to limit the recourse of the provider of credit enhancement solely to the security provided under the agreement;

(5) the state may grant a security interest in property acquired under the agreement; the security interest may be perfected as provided by AS 45.01 - AS 45.09 or as otherwise provided by law for perfecting liens on real estate;

(6) the agreement and contracts for credit enhancement entered into under the limitations set out in (4) and (5) of this subsection do not constitute a debt or the contracting of indebtedness under a statute limiting debt of the state or under art. IX, sec. 8, of the state constitution;

(7) the state bond committee

(A) may provide for the issuance of certificates of participation in financing the design and construction of the correctional facility authorized by this section; if the state bond committee authorizes issuance of certificates of participation and if payment is conditioned upon payment by the state under the agreement with respect to which the certificates relate, the certificates of participation in payments to be made under the agreement do not constitute a debt or the contracting of an indebtedness under a statute limiting the debt of the state or under art. IX, sec 8, of the state constitution;

(B) may give the state approval to enter into agreements with trustees relating to the agreement and the issuance of certificates of participation with respect to it.

(g) For the purposes of financing or refinancing a correctional facility described in this section, the lessor may assign all or a part of the lessor's interest in the lease-purchase, use-purchase, or other agreement to use a correctional facility described in this section. The lessor may assign the lessor's interest to an investor or to a trustee for the purpose of issuing certificates of participation. The assignment authorized by this subsection may be for the purpose of providing interim financing preparatory to long-term financing for the correctional facility or for long-term financing for the correctional facility. Under this subsection,

(1) the lessor may not make an assignment of the agreement unless the lessor first obtains the approval of the commissioner of administration; and

(2) when the lessor has made an assignment of the agreement,

(A) the lessee's obligation to pay rent is independent of any requirement of this section with respect to the design, construction, or operation of the correctional facility;

(B) the lessee's obligation is subject to failure by the state to appropriate money to make the payments required by the lease obligation;

(C) except as provided in (B) of this paragraph, the obligation of the lease is not subject to abatement, set-off, or reduction of any kind by reason of a requirement of this section or by reason of a breach, failure of performance, or another act or omission by the contractor, lessor, the state, or a state agency or officer; and

(D) the agreement may be modified for purposes of refunding it and any certificates of participation issued with respect to it."

Reletter the following subsection accordingly.

Page 6, line 30:

Delete "sec. 3"

Insert "sec. 4"

Page 7, following line 1:

Insert a new subsection to read:

"(i) Subsection (a) of this section constitutes the notice and approval required by AS 36.30.085."

Page 7, line 9:

Delete "sec. 4"

Insert "sec. 5"

THURSDAY, MARCH 20, 1997 Soldotna/Kenai, Alaska 50 cents newsstands/30 cents home delivery

Nikiski halfway house passes hurdle

by STEVE KADEL
Peninsula Clarion

A proposed halfway house in Nikiski got a green light Wednesday.

The Kenai Peninsula Borough Assembly, meeting as the Board of Adjustment, upheld a planning commission decision to grant a land-use permit for a Department of Corrections halfway house at North Star Lodge.

About 55 people attended Wednesday's meeting. After public testimony for and against the halfway house, many citizens stayed more than an hour as the board met behind closed doors to discuss the appeal.

Audience members, most of whom were Nikiski residents, weren't happy about the decision — or the manner in which it was reached.

"What's the story about you going into a secret meeting when we're all sitting here?" a man asked as board members returned to the borough assembly chambers.

Jack Brown was the only board member opposed to making the decision in private. Doing so would add even more uncertainty to an already sensitive issue, he said.

Brown said he voted in favor of the appeal by Janet Miller to overturn the planning commission decision. Drew Scalzi said he voted to uphold the original decision.

Other board members didn't reveal how they voted, although Mike Wiley said it was a 6-3 vote.

Brown predicted the board's decision won't be the final chapter in the halfway house saga.

"What we do today will more than likely end up in court," Brown said.

Board members cited possible future appeals as a reason for not discussing their decision in detail.

Sandra Wicks, an attorney representing Allvest Inc. of Anchorage, a rehabilitative services company, agreed with Brown's assessment.

"This is probably going to get appealed to the Superior Court," Wicks said.

Allvest would operate the 56-bed halfway house at North Star Lodge, which is owned

See NIKISKI, back page

...Nikiski

Continued from page 1

by Jerry Pfaff. Allvest operates two halfway houses in Anchorage, one in Fairbanks and one in Bethel.

Miller, whose husband Larry joined her in filing the appeal, described halfway house residents as threats to community safety.

It would be easy for residents to walk away from the house, she said. There would be a two- or three-hour delay before police could respond, given the distance between Alaska State Troopers' Soldotna office and Nikiski, Miller said.

"They're not where they are by accident," she said of halfway house residents. "That place could become a collection point for sex offenders.

"I perceive an inebriated resident convict as a hazard to my community."

The halfway house also would cause Nikiski residents to start locking their cars instead of leaving them unlocked with keys inside, as many people do, Miller added.

The perception of halfway house residents as people serving short sentences for misdemeanor crimes is misleading, she said, because many have plea bargained after being charged with more serious felonies.

Wicks tried to dispel residents' fears by saying those placed in halfway houses "have earned degrees of freedom."

They are strictly prohibited from having drugs or alcohol, and would be released from the program and sent to prison if found in possession of either substance, she said.

One Anchorage halfway house is located a block from a school, and residents routinely volunteer at the school without incident, Wicks said.

Few residents have walked away from halfway houses since the facilities opened in Alaska in 1980, she said. When someone does walk off, it is reported to the Department of Corrections, Wicks said.

Also, several years of halfway house operations in Alaska show no effect on property values in the adjoining neighborhood, she said.

Wicks called Nikiski residents' concerns "an emotional reaction."

"We have a question of perception," she said. "Land-use decisions are not popularity contests."

Distributed by Rep. Croft
To HJUD members

ADN 3/24/97

Halfway house all done in

Nikiski lodge burns before plan effected

By RACHEL D'ORO
Daily News reporter

A Nikiski lodge targeted to be the Kenai Peninsula's first halfway house amid local opposition was destroyed by fire Sunday.

No one was injured in the 3 a.m. blaze that gutted the two-story North Star Lodge, said Nikiski Fire Battalion Chief Doug Nightingale. No one was inside the wood-frame building at the time, he said.

Firefighters continued to douse hot spots Sunday afternoon, Nightingale said. Firefighters will continue to check for glowing embers at least through today, he said.

The state fire marshall was investigating the fire because it involved a commercial building, according to Nightingale. He said the cause of the blaze had not been determined.

"The building is totally gone," he said. "There's nothing left for anybody to build from."

The lodge was the focus of a controversy over a planned 56-bed halfway house for convicts at the end of their sentences. But Nikiski residents said a halfway house would threaten the community's safety and fought to keep it from opening. They lost their appeal Wednesday when the Kenai Peninsula Borough Assembly upheld a decision to allow Allvest Inc. to turn the lodge into a halfway house.

Lodge owner Jerry Pfaff said he and his wife were on their way to church Sunday morning when they passed the burned property. He said the lodge was in the process of being sold to Allvest, which owns halfway houses in Anchorage, Fairbanks and Bethel.

Pfaff declined to disclose details about the sale, saying only that replacing the building would cost at least $800,000. The future of the three-acre site is now uncertain, he said.

Pfaff bought the lodge in 1992, remodeling it the following year and operating it as a hotel until mid-December. Until last week, Pfaff leased the lodge to Cook Inlet Processing to house cannery workers, he said.

Much of the opposition to a halfway house was directed at Pfaff but only in angry words, he said. He couldn't imagine the opponents stooping to arson, he said.

"There was a lot of verbal abuse," he said. "But I don't know anybody who would do anything as vicious as this."

AMENDMENT #3

OFFERED IN THE HOUSE CROFT/GREEN

TO: HB 53

Page 3, following line 3:

Insert a new bill section to read:

"*Sec. 2. AS 33.30.031 is amended by adding a new subsection to read:

(f) The commissioner may not enter into an agreement to provide necessary facilities under (a) of this section as a correctional facility that is to be constructed in this state after the effective date of this Act unless the commissioner initiates and completes a site selection process. The site selection process must provide the public reasonable opportunity to comment about sites to be considered for the location of the correctional facility. In addition, if, on the basis of the site selection process, the commissioner determines to enter into an agreement to contract for provision of necessary facilities at a correctional facility that is to be located at a site within a municipality or legal subdivision of the state, the correctional facility may not be constructed at the site unless approved by a majority of the residential landowners VOTERS within the "affected area" who vote at an election conducted by the municipality or legal subdivision of the state. For the purpose of this subsection, "affected area" means the area within 2 miles of the external perimeter of the PROPOSED correctional facility. This restriction does not apply to construction within the perimeter of correctional facilities in existence before the effective date of this act.

(g) In conducting the site selection process required by (f) of this section, the commissioner may solicit proposals from private entities by publishing a request for proposal in a newspaper of general circulation. The commissioner shall accept proposals for six months after initial publication of the request for proposals. Any such proposal shall certify in a manner prescribed by the commissioner that

(1) the facility to be constructed will meet the department's requirements as described by the commissioner in the RFP or other document;

(2) the facility will be operated at a cost to the state below the state's cost to operate a comparable facility, that cost to be described by the commissioner in the RFP or other documents;

(3) the entity owns or has an option to buy at a fixed cost the land on which the proposed facility would be located, and the entity agrees that the state may purchase the land at a price fixed at the time of contracting if the state assumes ownership or control of the facility pursuant to statute or provision of contract;

(h) in order for the certification of approval under subsection (f) CONFORMS WITH (g) to be valid, the approval process must meet the following requirements:

(1) not more than one month after initial publication of the RFP, the private entity shall publish in a newspaper of general circulation notice of intent to make a proposal, including a description of the location to be proposed;

(2) not more than one month after initial publication of the RFP, the private entity shall deliver by certified mail to all residential landowners residing within two miles of the proposed site notice of intent to make a proposal, including a description of the location to be proposed;

(3) at least three months prior to the bid closure date published on the RFP, the municipality or political subdivision of the state conducting the election shall deliver by certified mail to all residential landowners residing within two miles of the proposed site a mail-in ballot approved by the commissioner that residential landowners may use to signify approval of the proposed site;

(4) the approval process shall last not more than three months from the mailing of the ballots and no indication of approval shall be counted after the close of this period;

(i) If the proposed site lies within the boundaries of a municipality or political subdivision of the state, the entity making the proposal may, at the expense of the entity, contract with the administrator of the municipality or political subdivision to count ballots prepared under (h) of this section, publish the results in a newspaper of general circulation, and make all ballots received available for inspection by parties with reasonable interest in the proposal. If the entity making the proposal does not enter into a contract with the administrator of the municipality or political subdivision to count ballots, the commissioner shall count the ballots, publish the results in a newspaper of general circulation, and make all ballots received available for inspection by parties with reasonable interest in the proposal.

Renumber the following bill sections accordingly.

Page 4, line 27:
Delete "sec. 4"
Insert "sec. 5"

Page 6, line 30:
Delete "sec. 3"
Insert "sec. 4"

Page 7, line 9:
Delete "sec. 4"
Insert "sec. 5"

AMENDMENT #3 Revised K.32

OFFERED IN THE HOUSE
TO: HB 53

Page 3, following line 3:
Insert a new bill section to read:
"*Sec. 2. AS 33.30.031 is amended by adding a new subsection to read:
(f) The commissioner may not enter into an agreement to provide necessary facilities under (a) of this section as a correctional facility that is to be constructed in this state after the effective date of this Act unless the commissioner initiates and completes a site selection process. The site selection process must provide the public reasonable opportunity to comment about sites to be considered for the location of the correctional facility. In additions, if, on the basis of the site selection process, the commissioner determines to enter into an agreement to contract for provision of necessary facilities at a correctional facility that is to be located at a site within a municipality or legal subdivision of the state, the correctional facility may not be constructed at the site unless approved by a majority of the voters within the "affected area" voting at an election conducted by the municipality or legal subdivision of the state. For the purpose of this subsection, "affected area" means the area within 2 miles of the external perimeter of the correctional facility. This restriction does not apply to construction within the perimeter of correctional facilities in existence before the effective date of this act.

Renumber the following bill sections accordingly.

who vote

residential land owners

Page 4, line 27:
Delete "sec. 4"
Insert "sec. 5"

Page 6, line 30:
Delete "sec. 3"
Insert "sec. 4"

Page 7, line 9:
Delete "sec. 4"
Insert "sec. 5"

MEMORANDUM

To: Rep. Jeannette James, Chair, HB 53 HJUD subcommittee
Rep. Joe Green, subcommittee member
From: Rep. Eric Croft, subcommittee member
Date: March 22, 1997
Re: Draft language for site selection process

In the proposed draft, below, I've tried to accomplish a strong, fair site selection process that addresses concerns both of you have voiced. The proposed language:

- in subsection (f) ensures that voters in an areawide plebiscite will have an opportunity to register their objection to or approval of a private prison in their community;
- in subsection (g)(3) addresses Rep. James' fiscal responsibility concern by assuring stability in the price and transfer of real property on which a private prison might be sited;
- in subsection (h) addresses Rep. Green's local control concern by providing a mechanism by which residential property owners within a two-mile radius of the proposed private prison may nix the project;
- in subsections (h) and (i), provides that the entity proposing to build the private prison bear the cost for most elements of the site selection process;
- is modeled as closely as possible after a viable Municipality of Anchorage process (for establishing Business Improvement Districts and other special assessments) that has already proven to work well.

I look forward to working with you to further refine subcommittee language for submission to the Judiciary Committee. I know the language looks complex, but I believe this is mainly a reflection of our concern for specificity.

A M E N D M E N T #3 (Subcommittee revision)

OFFERED IN THE HOUSE

TO: HB 53

Page 3, following line 3:

Insert a new bill section to read:

*Sec. 2. AS 33.30.031 is amended by adding a new subsections to read:

(f) The commissioner may not enter into an agreement to provide facilities under (a) of this section after the effective date of this Act unless the commissioner initiates and completes a site selection process in accordance with (f)-(i) of this section. The commissioner shall not initiate a site selection process to consider sites within a municipality or political subdivision of the state unless, within four years prior to the commissioner's initial publication of a request for proposals under (g) of this section, a majority of the voters voting at an election conducted by the municipality, the state, or political subdivision of the state have approved locating a facility described in (a) of this section within the boundaries of the municipality or political subdivision of the state.

(g) In conducting the site selection process required by (f) of this section, the commissioner may solicit proposals from private entities by publishing a request for proposal in a newspaper of general circulation. The commissioner shall accept proposals for six months after initial publication of the request for proposals. Any such proposal shall certify in a manner prescribed by the commissioner that

(1) the facility to be constructed will meet the department's requirements as described by the commissioner in the RFP or other document;

(2) the facility will be operated at a cost to the state below the state's cost to operate a comparable facility, that cost to be described by the commissioner in the RFP or other document;

(3) the entity owns or has an option to buy at a fixed cost the land on which the proposed facility would be located, and the entity agrees that the state may purchase the land at a fixed price if the state assumes ownership or control of the facility pursuant to statute or provision of contract;

(4) the site has been approved by more than fifty percent of the residential landowners residing within two miles of the proposed site.

fixed at the time of contracting

(f)

(h) In order for the certification of approval under subsection (g)(4) to be valid, the approval process must meet the following requirements:

(1) not more than one month after initial publication of the RFP, the private entity shall publish in a newspaper of general circulation notice of intent to make a proposal, including a description of the location to be proposed;

(2) not more than one month after initial publication of the RFP, the private entity shall deliver by certified mail to all residential landowners residing within two miles of the proposed site notice of intent to make a proposal, including a description of the location to be proposed;

(3) at least three months prior to the bid closure date published on the RFP, the commissioner or municipality or political subdivision of the state conducting the election shall deliver by certified mail to all residential landowners residing within two miles of the proposed site a mail-in ballot approved by the commissioner that residential landowners may use to signify approval of the proposed site;

(4) the approval process shall last no more than three months from the mailing o the ballots and no indication of approval shall be counted after the close of this period;

(5) during the three month approval period, any residential landowner may, in a manner prescribed by the party conducting the election, elect to withdraw his or her indication of approval;

(i) If the proposed site lies within the boundaries of a municipality or political subdivision of the state, the entity making the proposal may, at the expense of the entity, contract with the administrator of the municipality or political subdivision to count ballots prepared under (h) of this section, publish the results in a newspaper of general circulation, and make all ballots received available for inspection by parties with reasonable interest in the proposal. If the entity making the proposal does not enter into a contract with the administrator of the municipality or political subdivision to count ballots, the commissioner shall count the ballots, publish the results in a newspaper of general circulation, and make all ballots received available for inspection by parties with reasonable interest in the proposal.

MEMORANDUM

Date: March 14, 1997
To: Jack Chenoweth, Legislative Legal
From: Lisa Kirsch, House Judiciary Committee
Re: HB 53

We attempted to move some of the amendments that you have drafted for HB 53 and quite a few questions arose during the meeting. The bill has been sent to subcommittee on the vote amendment (K.32) and Rokeberg's amendment requiring a women's facility (K.37).

Questions that arose:

1) The sponsor opposed our amendment to add bond requirements, insurance, etc. (K.31). His argument is that AS 36.25.010 applies to lease purchase under the bill. I question whether it covers pure leases where the building is private and not a "public building." I also looked to AS 36.30.040, but even though the regs. may cover the current concerns some didn't like the fact that the procurement regs could change.

2) There was a great deal of confusion over whether this bill applied to one prison or all future construction. Some felt the plural or singular language controlled, some felt the dollar amount limited the bill to a single facility.

3) If the bill only covers a single prison how will Rokeberg's amendment fit in?

I am sure you are busy, so you can just call me Monday if that is easiest. However, the other committee members may ask you the same questions, so it might be faster to send one memo that I could distribute. It is up to you.

Thanks for your help.

LEGAL SERVICES

DIVISION OF LEGAL AND RESEARCH SERVICES
LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA

(907) 465-3867 or 465-2450
FAX (907) 465-2029
Mail Stop 3101

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

MEMORANDUM March 17, 1997

SUBJECT: Amendments to House Bill 53 (Work Order No. 20-LS0194\K)

TO: Representative Joe Green
ATTN: Lisa Kirsch

FROM: Jack Chenoweth
Legislative Counsel

To the points of your March 14 memo:

1. Amendment K.31, relating to bond and insurance requirements, is not project specific. By its terms, it would apply whenever the Department of Corrections proposes to look to a private agency to provide prisoner confinement and care services. I honestly don't know whether the state requires bid security in the construction phase of lease-purchase agreements, and didn't find a statute or regulation that was definitive on the point. Consequently, the bill sponsor may be correct in that it is duplicative of AS 36.25 and of AS 36.30.120 for construction bids. However, AS 33.30.031(c) as amended by K.31 also has applicability as relating to contracted operational services. Bid security for operational services is addressed in the last sentence of AS 36.30.120(a).

2. Apart from its amendments to the permanent law provisions, HB 53 applies to authorize and direct development of a new correctional facility project using one procurement method or the other--that is, procurement of space under the special provisions of HB 53 would proceed either on the basis of a lease under bill sec. 3 or under a lease-purchase under bill sec. 4. Projects could not be developed using both methods. After a project is in place using one method or the other, then the Department of Corrections would have to return to the legislature under AS 36.30.085 for authorization for another lease-purchase arrangement. Under the permanent law provision of HB 53, the department's general authority to lease additional space is being expanded: under amended AS 33.30.031(a), the commissioner may lease space from a public or private agency in this or another state, and under proposed AS 33.30.043, the commissioner may lease space in a facility constructed by a municipality. Space leases that exceed the limitations of AS 36.30.080(c) are subject to prior legislative approval.

3. The amendment request by Representative Rokeberg, reflected in amendment K.37, was entirely silent on the question of amending or leaving untouched the number of facilities to be built under the lease and lease-purchase procurement methods. Admittedly, it presented a tricky problem to open the door to multiple facilities (one of which would be required to be used to house female prisoners) when the text of the statute to be amended did not contemplate more than one facility. However, I concluded that we could probably respond to the request by taking the lease-purchase authorization and revising it to authorize its use for multiple facilities without having effect on the choice of procurement methods used. You're right in observing that the dollar limitations set out in the lease-purchase authorization might limit use of the lease-purchase procurement method for multiple prison facilities. However, I had no instruction on the point from the amendment sponsor's office and figured that if there were sufficient support for that approach, the committee could adjust the dollar limitations in bill section 4 as the members saw fit.

JBC:glc
97-181.glc

MEMORANDUM

Date: April 1, 1997

To: Joe Green

From: Lisa Kirsch

Re: **HB 53 --Amendments proposed by Rep. Croft**

I have reviewed Eric Croft's amendments, and they differ from ours in that they:

1) do not provide for bond requirements. Existing law provides for bonding on construction contracts, But not on operational contracts;

2) Include a simple two mile radius for the approval vote area--this has the problems we discussed earlier which are incumbent to defining the area, deciding who is inside and outside and the costs associated with this process of drawing lines.

3) allows "residential landowners" to approve the site. Does this mean we have to further process the list of voters residing within a two mile radius to determine that they hold title to real property? This may be equal protection problem if renters affected by a proposed prison are excluded simply because they don't hold title to their homes. Commercial landowners would also be excluded even though the proposed prison might affect their business;

4) require a majority greater than 50% of the "residential landowners." (g)(4)What if we get low response (less than 50% reply) to the mail in ballots? Does this mean the site cannot be used?

5) require approval of a "majority of the voters" (section (f)) to locate a prison within the municipality within four years. It isn't clear whether this is a different election, or is intended to mean the election described in subsection (g)(4);

6) require a proposal that shows a cost savings in operation. This is a less stringent requirement compared to the earlier requests for 20-25% cost savings on both construction and operations;

7) allow the state an option to buy the land at a fixed price.

8) require publication by the DOC of the RFP in a newspaper and requires that the bid process remain open for six months;

9) require publication of the "intent to make a proposal" in the newspaper by the private entity;

10) require the private entity to send the "intent to make a proposal" to the residential landowners within 2 miles by certified mail;

11) require mail in ballots to be sent out at least three months before bid closure. This amendment does not indicate whether the state or the municipality pays for the election, and only says either the state, the municipality or the political subdivision shall conduct the election; and

12) allows the private entity to count ballots at their expense if they choose to do so--otherwise it appears that this task falls to the Commissioner of DOC.

Sheila Selkregg
w 343 4215
h 338 3636
cell 240 3682

AMENDMENT #3 Revised

OFFERED IN THE HOUSE
TO: HB 53

Page 3, following line 3:
Insert a new bill section to read:
"*Sec. 2. AS 33.30.031 is amended by adding a new subsection to read:
(f) The commissioner may not enter into an agreement to provide necessary facilities under (a) of this section as a correctional facility that is to be constructed in this state after the effective date of this Act unless the commissioner initiates and completes a site selection process. The site selection process must provide the public reasonable opportunity to comment about sites to be considered for the location of the correctional facility. In additions, if, on the basis of the site selection process, the commissioner determines to enter into an agreement to contract for provision of necessary facilities at a correctional facility that is to be located at a site within a municipality or legal subdivision of the state, the correctional facility may not be constructed at the site unless approved by a majority of the voters within the "affected area" voting at an election conducted by the municipality or legal subdivision of the state. For the purpose of this subsection, "affected area" means the area within 2 miles of the external perimeter of the correctional facility. This restriction does not apply to construction within the perimeter of correctional facilities in existence before the effective date of this act.

Renumber the following bill sections accordingly.

Page 4, line 27:
Delete "sec. 4"
Insert "sec. 5"

Page 6, line 30:
Delete "sec. 3"
Insert "sec. 4"

Page 7, line 9:
Delete "sec. 4"
Insert "sec. 5"

Bond requirements missing

2 mile radius def. problems

(3) (4) — [approval by more than 50%
What if little or no response?

(9)(2) operation costs lower (no construction savings requirement)

HB53

dual majority
- Must it be dual?
- Actually approval only of affected neighborhood

2 mile radius
but how do they draw lines
- middle of the prison
- the 4 corners?

service area?

Pay for it — by mail? = if muni expenses

- draw line — prob
- Voter registration — meter up

Closest approx.
- municipality decides
-
-

smallest existing area subdistrict or covers all res. w/in 2 mile
- city
- sch area
- elect dist
- com council
- neighborhood

South Anchorage Coalition

FAX

Date: 3/11/97

TO: Rep. Joe Green

Fax # (907) 465-4316

FROM: B.K. Powell
Fax # (907) 345-5542
Tel (907) 345-4854
e-mail: amunra@alaska.net

RE: State of Oklahoma private prison information

Message:

Joe:

Here is some information you may find interesting. I received this from the Oklahoma Department of Corrections. Oklahoma has 5 private prisons. They stated that one of their statutes regarding prison location is that a prison cannot be located any closer than 1 mile from the nearest school. I hope you find this information useful. If you have questions or require additional information, please feel free to contact me.

PS: I've requested a hard copy of Oklahoma's statutes and reports regarding private prisons. I'll send you a copy.

Regards:

B.K.

B.K. Powell
South Anchorage Coalition

Subject: Private Prison Inquiry
Date: Wed, 12 Mar 1997 17:57:21 -0600
From: rebobz@doc.state.ok.us (Bob Zapffe)
To: <amunra@alaska.net>

Please review our website pages on private prisons at http://www.doc.state.ok.us/docs/privatep.htm If you need more information, Dennis Cunningham is our private prison contract administrator. His e-mail is didennic@doc.state.ok.us. I believe our statutes require a prison facility be at least a mile from a school. I'm not surprised people in Anchorage are not excited about a prison, since the economic impact more remote areas seek is diluted in a big city atmosphere. Good luck. Check back with me if you need more info. Please browse our website.

Bob Zapffe, Executive Assistant
Oklahoma Department of Corrections
Research & Evaluation
(405) 425-2512 Fax (405) 425-2741
P.O. Box 11400
Oklahoma City, OK 73136-0400

Subject: Re: Private Prison location
Date: Thu, 13 Mar 1997 07:25:24 -0600
From: didennic@doc.state.ok.us (Dennis Cunningham)
To: "BK Powell" <"amunra@alaska.net"@Alaska.NET>

Private Companies have built speculative private prisons in the past few years here. We built one new prison. All these have been, as you said primarily rural locations, in areas that needed an economic boost.

Our agency's stance has been that the communities must want us, for us to consider locating a facility somewhere. The facility that the state built was in response to an RFP process, in which communities competed for the facility. The 'winner' even offered a million dollars of incentives to the state. The RFP process is a public process.

If you are interested in receiving hard copies of statutes and reports send me your address.

Dennis Cunningham, Private Prison Administrator
P.O. Box 11400
Oklahoma City, OK 73136-0400
(405) 425-2616 FAX (405) 425-2578

> *From: BK Powell <"amunra@alaska.net"@Alaska.NET>*
> *To: didennic@doc.state.ok.us*
> *Subject: Private Prison location*
> *Date: Wednesday, March 12, 1997 7:38 PM*
>
> *Your name and e-mail address was forwarded to me by Mr. Zapffe. Alaska is* in debate regarding
> *contracting for a private prison. As is the case with most states, we are* in need of beds.
> *The issue is the location of the proposed prison. The proponents own the* land (40 acre site)
> *and feel this is the best location (in the state). This site is in* Anchorage
> *(pop. 250,000) within 1/2 of established high density neighborhoods.*
> *The proposed operator has no experience with prison operation, they do* operate 2 halfway houses
> *in Anchorage. 1000's of Anchorage residents are*
> *upset over the proposed location. Concerns about*
> *safety, property values, etc. My question is this: what process did* Oklahoma use regarding
> *site selection, was it a public process? It is my understanding that new* prisons
> *(over the last 10 years) are located in*
> *rural areas, with somewhat of a depressed economy, and that these areas* would welcome
> *the prison business. Anchorage is not rural nor is the economy flatlined.* Alaska does
> *have sites that fit the rural/economic description and would welcome the* business.
> *Any information regarding this subject that you would care to share would*
> *be greatly appreciated.*
>
> *Regards*
>
> *B.K. Powell*

Private Prisons with Oklahoma DOC Contracts

As of February 20, 1997

Wackenhut/Central Texas Parole Violator Facility (148 Male/55 Female)
Per diem $39.00 + Medical/security costs
Bob Morales, ActingFacility Administrator
218 S. Laredo
San Antonio, Texas 78207-4532
Phone: 210-227-5600 Fax: 210-226-5007
402 miles from Lexington Assessment and Reception Center

CCRI/Limestone County Detention Center (490 Male)
Per Diem $40.50 + Medical/security costs
Carl White, Director
910 Tyus Road
Groesbeck, Texas 76642
Phone: 817-729-8615 Fax: 817-729-8108
Near Waco, Texas, 220 miles from Lexington Assessment and Reception Center

Mansfield Law Enforcement Center (180 Male/20 Female)
Per Diem $42.00 + Medical/security costs
Jim Owen, Administrator
1601 Heritage Parkway
Mansfield, Texas 76063
Phone: 817-473-8676 Fax: 817-473-8954
Near Ft. Worth, Texas, 170 miles from Lexington Assessment and Reception Center

GRW/Odessa Detention Center (95 Female)
Per Diem $39.00 + Medical/security costs
Kay Tomlinson, Administrator
203 N. Grant
Odessa, Texas 79761
Phone: 915-335-4998 Fax: 915-335-4996
550 miles from Lexington Assessment and Reception Center

Average TX per diem $40.37 + Indirect DOC costs =$3.97 per day

CCA/Davis Correctional Facility (960 male)
Per Diem $41.95 + Medical/security costs + Therapeutic Community Costs
Stephen W. Kaiser, Warden
Rt. 4 Box 40
Holdenville, OK 74848-9295
Phone: 405-379-6400 Fax: 405-379-6496
62 miles from Lexington Assessment and Reception Center

CCA/Great Plains Correctional Facility (250 male)
Per Diem $46.37 + Medical/security costs

Tom Martin, Warden
Highway 281 South, P.O. Box 1018
Hinton, OK 73047
Phone: 405-542-3711 Fax: 405-542-3710

Map of private prisons with Oklahoma contracts.

Profile of Offenders In Private Prisons with DOC Contracts

Statutory Authority for Private Prison Contracts

Private Prison Contractor Application

Dennis Cunningham is the contract monitor for the Oklahoma Department of Corrections. He may be reached at 405-425-2616 or fax at 405-425-7236. Other staff deal with records management, medical, population management/classification, transportation, and trust fund issues.

Oklahoma Department of Corrections

Private Prison Administration

An Overview of Oklahoma Statutory Guidelines

for Private Prison Contracting

I. According to **O.S. 57 Section 502,** APrivate prison contractor means:

A. a nongovernmental entity or public trust which, pursuant to a contract with the Department of Corrections, operates an institution within the Department, or provides for the housing, care, and control of inmates and performs other functions related to said responsibilities within a minimum or medium security level facility not owned by the Department but operated by the contractor; or

B. a nongovernmental entity or public trust which, pursuant to a contract with the United States or another state, provides for the housing care and control of minimum or medium security inmates in the custody of the United States or another state, and performs other functions related to said responsibilities within a facility owned or operated by the contractor.

II. Overview of O.S. 57 Section 561, Private Prison Contracting

A. Title 57 Section 561 allows the Board of Corrections to contract with private prisons contractors (this includes public trusts) for the operation of a prison. The process of contracting for a prison is described as follows.:

Step 1 The Department of Corrections shall maintain a comprehensive file of all contractors interested in and capable of operating an institution, either owned by the department or the contractor. The department must furnish necessary application forms within 20 days to any person or firm wishing to be included in the comprehensive file.

Step 2 If the department intends to secure the services of a private prison contractor, all persons and firms included in the comprehensive file shall be notified by mail of such intent. The notification shall contain a description of the project, estimated time schedule for the project, last date of submitting notice of interest and other pertinent data.

Step 3 Private prison contractors shall submit a letter expressing interest in the project within 30 days of the postmark date of the letter of notification (Step 2).

Step 4 The department shall prepare a detailed project plan and submit it to the Board of Corrections for approval.

Step 5 After the Board of Corrections has approved the detailed project plan, the department shall select three to five contractors for detailed consideration. The selection to be based on the comprehensive file data, inquiries to former clients, performance, expertise, and capacity of the contractors.

Step 6 A report of the evaluation procedures and recommendations of the department shall be submitted to the Board of Corrections for their independent review of the process.

Step 7 The department shall select and negotiate contract terms with the contractor whose qualifications and project proposal best meet the criteria of the project description. The negotiated project scope and fee shall be submitted to the Board of Corrections for their approval to make an award of contract. Should the department fail to reach a contract agreement with the first-choice contractor, negotiations shall begin with the second-choice contractor, and if agreement is not reached, negotiations shall begin with the third-choice contractor. If agreement is not reached with the third-choice contractor, the process will start over at Step 5.

B. In addition to the seven steps noted above, Title 57 Section 561 also provides:

1. For adding contractors to the list for considerations, if there is inadequate response to the project.

2. Assistance from the Department of Central Services in implementing private prison contacting procedures.

3. Authority for the director of the Department of Central Services to lease state owned property in conjunction with a private prison contract.

4. For private prison contracts to be for a term of one year subject to renewal at the state's option for a cumulative total of 50 years.

5. That private prison contractors provide assurances with regard to qualifications, experience, proper staffing, financing and ability, at the Board of Corrections, prior to award of the contract.

6. That private prison contractors demonstrate to the satisfaction of the Board of Corrections, that the contractor can obtain required insurance or can provide self-insurance.

7. That private prisons contractors are exempt from legislation governing correctional employees, except with regard to authorized use of firearms.

8. That any offense which would be a crime if committed within a state correctional facility is also a crime if committed in a facility operated by a contractor.

9. That the director or his designee shall monitor the performance of private prison contractors.

10. Special requirements when the private prison contractor operates a non-state owned facility. This includes granting the department the option to purchase or lease the facility at a

predetermined price at the beginning of each fiscal year. The contractor is required to provide the service in a facility that meets ACA standards. The contractor must receive ACA accreditation within three years of commencement of operations of the facility.

Private Prison Contractor Application

OKLAHOMA DEPARTMENT OF CORRECTIONS
PRIVATE PRISON CONTRACTOR
APPLICATION FORM INSTRUCTIONS

Part I. Specific Instructions

1. Enter the full name of your company and the company=s federal employer identification (FEI) number. If your company does not have an FEI number and your company is an individual proprietorship, the social security number of the proprietor may be substituted for the FEI number. NO OTHER SUBSTITUTIONS ARE PERMITTED.

2. Enter the date your company was established.

3. Enter the firm structure. Examples of company structure are individual proprietorship, partnership, corporation, etc.

4. Enter the full business mailing address of your company=s home office and phone number, including area code.

5. If your company=s home office is located in Oklahoma and you want all correspondence to be directed to the home office, enter Asee above.@ Otherwise, enter the full business mailing address of your company=s Oklahoma office, and phone number, including area code. If your company has no office in Oklahoma, enter Anone.@

6. List the full names and titles of all principals in your company. Principals include officers, members of the board of directors, owners of individual proprietorships and partnerships, (including limited partners), and corporate stockholders who own or control five percent or more of the outstanding voting stock of the corporation. Principals may be individuals, proprietorships, partnerships, or corporations. Attach additional sheets if necessary.

7. List the full names and titles of all key personnel not listed in item six above. Key personnel would include managers, supervisors, and other employees with a high degree of expertise in their field and who would make substantial contributions to the operation of a privately operated prison. Attach additional sheets if necessary.

8. Enter the current number of employees in your firm. Include partners actively engaged in the operation of the firm.

9. For each type of service listed in items A through I, list the full mailing address of subcontractors normally used by your firm to provide the service. If subcontractors are not normally used for that type of service, enter Anone.@ In item J, list other types of services normally subcontracted by your firm and the full mailing address of subcontractors used for each type of service. Attach additional sheets if necessary.

10. Based on your response to item nine above, indicate the types of services provided by your firm without the use of subcontractors. Attach additional sheets if necessary.

11. Complete a separate page of this section for each principal and key personnel listed in sections six and seven. Make enough copies of page three to provide a separate page for

each principal and key personnel. The pages should be numbered 3-A, 3-B, 3-C, etc.

Name: Enter the full name of the principal or key personnel.

Position in firm: Enter their title.

Years of experience: Enter their years of experience in their field.

Age: Enter their age.

Years in this firm: Enter the number of years they have been with your company.

Years as principal in their firms: Enter the number of years they were principals in other companies.

Education: For each college attended, enter the full name of the college, full name of any degrees received, or Anone@ if no degree received, the year they received their degree, and their area of specialization within their degree field.

Professional organization memberships: Enter the full name of professional organizations they belong to.

Professional registrations: For each professional registration (doctor, lawyer, physiologist, etc.), list the type of registration, the state registered, the year they became registered, and their registration number. Attach additional sheets if necessary.

Years of professional experience: List the years they have been engaged in the practice of their profession.

Specialization and years: List the area(s) of specialization within their field and the number of years in that specialty.

Have you ever been convicted of a felony: If they have never been convicted of a felony, enter ANO.@ If they have been convicted of a felony, enter AYES@ and provide details, including charge, circumstances, and jurisdiction.

Employment history: Beginning with their current employment, list the company name, title, and years of employment. Be sure to account for all years of professional experience. Include a brief description of duties performed.

12. Complete a separate page of this section for each past and present contract with the state of Oklahoma. Include all consultant and service contracts with all entities of the state of Oklahoma. If you have no past or present contracts with the state of Oklahoma, enter ANo Past or Present Contracts@ in the space for name of project. Make enough copies of page four to provide a separate page for each contract. The pages should be numbered 4-A, 4-B, 4-C, etc.

Name of project: List the name of the contract project.

Location: List all locations where contract services were provided.

Name, address, and contact person of agency: List the full name and mailing address of the agency the contract was with. Also, list the full name, title, and phone number, including area code, of the person in the agency we could contact regarding the goods or services provided by your company.

Project period: List the starting and ending dates of the project.

Project cost: For projects currently underway, list the contract amount. For completed projects list the amount you were actually paid.

Project description: Describe the purpose of the project, your involvement in the project, and the results of the project. Be sure to note major activities you participated in.

13. Complete a separate page of this section for at least five past and present contracts with private companies, cities, counties, other states, and the federal government. Include all consultant and service contracts with entities other than the state of Oklahoma. If you have no past or present contracts with entities other than the state of Oklahoma, enter ANo past or present contracts@ in the space for name of project. Make enough copies of page five to provide a separate page for each contract. The pages should be numbered 5-A, 5-B, 5-C, etc.

Name of project: List the name of the contract project.

Location: List all locations where contract services were provided.

Name, address, and contact person of agency: List the full name and mailing address of the agency the contract was with. Also, list the full name, title, and phone number including area code of the person in the agency we could contact regarding the goods or services provided by your company.

Project period: List the starting and ending dates of the project.

Project cost: For projects currently underway, list the contract amount; for completed projects, list the amount you were actually paid.

Project description: Describe the purpose of the project, your involvement in the project, and the results of the project. Be sure to note major activities you participated in.

14. The state of Oklahoma requires private prison contractors to obtain certain insurance coverage or to provide self-insurance. If your firm will be self-insured, enter ASelf-Insured.@

15. You are to provide certain financial information about your firm. Audited financial statements must be submitted for the most recently completed year and the year prior to the most recently completed year. These audited financial statements must include an audit

opinion of the financial statements by a CERTIFIED PUBLIC ACCOUNTANT. Opinions issued by APublic Accountants@ or other individuals not licensed to practice as a Certified Public Accountant,@ will not be accepted. At a minimum, the financial statements will include a balance sheet, a profit and loss statement, notes to financial statements, and an opinion of the financial statements signed by a certified public accountant. Provide Dun & Bradstreet numbers for the company and all principals of the firm listed in item six.

16. The application must be signed by a principal, officer, or director of the firm who is authorized to make representations concerning the firm. The signer=s title, the firm name, and the date signed are also required.

Part II. General Instructions

The completed application and all attachments are to be mailed to:

Dennis Cunningham
Private Prisons Administrator
Oklahoma Department of Corrections
P.O. Box 11400
Oklahoma City, OK 73136-0400

All applications must be complete. Failure to properly complete all sections of the application and attach all required statements will result in the application being returned to you.

ALASKA STATE LEGISLATURE

PLEASE ENTER INTO THE RECORD MY TESTIMONY TO THE HOUSE JUDICIARY
COMMITTEE NAME

COMMITTEE ON PRIVATE PRISON HOUSE BILL 53 DATED _____
BILL/SUBJECT

HB 53 IS NOT IN THE BEST INTEREST OF THE PEOPLE OF ALASKA. HB 53 IS PUTTING THE CART BEFORE THE HORSE IN THAT HB 150 WHICH IS PENDING IS THE CORRECT AND FISCALLY RESPONSIBLE SOLUTION. THE FACILITIES CURRENTLY AVAILABLE, FUNCTIONALLY SUPPORT COMMUNITY NEEDS AND SAFETY ISSUES TO THE PUBLIC. YEARS AGO THE FACILITIES WERE BUILT WHICH COULD SERVE INCARCERATION NEEDS AND BE EXPANDED AS NEEDED IN THE FUTURE. WELL THE FUTURE IS UPON US AND THE PLANS SIT IN CABINETS WHY REWRITE A PLAN SUCH AS HB 53 AND CREATE A FISCAL DEFICIT FOR FUTURE ALASKANS. CHILDRENS EDUCATION NEEDS FAR OUTWEIGH A PRIVATE PRISON, AND PUBLIC SAFETY AND TRUST CAN NOT BE EASILY REGAINED ONCE AN ALL DOLLAR AND NO SENSE DECISION IS MADE. THE GRASS ISN'T ALWAYS GREENER WHEN IT COULD IMPACT ON PUBLIC SAFETY. SPRING CREEK AND OTHER PRISONS NEED THE UPGRADES, AND WE NEED TO COMPARE AND CONTRAST THE COST OF SPRING CREEK IMPROVEMENT COSTS BEFORE REINVENTING THE WHEEL.

SIGNED Robert E Crandell
TESTIFIER

COMMUNITY MEMBER
COMMUNITY OF FAIRBANKS
REPRESENTING (OPTIONAL)

2200 TURNER STREET FAIRBANKS, AK 99701
ADDRESS/PHONE NUMBER

Florida Statutes (Supplement 1996)

CHAPTER 957: CORRECTIONAL PRIVATIZATION COMMISSION

[*Footnote 1*]

957.03 Correctional Privatization Commission. ---

(1) COMMISSION. The Correctional Privatization Commission is created for the purpose of entering into contracts with contractors for the designing, financing, acquiring, leasing, constructing, and operating of private correctional facilities. For administrative purposes, the commission is created within the Department of Management Services. The commission may enter into contracts with contractors for the designing, financing, acquiring, leasing, and constructing of private juvenile commitment facilities.

(2) MEMBERS; QUALIFICATIONS. The commission shall consist of five members appointed by the Governor, none of whom may be an employee of the Department of Corrections or the Department of Juvenile Justice, one of whom must be a minority person as defined in s. 288.703(3), and four of whom must be employed by the private sector. A commissioner may not have been an employee or a contract vendor of or a consultant to the department or the Department of Juvenile Justice, or an employee or a contract vendor of or a consultant to a bidder, for 2 years prior to appointment to the commission and may not become an employee or a contract vendor of or a consultant to the department or the Department of Juvenile Justice, or an employee or a contract vendor of or a consultant to a bidder, for 2 years following the termination of the appointment to the commission.

(3) TERMS, ORGANIZATION, AND MEETINGS.

(a) The term of office for a member of the commission is 4 years.

(b) A vacancy shall be filled in the same manner as the original appointment and shall be for the remainder of the unexpired term only.

(c) The Governor shall appoint from among the members a chair and a vice chair for terms of 2 years each.

(d) Members of the commission shall serve without compensation but are entitled to reimbursement for per diem and travel expenses pursuant to s. 112.061.

(e) The commission may employ an executive director and such staff as is necessary, within the limits of legislative appropriation. The commission may retain such consultants as it deems necessary to accomplish its mission. Neither the executive director nor any consultant retained by the commission may have been an employee or a contract vendor of or a consultant to the department or the Department of Juvenile Justice, or an employee or a contract vendor of or a consultant to a bidder, for 2 years prior to employment with the commission and may not become an employee or a contract vendor of or a consultant to the department or the Department of Juvenile Justice, or an employee or a contract vendor of or a consultant to a bidder, for 2 years following termination of employment with the commission.

(f) The commission shall meet upon the call of the chair or a majority of the members of the commission. A majority of the members of the commission constitutes a quorum.

(g) In accordance with all provisions of law, the commission may lease such office space as is necessary, within the limits of legislative appropriation.

(4) DUTIES.

(a) The commission shall enter into a contract or contracts with one contractor per facility for the designing, acquiring, financing, leasing, constructing, and operating of that facility or, if specifically authorized by the Legislature, separately contract for any such services. The commission shall not enter into any contract to design, acquire, finance, lease, construct, or operate more than two private correctional facilities without specific legislative authorization.

(b) In its request for proposals, the commission shall invite innovation and shall not require use of prototype designs of state correctional facilities specified or designed by or for the department or of state juvenile facilities specified or designed by or for the Department of Juvenile Justice. The commission shall not require the use of any prototype design that specially advantages any contractor.

(c) The commission must report to the Speaker of the House of Representatives and the President of the Senate by December 1 each year on the status and effectiveness of the facilities under its management. Each report must also include a comparison of recidivism rates for inmates of private correctional facilities to the recidivism rates for inmates of comparable facilities managed by the department.

(5) ADOPTION OF RULES. The commission may adopt rules necessary to carry out its contracting and monitoring duties provided under this chapter.

History: s. 40, ch. 93-406; s. 1, ch. 94-148; s. 55, ch. 96-312; s. 21, ch. 96-422.

[***Footnote 1***] **Note.** Section 59, ch. 96-312, provides that "the provisions of ss. 957.03 and 957.04, Florida Statutes, as amended by this act, shall apply to contracts awarded on or after July 1, 1996."

[*Footnote 1*]

957.04 Contract requirements. ---

(1) A contract entered into under this chapter for the operation of private correctional facilities shall maximize the cost savings of such facilities and shall:

(a) Be negotiated with the firm found most qualified. However, a contract for private correctional services may not be entered into by the commission unless the commission determines that the contractor has demonstrated that it has: 1. The qualifications, experience, and management personnel necessary to carry out the terms of the contract. 2. The ability to expedite the siting, design, and construction of correctional facilities. 3. The ability to comply with applicable laws, court orders, and national correctional standards.

(b) Indemnify the state and the department, including their officials and agents, against any and all liability, including, but not limited to, civil rights liability. Proof of satisfactory insurance is required in an amount to be determined by the commission, following consultation with the Division of Risk Management of the Department of Insurance. Not less than 30 days prior to the release of each request for proposals by the commission, the commission shall request the written recommendation of the division regarding indemnification of the state and the department under this paragraph. Within 15 days after such request, the division shall provide a written recommendation to the commission regarding the amount and manner of such indemnification. The commission shall adopt the division's recommendation unless, based on substantial competent evidence, the commission determines a different amount and manner of indemnification is sufficient.

(c) Require that the contractor seek, obtain, and maintain accreditation by the American Correctional Association for the facility under that contract. Compliance with amendments to the accreditation standards of the association is required upon the approval of such amendments by the commission.

(d) Require that the proposed facilities and the management plans for the inmates meet applicable American Correctional Association standards and the requirements of all applicable court orders and state law.

(e) Establish operations standards for correctional facilities subject to the contract. The commission may waive any rule, policy, or procedure of the department related to the operations standards of correctional facilities that are inconsistent with the mission of the commission to establish cost-effective, privately operated correctional facilities.

(f) Require the contractor to be responsible for a range of dental, medical, and psychological services; diet; education; and work programs at least equal to those provided by the department in comparable facilities. The work and education programs must be designed to reduce recidivism, and include opportunities to participate in such work programs as authorized pursuant to s. 946.006.

(g) Require the selection and appointment of a full-time contract monitor. The contract monitor shall be appointed and supervised by the commission. The contractor is required to reimburse the commission for the salary and expenses of the contract monitor. It is the obligation of the contractor to provide suitable office space for the contract monitor at the correctional facility. The contract monitor shall have unlimited access to the correctional facility.

(h) Be for a period of 3 years and may be renewed for successive 2-year periods thereafter. However, the state is not obligated for any payments to the contractor beyond current annual appropriations.

(2) Each contract entered into for the design and construction of a private correctional facility or juvenile commitment facility must include:

(a) Notwithstanding any provision of chapter 255 to the contrary, a specific provision authorizing the use of tax-exempt financing through the issuance of tax-exempt bonds, certificates of participation, lease-purchase agreements, or other tax-exempt financing methods. Pursuant to s. 255.25, approval is hereby provided for the lease-purchase of up to two private correctional facilities and any other facility authorized by the General Appropriations Act.

(b) A specific provision requiring the design and construction of the proposed facilities to meet the applicable standards of the American Correctional Association and the requirements of all applicable court orders and state law.

(c) A specific provision requiring the contractor, and not the commission, to obtain the financing required to design and construct the private correctional facility or juvenile commitment facility built under this chapter.

(d) A specific provision stating that the state is not obligated for any payments that exceed the amount of the current annual appropriation.

(3)

(a) Each contract for the designing, financing, acquiring, leasing, constructing, and operating of a private correctional facility shall be subject to ss. 255.2502 and 255.2503.

(b) Each contract for the designing, financing, acquiring, leasing, and constructing of a private juvenile commitment facility shall be subject to ss. 255.2502 and 255.2503.

(4) A contract entered into under this chapter does not accord third-party beneficiary status to any inmate or juvenile offender or to any member of the general public.

(5) Each contract entered into by the commission must include substantial minority participation unless demonstrated by evidence, after a good faith effort, as impr. .tical and must also include any other requirements the commission considers necessary and appropriate for carrying out the purposes of this chapter.

(6) Notwithstanding [*Footnote 2*] s. 253.025(8), the Board of Trustees of the Internal Improvement Trust Fund need not approve a lease-purchase agreement negotiated by the commission if the commission finds that there is a need to expedite the lease-purchase.

(7)

(a) Notwithstanding s. 253.025 or s. 287.057, whenever the commission finds it to be in the best interest of timely site acquisition, it may contract without the need for competitive selection with one or more appraisers whose names are contained on the list of approved appraisers maintained by the Division of State Lands of the Department of Environmental Protection in accordance with [*Footnote 3*] s. 253.025(7)(b). In those instances when the commission directly contracts for appraisal services, it shall also contract with an approved appraiser who is not employed by the same appraisal firm for review services.

(b) Notwithstanding [*Footnote 3*] s. 253.025(7), the commission may negotiate and enter into lease-purchase agreements before an appraisal is obtained. Any such agreement must state that the final purchase price cannot exceed the maximum value allowed by law.

[***Footnote 4***] (8) For the 1996-1997 fiscal year only, the Correctional Privatization Commission may expend appropriated funds to assist in defraying impact costs that are incurred by a municipality or county and are associated with the opening and operating of a facility under the authority of the commission and within that municipality or county. The amount that may be paid under this subsection for any facility may not exceed 1 percent of the facility construction cost, less any building and construction impact fees imposed during the permitting process for the facility. This subsection applies only to facilities contracted under the authority of the 1996-1997 General Appropriations Act. This subsection is repealed on July 1, 1997.

History: s. 40, ch. 93-406; s. 2, ch. 94-148; s. 56, ch. 96-312; s. 13, ch. 96-420; s. 22, ch. 96-422.

[*Footnote 1*] **Note.** Section 59, ch. 96-312, provides that "the provisions of ss. 957.03 and 957.04, Florida Statutes, as amended by this act, shall apply to contracts awarded on or after July 1, 1996."

[*Footnote 2*] **Note.** Redesignated as s. 253.025(7) by s. 2, ch. 94-240.

[*Footnote 3*] **Note.** Section 253.025(7) was redesignated as s. 253.025(6) by s. 2, ch. 94-240.

[*Footnote 4*] **Note.** Section 13, ch. 96-420, added subsection (8) "in order to implement Specific Appropriation 571 of the 1996-1997 General Appropriations Act."

957.05 Requirements for contractors operating private correctional facilities. ---

(1) Each contractor entering into a contract under this chapter is liable in tort with respect to the care and custody of inmates under its supervision and for any breach of contract. Sovereign immunity may not be raised by a contractor, or the insurer of that contractor on the contractor's behalf, as a defense in any action arising out of the performance of any contract entered into under this chapter or as a defense in tort, or any other application, with respect to the care and custody of inmates under the contractor's supervision and for any breach of contract.

(2)

(a) The training requirements, including inservice training requirements, for employees of a contractor that assumes the responsibility for the operation and maintenance of a private correctional facility must meet or exceed the requirements for similar employees of the department or the training requirements mandated for accreditation by the American Correctional Association, whichever of those requirements are the more demanding. All employee training expenses are the responsibility of the contractor.

(b) Employees of a contractor who are responsible for the supervision of inmates shall have the same legal authority to rely on nondeadly and deadly force as do similar employees of the department.

(3) Any contractor or person employed by a contractor operating a correctional or detention facility pursuant to a contract executed under this chapter shall be exempt from the requirements of chapter 493, relating to licensure of private investigators and security officers.

History: s. 40, ch. 93-406; s. 57, ch. 96-312.

957.07 Cost-saving requirements. ---

The commission may not enter into a contract or series of contracts unless the commission determines that the contract or series of contracts in total for the facility will result in a cost savings to the state of at least 7 percent over the public provision of a similar facility. Such cost savings as determined by the commission must be based upon the actual costs associated with the construction and operation of similar facilities or services as certified to the commission by the Auditor General. In certifying the actual costs for the determination of the cost savings required by this section, the

Auditor General shall calculate all of the cost components that determine the inmate per diem in correctional facilities of a substantially similar size, type, and location that are operated by the department, including all administrative costs associated with central administration. Services that are provided to the department by other governmental agencies at no direct cost to the department shall be assigned an equivalent cost and included in the per diem. Reasonable projections of payments of any kind to the state or any political subdivision thereof for which the private entity would be liable because of its status as private rather than a public entity, including, but not limited to, corporate income and sales tax payments, shall be included as cost savings in all such determinations. In addition, the costs associated with the appointment and activities of each contract monitor shall be included in such determination. In counties where the Department of Corrections pays its employees a competitive area differential, the cost for the public provision of a similar correctional facility may include the competitive area differential paid by the department. The Auditor General shall provide a report detailing the state cost to design, finance, acquire, lease, construct, and operate a facility similar to the private correctional facility on a per diem basis. This report shall be provided to the commission in sufficient time that it may be included in the request for proposals.

History: s. 40, ch. 93-406; s. 5, ch. 94-148; s. 58, ch. 96-312.

957.125 Correctional facilities for youthful offenders. ---

(1) The Correctional Privatization Commission may enter into contracts in fiscal year 1994-1995 for designing, financing, acquiring, leasing, constructing, and operating three correctional facilities, notwithstanding s. 957.07. These three facilities shall be designed to have a capacity of up to 350 beds each and house inmates sentenced or classified as youthful offenders within the custody of the Department of Corrections under chapter 958. Two of these facilities shall be designed to house youthful offenders between the ages of 14 and 18, and one shall be designed to house youthful offenders between the ages of 19 and 24.

(2) These youthful offender facilities shall be designed to provide the optimum capacity for programs for youthful offenders designed to reduce recidivism, including, but not limited to: educational and vocational programs, substance abuse and mental health counseling, prerelease orientation and planning, job and career counseling, physical exercise, dispute resolution, and life skills training. In order to ensure this quality programming, the commission shall give no more than 30 percent weight to cost in evaluating proposals.

(3) Effective July 1, 1996, the authority to contract for the operation of two youthful offender facilities shall be transferred from the Correctional Privatization Commission to the Department of Juvenile Justice, and those facilities shall be used for male or female committed juvenile offenders. The Department of Juvenile Justice is authorized to modify any operational contract with the same contractor to whom the Correctional Privatization Commission awarded the contract for these facilities, without rebidding, in order to conform with the requirements of this subsection.

(4) The commission shall specify the area in which each facility will be located and require that each be located in or near a different metropolitan area in areas of the state close to the home communities of the youthful offenders they house in order to assist in the most effective rehabilitation efforts, including family visitation.

History: s. 107, ch. 94-209; s. 23, ch. 96-422.

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MEMORANDUM

State of Alaska
Department of Law

TO Honorable Glenn A. Olds
Commissioner
Department of Commerce
and Economic Development

DATE August 13, 1991

FILE NO 663-92-0061

TEL NO 465-3600

SUBJECT Applicability of Procurement Code to insurance license test administration

FROM Alexis Gabay
Assistant Attorney General
Commercial Section-Juneau

You have asked whether the State Procurement Code, AS 36.30, applies to contracts for the administration of insurance license tests by the Division of Insurance. You have stated that the division does not pay the testing service any money for the administration of the licensing examinations.

This issue was discussed in an earlier opinion concerning the Division of Occupational Licensing. 1989 Inf. Op. Att'y Gen. (Dec. 6; 663-89-0241). The testing arrangements in that situation appear to be identical to the arrangement employed by the Division of Insurance. In that opinion, we determined that the State Procurement Code was not applicable. Similarly, because no state funds are involved in the arrangement between the Division of Insurance and the testing service, we conclude that the State Procurement Code does not apply.

AS 36.30.850(b) provides that the State Procurement Code "applies to every expenditure of state money by the state, acting through an agency, under a contract . . . ."

"State money" is defined as "any money appropriated to an agency or spent by an agency irrespective of its source, including federal assistance except as otherwise specified in AS 36.30.890, but does not include money held in trust by an agency for a person." AS 36.30.990(20).

As you have described the testing arrangement, the division does not pay any money to the testing service. Instead, all test fees are paid by the applicants directly to the testing service. Therefore, these fees paid do not fit within the definition of state money, and the State Procurement Code does not apply to the division's arrangement with the testing service.

I hope this adequately addresses your concerns. Please let me know if I can be of further assistance.

AG:prm

STATE OF ALASKA

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

STEVE COWPER, GOVERNOR

REPLY TO:

☐ *1031 W 4th AVENUE SUITE 200*
ANCHORAGE, ALASKA 99501-1994
PHONE: (907) 276-3550
FAX: (907) 276-3697

☐ *1st NATIONAL CENTER*
100 CUSHMAN ST. SUITE 400
FAIRBANKS, ALASKA 99701-4679
PHONE: (907) 452-1568
FAX: (907) 456-1317

☒ *P.O. BOX K—STATE CAPITOL*
JUNEAU, ALASKA 99811-0300
PHONE: (907) 465-3600
FAX: (907) 463-5295

March 15, 1990

The Honorable Jan Faiks
Alaska State Senate
Alaska State Legislature
P.O. Box V
Juneau, AK 99811

Re: Legality of Municipality of Anchorage charter provision - requiring super-majority vote to approve sale municipal asset

Our File: 663-90-0197

Dear Senator Faiks:

You have asked our opinion regarding the legality of a provision in the Municipality of Anchorage's (Anchorage) charter that requires a super-majority vote (60%) of the electorate in order to approve the sale of a major municipal asset if the assembly refers the question of the sale to the voters. In particular, you question if it is legal for a charter to allow passage of an ordinance by a simple majority of the assembly, while requiring a supermajority if the same question is presented as a referendum to the voters for approval. In short, it is our opinion that the charter provision in question is legal for the reasons explained below.

Anchorage is a home rule municipality. Under the Alaska Constitution, art. 10, sec. 11, a home rule municipality may exercise all legislative powers not prohibited by law or by charter, 1/ and a liberal construction is given to the powers of municipalities. 2/ In particular, we find nothing in the Alaska

---

1/ Alaska Const. art. X, sec. 11 reads: "[a] home rule borough or city may exercise all legislative powers not prohibited by law or by charter."

2/ Alaska Const. art. I, sec. 1 reads in relevant part: "[t]he purpose of this article is to provide for maximum local self-government ... A liberal construction is to be given to the powers of local government units." (Emphasis added).

constitution or statutes that prohibits Anchorage from adopting a charter provision requiring a supermajority vote in order to sell a major municipal asset such as its public utilities when the assembly has referred the question to the voters. Given the home rule status of this municipality, and the liberal construction given to powers of a home rule, municipality under Article X, Section 11, of the Alaska Constitution, we believe that a court would find Anchorage's supermajority provision to be valid.

We want to point out that there are several prohibitions that the legislature has put on home rule powers. The statutory prohibitions are listed in AS 29.10.200, and supersede existing and prohibit future home rule charters or ordinances that provide otherwise. However, AS 29.10.200 does not contain a prohibition as to method of sale of home rule municipal assets nor does it prescribe the voting percentages applicable to public approval (referendum vote) of such a sale. In general, a simple majority vote is all that is needed for a referendum to pass. See AS 29.26.180(d). However, a home rule municipality is not bound by the initiative or referendum procedures set out in AS 29.26.110 --.190, but is allowed to prescribe its own procedures governing use of the initiative and referendum. See AS 29.10.030(a). Given that a home rule municipality can exercise all legislative powers not prohibited by law or charter, we believe that the charter provision in question would be found by the Alaska Supreme Court to be legally permissible.

The ruling in Lien v. City of Ketchikan, 383 P.2d 721 (Alaska 1963), supports our position. In Lien, the Alaska Supreme Court ruled that where a home rule municipality is concerned, the charter is looked to in determining whether a particular power has been conferred upon the municipality on issues of purely local concern. Id. at 723 In that case, the issue concerned the leasing of city property. The charter provision allowing the lease of city property was ruled to be controlling over a statute that prohibited the lease because the court found the lease of city property was an issue of local, not statewide, concern. Id. Unlike the situation in Lien, Anchorage's charter provision requiring a supermajority vote in order to sell a major municipal asset is not contrary to any statute.

If Anchorage's charter had not specifically required the supermajority vote on referenda to approve sale of municipal utilities, our answer on this question might be different. In Malone v. Meekins, 650 P.2d 351 (Alaska 1982), the supreme court decided that supermajority voting requirements are not valid unless they are specifically authorized by the Alaska Constitution. In accord Abood v. Gorsuch, 703 P.2d 1158 (Alaska 1985). Here, while AS 29.10.030(a) mandates that a charter provide "procedures" for the initiative and referendum, we note that AS 29.10.030(c) prohibits a charter from permitting the initiative and referendum to be used for a purpose prohibited by art. XI, sec. 7 of the State Constitution. However, we have an express supermajority voting requirement set out in the charter and have no constitutional requirement to the contrary.

Finally, with regard to a municipality's authority to sell its public utilities, the general rule is that no sale of a municipally owned utility can occur without express authority. 12E McQuillin The Law of Municipal Corporations, § 35.36 at 605 (3rd ed. 1986 Rev). In Alaska, all municipalities are given the general authority to acquire, manage, control, use, and sell real and personal property. AS 29.35.010(7). There is no statutory restriction on the sale of a public utility versus other kinds of municipal property. Anchorage has specific authority in its charter to sell its municipally owned utilities and the assembly may condition its own approval of the sale of a municipal utility on 60 percent voter approval as provided for in the charter. Anchorage's higher percentage voter approval provision for sale of a major municipal asset is not an uncommon practice. The 60 percent approval of the electorate prescribed by the charter must be substantially complied with; otherwise the subsequent steps in completing the sale will be without validity. 12E McQuillin, § 35.36 at 605.

In conclusion, we find no constitutional or statutory provision that prohibits enforcement of Anchorage's charter provision calling for a three-fifths vote of the electorate in order to sell a major municipal asset.

We hope this addresses your concerns. Please do not hesitate to call this office if you have further questions.

Sincerely yours,

DOUGLAS B. BAILY
ATTORNEY GENERAL

By:
Marjorie L. Odland
Assistant Attorney General

MLO:jr

tations on the doctrine urged by the State are inapposite to the circumstances of this case.[8]

KILA, INC., Appellant,

v.

STATE of Alaska, DEPARTMENT OF ADMINISTRATION, State of Alaska, Department of Corrections, and Allvest, Inc., Appellees.

No. S-5237.

Supreme Court of Alaska.

July 8, 1994.

Rehearing Denied Aug. 3, 1994.

Unsuccessful bidder brought action to challenge a decision of the Department of Corrections (DOC) awarding a contract to house minimum security prisoners. The Superior Court, Fourth Judicial District Fairbanks, Rodger W. Pegues, J. pro tem., affirmed the Department of Administration's rejection of the unsuccessful bidder's protest. Appeal was taken. The Supreme Court, Rabinowitz, J., held that: (1) neither the Department of Corrections nor the Department of Administration is covered by the Administrative Procedure Act, including its provision that requires a qualified, unbiased, and impartial hearing officer; (2) there was no indication that the hearing officer had lacked impartiality; (3) the Department of Corrections official who was involved in the preparation of requests for proposals for the contract and who had also been employed by the successful bidder had no personal or financial interest prohibited by the Executive Branch Ethics Act; (4) modifications by the successful bidder after it was awarded the contract did not nullify the contract; and (5) the Open Meetings Act did not apply to informal meetings on the requested modifications of the contract.

Affirmed.

1. States ⇐107

Unsuccessful bidder's appeal from award by Department of Corrections (DOC) of contract to house minimum security prisoners was not moot, even though contract had been fully performed by successful bidder, where unsuccessful bidder sought to recover bid preparation costs.

2. Public Contracts ⇐10

Government agency has implied contractual duty to consider solicited bids for goods and services in fair and honest manner.

3. States ⇐98

Neither Department of Corrections, which awarded contract to house minimum security prisoners, nor Department of Administration, which reviewed unsuccessful bidder's protest, is covered by Administrative Procedure Act, including its provision that requires qualified, unbiased, and impartial hearing officer. AS 44.62.330(a, b), 44.62.350.

4. States ⇐98

Informal hearings before Department of Administration on unsuccessful bidder's protest against award by Department of Corrections (DOC) of contract to house minimum security prisoners were specifically exempted from Administrative Procedure Act, included provision requiring qualified, unbiased, and impartial hearing officer. AS 36.30.670(a), 44.62.330(a, b), 44.62.350.

5. States ⇐98

Hearing officer who presided over unsuccessful bidder's protest against award by Department of Corrections (DOC) of contract to house minimum security prisoners did not demonstrate any bias or partiality, even if he had been subject to Administrative Procedure Act, including provision requiring qualified, unbiased, and impartial hearing officer. AS 44.62.330(a, b), 44.62.350.

6. States ⇐98

Alleged variances asserted by unsuccessful bidder when it protested award by Department of Corrections (DOC) of contract to house minimum security prisoners were not so material as to demonstrate that successful bidder had gained competitive advantage by claimed bias of hearing officer who presided over protests.

7. States ⇐73

Department of Corrections official who was involved in preparation of requests for proposals for contract to house minimum security prisoners and who had also been employed by successful bidder had no personal or financial interest in contract that could have been conflict of interest under Executive Branch Ethics Act, official's involvement was limited to advancing some suggestions to change scope of work section and geographic and professional criteria for selecting members of committee to evaluate proposals. AS 39.52.110(b), 39.52.150(a).

8. States ⇐73

Department of Corrections official who was involved in preparation of requests for proposals for contract to house minimum security prisoners and who had also been employed by successful bidder had no personal or financial interest in contract that could have been conflict of interest and, thus, had no duty under Executive Branch Ethics Act to consult with Attorney General. AS 39.52.240.

9. States ⇐104

Alleged variances by successful bidder after it was awarded contract to house minimum security prisoners were not material and did not render contract void; legitimate reasons were offered for changes, need for changes had not been foreseen when Department of Corrections awarded contract, contract amendment was timely, state consistently allowed modifications when in its best interest, and modification did not interfere with intent of contract.

10. Administrative Law and Procedure ⇐124

States ⇐106

Open Meetings Act did not apply to informal meetings of Department of Corrections (DOC) employees on requested modifications of contract to house minimum security prisoners; meetings were teleconferences held between DOC employees and successful bidder's president. AS 44.62.310, 44.62.310(a), 44.62.312.

Robert John and William R. Satterberg, Jr., Fairbanks, for appellant.

Timothy W. Terrell, Asst. Atty. Gen., Office of Sp. Prosecutions and Appeals, Anchorage, and Charles E. Cole, Atty. Gen., Juneau, for appellees.

OPINION

RABINOWITZ, Justice.

This appeal arises from the Department of Corrections' award of a contract to Allvest, Inc. for the housing of minimum security prisoners in the Fairbanks area. KILA, Inc. ("KILA"), an unsuccessful bidder, contested the award, exhausted its administrative appeals, and then appealed to the superior court. The superior court affirmed the Department of Administration's decision denying KILA's protest. This appeal followed.

I. *FACTS AND PROCEEDINGS*

In August 1988, the Department of Corrections ("DOC") received authorization to seek proposals for a provider of professional services in the operation of an adult community

jection by failing to raise the issue with the Nome superior court.

8. Insofar as the pleadings in this case encompass a claim on the underlying promissory note signed by Campion, the action can proceed. The judgment of the District Court for the Virgin Islands that the superior court in Nome lacked personal jurisdiction over Campion is clearly based on its conclusion that service was improper, not that minimum contacts with Alaska were lacking given proper service. Further, we express no view as to whether the State is collaterally estopped from contending that the foreclosure, as distinct from the deficiency, was effective, in view of the special interest which a state court has in adjudicating title to real property within its boundaries. *Abadon v. Trad*, 624 P.2d 287, 291 n. 6 (Alaska 1981), and in view of the possibility that persons not parties to the Virgin Islands action might have an interest in the foreclosure proceeding. *See* Restatement (Second) of Judgments § 2815(a) (1982).

residential center in Fairbanks.[1] KILA and Allvest, Inc. ("Allvest") submitted bids. DOC subsequently cancelled its original Request for Proposals ("RFP"), because a change in zoning requirements rendered Allvest's proposal non-responsive, and because KILA submitted a bid beyond the amount of money that the State had allocated for the contract.[2] DOC issued a new RFP in August 1989.[3] At that time, Walter Majoros, the Director of Statewide Programs for DOC, was designated by the Commissioner of DOC, Susan Humphrey-Barnett, to serve as its procurement officer in the matter.

Majoros directed Benjamin J. Fewell, Jr., DOC's Program Coordinator, to establish and sit as non-voting chair of a Proposal Evaluation Committee ("PEC") for the purpose of evaluating proposals submitted by KILA and Allvest in response to the new RFP. DOC's Criminal Justice Planner, Marianne McNabb, submitted suggestions on the "experience and geographic location required for a PEC member to have an adequate understanding of the needs and limitations" of the residential center. However, she neither participated in the selection of individual PEC members nor contacted them regarding the evaluation of the bids.

Applying the RFP evaluation criteria, four of the PEC's five voting members rated Allvest's proposal higher than KILA's. Based on the majority vote of the PEC, Fewell recommended to Majoros that DOC negotiate a contract with Allvest. DOC then issued a notice of intent to award a contract to Allvest. KILA protested the award.

After issuance of the notice of intent, PEC member Lew Reece submitted a memorandum to Humphrey-Barnett, alleging that Fewell had imposed his own values on the PEC proceedings and skewed the outcome. He met with Ken Brown, DOC's Northern Regional Director, and also with Humphrey-Barnett. Majoros immediately investigated Reece's concerns, contacting the other PEC evaluators to determine if they thought Fewell was biased. The other four voting members stated that they believed Fewell was impartial and that they had voted independently. Humphrey-Barnett concurred with Majoros' determination that Reece's allegations were unfounded.

Allvest's original bid outlined a plan to develop a facility on Badger Road. After DOC issued the notice of intent to award the contract, local opposition to using the Badger Road site developed. Aware of the pressure regarding the location, DOC began to discuss its options. Because Allvest had proposed a location that met both the requirements of the RFP and zoning requirements, retracting the intent to award could have caused severe difficulties. Fewell, therefore, advised Majoros not to cancel and re-bid but "to continue on course and try to reach a solution" that would provide for use of the proposed Badger Road location.

On November 21, 1989, DOC signed the contract with Allvest to commence January 1, 1990, giving Allvest approximately one month to bring the facility up to specifications.[4] On the same day Tananu Chiefs Conference, Inc. ("TCC"), the owner of record, was informed by the United States Department of Housing and Urban Development ("HUD") of potential lease problems involving the Badger Road location. As the hearing officer found, "There is no evidence outside of the viability of the TCC/HUD lease issue from which to conclude that Allvest was not a responsible proposer." As public pressure increased, including substantial pressure on HUD, Allvest contacted a local real estate agent to research the availability of other locations. The agent discovered that KILA did not own the facility it was using and eventually a lease was executed between Allvest and the property owner that would enable Allvest to use the existing facilities.

DOC denied KILA's bid protest on November 16, 1989. KILA appealed the denial of its protest on November 30, 1989. KILA also corresponded with Fewell, Humphrey-Barnett, and Larry McKinstry, an assistant attorney general, requesting "[r]easonable notice of, and right to attend any and all State meetings addressing the Allvest contract modification requests, or the KILA contract dispute, or any meeting related to such."

The Department of Administration granted KILA an administrative hearing to address the bid protest issues in dispute. A hearing was held from May 29 to June 2, 1990. Pursuant to the hearing officer's recommendations, the Commissioner of the Department of Administration denied KILA's appeal in September 1990.

[1] KILA appealed the decision of the Department of Administration to the superior court. The superior court affirmed the Department of Administration's decision, and this appeal followed. On appeal, KILA raises numerous specifications of error, ultimately seeking to have DOC re-bid the contract and pay KILA's bid preparation costs.[5]

II. *DISCUSSION*

A. *Alleged Bias in the Bidding Process*

[2] When soliciting bids for goods and services, a government agency has an implied contractual duty to consider bids in a fair and honest manner:

> [I]n exchange for a bidder's investment of the time and resources involved in bid preparation, a government agency must be held to an implied promise to consider bids honestly and fairly. Breach of this implied contract on the part of an agency entitles a disappointed bidder to recover the costs incurred in preparation of the bid.... [T]he "reasonable basis" standard for review of administrative decisions, *see Jager v. State*, 537 P.2d 1100, 1107–08 (Alaska 1975); *Kelly v. Zamarello*, 486 P.2d 906, 916–17 (Alaska 1971), is applicable in this situation.[6] *See Keco Industries, Inc. v. United States*, [203 Ct.Cl. 566], 492 F.2d 1200, 1203–04 (1974).

King v. Alaska State Hous. Auth., 633 P.2d 256, 263 (Alaska 1981) (*King II*). A review of the entire record persuades us that KILA's bid was fairly and honestly considered.[7]

1. The purpose of the Request for Proposals was to provide housing security and other services for appropriately classified offenders whom DOC might assign to the center. Alternative placement centers of this type provide DOC with placement options for some misdemeanant offenders, and serve as halfway houses for offenders who are being released back into the community.

2. After submission of the Allvest proposal, the Fairbanks North Star Borough enacted a zoning change that denied use of the building proposed by Allvest for the purpose intended. This left KILA as the only available proposer. It was alleged that KILA's bid was approximately $185,000 higher than Allvest's bid.

3. The proposal responses were due on or before September 18, 1989. DOC received Allvest's proposal on September 15, 1989. On September 17, KILA informed DOC that although it had delivered its proposal to a private delivery service in Fairbanks, the weather conditions were so bad in Juneau that planes were unable to land. In order to promote fairness and competition, the program coordinator amended the RFP to provide for receipt of KILA's proposal. *See* 2 AAC 12.850 (authorizing extension of solicitation). Allvest objected to the amendment allowing any extension of time.

4. Allvest had concluded that it would take approximately 20 days to bring the Badger Road facility up to the required standards.

5. Allvest has fully performed the contract in question, a development which normally would moot this entire appeal. Given these circumstances, the State moved to dismiss the appeal. An individual justice of this court denied the motion, stating that "[w]hile appellant's claim that it is entitled to its bid preparation costs may be unsuccessful, the appeal is not rendered moot by the fact that the successful bidder has fully performed the contract."

   In addition, the State argues that this court should refuse to address the issue of bid preparation costs because KILA failed to raise the point at the administrative level. This is incorrect. In the November 2, 1989 notice of protest letter from KILA's counsel to the Commissioner of DOC, KILA requested that it be awarded the contract, or in the alternative, that the contract be readvertised for bid. On November 7, 1989, KILA's attorney sent the Commissioner a supplement that requested bid preparation costs. Thus, KILA made the request at the appropriate time.

6. Under this standard, "we merely seek to determine whether the agency's decision is supported by the facts and has a reasonable basis in law even if we may not agree with the agency's ultimate determination." *Fairbanks N. Star Borough Sch. Dist. v. Bowers Office Prods.*, 551 P.2d 56, 58 (Alaska 1992) (quoting *Tesoro Alaska Petroleum v. Kenai Pipe Line Co.*, 746 P.2d 896, 903 (Alaska 1987)).

7. In an administrative appeal based on the agency record, we accord no deference to the decision of the superior court and independently scrutinize the administrative action. *Tesoro Alaska Petroleum Co. v. Kenai Pipe Line Co.*, 746 P.2d 896, 903 (Alaska 1987).

1. *KILA's Contention that Majoros Was Not Impartial*

Majoros was responsible for all DOC procurements under statewide programs.[8] KILA objects to Majoros' participation in the procurement process, claiming that Majoros was not impartial as required by AS 44.62.350, and that his partiality resulted in a competitive advantage to Allvest.

[3] Alaska Statute 44.62.350 governs the appointment of hearing officers to hear and adjudicate disputes under the Administrative Procedure Act:

> The governor shall assign a qualified, unbiased, and impartial hearing officer, with experience in the general practice of law, to conduct hearings under this chapter.

Relying on this provision, KILA contends that Majoros was required to be impartial in reviewing the protest letter. However, the application of AS 44.62.350 is governed by AS 44.62.330(b), which reads in relevant part:

> The procedure of an agency not listed in (a) of this section shall be conducted under AS 44.62.330–44.62.630 only as to those functions to which AS 44.62.330–44.62.630 are made applicable by the statutes relating to that agency.

Neither the Department of Administration nor DOC are among the agencies listed in AS 44.62.330(a), and thus they are not covered by the Administrative Procedure Act.

[4] In addition, AS 36.30.670(a) expressly exempts from the Administrative Procedure Act informal hearings such as the one in which the Department of Administration reviewed the denial of KILA's bid protest. Therefore, AS 44.62.350 does not apply to a procurement officer's decision regarding a bid protest or to informal hearings held subsequent to a protest appeal. Nevertheless, the inapplicability of AS 44.62.350 does not relieve Majoros of the obligation to review bid protests in an impartial and unbiased manner.

[5, 6] Our review of the record, and in particular our consideration of Majoros' response to KILA's letter of protest, persuades us that none of KILA's objections demonstrate bias or a lack of impartiality on Majoros' part.[9] KILA has not shown that Majoros was biased either in approving the PEC recommendation to award the contract to Allvest or in reviewing and rejecting KILA's protest letter.[10] We further conclude that none of KILA's objections prove that Allvest gained a competitive advantage by virtue of Majoros' decision. Taken individually or cumulatively, the alleged "variances" to which KILA objects are not material.[11]

2. *KILA'S Assertion that Marianne McNabb Had a Severe Conflict of Interest in Violation of the Executive Branch Ethics Act*

[7] KILA asserts that DOC official Marianne McNabb's involvement in the preparation of the RFPs and her involvement in a prior program audit of Allvest's Cordova Center in Anchorage violated the Executive Branch Ethics Act, AS 39.52.010–.960.[12] Specifically, KILA argues that McNabb's prior involvement with Allvest prohibited her from participating in the bid process.[13] Prior to being hired by DOC, McNabb was employed by Allvest as vice-president of operations from October 1987 through December 1988.[14]

The hearing officer rejected KILA's contention:

> KILA alleges a violation of the State ethics law although no explanation is provided as to what specific provision of AS 39.52 is alleged to have been violated. No evidence was brought forward or even hinted at that would suggest that Ms. McNabb

8. Under AS 36.30.250 and AS 36.30.560–.585, the procurement officer must make decisions on the contract award and also make the determinations necessary on protests. In determining an award of contract, a procurement officer's initial duty is as follows:

> The procurement officer shall award a contract under competitive sealed proposals to the responsible and responsive offeror whose proposal is determined in writing to be the most advantageous to the state taking into consideration price and the evaluation factors set out in the request for proposals.

AS 36.30.250(a).

9. In its notice of bid protest, KILA presented the following points:

1. KILA argued that several years ago, the Department of Health and Social Services rejected the facility that Allvest proposed to lease as "insufficient and inappropriate" for use as a youth facility. Majoros responded, "A decision by the Department of Health and Social Service [sic] as to the suitability of any piece of property to meet their needs for a given project has no bearing on the Department of Corrections [sic] needs or requirements for this contract."

2. KILA disputed Majoros' acceptance of Allvest's proposed location, in light of potential problems with nuisance suits, suits for taking of private property, and local zoning laws, and challenged his reliance on the negotiation process to rectify any difficulties, claiming that the failure to address these issues was arbitrary and capricious. Majoros responded that pursuant to the RFP's requirements, Allvest provided information concerning permits, local zoning ordinances, codes, and laws, and also held a public hearing. Majoros noted that "[t]he RFP does not require total community approval, except through zoning requirements, but does provide for expression of community concern and suggestions."

3. KILA asserted that Majoros inadequately considered the effects of the alternative placement center's site upon local property values. Majoros responded that under AS 36.30.250 he could consider only price and the evaluation factors set out in the RFP, and no other factors or criteria, when making his decision.

Further, he contended, the RFP required that comments concerning defects and objectionable material in the solicitation be made in writing and received by the purchasing authority at least 10 days before the opening of the proposals. Therefore, Majoros concluded that any changes in the RFP's evaluation criteria, such as impact on property values within the vicinity of a residential center, should have been requested within that time frame. Majoros also stated that no evidence at the time of the bid indicated that if the state complied with local zoning requirements, a negative impact on local property values would occur.

In further support of its contentions of bias, KILA points to Majoros' acceptance of Allvest's allegedly deficient fire-safety plan, resident termination/walking procedures, resident medical/dental services, and disaster plan. KILA also questions Majoros' holding that the PEC did not have an affirmative duty to investigate the representations of the bidders.

10. KILA also asserts that Majoros' rejection of its bid protest was arbitrary, capricious, and an abuse of discretion. This argument is without merit.

11. A material variance from a bid specification requires rejection of the bid. *Chris Berg, Inc. v. State Dep't of Transp.*, 680 P.2d 93, 94 (Alaska 1984). A variance is material if it provides a bidder with a substantial advantage over other bidders, thus limiting or stifling competition. *Id.* All proposals for public contracts must therefore "substantially comply with all requirements contained in the invitation for proposals." *King v. Alaska State Hous. Auth.*, 512 P.2d 887, 892 (Alaska 1973) (*King I*). In *King I* we stated:

> Thus all terms of ASHA's invitation became by implication part of a valid proposal. In order that competition among redevelopers remain equal. Consistent with this well established principle courts hold that while a "material" variance from the invitation requires rejection of the proposal, a "minor" variance does not require rejection of the proposal.

Id. (footnote omitted). We review the agency's determination that a bid is responsive to the agency's solicitation under the reasonable basis standard. *Chris Berg*, 680 P.2d at 94.

12. Alaska Statute 39.52.150(a) provides:

> A public officer, or an immediate family member, may not attempt to acquire, receive, apply for, be a party to, or have a personal or financial interest in a state grant, contract, lease, or loan if the public officer may take or withhold official action that affects the award, execution, or administration of the state grant, contract, lease, or loan.

Also relevant is AS 39.52.110(b):

> Unethical conduct is prohibited, but there is no substantial impropriety if, as to a specific matter, a public officer's
>
> (1) personal or financial interest in the matter is insignificant, or of a type that is possessed generally by the public or a large class of persons to which the public officer belongs; or
>
> (2) action or influence would have insignificant or conjectural effect on the matter.

13. As DOC's Criminal Justice Planner, McNabb is "responsible for the implementation and facilitation of various DOC programs with service contractors such as KILA and Allvest." She recently rewrote the DOC standards regarding the provision of services by various contractors. Her position requires that she stay in close contact with DOC contractors to ensure that they understand and comply with those standards.

14. As a former Allvest employee McNabb was responsible for its Alaska operations. KILA states that McNabb authored and approved the operations manual, which formed a portion of the submittal supporting Allvest's bid. After McNabb started work with DOC as a criminal justice planner, her activities relating to Allvest were minimal. At the request of Humphrey-Barnett in May 1989, McNabb participated in an audit of Allvest's Anchorage program to determine its compliance with DOC standards. The audit was performed independently of the contract award process and was not intended to be used in conjunction with the Fairbanks award. McNabb participated as one of three evaluators who concluded that the Allvest program was in compliance.

benefitted in any way from her former association with Allvest or that she was not honest, truthful, and unbiased in her evaluation of Allvest facilities. Ms. McNabb was not a member of the PEC and testimony established that her only involvement with the solicitation, evaluation, or award of the contract was to suggest minor changes in the scope of work section of the RFP after her input was solicited by DOC and suggested some wording changes in the final contract. No evidence was presented to suggest that her input resulted in an advantage or disadvantage for either proposer.

Our review of the record leads us to conclude that substantial evidence supports the hearing officer's findings. As the State notes, McNabb's involvement was limited to advancing some suggestions for the "scope of work" section of the RFP and the geographic and professional criteria for selecting the PEC members. McNabb had neither a personal nor a financial interest in the contract in question. Any personal or financial interest she may have had was insignificant. Therefore, her actions did not violate the Act. *See* AS 39.52.110(b)(1) [15]

[8] One final observation should be made in regard to this issue: KILA contends that pursuant to AS 39.52.240, McNabb should have requested an opinion from the Attorney General as to her apparent conflict of interest. As indicated above, in the absence of any personal or financial interest in the contract, and given the fact that McNabb did not participate in or influence the PEC's contract award process, she was not required to contact the Attorney General regarding the alleged conflict.

3. *KILA's Contention that the Contract Award Process Was Permeated with Illegalities*

[9] KILA also claims the State's allowance of Allvest's substitution of facilities after the award of the contract resulted in an unlawful competitive advantage to Allvest that requires voiding the contract. In order to establish a competitive advantage, KILA must prove that a "material" variance was effected in the contract:

> Not all amendments to competitively bid contracts are prohibited, only those regarded as material. The concept of materiality in this context has not been satisfactorily captured in a single phrase. One court has spoken of "an essential change of such magnitude as to be incompatible with the general scheme" of competitive bidding; another has phrased the question to be whether the amendment "so varied from the original plan, was of such importance, or so altered the essential identity or main purpose of the contract, that it constitutes a new undertaking." These formulations simply recognize that the materiality concept prohibits those changes which tend to be subversive of the purposes of competitive bidding.

Kenai Lumber v. LeResche, 646 P.2d 215, 221 (Alaska 1982) (footnotes omitted).[16] Five factors determine whether a contract change constitutes a "material" variance:

> (1) the legitimacy of the reasons for the change;
>
> (2) whether the reasons for the change were unforeseen at the time the contract was made;
>
> (3) the timing of the change;
>
> (4) whether the contract contains clauses authorizing modifications; [and]
>
> (5) the extent of the change, relative to the original contract.

Id. (footnotes omitted).

The hearing officer applied the five factors and concluded that the amendment "was not a major variation of the original plan nor did it so alter the essential identity or main purpose of the contract that it constituted a new undertaking." Based on the facts, supporting testimony, and evidence presented, the hearing officer determined: (1) that there were legitimate reasons for the change in facilities; (2) that DOC did not foresee the reasons for the change at the time the contract was signed, and that Allvest acted in good faith; (3) that given the necessity to have an operative facility by January 1, 1990, the contract amendment was timely; (4) that the State consistently allows contract modifications when they are in its best interests; [17] and (5) that the modification did not interfere with the "intent" of the contract—to secure a correctional facility in the Fairbanks area—and that "[t]he specific site of the facility was not relevant to the functioning of the program." We conclude that the hearing officer's factual findings have substantial support in the record and that his interpretation of "material variance" has a reasonable basis in law.

KILA advances numerous other improprieties and alleged illegalities in the contracting process. Our review of these points in light of the entire record and applicable law persuades us that none have merit.[18]

B. *KILA's Contention that the State Violated the Open Meetings Act*

[10] KILA argues that the Open Meetings Act ("Act"), AS 44.62.310-.312, required that it be granted reasonable notice of, and the right to attend and participate in, meetings concerning the disposition of KILA's contract, the Allvest contract modification requests, and KILA's contract dispute. Contending that the State failed to give public notice of these meetings and denied KILA's representatives access to them, KILA urges us to void any actions modifying the contract.

The state argues that neither DOC nor the Department of Administration violated the Act because the Act does not apply to informal groups of state employees who have no power to take collective action by vote. More particularly, the State notes that

> McKinstry, Fewell, Weimar and Majoros were not part of any formally appointed or constituted body. No statute, regulation or formal administrative action created this group as a collective entity, nor were these persons appointed or elected to the group. As a collective entity they had no powers, and could take no actions. They could not take action by a group vote.

The State further contends that no "meetings" to discuss contract modifications by any official or even informal "bodies" took place. The "meetings" in question consist of two separate teleconferences held between Majoros, Fewell, McKinstry, and the president of Allvest. The hearing officer declined to apply the Act to KILA's appeal because of the nature of the meetings at issue. The hearing officer found that the meetings were "informal" and that it would be "impossible to apply [the Act] to the everyday dealings of public employees when they meet with each other and those outside of State government in the day-to-day conduct of this State's business."

We agree. Alaska Statute 44.62.310(a) provides in relevant part:

> All meetings of a legislative body, of a board of regents, or of an administrative body, board, commission, committee, subcommittee, authority, council, agency, or

15. The exemption found in AS 39.52.110(b)(2) is also applicable since McNabb had no role in the PEC evaluation process and did not affect its outcome.

16. *Cf. supra* note 11 (citing similar rule for variance in bids from an RFP).

17. After reviewing Allvest's request for a change in the facility's location, Fewell contacted both the Department of Administration and the Attorney General's Office. He requested advice concerning the requirements of the procurement code and whether the change in location would constitute a modification in the contract so severe as "to warrant not allowing the request." Both the Department of Administration and the Attorney General's Office indicated that the modification was permissible.

18. KILA argues that DOC's cancellation of the first RFP was improper. Since KILA did not protest DOC's cancellation of the first RFP on appeal to the superior court, the issue is not properly before us. KILA further contends that Allvest's bid was in numerous respects nonresponsive. We find no merit in this specific contention.

In addition, KILA argues that under AS 44.62.350(c) the hearing officer was unqualified in that he had not been admitted to practice law for at least two years immediately before his appointment. This contention has little merit. First, review of the record shows that KILA waived this contention by not raising it at the administrative level. Second, AS 36.30.030 provides that hearings held on public contract controversies "shall be conducted according to AS 36.30.670," which in turn expressly exempts hearings under AS 36.30 from the Administrative Procedure Act, AS 44.62. Alaska Statute 36.30.670 does not require that hearing officers appointed under that chapter be admitted to the practice of law.

other organization, including subordinate units of the above groups, of the state or any of its political subdivisions, including but not limited to municipalities, boroughs, school boards, and all other boards, agencies, assemblies, councils, departments, divisions, bureaus, commissions or organizations, advisory or otherwise, of the state or local government supported in whole or in part by public money or authorized to spend public money, are open to the public except as otherwise provided by this section.[19]

KILA has presented no evidence that these informal meetings were held by governmental units whose actions come within the ambit of AS 44.62.310. This statute contemplates meetings of a governmental body, including subordinate units thereof. Under the particular facts of this record we hold that the Act did not apply to the individuals who participated in the two meetings now questioned.

III. *CONCLUSION*

KILA has failed to prove that any of the DOC officials involved acted in bad faith, were biased, or lacked impartiality. Further, KILA failed to demonstrate that the hearing officer for the Department of Administration lacked a reasonable basis for his conclusion that Allvest's bid was responsive. KILA's arguments that Majoros was biased, that McNabb had a conflict of interest, and that the process was permeated with illegalities are meritless. Finally, KILA failed to show any violation of the Open Meetings Act. Thus, the contract between DOC and Allvest is not voided, and KILA is not entitled to its bid preparation costs.

AFFIRMED.

19. We have broadly construed the policy objectives of the Act, as stated in AS 44.62.312, to encourage openness in government dealings:

> Given the strong statement of public policy in AS 44.62.312, the question is not whether a quorum of a governmental unit was present at a private meeting. Rather, the question is whether activities of public officials have the effect of circumventing the [Act].

Brookwood Area Homeowners Ass'n v. Municipality of Anchorage, 702 P.2d 1317, 1323 n. 6 (Alaska 1985). In *Brookwood*, we defined a "meeting" to encompass "every step of the deliberative and decision making process when a governmental unit meets to transact public business." *Id.* at 1323.

Richard SKVARCH, Appellant,

v.

Paulette SKVARCH, Appellee.

No. S–5690.

Supreme Court of Alaska.

July 8, 1994.

Divorced husband sought to modify his obligation to pay former wife $500 a month for 36 months under property settlement. The Superior Court, Third Judicial District, Kenai, Jonathan H. Link, J., denied husband's motion, and husband appealed. The Supreme Court, Matthews, J., held that rehabilitative alimony payments established in property settlement agreement were integral part of division of property, and would not be modified.

Affirmed.

1. Husband and Wife ⇐279(2)

Alimony payments are integrated in property settlement, and are not subject to modification, when they constitute part of consideration given for other property benefits.

2. Divorce ⇐245(2)

Where party receives alimony in exchange for claims in other property, it would be unjust to modify alimony while leaving remaining property distribution untouched.

3. Husband and Wife ⇐279(2)

Monthly payments were integral part of division of property, and would not be modified, though payments were called temporary rehabilitation alimony in property settlement agreement and referred to as spousal support in letters negotiating settlement; payments were provided for in exhibit to property settlement agreement, payments were included in wife's property and deducted from husband's property, property division could be considered inequitable without payments, payments were not explicitly linked to rehabilitation efforts, duration of payments was negotiated by spouse, unavailability of substantial portion of marital assets made use of alimony-type payments appropriate to adjust settlement, and purpose husband presently claimed for rehabilitative alimony would not support alimony provision as originally formulated.

Allan Beiswenger, Robinson, Beiswenger & Ehrhardt, Soldotna, for appellant.

Peter F. Mysing, Kenai, for appellee.

Before MOORE, C.J., and RABINOWITZ, MATTHEWS and COMPTON, JJ.

OPINION

MATTHEWS, Justice.

Richard Skvarch seeks to modify his obligation to pay Paulette Skvarch $500 a month for thirty-six months under a property settlement agreement reached between the parties in connection with their divorce.

Richard and Paulette Skvarch were divorced April 23, 1992, after twenty-six years of marriage. At the time of the divorce decree Richard resided in Alaska, where he earned in excess of $100,000 per year, and Paulette lived in Pennsylvania, where she was being trained as a medical stenographer. The Skvarchs' marital property was divided between them according to the terms of a property settlement agreement they had reached. The agreement awarded Paulette assets with a total value of $108,308.09 and Richard assets with a total value of $81,372.27.[1] Paulette's total includes $18,000 for "temporary rehabilitative alimony in the sum of $500.00 per month, without interest, for a period of thirty-six months, commencing on the 10th day of the month following the entry of a decree of divorce herein." Similarly, Richard's total property distribution includes an $18,000 credit for "temporary rehabilitative alimony" payments to Paulette.

On February 3, 1993, Richard moved to modify the decree of divorce to eliminate his obligation to pay rehabilitative alimony. In support of this motion, Richard alleged that Paulette had completed her vocational training, had obtained employment as a medical secretary, and had remarried and that therefore the purpose for the rehabilitative alimony no longer existed.[2] Paulette opposed this motion, arguing that the monthly "rehabilitative alimony" payments were part of the parties' property settlement, that vacating the payments would render the settlement inequitable, and that even if the payments were alimony, they were just and necessary to her rehabilitation.

The superior court denied Richard's motion to modify the divorce decree. In a footnote, the court found "that these are rehabilitative alimony payments." Richard appeals.[3]

[1–3] This court has recognized that "[w]here a support provision is an integral part of the property settlement, courts generally hold that the support provision is not subject to later modification." *Keffer v. Keffer*, 852 P.2d 394, 397 (Alaska 1993) (citing John J. Michalik, Annotation, *Divorce: Power of Court to Modify Decree for Alimony or Support of Spouse Which Was Based on Agreement of Parties*, 61 A.L.R.3d 520, 590 (1975)); *see also Voyles v. Voyles*, 644 P.2d 847, 849–50 (Alaska 1982) ("We wish to make

1. This is a 57.1%/42.9% division in favor of Paulette.

2. Paulette has not denied any of these allegations.

3. A trial court's denial of a motion to modify a support obligation is reviewed for an abuse of discretion. *Hinchey v. Hinchey*, 722 P.2d 949, 954 (Alaska 1986). This court will find an abuse of discretion only if it is "left with a definite and firm conviction, after reviewing the whole record, that the trial court erred in its ruling." *Id.* (quoting *Jones v. Jones*, 666 P.2d 1031, 1035 (Alaska 1983)).

AS 33.30.041
Lease to Municipality

33.30.026 Procurement Code Applicable to contracts. (36.30)

33.30.025 Siting of prison
Notify community council
if @ lk 1/2 mile of comm'l area

33.30.031 Contracts for confinement & care

Amend this? → 36.30.250 Award of Contract
as alternative — gives stds for award decision
Under Kila
Alt. #2 Must consid. prop. values
Pub safety issues

Rivet v St 582 P2134

35 ALR 3d 1293

Eminent Domain

AG Opinion 4/17/81

AS 09.55.240
public uses authorized by the leg. is.

~~Alternative must~~ NOTICE →

33.30.025 Sixty

Municipality

— Only has powers expressly granted
— Any Q resolved agst muni.

Initiative If in conflict w statute no good
Whitson v. Anch 608 P2 759
Acevedo v. City N.P. 672 P2 130

29.08.020 29 48 260 (c)
Libby v. City D 612 P2 33

Liberati 584 P2 1048
Konai 889 P2 604
Only powers in Title 29
AK for reform v. St 887 P2 960 Jud rev. of initiative
Foreman 779 P2 1199 State preempts NF interferes w effective func

Lisa's Copy

South Anchorage Coalition FAX

PAGE 1 OF 3

Date: 3/6/97

TO: Rep Joe Green
ATTN: LISA KIRSCH

Fax # (907) 465-4316

FROM: B.K. Powell
Fax # (907) 345-5542
Tel (907) 345-4854
e-mail: amunra@alaska.net

RE: HB 53 AMENDENTS

Message:

Lisa:

Here is our "draft" of suggested amendments to HB 53. Please review and advise. Our suggestions are in ***bold underlined Italics.***

One last note, under Section 4. (A) " for its initial period, not to exceed five years, be entered into with a private third-party contractor that is the same person as the third –party contractor described in (1) of this subsection; and" Perhaps we should look at a five year contract with a contract review (operational review) at the end of 3 years, and if successful in this review the additional 2 years (of the contract) is awarded. If not successful in the review then perhaps a 6 month probation period to adjust to state standards and if standards are not met after probationary period then a re-bid of the contract should occur.

Regards:

B.K. Powell
South Anchorage Coalition

FROM: **South Anchorage Coalition**

RE: House Bill No. 53
In the Legislature of the State of Alaska
Twentieth Legislature-First Session
By Representative Mulder
Introduced: 1/13/97

March 6, 1997

The following represents suggested changes to HB53 as drafted by the South Anchorage Coalition.

Section 1 AS 33.30.031 (a) is amended to read:

(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, **subject to the following:**

does 36.30.085 apply?

(1) the commissioner may enter into an agreement only with an agency that
(A) demonstrates the qualifications and experience to provide a degree of custody, care and discipline to the extent required by the laws of this state; and
(B) posts an adequate performance bond and payment bond; and
(C) if a private agency, demonstrates the capability to provide the necessary qualified personnel to implement the terms of the contract; and
(D) if a private agency, provides a bond or certificate of insurance sufficient to defend and indemnify the state and the local government against claims or liability arising from the operation of correctional facilities by the contractor; and
(E) in the event the services are to be provided in a new correctional facility within the State of Alaska, a public site selection process shall be implemented as defined by:
(I) Local community or political subdivision of the state and approval by a single question ballot, approved by a majority of voters in the affected community; and said correctional facility operates under operational standards as defined in xxxxxxxxx ?? applicable national guidelines

procurement code?

AS provided in AS 33.30.025 & amend that §

33.30.041 (b)(3)

Sec 2.

See 33.30.031 (c) competitive bids

~~36.30.300~~ 36.30.100

Sec. 33.30.043 Lease of or agreement to use space within ***a local community, municipality or political subdivision of the state.*** (a) If the commissioner determines that it would be in the best interest of the state, the commissioner may enter into an agreement with ***a local community, municipality or political subdivision of the state*** for the lease by the state of a correctional facility or a part of it or for the use and operation of a correctional facility or a part of it for the benefit of the state.

Sec. 3. Authorization to the ***successful bidder*** to lease, or for use of, correctional facility space with a third-party contractor operation. (a) To relieve overcrowding of existing correctional facilities, the Department of Corrections may enter in ***an agreement*** to lease space or for use of space within a correctional facility ***through the issuance of a RFP.*** That will house persons who are committed to the custody of the commissioner of corrections. The agreement to lease or for use entered into under this section is predicated upon and must provide for an agreement under which a private ***qualified and experienced prison*** contractor operates the facility by providing for custody, care and discipline services for persons held by the commissioner of corrections under authority of state law.

Is this external - will it foreclose AK Contractors if this is unprecedented in 42's State

HB53

Jim Baldwin

Voter approval

- delegation of lawmaking auth.

- delegation of police power

intended use of property

— bed # limits

— except expansions

Specific req

adjoining approval

Cases on both sides

51 ALR 4th 1076

83 ALR 3d 1086 — Senior citizen zoning

NO Alaska cases

AS 46 40 070

Coastal zone mgmt.

Natural resource development

Timing is over to vote

may have arbitrary decision

Distrig btwn various areas of regulation

Cutting off state's ability

vs. unreasonable

Must complete is statutory scheme

HB53

If State prison
to have
Jim Baldwin — to 3600
"NEW FACILITY" — Prudhoe Bay - Borrow opposed
— 1/2 way houses "correctional facilities"
"prison"

Amend ⊗ → facility > ~~100~~ 50

~~X~~pand other loca.

Meaningful stds.

→ stress pub safety concerns
→ character of neighborhood

CK

NEW
No facility > 50 beds
~~if~~ within ½ mile of area of pop density > ____
OR CHANGE CHARACTER OF A NEIGHBORHOOD
— unless voters approve

INDEX

TABLE OF JURISDICTIONS REPRESENTED

Consult POCKET PART in this volume for later cases

I. Preliminary matters

§ 1. Introduction

[a] Scope

The purpose of this annotation is to collect and analyze the state and federal cases in which the courts have considered the validity, construction, and effect of statutes requiring consultation with, or approval of, a local governmental unit prior to locating a group home, halfway house, or similar community residence[1] for persons

1. "Group home," "halfway house," "community residence," and similar phrases, as employed herein, are intended to include any residential facil-

afflicted with any kind or degree of mental or emotional disturbance, retardation, or other disability of a nonphysical nature, within the local governmental unit's jurisdiction.

Since the annotation focuses on procedural requirements governing the location of community homes for the mentally ill under statutes providing for local government participation in the site selection process, issues concerning particular substantive criteria governing the location of such homes are beyond its scope, as are issues concerning the merits of locating a community home at a particular place or within a particular jurisdiction.[2]

Although all of the cases collected in the annotation consider the validity, construction, and effect of statutes governing the placement of group homes, relevant statutes are discussed herein only to the extent that they are reflected in the reported cases within the scope of this annotation. The reader is therefore advised to consult the appropriate statutory compilation in any jurisdiction of interest.

[b] Related matters

Community residence for mentally disabled persons as violation of restrictive covenant. 41 ALR4th 1216.

Applicability and application of zoning regulations to single residences employed for group living of mentally retarded persons. 32 ALR4th 1018.

Halfway houses: housing facilities for former patients of mental hospital as violating zoning restrictions. 100 ALR3d 876.

Zoning regulations as applied to homes or housing for the elderly. 83 ALR3d 1103.

Validity of zoning for senior citizen communities. 83 ALR3d 1084.

Validity and construction of statute requiring establishment of "need" as precondition to operation of hospital or other facilities for the care of sick people. 61 ALR3d 278.

Validity and construction of zoning regulations expressly referring to hospitals, sanitariums, nursing homes. 27 ALR3d 1022.

Institution for the punishment or rehabilitation of criminals, delinquents, or alcoholics as enjoinable nuisance. 21 ALR3d 1058.

Validity of zoning ordinance or similar public regulation requiring consent of neighboring property owners to permit or sanction specified uses or construction of buildings. 21 ALR2d 551.

Supreme Court's views as to constitutionality of residential zoning restrictions. 52 L Ed 2d 863.

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ity designed to allow a relatively small number of persons needing specialized supervision or care to live together in a homelike, noninstitutional environment.

2. As to issues concerning the validity, construction, application, and effect of local zoning ordinances, permit requirements, and similar regulations with respect to community homes for the mentally ill, see the annotations at 32 ALR4th 1018 and 100 ALR3d 876.

§ 2. Summary and comment

[a] Generally

In an apparent effort to reconcile the need of mentally ill persons for treatment in a homelike, noninstitutional environment, and for early integration into normal community life, with the interest of local communities in preserving the integrity of traditional, single-family residential areas, several states have enacted statutes providing for local government participation in the process of selecting sites for community homes for the mentally ill. The need for such legislation seems to have arisen largely from the fact that community homes for the mentally handicapped have usually been licensed, and often sponsored, by state social service and mental health agencies, with local communities and residents having no formal role or direct voice in the site-selection process and resorting to such indirect means of participation as enforcement of zoning ordinances and restrictive covenants.[3]

Courts have upheld the validity of statutes which accord to a state administrative agency the final decision whether to approve the location of such a home, after consultation between the sponsor and the affected municipality, against challenges that the statutes violated the rights of municipalities and neighboring property owners by failing to provide for adequate notice and hearing (§ 3[a]) or for an impartial decisionmaker (§ 3[b]), and despite the contention by mentally retarded persons that a requirement of local government participation in site selection violated their due process rights to purchase and occupy residential property (§ 3[c]). While it has been held that a statute requiring local consultation or approval prior to the location or licensing of a home did not violate the equal protection rights of municipalities or of the mentally retarded (§ 4[a]), one court held that a statute requiring local government approval violated the right of mentally retarded persons to equal protection of the law, where other property owners in the same district did not have to satisfy any such requirement before putting their property to an otherwise legal use (§ 4[b]). The courts have sustained the validity of such statutes against municipal contentions that they unconstitutionally delegated legislative powers to an administrative agency (§ 5), or were invalid because they interfered with the exercise of local zoning power (§ 6).

In a number of cases, the necessity of compliance with a statute requiring notice to, consultation with, or approval by local authorities prior to locating a community home for the mentally ill has turned upon the applicability of the statute to the particular proposed home. It has been held that compliance with a statute, requiring notice to and consultation with a local government unit prior to locating a community home within its jurisdiction, was unnecessary where the statute was inapplicable to a

3. See, for example, "Zoning for community homes serving developmentally disabled persons," 2 Mental Disability L. Rptr 794-796 (May-June, 1978).

facility which did not meet the statutory definition of a community home with respect to the number of residents which could be placed in such homes (§ 7). It has also been suggested that a statute requiring prior approval was limited in application to community homes located in districts zoned for single-family dwellings, where the statute accorded a right of location for community homes in areas zoned for multifamily dwellings (§ 8). Further, the applicability of a statute empowering a state administrative agency to approve the location of a community home, after consultation between the sponsor and the affected municipality, has been held limited to homes for which sites were selected or licensed after the effective date of the statute (§ 9). Under a statute requiring the sponsor of a community home to notify the affected municipality of its intent to locate such a home within the municipality, and allowing the municipality 40 days thereafter within which to approve, object, or suggest alternative sites, one court held that the municipality was entitled to a second notice and period for response after the parties failed to agree within 40 days and the sponsor then selected a new site not conforming to the original site selection criteria (§ 10).

Whether notice to, consultation with, or approval by local authorities in a given case constituted sufficient compliance with a statute requiring such action has been determined with reference to a variety of factors. Under statutes requiring that particular officials or political bodies be notified or consulted, compliance has been found despite the fact that some other officials or bodies were notified or consulted, where the proper persons were actually or constructively informed of a sponsor's plans (§ 11[a, b]), although approval of a community home by a mayor has been found insufficient where a statute required approval by a majority vote of the legislative body of the local government unit having jurisdiction over the site of the home (§ 11[c]).

Under statutes requiring the sponsor of a community home to give notice of its intent to establish the home to the local government unit having jurisdiction over the site of the home, the courts have held that particular notices were sufficient despite an alleged failure by the sponsor to provide certain information in or together with such notice, such as the names of lessors of the residence property (§ 12[a]), identification of a particular site for the residence (§ 12[b]), published data as to similar residences in the area (§ 12[c]), and a full description of community support requirements for the residence (§ 12[d]).

Some statutes require that certain actions be taken within a particular period of time. Under a statute requiring a state agency to seek the advice and consultation of the affected municipality before planning and locating a community home for the developmentally disabled in the municipality, it has been held that consultation with a town supervisor was timely, where

it took place before the agency made an irrevocable commitment to locate the home at a particular site (§ 13[a]). Where a statute allowed the affected municipality a certain period of time within which to object to a proposal to locate within it a community residence for the mentally disabled, or to suggest alternative sites for the residence, it has been held that failure of the municipality to object or recommend alternative sites within that time foreclosed it from doing so later (§ 13[b]). And under statutes providing that administrative hearing on municipal objections, and a decision on such objections, take place within a certain period of time, the courts have held that failure to conduct a hearing or to render a decision within that time did not invalidate administrative approval of the placement of the residence, finding that such time limits were not essential to the act to be performed (§ 13[c, d]).

Co-operation required by statute between a state agency seeking to locate group homes for the emotionally disturbed and local authorities has been held sufficient despite the failure of agency representatives to attend a meeting between city officials and concerned residents where the agency was not invited to the meeting, but representatives did attend a later meeting (§ 14). Informal contacts between a state sponsoring agency and a town supervisor have been held sufficient to comply with a statute requiring the agency to seek the advice and consultation of the governing body of the municipality in which it proposed to locate a community home for the developmentally disabled, against a contention that a public hearing before the town board was necessary, where the statute did not prescribe any particular manner in which advice and consultation was to be sought and did not require the agency to actually obtain consultation or heed any advice (§ 15).

[b] Practice pointers

Counsel representing the sponsor of a proposed community home for the mentally ill should consult the statutory law of his jurisdiction early in his representation in order to determine whether any provisions thereof require notice to, consultation with, or approval of, local authorities prior to establishment of such a home within a particular area. Such provisions may or may not apply, and the necessity of compliance therewith may depend on such factors as the number of residents and supervisory staff to be housed in the proposed facility,[4] the nature or zoning classification of the area in which the home is proposed to be

4. For example, see Shannon v Introne (1981, 2d Dept) 80 App Div 2d 834, 436 NYS2d 337, aff'd 53 NY2d 929, 441 NYS2d 60, 423 NE2d 818, in which it was held that compliance by the sponsor with a statutory requirement of notice to local authorities was not necessary where the statute defined "community residential facility for the disabled" as a residence for 4 to 14 mentally disabled individuals, and the home in question was to house only three such individuals.

located,[5] or on the history of any prior attempts to establish the home at the proposed site.[6]

If counsel determines that a statute does require consultation with or approval of local authorities prior to establishing the proposed home at a particular site, he or she may wish to consider a challenge to the validity of such requirements.[7] Legislative history and statutory declarations of policy may provide useful basis for argument as to whether a rational or substantial relationship exists between a local consultation or approval requirement, on the one hand, and the underlying policies of the statute or local governmental interests, on the other hand.[8]

Counsel for the sponsoring agency should give attention to the nature and extent of local government participation in, or control over, the site selection process contemplated by the statutes in his jurisdiction. While under some statutes it may be sufficient merely to seek the advice and consultation of local authorities, without having to actually obtain such consultation or heed any advice,[9] other statutes may accord local authorities absolute power to approve or disapprove the proposal.[10]

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5. For example, in Kenner v Normal Life of Louisiana, Inc (1985, La App 5th Cir) 465 So 2d 2, affd on other grounds (La) 483 So 2d 903, it was held that a statutory provision according community homes a "right" to locate in residential areas zoned for multifamily dwellings did not absolve the sponsors of such a home from its noncompliance with another provision requiring site approval by local authorities, where the home was located in a residential area zoned for single-family dwellings.

6. For example, in Browe v Champagne (1979) 97 Misc 2d 1058, 413 NYS2d 103, it was held that a sponsor could not obtain site approval from the state department of retardation under a statute giving the department this power upon notice to and consultation with local authorities, where the sponsor had sought and been denied such approval by local authorities prior to the effective date of the statute.

7. See §§ 3-6.

8. See, for example, Clark v Manuel (1985, La) 463 So 2d 1276, 51 ALR4th 1077, where the court, in holding that a statute was subject to heightened scrutiny for purposes of equal protection analysis, noted a statutory declaration that mentally retarded and developmentally disabled persons have a right to live in the least restrictive residential living option appropriate to their individual needs and abilities, including community homes. The court also noted legislative committee reports determining that legislation was needed to facilitate the establishment of such living arrangements, and the history of unsuccessful efforts to amend such legislation to state that local zoning ordinances be paramount to the state's policy to promote community homes for the mentally handicapped.

9. See, for example, Distel v Department of Mental Health (1984) 138 Mich App 576, 360 NW2d 249, in which it was held that informal contacts with a town supervisor, without any public hearing or presentation to the town council, constituted sufficient compliance with a statute requiring the sponsor of a community home to seek the advice and consultation of a municipality before planning and locating such a home within the municipality.

10. See, for example, Clark v Manuel (1985, La) 463 So 2d 1276, 51 ALR4th

It may be advisable that statutory requirements of notice to, consultation with, or approval by local authorities be met before making any irrevocable commitment to locating the home at a particular site. In this connection, counsel may wish to postpone entering into any lease, purchase, or contract to improve the proposed site until all of the statutory requirements have been satisfied, or at least to insert into any such agreement a provision making it contingent upon such satisfaction.[11]

Where a statute requires prior notice to the local government unit having jurisdiction over the proposed site of a community home, counsel for the sponsor should be careful that any information required to be provided in such notice be at least as specific, comprehensive, and current as the letter and purpose of the statute requires, since inadequate information supplied to local authorities may invite a challenge to establishment of the home on the ground that such inadequacy denied them an opportunity to assess the merits of the proposal and participate meaningfully in the site selection process.[12]

Counsel should also be careful, where the statute specifies a particular official or governmental body which must be notified or consulted, or the approval of which must be secured, to involve the proper officials or bodies in the site selection process (§ 11).

Counsel for a sponsoring agency may wish to consider whether and to what extent compliance with statutory requirements of consultation with, or approval of, local authorities obviates the necessity for compliance with local zoning ordinances, permit requirements, and other land use restrictions.[13]

Counsel for a local governmental

1077, in which the court stated that a statute, requiring prior approval by the local governing authority having jurisdiction over the proposed site of a community home for the mentally handicapped, gave local authorities absolute discretion whether to approve or disapprove the site, regardless of whether any applicable zoning ordinances would bar a community home in a particular area.

11. See, for example, Distel v Department of Mental Health (1984) 138 Mich App 576, 360 NW2d 249, § 13[a].

12. See, for example, Pleasant Valley v Wassaic Developmental Disabilities Services Office (1983, 2d Dept) 92 App Div 2d 543, 459 NYS2d 109, in which the court found that the sponsor's failure to identify any particular sites in its notice violated the spirit of the notice requirement, but held that the town had not been prejudiced, since it was informed of the proposed sites informally.

13. For example, the court in Livonia v Department of Social Services (1985) 423 Mich 466, 378 NW2d 402, considered a statute providing that group homes for six or fewer emotionally disturbed residents and licensed in accordance with procedures requiring notice to and co-operation with local authorities in site selection be permitted in all residential areas and exempt from local use permit requirements, and held that it superseded local zoning and use permit requirements, in light of state constitutional and statutory provisions designed to foster and support services for the mentally handicapped.

unit entitled by statute to notice and consultation with respect to the location of community homes for the mentally ill should be especially sensitive to any statutory time limits within which objections or alternative site proposals must be made, since the opportunity to raise objections or make alternative proposals may be foreclosed after the expiration of such time limits (§ 13[b]).

Counsel representing property owners in the neighborhood of a proposed community home for the mentally ill, or an association of such property owners, may be consulted with a view to opposing the establishment of such a home. In considering legal action against establishment of the home, such as a petition for injunctive relief or judicial review of an administrative decision approving the location of the home, counsel should be prepared to show that his client has standing to take such action. While some statutes may expressly allow any aggrieved person to seek judicial review of a decision authorizing the establishment of a community home or to seek enforcement of statutory site-selection requirements,[14] other statutes may expressly accord such a right only to the sponsor of the home and to the affected municipality. In the latter case, counsel may wish to advance the argument that the statute does not expressly deny standing to other persons or entities, such as neighboring property owners or associations representing them, and that such persons or entities come within the zone of interests protected by the statute.[15] Beyond the issue of standing, counsel for neighboring property owners should clearly allege and be prepared to prove that location of a community home for the mentally ill in their vicinity will adversely affect them, such as by causing a reduction in the market value of their property or by interfering with the beneficial use and enjoyment of such property through increased traffic and parking problems, danger from residents of the home, and other effects. Counsel should be aware that failure clearly to allege such matters in a complaint or a lack of sufficient evidence to prove such allegations may preclude any relief.[16]

14. See, for example, Livonia v Department of Social Services (1985) 423 Mich 466, 378 NW2d 402, in which the court considered a statute requiring a "person aggrieved" by an administrative decision to license a community home to petition for judicial review within 10 days of such decision, and apparently treated an association of property owners in the vicinity of two community homes for the developmentally disabled as such an "aggrieved person" for purposes of judicial review.

15. See, for example, Grasmere Homeowners' Asso. v Introne (1981, 2d Dept) 84 App Div 2d 778, 443 NYS2d 956.

16. For example, in Livonia v Department of Social Services (1985) 423 Mich 466, 378 NW2d 402, the court held that an association of property owners located near the sites of several proposed group homes for the emotionally disturbed failed to sufficiently allege any deprivation of property rights to state a claim that statutory procedures for licensing the homes prior to resolution of administrative proceedings concerning their location violated constitutional guaranties of due process. The court found that the property owners had failed to allege sufficient facts concerning diminution in the value, or interference with the use and enjoyment, of their property caused by the licensures, and noted that although the property owners had alleged increased traffic and parking problems near the community homes, they did not allege that such problems had interfered with the value, use, or enjoyment of their property.

II. Validity

§ 3. Due process of law

[a] Notice and hearing

The validity of statutes empowering a state administrative agency to authorize the placement of a community home for the mentally ill in a particular locality, after consultation between the home's sponsor and the municipality having jurisdiction over the site of the home, was upheld in the following cases, against challenges that the statutes violated the rights of municipalities and neighboring property owners to due process of law because notice and hearing opportunities were insufficient.

A statute requiring the state department of social services to notify a municipality of its intent to license a group home for emotionally disturbed persons to be located within the municipality 45 days in advance of such licensure, requiring the municipality in turn to notify neighboring property owners of the proposal, providing for administrative hearing on any objections to the proposal, and permitting any aggrieved person to seek judicial review of the administrative decision, was held not to violate any right of the municipality or neighboring property owners to due process of law in Livonia v Department of Social Services (1985) 423 Mich 466, 378 NW2d 402. Affirming an administrative decision to license several such homes and a denial of injunctive relief to a city and property owners in the homes' vicinity, the court ruled that the statute provided for adequate notice to the city and neighboring property owners prior to a proposed licensure. While noting that the statute also permitted temporary licensing pending resolution of administrative proceedings concerning the location of group homes, the court held that the city was not thereby denied due process, since it had no constitutionally protected liberty or property interest affected by the temporary licensing. Recognizing that the property owners had a protected interest in the value, use, and enjoyment of their property and a contractual right to enforce restrictive covenants in their deeds, the court found that they had failed sufficiently to allege or prove any deprivation of or interference with these rights as a result of temporary licensing, noting that the proposed use as a group home was otherwise single-family and residential in nature and not violative of any restrictive covenants.

In Old Field v Introne (1980) 104 Misc 2d 122, 430 NYS2d 192, the court held that the asserted right of a municipality to due process of law under the federal and New York constitutions was not violated by a statute empowering the state commissioner of mental

retardation to authorize the location of a community residence for the mentally disabled, upon notice to the municipality by the residence's sponsor of its intent to locate the residence within the municipality, opportunity for the municipality to object or suggest alternative sites, and a hearing on any objections. Explaining that the requirements of due process include a hearing or oppurtunity to be heard, the court ruled that the provisions for hearing on municipal objections to site proposals and for judicial review of the commissioner's decision were adequate to protect any right of the municipality to due process.

[b] Impartial decisionmaker

In the following case, the validity of a statute, empowering a state administrative agency to authorize the location of a group home for the emotionally disturbed upon notice to the affected municipality and neighboring property owners, and after consultation between the home's sponsor and the municipality, was upheld against a challenge that the statute violated the rights of the municipality and neighboring property owners to due process of law by denying them an impartial decisionmaker.

In Livonia v Department of Social Services (1985) 423 Mich 466, 378 NW2d 402, the court held that a city, in which the state department of social services proposed to locate several group homes for the emotionally disturbed, and property owners in the vicinity of the homes, were not denied an impartial decisionmaker for due process purposes by the fact that the director of the department, who made the final decision whether to authorize placement of the homes, had been publicly criticized by the parties and other communities and citizens concerning decisions to place group homes in residential areas, had been joined as a defendant in separate proceedings to enjoin the establishment of the homes in question, and headed the same agency which investigated the homes' sponsors and conducted administrative hearings on the proposal. Observing that the right to a hearing before an unbiased and impartial decisionmaker is a basic requirement of due process, the court nevertheless ruled that mere disagreement between the parties and the department with respect to the location of group homes in residential areas did not rise to the level of personal abuse and criticism of the director suggesting a probability of actual bias on his part. Nor, stated the court, did the director's involvement in the injunctive proceedings render him so immediately and personally enmeshed in other matters involving the parties as to automatically preclude him from rendering an impartial administrative decision. Finally, the court found that although the director was the final decisionmaker in approving the location of a group home, he did not personally conduct any investigation or preside as factfinder in the administrative proceedings, reasoning that mere familiarity with the facts obtained by him in the course of reviewing investigative and administrative findings did not render the director less than impartial.

[c] Right of mentally ill to purchase and occupy property

In the following case, it was held

that a statute, apparently providing for local government participation in the selection of sites for community residences for the mentally disabled, did not violate the due process rights of mentally retarded persons to purchase and occupy residential property, as there existed a rational relationship between the local participation requirement and the purposes sought to be achieved by the statute.

Rejecting the argument advanced by an association of retarded persons that a statute, apparently requiring consultation between the sponsor of a proposed community residence for the mentally disabled and the municipality in which it is to be located, violated the due process rights of the mentally disabled to purchase and occupy residential property, the court in Di Biase v Piscitelli (1982, 2d Dept) 87 App Div 2d 611, 448 NYS2d 35, held that the statutory site selection procedure was rationally related to the public policy sought to be implemented by the legislature. Finding that the statute expressed a public policy that the needs of the mentally disabled be met through group homes in community settings rather than in state institutions, the court determined that the statute's local participation requirement was designed to insure that such homes be established through a process of joint discussion and accommodation between the providers of care to the mentally disabled and representatives of the community.

§ 4. Equal protection of the law

[a] Held valid

The validity of statutes requiring consultation with or approval by local government units prior to the location of a community home for the mentally ill within their jurisdiction was upheld in the following cases, against claims that such statutes violated the rights of the mentally disabled or of a municipality to equal protection of the law.

The court in Normal Life of Louisiana, Inc. v Jefferson Parish Dept. of Inspection & Code Enforcement (1986, La App 5th Cir) 483 So 2d 1123, held that a statute requiring the sponsor of a proposed community home for the mentally retarded to secure approval from the local governing authority having jurisdiction over the proposed site prior to locating the home did not, as applied to a home located in a zoned district, violate the right of mentally retarded persons to equal protection of the law. The sponsor of the home in question obtained a permit from the parish department of inspection to construct the home in an area zoned for one-family and two-family dwellings. After the home was completed, the parish obtained an injunction against its operation on the ground that the sponsor failed to secure prior approval of the site from the parish council. In affirming the injunction, the court found that the home's residents would not constitute a "family" as defined by the local zoning ordinance, and that the home would not meet the criteria of any use permitted in the zoning district in which it was located. The court observed that the sponsor would therefore be obliged to obtain the parish council's approval for a building or use exception

before locating the home in the district, in a manner similar to that required by the statute, just as would a person seeking to locate a boarding house in that district. Thus, reasoned the court, tha statute placed essentially the same burden on a person wishing to open a community home as the parish zoning ordinance placed on anyone seeking a variance or exception. The court distinguished Clark v Manuel (1985, La) 463 So 2d 1276, 51 ALR4th 1077, § 4[b], pointing out that the statutory approval requirement was there held unconstitutional because the community home in question was located in an unzoned district where other property owners were not required to secure local approval before attempting a special use, exception, or variance.

A statute apparently providing for consultation between the sponsor of a proposed community residence for the mentally disabled and the municipality in which it is to be located was held constitutionally valid in Di Biase v Piscitelli (1982, 2d Dept) 87 App Div 2d 611, 448 NYS2d 35, against the challenge by an association of retarded persons that the statute violated the right of the mentally disabled to equal protection of the law in the purchase and occupancy of residential property. The court ruled that the statutory site selection procedure was rationally related to the public policy sought to be implemented by the legislature, finding that the statute expressed a public policy that the needs of the mentally disabled be met through group homes in community settings rather than in state institutions, and that the statute's local participation requirement was designed to insure that group homes be established through a process of joint discussion and accommodation between the providers of care to the mentally disabled and representatives of the community.

In Old Field v Introne (1980) 104 Misc 2d 122, 430 NYS2d 192, the court held that the asserted right of a municipality to equal protection of the law was not violated by a statute empowering the state commissioner of mental retardation to authorize the location of a community residence for the mentally disabled upon notice to the municipality by the residence's sponsor of its intent to locate such a residence within the municipality, opportunity for the municipality to object or suggest alternative sites, and hearing on any objections. Assuming that concepts of equal protection applied to municipal corporations, the court ruled that a denial of equal protection could not be found since it was not alleged that the statute was without a rational basis or differentiated in a palpably arbitrary manner.

[b] Held invalid

It was held in the following case that a statute, requiring approval of a local governing authority prior to locating within its jurisdiction a community home for the mentally handicapped, violated the right of mentally retarded persons to equal protection of the law, because the mentally retarded were a "quasi-suspect" class and there was no substantial relationship between the approval requirement and various local [illegible] interests.

In Clark v Manuel (1985, La)

463 So 2d 1276, 51 ALR4th 1077, the court held that a statute, requiring the sponsor of a community home for the mentally handicapped to obtain prior approval of the proposed site from the local governing authority having jurisdiction over the site, violated the equal protection clauses of the federal and Louisiana constitutions. An association of mentally retarded persons leased a house in an unzoned residential subdivision for the purpose of operating a community home, but failed to seek or obtain prior approval of the site from the town council. In dismissing a petition for injunctive relief by residents of the subdivision the court construed the statute as granting local authorities absolute discretion to approve or disapprove the proposed site. Since no other property owners in unzoned districts of the state were required to secure such approval before putting their property to a legal use, the court found that the statute imposed on the class of mentally retarded persons a burden not shared by others similarly situated. The court explained that the mentally retarded constitute a "quasi-suspect" class due to historical prejudice against that group, their relative political powerlessness, and the immutability of the retarded condition, requiring that the statutory distinction be substantially related to an important governmental interest in order to survive constitutional challenge. As applied to homes for the mentally retarded, the court found no substantial relationship between the local approval requirement and such governmental interests as controlling population density and traffic congestion or protecting public safety and health. The court pointed out that the same concerns would apply regardless of whether the residents of the home were retarded, the home was limited to six residents, the statute barred the location of the home near another community home, and another provision of the statute declared a legislative finding that mental retardation does not threaten the safety of a community or the individual.

§ 5. Delegation of legislative power to administrative agency

Statutes vesting in a state administrative agency the power to approve the location of a community home for the mentally ill, after consultation between the sponsor of the home and the municipality in which it is proposed to be located, were held valid in the following cases as not unconstitutionally delegating legislative powers to the agency, where the statutes provided meaningful standards to control the exercise of administrative discretion.

Under a statute providing that the state department of social services could not license a proposed group home for emotionally disturbed persons without local approval, if issuance of the license would substantially contribute to an excessive concentration of such homes within the affected municipality, the court in Livonia v Department of Social Services (1985) 423 Mich 466, 378 NW2d 402, held that the legislature's failure to define the term "excessive concentration," or to provide any explicit standards to guide the department

in making a licensing determination, did not render the statute unconstitutional as impermissibly delegating legislative power to the department. The court observed that while the legislature could not delegate its power to make a law, it could make a law to delegate to administrative officials the power to determine some fact or state of things upon which the law's operation depended, as long as sufficiently defined limits on the exercise of administrative discretion were provided to avoid delegating legislative powers and exposing the people to the uncontrolled, arbitrary power of administrative officials. The court stated further that, in determining whether a given statute provides sufficient standards, the statute must be read as a whole, the standard should be as reasonably precise as the subject matter requires or permits, in light of the degree to which the subject will require constantly changing regulation, and the statute must, if possible, be construed as conferring administrative and discretionary power, not legislative or arbitrary power. With respect to the statute under review, the court noted a provision requiring that a determination of excessive concentration be made with reference to the particular municipality in which a proposed home is to be located, without regard to the number of such homes located in other municipalities, and a further provision forbidding the location of one group home within a certain distance of another such home. The court also construed the statute to require the department to consider the overall residential character of the surrounding neighborhood as it exists and how that character would be changed, if at all, by the addition of a group home. The court concluded that, given these limitations, the statute conferred upon the department discretionary, rather than arbitrary or legislative, authority.

The court in Old Field v Introne (1980) 104 Misc 2d 122, 430 NYS2d 192, held that a statute empowering the state commissioner of mental retardation to authorize the location of a community residence for the mentally disabled, upon notice to the municipality by the residence's sponsor of its intent to locate the residence within the municipality, opportunity for the municipality to object or suggest alternative sites, and hearing on any objections, did not unconstitutionally delegate legislative power to the administrative agency. Observing that while the legislature may constitutionally confer discretion upon an administrative agency only if it limits the field in which that discretion is to operate and provide standards to govern its exercise, the court stated that a precise or specific formula need not be furnished in a field where flexibility and the adaptation of legislative policy to infinitely variable conditions is essential to the program, and that it is enough if the legislature lays down an intelligible principle, specifying the standards or guides in as detailed a fashion as is reasonably practicable in light of the complexities of the field to be regulated. The court concluded that since the statute under review clearly defined the term "community residential facility for the disabled," set forth procedures to air community objections, and specified factors to be considered by the commissioner in determining whether and where to locate such a residence, adequate standards were provided to govern the exercise of administrative discretion.

§ 6. Invasion of local zoning power by state

In the following cases, statutes empowering a state administrative agency to approve the location of a community home for the mentally ill after consultation between the home's sponsor and the municipality having jurisdiction over the proposed site of the home, were held valid against municipal contentions that such legislation deprived local governments of their power to enact and enforce zoning ordinances.

In Livonia v Department of Social Services (1985) 423 Mich 466, 378 NW2d 402, the court held valid a statute providing that a group home for six or fewer emotionally disturbed residents, licensed in accordance with procedures requiring notice to and cooperation with the municipality in which it is located, be permitted in any residential zone and exempt from local use permit requirements, despite an argument that the statute violated a state constitutional provision granting to municipalities the power to enact ordinances with respect to property. The court explained that this provision referred to the power of a municipality over its own property, rather than over private property within its boundaries. Acknowledging that another state statute accorded to municipalities a general power to enact zoning ordinances and other land use regulations, and that prior to the enactment of the provision in question municipalities were permitted to enact reasonable zoning ordinances restricting the placement of group homes in residential areas, the court pointed out that the provision, by its own terms, had been enacted to implement a state policy that persons in need of community residential care should not be excluded by zoning from the benefits of normal residential surroundings. The court further ruled that such restrictive ordinances and regulations must give way to conflicting state constitutional and statutory provisions designed to foster and support services for the mentally handicapped.

A statute empowering the state commissioner of mental retardation to authorize the location of a community residence for the mentally disabled, upon notice to the municipality by the residence's sponsor of its intent to locate the residence within the municipality, opportunity for the municipality to object or suggest alternative sites, and hearing on any objections, was held valid in Old Field v Introne (1980) 104 Misc 2d 122, 430 NYS2d 192, against the contention that it interfered with enforcement of local zoning ordinances. Observing that where a local ordinance is in conflict with and hinders state public policy, the ordinance may not be enforced, the court ruled that the municipality's ordinances were void to the extent that they would prohibit the use of the site in question as a community residence for the mentally disabled, and commented that agencies performing a function of substantial state concern in matters of public health and welfare must be able to

act freely of countervailing local concerns and without hindrance by conflicting local ordinances.

III. Necessity of notice, consultation, or approval

§ 7. Fewer residents than statutory minimum

In the following case, the court held that compliance with a statute, requiring the sponsor of a proposed community residence for 4 to 14 mentally disabled persons to give written notice of its intent to establish the residence to the municipality in which the residence is to be located, was unnecessary where the residence in question was proposed to house fewer than four persons.

In Shannon v Introne (1981, 2d Dept) 80 App Div 2d 834, 436 NYS2d 337, affd 53 NY2d 929, 441 NYS2d 60, 423 NE2d 818, the court held, under a statute requiring the sponsor of a proposed community residence for the mentally disabled to provide advance notice of its intent to establish such a residence to the local government unit having jurisdiction over the proposed site of the residence, that such advance notice was not required where the statute defined "community residential facility for the disabled" as a residence for 4 to 14 mentally disabled individuals, and the residence in question was to house only three such persons. Reversing an injunction against establishment of the residence entered on grounds of noncompliance with the notice requirement, the court refused to adopt the suggestion that, because the legislature intended to provide greater community input into the selection of sites for such residences, the notice provision of the statute should apply to residences for fewer than four persons. The court concluded that in view of the plain and unambiguous language of the statute, notice was required only if a "residential facility," as defined by the statute, was contemplated.

§ 8. Effect of local zoning

In the following case, the court held that a statute, requiring approval of a local governing authority prior to locating within its jurisdiction a community home for the mentally retarded, was applicable to a home located in an area zoned for single-family dwellings, even though the same statute expressed a state policy that such homes be permitted "by right" in areas zoned for multifamily dwellings.

Construing a statute expressing a state policy that community homes for the mentally handicapped be permitted "by right" in all residential districts zoned for multifamily dwellings, and otherwise providing that the sponsor of such a home give notice to and secure site approval from the local governing authority having jurisdiction over the proposed site, the court in Kenner v Normal Life of Louisiana, Inc. (1985, La App 5th Cir) 465 So 2d 82, affd on other grounds (La) 483 So 2d 903, held that the requirement of prior notice and approval applied to a home located in a residential district zoned only for single-family dwellings. In affirming a permanent injunction against operation of the home sought by the city on the ground that the sponsor had failed to secure site approval from the local governing authority in the manner

required by the statute, the court held that the statute appeared to grant a right of location for community homes only where they were located in areas zoned for multifamily dwellings, and that since such a right was not expressly accorded to homes located in areas zoned for single-family dwellings, such as the home in question, the sponsor of a home located in such an area must secure site approval from the local governing authority.[17]

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In the following case the court, construing a statute expressing a state policy that community homes for the mentally handicapped be permitted "by right" in areas zoned for multifamily dwellings, stated that compliance with a further provision requiring prior approval by the local governing authority having jurisdiction over the site of a proposed home would be necessary, regardless of where the home was to be located.

In Clark v Manuel (1985, La) 463 So 2d 1276, 51 ALR4th 1077, the court construed a statute, providing that the sponsor of a community home for the mentally handicapped must obtain prior approval of the proposed site from the local governing authority having jurisdiction over the site, to require local government approval regardless of whether any applicable zoning ordinances would permit or prohibit use of the site as a community home for the mentally handicapped. The court further stated that, although another provision of the statute expressed a state "policy" that such homes be permitted by right in districts zoned for multifamily dwellings even homes located in such districts would be required to secure prior site approval from the local governing authority.

§ 9. Site selected before statute enacted

The courts in the following cases held inapplicable a statute, empowering a state administrative agency to license a community home for the mentally ill within a particular municipality after consultation between the sponsor and the municipality, where the sponsor had selected the site of the home or negotiated with the municipality concerning such site, or the site-selection process was otherwise completed, prior to the effective date of the statute.

In Livonia v Department of Social Services (1985) 423 Mich 466, 378 NW2d 402, the court held that a statute, requiring the state department of mental health to seek the advice and consultation of the affected municipality prior to planning and locating a community home for the emotionally disturbed, was inapplicable where the site-selection process for several such homes in a particular city had been completed through another state agency prior to the effective date of the statute, and that the

17. On petition for rehearing, the court stated that its holding was "incorrect" to the extent based on the local approval provision found unconstitutional in the intervening decision of Clark v Manuel (1985, La) 463 So 2d 1276, 51 ALR4th 1077, § 4[b], but sustained its holding against the sponsor of the home on other grounds.

department's alleged failure to cooperate with the city therefore provided no basis for invalidating licenses issued by the other agency.

A statute requiring notice by a sponsoring agency to the affected municipality of its intent to locate a community residence for the mentally disabled within the municipality, allowing the municipality a certain time thereafter within which to object or suggest alternative sites, and providing for administrative hearing in the event of failure to agree within that time, was determined inapplicable in Community Board No. 3 v New York, Office of Mental Retardation & Developmental Disabilities (1980, 2d Dept) 76 App Div 2d 851, 428 NYS2d 520. Ruling that a local planning board was without predicate for its petition seeking judicial review of an administrative decision approving the location of a community residence, the court found that the site in question had been selected, with the board's knowledge, for use as a community residence prior to the effective date of the statute, and that at best the parties had intended to use the statute, which had been enacted during the course of negotiations, merely as a guideline for establishing the residence.

In Browe v Champagne (1979) 97 Misc 2d 1058, 413 NYS2d 103, the court held, under a statute empowering the state commissioner of mental retardation to approve the location of a community residence for the mentally disabled after consultation between the sponsor of the residence and the municipality in which it is proposed to be located, that a sponsor could not employ the statutory procedure to obtain approval of its plan by the commissioner when it had failed to obtain the approval of local authorities for use of the same site prior to the effective date of the statute. It appeared that the sponsor had sought, and been denied, site approval by a city planning commission prior to enactment of the statute, and appealed this denial to the commissioner of mental retardation after enactment of the statute. Although the statute provided that it was not applicable to sites selected prior to its effective date, the commissioner found that the site in question had not been so selected, in view of the sponsor's action in releasing the prospective sellers of the site from their contract after the planning commission's denial and before enactment of the statute. A permit to renovate the premises for use as a community residence was thereafter issued by the city in response to the commissioner's determination, and property owners in the vicinity of the site sought judicial review. Conceding that the sponsor had followed the statutory site selection procedures, the court nevertheless set aside the commissioner's decision and rescinded the permit. The court reasoned that to permit the sponsor to use the statutory procedure as a second vehicle to secure the approval it had been denied previously would undermine the policy expressed in the statute of encouraging co-operation between state and local authorities in the site selection process, so as to ensure acceptance of community residences by local communities.

And in Gedney Asso. v New York Dept. of Mental Hygiene (1982) 112 Misc 2d 209, 445 NYS2d 876, the court held that statutory requirements of notice by the sponsor of a proposed community residence for the mentally disabled to the municipality in which it is to be located, opportunity for the municipality to approve, object, or suggest alternative sites, and for administrative hearing on municipal objections, did not apply to the location at a particular site of eight community residences planned for by the state department of mental retardation several years prior to the effective date of the statute, in view of a provision of that statute that it did not apply with respect to sites selected by the sponsor prior to the statute's effective date. The court accordingly ruled that a complaint for injuctive relief brought by neighboring property owners alleging noncompliance with the statutory requirements would be dismissed in the absence of proof that the state had, at any time, abandoned its plans to locate the residences at the proposed site prior to the effective date of the legislation.

§ 10. Additional notice and consultation

In the following case, it was held that the sponsor of a proposed community residence for the mentally disabled was required to provide a municipality with advance notice of its intent to locate the residence within the municipality, where it selected a new proposed site for the residence after failing to reach agreement with the municipality concerning previously proposed sites within a certain time fixed by statute.

Under a statute requiring the sponsor of a proposed community residence for the mentally disabled to give notice of its intent to establish the residence to the municipality in which the residence is to be located, and allowing the municipality 40 days thereafter within which to approve the proposed site, suggest alternative sites, or object to the location of any such residence within it, the court in Pound Ridge v Introne (1981, 2d Dept) 81 App Div 2d 885, 439 NYS2d 53, held that where the state office of mental retardation and the municipality failed to agree on a site for a community residence within 40 days under site selection criteria established by the state office, and that office subsequently changed its selection criteria and chose a new proposed site not complying with the original criteria, new notice and another 40-day period for objection or alternative site proposals was required to be given to the municipality. Observing that by the time the state had selected a new site, the municipality's right to participate in the site selection process had already expired, the court found that the state's action effectively denied that right with respect to the new proposed site. Noting the serious implications which the state's action might have upon the harmonious working relationship envisioned by the legislature between state agencies and the affected communities in the establishment of community residences for the mentally disabled, the court concluded that the municipality would be entitled to a second opportunity to work with the state in

the designation of potential sites complying with the new criteria.

IV. Propriety of particular notice, consultation, or approval

§ 11. Allegedly improper officials notified, consulted, or approving

[a] Bureau of inspection

In the following case, it was held that the sponsor of several proposed group homes for the emotionally disturbed substantially complied with a statute, requiring that notice of its intent to establish or apply for licensing of the homes be given to the clerk, council, or designated agent of the affected municipality, where those officials received actual, albeit indirect, notice of the sponsor's plans as a result of its notice to a city bureau of inspection.

The court in Livonia v Department of Social Services (1985) 423 Mich 466, 378 NW2d 402, held that notice by the department of social services to a city bureau of inspection of its intent to license several group homes for emotionally disturbed persons constituted substantial compliance with a statute requiring the department to notify the clerk, council, or designated agent of a municipality as to where a proposed group home will be located at least 45 days prior to licensing of the home. Acknowledging that the bureau of inspection was not a designated agent of the city clerk or council for notification purposes, the court nevertheless found that the clerk and council had received actual, albeit indirect, notice of the department's plans more than 45 days before the homes were licensed, since city officials and concerned residents had met to discuss the proposed licensure and the clerk and council were sent copies of letters concerning location of the homes by the city attorney, on behalf of the legislative body of the city. The court stated that although mandatory notice provisions could not be ignored, substantial compliance was sufficient, and found no evidence that the city or property owners had been prejudiced by the department's technical noncompliance with the statute.

[b] Supervisor

In the following case, the court held that the sponsor of a proposed community home for the developmentally disabled had complied with a statute requiring that it seek the advice and consultation of the governing body of the municipality in which it proposed to locate the home, through contacts with the town supervisor, who was a member of the township board and the agent for transaction of its business.

In Distel v Department of Mental Health (1984) 138 Mich App 576, 360 NW2d 249, it was held that the state department of mental health had complied with the terms of a statute requiring that the department, before planning and locating a residential home for the developmentally disabled in any municipality, seek the advice and consultation of the "governing body" of the municipality in which the home is to be located, despite contentions by property owners in the neighborhood of a proposed home that the statute had not been complied with, because the department had consulted only the town supervisor and failed to obtain a discussion of the home at a public meeting before the township board. Affirming a denial of injunctive relief to the property owners, the court noted that the statute did not prescribe any particular method by which advice and consultation was to be sought, and found that since the supervisor was a member of the township board, which constituted the "governing body" of the town, and was the township's agent for the transaction of all its legal business, he was the logical person for the department to contact in seeking the advice and consultation of the township board. Further, the court found from the record that a hearing on the proposal before the township board had, in fact, been obtained.

[c] Mayor

It was held in the following case that approval by a mayor and city planning officials did not satisfy the requirements of a statute providing that the sponsor of a proposed community home for the mentally handicapped obtain site approval from the local governmental authority having jurisdiction over the site of the home, where the mayor and other officials were not agents of the legislative body of the city and approval could only be had by majority vote of that body.

Applying a statute requiring the sponsor of a community home for the mentally handicapped to secure approval of the site of the proposed home from the "local governmental authority" having jurisdiction over the site, the court in Kenner v Normal Life of Louisiana, Inc. (1985, La App 5th Cir) 465 So 2d 82, affd on other grounds (La) 483 So 2d 903, held that the sponsor's informal contacts with the mayor and officials of the city planning department, who informed the sponsor that their approval was not required and thereafter welcomed the sponsor to the city, did not constitute sufficient compliance with the requirements of the statute. Affirming a permanent injunction against further operation of the home sought by the city after it received complaints concerning the home, the court noted that the statute defined "governmental authority" as the body which exercises the legislative function of the political subdivision in which the home is to be located, and provided that the required approval or disapproval be by a majority of the membership of that authority. The court concluded that although the mayor and other city officials had inadvertently misled the sponsor, those officials were not vested with authority to waive the mandatory requirements of the statute.[18]

§ 12. Sufficiency of information provided

[a] Names of lessors of the residence property

In the following case, it was held that a notice of application for the

18. On petition for rehearing, the court stated that its holding was "incorrect" to the extent based on the local approval provision found unconstitutional in the intervening decision of Clark v Manuel (1985, La) 463 So 2d 1276, 51 ALR4th 1077, § 4[b], but sustained its holding against the sponsor of the home on other grounds.

licensing of several group homes for the emotionally disturbed, given by a state agency to the municipality in which the homes were proposed to be located, was not insufficient for failure to include the names of the lessors of the residence properties, where statute required that this information be kept confidential.

Construing a statute requiring the department of social services to give notice of an application for licensing of a group home for the emotionally disturbed to the municipality where it is proposed to be located, the court in Livonia v Department of Social Services (1985) 423 Mich 466, 378 NW2d 402, held that the department did not violate the statute by omitting from its notice the names of the lessors of several residences to be used as group homes, even though the statute required the applicant for license to disclose this information to the department. Affirming a denial of injunctive relief to the city and neighboring property owners and an administrative decision to license the homes in question, the court noted that the statute also provided that an application for license and materials submitted therewith be kept confidential until sought by a party in a contested case, and concluded that the department had therefore properly omitted the names of any lessors from its notice of application to the city.

[b] Identification of residence site

The courts in the following cases held that a statute, requiring the sponsor of a proposed community residence for the mentally ill to give notice of its intent to establish the residence to the local government unit having jurisdiction over the site of the residence, had been complied with despite the sponsor's failure to specifically identify the proposed site in the notice, where the statute did not require such identification.

Under a statute requiring the sponsor of a proposed community residence for the mentally disabled to give written notice of its intent to establish the residence to the municipality in which it is to be located, and allowing the municipality 40 days thereafter within which to approve, object, or suggest alternative sites, the court in Stony Point v New York State Office of Mental Retardation etc. (1980, 2d Dept) 78 App Div 2d 858, 432 NYS2d 633, § 13[b], held that a town's failure to object within the 40-day period to a proposal to locate such a residence within it could not be excused by the sponsor's failure to identify in its notice a proposed site for the residence, observing that the statute did not require the designation of a particular site in a sponsor's notice of intent.

In Community Planning Bd. No. 18 v Introne (1981, 2d Dept) 84 App Div 2d 564, 443 NYS2d 262, the court held that the state office of mental retardation had complied with a statute requiring the department to give notice of its intent to establish a community residence for the mentally disabled to the municipality in which the residence is to be located, by designating in its notice to a local planning board three broad geographic areas among which two proposed residences would be located. Affirming

an administrative decision approving location of the residences within the board's jurisdiction, the court rejected the board's contention that the use of areas rather than specific sites was improper, and ruled that the department's notice was sufficient, since the statute did not require the designation of specific sites in the notice of intent.

And in Pleasant Valley v Wassaic Developmental Disabilities Services Office (1983, 2d Dept) 92 App Div 2d 543, 459 NYS2d 109, the court held that the failure of a sponsor of two proposed community residences for the mentally retarded to specify in its notice of intent particular sites where it proposed to locate the residences did not invalidate a decision by the state commissioner of mental retardation authorizing the establishment of the residences in a particular municipality. The statute required that the sponsor give written notice of its intent to establish such a residence to the municipality in which it proposed to locate the residence, and provided that the sponsor in such notice "may" recommend one or more sites for the residence. Observing that the statute had recently been amended to require identification of proposed sites, the court found that the sponsor's failure to identify particular sites in its notice violated the spirit of the notice requirement, but ruled that the town was not prejudiced because it was actually advised of those sites informally. The court also pointed out that under the statute, the town had no right to question the suitablity of particular sites, but only the need for any such residences in the town generally, so that precise identification of the proposed sites was not necessary to presentation of the town's case at an administrative hearing on its objections to establishment of the residences within the town.

[c] Published data as to similar residences in area

In the following case, it was held that the sponsor of a proposed community residence for the mentally disabled sufficiently complied with a statute, requiring it to send to the affected municipality a copy of the most recent published data concerning types and locations of similar facilities in the area.

In Hempstead v Commissioner, State of New York Office of Mental Retardation & Developmental Disabilities (1985, 2d Dept) 112 App Div 2d 1042, 493 NYS2d 29, the court held that compliance by the sponsor of a community residence for the mentally disabled with a statute, requiring the sponsor to send to the chief executive officer of the affected municipality a copy of the most recent published data concerning types and locations of similar facilities in the area, was not vitiated by the subsequent publication of a new set of data, where the data sent by the sponsor was the most recent available at the time it was sent.

[d] Community support requirements

It was held in the following case, under a statute giving a municipality 40 days after receiving notice of a proposal to locate within it a community residence for the mentally disabled in which to object or recommend alternative sites, that the municipality's failure to object

or recommend alternatives within the 40-day period could not be excused by the sponsor's alleged vagueness in describing community support requirements for the residence, where such description was reasonably specific.

In Stony Point v New York State Office of Mental Retardation etc. (1980, 2d Dept) 78 App Div 2d 858, 432 NYS2d 633, the court held, under a statute requiring the sponsor of a proposed community residence for the mentally disabled to give written notice of its intent to establish the residence to the municipality in which it proposed to locate the residence, and allowing the municipality 40 days thereafter within which to approve, object, or suggest alternative sites, that a town's failure to object within the 40-day period to a proposal to locate such a residence within it could not be excused by the alleged vagueness of a sponsor's notice of intent in describing community support requirements. The court observed that the sponsor, in notifying the town by letter of its intent to locate a community residence for mentally disabled persons within the geographic limits of the town, described the nature of the contemplated program and, in a general way, the demands that the program would place upon community services. The court ruled that the sponsor's description of community support requirements, which stated that the residents would be doing their personal shopping in the town and would participate in recreational and leisure time activities available in the community under the supervision of qualified staff, was reasonably specific.

§ 13. Timing

[a] Consultation

It was held in the following case that consultation between the sponsor of a proposed home for the developmentally disabled and the municipality in which it proposed to locate the home was timely, where the sponsor had not made an irrevocable commitment to the particular site at the time of such consultation.

In Distel v Department of Mental Health (1984) 138 Mich App 576, 360 NW2d 249, the court held that the state department of mental health had complied with the terms of a statute requiring that the department, "before planning and locating" a residential home for the developmentally disabled in any municipality, seek the advice and consultation of the governing body of the municipality, where the department was not irrevocably bound to a lease of the residence property at the time of its contacts with a town supervisor. Property owners in the neighborhood of a proposed home sought injunctive relief against its establishment, arguing that the department's contacts with the town supervisor concerning location of the home were not timely under the statute because they took place after the department had entered into a lease of the premises where the home was to be located. Observing that the purpose of the statute was to provide local authorities with a meaningful opportunity to express their views concerning establishment of group homes in their communities, the court held that efforts to seek their advice and consultation would be timely if made by

the department after initial planning and prior to an irrevocable commitment to establish a home at the proposed site. Accordingly, the department's contacts with the town supervisor were ruled timely where they took place prior to final approval of the lease by state authorities.

[b] Objection or recommendation of alternatives

Applying statutes requiring that municipal objections to a proposal to locate a community residence for the mentally ill in the municipality, or alternative site recommendations, be made within a certain period of time, the courts in the following cases held that a municipality's failure to object or recommend alternative sites within that time precluded it from doing so later.

Under a statute requiring the sponsor of a proposed community residence for the mentally disabled to give written notice of its intent to establish the residence to the municipality in which it is to be located and allowing the municipality 40 days thereafter within which to approve, object, or suggest alternative sites, the court in Stony Point v New York State Office of Mental Retardation etc. (1980, 2d Dept) 78 App Div 2d 858, 432 NYS2d 633, held that a town could not obtain injunctive relief against the licensing and operation of such a residence where it failed to object within 40 days after receiving written notice of the sponsor's intent to establish the residence within the town. The sponsor notified the town by letter of its intent to locate a community residence for mentally disabled persons within the geographic limits of the town, and while indicating that a specific site had not as yet been identified, described the nature of the contemplated program and the demands that the program would place upon community services. The letter also specifically referred to the section of the law under which the sponsor was proceeding, and recited both the statutory responses which the town could make to the proposal and the 40-day period within which such responses were due. A meeting between the town board and the sponsor was subsequently held, but the town failed to suggest one or more suitable sites or to object to the establishment of such a residence in the town within the 40-day period, and registered its view that no safe location for the residence could be found within the town only upon being informed, 10 months after the meeting, that the sponsor was proceeding with its plans. Reversing an order granting the town a preliminary injunction against establishment of the residence, the court ruled that if the town had any objection to the establishment of a community residence within its confines, it was bound by statute to voice its objection within 40 days as indicated in the sponsor's letter of intent. The court rejected the town's argument that it could not have raised an objection until after the 40-day period had expired due to the alleged vagueness of the sponsor's notice of intent with respect to community support requirements for the residence and the sponsor's failure to designate a particular site for the residence in its notice, finding

that the sponsor's description of community support requirements had been reasonably specific, and observing that the statute did not require the designation of a particular site in a sponsor's notice of intent.

Where a city objected to the site of a proposed community residence for the mentally disabled and suggested to the residence's sponsor 14 alternative sites, one of which was selected by the sponsor, the court in Oswego v Prevost (1982, 4th Dept) 91 App Div 2d 848, 458 NYS2d 414, app dismd 58 NY2d 1033, 462 NYS2d 443, 448 NE2d 1354, held, under a statute allowing a municipality 40 days after notice by a sponsor within which to approve the proposed site, suggest alternative sites or oppose location of any such residence within the municipality on grounds that such location would result in an overconcentration of such facilities, that the city's failure to raise such an objection within the 40-day period foreclosed it from doing so later. Noting that the purpose of the 40-day period was to enable a municipality to hold preliminary hearings and pursue its own investigation of the matter before determining the course it intended to follow, the court reasoned that the municipality must choose its course within the statutory period, since prejudice and cost to the sponsor would inevitably increase with delay.

See also Oyster Bay v State Office of Mental Retardation & Developmental Disabilities (1985, 2d Dept) 115 App Div 536, 496 NYS 2d 61, in which the court held that the sponsor of a proposed community home for the mentally retarded was entitled to continue with its plans to establish the home where the municipality in which the home was to be located failed to properly object to the home's establishment within a statutorily prescribed period of 40 days from receiving notification of the sponsor's plans.

◆

In the following case, it was held that a local government unit's right to a statutorily prescribed period of time within which to suggest further alternative sites, after a sponsor's rejection of its original alternative site proposals, was not violated by the sponsor's action in scheduling a hearing before expiration of the statutory time, since the hearing was not actually conducted until after the expiration of such time.

Dismissing the petition of a local planning board to annul an administrative decision approving the location of a community residence for the mentally disabled within its jurisdiction, the court in Community Board No. 3 v New York, Office of Mental Retardation & Developmental Disabilities (1980, 2d Dept) 76 App Div 2d 851, 428 NYS2d 520, held that the board was not denied its right to a statutorily prescribed time within which to suggest further alternative sites after the residence's sponsor rejected its original alternative site proposals, by the sponsor's action in scheduling an administrative hearing before expiration of the statutory time. The statute in question allowed the board 15 days after rejection by the sponsor of its alternative site proposals, within which to suggest further alternatives, before it could be concluded that there was sufficient lack of agreement to warrant the scheduling of a factfinding hearing. The court found that although the sponsor had scheduled a factfinding hearing only 10 days after rejecting the board's alternative site suggestions, the hearing was not actually held until 23 days after such rejection, thereby exceeding the statutory period within which the board could suggest further alternatives by 8 days. The court ruled that the board's failure during this 23-day period to suggest further alternative sites, or to seek deferral of the hearing in order to posit further alternatives, justified the sponsor's conclusion that there was sufficient disagreement between the parties regarding a proposed site to warrant invocation of a formal hearing.

[c] Hearing

It was held in the following case that the failure of an administrative agency to conduct a hearing on municipal objections to the location of a proposed community home for the mentally ill within a certain time prescribed by statute did not render the agency's determination void, where such time limits did not relate to the essence and substance of the act to be performed and the municipality was not prejudiced by the delay.

In Pleasant Valley v Wassaic Developmental Disabilities Services Office (1983, 2d Dept) 92 App Div 2d 543, 459 NYS2d 109, the court held that the failure of the commissioner of mental retardation to conduct a hearing on a town's objections to the location within it of two community residences for the mentally retarded, within a certain time fixed by statute, did not invalidate the commissioner's decision authorizing the establishment of the residences in the town. The statute required that the commissioner hold a hearing on a municipality's objection to the location in it of any such residences within 15 days of a request for such a hearing, but the commissioner did not hold a hearing on the town's objection to establishment of the residences in question until 61 days after its request therefor. In dismissing a petition by the town for judicial review of the commissioner's decision, the court held that the 15-day provision was directory rather than mandatory, since it did not relate to the essence and substance of the act to be performed. The court said that the commissioner's failure to conduct a hearing within 15 days of the town's request actually benefited the town by giving it more time to prepare for the hearing, and that this technical departure from the statutory time limit did not frustrate the purpose of the statute to foster communication and co-operation between state agencies and local communities in the site selection process.

[d] Decision

Courts in the following cases held that an administrative decision to approve the location of a community home for the mentally ill within a particular municipality was not invalidated by failure to render the decision within a statutorily prescribed time after hearing on municipal objections, ruling that such time limits were directory only, and not mandatory.

In Pleasant Valley v Wassaic Developmental Disabilities Services Office (1983, 2d Dept) 92 App Div 2d 543, 459 NYS2d 109, the court held that the failure of the commissioner of mental retardation to render a decision on a town's objections to the location within it of two community residences for the mentally retarded, until just after a time period fixed by statute, did not invalidate the commissioner's decision authorizing the establishment of the residences in the town. The statute required that the commissioner render a decision on a municipality's objection to the location within it of any such residences within 30 days of hearing on such objection, but the commissioner did not render a decision on the town's objection to the residences in question until 31 days after the hearing. In dismissing a petition by the town for judicial review of the commissioner's decision, the court ruled that the 30-day provision was directory rather than mandatory, as it did not relate to the essence and substance of the act to be performed, and that the commissioner's failure to render a decision within 30 days of hearing did not frustrate the purpose of the statute to foster communication and co-operation between state agencies and local communities in the site selection process.

Similarly, in Oyster Bay v Webb (1985, 2d Dept) 111 App Div 2d 760, 490 NYS2d 247, the court, reasoning that a statute requiring the state commissioner of mental retardation to render a decision as to the location of a community residence for the mentally disabled within 30 days of hearing on municipal objections was directory only and not mandatory, held that a decision rendered more than 30 days after hearing would not be annulled on that ground, at least in the absence of undue delay. The court accordingly affirmed an administrative decision to establish a community residence at a location other than that desired by the town.

§ 14. Nonattendance by agency at local meeting

In the following case, it was held that a state administrative agency had fulfilled its statutory duty to co-operate with local units of government in selecting sites for group homes for the emotionally disturbed, despite its failure to attend a meeting with local residents and city officials concerning the location of several such homes.

In Livonia v Department of Social Services (1985) 423 Mich 466, 378 NW2d 402, the court held that the state department of social services, seeking to authorize the location of several group homes for the emotionally disturbed in a particular city, had complied with a statute requiring the department to co-operate with other state agencies and local units of government in administering an act providing for the licensure of such homes after notice to and consultation with the municipalities in which they are to be located, where the city's only allegation of nonco-operation was the failure of department representatives to attend a scheduled meeting of city officials and concerned residents regarding location of the homes, which meeting the department claimed it was not aware of and to which it had not been invited. The court observed that department representatives had attended a later meeting with city officials and residents, and accordingly affirmed an administrative decision approving the location of the homes.

§ 15. Informal contacts

In the following case, the court held that informal contacts between the sponsor of a proposed community home for the developmentally disabled and a town supervisor constituted sufficient compliance with a statute requiring the sponsor to seek the advice and consultation of the municipality in which the home is to be located, where the statute prescribed no particular method by which such advice and consultation was to be sought and did not require that consultation be actually obtained or that any advice be heeded.

In Distel v Department of Mental Health (1984) 138 Mich App 576, 360 NW2d 249, it was held that the state department of mental health had complied with the terms of a statute requiring that the department, before planning and locating a residential home for the developmentally disabled in any municipality, "seek the advice and consultation" of the governing body of the municipality in which the home is to be located, although it merely had informal consultation with an official. Property owners in the neighborhood of a proposed home sought injunctive relief against its establishment, arguing that the statute had not been complied with because the department had failed to obtain a discussion of the home at a public meeting before the township board and had only made informal contacts with the town supervisor concerning the proposed home. In affirming a denial of injunctive relief to the property owners, the court noted that a public meeting had, in fact, been held. The court further observed that the statute required only that the department "seek" advice and consultation of the local governing body, not that such advice and consultation be actually obtained or heeded. Also noting that the statute did not prescribe any particular method by which advice and consultation was to be sought, the court held that the department's informal contacts with the town supervisor constituted sufficient compliance with the statute.

Consult POCKET PART in this volume for later cases

HOUSE BILL NO. 53

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTIETH LEGISLATURE - FIRST SESSION

BY REPRESENTATIVE MULDER

Introduced: 1/13/97
Referred: State Affairs, Finance

A BILL

FOR AN ACT ENTITLED

"An Act relating to the authority of the Department of Corrections to contract for facilities for the confinement and care of prisoners, and annulling a regulation of the Department of Corrections that limits the purposes for which an agreement with a private agency may be entered into; authorizing an agreement by which the Department of Corrections may, for the benefit of the state, enter into one lease of, or similar agreement to use, space within a correctional facility that is operated by a private contractor, and setting conditions on the operation of the correctional facility affected by the lease or use agreement; and giving notice of and approving a lease-purchase agreement or similar use-purchase agreement for the design, construction, and operation of a correctional facility, and setting conditions and limitations on the facility's design, construction, and operation."

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

* **Section 1.** AS 33.30.031(a) is amended to read:

(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**, subject to the following:**

(1) the commissioner may not enter into an agreement with an agency that is unable to provide a degree of custody, care, and discipline to the extent required by the laws of this state;

(2) correctional [. CORRECTIONAL] facilities provided through agreement with **an** [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 **an** [A PRIVATE] agency

(A) 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

(B) may not by regulation be restricted or limited by the commissioner to use only for prisoners involved in certain rehabilitative or treatment programs authorized by law [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].

* **Sec. 2.** AS 33.30 is amended by adding a new section to article 1 to read:

Sec. 33.30.043. Lease of or agreement to use space within municipal correctional facility. (a) If the commissioner determines that it would be in the best interest of the state, the commissioner may enter into an agreement with a municipality of the state for the lease by the state of a correctional facility or a part of it or for the use and operation of a correctional facility or a part of it for the benefit of the state.

(b) An agreement executed by the commissioner under (a) of this section must provide that

(1) the state has the right to detain or confine a prisoner held under authority of law in the correctional facility;

(2) the administrator of the correctional facility agrees to implement an order concerning a prisoner issued by a court of the state;

(3) the administrator of the correctional facility shall comply with the law and with regulations adopted by the commissioner relating to the custody, care, and discipline of a prisoner detained or confined in the correctional facility; and

(4) the commissioner may inspect the correctional facility at any time to determine the conditions under which a prisoner is detained or confined.

(c) The agreement executed by the commissioner under (a) of this section may require the administrator of the correctional facility to comply with requirements that the commissioner considers necessary for the protection of the public or for the quality of care and programs for prisoners required by this chapter and regulations adopted by the commissioner.

* **Sec. 3.** AUTHORIZATION TO LEASE, OR FOR USE OF, CORRECTIONAL FACILITY SPACE WITH THIRD-PARTY CONTRACTOR OPERATION. (a) To relieve overcrowding of existing correctional facilities, the Department of Corrections may enter into no more than one agreement to lease space or for use of space within a correctional facility that will house persons who are committed to the custody of the commissioner of corrections. The agreement to lease or for use entered into under this section is predicated upon and must

provide for an agreement under which a private third-party contractor operates the facility by providing for custody, care, and discipline services for persons held by the commissioner of corrections under authority of state law.

(b) The authorization given by (a) of this section is subject to the conditions of (c) - (e) of this section and to the further limitation that the total payments for the full term of the agreement to lease or for use may not exceed $150,000,000 and the anticipated annual amount of the rental obligation to be paid by the Department of Corrections under the agreement to lease or for use must be reasonably commensurate with that total.

(c) A lease of space or agreement for use of space authorized by (a) of this section may not involve a correctional facility that

(1) contains a total population of less than 500 or more than 800 prisoners; or

(2) is to be operated by the state or a municipality except that the state or a municipality may operate the correctional facility temporarily if, in a correctional facility that is to be operated by a third-party contractor with whom the state or a municipality has entered into an agreement to operate the correctional facility, the private third-party contractor with whom the state or a municipality has entered into the agreement to operate the correctional facility defaults in performance under the contract and operation of the correctional facility by the state or the municipality is reasonably necessary to ensure the facility's continued operation.

(d) If required by the commissioner of corrections as a condition of the correctional facility's operation, in the award of a contract for the operation of the correctional facility to be operated under the authorization set out in (a) of this section, the Department of Corrections shall require that persons employed by the contractor as correctional officers in the facility meet the requirements of AS 18.65.130 - 18.65.290 that are applicable to correctional officers.

(e) The Department of Corrections may not, under this section, enter into an agreement to lease space or for the use of space in a correctional facility if, under sec. 4 of this Act, the Department of Administration, on behalf of the Department of Corrections, enters into a lease-purchase agreement, use-purchase agreement, or other agreement to use a facility that has a nominal purchase option.

*** Sec. 4.** NOTICE AND APPROVAL OF LEASE-PURCHASE AGREEMENT OR

SIMILAR USE-PURCHASE AGREEMENT. (a) To provide for the design, construction, and operation of a new correctional facility in order to relieve overcrowding of existing correctional facilities, the Department of Administration, on behalf of the Department of Corrections, may enter into an agreement under AS 33.30.031, in the form of a lease-purchase agreement, use-purchase agreement, or other agreement to use a facility that has a nominal purchase option, for the design, construction, and operation of a correctional facility that will house persons who are committed to the custody of the commissioner of corrections. The project approval given by this subsection is subject to the conditions of (b) - (e) and (g) of this section and to the following limitations:

(1) the anticipated total construction, acquisition, and related costs of establishing the correctional facility may not exceed $90,000,000;

(2) the total lease or use payments for the full term of the agreement may not exceed $180,000,000 and the anticipated annual amount of the rental obligation to be paid by the Department of Corrections under the lease or use agreement must be reasonably commensurate with that total; and

(3) at the end of the term of the lease-purchase agreement or use-purchase agreement, the state shall own the correctional facility.

(b) The correctional facility to be designed, constructed, and operated under the notice and approval given in (a) of this section

(1) must be designed and constructed so as to house, in separate housing, female prisoners and male prisoners;

(2) may not contain a total population of more than 1,000 prisoners, but must be designed and constructed so as to allow expansion of the facility to a greater capacity; and

(3) may not be operated by the state except temporarily when

(A) the private third-party contractor with whom the state has entered into an agreement to operate defaults in performance under the contract and state operation is reasonably necessary to ensure the facility's continued operation; or

(B) the state is unable to contract with a private third-party contractor.

(c) The lease-purchase or use-purchase agreement entered into under this section must provide for

(1) an agreement under which the correctional facility is designed, constructed,

and, except for services to prisoners described in (2) of this subsection, operated by a private third-party contractor; the agreement described in this subsection is made for the purpose of acquiring, improving, and maintaining the correctional facility structure under AS 36.30.085, and is exclusive of one or more agreements for the custody, care, and discipline of prisoners housed in the facility as may be authorized by AS 33.30.031(a)(1) and (3);

(2) an operating agreement, separate from the agreement described in (1) of this subsection, under which a private third-party contractor operates the facility by providing for custody, care, and discipline services for persons held by the commissioner of corrections under authority of state law; the operating agreement described in this paragraph shall

(A) for its initial period, not to exceed five years, be entered into with a private third-party contractor that is the same person as the third-party contractor described in (1) of this subsection; and

(B) for the duration of the period of the lease-purchase or use-purchase agreement, be rebid or reoffered at intervals of not more than five years and may be entered into with a private third-party contractor other than the person described in (A) of this paragraph.

(d) In the evaluation of a bid submitted to construct and operate the correctional facility described in this section, the Department of Administration may provide incentive to the maker of a bid that pledges to employ state residents as far as practicable.

(e) If required by the commissioner of corrections as a condition of the correctional facility's operation, in the award of a contract for the operation of the correctional facility to be designed, constructed, and operated under the notice and approval given in (a) of this section, the Department of Administration shall require that persons employed by the contractor as correctional officers in the facility meet the requirements of AS 18.65.130 - 18.65.290 that are applicable to correctional officers.

(f) Subsection (a) of this section constitutes the notice and approval required by AS 36.30.085.

(g) The Department of Administration, on behalf of the Department of Corrections, may not, under this section, enter into a lease-purchase agreement, use-purchase agreement, or other agreement to use a facility that has a nominal purchase option if, under sec. 3 of this Act, the Department of Corrections enters into an agreement to lease space or for the use of

space in a correctional facility.

*** Sec. 5.** CONSTRUCTION OF CORRECTIONAL FACILITY UNDER PROJECT LABOR AGREEMENT. (a) The purpose of this section is to enable the state to meet its obligation to improve the care and custody of the prisoners for which it is responsible at an early date through the completion of construction of a major correctional facility by structuring labor relations at the job site of the correctional facility in the interests of industrial harmony and in a way that makes optimal use of construction resources.

(b) Notwithstanding any restrictions that may be applicable under AS 36.30, the correctional facility described in sec. 4 of this Act may be constructed only under a public construction project labor agreement between the building construction contractor and one or more building trade unions; the labor agreement must provide

(1) a no-strike and no-slowdown pledge by the union or unions;

(2) a commitment on the part of the construction contractor to hire through local union hiring halls; and

(3) a provision allowing not more than 15 percent of the construction contractor's workforce on the public construction project to be composed of persons who are not members of the union or unions.

*** Sec. 6.** 22 AAC 05.300(e) is annulled.

DRAFT DRAFT

ALASKA'S CORRECTIONS PLAN

LOCATION	NEW BEDS	CONST. COSTS	OP. COSTS
Anchorage (replace 6th Ave. Jail)	260 (400 bed facility)	$60,000	$8,076
Palmer (medium security)	221	$13,050	$3,763
Hiland Mountain	0 (create women's unit)	$1,000	0
Mat-Su Pre-Trial	64	$6,000	$1,107
Yukon-Kuskokwim (Bethel)	48	$5,000	$963
Fairbanks	80	$10,250	$2,266
North Slope Borough	50	??	??
Wildwood (Kenai)	149	$29,200	$2,111
Spring Creek (Seward)	166-250	$25,000	$7,380
Lemon Creek (Juneau)	64	$9,000	$1,931
Totals:	1102 - 1186	$158,500	$27,597

ALASKA'S CORRECTIONS PLAN

Three components:

- Limit the number of prisoners going into the "hard bed" system (to the extent that this can be done in a manner that is consistent with public safety)
- Expand the number of "hard beds" to keep up with the growing numbers
- Get the prisoners out of "hard beds" quicker (to the extent that this can be done in a manner that is consistent with public safety)

Pursue expansion options that are:

- Safe
- Statewide (comprehensive)
- Meet regional needs
- Involve community participation (gov't to gov't)
- Cost effective

MEMORANDUM

Date: March 11, 1997

To: Joe Green

From: Lisa Kirsch

Re: **HB 53 --Amendments Revisited**

I have received this afternoon via fax two nearly identical memos from the **South Anchorage Coalition** and **Oceanview/Old Seward Community Council.**

Both organizations request amendments that require:

1) A **feasibility study,** including cost benefit analysis that examines various methods for reducing overcrowding;

2) **25% cost savings on construction** when compared to state construction of facilities;

3) **20% cost savings on operation** as compared with state operation of facilities;

4) Housing of **Alaska prisoners only**; and

5) a provision for **State operation of a facility** when
a) the operator defaults and state operation is necessary or,
b) the state is unable to contract with a private third party contractor or it is the best interest of the state to operate the facility.

The Seward group also included a provision designed to encourage competition that amends the section that gives corrections the ability to lease space in another facility to ease overcrowding. Their amendment allows corrections to enter into **more than one agreement** and **to lease space in smaller facilities** (as few as 100 total beds).

The **feasibility study** looks like something that will take a great deal of time and money and will result in an increase in

correction's fiscal note. The provisions as to overcrowding appear to create a problem in that the state would be required to revisit the overcrowding issue each time it considers a new contract. The provision that the private proposal must always outperform the state run facilities. The value of this provision may be reliant upon how you calculate the costs. Will the state cost include the potential liability to additional state employees, liability to subcontractors, maintainance cost overruns and other otherwise hidden costs incurred when you take on a project? Mulder testified that the contractor would be held to a contract for a number of years. If the bidder miscalculates his costs and they increase the bidder must continue to provide the service at the same cost to the state. The state run operations do not have this benefit.

Cost savings requirements. These two sections that require a savings of 25% on construction and 20% on operation appear to put the private sector at a great disadvantage. I think this amendment is dishonest in that it purports to protect state interests, but in fact appears to create an impossible hurdle for the private sector.

I guess the point that these groups are trying to make is that we should not bid the project out if there is not a big savings. This assumes that all other things being equal, we shoudl choose public prisons. I think this issue turns on a policy question. Are private prisons ever a good idea? Do they in fact give us a cost savings on a necessary evil (imprisonment) and get market efficiency into an otherwise inefficient government system Or do they, as Charles Cambell's letter suggests, incarcerate a burgeoning population in a facility run by people who are motivated, not to rehabilitate, but to ensure recidivism so that their large facility is always full and profit generating.

Alaska prisoners only. This section prevents private prisons from taking on other state's prisoners. This may assure that there is space for our inmates.

State operation of a facility. This section broadens the circumstances under which the state could take over operations. It allows the state to operate the prison indefinitely and allow the state to take over operations simply because it is in the state's best interest. This could make it very difficult to find a contractor who would agree to these terms. The way these sections read now seems to dovetail with typical contract law. If you amend it to say that the

state may intervene and essentially breach the contract with the operator even where the contractor has not breached first you may run into problems.

MEMORANDUM

Date: March 11, 1997

To: Jack Chenoweth, Legislative Legal

From: Lisa Kirsch, House Judiciary Committee

Re: Amendment to HB 53

In regard to amendment 0-LS0194\K.32;

Chairman Joe Green has asked me to get your opinion on some fine tuning to this amendment. He would like to know if it is possible for a majority of the voters affected by the prison to vote down a site choice. What we discussed was a situation where a municipality as a whole might vote in favor of a site, but a majority of the voters in the community near the site oppose that site. One suggestion I made was that we modify "municipality" with "or political subdivision of the state" and that we modify "voters" (line 13) with "within a two mile radius of the proposed site" or "affected by the proposed site" and delete "voting in the municipality affected."

Another concern about the use of the word "municipality" that was raised in testimony yesterday was that it narrowed the site selection to too small a group since there are very few municipalities is AK. Does "municipality" as used in the AS have a meaning that includes villages, boroughs. etc., or does it literally mean municipalities? I know in HB 22 we used language that Mike Ford suggested which I believe was "and political subdivisions of the state."

Could you please let me know whether you think these changes will have the desired effect? Chairman Green was particularly concerned whether or not the legislature could give a community the

power to override the municipality's decision to locate a prison at a particular site.

One final minor word change. Chairman Green thought that the use of the word "at" on lines 5 and 11(first appearance) of amendment 0-LS0194\K.32 was awkward since the "correctional facility" does not yet exist. He will defer to your drafting expertise if this is the only way to convey our intent.

Thanks for your help.

03/10/97 LEGISLATIVE TELECONFERENCE NETWORK SYSTEM ITN1150

13:39:29 PARTICIPANT LIST (ALL PARTICIPANTS) BY:ANC

TCN:70378 SCHEDULED FOR:03/10/97 13:00 TO 15:00 FOR:ANC

PUBLIC HEARING HOUSE JUDICIARY

LOCATION:ANCHORAGE

HB	65		THEDA	PITTMAN		TESTIFY
HB	65		PAULINE	UTTER		TESTIFY
HB	53		DOUG	PERKINS		TESTIFY
HB	53		STEVE	LARSON		TESTIFY
HB	53		BARBARA	WEINIG		TESTIFY
HB	53		JOHN	YARBOR		TESTIFY
HB	53		JULIE	OLSON	OCEANVIEW/OS CC	TESTIFY
HB	53	MR.	B.K.	POWELL		TESTIFY
HB	53		ED	EARNHART		TESTIFY
HB	53		CHRALES	O'CONNELL	ASEA/AFSCME #52	TESTIFY

She is not on List From Friday And I have told Anchorage Public Testimony is closed on HB65

Fair banks:

Mr. Craig Persson P. Safe. Emp. Assoc

Kenai: Ms. Joan Bennett-Schrader CLUW

Matsu:— Paul Sweet -didn't test.

Juneau:

Forest Browne

Margo Knuth

HB 53

33.30.031(c) requires competitive bid procedure for contracts for construction

36.30.100 - 170 Competitive Sealed bids procedure

33.30.025 Siting of prison
Amends
→ when notify ?

33.30.031 (a)
a: degree of cust, care & discipline similar that req by the state

33.30.021 Comm to adopt regs.

22AAC 05.256
22AAC 05.195

22AAC 05.300 Contract facilities
(f) "residential correctional facilities"
subject to 22AAC05.400 - 480 (Discipline §§)

Municipality of Anchorage

P.O. Box 196650
Anchorage, Alaska 99519-6650
Telephone: (907) 343-4431
Fax: (907) 343-4499
http://www.ci.anchorage.ak.us

Rick Mystrom, Mayor

March 11, 1997

OFFICE OF THE MAYOR

MAR 1 1 1997

Members of the Anchorage Caucus
Alaska State Legislature
State Capitol
Juneau, AK 99801

Dear Caucus Members:

Resolving the prisoner housing shortage in the State has been the topic of ongoing discussion for the past few years. In Anchorage, the shortage of jail and detention space has created several unsatisfactory situations:

- There are times when police officers have to wait for space in the jail to open up before they can drop off arrestees. This ties up the police and keeps them off the street.
- Sixth Avenue Jail is consistently over capacity by 35% or more. Other correctional facilities in the area are also regularly over capacity.
- Juvenile offenders are often released due to lack of adequate facilities.

We need to have a replacement for the aging Sixth Avenue Jail. We also need to expand the overcrowded McLaughlin Youth Center. Our objectives, in keeping with our goal of making Anchorage a safer city are:

- To obtain 400 jail beds in a modern, cost-effective correctional facility.
- To expand McLaughlin Youth Center, by adding at least 65 additional beds;
- To maintain approximately the same current cost structure for the housing of Municipal prisoners; and

As you consider the various options for solving the State's correctional problems, please keep in mind these needs and objectives. In accomplishing these objectives, it is essential that an appropriate public site selection process be completed before any new correctional facility is located in Anchorage.

I am hopeful a solution to this continuing problem can be found soon. If you would like to discuss this matter further, please contact my office.

Sincerely,

Rick Mystrom

Rick Mystrom
Mayor

cc: Department of Corrections

"City of Lights and Flowers"

Q for Neil or drafter

Can a municipality provide a single Q ballot & require approval by a majority of voters.

Corrections Q

AS 36.30 Does State procurement code apply? why bd. of regents?

Jim Baldwin 2129
municipal

Margo Q

Does bill § 1 33 30.031(a)(1) apply to all regs in AAC - stds of care etc

How about 33.30.041 (5)(3) Mdmen language: "admin shall comply w the law & regs adopted by the comiss."

"political subdivision of the state" does this include everything?

→ Site selection process
Usays kill it for VICO

→ municipality.
[If contracting with/Seward for ex no need for competitive bid

HB 53

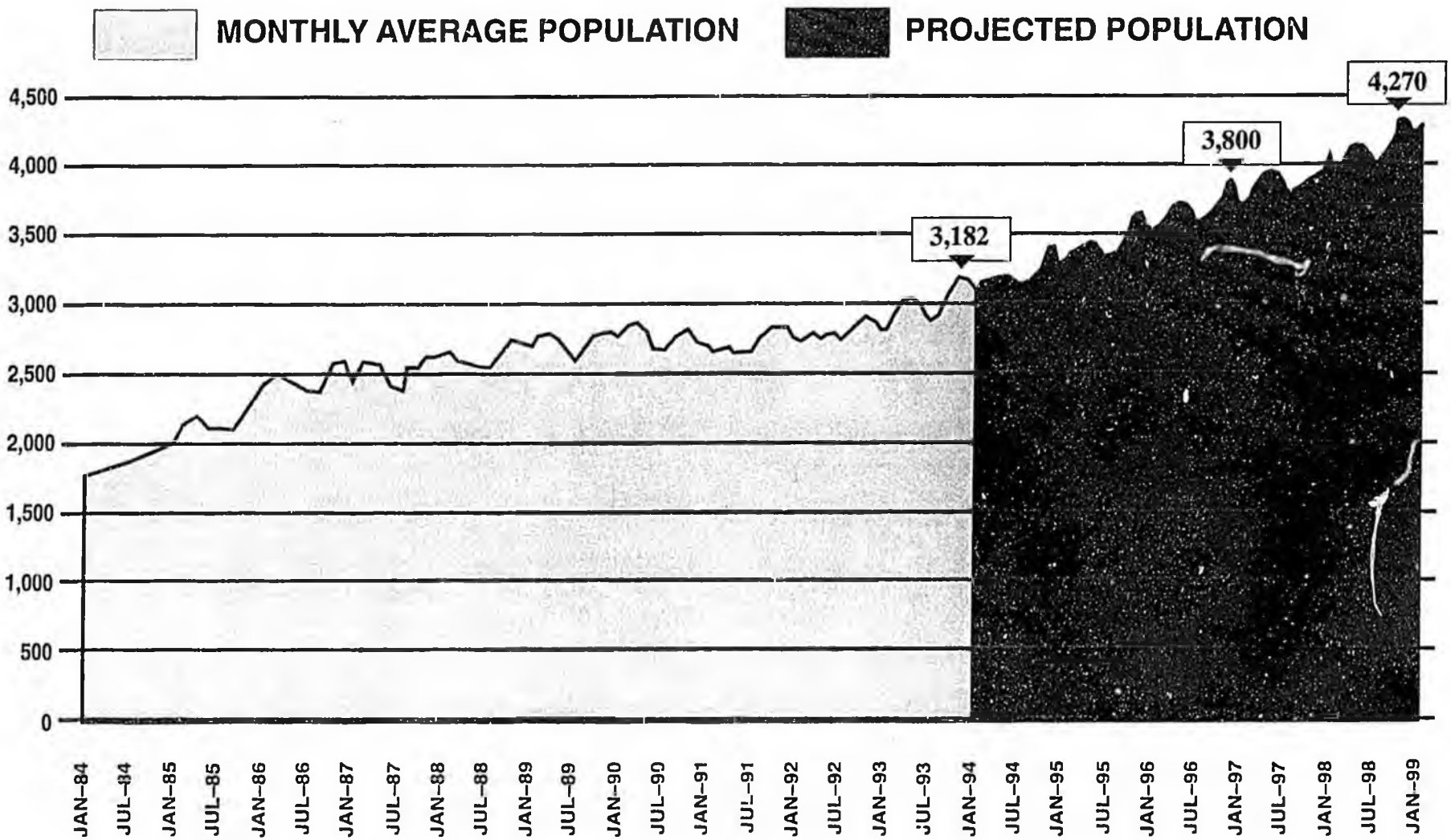
Sen Parnell off wants to see amend

Jim Baldwin private int. wants to nail down a site

private wants pr'dc kinds of prisoners

4330 Mayo
Jim Baldwin
Dep of Law opinion
from Roos time
Bullock may not
veto

In 1994 the Dept. of Corrections appeared before the House Subcommittee on Corrections and presented the following graph.



The graph was compiled from corrections' official monthly count and reflects an annual average inmate population growth rate of 8.2% from January 1984 until January 1994. Department testimony projected that by January 1997 corrections' total inmate population (including out-of-state, CRC and treatment beds) would reach 3,800. By October 1996 corrections' population topped 3,800 with no prospect for decline. Ten and as many as 14 of corrections' fifteen facilities are now operating over emergency capacity and the system as a whole is operating between 250 and 300 prisoners over maximum capacity.

Projected growth does not account for any legislative crime initiatives passed in 1995 and 1996.

Instate Inmate Count – Alaska Department of Corrections – June, 1995

		COOK INLET PRE-TRIAL		HIGHLAND MOUNTAIN CORRECTIONAL CENTER			MEADOW CREEK CORRECTIONAL CENTER				SIXTH AVENUE JAIL						
	104	403	200	233	53	170	79	66	172	176	108	486	210	113	92	[illegible]	2665
	102	397	189	225	47	163	76	62	165	176	104	466	204	112	88	Maximum Capacity	2577
Day	AMCC	CIPT	FCC	HMCC	KCC	LCCC	MSPT	MCCC	PCC/MED	PCC/MIN	SIXTH	SCCC	WWCC	WWPT	YKCC	Emerg. Cap.	Total	%
1	82	[illegible]	170	230	46	148	[illegible]	58	[illegible]	174	[illegible]	446	204	69	[illegible]	2665	2555	95
2	82	[illegible]	177	230	46	150	[illegible]	60	170	175	[illegible]	452	204	87	[illegible]	2665	2569	96
3	85	[illegible]	181	231	47	152	[illegible]	60	[illegible]	172	[illegible]	452	204	82	[illegible]	2665	2569	96
4	81	[illegible]	181	230	51	154	[illegible]	60	167	175	[illegible]	452	203	81	[illegible]	2665	2573	97
5	78	[illegible]	180	230	49	151	[illegible]	60	167	174	[illegible]	452	204	84	[illegible]	2665	2554	96
6	78	[illegible]	183	230	52	149	[illegible]	58	166	172	[illegible]	452	204	83	[illegible]	2665	2578	97
7	78	402	167	[illegible]	51	148	[illegible]	62	164	174	[illegible]	452	204	98	[illegible]	2665	2558	96
8	79	[illegible]	172	232	48	148	75	59	164	[illegible]	[illegible]	450	204	94	[illegible]	2665	2574	97
9	79	395	164	232	49	147	78	61	169	174	[illegible]	450	204	97	[illegible]	2665	2530	95
10	79	390	176	231	49	145	73	60	166	[illegible]	[illegible]	450	204	97	[illegible]	2665	2529	95
11	81	393	167	230	50	144	[illegible]	60	164	175	[illegible]	449	204	95	[illegible]	2665	2518	94
12	79	395	162	230	50	142	[illegible]	60	163	175	[illegible]	448	204	94	[illegible]	2665	2516	94
13	76	396	169	228	48	145	78	57	159	[illegible]	101	446	204	80	[illegible]	2665	2479	93
14	77	394	158	228	50	137	[illegible]	57	159	172	105	446	204	80	[illegible]	2665	2468	93
15	80	389	156	227	48	139	[illegible]	55	154	175	98	444	204	91	[illegible]	2665	2456	92
16	79	395	148	228	50	141	[illegible]	55	153	173	103	444	204	94	[illegible]	2665	2465	92
17	92	387	154	228	49	141	76	56	155	175	[illegible]	450	204	94	[illegible]	2665	2483	93
18	89	386	158	228	[illegible]	145	[illegible]	56	154	174	[illegible]	450	204	91	[illegible]	2665	2496	94
19	90	385	157	228	50	146	[illegible]	56	154	174	[illegible]	450	204	94	[illegible]	2665	2497	94
20	88	395	159	228	49	143	[illegible]	56	159	173	[illegible]	450	204	88	[illegible]	2665	2486	93
21	84	395	164	230	47	146	77	63	157	171	[illegible]	450	204	85	[illegible]	2665	2497	94
22	88	[illegible]	162	231	50	148	70	61	159	168	[illegible]	449	204	84	[illegible]	2665	2498	94
23	84	[illegible]	161	228	[illegible]	144	77	60	158	169	[illegible]	447	204	86	[illegible]	2665	2503	94
24	84	394	169	228	52	147	77	59	162	173	[illegible]	447	204	87	[illegible]	2665	2493	94
25	84	396	177	227	51	143	[illegible]	57	163	170	[illegible]	447	204	86	[illegible]	2665	2502	94
26	85	399	169	226	[illegible]	144	[illegible]	58	163	170	[illegible]	447	204	82	[illegible]	2665	2500	94
27	88	394	165	224	[illegible]	144	[illegible]	64	162	170	[illegible]	447	204	80	[illegible]	2665	2491	93
28	88	387	162	229	52	143	[illegible]	64	159	175	[illegible]	447	200	80	[illegible]	2665	2488	93
29	85	390	163	229	[illegible]	143	[illegible]	64	166	174	91	447	200	81	[illegible]	2665	2488	93
30	84	395	160	229	[illegible]	141	[illegible]	65	166	174	100	447	200	81	[illegible]	2665	2483	93
31																2665	0	0
AVG	82.86	396.733	166.367	229.1	50.1333	145.267	80.7333	59.3667	162.333	173.2667	114.067	448.633	203.567	86.7667	113.667	2665	2512.9	94
10 day	0	0	0	0	1	0	6	0	0	0	0	0	0	0	396	2665		
30/90	0	42	0	2	27	0	56	0	62	0	77	0	0	0	90	2665		

Instate Inmate Count – Alaska Department of Corrections – June, 1995

		COOK INLET PRE-TRIAL		HIGHLAND MOUNTAIN CORRECTIONAL CENTER			MEADOW CREEK CORRECTIONAL CENTER				SIXTH AVENUE JAIL							
	104	403	200	233	53	170	79	66	172	176	108	486	210	113	92	[redacted]		2665
	102	397	189	225	47	164	76	62	165	176	104	466	204	112	88	Maximum Capacity		2577
Day	AMCC	CIPT	FCC	HMCC	KCC	LCCC	MSPT	MCCC	PCC/MED	PCC/MIN	SIXTH	SCCC	WWCC	WWPT	YKCC	Emerg Cap	Total	%
1	82	[redacted]	170	230	46	148	[redacted]	58	[redacted]	174	[redacted]	446	204	69	[redacted]	2665	2555	95
2	82	[redacted]	177	230	46	150	[redacted]	60	170	175	[redacted]	452	204	87	[redacted]	2665	2569	96
3	85	[redacted]	181	231	47	152	[redacted]	60	[redacted]	172	[redacted]	452	204	82	[redacted]	2665	2569	96
4	81	[redacted]	181	230	51	154	[redacted]	60	167	175	[redacted]	452	203	81	[redacted]	2665	2573	97
5	78	[redacted]	180	230	49	151	[redacted]	60	167	174	[redacted]	452	204	84	[redacted]	2665	2554	96
6	78	[redacted]	183	230	52	149	[redacted]	58	166	172	[redacted]	452	204	83	[redacted]	2665	2578	97
7	78	402	167	[redacted]	51	148	[redacted]	62	164	174	[redacted]	452	204	98	[redacted]	2665	2558	96
8	79	[redacted]	172	232	48	148	75	59	164	[redacted]	[redacted]	450	204	94	[redacted]	2665	2574	97
9	79	395	164	232	49	147	78	61	169	174	[redacted]	450	204	97	[redacted]	2665	2530	95
10	79	390	176	231	49	145	73	60	166	[redacted]	[redacted]	450	204	97	[redacted]	2665	2529	95
11	81	393	167	230	50	144	[redacted]	60	164	175	[redacted]	449	204	95	[redacted]	2665	2518	94
12	79	395	162	230	50	142	[redacted]	60	163	175	[redacted]	448	204	94	[redacted]	2665	2516	94
13	76	396	169	228	48	145	78	57	159	[redacted]	101	446	204	80	[redacted]	2665	2479	93
14	77	394	158	228	50	137	[redacted]	57	159	172	105	446	204	80	[redacted]	2665	2468	93
15	80	389	156	227	48	139	[redacted]	55	154	175	98	444	204	91	[redacted]	2665	2456	92
16	79	395	148	228	50	141	[redacted]	55	153	173	103	444	204	94	[redacted]	2665	2465	92
17	92	387	154	228	49	141	76	56	155	175	[redacted]	450	204	94	[redacted]	2665	2483	93
18	89	386	158	228	[redacted]	145	[redacted]	56	154	174	[redacted]	450	204	91	[redacted]	2665	2496	94
19	90	385	157	228	50	146	[redacted]	56	154	174	[redacted]	450	204	94	[redacted]	2665	2497	94
20	88	395	159	228	49	143	[redacted]	56	159	173	[redacted]	450	204	88	[redacted]	2665	2486	93
21	84	395	164	230	47	146	77	63	157	171	[redacted]	450	204	85	[redacted]	2665	2497	94
22	88	[redacted]	162	231	50	148	70	61	159	168	[redacted]	449	204	84	[redacted]	2665	2498	94
23	84	[redacted]	161	228	[redacted]	144	77	60	158	169	[redacted]	447	204	86	[redacted]	2665	2503	94
24	84	394	169	228	52	147	77	59	162	173	[redacted]	447	204	87	[redacted]	2665	2493	94
25	84	396	177	227	51	143	[redacted]	57	163	170	[redacted]	447	204	86	[redacted]	2665	2502	94
26	85	399	169	226	[redacted]	144	[redacted]	58	163	170	[redacted]	447	204	82	[redacted]	2665	2500	94
27	88	394	165	224	[redacted]	144	[redacted]	64	162	170	[redacted]	447	204	80	[redacted]	2665	2491	93
28	88	387	162	229	52	143	[redacted]	64	159	175	[redacted]	447	200	80	[redacted]	2665	2488	93
29	85	390	163	229	[redacted]	143	[redacted]	64	166	174	91	447	200	81	[redacted]	2665	2488	93
30	84	395	160	229	[redacted]	141	[redacted]	65	166	174	100	447	200	81	[redacted]	2665	2483	93
31																2665	0	0
AVG	82.86	396.733	166.367	229.1	50.1333	145.267	80.7333	59.3667	162.333	173.2667	114.067	448.633	203.567	86.7667	113.667	2665	2512.9	94
10 day	0	0	0	0	1	0	6	0	0	0	0	0	0	0	396	2665		
30/90	0	42	0	2	27	0	56	0	62	0	77	0	0	0	90	2665		

Instate Inmate Count – Alaska Department of Corrections – September, 1996

		COOK INLET PRE-TRIAL		HIGHLAND MOUNTAIN CORRECTIONAL CENTER				MEADOW CREEK CORRECTIONAL CENTER			SIXTH AVENUE JAIL					[redacted]	
	104	403	200	233	53	170	85	66	172	176	108	486	230	113	92	[redacted]	2691
	102	397	189	225	47	164	82	62	165	176	104	466	224	112	88	Maximum Capacity	2603
Day	AMCC	CIPT	FCC	HMCC	KCC	LCCC	MSPT	MCCC	PC/MED	PCC/MIN	SIXTH	SCCC	WWCC	WWPT	YKCC	Emerg. Cap.	Total	%
1	95							64					225	107		2691	2895	108
2	93							64					226	104		2691	2890	107
3	92							64					226	104		2691	2895	108
4	94							64				462	224	107		2691	2900	108
5	92							64		175			224			2691	2904	108
6	91							63					224			2691	2911	108
7	93							64					224			2691	2917	108
8	94							64					224			2691	2924	108
9	94				52			63					224	112		2691	2928	109
10	91							62						102		2691	2918	108
11	96							62						105		2691	2910	108
12	94							62						102		2691	2888	107
13	94							62						98		2691	2911	108
14	100							61								26901	2943	109
15								63								2691	2933	109
16								63								2691	2939	109
17														112		2691	2941	109
18																2691	2919	108
19	102															2691	2934	109
20	99															2691	2930	109
21	102				50											2691	2919	108
22	102				50			65								2691	2922	109
23	102			232	50			65								2691	2925	109
24					49			65		175				108		2691	2897	108
25	101			221	49			64		175				105		2691	2865	106
26	99			221	52			65						105		2691	2875	107
27	101			220				65		175				108		2691	2874	107
28	100			227				66		171				109		2691	2884	107
29	97			224				65		174				108		2691	2883	107
30	97			224	51			65		174				107		2691	2879	107
31																2691	0	0
AVG	98.07	428.00	232.23	233.07	55.37	203.43	99.47	64.27	240.30	175.57	137.20	495.60	231.03	110.13	104.63	2691	2908.37	108
10 day	0	124	89	0	0	59	58	0	394	0	125	25	20	0	839			
30/90	10	90	89	36	58	90	79	13	90	0	90	89	29	15	90			

KEY — Prisons under capacity; Prisons at maximum capacity; Prisons over emergency capacity and accruing fines

Instate Inmate Count – Alaska Department of Corrections – September, 1996

Day	AMCC	CIPT (Cook Inlet Pre-Trial)	FCC	HMCC (Highland Mountain Correctional Center)	KCC	LCCC	MSPT	MCCC (Meadow Creek Correctional Center)	PC/MED	PCC/MIN	SIXTH (Sixth Avenue Jail)	SCCC	WWCC	WWPT	YKCC	Emerg Cap	Total	%
	104	403	200	233	53	170	85	66	172	176	108	486	230	113	92	Emergency Capacity		2691
	102	397	189	225	47	164	82	62	165	176	104	466	224	112	88	Maximum Capacity		2601
1	95	426	224	234	64	205	94	64	244	176	146	480	225	107	102	2691	2895	108
2	93	426	222	233	61	203	100	64	250	176	135	480	226	104	103	2691	2890	107
3	92	426	226	233	60	204	101	64	250	176	140	480	226	104	103	2691	2895	108
4	94	435	226	236	62	204	101	64	248	176	136	482	224	107	108	2691	2900	108
5	92	430	229	240	59	205	102	64	245	175	131	490	224	118	107	2691	2904	108
6	91	427	220	240	59	206	101	63	234	176	184	492	224	117	107	2691	2911	108
7	93	426	234	236	58	204	98	64	233	176	186	491	224	116	108	2691	2917	108
8	94	432	234	236	64	205	101	64	238	176	138	489	224	116	113	2691	2924	108
9	94	442	236	236	52	205	102	63	246	176	138	490	224	112	111	2691	2928	109
10	91	431	231	238	59	205	101	62	250	176	134	494	233	102	111	2691	2918	108
11	96	431	236	238	56	204	98	62	235	176	135	496	236	105	107	2691	2910	108
12	94	438	230	236	64	204	87	62	242	176	127	496	233	102	105	2691	2886	107
13	94	440	234	234	66	205	89	62	235	176	144	496	234	98	103	2691	2911	108
14	100	424	232	238	60	204	100	61	244	176	153	496	234	116	103	2691	2943	109
15	105	430	231	238	67	203	101	63	251	176	128	496	234	116	104	2691	2933	109
16	105	432	227	237	58	202	102	63	249	176	136	496	239	113	107	2691	2939	109
17	109	435	228	236	67	201	89	67	240	176	146	496	234	112	107	2691	2941	109
18	106	420	228	235	66	198	88	67	247	176	144	498	234	116	103	2691	2919	108
19	102	421	230	236	64	196	98	67	250	176	146	490	234	116	107	2691	2934	109
20	99	420	236	236	63	204	102	67	239	176	140	498	234	113	113	2691	2930	109
21	102	426	234	234	50	208	99	66	244	176	123	497	236	120	106	2691	2919	108
22	102	426	236	233	50	205	100	65	242	176	134	497	234	116	108	2691	2922	109
23	102	430	238	232	50	203	99	65	240	176	136	497	234	116	106	2691	2925	109
24	104	427	231	235	49	201	100	65	233	175	131	497	234	108	104	2691	2897	108
25	101	428	231	221	49	201	89	64	231	175	131	497	234	105	98	2691	2865	106
26	99	431	232	221	52	202	97	65	234	176	132	497	234	105	98	2691	2875	107
27	101	422	236	220	66	203	99	65	231	175	122	506	234	108	96	2691	2874	107
28	100	413	246	227	66	203	102	66	232	171	124	506	231	109	96	2691	2884	107
29	97	420	242	224	64	205	108	65	225	171	127	506	233	108	96	2691	2883	107
30	97	426	244	224	51	205	99	65	222	174	134	506	233	107	97	2691	2879	107
31																2691	0	0
AVG	98.07	428.00	232.23	233.07	55.37	203.43	99.47	64.27	240.30	175.57	137.20	495.00	233.03	110.13	104.63	2691	2908.17	108
10 day	0	124	89	0	0	59	98	0	394	0	125	25	20	0	839			
in 90	10	90	89	36	58	90	79	13	90	0	90	89	29	15	90			

KEY: Population under capacity | Population at maximum capacity | Population over emergency capacity

Instate Inmate Count – Alaska Department of Corrections – February 1997

	104	403	200	233	53	170	85	66	172	176	108	486	230	113	92		2691
	102	397	189	225	47	164	82	62	165	176	104	466	224	112	88	Maximum Capacity	2603
Day	AMCC	CIPT	FCC	HMCC	KCC	LCCC	MSPT	MCCC	PC/MED	PCC/MIN	SIXTH	SCCC	WWCC	WWPT	YKCC	Emerg. Cap.	Total	%
1				226												2691	2990	111
2				226						175				112		2691	3012	112
3				229										110		2691	3015	112
4				225						175				112		2691	3004	112
5				226						175						2691	3034	113
6				231												2691	3051	113
7				231										111		2691	3034	113
8				231												2691	3040	113
9				229												2691	3015	113
10				227												2691	3022	112
11				229												2691	3004	112
12																2691	3009	112
13										175						2691	2992	111
14				232						174						2691	3011	112
15								65								2691	3014	112
16								65								2691	3004	112
17				231				65								2691	3008	112
18				230				65								2691	3011	112
19				230				64								2691	3004	112
20								64								2691	3000	111
21								63		173						2691	3021	112
22								63		174						2691	3021	112
23								63		174						2691	3021	112
24								63						112		2691	3025	112
25								63		173				110		2691	3015	112
26														107		2691	3005	112
27				231												2691	3014	112
28				231												2691	2999	111
29																		
30																		
31																		
AVG	117.14	427.36	236.75	231.21	58.09	204.68	94.32	66.21	240.89	175.43	138.71	543.57	234.89	116.93	127.82	2691	3014.86	112
10 day	66	274	239	0	15	227	51	1	550	0	278	178	171	2	34			
30/90	67	90	90	17	49	90	83	27	90	0	90	90	90	33	87			

KEY — Prisons under capacity; Prisons at maximum capacity; Prisons over emergency capacity and accruing fines

Instate Inmate Count - Alaska Department of Corrections – February 1997

	104	403	200	233	53	170	85	66	172	176	108	466	230	113	92	Emergency Capacity	2691
	102	397	189	225	47	164	82	62	162	176	104	466	224	112	88	Maximum Capacity	2603
Day	AMCC	CIPT	FCC	HMCC	KCC	LCCC	MSPT	MCCC	PC/MED	PCC/MIN	SIXTH	SCCC	WWCC	WWPT	YKCC	Emerg.Cap. Total	%
1	116	425	239	226	59	200	100	70	238	176	167	534	234	116	133	2691 2990	111
2	114	409	237	226	61	201	103	79	239	175	169	536	236	112	126	2691 3012	112
3	114	430	241	226	62	200	103	69	243	176	164	534	234	110	124	2691 3015	112
4	116	433	243	225	56	197	97	69	242	175	163	540	234	112	122	2691 3004	112
5	118	437	244	226	54	199	96	69	242	175	152	540	234	114	128	2691 3034	113
6	117	422	239	231	62	199	100	68	242	176	154	548	234	116	131	2691 3051	113
7	118	418	237	231	64	205	99	68	237	176	145	549	234	111	131	2691 3034	113
8	117	424	242	231	61	200	98	68	238	176	151	548	234	114	140	2691 3040	113
9	118	424	239	229	57	198	95	67	238	176	154	548	236	121	137	2691 3035	113
10	114	411	242	227	55	200	98	67	236	176	156	546	234	119	130	2691 3022	112
11	115	419	241	229	56	198	96	67	235	176	149	542	234	120	133	2691 3004	112
12	114	420	242	234	58	199	96	67	240	176	138	541	234	119	127	2691 3009	112
13	113	423	237	233	53	198	92	67	240	175	139	541	234	119	123	2691 2992	111
14	117	423	238	232	56	201	96	60	243	174	141	540	238	121	123	2691 3011	112
15	119	413	243	233	56	201	99	65	246	176	124	540	236	120	127	2691 3014	112
16	115	418	240	233	58	203	97	65	243	176	122	545	238	120	125	2691 3004	112
17	117	428	241	231	59	201	91	65	235	176	128	540	238	121	134	2691 3006	112
18	116	434	239	230	63	207	91	65	236	176	132	539	237	125	135	2691 3011	112
19	115	431	237	230	58	206	91	64	241	176	131	539	236	123	133	2691 3004	112
20	112	440	220	237	56	206	91	64	236	176	138	539	235	118	135	2691 3000	111
21	113	432	223	237	57	210	90	63	240	173	143	540	235	117	130	2691 3021	112
22	120	435	233	236	57	209	92	63	243	174	126	544	235	119	131	2691 3021	112
23	120	432	237	235	58	215	89	63	242	174	132	554	232	117	136	2691 3021	112
24	120	439	236	236	60	214	91	63	239	176	133	554	234	112	132	2691 3029	112
25	121	426	235	235	60	214	91	63	242	173	128	552	233	110	129	2691 3015	112
26	122	426	233	234	62	210	90	66	237	176	130	554	234	107	135	2691 3006	112
27	116	427	238	231	62	212	92	66	242	176	125	544	233	115	130	2691 3014	112
28	116	427	236	231	63	213	92	62	241	176	128	546	234	114	134	2691 2999	111
29																	
30																	
31																	
AVG	117.14	427.36	236.75	231.21	58.89	208.68	94.32	66.21	240.89	175.43	140.71	544.57	244.89	116.91	127.82	2691 3014.82	112
10 day	96	274	239	0	15	227	51	1	520	0	278	178	171	2	34		
30/90	67	90	90	17	49	90	83	27	90	0	90	90	90	41	87		

Persons under capacity | Persons at maximum capacity | Persons over emergency capacity and awaiting move

Oceanview/Old Seward Community Council
P.O. Box 110045
Anchorage, AK 99511

March 11, 1997

Representative Joe Green
House Judiciary Committee
Alaska State Legislature
Juneau AK

Dear Representative Green;

Thank you giving us the opportunity to testify at Monday's Judiciary Committee hearing on House Bill # 53. The Oceanview/Old Seward Community Council is appreciative of your efforts at ensuring that House Bill #53 will be modified in order to protect the public's interest. Our Council would like House Bill #53 amended to encourage DOC to evaluate all options in order to reduce the prison overcrowding problem and give DOC enough flexibility to be able to pick the best solution (or solutions) for the state.

In order to further these objectives, the Council requests that the following Amendments be added to House Bill #53:

In order to promote competition in providing services:
Page 3, line 29
Change "no more than one agreement " to "one or more agreements"
Page 4, line 11
Change "500" to "100"

To insure cost savings to the State and the best use of limited funds:
Page 5, following line 19
Insert new paragraphs to read:
"(1) may not be constructed under the authority given in this Act unless
(A) before construction planning is begun, the commissioner of corrections first conducts a feasibility study, including a cost-benefit analysis, that examines various methods available to the state for relieving or eliminating the state's prison overcrowding; and
(B) the feasibility study conducted under (A) of this paragraph demonstrates that construction and operation of the correctional facility described in (a) of this section offers a positive cost/benefit ratio when

compared to comparable state correctional facilities and is otherwise feasible to relieve or eliminate overcrowding of existing correctional facilities;"

"(2) may not be constructed under the authority in this Act unless, before construction planning is begun, the commissioner of corrections first conducts a study, and the study demonstrates that construction of the correctional facility described in (a) of this section will result in a saving to the state of at least 25% when compared to construction of the facility by the state using the usual and customary state construction practices;"

Renumber the following paragraphs accordingly

Page 5, line 23, following "capacity;";
Insert a new paragraph to read:
"(1) may not be constructed for operation by a contractor under the authority given in this Act unless, before construction planning is begun, the commissioner of corrections first conducts a study, and the study demonstrates that operation of the correctional facility described in (a) of this section will achieve saving to the state of at least 20% when compared to operation of the correctional facility by the Department of Corrections;"

Renumber the following paragraphs accordingly.

To insure that only Alaska's prisoners are housed in the facility:
Page 5, line 24, following "(3)"
Insert "may not be used to house prisoners not convicted in a court of this state; and (4)"

To insure that the State has flexibility to deal with changing needs/circumstances:
Page 5, line 24:
Delete "temporarily"

Page 5, line 28, following "contractor":
Insert ";or
(C) the state determines that it is in the best interests of the state for the correctional facility to be operated by the state or by the political subdivision or public corporation of the state"

These Amendments will be discussed at our Community Council meeting and teleconference on March 12th. Thank you for your assistance.

Sincerely,

Julie Olsen

Julie Olsen
President
Oceanview/Old Seward Community Council
345-6575 (hm.)
786-5265 (wk.)

South Anchorage Coalition

FAX

Date: 3/11/97

TO: Rep. Joe Green

Fax # (907) 465-4316

Sue Here are some new proposals. What do you think? BK

FROM: B.K. Powell
Fax # (907) 345-5542
Tel (907) 345-4854
e-mail: amunra@alaska.net

RE: HB 53 AMENDENTS

Message:

After attending the public forum regarding HB 53, our group would like to submit additional suggested amendments to HB 53. They are as follows:

Page 5, following line 19:

Insert new paragraph to read:

"(1) May not be constructed under the authority given in this Act unless
(A) before construction planning is begun, the commissioner of corrections first conducts a feasibility study, including a cost-benefit analysis, that examines various methods available to the state for relieving or eliminating the state's prison overcrowding; and
(B) The feasibility study conducted under (A) of this paragraph demonstrates that construction and operation of the correctional facility described in (a) of this section.
(i) Offers a positive cost benefit ratio when compared to comparable state correctional facilities.
(ii) Is otherwise feasible to relieve or eliminate overcrowding of existing correctional facilities

Renumber the following paragraphs accordingly

Page 5, following line 19:

Insert a new paragraph to read:

25%

(1) May not be constructed under the authority given in this Act unless, before construction planning is begun, the commissioner of corrections first conducts a study, and the study demonstrates that construction of the correctional facility described in (a) of this section will result in a saving of a least 25 percent when compared to construction of the facility by the state using the usual and customary state construction practices"

Renumber the following paragraphs accordingly.

Page 5, line 23, following the word "capacity;"

Insert a new paragraph to read:

20%

"(3) May not be constructed for operation by a contractor under the authority given in the Act unless, before construction planning is begun, the commissioner of corrections first conducts a study and the study demonstrates that operation of the correctional facility described in (a) of this section will achieve a saving to the state of at least 20 percent when compared to operation of a correctional facility by the Department of Corrections;"

Renumber the following paragraph accordingly.

AK only

Page 5, line 23, following "(3)":

Insert "may not be used to house prisoners not convicted in a court of this state; and
(4)"

Page 5, line 24:

Delete "temporarily"

Page 5, line 28, following "contractor"

Insert ": or

(C) The state determines that it is in the best interests of the state for the correctional facility to be operated by the state or by the political subdivision or public corporation of the state."

If you need further information or have questions, please do not hesitate to contact me.

Regards:

B.K. Powell
South Anchorage Coalition

CHARLES CAMPBELL
3029 Douglas Highway • Juneau, Alaska 99801
phone (907) 586-5723 • FAX (907) 586-1252

March 11, 1997

Representative Joe Green, Chair
House Judiciary Committee
House of Representatives
State Capital
Juneau, Alaska 99801

Re: House Bill 53

Dear Representative Green:

Because of a conflict I was unable to attend the hearing on HB 53 in House Judiciary yesterday Monday the 10th. My understanding is that the bill will again be taken up tomorrow, but that no further public testimony is scheduled. I am a past Director of Corrections in Alaska with forty-seven years involvement in the criminal justice field, but given the circumstances I will not count on being able to testify.

For this reason I write this letter to express my objection to HB 53 and to the whole notion of imprisonment for profit. It is certainly not a new idea; it remains a fundamentally cynical idea in the deepest sense.

Although HB 53 is technically improved from its predecessor, it proposes an idea that cannot be good for Alaska over the long term. The question of taxes now arises, which quite probably eliminates any significant financial advantage the idea of prison privatization might offer.

Last April former Commissioner Prewitt, who apparently had been engaged by the mercenary interests who want to get into the private prison business in Alaska, wrote a "My Turn" column that appeared in the *Juneau Empire*. I submitted a response to the *Empire*, but three weeks passed, as did the timeliness of my article- therefore I withdrew it. Although that piece was addressed to last year's private prison bill, the main points made are relevant to HB 53. I enclose a copy. Moreover, I will send copies of this letter and the article to other members of the committee and perhaps to other members of the Legislature.

Please let me know if I can be of any service to you.

Sincerely,

C Campbell

cc: Members, House Judiciary and Finance Committees
Representative Elton
Representative Hudson

Relevant to House Bill 53

Proposed My Turn column by Charles Campbell, submitted to the Juneau Empire in April of 1996, but withdrawn by the writer after demise of the privatization bill in the House.

There is something deeply disturbing to me about mercenary interests stepping forward with such zeal to exploit the current tragedy of America's present overuse of imprisonment. Imprisonment for profit has become a nationwide phenomenon and it isn't a pretty sight. Multi-national corporations, like Bechtel, having smelled out the profits to be made, are gearing up to compete with Correctional Corporation of America and Wackenhut, current leaders in America's remarkable new growth industry. And now, there is a move afoot in the State Legislature to set up a private prison business here in Alaska, over the objections of the Department of Corrections.

Let it be acknowledged that crime is a cause for serious concern in America. It is not so serious, however, as to justify our having the highest incarceration rate on earth, a 150% increase in fifteen years. (Sad to say, Alaska's incarceration rate is among the highest in the nation.)

Over-imprisonment is not a solution. It takes many thousands of criminally inclined young men off the streets for a while, (the majority of them not convicted of violent offenses.) It does nothing toward making them better citizens; it does quite the opposite. Over reliance on imprisonment inevitably exacerbates the problem of crime.

A couple of weeks ago in this space, Frank Prewitt, a former Commissioner of Corrections and now a consultant to Wackenhut's private imprisonment effort, urged *privatization* as the best means of economically addressing the serious problem of overcrowding in Alaska's prisons. Should this advice be followed it would undoubtedly mean adoption of a bill in the Legislature that would require the State to enter into a lease-purchase agreement with a private corporation for construction and operation of a one thousand bed prison in Anchorage. Mr. Prewitt and the bill's sponsor, Representative Elden Mulder, tell us that the state would save money by this approach. Where short-term monetary costs are concerned, it probably would. But let's face it; in the end we usually get what we pay for, and when it comes to private prisons, we aren't likely to get a bargain. Throughout their long and dreary history, private prisons have never been a bargain.

It is a mistake to ignore the lessons of history, especially when they are so clear and applicable, as they are where imprisonment-for-profit is concerned. We need to remember the appalling results and tragic legacy of turning imprisonment over to profit-seeking interests at the end of the Civil War.

But let's talk about today, here in Alaska. I should think the last thing we would want to do is authorize construction of a thousand bed facility and then turn it over to a company whose profits would depend on keeping it filled up. The crucial fact to remember in this matter is that *recidivism* is a plus factor for the private imprisonment industry. Moreover, private corporations, which do business with the State, tend to have P.R. resources and high-paid lobbyists. It isn't likely these six-figure-per-year kinds of folks will be using their skills and influence toward advancing legislation that might reduce the incidence of crime in Alaska.

Margaret Pugh, Alaska's entirely competent Commissioner of Corrections, has developed a plan for addressing the very real and immediate problem of prison over-crowding. It is a reasonable plan. Under the circumstances, I favor it. But we will never be able to build our way

out of the problem of prison over-crowding. What's most needed is an arrangement to seek out the factors that are contributing to such rampart over-imprisonment. My belief is that we need to revamp the sentencing statues of the State, making sure dangerous offenders stay confined a long time, and that non-dangerous offenders spend less time in conventional institutions. We need to make expanded use of alternatives to imprisonment for offenders who are not dangerous. We need to give high-priority support to drug treatment and alcohol abuse programs, and other kinds of preventative measures. We need to do whatever it takes to have better schools and better resources in the community for young people, and we need to do everything we can to encourage better parenting for our children.

It has been said so often, and so often ignored, that it sounds like a hollow cliche. I will say it again. We need to make a major investment in addressing the root causes of crime.

ALASKA STATE LEGISLATURE
HOUSE OF REPRESENTATIVES

CHAIR,
LEGISLATIVE COUNCIL

CO-CHAIR,
HOUSE SPECIAL COMMITTEE
ON MILITARY AND
VETERANS' AFFAIRS

CO-CHAIR,
MILITARY AFFAIRS FOR
ANCHORAGE CAUCUS

REPRESENTATIVE ELDON MULDER
DISTRICT 23 MULDOON-FT. RICHARDSON

Sponsor Statement

House Bill 53

by

Representative Eldon Mulder

Republican, District 23
Muldoon & Fort Richardson

Alaska prisons are overcrowded -- and the problem is growing. (See attached chart)

It is obvious that we need additional prison capacity in Alaska. The Department of Corrections reports that it is regularly exceeding maximum and emergency capacities under the Cleary Final Settlement Agreement by over 100 prisoners. Since February of 1995, Alaska has had over 200 prisoners in a private facility in Arizona. In FY98 we will enhance the Arizona economy by about $5 million and employ Arizonans to guard Alaskan prisoners in a prison in Florence, Arizona.

State or federal courts have not taken over the Alaska prison system as they have in many other states. However, we are in contempt of the Court supervised Cleary Agreement. Fines have been assessed, although not yet paid. The potential jeopardy is the Court will direct the fines be paid to specific prisoner activities or will begin to mandate release of prisoners to solve the overcrowding. Neither option is acceptable.

We can solve this problem. While we solve it, we can:

- Improve Alaska's economy by $5 million a year
- Provide construction jobs

February 6, 1997

ALASKA STATE CAPITOL; JUNEAU, AK 99801-1182 • PHONE (907) 465-2647 • FAX (907) 465-3518
716 W. 4TH AVENUE; ANCHORAGE, AK 99501-2133 • PHONE (907) 258-8193 • FAX (907) 258-5511

- Provide good long-term correctional jobs
- Reduce per day cost of incarceration

The question is how to expand prison capacity efficiently, economically, and in the context of limited available state capital funds. We have a few options to resolve our prison capacity problem.

1. Expand our current system.
2. Continue to send prisoners outside.
3. Encourage the private sector to build a prison.

We could continue to add space to our small and inefficient prisons with daily costs averaging over $105 per inmate day. That would increase the number of state employees and require significant state dollars for capital. State prisons must compete with schools, roads, harbors and deferred maintenance funding. This leaves preciously few state capital dollars available to build a new state prison.

Sending prisoners out of state is less costly. However, the solution is only temporary. The types of prisoners we can send outside are limited in number. Our Courts have frowned on exporting prisoners as a permanent solution to capacity problems. Out-of-state prisons bring transportation and management challenges greater than in state prisons and take $5 million out of Alaska's economy.

A private facility provides many advantages to Alaska:

- Demonstrated ability to operate at or below the cost of comparative public facilities
- Ability to move quickly and economically on construction
- Efficiencies in operations through management innovations and competitive pressure
- A real opportunity to bring $5 million in jobs and purchasing back to Alaska

The House Finance Sub-Committee on Corrections held interim hearings on the topic of prison privatization. It found over twenty-five 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 maintaining security for residents of the state.

The cost advantage of a private facility can be significant. Studies show that private prisons are less expensive to operate than state run facilities and are just as safe. A National Conference of State Legislatures study in January of 1996 reported private prisons in Texas saved 14% and in Louisiana saved 8%.

There is a strong possibility that the cost per inmate day of a private facility in Alaska will be closer to the cost of the Arizona facility than Alaska's average cost. The cost per inmate day at the Arizona facility is about $70.00. Alaskan facilities average cost per inmate day is about $105.00.

Bringing competition into the market place offers an opportunity to reduce operating costs in our Department of Corrections. Tennessee, a state with both public and private prisons, found that private prisons have a very positive effect on state facilities. The new, competitive market place forced the state system to improve or change many traditional management practices. The result has been healthy savings for the state.

A private prison resolves the problem of the state front-ending the costs of construction. The private contractor will finance the facility then lease it to the state as it is used. A private sector facility will avoid the 25% to 45% extra cost incurred in public construction projects. It will be operated more efficiently than our current prisons.

A private contractor can bring new ideas to our state corrections system. If the prison happens to end up part of a national chain, it will bring the experience gained in many facilities in other states. 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 Alaska's environment. A private sector contractor could begin serving prisoners as soon as 18 months after contract award and securing property for the facility.

HB 53 encourages the Department of Corrections to address the capacity and efficiency problems by acquiring one new prison by lease or lease/purchase from a private contractor or from a private contractor through a municipality.

A new private prison facility built under a lease/purchase agreement will:
1. Include a maximum of 1000 beds
2. Be designed to allow expansion
3. Not exceed a capital cost of $90,000,000 and total payment of $180,000,000
4. Be constructed under a project labor agreement (PLA) to help improve prospects of "Alaska hire"
5. Have correctional officers with the same training as state correctional officers

A new private prison facility acquired under a lease agreement:
1. Will include between 500 and 800 beds
2. May be leased through a municipality
3. Must be operated by a private contractor

4. Cannot exceed a total lease cost of $150,000,000
5. Will have correctional officers with the same training as state correctional officers

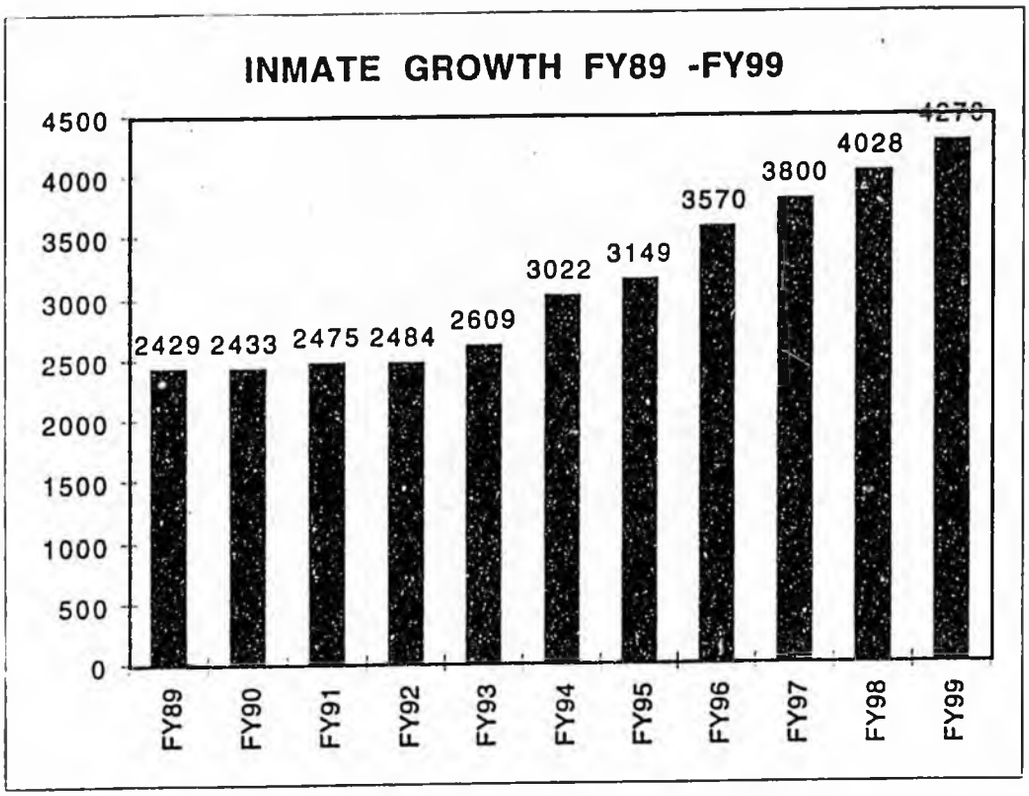
HB 53 responds to concerns raised by public employees at the interim hearings. It requires that the correctional officers in the private institution be trained to the same standards as state correction officers. We believe that this provision will protect the integrity of the prison system while taking advantage of lower costs and innovative management techniques.

The specific location of the new prison is left to the discretion of the Department of Corrections. We expect the Department will respect the planning and zoning requirements of local governments. There is precedent for this working relationship in the process the Department uses in acquiring new community residential centers. We expect the Department to consider efficiency of operation and community concerns before it makes a final decision on locating the new prison.

HB 53 also clarifies state law to make specific the implied power to contract for correctional services in and out of state and to contract with a municipality for prison services.

HB 53

- Allows the acquisition of only one new private prison
- Provides more prison capacity at a lower cost to the state, both in the operating and capital budgets
- Creates construction jobs in Alaska
- Creates on going prison jobs for Alaskans
- Keeps $5 million of Alaskan money in Alaska
- Brings an innovative opportunity to address Alaska's needs
- Protects the public



The Chart reflects all inmates including state institutions, out-of-state prisons, CRCs, and treatment beds. The source for the data is the Department of Corrections and Legislative Finance

LEGAL SERVICES

DIVISION OF LEGAL AND RESEARCH SERVICES
LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA

(907) 465-3867 or 465-2450
FAX (907) 465-2029
Mail Stop 3101

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

MEMORANDUM January 24, 1997

SUBJECT: House Bill 53, authorizing contracted operation of correctional facilities, and approving a lease or similar agreement to use or a lease-purchase or similar use-purchase agreement for construction and operation of a new correctional facility -- sectional analysis (Work Order No. 20-LS0194\K)

TO: Representative Eldon Mulder
ATTN: Dennis DeWitt

FROM: Jack Chenoweth
Legislative Counsel

Current law authorizes the commissioner of corrections to enter into agreements with third parties to provide certain rehabilitative and treatment services in conjunction with the department's detention responsibilities. The bill contains provisions revising and expanding that authority and annuls an administrative regulation that limits the use of private third party contractors.

The measure also contains permanent law and uncodified provisions authorizing use of leases or similar agreements to use space within municipal correctional facilities, authorizes development of a new correctional facility through a lease-purchase agreement or similar mechanism, and sets limits and conditions on use of each of the two mechanisms.

Revision and expansion of contracting authority:

Bill section 1: The language changes are to AS 33.30.031(a). The proposed changes necessitate a reformatting of material within the paragraph. Proposed paragraph (a)(1) carries forward a limitation of the last sentence of the subsection wherein the commissioner may contract with an agency for detention and confinement services if the degree of custody, care, and discipline to be provided meet standards required by state law. Proposed paragraphs (a)(2) and (3) eliminate the distinction in law as to use of a private or public agency as a contractor, eliminate a presumption that limits use of contracted facilities to those within the state, and generally authorizes use of facilities provided by an agency under contract, extending beyond rehabilitation and treatment to add detention and confinement, so long as the security of the facility is not inconsistent with prisoner custody classification requirements.

Bill section 6 annuls a regulation based on current law limiting the department's use of contract facilities to rehabilitation and treatment-related facilities and for incarceration for offenses punishable as misdemeanors.

Space use arrangements and their financing:

Bill section 2: Existing law, AS 33.30.041, spells out a relationship between the state, as lessor of space within a correctional facility, and a municipality, as the lessee. This section addresses the situation in which the parties stand in an opposite relationship. It proposes to add a new section, AS 33.30.043, under which the commissioner may lease, as the lessee, space within, arrange for the use of space within, or use and operate, a correctional facility within a municipality of the state. Subsections (b) and (c) set out particular provisions that must operate for the benefit of the department and the prisoners for which it is responsible within an agreement to lease.

Bill section 3: This uncodified provision supplements the permanent law change in which the state may agree to use space within a correctional facility operated by another. Subsection (a) of the bill section authorizes the state's entry into no more than one agreement for lease or use of space, in a facility operated by a third-party contractor, subject to the particular conditions and constraints set out in (b) - (d).

Bill section 4: AS 36.30.085 spells out specific requirements under which the state may use a lease-purchase or similar use-purchase agreement in order to finance a new facility to which the state eventually obtains title. Subsection (a) of this bill section, offered as uncodified law, 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. Subsection (b) sets out particulars applicable to other facets of the project including population housing perspectives and a prohibition on direct state operation of the correctional facility with specific exceptions. Subsection (c) permits a division of the lease-purchase or use-purchase agreement into segments, dividing the construction phase from the operating phase and including a requirement within the operating phase for periodic rebidding or reoffering of the agreement in five year blocks in order to meet federal tax code concerns. Subsection (d) concerns inclusion of a resident hire incentive as a part of bid evaluation. Subsection (e) 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. Subsection (f) formally declares that the provision "constitutes the notice and approval required by AS 36.30.085" for lease-purchase agreements that are entered into by the state.

Bill section 5: The bill section imposes a requirement that, in any correctional facility to be constructed, the facility is to be constructed under a public construction project labor agreement setting out particular requirements to be incorporated into the agreement.

*

A choice of space use financing arrangements is required. Persons interested in the legislation should note that, as between **bill section 3** (specifically authorizing lease or use of space within the facility of another) and **bill section 4** (giving legislative approval of lease-purchase or similar use-purchase agreement), section 3(e) and section 4(g), taken together, authorize state involvement in just one correctional facility, and that the choice of the use of one method--lease or lease-purchase--bars the state's subsequent use of the other--lease-purchase or lease, respectively--to secure subsequent facilities under the uncodified provisions that are a part of this measure.

JBC:jdr
97-044.jdr

345-4854
" 5542
BK Powell

HB53

3/6/97

Corrections std
Nation std

(1) → operation std. for corrections

(2) → competitive bidding process

(3) → site selection committee

refers to "municipalities" only

§3 Operation to
3d party
should be bidder
RFP

How does State monitor
no review after 5 years

"Public process"

33.30.041
33.30.025

FORUM / LETTERS

Private prisons make good economic sense

By REP. ELDON MULDER

It's time to look at the economics of what we are doing as a state. We must be driven by what is cost-effective — what opportunities let us stretch scarce state dollars. Private prisons fit that description.


Mulder

Private prisons are not a new idea to over 30 states. They have been very successful overall, with significant savings to the states while maintaining a high level of public safety. The National Conference of State Legislatures, the state of Tennessee and the Legislative Budget Committee of the state of Washington have published reports on private prisons in the past year. Each study found cost savings and quality services offered by private sector-operated prisons. Alaska's Department of Corrections is currently using a privately owned prison in Arizona for 206 Alaska prisoners.

Assertions that private prisons do not save money are not supported by the facts. Assertions that private prisons are more dangerous to the public are simply untrue, as are assertions that private prisons treat their employees poorly.

• **COST**: The NCSL study reported Louisiana and Texas saved 8 percent and 14 percent respectively. A study in Tennessee showed the private prison 2 percent more expensive but safer than identical public facilities. The Washington state study suggested that keeping the private facility below capacity while keeping the public facility at capacity caused the difference in cost. Tennessee officials believe competition from the private sector had the effect of bringing costs down in public facilities.

• **SAFETY**: The Washington state study asked, "Are the private prisons as safe and secure as the public prisons?" The answer was yes.

COMPASS
POINTS OF VIEW FROM OUR COMMUNITY

• **EMPLOYEE TREATMENT**: Wages, benefits and conditions vary. Some private prison employees are paid higher than their public counterparts, some lower. Some private institutions are organized, some are not. Employees I spoke to at the private prisons seemed happier with their employment conditions than did employees in public prisons I have visited in Alaska.

The key issue is the opportunity to bring competition into a closed market. The Washington state study says that potential savings from privatization would be directly related to competition between private and public facilities within the same prison system. Many employees of the Alaska prison system tell me the same thing. They tell me that they can become more efficient. I believe that the competition will encourage them to do so.

As we look at the opportunity for a private prison in Alaska, we need to consider several factors.

First, the Department of Corrections budget has grown 604 percent in the past 17 years, while population and inflation have grown only 155 percent. The Department of Corrections budget has grown from $119,359,000 in FY 94 to a proposed $138,417,300 for FY 97. That is an increase of $19,058,300 — almost 16 percent in four short years!

I am committed to making our state government more efficient and effective. That is why I have been working for the passage of House Bill 428.

House Bill 428 encourages the Department of Corrections to move toward the use of private sector prisons. That will bring jobs back from Arizona into Alaska — a payroll of almost $6 million. Building a private prison will also bring construction jobs to Alaska. Both of those opportunities are good for Alaskans and our economy.

The other important opportunity offered by a private prison is reducing the cost of incarceration in our state. Today the average cost is $107 per day per inmate. That's over $39,000 a year per prisoner. Reducing the cost per prisoner day only $1 will save $1 million in the department's budget.

Every state that has begun use of private prisons has saved money in its corrections system. Ironically, Alaska spends over $30 per day less to have its prisoners in a private prison in Arizona. That's an annual saving of more than $11,000 per prisoner.

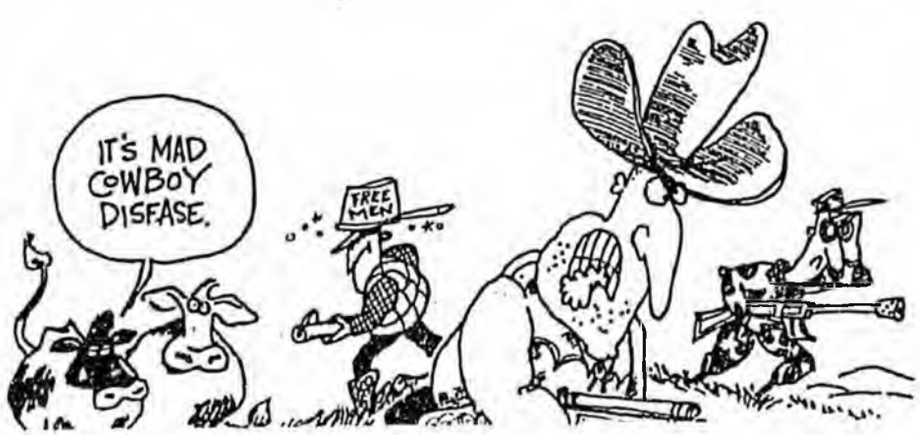
Our system is overcrowded. We are incurring fines every day we exceed our emergency caps, thus far over $1 million. We need more capacity in our prisons.

□ Rep. Eldon Mulder represents District 23, the Muldoon-Fort Richardson area.

Photo radar unduly criticized

I would like to politely enlighten Mr. Erik Heiker about his assertion that "photo radar is the brainchild of Mark Begich, a snollygoster who has tried everything possible to extract additional 'funds' from us." (letter, March 30).

Mr. Begich began investigating photo radar at the persistent requests of his constituents in the University Area Community Council. Over the years, university area residents had considered a variety of measures to alleviate the traffic problems in our area — stop signs, speed bumps, sidewalks, blocking off streets. Photo radar was one measure on which the council reached a consensus and, at the council's request, Mr. Begich pursued the photo radar issue.



What are we teaching our kids?

If we put aside all the no-brainer activities of the mayor and Assembly when they decided to mass-monitor public traffic behavior in school zones, the question that everyone should ask is: Do we want our children to accept living under mass surveillance as normal?

— Robert Furnback
Anchorage

Turn off radar after school

I would like to thank the young man who stood on Northern Lights Boulevard near East High School with a sign warning motorists of the photo radar ahead. This happened on Wednesday, March 27, at 5:50 p.m., well after school hours.

My Turn

Why we should consider privatizing prisons

By FRANK PREWITT

I have been following, with concern, the rapid polarization between proponents of a large, privately operated prison in Anchorage, versus regional expansion of existing state facilities.

In truth, both are needed. In Southcentral Alaska, more than 700 new prison and jail beds are needed by the year 2000; more than 400 additional beds will soon be required to accommodate local demand in north, west, and Southeast Alaska.

This month, eight out of Alaska's 15 facilities are operating at 105 percent over emergency capacity. The "emergency capacity" of our jails and prisons is not an arbitrary number pulled out of the air by an overreaching court. Each prior administration and an assortment of consultants have agreed that operating Alaska's correctional facilities over emergency capacity can result in riot, escape, destruction of public property and loss of life.

During the eighties, the preferred response to all categories of crime was to simply build and staff more state prisons and jails, driving the Department of Corrections' operating budget from $22 million to more than $100 million in less than 10 years. Feeling the birth pangs of the "fiscal gap," and faced with yet another round of prison expansion, the 1991 Legislature said "no" to Correction's capital expansion request. Instead, the department was urged to develop less costly alternatives for low-risk offenders. Translated, this means restricting "hard bed" prison confinement to dangerous offenders and diverting misdemeanants, non-violent felons and low-custody prerelease prisoners to community work service, agricultural farms and other programs designed to compel personal accountability.

By 1993, most misdemeanants and over 12 percent of low-custody prerelease felons were incarcerated in structured community correctional centers run by private companies, at significant savings to the state. But by the fall of 1994, demand for conventional "hard beds" outstripped supply and the state was found in contempt of court for exceeding emergency capacity in most of its facilities.

The department's response was to seek immediate relief by purchasing 200 beds from a private corrections company in Arizona, at half of the cost of the average state-operated bed. With an average annual growth rate of 200 prisoners, the private Arizona beds only provided temporary relief from prison overcrowding. Today, a year and a half later, the Department of Corrections is facing the worst overcrowding in state history and fines accrue at the rate of over $3,000 per day.

So what is the answer? It depends on the question. Corrections cannot, nor should be expected to prevent crime; prevention is a much broader community responsibility.

But Corrections can be counted on to protect the public from people committed to its custody (most of the time), provide resources for individual reform and supervise personal accountability to victims and dependents. As to supply and demand for correctional services, there is no question the latter grossly exceeds the former. The only real question is who will provide the future delivery of correctional services, government or the private sector?

When the State of Alaska builds a prison, the cost of construction is approximately $175,000 per bed; the average operating cost is nearly $107 per day, per bed. A 600-bed state-built and run prison in Anchorage would cost more than $105 million in capital and roughly $20 million per year to operate. Add the operating cost to the cost of amortized capital construction and the price to house one prison for one day rises to over $150. The same privately funded and operated facility would require no state or municipal capital, and would operate at roughly $85 per day.

Expanding private correctional services in Alaska does not have to threaten existing state jobs or diminish the distinguished record of the Department of Corrections; unfortunately, there are plenty of criminals to go around. What is needed is a recognition that prisoner should not consume the lion's share of the state operating budget, and a commitment to place the economic welfare of Alaska above self interest.

oooco

Frank Prewitt was legal counsel to the Department of Corrections under Gov. Sheffield, deputy commissioner under Gov. Cowper and commissioner under Gov. Hickel. He holds a master's degree in corrections from the University of Oregon and a Law Degree from Seattle University. He is currently in private practice and is a consultant to Wackenhut Corrections Corp.

Letters

School district isn't to blame for lost boys

After reading the article on the students lost at Eaglecrest, I must respond. First, I share feelings of great relief and thanksgiving that the boys were found and no one was injured. Next, I ask the "lost boys" to demonstrate honesty in taking responsibility for making the choice to leave the ski area boundary. I also support the school district's response. There was confusion and it's time to examine field trip procedures.

Finally, I urge the parents of these "lost boys" to demonstrate conflict resolution and problem solving skills. Juneau's youth needs to see adults "practice what we preach." If we want and expect less aggression and violence in our community, then we need to model conflict resolution.

I fear growing old in a society where litigation is the first response to a fearful and angry situ-

Banish ignorance on the last, or lost frontier

Charles Dickens wrote one hundred and fifty years ago, "This boy is IGNORANCE, this girl is WANT. Beware them both in all their degree, but most of all beware this boy, for on his brow I see that written which is doom unless the writing be erased. Slander it, deny those who tell it ye, admit for your factious purposes and make it worse, and bide the end!" Don't let Dickens' prophecy live 150 years later. Erase ignorance.

Alaska will not be the last frontier, it will be the lost frontier. And it will be pitiful.

Do not eliminate the budgets for state arts council, public broadcasting and the library book acquisition fund.

Katherine H. Jensen

Give me that old time

Harborview rifle range issue isn't *that* complex

The continuing debate on reopening the Harborview School Rifle Range has been most educational. Over the last couple of years, various school officials and PTA members have admitted their inability to differentiate between the legitimate and illegitimate use of firearms, and to convey that difference to the students in their charge.

Doubtlessly, their admissions of incompetence will not be followed by their resignations, so we may only hope they will read and reread the superb letter (March 25) from Kirk and Denise Radach on this issue.

I can't help but wonder, however, that if our "educators" do not understand right from wrong in the classroom, how do they deal with academic esoterica?

Navin D. Holmberg

Kids' safety is ultimately parents' responsibility

A note of concern about parents and the public school system regarding the article about the four boys lost at Eaglecrest last week.

It seems to me that the ultimate responsibility for a child's safety and education lies with the parent, not the school system.

A parent must teach his child to be responsible for his or her own choices.

Why would a child leave a group if he had been taught safety rules at home?

I hope the parents of these boys reconsider their thoughts of a lawsuit accusing negligence. This may destroy the chance for the rest of our children to enjoy an experience at Eaglecrest.

Assume responsibility for teaching your own child so the public school system will be more effective

myself felt.

I care little about union involvement. I cannot envision myself waving a sign at a rally for a paltry pay raise that would barely buy a sack of groceries each month, but I was there. I resent the newspaper's implication that I was there demanding the Legislature fund a pay raise for me. I was there to remind overzealous legislators what the words "good faith" and "honor" mean. It is unfortunate that so many of them have forgotten that these are the premises upon which our country was founded.

Phyllice Bradner

Grip of the 'iron triangle' is finally released

Prior to the passage of the Tongass Timber Reform Act (TTRA), there existed an alliance between the Alaska

Timber contracts mean jobs to my father, myself

My father and I have a lot in common. He took his sons hunting and fishing as I do. He raised his family in Ketchikan as I would like to. We both own boats. (Actually, he owns a boat, I own a skiff.) We both bought houses in Ketchikan. We are both journeymen, he as a millwright and I as a industrial painter. We both work at the Ketchikan Pulp Mill.

If the timber contract does not go through we will have one more think in common. We both won't have a job. Please extend the timber contract.

Matthew Hemingway
Ketchikan

I'm no 'enthusiast,' but am a trained gun user

Cost of Prisoners Per Day

12/5/96

Dept. of Corrections
Daily Cost Calculations
Based on FY'96 Actuals

Total Institutional Related Costs	$106,611,517
Total Cost Reimbursements	$ (500,101)
Net Cost of Institutions Operations	**$106,111,416**
Daily Cost (Divided by 366)	$ 289,922
Average Daily Population for FY'96	2,754
Daily Cost per Prisoner	$ 105.27
Community Corrections	$ 10,551,033
Daily Cost (Divided by 366)	$ 28,828
CRC Capacity	422
Daily Cost Per Prisoner	$ 68.31
Probation Costs	$ 7,849,792
Daily Cost (Divided by 366)	21,448
Probationers Served	$ 3,165
Daily Cost per Probationer	$ 6.78
Out-of-State Contractual	$ 5,982,322
Daily Cost (Divided by 366)	$ 16,345
Out-of-State Capacity	253
Daily Cost Per Prisoner	$ 64.61
Pt.MacKenzie Rehab Ctr.	$ 1,980,438
Daily Cost (Divided by 366)	5,411
Pt.MacKenzie Capacity	$ 72
Daily Cost per Prisoner	$ 75.15

← 206 Beds ARE ARIZONA PRIVATE Facility

NCSL • LEGISBRIEF

January 1996 Vol. 4, No. 6

PRIVATIZATION OF STATE CORRECTIONS MANAGEMENT

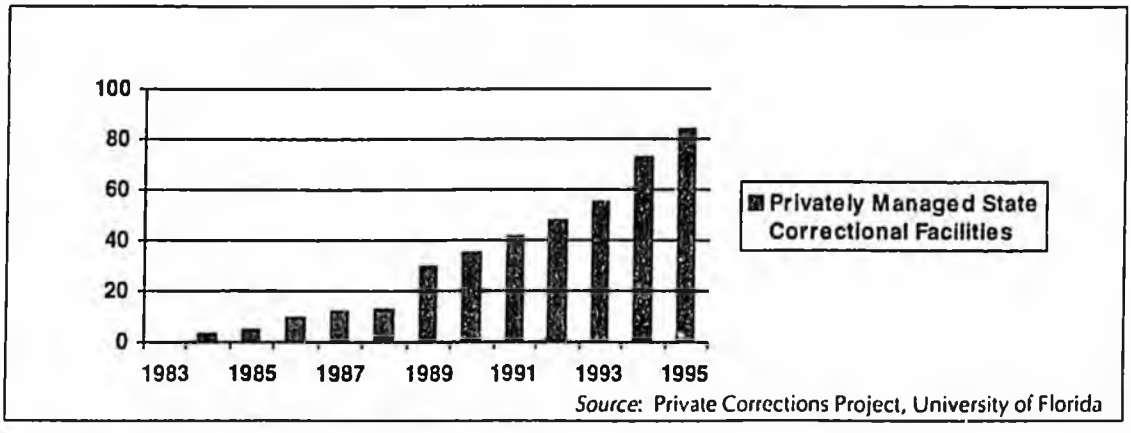
By Elizabeth Pearson and Donna Lyons

Background

Rising corrections expenditures have many state legislatures looking hard at privatization as a cost-savings way of building and operating prisons. Since 1985, the number of incarcerated adults has increased 43 percent. State corrections spending has followed this trend. In 1985, state per capita correction spending was $38.71; in 1992 it was $79.34—a 104 percent increase in seven years. Corrections spending became the fastest growing component of state budget appropriations in 1995, increasing 13.3 percent, on average, from 1994.

Twenty-eight states can contract out for prison management.

Motivated largely by fiscal pressure, 28 states now have legislation enabling their corrections departments to arrange for private management of correctional facilities, or to shift responsibility for management and operation of prison facilities to private prison management corporations. The first initiative was at the federal level, when, in 1984, President Reagan approved private holding cells for illegal aliens in TEXAS. Since then, 20 private prison firms have emerged, managing 84 state facilities in 1995, with a rated inmate capacity of 43,508.



Source: Private Corrections Project, University of Florida

State Action

The latest enabling legislation for prison privatization was passed in CONNECTICUT and OREGON in 1995. Also last year, ARIZONA, FLORIDA, NEW MEXICO and TENNESSEE expanded and clarified their contract requirements for private prison management firms. VIRGINIA passed legislation to privatize regional jail facilities. ILLINOIS remains the only state that specifically prohibits the Department of Corrections from entering into contracts with private companies to manage correctional facilities, although MISSOURI introduced similar legislation in 1995. Some states have enacted laws to regulate "spec" prisons, or private "rent-a-cell" facilities that house inmates from other states, localities or the federal government. States with such regulatory provisions include COLORADO, GEORGIA, KANSAS, OKLAHOMA and SOUTH DAKOTA.

A TENNESSEE evaluation in 1993 compared cost and quality in similar public and private correctional centers. Quality measurements included accreditation factors like health care, treatment, security and how inmates spend their time. The evaluation showed that while the accreditation rating was slightly higher (99.29 compared to 98.78 and 98.88) at the privately

NATIONAL CONFERENCE OF STATE LEGISLATURES

Executive Director, William T. Pound

Denver Office: 1560 Broadway, Suite 700, Denver, Colorado 80202, 303.830.2200

Washington Office: 444 N. Capitol St., N.W., Suite 515, Washington, D.C. 20001, 202.624.5400

run prison than at the publicly managed institution, the average daily operating cost per inmate was also higher for the privately run facility at $33.78 compared to the average $33.18 for the two publicly managed facilities.

Evaluations of private correctional facilities in LOUISIANA and TEXAS have had different results. A privately managed prison, Winnfield Correctional Center in Louisiana, has shown an 8 percent cost savings in its first three years of operation when compared to a publicly run, comparably sized counterpart, Cottonport in Avoyelles Parish. A Texas Sunset Advisory Commission study in 1991 determined whether the contracts entered into by the Texas Department of Criminal Justice resulted in the 10 percent cost savings mandated by Texas law. The evaluation showed a savings of $6.16 per prisoner, per diem, for four 500 bed, privately run facilities—more than a 14 percent cost savings over comparable publicly run facilities.

Pros and Cons

Privatization of correctional facilities remains controversial.

Proponents of privatization cite as advantages of private correctional facilities:

- Competitive forces of the private sector introduced into government monopolies will drive the "price" of services down, reducing state corrections expenditures.
- Innovative private sector management approaches and hiring capabilities allow private firms to offer different services, like creative education programs, expanding opportunities for rehabilitation and involvement to inmates.
- Private firms can offer special incentives to their employees, such as performance-based pay, shares of company stock and profit sharing.
- Private companys' financial stability and insurance policies lessen government liability from lawsuits due to indemnification clauses in their contracts.
- Private firms paying sales and property taxes offer a "hidden rebate" to state and local governments through additional revenue.

Those who oppose privatization initiatives contend:

- Private sector profit motives will encourage lower wages as a means for cost savings, resulting in reduced standards for hiring critical prison employees like corrections officers.
- The prison management "business" is a relatively small market, and lack of competition will become a transfer of power to the private sector.
- Privatization initiatives will result in a cost shifting, not a cost savings, by changing the state's role from one of operations management to administrative oversight.
- Food service and medical care may be compromised to control costs.
- Private prison management companies may become influential, affecting criminal justice policies and systems.
- Civil liability of government will not be removed by private contract; it will be extended to private contractors as well.

Selected References

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Thomas, Charles W., Ph.D. "Growth in Privatization Continues to Accelerate." *Corrections Compendium*, April 1994: pp. 5-6, 19.

Contacts for More Information

Donna Lyons and Robert Frohling
NCSL—Denver
(303) 830-2200
donna.lyons@ncsl.org
robert.frohling@ncsl.org

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Privatization emerging as feasible correctional tool

With the imminent release of the Private Adult Corrections Facility Census' ninth edition, the general direction of privatization is becoming increasingly clear: Full speed ahead.

In an exclusive interview with *Corrections Alert*, long-time census author and privatization expert Dr. Charlie Thomas says, "It's clear that this is a trend that is not about to stop."

Spurred by studies that continue to prove private firms can build prisons faster and operate them cheaper than public agencies, as well as other benefits of private facility construction, operation, and management, legislators across the nation are scrambling for seats at the privatization table.

When asked to comment on the prognosis for private sector prison management, Thomas points to two critical factors:

- Legislative emphasis: In 1995, corrections spending became the fastest growing component of state budget appropriations, increasing 13.3 percent, on average, from 1994. Add to that the 28 states that now have "enabling legislation" that permits their respective departments of correction to arrange for some degree of private prison management, and the environment is ripe for continued growth.
- More prisoners = more prisons: Thomas emphatically declares that the number of prisoners in private prisons will break the 100,000 barrier sometime in 1997 and exceed 200,000 by year end 2000. The accompanying graph illustrates Thomas' projections.

Although he cautions that there may be a gradual reduction in the annual percentage increases, which in the past have exceeded 80 percent, Thomas cites the explosive growth history as well as virtually-certain future prison population expansion to prove that private prison management is here to stay.

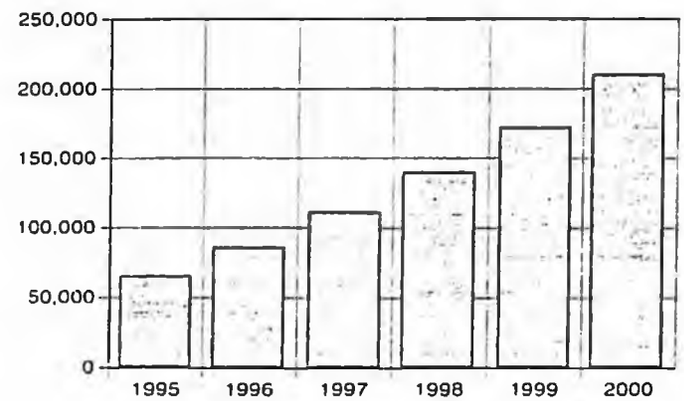
Exploding growth

The incredible development of private sector prison management is rooted in relatively modest beginnings. As recently as the early 1980s, there were no state jurisdictions in the US that had the clear legal authority to contract for the full scale private management of either local or state level correctional facilities. "The only entities having prisoner custody responsibilities which they believed permitted them to contract with the private sector were three federal agencies—the Bureau of Prisons, the Immigration and Naturalization Service, and the US Marshals Service," explains Thomas.

"At least largely because of that," he adds, "we saw no contracts awarded at the local level until 1984, when Hamilton County, Tenn., awarded a contract to Corrections Corporation

Continued on page 2

Projected private prison population growth



Note: Assume gradual year by year reduction in the annual percentage increases.

In this issue...

of America (CCA)." The first state
el award was not until 1985, when
. awarded a contract for the management of a minimum-security state prison to United States Corrections Corporation (USCC). The first federal award of any consequence was not until 1984, when the INS awarded a contract to CCA for the operation of what is now known as the Houston Processing Center in Houston, Texas.

From these erstwhile beginnings, by year end 1995, Thomas' preliminary estimates show that there were 17 firms which had received 102 contract awards (90 in the US, six in Australia and six in the UK) with private facilities in operation or under construction in 19 states. "That's an increase of over 88 percent from year end 1994," observes Thomas.

The aggregate rated capacity of facilities in operation or under construction increased 29 percent from year end 1994 (49,154) to year end 1995 (63,306). According to Thomas, the average annual rate of growth in contract capacity for the last five years
's been 34 percent.

Why the appeal of privatization?

Motivated largely by fiscal pressure, states are turning to private companies to help them steer a safe and secure prison system while maintaining a tight grip on the financial reins.

Privatization is increasingly attractive to tough-on-crime politicians who want to lock up more criminals but must do so in an environment that stresses fiscal responsibility and accountability. As politicians slice smaller pieces of the budget pie and serve the money to corrections, they are simultaneously pressing corrections administrators to ensure higher levels of quality, security, and management expertise.

Although "the core reasons for the growth in the appeal of privatization vary by jurisdiction," says Thomas, "on any list of the influences shaping the appeal one would find the speed with which the private sector has been able to move from contract execution to facility opening. A time lag of 12-18 months to open a facility is typical, compared to a time lag for public agencies that continues to be 36-48 months."

For jurisdictions facing restrictive consent decrees or court orders, Thomas notes, the swiftness with which the private sector can complete projects has a consequential, tangible value.

Another reason is that jurisdictions both in and outside of the US are finding that the funding pool for correctional purposes continues to evaporate. This, says Thomas, "raises the two most powerful influences shaping the appeal of privatization: One, that capital outlay requirements for privatized facilities are regularly 15 percent to 25 percent below comparable public agency requirements; and two, that everyday operating costs for private companies are typically in the range of 10 percent to 15 percent lower than comparable public agencies."

As for ensuring a higher level of management expertise, Thomas mentions that private corrections management firms can enhance the professionalism of a smaller jurisdiction's correctional facility by providing highly trained, experienced personnel.

Thomas cites a series of projects initiated during 1995 in counties across the US, particularly in Md., Ind., Fla., Texas, and NM, as examples in which private corrections management firms helped smaller counties employ the most current and effective practices in correctional management and operations.

"Having the private companies come in brings a higher level of professional expertise to county-run facilities," explains Thomas. "Therefore, the smaller counties are able to have jails that are on par, operationally, with those in larger systems. Instead of being independent and isolated, they get the benefit of having the substantial operational and management experience of private companies."

A final, though no less important, influence is that in many systems, contracting with the private sector creates a buffer in the area of legal liability exposure. In the age of inmate lawsuits, this benefit is particularly attractive to corrections administrators. Notes Thomas, "The

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independent contractor that you retain is obliged by contract condition or law or both to indemnify and hold harmless the contracting governmental entity against any and all sources of legal liability exposure, including civil rights exposure associated with the operation of the privatized facility."

What's next for the industry?

The rapid growth in some of the larger private corrections management firms puts them in the position of operating corporate correctional systems that are now substantially larger than an overwhelming majority of the prison systems operated by individual systems in the US.

Companies like CCA—the largest of the firms—and the Wackenhut Corrections Corporation (CCA's primary competitor) rival the larger state systems in terms of overall prisoner population. At the end of 1995, CCA had 42 secure adult facilities under contract with a contract capacity of 30,610 prisoners. Significantly, these 42 facilities are at the county, state, and federal levels, with a inmate mix that includes male and female prisoners at all classification levels.

"If we compare the size of CCA (including the capacity of facilities now under construction) with the prisoner populations of individual US states, at 30,610, CCA's in the top ten in terms of population," reflects Thomas.

The 1990s may in retrospect be viewed as the decade during which private corrections management firms broke out of the beachhead first established in the 1980s. "When the policy makers want to engage in comparison shopping for correctional purposes," declares Thomas, "they now have an increasingly long list of alternative providers. They are increasingly making a policy choice to select private providers from that list."

As more and more legislatures turn to private providers, and "as the selection of private providers yields one or more of the benefits mentioned above, governments have greater confidence in the ability of the private sector to deliver competitive services on a cost effective basis," notes Thomas.

He adds that because this momentum may well spur continued growth through the decade and beyond, "there is every reason to believe that this growth is going to persist for the foreseeable future."

[Ed. note: Already in 1996 there have been five contract awards (one federal to USCC, two state—one to Wackenhut, one to CCA—and two county level awards—one to CCA, and the other to RECOR.) Thomas estimates that the capacity of private facilities in operation or under construction by year end 1996 will be between 85,000 and 88,000 beds. For more information, contact Dr. Charles Thomas at 904-392-1025.]

LEGAL

Painful execution declared unconstitutional

Fierro v. Gomez, (No. 94-16775, February 21, 1996). Calif.'s method of executing inmates by lethal gas constitutes cruel and unusual punishment in violation of the Eighth Amendment, according to a recent decision by the Ninth Circuit.

David Fierro, Alejandro Gilbert Ruiz, and Robert Alton Harris, Calif. inmates sentenced to death, filed suit in 1992 under 42 U.S.C. Section 1983 against the director of the Calif. Department of Corrections and the warden of San Quentin Prison, alleging that the state statute proscribing lethal gas as the method of execution violated the Eighth and Fourteenth Amendments.

The Ninth Circuit agreed and affirmed the lower court's injunction against lethal gas executions. The court found that extensive expert testimony as well as prison medical records documenting inmates' deaths by lethal gas showed that such inmates suffered extreme pain, sometimes for several minutes before their deaths.

Restitution from outside funds constitutional

Mahers v. Halford, (No. 95-1516, February 21, 1996). Corrections officials may withhold court-ordered restitution deductions from funds inmates receive from outside sources without providing individualized pre-deprivation hearings, according to a recent Eighth Circuit opinion.

The Iowa Department of Corrections began automatically deducting 20 percent of all money received by inmates, including money received from outside sources, toward inmates' restitution obligations. No hearings are provided prior to the deductions.

Ronald Mahers, an Iowa inmate, brought suit against the corrections department, alleging that deductions from outside source donations without individualized hearings violated due process because inmates had no opportunity to show that the money was for an important purpose that should render it exempt from deductions.

The Eighth Circuit rejected the claim, holding that: (1) inmates' private interests in the money they receive from outside sources is subject to limits; (2) the risk that restitution will be mistakenly deducted from an inmate's funds is minimal, largely because inmates receive procedural protections at the time restitution plans are set up; and (3) the restitution system serves the important state interests of compensating victims and teaching inmates responsibility.

RFRA claim for kosher diet fails

Prins v. Coughlin, (No. 95-2458, February 20, 1996). The transfer of an inmate to a corrections facility which did not provide him with daily hot kosher meals did not substantially burden the exercise of his religion as a Jew in violation of RFRA, the Second Circuit recently held.

Brian Prins, an inmate in the NY State Department of Corrections, was transferred from the Green Haven Correctional Facility to the Clinton Correctional Facility in northern NY State. Clinton did not serve Prins hot kosher meals every day prepared in a kosher kitchen. He filed suit against corrections officials, cla[illegible]ing that his

Continued on page 4

State of Washington
Legislative Budget Committee

506 16th Ave. S.E., PO Box 40910, Olympia, WA 98501-2323
Phone: (206) 786-5171

Department of Corrections Privatization Feasibility Study

This report is a working paper and is intended for discussion purposes only. Its contents are not necessarily endorsed by the Legislative Budget Committee and should not be interpreted as final committee recommendations.

January 1, 1996

Upon request, this document is available in alternative formats for persons with disabilities.

Table of Contents

PART 1: BACKGROUND AND INTRODUCTION

The state operating budget for the 1995-97 Biennium provided funds for the legislature to review and identify state programs or services that may be competitively contracted to produce cost savings or improvements in the quality or level of services without harm to the public good. The Legislative Budget Committee (LBC) was asked to do the part of this review relating to adult correctional institutions, and to have a preliminary report completed by January 1, 1996.

Study Objectives

The LBC's study objectives were set out as follows.

- Work with the Attorney General (AG) to identify any potential legal constraints to implementing privatization, and, if applicable, any statutory changes needed to remove such constraints.

- Verify whether other states and jurisdictions have achieved cost savings through privatization without harm to the public good.

- If savings occur, identify the ways in which they are achieved (e.g., design/operational efficiencies, different levels of service, personnel compensation).

- Evaluate the feasibility and cost savings potential of privatizing Department of Corrections (DOC) institutions and facilities (e.g., specifically the new 1, 936 bed institution being planned).

- With the assistance of DOC and the Attorney General, evaluate best practices, and develop prototypes for Requests for Proposals (RFPs), contracts, and competitive procedures for privatization.

Study Results

By addressing the study objectives, this report provides information to assist the legislature in its deliberations on privatization. Although the report makes no recommendation on the policy issue of whether to privatize adult correctional facilities, there are numerous issues and obstacles related to privatization that are addressed in the technical appendices. These technical appendices (particularly those concerning legal issues, RFPs and contracts, and estimating annual ownership costs) are designed to be used as guidelines to be followed in the event that privatization is pursued. Similarly, the report

also contains five general guidelines that could be followed for minimizing the risk to the state, while promoting cost savings without sacrificing quality.

Acknowledgments

We appreciate the support given to this study by the Department of Corrections, the Office of the Attorney General, the Senate Ways and Means Committee, and the House Office of Program Research.

We are also indebted to the states and private companies that provided us information. In particular, the case studies and examples included in this study would not have been possible without extensive cooperation from the states of Louisiana, Tennessee and Florida, and from the Corrections Corporation of America and the Wackenhut Corporation.

This study was conducted by Bob Thomas, Kathy Gookin, Beth Keating and Valerie Whitener of the LBC staff, with technical assistance from the project consultants, Robert M. Williams and Richard Crane. Cheryle Broom was the project supervisor.

The legal analysis by the Office of the Attorney General was conducted by Richard Heath, Talis Abolins, Deborah Cade, Lee Johnson, Zachary Mosner, Mitch Sachs and Mike Lynch.

A panel that reviewed our consultant's work on RFPs and contracts consisted of: Linda Brownell (Senate Ways and Means); Karl Herzog (House Capital Budget Committee); Kristen Reiber (House Appropriations); Richard Heath and Talis Abolins (Office of the Attorney General); and Jim Blodgett, Bernie Warner, and Margaret Vonheeder (Department of Corrections).

PART 2: LEGAL THRESHOLDS

The LBC was asked to work with the Office of the Attorney General (AG) to identify any potential legal constraints to implementing privatization, and if applicable, any statutory changes needed to remove such constraints.

In addition to answering the basic questions posed, the AG provided further commentary on a number of legal issues to be considered in the event that the state would pursue privatization. The full text of the AG's analysis is included in Appendix 1. The three basic threshold questions are presented and answered below.

- **Is there a constitutional prohibition against contracting prison operations?**

No. There is, however, a doctrine that would prevent the state from delegating away its ultimate responsibility to foster and support our prisons. There are no court decisions specifying what is necessary to avoid an unconstitutional delegation of corrections responsibility.

In Washington, a court would likely use a two-part test to determine whether the state's delegation of power is constitutional. Under this test,

> 1. the legislature must provide standards or guidelines which define in general terms what is to be done and the instrumentality or administrative body which is to accomplish it; and
>
> 2. procedural safeguards must exist to control arbitrary administrative action and any administrative abuse of discretion.

The first requirement would likely be met by adequate statutory standards for private prison operations, and by the detailed requirements of the state's request for proposal and contract.

The second requirement would likely be met by the state's retention of ultimate decision-making responsibility in the areas of classification, discipline, sentence-calculation, and release decisions. Other states have strived to accomplish this in a number of ways. The more control that is retained, the less risk of unconstitutional delegation. Conversely, too much

- Need to retain certain responsibilities

state involvement in facility decision-making may interfere with efficiencies that the private contractor proposes to achieve.

- **Are there existing statutory or case law constraints to contracting out prison work?**

Yes. Contracting for services that have been traditionally and historically performed by classified DOC prison employees would likely be found to violate existing civil service law as interpreted by the courts. A possible exception in RCW 41.06.380 for certain contracts originally entered into before April 23, 1979, would not apply, as our review discloses no such DOC contracts relating to prisons.

Legislative authority would have to be provided in order to contract for the operation of a prison without using state civil service employees. In order to remove any such question as to the authority given, the authorization should be in the form of an explicit direction in the statute to contract out the work involved. Repeal of RCW 41.06.380 is not necessary, since it is not that statute that prohibits contracting out in general.

- Legislative authority needed

Whatever language might be chosen for authorizing DOC to contract out, the language should be carefully drafted to ensure that the intent to contract out is clear.

- **Are there provisions in the relevant collective bargaining agreement against contracting out?**

Yes. Under the current collective bargaining agreement DOC has agreed not to contract services when such action would have the effect of terminating classified employees or when the services to be contracted would be the same as those historically provided by classified employees.

The effect of existing collective bargaining agreement provisions on the ability of the legislature to direct contracting out is unsettled. State unions have taken the position in court that the legislature may not retroactively change an agency's agreement not to contract out. They have based their position on a state Constitutional prohibition against impairment of contracts. However, even if a challenge to a contracting out statute were to be successful on this ground, it would only bar application of the statute

- Current agreement expires in June

during the existing term of the contract agreement. Therefore, the constitutional issue could be avoided by stating in the statute that contracting out would not occur until expiration of the current term of the agreement. The current agreement expires on June 25, 1996.

- Issue of removing DOC's discretion in bargaining

The statute and rules as currently written require an agency to bargain personnel matters over which management can lawfully exercise discretion. Therefore, elimination of the contracting out language from the new collective bargaining agreement would not be certain if discretion to contract out is given to management by the authorizing statute. Instead, the statute should direct DOC to contract out. The union could not then argue that contracting out is negotiable.

PART 3: REVIEW OF COST STUDIES – PUBLIC VS. PRIVATE

One of the feasibility study questions was: ***Have other states and jurisdictions achieved cost savings through privatization without harm to the public good?***

We approached answering this question by reviewing published sources and the experiences of other states that have experimented with the privatization of prisons.

REVIEW OF PUBLISHED SOURCES

- There are surprisingly few studies, and they are of limited value.

We conducted a review of existing literature on privatization of prisons. Although there are numerous published sources that debate the pros and cons of privatization, there are only a few studies that have attempted to compare costs, and they have reached conflicting conclusions. We reviewed the methodologies and conclusions of these studies, recreating the analyses when possible. With the exception of some state-sponsored studies (more on these later) the studies we reviewed had significant limitations or methodological weaknesses. We did not find that we could use these studies to draw any general conclusions about the potential for cost savings through privatization.

See Appendix 2 for more comments on the cost studies we reviewed.

We also reviewed two studies available concerning the quality of operations of public-versus-private facilities. Indicators of quality included such factors as safety issues, availability of programming, satisfaction with food, and job satisfaction of staff. In each case, the studies found no significant differences in quality between the particular publicly and privately operated prisons being compared.[1]

---

[1] Charles H. Logan, *Well Kept: Comparing Quality of Confinement in a Public and a Private Prison*, National Institute of Justice, March 1, 1991; and Tennessee Select Oversight Committee on Corrections, *Comparative Evaluation of Privately-managed CCA Prison and State-managed Prototypical Prisons*, January 1995.

REVIEW OF PRIVATIZATION EXPERIENCES IN OTHER STATES – CHOICE OF CASE STUDIES

– Criteria for selecting states for case studies

Since one of our study questions involves the feasibility of privatizing a multi-custody prison in Washington, we sought case studies of privatization in other states that met the following criteria:

- The experience with privatization should involve a large, multi-custody facility.
- The state-run facilities to be compared to the privately run facilities should be of similar capacity, design and security levels.
- Preferably the comparable facilities would have been in operation for several years.
- The states having such facilities would be willing to provide all the information we would need in a timely manner so as to meet the deadline for this report.
- The private companies operating the prisons would be willing to provide information needed for this study.

– Choice of Louisiana and Tennessee

We were fortunate in obtaining the cooperation of two states -- Louisiana and Tennessee -- that have facilities that are particularly well-suited for apples-to-apples comparisons of costs.

– Both states allow for apples-to apples comparisons

Louisiana has three large, prototypical, multi-custody facilities that are exactly the same design and capacity. One is operated by the state, and the two others are operated under contract by the Wackenhut Corporation (Wackenhut) and the Corrections Corporation of America (CCA), the two largest private operators of prisons. Louisiana's three facilities were all in full operation by the beginning of 1991. At present, the capacity at each of the facilities is 1,474 inmates.

Tennessee also has three large comparable facilities, two of which are state-run, and one of which is operated by CCA. The three facilities were in full operation by mid 1992. The current capacity at each of Tennessee's prototypical facilities is 1336 inmates.

- Benchmark studies in other states

We also reviewed cost studies from other states. The most important of these have been recent attempts to set cost benchmarks for targeted savings from privatization. The way this works is that states either estimate what the public costs would be of operating a particular new facility, or they identify their current costs of operating similar prisons within their system. Through a Request for Proposals (RFP), private companies are asked to respond with proposals that would result in a minimum cost-savings percentage (e.g., seven to ten percent), compared to the benchmark.

If the benchmarks are accurately and appropriately estimated, and the state receives responsive bids, then the compensation provided for in the contracts, compared to the benchmark, should indicate an amount of savings to be expected from privatization.

- Why this study does not report on the recent experiences of states using benchmarks

Two years ago the LBC gained experience in estimating the costs of prison operations. In its report on *Department of Corrections Capacity Planning and Implementation* (January 27, 1994), the LBC identified facility operating costs, by security level, in order to determine if some of the most inefficient prison facilities should be replaced. The findings from the report led to legislative approval of several capital projects intended to achieve operational savings.

Based on our experience, and knowing the care that must go into establishing benchmarks, we would be reluctant to accept projected savings based on benchmarks at face value. The time frame for the present study did not allow for the extent of review that would enable us to say whether recent benchmarking efforts in other states are likely to result in savings.

PART 4: RESULTS OF LOUISIANA AND TENNESSEE CASE STUDIES

This part of the feasibility study uses the case studies to answer two of the questions posed in the project scope and objectives:

1. Have other states and jurisdictions achieved cost savings through privatization without harm to the public good?

2. If savings have occurred, how have the private companies accomplished this?

In answer to the first question, we reviewed cost information and studies provided by the states and the private companies. For Tennessee, we reviewed and made adjustments to a cost comparison conducted by the state's Fiscal Review Committee for fiscal year 1993-1994. For Louisiana, we used state and company data for fiscal year 1995-1996. The results of our analysis were submitted to the states and the private companies for technical review and comment in November 1995. Details concerning the comparative costs and our methodology are included in Appendix 3. Summary comments about the results are included in this section.

The first question also contains a qualitative element related to the "public good." We endeavored to address this element by identifying any public safety differences between the public and private facilities (e.g., record of escapes and disturbances) and through examination of any other information that might suggest that there were substantive differences in prison operations and programs.

The second question concerns how private companies operate, and focuses on the issue of what the state might actually be purchasing in the event that it pursues privatization.

CASE STUDY COST COMPARISONS

- **Has Louisiana achieved cost savings through privatization?**

Until recently, yes. Based on information for 1995-96, the state can expect to break even on its two contracts when all facilities are operating at full capacity. The CCA prison is costing about 1 percent more than the state facility, and the Wackenhut prison is costing about 1 percent less. Historical data suggest, however, that both private facilities previously cost the state less than the state-run

prison on a per diem basis. For example, in fiscal year 1993-94, the two privately run facilities were costing the state approximately 4 percent less, even though they were housing fewer inmates.

- Why costs have converged

One explanation for the convergence of costs over time may be the effect of competition. This is an argument made by the private companies that was also mentioned by some state correctional officials. Lean budget years may also have made a difference. For some years the inflationary increases built into the private contracts has been greater than the increases in the corrections budget. So while the per diem costs for the private has inflated, it has not inflated for the public facility.

- **Has Tennessee achieved cost savings through privatization?**

The best answer is probably yes. During the study period (fiscal year 1993-94), the effective per diem for the private facility was less than the weighted average per diem for the two state-run facilities ($33.63 versus $34.29), but actually higher than one state facility and lower than another.

This information is somewhat misleading, however, because during the study period, in which additional capacity was being added at all three facilities, both state-run facilities had higher average daily populations (ADPs) than the private facility. Since the marginal cost to the state of placing inmates in its own facilities was less that the per diem for the private facility, this resulted in a lower effective per diem at the state facilities.

- Estimate of longer-term outlook

In order to understand how costs might compare over the long-term, when ADPs would more closely match, the state's Fiscal Review Committee estimated what the costs would be if the ADPs were equalized. Taking the same approach, but with the adjustments explained in Appendix 3, we estimate an average per diem for the state-run facilities of $35.55 (fiscal year 1993-94) when ADPs are equalized. With the private per diem at $33.63, this represents a potential savings of approximately 5.5 percent. This may be viewed as the expected savings that will be achieved when all the facilities are operating at full capacity.

- The effects of competition

Tennessee officials were of the opinion that competition from the private facility had the effect of keeping costs down at the public facilities. As evidence of this, we observed during our site visits that the private facility's estimate of additional staff needed for a proposed capacity expansion of 170 beds was less than half of the estimate made by one of the state-run facilities. We were told that this difference was causing closer scrutiny of the state prison's request than might otherwise have occurred.

CASE STUDY QUALITATIVE COMPARISONS

- **Are the private prisons as safe and secure as the public prisons?**

Yes, based on data at hand. We reviewed a year's worth of data from our study prisons regarding rates of escape, major disturbances, and inmate infractions. We also conducted site visits to observe prison environment and operations. A summary of our observations follows. (See Appendix 4 for more detailed information on both interstate and intrastate comparisons of inmate demographics and behavior).

- Escapes

There were no escapes at any of the Louisiana prisons. In Tennessee there was a total of three escapes from secure supervision in the two public prisons, and no escapes from the private prison. There was also a total of nine escapes from the two state run minimum security units, and only one escape from the privately run minimum security unit.

- Major disturbances

In Louisiana, each of the private prisons reported one major disturbance, while the public prison reported four. In Tennessee, one of the public prisons reported sixteen major disturbances, while the remaining public and private prisons each reported seven. Some of the difference in numbers may be due to reporting differences, as evidenced in the comparative evaluation completed in Tennessee in January, 1995. Although these numbers portray a large amount of major disturbances, none of the prisons experienced disturbances that required the use of outside assistance.

- Infractions

Inmate infractions are an important measure of safety and security, however, rates are dependent upon individual staff reports. In Louisiana, the Wackenhut prison issued .47 infractions per inmate, the CCA prison issued 1.3 per inmate, and the state prison issued 1.8 per inmate. In Tennessee, the infraction rates were more similar, with the private prison having issued slightly more infractions than the public prisons. During the study period of the Tennessee comparative evaluation, there were dramatically more injuries to staff and inmates reported at the privately run facility. However, the report indicated reporting differences, and weighted each of the Tennessee prisons the same in the areas of safety and security.

All of the prisons we visited were clean and appeared to be orderly.

- **Do the private prisons offer the same quantity and quality of inmate programs as the public prisons?**

Generally, yes. The private prisons in our study had similar inmate work requirements to the public prisons. Louisiana private and public prisons have a 100 percent inmate work program. In Tennessee, the private prison has an average of 84 percent of inmates either working or attending full time education programs.

- Rehabilitation

In Louisiana, 26 percent of the inmates at the state prison were enrolled in education programs, while only 20 and 16 percent were enrolled at each of the private prisons. Although the exact numbers were not provided, it was reported that programs are filled to capacity at each of the three prisons. Capacity and enrollment information was not available for other aspects of rehabilitation in Louisiana, but the emphasis in this state is clearly on work skill development and education in addition to a full-time work program.

In Tennessee, 23 percent of the inmates in the private prison participated in education programming, while 20 and 35 percent participated in education in the public prisons. A qualitative study conducted by Tennessee indicates similar programming availability and quality at each of the prisons.

- Limitation of comparisons

In order to make a complete comparison, further data would need to be gathered including the ratio of program completions to enrollments, length of programs and outcome indicators.

- **Do the inmates from the private prisons have a higher or lower rate of recidivism than those from the public prisons?**

This question cannot be answered within the context of this study. There have been no studies to address this question directly, or that measure recidivism from prison to prison. Although overall state recidivism rates appear in various publications, it is well known that most states define recidivism differently. For instance, the definition of recidivism may include re-arrest, technical violations or new convictions, or may only include actual returns to prison. States also measure recidivism over varying lengths of time, ranging from one year to five years.

- Problems with defining and measuring recidivism

The major links to recidivism appear to be in the areas of age and criminal history. Young offenders with an extensive arrest record for property crimes are more likely to re-offend than older, first-time offenders. A further problem with trying to assign a rate of recidivism to a particular prison is the fact than an inmate rarely spends his/her entire incarceration at only one prison. Given these problems, using available data about recidivism would not be valid.

EXAMPLES OF HOW THE COMPANIES HAVE REDUCED COSTS

In Louisiana and Tennessee, both states designed, built and own their prototypical facilities, and pay all debt service. Therefore, these states do not provide an opportunity to evaluate the savings potential of privatization on capital projects (see discussion of capital costs in Part 5, below).

- **What areas of the operational budget are likely candidates for cost savings?**

Personnel and supplies comprise approximately 85 to 90 percent of operating costs in the state-run facilities we evaluated. These are the two areas where opportunities for savings are substantial. Personnel (including contracted professional services)

accounts for about 70 percent of operating costs, while supplies account for 15 to 20 percent. The remaining areas of the budget, including such things as utilities and insurance, are not likely to vary significantly due to whether the state or a private company is operating a facility.

- **Do the private companies save on supplies?**

From all accounts, the private companies do save on supplies, but we do not have information that would permit us to estimate a percentage.

State and company officials in both states agreed that the private companies save money by not having to follow the state procurement rules. They can buy supplies when needed, at the most competitive price, and keep a smaller inventory.

This cost advantage to the private companies is offset by the fact that in both states the private facilities pay sales taxes that the state facilities are exempt from paying. Although this adds to the cost of the contracts, the states may still realize the benefit of the lower procurement costs because the sales taxes are returned to the states as revenues.

- **Do the private companies save on personnel costs?**

Yes. For the three private facilities included in our case studies, we estimate that the number of staff ranged from 88 to 97 percent of state facilities staffing, and that the average salaries for those personnel range from 69 to 93 percent of state salaries.[2]

- Example of magnitude of possible savings

The magnitude of the potential for savings in the area of personnel can be shown in the following example. If a private facility can operate with 90 percent of state staffing, and at 85 percent of average state salaries, this translates into a personnel savings of 24 percent. Since personnel costs comprise about 70 percent of all operating costs, this results in

[2] The lower end of the salary range was based on comparing the mid-points of the salary ranges for corrections officers at the Avoyelles (state-run) and Allen (Wackenhut) facilities in Louisiana. Corrections officers comprise more than two-thirds of all staff at both facilities. The use of the mid-point for the private facility is a conservative approach (i.e., does not over-estimate) insofar as the private facility has a higher turnover rate than the state-run facility.

a savings to the total budget of approximately 16 percent.

- **Are the savings passed on to the states?**

Some of the savings are passed on to the state to the extent that the contracted per diems for the private facilities are less than the states' per diems. The example above shows, however, that personnel can be a major source of profit for the private companies.

- **How do the private facilities manage operations with fewer staff?**

From our site visits and reviews of staffing patterns, two general explanations emerged.

1. There is a greater tendency for staff to have responsibilities in more than one area, and for management staff to have responsibilities in several areas.

2. More flexibility in the use of staff, including corrections officers, results in fewer staff (and/or less overtime) needed to cover mandatory posts.

- **Do the private companies also save on employee benefits?**

Not necessarily. In Louisiana the state spends less on benefits for current employees than either of the private companies, primarily because state government does not participate in the federal social security system. The state does have a retirement system, but its employer contribution to the retirement system is less, as a percentage, than what the private companies pay for social security contributions.[3] Of the two private companies, CCA additionally makes a company stock contribution and has a stock purchase matching plan that can equal an employer contribution of up to 6 percent of salary per year.[4] In Louisiana, Wackenhut makes no employer contribution to retirement, other than social security.

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[3] The amount that the state contributes that is needed to cover defined benefits for current employees is 5.357 percent, which compares to the social security employer contribution of 6.2 percent.

[4] During the first year of employment, CCA contributes 2 percent of salary, and 1 percent thereafter. It will match employee contributions up to 4 percent of salary.

We did not receive full benefit information for the privately run facility in Tennessee. In the area of retirement, the state contributes more than the maximum of 6 percent paid by CCA. It would be difficult to say, however, which retirement plan ultimately provides the most financial benefits to its members.

PART 5: COST SAVINGS POTENTIAL OF PRIVATIZING CORRECTIONS INSTITUTIONS AND FACILITIES

Although the two case studies indicate that savings from privatization are possible, they do not provide good estimates of the range of potential savings in Washington for two reasons:

- The costs to the states to operate prisons in Louisiana and Tennessee are less than in Washington, even after adjusting for cost of living differences. This is true regardless of whether the prison is state-run or privately run.

  When private companies indicate they could save Washington State large percentages in prison operating costs, it is likely they are referring, at least in part, to savings that would come from adopting an approach to operations more like one of these other states. Privatization would be one means of changing operations to realize savings, and might still have the potential for savings that are more directly related to privately run operations per se (e.g., through efficiencies in the procurement of supplies).

- Both states designed and built their prototype facilities, which means that the private companies were not in a position to achieve potential savings through lower development costs had they built the facilities, or through differences in design that might lower operating costs.

In order to provide decision-makers with more information about potential cost savings, we conducted operational cost comparisons between similar facilities in Washington, Louisiana, and Tennessee, and a capital cost comparison of facilities in Washington and Florida.

Florida offers a good example of a large, new, multi-custody facility that is designed, is being built, and will be operated, by a private company (Wackenhut).

INTERSTATE OPERATIONAL COST COMPARISON

- Difficulties in making comparisons

From state to state, budgeting practices are different enough to make interstate comparisons of prison costs difficult. For example, in Washington, prisoners' medical costs are included in DOC's budget, but are not allocated proportionately to all the facilities that utilize the medical services. In Louisiana, chronic and major medical service costs are borne by charity hospitals. From our discussions

with Louisiana officials, it apparently would not be possible to allocate these costs to the state prisons.

- Study approach focuses on areas that can be compared

The approach we took in making the interstate comparisons was to focus on those areas of facility operations for which we were able to collect cost data and make direct comparisons. For Washington and the two other states, the per diem amounts shown in Exhibit 1 (below) represent approximately 85 percent of direct facility per diem costs excluding debt service. Indirect costs, such as headquarters overhead and general government overhead, are not included in direct facility costs and therefore are not reflected in these numbers.

- Choice of Airway Heights as Washington's facility

For the Washington facility, we chose the Airway Heights Corrections Center in Spokane. Among the two newest multi-custody prisons in Washington (McNeil Island is the other one), Airway Heights has the most efficient housing unit design, and it is the prototype for the new 1,936 bed facility planned for Grays Harbor.

We used Airway's costs at a capacity of 1,424 beds, and made adjustments to the budgets of the Louisiana and Tennessee facilities to show their costs at 1,424 capacities. Adjustments to Airway's budget resulted from assuming that all 256 bed housing units were medium security, and that the minimum security facility was located within the institution's secure perimeter.

- Conservative approach in comparing per diems

In several instances when we had to make judgment calls about assumptions to use in making adjustments, we chose the assumptions that favored Washington. We did this in order to keep the estimates of cost differences conservative. Thus the spread between Washington's per diem costs and those of the other states may be somewhat understated.[5]

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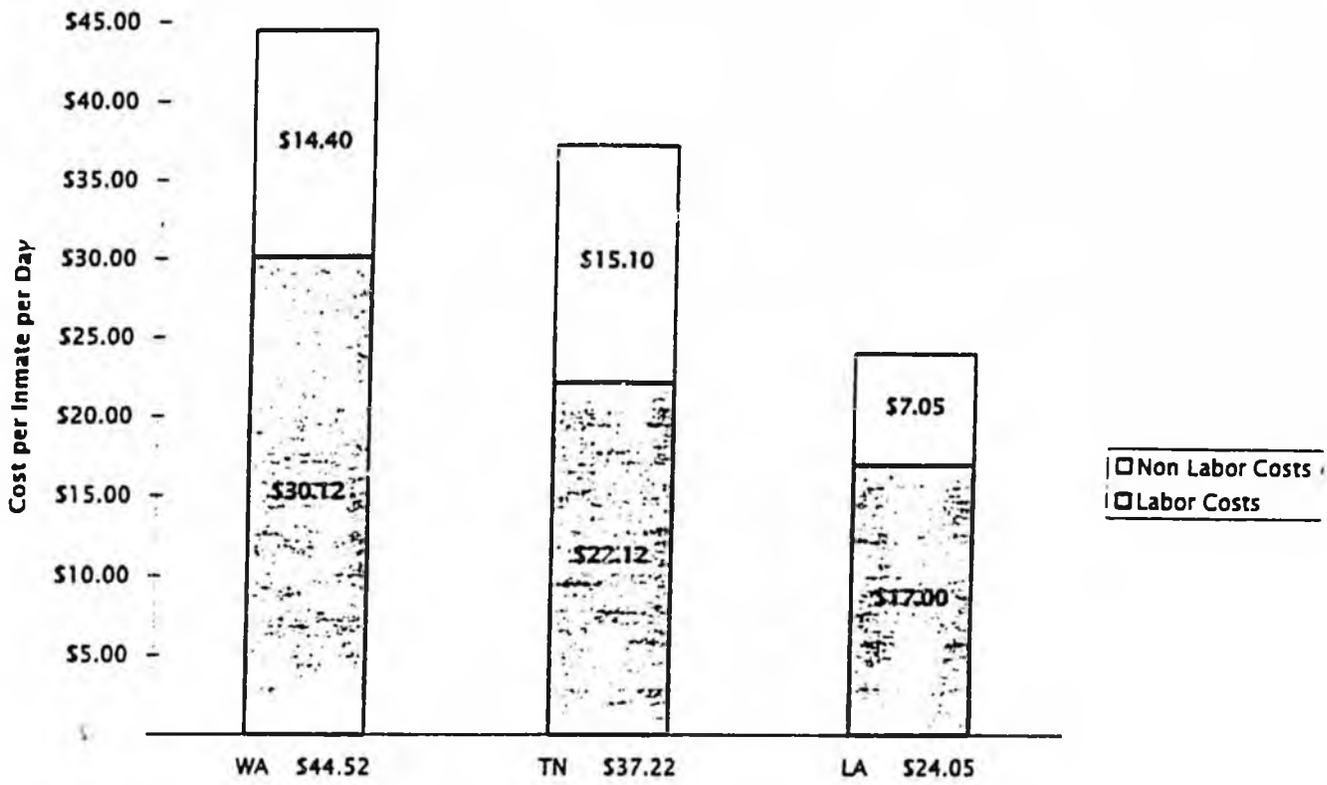
[5] The major assumptions benefiting Washington were: (1) the inclusion of Seattle in our cost-of-living index increased differences in cost of living, because the cost of living in Seattle is significantly higher than the average for the rest of the state; (2) in adjusting capacities upward and downward to create budgets for 1424 bed facilities in Louisiana and Tennessee,

Exhibit 1

**Comparable Per Diem Costs for a 1424 Bed Prison,
FY1996 Dollars Adjusted for Cost of Living Differences**



Source: LBC data, 1995

Excludes medical costs, overhead and debt service.

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we used worst-case scenarios for cost impacts; and (3) we assumed that staffing at Airway Heights, that is beyond what is required for 1424 beds, would be absorbed with the 512 bed expansion (bringing the facility to 1936 beds), and therefore we did not assume that the current additional staffing would be permanent.

- **What are the elements of Washington's higher labor costs?**

In comparison to Louisiana's facility, the difference in Washington's cost is due to more FTEs, higher salaries, higher benefits, and employees with more longevity.

In comparison to Tennessee, the difference in Washington's cost is due mainly to higher salaries, higher benefits, and employees with more longevity.

- **What are the differences in FTE totals?**

The Washington facility has 389 FTEs compared to 343 for Louisiana and 387 for Tennessee. However, these are not perfect comparisons because some contracted personnel might not be counted as FTEs. One example where contracting skews the comparison is in the case of educational programs. Washington shows fewer staff for education (5 FTEs) than Tennessee (22 FTEs) because of the use of contractors.

- **What areas of operations show major staffing differences?**

Both Louisiana and Tennessee have more staff assigned to security than Washington. This is generally due to a more efficient housing unit design and security staffing plan at Airway Heights, and in the case of Louisiana, to the fact that Louisiana has more guard towers. Both Louisiana and Tennessee have more work assignments for inmates, which requires additional security posts.

Major areas where Washington has more staff are administration and maintenance (higher than both Louisiana and Tennessee), and Classification and Food Service (higher than Louisiana).

More details on cost differences, including the differences in non labor costs, are included in Appendix 5.

- **Are the inmates in the three-state examples similar enough to allow for a fair comparison?**

Yes. We looked at demographics, classification and behavior and did not find any documented differences that would effect costs of operations. In other words, if the types of inmates from either of the two comparison state facilities were housed at the Washington facility, no change in operations would be required. Likewise, the current operations at the

other states' facilities could accommodate Washington's inmates. See Appendix 4 for more information on both interstate and intrastate comparisons of inmate demographics and behavior.

INTERSTATE CAPITAL COST COMPARISON

- Difficulties in making comparisons

Capital cost comparisons from facility to facility and state to state are difficult to develop. Contributing to the difficulty are: unique site conditions; differences in climate and in labor and materials prices; lack of similarity of space programming and inmate mix; lack of uniformity in cost reporting; and differences in timing of capital expenditures. Nevertheless, it is possible to make general comparisons and identify elements contributing to major cost differences.

- Study approach focuses on areas that can be compared

The approach we took in making the interstate comparison was to focus on the major elements contributing to capital cost: Amounts and types of space, unit construction costs, and ancillary construction costs such as design and administration. In developing the comparisons, we eliminated those items unique to the specific project including land, site development, taxes, and unique local costs (e.g., Washington State allocations for art).

- Choice of Grays Harbor as Washington's facility

For the Washington facility, we chose the Grays Harbor Correctional Center in Aberdeen. Site infrastructure and development work for this 1,936 bed facility is underway, and facility design is in the preliminary schematic phase. Site development work can be viewed as a separate project which can be completed independent of the method for procuring the construction of prison facilities.

- Choice of South Bay, Florida facility to be constructed by Wackenhut Corporation.

For the privatized facility, we chose the 1,318 bed South Bay Correctional Facility in Florida. Currently under development, this project provides sufficient similarities in size and inmate mix to allow for broad-level comparisons (i.e., size, cost per bed, unit construction costs). It also offers a financing and ownership model familiar to the State of Washington (i.e., Certificates of Participation with ultimate ownership by the State).

Costs for each facility were adjusted for comparative purposes. As examples, land and site-related costs, taxes, and unique fees were excluded. For the Florida facility, costs were increased by 20 percent to reflect estimated regional labor and material costs differences, by 10 percent to reflect higher costs associated with later construction of the Grays Harbor Facility, and by another 5 percent to provide an allowance for state oversight of the privatized construction. Additionally, reductions were made to the projected cost and size of the Grays Harbor facility to make it comparable to the Florida facility (budget reductions of $29 million or 20 percent, and space reductions of 154,000 gross square feet or 18 percent, to account for differences in inmate security levels and the fact that Florida space does not include Correctional Industries). More detailed descriptions of all the adjustments made in the comparison are included in Appendix 6.

- **How do the adjusted costs of the facilities compare. . .**

  . . .and what explains the difference?

Grays Harbor's projected cost per bed, at $60,400 after adjustments, was approximately double the adjusted cost of $29,000 for the private facility . The two major explanatory factors for this difference are that the cost per square foot for Grays Harbor is approximately 37 percent higher, and the square footage per inmate (or per bed) is 53 percent higher.

- Different operating concepts explain significant differences in space

Differences in space are largely explained by different operating and programming concepts. As examples:

- Grays Harbor assumes single cells for close security and segregation, whereas the private facility double-bunks these cells.

- Grays Harbor minimum security beds have relatively high per bed space allocations reflecting the incorporation of service and program space in the housing space, whereas in the private facility program and service space are centralized.

- Other examples of differences are in administration, physical plant (including warehousing), and

dining areas (Florida feeds inmates in housing areas; Grays Harbor provides inmate dining spaces).

- Differences in unit costs

Unit construction costs, as adjusted, include actual construction costs as well as project management, design, permits and fees, and equipment. We did not evaluate the separate components of these costs. We did note that these unit cost differences were similar to total construction cost differences between state and privately developed office building projects reviewed in the LBC study of leasing versus ownership costs.[6]

- **Did the approach taken by the state of Florida contribute to the relatively low cost of the private facility?**

Most likely, yes. Florida identified key expectations for the facility but did not mandate specifically how the bidders should meet them. For instance, the state identified the mix of inmates to be housed, specifying the ratio of cells to dormitory beds. The state also required that proposers meet all applicable facility and programming standards (e.g., ACA accreditation, building codes, energy analysis), provide minimum program availability (e.g., education) and services (e.g., medical and dental). The State required specification of facility layout, a staffing and operating plan, building finishes and materials, and detailed equipment lists.

Wackenhut's operating and capital cost bid constituted 25 percent of overall scoring. Florida officials noted that Wackenhut had the highest cost proposal among bidders, but met the criterion for a combined capital and operating cost that was at least 7 percent below the calculated benchmark.

- **Is the difference in cost between the Washington and Florida facilities explained by privatization?**

Not entirely. The private firm's operating philosophy and plan, as reflected in the facility design, contributed to the lower costs. However, there is nothing prohibiting a state government from adopting a similar plan. Privatization is a means by which to implement a different concept that can result in lower costs, but it is not the only means.

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[6] LBC Performance Audit: *Capital Planning and Budgeting: Study of Leasing Versus Ownership Costs*, December 14, 1995.

The substantial difference in unit construction costs could be attributable to a private model that strongly focuses on controlling the total costs of ownership, operating and capital.

- **How important are capital costs in the total cost of owning and operating a prison?**

Our review of the Grays Harbor project indicates that capital costs, after the effects of financing, constitute approximately 18.5 percent of life-cycle costs. This does not include the costs of major repairs and replacements. A conservative estimate of these costs would raise the capital cost percentage to at least 20 percent.

An analysis conducted for the Department of Corrections calculated that the initial cost of the proposed Grays Harbor facility constituted approximately 12.7 percent of total costs. The 12.7 percent calculation underestimated the capital costs percentage because operating costs were overstated and miscalculated in the total cost model.

- **Should capital and operating costs be combined in considering the cost savings potential of privatization?**

For new facilities, yes. In the Florida example, bidders had to meet a 7 percent cost reduction target that was based on a calculation of what the state's total ownership costs would be. Theoretically, a private company might propose to build a facility that would have capital costs higher than the state's capital costs in order to achieve operational efficiencies through design innovations. These operational savings could outweigh the capital costs and result in overall savings.

For the Florida approach to work well, the full costs of state ownership on an annualized basis need to be accurately estimated and compared to bids that are estimated the same way. Appendix 7 contains an explanation and an example of an approach developed by the capital consultant for this study. It is the approach that we would suggest for Washington State in the event that the state would issue RFPs for design, construction and operation of a new prison.

GENERAL CONCLUSION

- **Would privatization of a prison or prisons result in cost savings to Washington?**

Not necessarily. Much would depend on the care that was taken in estimating the state's costs, and in designing an RFP, choosing a contractor, and executing and monitoring the contract.

Based on the foregoing analysis, it appears that the greatest potential for savings for Washington State would not come from privatization per se, but from changes in operations (and related facility planning) that can be accomplished through privatization or through changes in state policy and practices.

Savings that would be directly related to privatization could come from two sources:

- the ability of a private company to operate outside of state rules and procedures, collective bargaining agreements and the employee compensation system; and

- from competition between private and public facilities within the same prison system.

The ability of a private company to operate a prison differently from a public facility would depend on the degree of flexibility allowed to the private firm under the contract. Ultimately, even if a private facility can operate for less, the state would not necessarily capture any of these savings for itself unless it received responsive bids with per diem costs lower than its own.

PART 6: BEST PRACTICES FOR REQUESTS FOR PROPOSALS AND CONTRACTS

With assistance from the Department of Corrections and the Attorney General, the LBC was asked to evaluate best practices and to develop prototypes for Requests for Proposals (RFPs) and contracts for the privatization of prisons.

The LBC retained the services of a consultant who has extensive legal expertise in these areas. Since it is unknown what, if any, scenario the state might pursue in the area of prison privatization, we asked the consultant to provide comprehensive lists of elements to be addressed in RFPs and contracts. From these lists, the consultant identified the discretionary and essential elements, and offered commentary and analysis of the elements based on best practices, as appropriate.

It was our intent that the consultant's work would provide guidelines and a framework for developing specific RFPs and contracts. Based on the work that has already been completed, and given the legal and contractual expertise that currently exists within state government, we feel that most, if not all, of any additional work needed for actual RFPs and contracts could be accomplished by in-house resources.

We were assisted in this part of our study by a panel that reviewed and commented upon the consultant's draft report. The review panel consisted of staff from the LBC, the Department of Corrections, the AG, the Senate Ways and Means Committee and the House Office of Program Research. The consultant's final report is included in Appendix 8 (RFPs) and Appendix 9 (contracts).

PART 7: GENERAL GUIDELINES

Our case studies of Louisiana and Tennessee suggest that these states have had positive experiences both in terms of quality of service and cost. However, there are other examples that could be cited of how privatization of correctional facilities has been a failure. Recently, an inmate riot and takeover of a privately run detention center in New Jersey has caused some to conclude that privatization does not work.[7] Our view is that other jurisdictions' experiences with privatization, either positive or negative, are not predictive of what Washington's experience would be. The outcome in this state would depend in large part on the care taken in designing an RFP, choosing a contractor, and in executing and monitoring the contract.

Although this report makes no recommendation on the policy issue of whether to privatize adult correctional facilities, there are numerous issues and obstacles related to privatization that are addressed in the technical appendices. These technical appendices (particularly those concerning legal issues, RFPs and contracts, and estimating annual ownership costs) are designed to be used as guidelines to be followed in the event that privatization is pursued. Similarly, there are five general guidelines that could be followed for minimizing the risk to the state, while promoting cost savings without sacrificing quality. They are:

1. Requests for proposals should set a minimum cost-saving target that must be met for proposals to be considered responsive. The amount of the target and the methodology for establishing it should be approved by the legislature.

2. Requests for proposals should set standards for programs, operations, and/or facility design and construction defined as *what* should be provided; and should allow respondents to be flexible and creative in *how* to meet those standards. The standards should be subject to approval by the legislature.

3. The state should develop a contingency plan for the smooth transition of operations from one private vendor to another, or to the state, in the event of contract expiration or termination.

4. The state should have an on-site monitor at the privately run facility to ensure that the state's responsibilities for inmates are being fulfilled, and that the contractor is in compliance with the contract.

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[7] This was the conclusion of the Washington Public Employees Association in letter dated July 12, 1995 entitled "Prison Privatization Doesn't Work -- The Riot at Esmor Correctional Services INS Center, Elizabeth, NJ, June 18, 1995."

5. The state should design and set criteria for an evaluation of the costs and quality of programs and operations at the privately run facility in comparison to a similar state facility or to established benchmarks. This evaluation should take place after the private facility has had at least one year of operating at full capacity, and should be conducted by an independent party designated by the legislature.

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:

Element	Value
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	NECC		SCCC		NWCC	
Element	Comp.	Non-C.	Comp.	Non-C.	Comp.	Non-C.
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.	NECC		SCCC		NWCC	
Element	Comp	Non-C.	Comp.	Non-C	Comp.	Non-C.
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 use 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.

	Job Waiting Percent		
Compare First and Second Years	NECC	SCCC	NWCC
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 %.

Evaluation Rating	NECC	SCCC	NWCC
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.

3/11/97 Chemo with Memo - per JG

line.
line 5 (at) a correction
line 11 (at) a correctional facility

" Municipality " or political subdivision of state.

— radius - 2 miles
" affected " voter

" community " what is def.

[does state statute trump local law —

LEGAL SERVICES

DIVISION OF LEGAL AND RESEARCH SERVICES
LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA

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FAX (907) 465-2029
Mail Stop 3101

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

MEMORANDUM April 2, 1997

SUBJECT: "'**Obvious**' flaws" in the April 1 amendment to House Bill 53 (Work Order No. 0-LS0194\K)

TO: Representative Joe Green
ATTN: Lisa Kirsch

FROM: Jack Chenoweth
Legislative Counsel

Page 1, line 4, should read "new subsections."

Page 1, line 6: AS 33.30.031(a) is a provision under which the Department may obtain facilities under agreement or contract. At line 6, you use the word "constructed," which leads me to think that there may be confusion as to whether this subsection, subsection (f), applies to all new construction or just to new construction that follows in conjunction with an agreement entered into under (a). If all new construction, this needs to go somewhere else. If just construction under an agreement entered into under AS 33.30.031, then it should be revised to say that.

On this same point, is it crystal clear to you that, by building these limitations into AS 33.30.031, the limitations will necessarily also apply to correctional facilities to be developed under a lease (AS 33.30.043) or under a lease-purchase arrangement (AS 36.30.085)?

Page 1, line 13 and line 16: What is an "other legal subdivision" of the state? Offer a definition for the term or delete it.

Page 1, line 14: Can the vote constitutionally be limited to "residential landowners"? See art. V. sec. 1, Constitution of the State of Alaska, allowing limitations on suffrage only in conjunction with bond issue elections, of which this is not one. Or is it your contention that this is not a state or municipal election to which this provision attaches?

Page 1, line 17: Do you mean the "external perimeter" of the "proposed" correctional facility? On that same point, are you talking about the "walls" of the nonexistent facility or

the outer lot line(s) on which that nonexistent facility is proposed to be placed? How the two miles is measured may determine whether a handful of people do or do not vote, and if there is any question on the point, you can expect litigation about its meaning.

Page 1, line 21: . . . may solicit "proposals" for what purpose? How does this solicitation of proposals tie back to "site selection process"? Proposals seems broader than site selection, so maybe reference to site selection process is too narrow.

Page 1, line 21: What turns on the limitation of a solicitation of proposals from "private entities"? Do you mean that municipalities and other public agencies may not respond?

Page 1, lines 21, 23, 26, and 28: Is the reference to "request for proposals" and "RFP" always a reference to the same document? Why does "or other document" not appear after "request for proposals" in lines 21 and 23?

Page 1, line 34: Where is "certification of approval" mentioned in subsection (f)? What is this a reference to? What turns on the fact that a certification of approval is "not valid"?

Page 2, line 36: Strike "the private entity" and substitute "a private entity that intends to respond to the commissioner's request for proposals."

Page 2, line 45: If limiting the vote to residential landowners is constitutionally improper, should this be changed to conform to whatever corrective action is made at page 1, line 14?

Page 2, lines 43 - 50: The approval process, such as it is, is contrived. Does it mean that every party responding to an RFP has to conduct a polling on its proposal? Suppose the municipality doesn't want to be responsible for the polling? Tie it back to the Division of Elections under the mail ballot provisions of current law, and authorize a municipality to conduct. Three months to receive the mail-in ballots is w-a-y t-o-o long.

Page 2, lines 44 and 51: Here "political subdivision"--previously, "legal subdivision." Are they the same? Different? What is it you have in mind? Either say so directly or define the term(s).

Page 2, lines 52 and 53: Here, there is some indication that the "private entity" making the proposal has responsibility for conducting the mail-in election, while under (h)(3) it is clear that the municipality is to do it. Very inconsistent.

Page 2, line 58: Here the commissioner of corrections is to count ballots.

Nothing in subsections (h) or (i) specifically says that if the voters vote "no" this site is no longer to be considered by the commissioner. I assume that this is where this idea is headed,

but a strong-willed commissioner may decide that, notwithstanding the no vote, the facility will be located at the site.

The material I received is two pages, ending at page 2, line 74. Did I get it all?

JBC:pl:jdr
97-084.plm

0-LS0194\K.37
Chenoweth
3/14/97

AMENDMENT

withdrawn

OFFERED IN THE HOUSE

TO: HB 53

Page 1, lines 9 - 11:

Delete "**a lease-purchase agreement or similar use-purchase agreement for the design, construction, and operation of a correctional facility, and setting conditions and limitations on the facility's design, construction, and operation**"

Insert "**lease-purchase agreements or similar use-purchase agreements for the design, construction, and operation of correctional facilities, and setting conditions and limitations on the design, construction, and operation of those facilities**"

Page 4, line 31:

Delete "AGREEMENT"

Insert "AGREEMENTS"

Page 5, line 1:

Delete "AGREEMENT"

Insert "AGREEMENTS"

Page 5, line 4:

Delete "an agreement"

Insert "one or more agreements"

Following "AS 33.30.031,":

Insert "each to be"

Page 5, line 6:

Delete "a correctional facility"

Insert "one or more correctional facilities"

Page 5, line 11:

Delete "facility"

Insert "facilities that are approved by this section"

Page 5, line 12:

Delete "agreement"

Insert "agreements that are approved by this section"

Page 5, line 14:

Delete "agreement"

Insert "agreements"

Page 5, line 16, following "term of":

Delete "the"

Insert "a"

Page 5, line 18, following "(b)":

Delete "The"

Insert "A"

Page 5, line 21, following "male prisoners":

Insert "if only one correctional facility is designed and constructed under the notice and approval given in (a) of this section; however, if more than one correctional facility is designed and constructed under the notice and approval given in (a) of this section, at least one correctional facility must be limited to confining female prisoners only"

Page 5, line 29:

Delete "The"

Insert "Each"

Page 6, line 17, following "operate":

Delete "the"

Insert "a"

Page 6, line 21, following "operation of":

Delete "the"

Insert "a"

Page 7, line 5:

Delete "a major correctional facility"

Insert "one or more major correctional facilities"

Page 7, line 7, following "job site of":

Delete "the"

Insert "a"

Page 7, lines 8 - 9:

Delete "the correctional facility described"

Insert "a correctional facility for which notice and approval is given"

AMENDMENT #3

OFFERED IN THE HOUSE CROFT/GREEN

TO: HB 53

Page 3, following line 3:

Insert a new bill section to read:

"*Sec. 2. AS 33.30.031 is amended by adding a new subsections to read:

(f) The commissioner may not enter into an agreement to provide necessary facilities under (a) of this section as a correctional facility that is to be constructed in this state under an agreement entered into under AS 3330.031 after the effective date of this Act unless the commissioner initiates and completes a site selection process. The site selection process must provide the public reasonable opportunity to comment about sites to be considered for the location of the correctional facility. In additions, if, on the basis of the site selection process, the commissioner determines to enter into an agreement to contract for provision of necessary facilities at a correctional facility that is to be located at a site within a municipality, the correctional facility may not be constructed at the site unless approved by a majority of the residential landowners within the "affected area" who vote at an election conducted by the municipality or legal subdivision of the state. For the purpose of this subsection, "affected area" means **the precinct or precincts with at least 50% of their area within 2 miles of the external perimeter of the lot lines of the proposed correctional facility.** This restriction does not apply to construction within the perimeter of correctional facilities in existence before the effective date of this act.

(g) In conducting the site selection process required by (f) of this section, the commissioner may solicit proposals from private entities by publishing a request for proposal in a newspaper of general circulation. The commissioner shall accept proposals for six months after initial publication of the request for proposals. Any such proposal shall certify in a manner prescribed by the commissioner that

(1) the facility to be constructed will meet the department's requirements as described by the commissioner in the RFP or other document;

(2) the facility will be operated at a cost to the state below the state's cost to operate a comparable facility, that cost to be described by the commissioner in the RFP or other documents;

(3) the entity owns or has an option to buy at a fixed cost the land on which the proposed facility would be located, and the entity agrees that the state may purchase the land at a price fixed at the time of contracting if the state assumes ownership or control of the facility pursuant to statute or provision of contract;

(h) in order for the certification of approval under subsection (f) to be valid, the approval process must meet the following requirements:

(1) not more than one month after initial publication of the RFP, the private entity shall publish in a newspaper of general circulation notice of intent to make a proposal, including a description of the location to be proposed;

(2) not more than one month after initial publication of the RFP, the private entity shall deliver by certified mail to all residential landowners residing within two miles of the proposed site notice of intent to make a proposal, including a description of the location to be proposed;

(3) at least three months prior to the bid closure date published on the RFP, the municipality or political subdivision of the state conducting the election shall deliver by certified mail to all residential landowners residing within two miles of the proposed site a mail-in ballot approved by the commissioner that residential landowners may use to signify approval of the proposed site;

(4) the approval process shall last not more than three months from the mailing of the ballots and no indication of approval shall be counted after the close of this period;

(i) If the proposed site lies within the boundaries of a municipality or political subdivision of the state, the entity making the proposal may, at the expense of the entity, contract with the administrator of the municipality or political subdivision to count ballots prepared under (h) of this section, publish the results in a newspaper of general circulation, and make all ballots received available for inspection by parties with reasonable interest in the proposal. If the entity making the proposal does not enter into a contract with the administrator of the municipality or political subdivision to count ballots, the commissioner shall count the ballots, publish the results in a newspaper of general circulation, and make all ballots received available for inspection by parties with reasonable interest in the proposal.

Renumber the following bill sections accordingly.

Page 4, line 27:

Delete "sec. 4"

Insert "sec. 5"

Page 6, line 30:

Delete "sec. 3"

Insert "sec. 4"

Page 7, line 9:

Delete "sec. 4"

Insert "sec. 5"

0-LS0194\K.40
Chenoweth
4/2/97
Mulder

AMENDMENT

OFFERED IN THE HOUSE

TO: HB 53

Page 4, line 5, following "this section":

Insert "and sec. 6 of this Act"

Page 5, line 9, following "this section":

Insert "and sec. 6 of this Act"

Page 7, following line 17:

Insert a new bill section to read:

"* **Sec. 6.** GEOGRAPHICAL LIMITATION. The Department of Administration or the Department of Corrections, as appropriate, may not enter into an agreement under sec. 3 or 4 of this Act concerning a correctional facility that is located or to be located within the boundaries of a municipality having a population of more than 100,000."

Renumber the following bill section accordingly.

0-LS0194\K.38
Chenoweth
4/1/97

Mulder

AMENDMENT

OFFERED IN THE HOUSE

TO: HB 53

Page 5, line 17, following "facility":

Insert "and the land on which it is located"