

HB

498

SFIN

FILE

SENATE FINANCE COMMITTEE REPORT

REPORTED OUT

MAY 12 2002

SENATE FINANCE
COMMITTEE

DATE: 5/6/02

FURTHER:

DATE TURNED IN TO OFFICE: 12 May 2002

Finance Committee considered

CS FOR HOUSE BILL NO. 496(FIN) am
HB 498 CORRECTIONAL FACILITIES

"An Act expressing legislative intent regarding privately operated correctional facility space and services; relating to the development and financing of privately operated correctional facility space and services; authorizing the Department of Corrections to enter into an agreement for the confinement and care of prisoners in privately operated correctional facility space in the City of Whittier; giving notice of and approving the entry into and the issuance of certificates of participation for the upgrade, expansion, and replacement of a certain correctional facility in the City of Bethel; giving notice of and approving the entry into lease-financing agreements for that project; and providing for an effective date."

and recommends:

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

Senate Bill:

- same title
- new title

House Bill:

- same title
- technical title
- new: SCR # _____

NEW FISCAL NOTE(S):

Department	Date	Fiscal	Zero	FN#

PREVIOUS FISCAL NOTE(S):

Department	Date	Fiscal	Zero	FN#
Corrections	4/19/02	165.5		#3
Revenue	4/17/02		✓	#4

APPROPRIATION - no fiscal note

SIGNATURES AND RECOMMENDATIONS:	DO PASS	DO NOT PASS	NO REC	AMEND
<i>Lyle Green</i>			✓	
<i>Lila G...</i>			✓	
<i>[Signature]</i>	✓			
<i>[Signature]</i>		✓		
<i>[Signature]</i>		✓		
<i>[Signature]</i>	✓			
<i>[Signature]</i>	✓			
COCHAIR: <i>[Signature]</i>	✓			
COCHAIR: <i>[Signature]</i>			✓	

REPORTED CBT
MAY 1 2 2002
SENATE HOUSE

FISCAL NOTE

STATE OF ALASKA
2002 LEGISLATIVE SESSION

Fiscal Note Number: 4
Bill Version: CS-HB 498(FIN)
(H) Publish Date: 4/22/02

Revision Date/Time (Note if correction): _____ Dept. Affected: Revenue
Title: Whittier Private Prison BRU: Revenue Operations
Sponsor: House Finance Committee Component: Treasury Division
Requester: House Finance Committee Component No.: 121

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2003	FY 2004	FY 2005	FY 2006	FY 2007	FY 2008
Personal Services						
Travel		15.0				
Contractual		380.0				
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Debt Service			1,712.1	1,710.1	1,711.1	1,712.3
TOTAL OPERATING	0.0	395.0	1,712.1	1,710.1	1,711.1	1,712.3

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

1002 Federal Receipts						
1003 GF Match						
1004 GF		15.0				
1005 GF/Program Receipts						
1037 GF/Mental Health						
Bond Proceeds		380.0	1,712.1	1,710.1	1,711.1	1,712.3
TOTAL	0.0	395.0	1,712.1	1,710.1	1,711.1	1,712.3

Estimate of any current year (FY2002) cost: 0.0

Check this box (X) if funding for this bill is included in the Governor's FY 2003 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

See attached.

Prepared by: Deven Mitchell, State Debt Manager Phone 465-3750
Division: Treasury Division Date/Time 4/17/02 3:49 PM
Approved by: Larry Persily, Deputy Commissioner Date 4/17/2002
Agency: Department of Revenue

FISCAL NOTE #4

STATE OF ALASKA
2002 LEGISLATIVE SESSION

BILL NO. CSHB 498(FIN)

ANALYSIS CONTINUATION

This legislation authorizes the Department of Corrections to enter into an agreement with the City of Whittier for the purposes of acquiring correctional facility space and services to house state prisoners. The Finance Committee substitute also allows that if such a facility is started in Whittier, the Department of Administration may also enter into a lease-financing agreement for a 96-bed expansion of the Yukon-Kuskokwim Correctional Center in Bethel.

CITY OF WHITTIER

The agreement would be for a minimum of 25 years and provide at least 1,000 prison beds. The lease must provide for an agreement between the City of Whittier and one or more private, third-party contractors to construct and operate the facility. The legislation provides no requirement that tax-exempt financing be used for the facility, no maximum lease term, no maximum annual lease payment amount, and no maximum project size in dollars or number of prisoners to be housed at the facility.

Although there is no specific provision in this legislation for the State Bond Committee to participate in structuring the financing, the Department of Revenue anticipates working with the City of Whittier to obtain the most favorable financing terms for the state -- as the state's lease payments will be security for any bonds sold by the municipality. The state's credit must be represented, as the pledge that will be given to bond investors is that the state will make annual payments under the agreement entered into by the Department of Corrections. This "credit trail" quickly leads investors to the fact that the likelihood of repayment or credit risk involved with this transaction hinges on the appropriation of state general fund dollars. The foundation upon which the state has built its good credit rating has been the centralized control of the state's credit through the State Bond Committee, and the Bond Committee's involvement in this issuance is important to maintaining that credit strength. This position is further strengthened by the fact that the City of Whittier has no bonds currently outstanding, and has limited local resources available to develop this complex transaction. The State Bond Committee, and contractors of the Bond Committee, would work with the City of Whittier to structure and market the transaction. The anticipated travel costs in the fiscal note would be paid from the state general fund, with the additional \$50,000 to \$80,000 in contractual costs to be paid from bond proceeds of the transaction.

YUKON-KUSKOKWIM CORRECTIONAL FACILITY

The legislation also authorizes the issuance of up to \$17,895,000, plus costs of issuance, in certificates of participation (COPs) for the facility expansion in Bethel. The total estimated issuance amount authorized in this legislation is \$19,000,000. However, the numbers in this fiscal note are based on the assumption that the total issuance amount (project and cost of issuance) would be just \$17,895,000, which is what the departments of Revenue and Corrections estimate would be needed for the project. As these bonds would be sold using the competitive method of sale, the cost-of-issuance estimates do not include the underwriter's discount or bond insurance. Assuming an issuance October 2002, an interest rate of 4.7%, and a 15-year term, the annual debt service would be approximately \$1.7 million per year on a \$17,895,000 issuance. If the full \$19 million was issued under the same terms, annual debt service would be \$1.8 million.

MAY 1 2 2002

SENATE OFFICE

FISCAL NOTE

STATE OF ALASKA
2002 LEGISLATIVE SESSION

Fiscal Note Number: 3
Bill Version: C SHB 498(FIN)
(H) Publish Date: 4/22/02

Revision Date/Time (Note if correction): _____ Dept. Affected: Corrections
Title An Act expressing legislative intent re BRU Administration and Operations
privately operated correctional facility space and services; Component AI
Sponsor House Finance
Requester State Affairs; Finance Component No. #0694

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2003	FY 2004	FY 2005	FY 2006	FY 2007	FY 2008
Personal Services	71.0	144.7	645.1	989.3	941.3	897.4
Travel	3.0	6.0	22.0	172.0	169.0	166.0
Contractual	85.5	11.0	50.0	33,695.5	34,702.0	34,786.5
Supplies	3.0	6.0	14.0	18.0	15.0	12.0
Equipment	3.0	3.0	61.0	44.9	0.0	0.0
Land & Structures						
Grants & Claims						
Miscellaneous					5,682.0	5,682.0
TOTAL OPERATING	165.5	170.7	792.1	34,919.7	41,509.3	41,543.9

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

1002 Federal Receipts						
1003 GF Match						
1004 GF	165.5	170.7	792.1	34,919.7	41,509.3	41,543.9
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
TOTAL	165.5	170.7	792.1	34,919.7	41,509.3	41,543.9

Estimate of any current year (FY2002) cost: 0.0

Check this box (X) if funding for this bill is included in the Governor's FY 2003 budget proposal:

POSITIONS

Full-time	1	2	10	15	41	40
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

Section 1 of this bill states the legislative intent to secure additional correctional facility space through a privately operated correctional facility in Alaska. The legislature expects the Department of Corrections to contract with the City of Whittier for privately operated correctional facility space and services similar to those currently acquired for medium-security Alaska prisoners in a privately operated prison outside the state. Legislature expects the initial per diem costs will be between \$89 to \$91 per day.

Section 2 authorizes a contract with the City of Whittier for correctional facility space and services with third-party contractor operation for a minimum of 25 years, a minimum of 1,000 beds and the contract must provide cultural relevant services.

(Continued on Page 2)

Prepared by: Joseph Reeves Phone 465-3315
Division: Administrative Services Date/Time 4/19/02 9:10 AM
Approved by: Margaret M. Pugh, Commissioner Date 4/19/02
Agency: Department of Corrections

FISCAL NOTE #3

STATE OF ALASKA
2002 LEGISLATIVE SESSION

BILL NO. CSHB 498(FIN)

ANALYSIS CONTINUATION

DOC will require 2 Long-term Project positions- Facilities Manager I's to interface with the Whittier (Start FY2003) and Bethel (Start FY2004) project during design and construction phases and through the 1st year of operations. Each of the position's initial salary and benefit costs are \$71.0 per year with 3.75% annual performance adjustments included per labor agreement. Each of the Facility Manager staff will also require an additional \$14.5 of support costs for FY2003 (\$3.0 Travel, \$5.5 contractual Services, \$3.0 Supplies, and \$3.0 Equipment (one-time) for their first year operations, and \$11.5 for subsequent years.

The Department of Corrections (DOC) requires funds to enable the Agency to hire a professional contractor to negotiate and execute necessary prisoner care and operational contracts with the City of Whittier and their third party Representative. These contracts are to ensure they provide a degree of custody, care, and discipline similar to that required by the laws of this state. Estimate approximately \$125 per hour X 430 hours = \$79,950 or \$80.0 (Shown in Contractual Line of FN). This is the same amount that the Municipality of Anchorage spent on their contract negotiations for the new 400-bed Anchorage Jail. Assume all necessary contracts would be completed in FY2003.

The DOC requires funds to enter into a professional service agreement for contract compliance monitoring services of the contracts for the new Whittier Prison. The DOC must be assured that the Third-Party Operator of the facility complies with all of its contractual requirements to prevent and defend against potential litigation and/or liability for the State of Alaska. Monitoring services would include development of the monitoring instrument to include all aspects of correctional practice, on-going monthly monitoring, and reporting requirements. Estimate approximately \$100 per hour X 1,000 hours per year = \$100.0 per year (Shown in Contractual Line of FN) beginning in FY2006 (operations begins).

State oversight of the new Whittier Prison will require the following additional 8 Permanent full-time state staff in the Department's budget for the life of the contract: (assume that staff will begin work in FY2005 preparing offenders for transition from existing out-of-state facilities and developing case management files, and also build in a 3.75% performance incentive adjustments to salary costs per labor agreements for FY2006-FY2008)

4 Adult Probation Officer II's (Case Managers) @ \$65.0 per year = \$260.0 per year personal services
2 Nurse II (Medical Coordination) @ \$65.0 = \$130.0 per year personal services
1 Internal Auditor II (Contract Compliance) @ \$60.0 per year personal services
1 Criminal Justice Technician (Clerical/Office Support) @ \$45.0 per year personal services
Leased Vehicles for Adult Probation Officers (2) = \$15.0 per year contractual services
Travel-Supply Support costs 8 Positions @ \$6.0 each/year(\$2.0 Travel, \$3.0 Contractual, \$1.0 Supplies) = \$48.0/year.
Equipment: \$2.0 each X 8 position to cover PC's, printers, office equipment = \$16.0 (One-time).

Data processing equipment will be needed to support DOC oversight staff and to interface with the new Whittier Prison with the Department's new Offender Tracking Information System. Data processing PC's, office equipment, miscellaneous equipment including the WAN/LAN connection. \$45.0 in FY2005 (shown in equipment line of FN).

Starting in FY06, the DOC Transportation Section will require: four (4) additional PFT Prisoner Transportation Officers based at the Whittier Prison (\$65.0 each X 4 = \$260.0 personal services with a 3.75% performance incentive adjustment per labor agreements in subsequent years) and one PFT Prisoner Transportation Officer in the Anchorage Central Office (\$60.0 P.S.), safety and operating equipment for the five officers (\$14.9 Total Equipment one-time); a new Van to transport prisoners back and forth from the Whittier Prison (\$30.0 Total Equipment one-time); travel and transportation funds to move prisoners from out of state to Whittier (one-time contractual expenses of \$688.0 in FY06); travel and transportation costs to handle routine needs at the facility (annual expenses estimated at \$12,500 per month X 12 months = \$150.0 travel); and contractual services funds (\$7.5) and supply funds (\$4.0) to support the new transportation officers.

The annual operating costs to cover the contracting costs of housing prisons under this bill will be approximately \$32,850.0 (shown in contractual services line of FN) each fiscal year beginning in FY2006. (1,000 beds times \$90 per day times 365 days) Note that FY2008 leap year will require an additional \$90.0 of contractual funds. Contractual services amount assumes that all Architectural and Engineering will be completed in the first year (FY2003) and Construction will take approximately 2 years (FY2004 and FY2005) for this multi-story 1,000 bed facility. Prison operations at the new Whittier Prison is assumed to begin FY2006. Assuming 25 year contract with City of Whittier for prison services, at the \$90 per day rate per prisoner, the total 25 year contract will be cost \$821,790,000.

(Continued on Page 3 of 3)

FISCAL NOTE #3

STATE OF ALASKA
2002 LEGISLATIVE SESSION

BILL NO. CSHB 498(FIN)

ANALYSIS CONTINUATION

The \$32,850.0 annual contractual costs of incarceration at Whittier may be offset by moving offenders housed at the Out of State Contract facility (Central Arizona Detention Center) back to Alaska and housing them in the new Whittier Prison, if any remain at CADC when the new in-state facility is completed. If the CADC were to still have 585 (current FY03 population) Alaska offenders there by the time the Whittier Prison is completed, moving those prisoners back in-state could offset the \$32,850.0 contract costs at Whittier by \$13,879.1 (585 X \$65 per day X 365 days).

Section 3 states that the provisions of AS 33.30.031 (a) do not apply to an agreement for correctional space and services in accordance with the provisions of sec. 2 of this Act.

Section 4 authorizes the department to enter into a lease-financing agreement for the expansion of the Yukon-Kuskokwim Correctional Center (YKCC) in Bethel for up to 96 new beds as costs not to exceed: 1) \$183,300 per bed; 2) \$17,593,700 in capital costs; and 3) \$5,682,000 in increased operating expenditures. The estimated total cost of construction, acquisition, and equipping the project is \$19,000,000, which shall be paid from proceeds of the certificates of participation issued. The estimated aggregate annual amount of rental obligations under the lease-financing agreements is \$1,700,000. The total payments for the full term of certificates of participation are estimated to be \$25,500,000. Estimate that Architectural and Engineering will begin in FY2004 with Construction to occur FY2005-FY2006, and expanded Operations to begin in FY2007. Estimate that the expansion of 96 offender beds at YKCC will require 27 new staff (or 3.5 offenders per staff).

Section 5 Repeals Section 1-3, ch.32, SLA 2001, relating to contracting with the Kenai Peninsula Borough for private prison services.

Section 6 establishes a "Condition Effect" that states Section 4 only takes effect if construction begins on the private prison in Whittier.

Section 7 says Sections 1-3 and 5 of this Act takes effect July 1, 2002.

Section 8 says Section 4 takes effect the day after the day that the revisor of statutes is notified by the commissioner of corrections that construction has begun on the private prison approved in secs 1-3 of this Act.

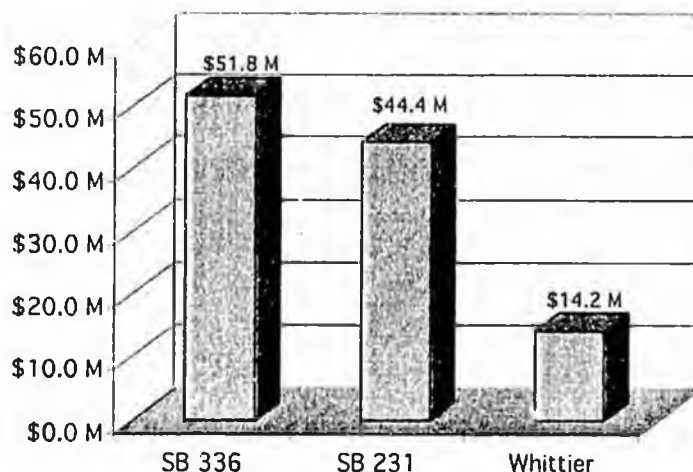
End.

SENATE FINANCE COMMITTEE
5/12/2002 COMMITTEE ACTION

Bill Number	HB 498		
Amendment			
Motion	report from Committee		
<u>Motion by</u>	Ward		
<u>Objection by</u>	Hoffman & Green		
<u>Removed</u>			
<u>Second Objection by</u>			
<u>Committee Member</u>	<u>Y</u>	<u>Vote</u>	<u>N</u>
Senator Olson		✓	
Senator Ward	✓		
Senator Wilken		✓	
Senator Austerman	✓		
Senator Green		✓	
Senator Hoffman	✓		
Senator Leman	✓		
Co-Chair Donley	✓		
Co-Chair Kelly	✓		
<u>Tally</u>			
Yea	10		
Nay	0		
Absent	1		
MOTION	PASS		

Committee

Total Annual Cost Increase
(Operating Cost and Capital Amortization)

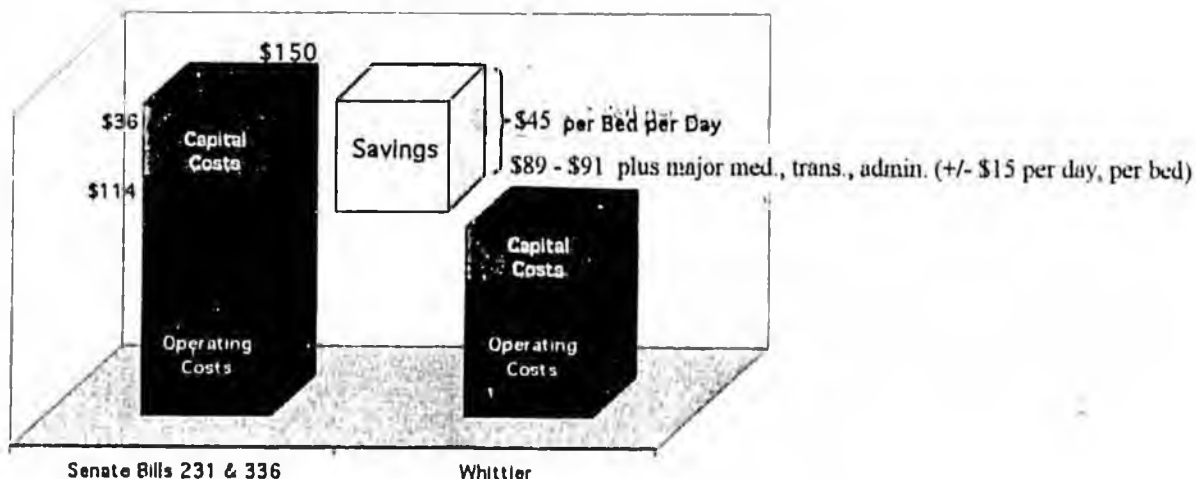


Annual Operating & Capital Cost Increase

	HB 497 SB 336	HB 388 SB 231	HB 498 (Whittier)
Total Operating Costs	\$52.9 M ¹	\$47.3 M ²	\$32.0 M ³
Less Offset from Arizona	\$17.8 M ⁴	\$17.8 M ⁴	\$17.8 M ⁴
Net Operating Cost Increase	\$35.1 M	\$29.5 M	\$14.2 M
Capital Cost Amortization ⁵	\$16.7 M	\$14.9 M	Included Above
Total Annual Cost Increase	\$51.8 M	\$44.4 M	\$14.2 M

- ¹ SB 336 - 1,269 beds at \$114 per day for 365 days/year = \$52,803,000 annual *operating costs only*
- ² SB 231 - 1,136 Beds at \$114 per day for 365 days/year = \$47,269,000 annual *operating costs only*
- ³ Whittier - 1,000 beds at \$89 per day for 365 days/year = \$32,485,000 annual *operating costs and capital costs*
- ⁴ Arizona - 750 beds at \$65 per day for 365 days/year = \$17,794,000 annual cost - current
- ⁵ Amortization of average cost per bed at \$36/day for 365 days/year times the number of beds

Daily Cost Comparison





ALASKA STATE LEGISLATURE
HOUSE FINANCE COMMITTEE
STATE CAPITOL, JUNEAU, ALASKA

Sponsor Statement

CSHB 498(FIN)am - "An Act expressing legislative intent regarding privately operated correctional facility space and services; relating to the development and financing of privately operated correctional facility space and services; authorizing the Department of Corrections to enter into an agreement for the confinement and care of prisoners in privately operated correctional facility space in the City of Whittier; giving notice of and approving the entry into and issuance of certificates of participation for the upgrade, expansion, and replacement of a certain correctional facility in the City of Bethel; giving notice of and approving the entry into lease-financing agreements for that project; and providing for an effective date."

CS for House Bill 498 (FIN)am authorizes the construction of a local government-financed, local government-owned, and privately managed 1000 bed, medium security prison in the City of Whittier, and authorizes the expansion of the Yukon-Kuskokwim Correctional Center in Bethel by up to 96 new beds.

Ten out of the state's 15 regional correctional facilities are currently operating over emergency capacity, the remainder approach emergency levels of prisoner overcrowding, and 600 Alaskan prisoners are housed in Arizona.

Prison overcrowding exposes inmates and staff to the risk of serious injury and death, and exposes the State to civil liability, as well as judicial intervention into the management prerogatives of the executive branch. With a total, all-time high prisoner population of 4,828, the current situation is grave and exceeds projections of the Dept. of Corrections.

This bill will create more than 500 direct and indirect, union scale construction jobs, and more than 500 permanent, direct and indirect, jobs for Alaskans associated with prison operations for the 25-year lease term authorized by the legislation. In addition, it will stimulate the Alaskan economy with the purchase of goods and services associated with an \$80-100 million construction project.

From a local perspective, a project of this magnitude will add value to the \$80 million Anton Anderson tunnel, reduce tolls and justify expanded hours of operation. Of greater importance, the prison will serve as an anchor economic engine in a community with limited economic stimulus opportunity.

The State will benefit economically and socially by providing in-state prison beds at significantly less cost than State-operated beds; by returning Alaskan prisoners closer to the resources necessary for effective rehabilitation; by diminishing State liability for the effects of prison overcrowding; and by providing programs designed to break the cycle of Alaska Native recidivism.

With an average voter turnout of 110 residents, 38 adult residents have petitioned the Whittier City Council to adopt an ordinance authorizing the City to develop the prison in their community. The enabling ordinance passed with a unanimous vote.

The House of Representatives chose to add to the bill the Governor's number one priority for prison expansion, the Y-K Correctional Facility in Bethel. This expansion of up to 96 beds would relieve the chronic overcrowding at a critical regional facility. The CS authorizes this expansion through the use of certificates of participation for a total cost not to exceed \$17.6 million.

This sponsor statement prepared by the office of Representative John Harris (465-4859).



ALASKA STATE LEGISLATURE
HOUSE FINANCE COMMITTEE
STATE CAPITOL, JUNEAU, ALASKA

Sectional Summary for Finance CS

CSHB 498 (Fin) – “An Act expressing legislative intent regarding privately operated correctional facility space and services; relating to the development and financing of privately operated correctional facility space and services; authorizing the Department of Corrections to enter into an agreement for the confinement and care of prisoners in privately operated correctional facility space in the City of Whittier; giving notice of and approving the entry into and the issuance of certificates of participation for the upgrade, expansion, and replacement of a certain correctional facility in the City of Bethel; giving notice of and approving the entry into lease-financing agreements for that project; and providing for an effective date.”

Section 1 expresses the Legislature’s intent that in Sec. 2-3 the Department of Corrections (DOC) secure additional prison space and services through a contract with the City of Whittier, similar to that currently contracted for outside the state. It further anticipates a privately-operated prison to bring competitive management styles and operations to Alaska. Finally, it expresses the intent that the initial per diem costs (excluding costs now excluded in the contract in Arizona, but including capital costs) should be in the \$89-\$91 range.

Section 2 in subsection (a) authorizes DOC to enter into a 25-year contract with Whittier for correctional space and services. Subsection (b) provides that the contract in (a) is predicated upon the City of Whittier having an agreement with one or more third-party contractors for construction and operation of the facility. It further requires that the City of Whittier procure the third-party contractors through a competitive procurement process. And it provides that the procurement requirements are satisfied if the City of Whittier follows its proscribed and lawful procedures under the general powers grant of the state municipal code (AS 29.35.010(15) (providing facilities for the confinement and care of prisoners).

Subsection (c) stipulates that the agreement authorized in (a) must cover a minimum of 1000 beds and the payment from DOC must cover the capital costs, including debt service, and operating costs for a period of five years from initial operation of the facility. The CS also includes a provision that the operating component must include a reasonable adjustment for costs not incurred until full occupancy.

Subsection (c) further provides that the payments under the agreement must be subject to annual appropriation by the legislature; that the agreement must contain a provision

allowing for termination with the third-party contractor and procurement of a replacement contractor; and that the agreement is subject to a requirement that the contractor provide culturally relevant counseling to incarcerated Alaska Natives.

Subsection (d) provides that the City of Whittier may issue bonds under its municipal powers and that the bonds may be secured by the revenues from the facility.

Section 3 adds a section of uncodified law to provide that AS 33.30.031(a) does not apply to the above-described agreement. AS 33.30.031(a) is a grant of authority to the commissioner of corrections that allows placement of prisoners in non-state facilities if the commissioner determines there is insufficient suitable space in-state.

The CS adds a new Section 4, authorizing Dept. of Administration to enter a lease-financing agreement for the expansion of the Y-K Correctional Facility in Bethel. Subsection (b) authorizes the state bond committee to issue certificates of participation of up to \$17,895,000, with estimated total costs for the expansion at Y-K of \$19 million. It further sets rent obligations at \$1.7 million and total payments over the term of the COPs at \$25.5 million. Subsection (b) also provides a definition of the phrase "cost of construction."

Subsection (c) sets forth the parameters for the state bond committee in financing the projects. Subsection (d) stipulates that the lease payments are subject to annual appropriation from the legislature, from the general fund or from any other valid source. Subsection (e) describes the project as expansion of the Y-K Correctional Facility by up to 96 beds and lays out costs. Subsection (f) states that the section constitutes required notice and approval of the project by the legislature.

Section 5 repeals unneeded portions of last year's legislation authorizing private prison in the Kenai Peninsula Borough.

Section 6 provides an effective date of July 1, 2002.

Section 7 ties the effective date for Sec. 4 to the day after the day the revisor of statutes is notified that construction has begun on the private prison authorized in Whittier.



THE CITY OF WHITTIER

Gateway to the Western Prince William Sound

P. O. Box 608 • Whittier, Alaska 99693 • (907) 472-2327 • Fax (907) 472-2404

March 22, 2002

Representative John Harris
Mailstop: 3100
State Capitol
Juneau, SK 99801-1182

FAX: 465-3799

Dear Representative Harris:

There are five prison bills before the Legislature this session that represent two different ways of managing correctional services in Alaska. Senate Bills 336, 231 and corresponding House Bills 497 and 388 implement the Administration's recently released master plan "Corrections & Community Partnerships: A New Way of Doing Business." There is nothing new about the plan, as these bills simply continue Alaska's cost prohibitive approach to managing the State's prisons and jails. **HB 498 (the Whittier prison)** represents a fundamental shift in policy that will return prisoners from Arizona, provide statewide relief to prison overcrowding and control Corrections' runaway budget.

When costs are compared, the difference in the two approaches is immediately apparent. *Attachments 1 and 2* summarize the Department's plan. It proposes to add 1,239 beds, to ten regional facilities, for a total capital cost of 239 million dollars. With an average daily operating rate, per bed, of \$111, this plan will increase the Department of Corrections annual operating budget by 50 million dollars. Further, the plan does not even presume to return prisoners from Arizona. It simply states that the expansion may "perhaps bring home some prisoners from out of state." (pg 25 Wildwood narrative) The Whittier prison adds the same number of beds (1200), for a total capital cost of 110 million dollars. This plan returns all 750 prisoners from Arizona and adds 450 medium security beds to satisfy the Department's reported in-state demand. Under the Whittier plan, the per diem rate is capped at \$89 to \$91 per bed, thereby delivering the same number of beds, for less than half the increase in operating cost under the Administration's plan, at only half the capital outlay.

Aside from the obvious economy of scale advantage of a single facility, what accounts for the huge difference? The difference is that the Administration's plan continues to expand the cost prohibitive policy of combining jail and prison services. This

practice, along with disproportionately high personnel costs, has propelled Alaska's prison and jail costs to double the national average.

Jails hold prisoners from the time of arrest until they are sentenced. The purpose of a jail is lock up...no fringe benefits, no programs, just lock up. After sentencing prisoners should be transferred to prisons that are built to provide security and rehabilitation programs.

Effective prison programs require access to health, education, training and other treatment resources that do not exist in many Alaska communities. Providing the same programs in facilities throughout the State is expensive and inefficient.

In *Attachment 3* you will see that the Department of Corrections is experiencing the worst facility overcrowding in State history. There is no question that there is a serious need for in-state beds. **The question is what kind of beds, and where?**

The Administration's master plan says that "the State now has an over abundance of medium custody inmates." (pg 2) The plan adds 217 medium security beds to the Palmer Correctional Center (Sutton) and 256 medium beds in Kenai. When the Arizona prisoners are factored into the demand, the State needs 1,223 prison beds.

The Department probably needs more beds at other facilities around the State, but *until jails are used as jails, and prisons are used as prisons, it is impossible to assess statewide regional demand*. For example, half of the prisoners in some regional facilities are sentenced, with the remainder awaiting trial or sentencing. Many of these facilities may not need to expand if the sentenced felons could be moved to a new prison facility. *Attachment 4* shows that this condition exists throughout the state.

Under the Administration's plan, the State will add only 473 medium security beds in Kenai and Palmer, for a capital cost of 94.5 million dollars. For the same money (\$110 million) the Whittier plan delivers 1200 beds. But the real cost savings is seen when the combined daily capital and operating costs, per bed, are compared.

Attachment 5 is an "apples to apples" comparison of private and State operated medium security beds. The State's daily average operating cost, per bed, in Palmer and Kenai is \$89. That cost includes the Department's reported daily cost, per bed, for those institutions, plus inmate programs, administration and statewide indirect costs. It omits major medical to fairly compare with the Whittier per diem. The capital cost for the 473 beds, amortized over twenty-five years, is \$36 per day, per bed. Thus, the total cost for a State medium security bed in South Central Alaska is \$125 per day, without major medical.

The Whittier prison's combined daily capital and operating cost, per bed, is capped at \$89 to \$91, without major medical. A local government owned, but privately built and managed, medium security prison bed saves the State \$35 per day, per bed, or 15.3 million dollars per year for 1200 beds.

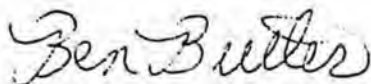
RECOMMENDATION

It is apparent that something must be done about the crisis in Corrections this session. The immediate need for 1,200 prison beds is obvious. But from the Department of Corrections' plan, it appears that the State has other legitimate prison and jail needs that may not be met by the Whittier prison.

After years of isolation in the backwaters of public policy, Whittier is sensitive to the needs of local communities throughout the State. Rather than piecemeal consideration of a variety of prison bills, perhaps there is a way to combine the Whittier plan with other obvious and compelling correctional needs.

Be that as it may, we deeply appreciate the Legislature's thoughtful consideration of the Whittier prison plan, as well as your advocacy on our behalf.

Sincerely,

A handwritten signature in cursive script that reads "Ben Butler".

Ben Butler
Mayor

enc: 6 Attachments

* Department of Corrections Master Plan
 "Corrections + Community Partnerships
 A New Way of Doing Business"
 February 2002

Summary

Location	# Beds	Type	Total Cost (Millions)
Bethel	96	Jail/Sentenced	\$18.594
Fairbanks	80	Jail/Sentenced	\$15.152
Palmer	217	Medium/Sentenced	\$44.494
Seward	150	Juvenile/Sentenced	\$28.130
Mat-Su	102	Jail	\$27.517
Anchorage	192	Jail/Special Need	\$26.428
Pt. Mac	88	Minimum/Sentenced	\$9.908
Kenai	256	Medium/Sentenced	\$50.050
Juneau	64	Jail/Sentenced	\$11.312
Ketchikan	24	Jail	\$7.478
Total Beds	1,269	Total Capital Costs	\$239.060
		For beds and Infrastructure	
\$111 Average Daily Cost Per Bed	1,269	Annual Operating Cost	\$50.1

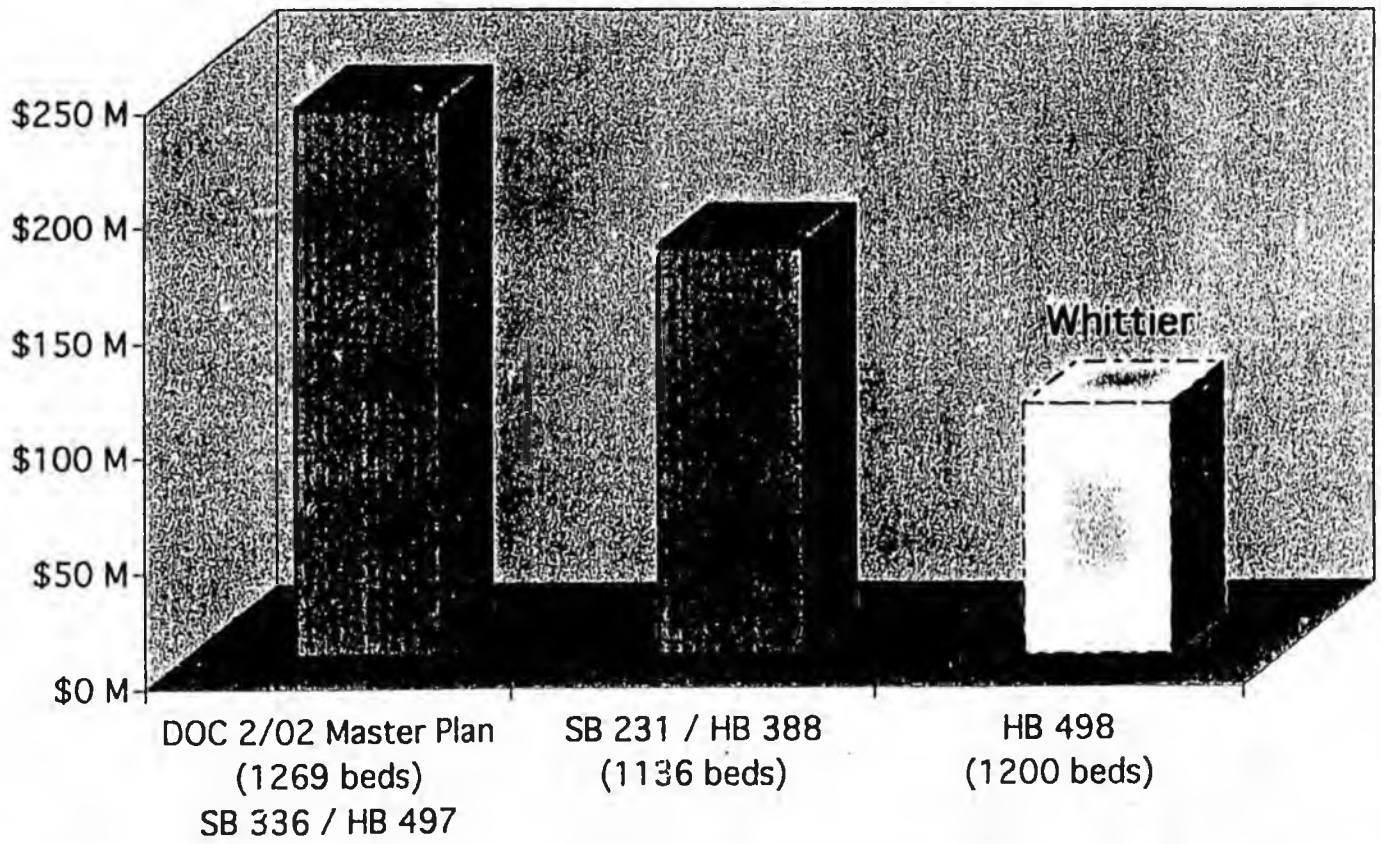
"The State now has an overabundance of medium custody inmates"

Page 2, *Corrections + Community Partnerships - A New Way of Doing Business*, February 2002

Medium Security Prison Space Demand	Palmer	217
	Kenai	256
	Arizona	750 (High Medium)
	Total Beds Needed 1,223	

* Senate Bills 336 and 231 and House Bills 497 and 398 are designed to implement this plan in whole or in phases

Proposed Capital Costs: 1200 Beds



Instate Inmate Count - Alaska Department of Corrections - February 2002

	104	403	211	233	58	170	85	78	214	176	108	486	255	113	92	Emergency Cap		2786
	102	397	200	225	52	164	82	78	207	176	104	466	249	112	88	Maximum Cap	2702	
Day	AMCC	CIPT	FCC	HMCC	KCC	LCCC	MSPT	MCCC	PCCmed	PCCmin	SIXTH	SCCC	WCC	WPT	YKCC	Totals	Over Max	
1			203	222	57			77		176				94	91	2859	106%	
2			206	224			85	77		176	108			106		2887	107%	
3			204	226				78		176				105		2907	107%	
4			226				85	75		176				104		2916	108%	
5		211	226				83	77		176				105		2921	108%	
6			226					77		176	107			104		2913	108%	
7			230				84	77		176	107			103		2917	108%	
8			231	55			82	77		175	108			111		2905	107%	
9		211					85	77		175	107			110		2920	108%	
10							85	77		175	108			109		2932	108%	
11						168	85	77		176	101			103		2916	108%	
12			232			169	84	77		176	100			104		2912	107%	
13		210	229				82	77		176	107			106		2915	107%	
14			227				78	77		175	104			97		2909	107%	
15			222				79	77		176				110		2928	108%	
16			223				75	77		176				111		2938	108%	
17			231				75	78		176				109		2944	108%	
18			230				81	78		175	106		253	108		2943	108%	
19			230				79	78		176	104		252	105		2946	108%	
20			226				80	78		176	106		253	109		2942	108%	
21				218	58		79	78		176	107			109		2939	108%	
22		204		216	57		79	76		176				107		2931	108%	
23				219			77	76		176				110		2951	108%	
24				218			81	75		176				110		2952	108%	
25				217			85	78		176				97		2961	109%	
26				215			82	78		176				102		2963	109%	
27				215			81	77		176	102			102		2917	107%	
28				212	57		82	77		176	102			99		2920	107%	
Avg.	113	437	214	225	61	177	82	77	228	176	110	541	261	105	104	2911	108%	104%

█ = Over Maximum Capacity

█ = Over Emergency Capacity

**Department of Corrections
Daily Totals**

Institution	MEN Sentenced	MEN Unsentenced	WOMEN Sentenced	WOMEN Unsentenced	Total
Anvil Mt. (Nome)	42	61	1	3	107
Cook Inlet PT	83	355	2	1	441
Fairbanks CC	47	141	10	12	210
Hiland Mt. CC	0	0	129	86	215
Ketchikan CC	15	43	3	3	64
Lemon Creek CC	101	59	3	10	173
MatSu Pre-Trial	7	72	0	1	80
Meadow Creek	78	0	0	0	78
Palmer Med. CC	100	130	0	0	230
Palmer Min. CC	173	3	0	0	176
6 th Avenue	28	68	0	4	100
Spring Creek CC	535	10	0	0	545
Wildwood CC	243	16	0	0	259
Wildwood PT	16	72	3	2	95
YKCC (Bethel)	26	87	1	7	121
Total	1496	1117	152	129	2,894

Percentages of Sentenced and Unsentenced

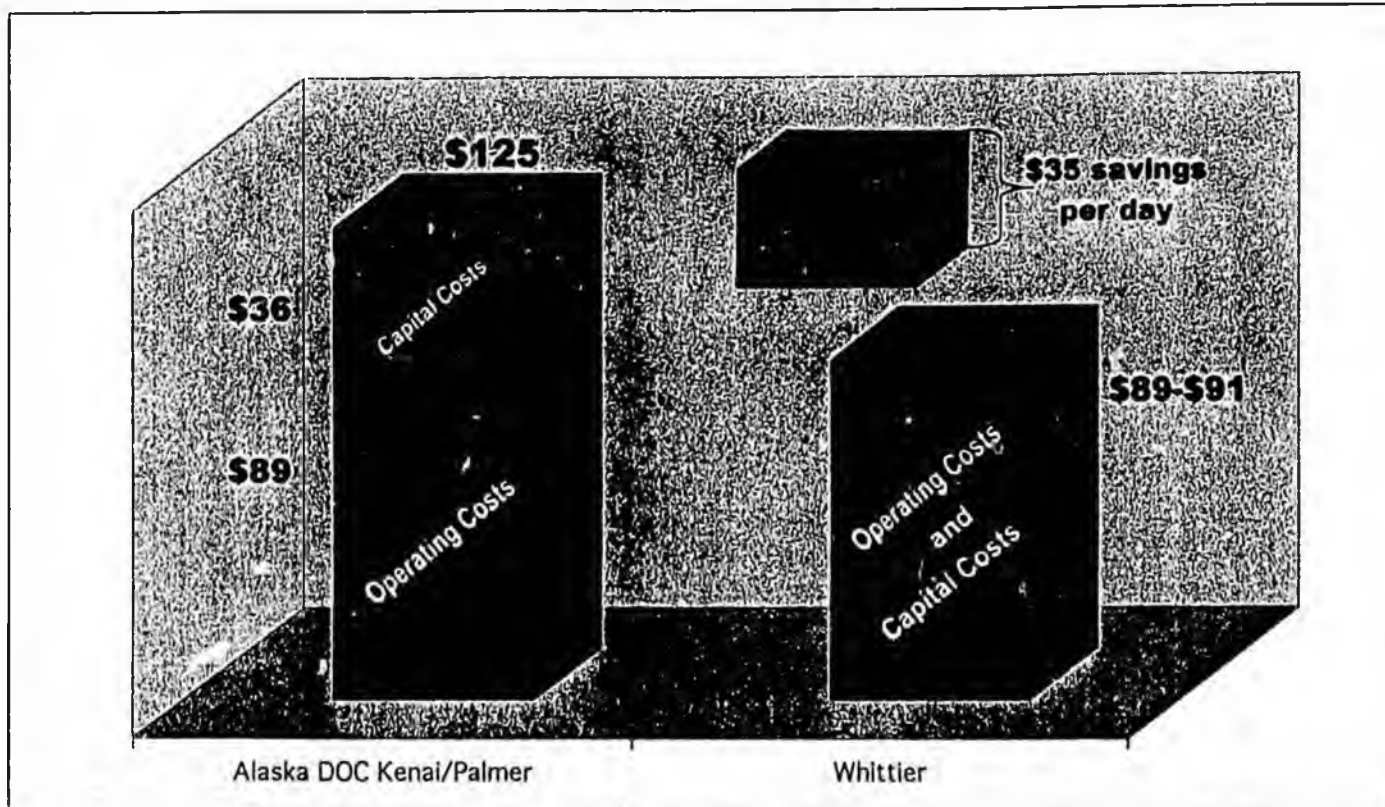
Unsentenced	Sentenced	Total
1246	1648	2,894
43%	57%	100%

Capitol and Operating Cost Comparison

Private vs. State Medium Security Beds

South Central Alaska

Attachment 5














Notes:

1. \$89 is the Wildwood and Palmer Average Daily Cost of Care, plus Inmate Programs, Admin and Support, and Statewide Indirect, less Major Medical.

2. \$36 is the Construction of the State's Planned Palmer and Kenai medium security prison additions (473 beds) amortized over 25 years.

Source: D.O.C. Daily Cost of Care (effective January 1, 2001) Published 12/7/00

Benefits to the State

-  Returns \$18 million per year to Alaska economy; economic multiplier effect benefits all of Alaska
-  325 Union construction jobs*
-  228 Indirect construction related jobs*
-  225-275 permanent prison jobs*
-  200 permanent indirect jobs*
-  Purchase of goods, materials and services associated with construction and operation over 25 years
-  35% less costly than State built and operated prison beds
-  Mitigates state liability for prison overcrowding
-  Returns Alaska prisoners nearer to Alaska rehabilitation resources and families
-  Only prison plan that focuses on Alaska Natives with programs *for Natives by Natives*
-  Adds value to \$90 million Anton Anderson Tunnel

* Adapted from Information by Scott Goldsmith, University of Alaska

BILL J. ALLEN
Publisher

Voice of the Times

A CONSERVATIVE VOICE FOR ALASKANS

WILLIAM J. TOBIN
Senior Editor

Time to break impasse on prisons

By FRANK PREWITT

ANWR, subsistence, the budget deficit, "all day long the noise of policy war rolls across the winter sea" muffling the sound of a lesser battle where less, rather than quality, of life is threatened. The engagement is over how best to manage Alaska's prisons and jails. Like other battles, the impasse from years of turf struggle weighs most heavily on the innocent and powerless. In Corrections' case, innocent staff and powerless offenders.

Twelve out of Alaska's 15 correctional facilities are, again, operating at emergency levels of overcrowding. Bad things happen when prisons and jails are overcrowded. Facilities and equipment break down, tempers flare, routine is disrupted, security is compromised and people get hurt, sometimes killed.

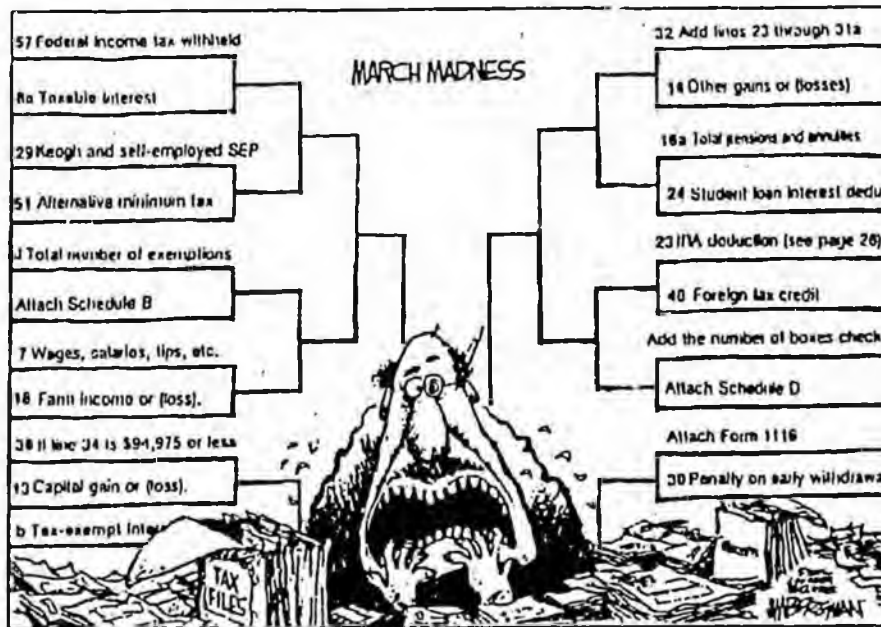
These life-threatening conditions are the result of a philosophical standoff between two legitimate, but distinctly different approaches to managing state resources.

One approach is the Department of Corrections' new master plan, "Corrections & Community Partnerships: A New Way of Doing Business." This session, four bills have been introduced to implement this plan. But rather than "a new way of doing business," the plan simply re-packages the old, increasingly impractical and cost-prohibitive approach to managing correctional services.

The other approach is the Whittier prison plan. The most obvious distinction between the two is the cost for the proposed beds. The department's plan adds 1,269 beds, to 10 facilities, for a construction cost of \$239 million. The Whittier private/public partnership adds the same number of beds, in one central facility, for a construction cost of \$110 million.

At an average daily operating cost, per bed, of \$111, the department's plan will increase the operating budget by nearly \$50 million, plus capital costs. The Whittier prison provides the same number of beds for a combined daily capital and operating cost of \$89 to \$91 per bed.

Both plans meet state and national



standards. The difference is that Corrections' plan continues the practice of housing prison and jail services under one roof, sacrificing economy of scale in favor of duplicating services throughout the state.

Jails are meant to hold prisoners from arrest to sentencing and through appeal. The mission of a jail is safe and secure confinement — no frills, no programs, just confinement. After sentencing, most convicted felons in other states and the federal system are transferred to central prisons designed to meet their security and program needs. Only prisoners with short sentences remain in local jails.

Prisons require access to mental health, adult education, vocational training and other resources that are in limited supply in many Alaska communities — resources like CIRI's Southcentral Foundation, the University of Alaska, the Alaska Native Medical Center and a host of other programs and practitioners committed to fostering behavioral change in people. Within a year or two of release, offenders should be transferred to halfway houses, close to family and the community support systems needed for successful reintegration.

Duplicating these services in facilities

throughout the state is inefficient, expensive and often ineffective because quality and continuity are difficult to maintain.

The department's plan adds 473 beds for sentenced felons in Palmer and Kenai. Add 750 Alaskan prisoners in Arizona and the state needs all 1,200 of the beds proposed by the Whittier plan. There is also a need for jail beds at other facilities around the state. But until jails are used as jails and prisons are used as prisons, it is difficult, if not impossible, to determine regional demand.

Edmund Burke said, "all government — indeed, every human benefit and enjoyment, every virtue and every prudent act — is founded on compromise and barter." It is time to compromise or barter through the impasse in Corrections by expanding state and municipal jails where there is a clear need, and by supporting private/public partnerships that can build and manage new prison beds at lower public expense.

The state simply cannot afford to become stuck fast in yesterday's way of doing business.

Frank Prewitt, an Anchorage attorney, is former commissioner of Corrections and a consultant to the Whittier prison project

Charles Campbell 3020 Douglas Hwy, Juneau, Alaska 99801
(907) 586-5793 cfc@gci.net

Senator Dave Donley, Chairman
Senate Finance Committee
Alaska State Legislature
Juneau, Alaska

May 12, 2002

Dear Senator Donley:

It troubles me that the Alaska State Legislature would give any consideration to *House Bill 498* (the Whittier private prison bill.) Should this deeply flawed bill eventually become law, the Department of Corrections would be deprived of its ability to function as an effective criminal justice and social agency. Our state would be locked into utilizing an ill-considered 100 million dollar monstrosity- a prison that would most certainly be fraught with serious, ongoing operational problems. And the Department of Corrections would still be required to confine hundreds of inmates great distances from their home communities, in a uniquely inaccessible location.

Alaska is not like California, where the decision was recently made to terminate contracts with all private prisons in the state. Should a 1,000 bed prison be built in Whittier under the provisions of this bill, that would be it. Alaska corrections would, of necessity, revolve around the need to keep all of those one thousand beds filled. Concerns about good prisoner classification and effective correctional programs would be out the window.

I am a past Director of Corrections in Alaska, and I have had much experience in the field over the past fifty years. I have had assignments at seven different federal prisons. Moreover, I have familiarity with probably about a hundred others. Please do not dismiss my admonition here. Keep in mind, the legislature has not sought any disinterested, expert consultation in this matter. I don't know of one correctional professional in Alaska, current or retired, who does not agree with the views I am expressing in this letter, except, to be sure, those who have a financial interest in the matter.

It would be irresponsible for the state to establish a large medium custody prison, private or otherwise, in Whittier. A dangerous situation would result. Of the hundreds of prisons about which I have personal knowledge, I do not know of one that doesn't have the ability to call in two or three squads of correctional officers in the event of emergency. A private prison at Whittier would never be able to do that. Almost certainly, they would be continuously short-staffed. And keep in mind, there is no significant law enforcement backup in that community.

Of equal concern to me would be the lack of accessible community resources for correctional programs. The easy accessibility of a strong cadre of good community volunteers is an absolute necessity for a correctional facility that aspires to offer effective programs. Whittier would never be able to provide that important advantage. The people who are pushing this bill have offered their own "expert" testimony regarding the "advantages" of Whittier as a location for correctional programs. The advice offered by Cornell's representative is so mistaken as to be mind-boggling.

There is an array of other serious problems with the prospect of a prison in Whittier, but information on those issues will be provided by others who intend to testify before your committee. I am determined to keep this letter to one page- to increase its chances of its being read and carefully considered.

I would be pleased should you, or any other member of the committee, choose to talk to me further about this matter.

Sincerely yours,

Charles Campbell

cc: Members, Senate Finance Committee

DEE HUBBARD chubbard@alaska.net

Analysis of the City of Whittier/Cornell Private Prison Resolution and Agreement

Resolution

There are a few concerns in Ordinance 434 2, which was adopted by a vote of 7 - 0 on Tuesday, February 19, 2002. This Ordinance enables the City of Whittier to sign an Agreement with Cornell Corrections of Alaska, Inc. to plan, promote, design, construct and operate a minimum 800 bed correctional facility.

Cornell and Corrections Corporation of America were the only two proposers. This method is the same that was used in the Kenai prison - RFQ.

The fourth Whereas clause reads.....

"Whereas, over eighty of the registered voters in the City have signed a petition expressing support for the location of a prison facility in Whittier".

When I testified at the City Council meeting Feb. 19, I questioned whether this was an official petition (that followed all of the requirements listed in AS 29.26.110). I asked if a registered voter had brought it forward, had the Clerk certify it, gathered signatures and then had those signatures verified by the City Clerk as being residents of Whittier. The Mayor looked a little perplexed and never gave me an answer. I mentioned that if this was an unofficial petition, then I didn't think it wise to have it listed in an official document.

Some residents did state whether they signed or did not sign the petition, when they testified.

At the time of the 2000 General Election there were 119 people that voted in Whittier. The number of registered voters was 414. The 2000 Census found ~~192~~ 192 residents.

In the sixth Whereas clause it says.....

"Whereas, Cornell through its representative and the City, through its representatives and attorneys have mutually drafted and negotiated a proposed comprehensive agreement with Cornell which:

1. authorizes Cornell to pursue the required planning and promotion of the Project to the legislature;
2. in the event of legislative approval, commits the City, along with Cornell, to enter into negotiations with the State Department of Corrections to achieve an Intergovernmental Agreement by which the State would purchase prison facility services from the City, said services to be designed, built and operated during the first five years by Cornell; and

3. is subject to the issuance by the City of debt obligations in the form of revenue bonds to pay for the design and construction of the Facility, which bonds are to be re-paid by the City out of the funds received from the State for the operation of the facility and are not to be a general obligation of the City".

²
In subsection (b) the new lingo is "purchase prison facility services", as opposed to the language in the Kenai ordinance of "leasing" bed space. I do not know the significance of "purchasing services" versus "leasing" beds. With the short time frame I haven't been able to get any answers. I did alert people in DOC, who were going to try and get an answer, because they didn't know either.

³
In subsection (c) it talks only about payment for design and construction. The Agreement itemizes further costs that the payment will cover.

Agreement

Throughout the Agreement there are several common threads.

1. A minimum of 800 beds would be provided.
2. All of the risks of design, construction and operation of a private prison would be on Cornell. The City is trying to stay more than an arm's length from those risks.
3. The City will be responsible for almost no payments toward any part of the prison project. As an example, Cornell will be paying for almost all, if not all, the lobbying expenses.
4. The State will be paying for all of the beds, irrespective of having a warm body in them. This is called the "Take or Pay" basis. It is defined in the Agreement as "Take or Pay shall mean the State's obligation under the IGA (Intergovernmental Agreement) to pay for the number of beds under contract regardless of whether a prisoner has been delivered to the Facility." (Page 4 of the Agreement)

Further, the Take or Pay rate appropriated by the State must be acceptable to Cornell. Advance payment is required.

5. A Bond Trustee will be designated to administer Bond proceeds and disburse funds for the project. The City of Whittier will have no responsibility for the bonds, except to cooperate with the issuance of the Bond and submit the Property and Facility to a deed of trust. It will be up to Cornell to coordinate with bond underwriters and the State Bond Committee to obtain all necessary papers and information to issue the Bond. All costs for this person will come out of the Bond.

I do not know if this is a standard practice to employ a Bond Trustee. Nor do I know how much this would cost. The questions were asked, but I have no answers yet.

6. Under Warranties of the City (Page 4 of the Agreement) the City warrantees "that the City, . . ., establish the Facility as an adult medium security correctional facility to house inmates from the State of Alaska, the federal government, and other governmental entities that may wish to house inmates at the constructed Facility".

This means that Cornell can go shopping for inmates, wherever it can find them. The State statutes contain no prohibition against housing out-of-state inmates.

The City of Whittier will "cooperate with Cornell to accommodate any other sources of inmates which Cornell may identify, which may allow for an additional expansion of the Facility". (Page 21 of the Agreement) If Cornell requests the City to help in this area, Cornell "shall reimburse and pay for the City's reasonable expenses incurred in response to Cornell's request." (Same Page)

I certainly didn't realize that not only was the State required to fill a 1200 bed facility, but it is also responsible for any expansion of the facility that Cornell identifies.

7. While the City will negotiate to achieve an IGA with the State, the City authorizes Cornell to coordinate and negotiate with the State to define the terms of the IGA.
8. "Cornell will bear its own expenses for the funding of this effort... ." "...the City shall have no obligation to reimburse Cornell for the costs incurred in planning and promoting the enabling legislation and the IGA" (Page 6 of the Agreement)
9. "Reimbursement Through the Bonds. Cornell and the City will cooperate with each other to seek reimbursement of their planning and promoting expense, including, without limitation, their expenses in preparing and responding to the Request for Qualifications and the negotiation of this Agreement, at the time of financing of the bonds issues for construction of the Project. The City shall pass such resolutions as are necessary to authorize reimbursement of pre-bond issuance expenses." (Page 6 of the Agreement)


This means that the Bond proceeds will pay Cornell and the City for every expense they have incurred from the very beginning of this project. How many thousands of dollars will that be? I have asked if this is a normal cost built into the Bond, but I have not yet received an answer. I find this incredibly greedy. The Agreement is riddled with snippets of language regarding payments of certain things to come out of the Bond.

10. The Project Costs "shall include the costs of design, financing expense, construction, promotion and planning development, legal expense, pre-opening activation and startup costs." (Page 7 of the Agreement)
11. The Design Build Contract players are Cornell, VECO Alaska, Neeser Construction, Inc. and Livingston Slone, Inc. Same group – different City.
12. Under the Assignment of IGA Revenues section "... the Bond Trustee who will apply the fees in the following priority: (i) to pay the indebtedness for the bonds that financed the construction of the Improvements; (ii) to pay the payment in lieu of taxes set forth in section 6.1, and (iii) to pay the balance to the Operator of the Facility. To the extent start-up costs actually incurred by Cornell are not included within the amount financed by the bonds as set forth in section 5 (C), the City acknowledges that a portion of the per diem payment shall be used by Cornell to recover its unreimbursed start-up costs over the five year term." (Page 10 of the Agreement)

This is another blatant example of greed. Let me show you a small section of Cornell's 10-Q SEC report on October 30, 2001, which discusses start-up costs.

"Following a Agreement award, the Company incurs pre-opening and start-up expenses including payroll, benefits, training and other operating costs prior to opening a new or expanded facility and during the period of operation while occupancy is ramping up. These costs vary by Agreement. Since pre-opening and start-up costs are factored into the revenue per diem rate that is charged to the contracting agency, the Company typically expects to recover these upfront costs over the life of the Agreement. Because occupancy rates during a facility's start-up phase typically result in capacity under-utilization for at least 90 to 180 days, the Company may incur additional post-opening start-up costs. The Company does not anticipate post-opening start-up costs at facilities operating under any future Agreements with the FBOP, because these Agreements are currently take-or-pay, meaning that the FBOP will pay the Company for at least 95% of the contractual monthly revenue regardless of actual occupancy.

Newly opened facilities are staffed according to Agreement requirements when the Company begins receiving offenders or clients. Offenders or clients are typically assigned to a newly opened facility on a phased-in basis over a one- to three-month period, although certain programs require a longer time period to reach break-even occupancy levels. The Company incurs start-up operating losses at new facilities until break-even occupancy levels are reached. Although the Company typically recovers these upfront costs over the life of the Agreement, quarterly results can be substantially affected by the timing of the commencement of operations as well as development and construction of new facilities."


 What we have here is the Bond paying for pre-start-up costs, prior to the signing of the Agreement, and the Bond paying for the start-up costs, after the Agreement is signed, up to the time the prison is up and running.

13. The State shall be responsible for payment of "major medical services, the cost of and provision of prescription medicine, or prisoner transportation, which shall be negotiated as a State provided item under the IGA." (Page 10 of the Agreement)
14. The City is included on every possible insurance policy that Cornell is required to carry.
15. Cornell requires that "any transportation contractor engaged by Cornell shall be subject to the" \$1,000,000 combined single limit per occurrence and annual aggregate comprehensive Automobile Liability Insurance. (Page 10 of the Agreement)

I asked someone at DOC about this requirement. The State self-insures. If the State could not meet this \$1 M requirement, would the Agreement between Whittier and Cornell then dictate to the State the coverage it has to have? I don't have an answer yet.

16. Cornell is not required to carry earthquake insurance. (Page 10 of the Agreement)
17. There is a whole subsection regarding Inmate Incarceration Service. (Pages 13 through 15 of the Agreement) This includes food service, health care, inmate programs, inmate work program, religion and transportation.

Some of the notable ideas put forth are an on-site infirmary, inmate programs "which will include, but not be limited to culturally relevant services to Alaskan native inmates", one chaplain and payment to Cornell for transportation of inmates.

 It was nice to see that "culturally relevant services" made it into the Agreement, as those services are briefly mentioned in the legislation. No Alaskan Native organization has stepped forward yet to say that it will help identify those services.

18. Under the subsection Facility Administration, Cornell will train staff to the State's standards. Staff will undergo background investigations to include educational, criminal and employment history. A criminal record check and drug test will be done on all employees.

An Emergency Response Plan will be delivered to the State and Whittier. The procedures will deal with fire, bomb threats, escape, hostage situations, riots, medical epidemics and natural disasters. The State and City will be notified whenever anyone escapes.

Cornell is responsible for all repairs and maintenance.

p-16

* If the Cornell Agreement is terminated for cause, the State still has to make payments and work with the City to find another operator. If this happens, would another bond have to be sold to pay the start-up costs of the new operator?

* The Payment in Lieu of Taxes are really quite cheap. Cornell must pay \$.50/bed/day, if there are 800 - 1099 beds (\$146,000 to \$200,567/yr.); \$.55/bed/day, if there are 1100 - 1199 beds (\$220,825 to \$240,699/yr) and \$.60/bed/day, if there are 1200+ beds (\$262,800 +/-yr)

Kenai at least asked for \$1.00/bed/day for an 800-bed prison and \$1.50/day for a 1,000-bed prison.

19. There is a whole section on Disputes, which require 60-day cure periods, meetings, mediation and litigation.

* 20. Under Assignment "Cornell shall have the right, without the consent of the City, to assign the Agreement to a wholly owned or commonly controlled affiliate and to assign its rights to revenues under this Agreement as collateral security for its obligations including but not limited to any financing undertaken in connection with the Facility." (Page 20 of the Agreement)

When Allvest was purchased, there was a 10 year Covenant Not To Compete in Alaska. That ends in June 20, 2008. If the prison is completed in 2005 and given the 5-year IGA, would the above Assignment clause mean that Allvest could be back in Alaska again?

21. The reasons given for termination of the Agreement without fault are the Legislature fails to pass enabling legislation in 2002 that in Cornell's judgment doesn't justify the project, the City and State fails to enter into an IGA "with terms sufficient in Cornell's reasonable judgment to undertake the successful design, construction and operation of the Facility, allowing a reasonable return to Cornell,", a site can't be identified, the City can't secure the consent of the Alaska Railroad under the Ground Lease (of Lease Parcel 5) or Cornell can't negotiate a Design Build Contract. (Page 22 of the Agreement)

22. The enforceability of the Agreement is conditioned on no protest or complaint being filed by another bidder (CCA) that challenges the Agreement within 10 days after the City Council has adopted Ordinance 434-02, the enabling ordinance. This would be March 1.

23. Although the Agreement says "This Agreement shall be governed, construed and enforced in accordance with the laws of the State of Alaska, without regard to conflict of

law principles" (Page 23 of the Agreement), haven't Cornell and the City in effect written a great deal of the IGA with this Agreement?

24. There are only two subsections that deal with Inmate Incarceration Service and Facility Administration where the Agreement says that if there is a conflict between the Agreement and the IGA, "the terms of the IGA shall control." (Page 17 of the Agreement)

Does this mean that the Agreement takes precedence over the IGA, and presumably the State, in all other sections?

I am sure that there are other areas of this Agreement that might be questionable to other people. These specific issues were brought forward to you, because I felt they needed to be highlighted.

Lest we all forget where the 1200 bed prison idea came from, I have attached the Alaska Journal of Commerce article written by McKibben Jackinsky. In reading it, you should notice that Paul Doucette, a Cornell spokesman, first brought it up.

Dee Hubbard
907-337-6370

February 27, 2002

7

AGREEMENT TO PROVIDE CORRECTIONAL FACILITY PLANNING, PROMOTION, DESIGN, CONSTRUCTION, AND OPERATION

("Agreement")

This Agreement is dated the ____ day of _____ 2002, between CORNELL CORRECTIONS OF ALASKA, INC. whose address is 5202 A Street, Anchorage, Alaska 99518 (hereafter "Cornell"), and the CITY OF WHITTIER, an Alaska municipal corporation, whose address is PO Box 608, Whittier, Alaska 99693 (hereafter "City").

Recitals

1. Confinement of prisoners thousands of miles from family and support systems is not a preferred correctional practice nor sound public policy. Confinement thousands of miles from villages, family and cultural support systems is of particular hardship to Native Alaskan prisoners. 7% of the State general population are Native males; but 37% of the State prison population are Native males, including over 300 Native prisoners currently confined in Arizona.
2. The Department of Corrections Master Plan proposes that by 2003 an 800-bed facility will be available in Alaska to allow the return of prisoners from Arizona. The Alaska Legislature has expressed a clear preference for the timely construction of a privately built and operated prison in Alaska.
3. Such a prison facility would enhance long-term employment for the citizens of the City, and would promote construction jobs during the construction of the facility.
4. The City wishes to facilitate the location of a privately operated prison in the City by acting as the direct provider of prison beds to the State of Alaska, Department of Corrections ("DOC") through an Inter Governmental Agreement ("IGA"), but at the same time, wishes to ensure that the risks of design, construction and operation of such facility is fully borne by the private operator and not itself.
5. Public ownership of the prison will enhance the cost-effective operation of the prison by affording the use of tax exempt bonds to construct the prison, and operation of the prison by a private operator will allow the more cost effective delivery of services.
6. Allocating the risk for planning, promotion, design, construction and operation of a minimum 800 bed medium security prison facility to a private developer imposes proper market incentives upon the developer to make cost effective decisions regarding design, operating expense, staffing levels, long-term warranties from the contractor, and the use of cost effective materials for the life cycle of the facility. Such an arrangement allows the City the opportunity to transfer the financial risk of the project to the private developer. Having that same entity responsible for operation allocates to the private

party the risk of operating the prison under the reimbursement budget created by the Inter-Governmental Agreement.

7. The City requires assistance in seeking legislative support for the State use of a private prison located in Whittier to meet Department of Correction needs.
8. In recognition of these goals, the City of Whittier in Ordinance 433-01 authorized the City Manager to solicit competitive bids or proposals for the planning, promotion, design, construction and operation of a minimum 800 bed medium security prison facility, effective upon reaching necessary agreements with the State of Alaska and issuance of the necessary bonds.
9. By a Request for Qualifications dated November 19, 2001, the City solicited the proposals authorized by Ordinance No. 433-01. After a competitive selection process, the City Council deemed Cornell eligible for negotiation as its Highest Ranked Proposer on December 21, 2001. Pursuant to WMC 3.32.190(F), the City entered into negotiations with Cornell to contract with the City for the planning, promotion, design, construction and operation of a minimum 800 bed correctional facility, subject to State of Alaska approval and appropriate funding.
10. The City considers it in the best interests of its citizens to enter into a comprehensive agreement for the promotion of authorizing legislation and the design, construction and operation of a prison to allow the City to enter into an Inter Governmental Agreement with the State of Alaska for the provision of medium security prison beds.

NOW FOR MUTUAL AND VALUABLE CONSIDERATION, THE PARTIES AGREE AS FOLLOWS:

1. DEFINITIONS.

- A. Definitions. As used in this Agreement, the following terms shall have the following meanings:
 1. "Commencement of Operations Date" shall mean the commencement of the performance of the operating covenants set forth in section 7, which shall be the earliest date after which all of the following have occurred:
 - a. The State of Alaska appropriates funds sufficient for Cornell to operate a medium security prison at the location agreed upon by Cornell and the City at a bed rate on a Take or Pay basis acceptable to Cornell;
 - b. The State of Alaska contracts with the City to provide a correctional facility and services to the State ("IGA");

- c. Cornell, through a qualified construction contractor, completes construction of Facilities meeting the requirements of the IGA; and
 - d. The date of commencement of operations as required by the IGA.
2. "Improvements" or "Facility(ies)" shall mean the prison facilities to be constructed by Cornell meeting the requirements of the IGA. The Facility will be designed and constructed to meet American Corrections Association ("ACA") standards and will meet all current applicable state and federal law applicable to the Facility as of the Commencement of Operations Date. The Facility will be designed to hold a minimum of 800 prisoners, depending on the terms of the IGA. The Facility will be built on the Property.
 3. "IGA." The Inter-Governmental Agreement ("IGA") to be negotiated between the State of Alaska Department of Corrections ("DOC") and the City for the purchase of a minimum of 800 medium security prison beds at a daily rate per bed. The beds will be paid by the State on a Take or Pay basis, and shall be paid in advance rather than in arrears, which terms in the IGA are material conditions to this Agreement. Cornell shall have the right to review the proposed final terms of the IGA, and if insufficient in its reasonable and good faith judgment to support the cost of construction and operation, then Cornell may terminate this Agreement upon 10 days advance written notice to the City.
 4. "Lender" or "Mortgagee" or "Bond Trustee" shall be used interchangeably as the person financing the construction of the Facility who may hold certain legal and equitable rights and liens in the Facility or revenues from the IGA, or both. It is contemplated that the Project will be financed using tax exempt revenue bonds secured by the Inter-Governmental Agreement to purchase prison beds, and will not be a general obligation bond of the City.
 5. "Operator" shall mean the party selected by the City for the operation of the Facility in accordance with the terms of the IGA. Cornell or its successor shall be the Operator for the initial term of this Agreement.
 6. "Project" shall mean the prison project, including its design and construction, its operation, and related financing.
 7. "Property" shall mean the real property, which will be identified as the location of the Facility, which will be owned by the City or held subject to a long term ground lease of sufficient security to allow financing of the prison and security on bonded indebtedness.

8. "Take or Pay" shall mean the State's obligation under the IGA to pay for the number of beds under contract regardless of whether a prisoner has been delivered to the Facility.

2. REPRESENTATIONS AND WARRANTIES.

A. Warranties of Cornell. Cornell warrants:

1. it is authorized to do business in the State of Alaska; and
2. that it is authorized to enter into this Agreement.

B. Warranties of City: City warrants:

1. that it is authorized to enter into this Agreement;
2. that the City, in furtherance of its governmental functions and in the exercise of its police powers, will, subject to the terms of this Agreement and the execution and performance by others of the obligations of the IGA, establish the Facility as an adult medium security correctional facility to house inmates from the State of Alaska, the federal government, and other governmental entities that may wish to house inmates at the constructed Facility; and
3. Any agreement that requires the City's approval as a party shall be promptly submitted to the City Council for consideration and action.

3. COVENANTS OF THE PARTIES.

A. Covenants of Cornell. Cornell will exercise due diligence to:

1. Coordinate the planning and promotion of authorizing legislation, the negotiation of an IGA, the architectural design, planning, employment, training, securing the necessary Design Build Contract, monitoring construction and other efforts necessary to construct the Improvements, and act as Operator of the Facility, and in general bring the Project to a timely and successful conclusion.
2. Negotiate, consistent with the covenant of good faith and fair dealing, such other terms and agreements with the City as necessary to complete the Project successfully.
3. Recruit, and, during the construction and operation phases of the Project, hire qualified local residents of the City.

4. Coordinate with bond underwriters and secure bond underwriting for the Project.
 5. Cooperate with the City to enter into such agreements with the City and the Alaska Railroad to obtain the consent of the Alaska Railroad to this Project under the Ground Lease.
- B. Covenants of City. City will exercise due diligence to:
1. Negotiate to achieve an IGA with the State of Alaska and act on such IGA as expeditiously as reasonably possible.
 2. Authorize Cornell or its designee to coordinate and negotiate with the State of Alaska to define the terms of the IGA.
 3. Cooperate with Cornell and its bond underwriters in their efforts to arrange and undertake the issuance of tax exempt funding sufficient to build the Improvements and use reasonable efforts to provide that IGA revenues are applied by the Bond Trustee only to payment of bond debt, and payment to the Operator, and the payment in lieu of taxes to the City.
 4. Negotiate, consistent with the covenant of good faith and fair dealing, such terms and agreements with Cornell as necessary to complete the Project successfully.
 6. Provide unrestricted access to the Property to Cornell for construction of the Facilities, and use best efforts to enter into such security agreements as are reasonably necessary for the financing of the tax exempt bonds.
 7. Use its best efforts to secure the consent of the Alaska Railroad Corporation for the Project under the terms of the Ground Lease and Management Agreement dated November 13, 1998, between the Alaska Railroad Corporation and the City of Whittier, ("Ground Lease") as necessary to remain in compliance with the Ground Lease and to satisfy the requirements of the Lender.

4. PLANNING AND PROMOTION OBLIGATIONS.

- A. Scope. Cornell agrees, at Cornell's sole expense, to assist the City in its planning and promotion of the project with the Alaska State Legislature and the State of Alaska Department of Corrections. The obligations shall begin immediately upon execution of the Agreement. These duties may include, but are not limited to: lobbying, providing concept design drawings, construction cost estimates, operating budgets to calculate per diem bed reimbursement rates, and such other support as the City may require from time to time.

- B. IGA. Cornell, at its sole expense, shall provide the resources and take the lead in negotiating the IGA with the DOC. The City shall also attend such negotiating sessions, with such personnel as it deems necessary in its sole judgment. The City and Cornell shall each bear the expense of their individual efforts, subject to reimbursement from the bond proceeds.
- C. No Direct Reimbursement. Cornell shall support the City with the planning and promotion of an IGA and authorizing legislation with the State of Alaska for the project. Cornell will bear its own expenses for the funding of this effort, subject only to the cooperation of the City to recoup such expenditures as part of the bond financing of the Project, to the extent allowable by law. Except for the duty of cooperation, and to the extent allowed by the bond financing, the City shall have no obligation to reimburse Cornell for the costs incurred in planning and promoting the enabling legislation and the IGA.
- D. Reimbursement Through the Bonds. Cornell and the City will cooperate with each other to seek reimbursement of their planning and promotion expense, including, without limitation, their expenses in preparing and responding to the Request for Qualifications and the negotiation of this Agreement, at the time of financing of the bonds issued for construction of the Project. The City shall pass such resolutions as are necessary to authorize reimbursement of pre-bond issuance expenses.

5. DESIGN BUILD COVENANTS

- A. Scope. Upon execution of an IGA between the State and the City, Cornell shall commence the design and construction of the Facility. Cornell shall have full and exclusive responsibility to design and construct the Facility. However, such Facility shall be constructed and operated within the budget established under the IGA, meet the performance requirements of the IGA, and be built to American Corrections Association ("ACA") standards.
- B. Design Build Contract. Cornell shall enter into a fixed price design build contract (the "Design Build Contract") with Neeser Construction, Inc., and VECO Alaska, Inc., as the contractor and with the design to be provided by, Livingston Slone, Inc. (collectively the "Contractor") for a turn-key design and construction of the Facility in accordance with the requirements of the IGA for a fixed budget price. Cornell may retain such other design firms and construction firms, as it deems appropriate to discharge its obligations under this Agreement. The Design Build Contract shall comply with AS 36.05.010 ("Little Davis-Bacon Act"). The Design Build Contract shall require that the Improvements will be constructed in a good and workmanlike manner, to specifications in conformance with ACA standards, and State of Alaska Department of Corrections ("DOC") standards applicable under the IGA existing on or before the Commencement of Operations Date. The Design Build Contract shall require the contractor to obtain payment and performance bonds for 100% of the guaranteed maximum price or lump sum

price and in a form approved by the Lender and City, with the Lender and the City as co-obligee with Cornell, as their interests may appear. Cornell shall require the Contractor and its subcontractors to carry builder's risk insurance and general commercial liability coverage and its design subcontractors to carry professional liability coverage in amounts reasonably appropriate to projects of this magnitude and risk and to name the City the Alaska Railroad and Cornell as additional insureds under such policies. Cornell shall provide, or shall arrange for its contractors and subcontractors to provide certificates of insurance to the City consistent with these requirements.

- C. Financing. Cornell, at its sole expense, shall coordinate with bond underwriters, as well as the State Bond Committee to the extent required by the IGA, to secure the revenue bonds to be issued by the City and shall provide the support and information necessary to issue and secure the bond. The City will cooperate with the issuance of the bond, and in the disbursement of funds necessary to pay for the design and construction of the Project, including, to the extent allowed, Cornell's and the City's start-up costs and promotional expense as more fully set forth in Section 4(D). The City shall submit the Property and Facility to a deed of trust and other security if necessary for the financing of the Project.
- D. Project Cost. The cost of the Project for purposes of this Section 5 shall include the costs of design, financing expense, construction, promotion and planning, development, legal expense, pre-opening activation and startup costs. The City shall cooperate by adopting the necessary authorization resolutions to allow for payment of the invoices submitted by Cornell to the Bond Trustee for payments due under the Design Build Contract. The budget established for bond financing shall include the parties' reasonably incurred promotional and other expenses incurred during the procurement and negotiation of this Agreement, the planning and promotion phase, the negotiation of the IGA, a reasonable developer's fee to Cornell, the lump sum due under the Design Build Contract, the expenses of the bond underwriting and marketing and such other necessary expenditures required to complete the Project. The bond principal shall be an amount, when reduced to a debt service obligation under the bond, that Cornell will still be able to operate the prison for the first five years of the Term, within the revenue stream set by the IGA. The budget shall include an amount not to exceed \$10,000 for the City's out of pocket expenses, if any, incurred during the performance of the Design Build Contract, which to the fullest extent allowable, shall be a reimbursable expense to Cornell to be recovered from the bond proceeds. The budget shall include a reasonable contingency for risks of construction and site conditions.
- E. Disclaimer of Liability; Cornell's Duty of Indemnification. The City shall have the right, but not the obligation or duty to Cornell, the State, the Lenders or any other party, to oversee, monitor, perform, or review the progress of the design and construction, or the disbursement of funds to or payment of any of Cornell's contractors, any subcontractors or any laborers employed by any of them or any material suppliers, or for any claims or liens that may be filed by any such

persons, all of which shall be the sole responsibility of Cornell. Except in the case of the sole negligence or willful misconduct by the party seeking indemnity, Cornell shall indemnify, defend, and hold harmless the City and/or the Alaska Railroad Corporation and their officers, agents, and employees (the "Indemnitees") from and against any and all liability, claims, damages, losses, expenses, actions, attorney's fees, costs, and suits whatsoever caused by or arising out of or in any way connected with the Design Build Contract, its performance, acts, or omissions thereunder by Cornell or any of its officers, agents, representatives, employees, or the Contractor or arising from or related to a failure to comply with any municipal, state or federal statute, law, regulation, or rule by Cornell or any of its officers, agents, representatives, employees, or the Contractor. Cornell hereby agrees to require its Contractor and the subcontracts issued by the Contractor to provide said promises of indemnification in favor of the Indemnitees for claims arising out of the performance of any of its subcontracts on the Project.

- F. Bond Trustee. The City shall appoint a suitable Bond Trustee, as proposed by and in cooperation with the Lender, to administer the bond proceeds and disburse funds for the Project. The City shall have no duty to investigate the qualifications of the Bond Trustee nominated by the Lender and shall have no liability whatsoever to any person for the appointment of, or conduct, acts or omissions of the Bond Trustee, arising from this Agreement. Cornell shall use its best efforts to ensure such terms (but does not guarantee that these will be achieved) are set forth in subsequent agreements in the IGA, with the Lender, and in the Design Build Contract. Such Lender and/or Bond Trustee shall be solely responsible for the timely payment of construction invoices properly submitted and documented for payment, and the cost of such Bond Trustee shall be a cost subject to financing under the bond.
- G. Site Selection. The City and Cornell shall mutually agree upon and identify a site owned or leased by the City suitable for the construction and location of the Facility. Cornell shall be solely responsible for undertaking all necessary site investigations as is required for its Design Build Contract. The City shall provide unrestricted access to the Property for the construction of the Facility. The City shall grant exclusive control over the Property to Cornell during the construction of the Facility. Such access shall be provided at no or nominal cost. The site shall not include the land deemed reasonably necessary by the City for a municipal boat ramp and adequate parking. The location and size of the site shall reasonably meet the requirements needed for the development of a Facility consistent with the requirements of the IGA.
- H. Delivery. Cornell shall deliver to the City a completed Facility, constructed in accordance with the IGA and ACA standards, and applicable permits, at the conclusion of the Design Build Contract, free and clear of claims or liens. Cornell shall deliver clear and marketable title to any personal property provided with the

Facility. Cornell shall cause the City to be named on any warranties provided in connection with the Facility.

6. OPERATIONAL PHASE COVENANTS

- A. Term, Scope. The term of the operations phase of this Agreement shall begin on the Commencement of Operations Date and end on the end of the fifth year thereafter. The Operator will have full and exclusive authority, consistent with the requirements of the IGA and applicable law, to manage, maintain, and operate the Facility, and shall have exclusive control over the Facility and access to it. The Operator will be required to undertake the steps necessary to have the Facility accredited by the ACA and to meet applicable minimum standards under state and federal law applicable to Facilities of this type.
- B. Exclusive Responsibility and Indemnity. The City hereby delegates to Cornell and its designee or assignee the operation of the Facility for the first 5 years after the Commencement of Operations Date for the operation of the Facility in accordance with the terms of the IGA. The performances and obligations imposed by this Agreement for operating the Facility rest exclusively with Cornell and Cornell shall be exclusively charged with operating the Facility in accordance with the IGA. In addition, Cornell shall bear full responsibility to discharge the obligations, if any, of the City as the Owner of the Facility under the IGA.

Without limiting the obligations of Cornell in section 7 below, and except in the case of the sole negligence or willful misconduct by the party seeking indemnity, Cornell shall fully indemnify, defend and hold the Indemnitees harmless from claims of any kind whatsoever against the Indemnitees arising out of or in any way connected with the operation of the Facility, including, specifically, but without limitation, the obligations of Cornell in subsections G and H of this section, and any lawsuits, claims, or allegations of any kind whatsoever by Facility inmates, visitors, or Facility employees.

The City shall have the right to renew the agreement to operate the Facility with Cornell or its successor for successive five-year terms thereafter in its sole discretion, provided the IGA terms are reasonably acceptable to Cornell during the renewal period. In the event Cornell is not the Operator, such subsequent operator shall assume all such responsibilities under the IGA and further agree to indemnify, defend and hold Cornell and the City harmless from all liabilities incurred as a result of the subsequent operator's actions or omissions.

- C. Assignment of IGA Revenues. The City shall assign irrevocably all of the City's right, title and interest in the proceeds of its Take-or-Pay guaranteed per bed fees from the State of Alaska under the IGA to the Bond Trustee who will apply the fees in the following priority: (i) to pay the indebtedness for the bonds that financed the construction of the Improvements; (ii) to pay the payment in lieu of taxes set forth in section 6.I. and (iii) to pay the balance to the Operator of the

Facility. To the extent start-up costs actually incurred by Cornell are not included within the amount financed by the bonds as set forth in section 5.(C), the City acknowledges that a portion of the per diem payment shall be used by Cornell to recover its un-reimbursed start-up costs over the five year term.

D. Compliance with Laws. Cornell shall comply with and cause the Property and Improvements to be in compliance with (i) all laws, ordinances and regulations, and other governmental rules, orders and determinations, whether or not presently contemplated (collectively "Legal Requirements") applicable to the Property and Improvements or the uses conducted on the Property, (ii) the provisions of any insurance policies required to be maintained by Cornell with respect to the Property, and (iii) the terms of any ground lease, easements, covenants, conditions and restrictions affecting the Property. If any additions, alterations, changes, repairs or other work of any nature, structural or otherwise, shall be required or ordered or become necessary at any time during the term of this Agreement because of any of these requirements, the entire expense of the same, irrespective of when the same shall be incurred or become due, shall be the sole liability of Cornell. Any change in the law affecting the Improvements, or additional requirements under the terms of the IGA after the completion of the Improvements shall, however, not be the responsibility of Cornell and Cornell shall be entitled, along with the cooperation of the City, to seek a equitable adjustment in the prison bed fee set in the IGA from the State. It is the expectation of the parties to this Agreement that the per diem fee under the IGA will cover the duties set forth in this Agreement and as further stated in the IGA, but shall not include or cover major medical services, the cost of and provision of prescription medicine, or prisoner transportation, which shall be negotiated as a State provided item under the IGA.

E. Insurance. At all times following the Commencement of Operations Date, Cornell shall carry insurance in amounts described below.

1. Workers Compensation Insurance. Cornell shall provide and maintain in force statutory workers' compensation insurance coverage for all employees of Cornell engaged in work under this Agreement. Coverage must extend to include all departments in which employees are engaging in work and employer's liability protection not less than \$500,000 per person, \$500,000 per occurrence. The Policy must be endorsed to waive rights of subrogation against the City, and its respective employees, shareholders, officers, directors, agents and other representatives, and their successors and assigns (collectively, the "Additional Insureds").
2. Comprehensive (Commercial) General Liability Insurance. Cornell will provide and maintain in force comprehensive (commercial) general liability insurance, with coverage limits not less than \$5,000,000 combined single limit per occurrence and annual aggregates where generally applicable and shall include premise operations, independent

contractors, products, completed operations, broad form property damage, contractual liability coverage including, but not limited to, the indemnification clauses in Sections 5.E., 6.B., and 7, and personal injury endorsements. It shall be subject to a reasonable deductible or endorsements. The City and the Alaska Railroad shall be included as additional insureds. This insurance shall be considered primary of any other insurance carried by the City, the Alaska Railroad or Cornell, or both, through self-insurance or otherwise.

3. Comprehensive Automobile Liability Insurance. Cornell shall provide and maintain in force comprehensive automobile liability insurance covering all owned, hired and non-owned vehicles with coverage limits not less than \$1,000,000 combined single limit per occurrence and annual aggregate. This insurance shall contain a "cross liability" or "Severability of interest" clause or endorsement and the City shall be included as an additional insured. This insurance shall be considered primary of any other insurance carried by the City or Cornell, or both, through self-insurance or otherwise. Any transportation contractor engaged by Cornell shall be subject to the same insurance requirement.
4. Professional Liability Insurance. Cornell will provide and maintain in force professional liability insurance or a comparable policy form providing jail keepers' legal liability insurance coverage for errors, omissions or wrongful acts of Cornell, a subcontractor or anyone directly or indirectly employed by them in the performance of services of this Agreement with limits not less than \$5,000,000 combined single limit per occurrence and annual aggregate limit. It shall be subject to a reasonable deductible in an amount not to exceed \$500,000. This insurance shall contain a "cross liability" or "Severability of interest" clause or endorsement and the City shall be included as an additional insured.
5. Umbrella Liability Insurance. Cornell will provide and maintain in force an umbrella or excess liability insurance coverage with limits not less than \$5,000,000 combined single limit per occurrence and annual aggregate limit, or shall otherwise carry general liability aggregate coverage totaling not less than \$10,000,000. Umbrella insurance shall contain a "cross liability" or "Severability of interest" clause or endorsement and the City the Alaska Railroad shall be included as additional insureds.
6. Additional Coverage. Cornell is responsible for obtaining any insurance required by the State of Alaska to cover inmate work related injury, disability, or death.
7. Claims Made Coverage. If any of the required insurance is arranged on a "claims made" basis, "tail" coverage shall be required at the expiration of this Agreement for a duration of 24 months. Cornell will be responsible

for furnishing certification of "tail" coverage as described or continuous "claims made" liability coverage for 24 months following expiration of this Agreement. Such continuous "claims made" coverage in lieu of "tail" coverage, must also be retroactive to the effective date of this Agreement.

8. Additional Insured. The liability insurance coverage required for performance of this Agreement shall include the City and the Alaska Railroad as additional insureds but only with respect to Cornell's activities to be performed under this Agreement.

9. Property Insurance. Cornell shall provide and maintain in force insurance on the Facility (including, without limitation, all improvements made by the Operator following completion of the Facility) and all fixtures, equipment and personal Property at the Facility under a standard industry "All Risks of Physical Loss" policy (hereinafter referred to as "All Risks") including flood damage (when and to the extent obtainable from the United States government or any agency thereof at commercially reasonable rates); and war risks if commercially available. Such insurance will be written with full replacement coverage (the "Replacement Value"), i.e., in an amount equal to the greater of (1) 100% of the full costs of replacement of the Facility and such fixtures, equipment and personal Property (less the cost of excavations, foundations and footings below the basement floor) or (2) an amount sufficient to prevent the City from becoming a co-insurer of any loss under the applicable policy. The insurance company's determination of the amount of coverage required in clause (1) above shall be binding and conclusive on the City and Cornell for purposes of the coverage required by clause (1). A stipulated value or agreed amount endorsement deleting the co-insurance provision of the policy shall be provided with such insurance. If not otherwise included within the "All Risks" coverage specified above, Cornell shall carry or cause to be carried, by endorsement to such "All Risks" policy, coverage against damage due to water and sprinkler leakage, flood and collapse and shall be written with limits of coverage reasonably required by the City, subject to the budget constraints of the IGA, and as required by the Lender for the financing of the Facility, but shall not be required to carry earthquake coverage. The City shall be named as an insured party under such coverage. The City shall assign the insurance proceeds to fund the repairs required by the casualty or loss to Cornell, subject to the terms of the financing, which may require any insurance proceeds to be handled by the Lender. Upon such assignment, Cornell shall be responsible to undertake the repair, unless in its good faith judgment the proceeds are insufficient to complete the necessary repairs, in which event it may decline the assignment of the insurance proceeds and the City shall be responsible for the repairs.

10. Cancellation. There shall be no cancellation, material change, and

potential exhaustion of aggregate limits or intent to not renew insurance coverage without thirty (30) days written notice from Cornell or its insurers to the City. Any failure to comply with the reporting provision of this insurance, except for the potential exhaustion of aggregate limits, shall not affect the coverage provided to the City. Cornell shall provide the City with certificates of insurance reflecting insurance consistent with these provisions.

F. Agreement to Cooperate for Other Contracts. The Operator shall have the right to seek contracts to house prisoners or detainees in the facility held under Alaska state, borough, municipal, or federal jurisdiction. The City agrees to approve and execute such contracts with sending jurisdictions for the housing and care of inmates as requested by Cornell, under the following conditions:

1. Cornell, in its sole discretion, requests the contract in writing;
2. Cornell is not in material default of this Agreement and, if it is in default, not using good faith efforts to cure such default;
3. Cornell certifies that the proposed contract satisfies in all material respects the federal and state laws applicable to the operation of the Facility and is consistent with the IGA and has the consent of the State of Alaska;
4. Cornell certifies that the inmates sought to be transferred under the proposed contract are eligible for housing at the Facility under Alaska state law in effect at the proposed date of the transfer; and
5. Cornell certifies that appropriate and adequate Facility security, bed space, Facility personnel and medical services are available to house the inmates proposed to be housed at the Facility.
6. Such contracts do not impose monetary obligations on the City or materially increase the City's risk of loss or liability to any person.

The City agrees not to unreasonably withhold, condition or delay approval of or refuse to execute such proposed contracts or intergovernmental agreements.

G. Inmate Incarceration Service. It shall be the sole and exclusive responsibility of Cornell to confine and supervise all Inmates assigned to the Facility and to provide safe and humane care and treatment, in accordance with ACA Standards, including the furnishing of subsistence, routine and emergency medical care, training and treatment programs, compliance with sentences and orders of the committing Jurisdiction(s), access to legal process and compliance with all applicable laws and agreements.

1. Food Service. Food service operations may be delivered by Cornell employees, contractor employees or a combination of Cornell staff and contractor employees. All staff, Inmates and contractor employees will undergo medical testing prior to initially reporting for food service duty assignments and will be examined regularly to assure health of the staff. Cyclical menus will be approved by a registered dietician and will provide for a minimum of daily calories to meet or exceed ACA standards and the IGA. All health regulations of the State will be followed and the results of all inspections will be available for review on demand by the City. Special meals will be provided for Inmates when prescribed by medical or religious staff. Food shall not be withheld nor the standard menu varied as a disciplinary sanction.
2. Health Care. On-site infirmary and nursing care may be delivered by Cornell employees, contractor employees or a combination of Cornell staff and contractor employees. Major medical care will be provided directly by the State of Alaska outside of the Facility. All medical, mental health and dental care personnel providing services to Inmates will be appropriately licensed and/or certified under the laws of Alaska and all medical services will be delivered in accordance with ACA standards. All correctional officers will receive annual training in CPR. Cornell will operate or contract with a pharmacy service under the supervision and counsel of a doctor or pharmacist who will provide Inmates with over-the-counter medications and prescribed pharmaceuticals. The scope of on-site medical care will be further elaborated in the IGA.
3. Inmate Programs and Case Management. Cornell will develop and deliver Inmate programs as appropriate to the needs of the Inmate population and to the objectives of the IGA, which will include, but not be limited to culturally relevant services to Alaska native inmates. The educational qualifications, training and verification of all program staff members will satisfy the standards of the ACA and the IGA. Academic and vocational instructors may be either Cornell employees and/or contract employees. All other program staff members will be Cornell employees or subcontractors of Cornell.
4. Inmate Work Program. Cornell will develop and implement a comprehensive work program for Inmates within the Facility. The program's objective will be to provide maximum opportunity for Inmates to be engaged in constructive activities for as many hours each day as possible, considering mandatory Facility schedules.
5. Religion. Cornell will employ the services of a chaplain to develop and conduct a comprehensive religious program with representation from a variety of denominations and faiths. The program will be open to all Inmates who wish to participate and no preference will be given to the

activity of any one denomination, sect or faith over another. Cornell will seek participation of local churches and nonprofit organizations near the Facility. These religious and rehabilitative programs will be instituted and continuously encouraged by Cornell to allow the local community to have a sense of mission to meet the inmates religious needs. It is understood and recognized that improving and changing lives is the focus of these cooperative programs. Cornell will be actively involved in the support and utilization of local applications and broader nationally recognized programs of similar application.

6. Transportation. Cornell will cooperate with the State of Alaska for the transportation of Inmates, which will be the responsibility of the State and not Cornell. Cornell shall be entitled to additional compensation, beyond its per diem bed rate, for any security it provides for transportation of prisoners for medical care outside of the Facility, or other transportation responsibilities or services requested under the IGA, however, such responsibility to pay shall be conditioned upon approval of such compensation in the IGA.

H. Facility Administration. Cornell shall have authority to fully and completely manage the operation of the Facility and to select, hire, train, supervise and discharge all of Cornell's employees assigned to the Facility. Cornell shall enter into all agreements and understandings that are normal, routine and reasonable for the general operations of the Facility under its own corporate identity, unless otherwise specified within this Agreement. Cornell shall prepare Policies and Procedures Manuals covering the operation of all elements of the Facility and shall provide them to the State of Alaska for approval not later than ninety (90) days prior to the expected Commencement of Operations Date of the Facility. These manuals will constitute a comprehensive reference for all actions associated with the Facility and shall incorporate, but shall not be limited to, the following terms and conditions:

1. Personnel Hiring and Qualifications. Cornell will hire staff to American Correctional Association standards, and will train to the State of Alaska Department of Corrections standards. Cornell shall employ a fully trained and uniformly dressed staff to provide 24-hour per day, seven days per week correctional services for the Facility. Prior to their employment, applicants will undergo background investigations to include educational, criminal and employment history to help assure that their personal conduct or history will not jeopardize security of operations or discredit the Facility, Cornell, or the City. Cornell will obtain a criminal record check and a drug test for all employees at the Facility.
2. Emergency Response Plan. Cornell will deliver to the State and the City an Emergency Response Plan for the marshalling of resources to quickly and appropriately respond to any crisis that might arise in the operation of

the Facility. Procedures and plans will be developed in coordination with local and area fire departments, law enforcement agencies and the State Department of Corrections ("DOC"), and will be provided to all parties in written form to assure clear understandings. The plan will include procedures to deal with fire, bomb threats, escape, hostage situations, riots, medical epidemics and natural disasters. It will also provide for the notification and reporting of escapes to residents within the City, and to the State.

3. Accreditation. Cornell shall use its best efforts to maintain the accreditation of the Facility by the ACA.
 4. Record Keeping. Cornell will adapt its reporting systems for basic compatibility with systems used by the State of Alaska. Cornell shall develop a system of financial accounting and inmate tracking that shall comply with the IGA and shall include, without limitation, files and reports documenting Inmates activities, adjustment, participation, discipline, and any other relevant information, or significant events while in custody at the Facility.
 5. License and Permits. Cornell shall undertake all reasonable measures necessary to keep in full force and effect all licenses and permits required for the operation of the Facility, and the City shall cooperate with such efforts, the expense of which shall be the responsibility of Cornell.
- I. Termination for Cause. The City may terminate the Operator for cause after notice of default in writing if Operator fails to cure such default within the time allowed by Section 8.A. The DOC may terminate the Operator on the terms as set forth in the IGA, provided, however, that the State shall be required in the IGA to agree that, in the event its terminates the Operator, such termination shall not result in a default by the City under the IGA, shall not interrupt the State's obligation to make payments under the Bond, and shall cooperate with the City in securing a substitute Operator.
 - J. Repairs and Maintenance. Cornell shall, at its own expense, promptly, as and when necessary, keep and maintain the Facility in good condition and repair and make all necessary repairs and replacements to the Facility, whether structural or non-structural, including, but not limited to, the pipes, water, sewage and heating system, plumbing system, window glass, fixtures, and all other appliances and their appurtenances and all equipment used to make the Facility habitable so that the Facility remains in at least the same condition and repair as when received by Cornell, reasonable wear and tear excepted. All repairs and replacements shall be in quality and class at least equal to the original work.
 - K. Payment in Lieu of Taxes. ("PILT") Cornell shall pay to the City, from the IGA a payment in lieu of taxes ("PILT") as follows:

1. per 800 to 1099 beds per diem-- \$.50 per bed per day, totaling \$146,000 to \$200,567.50 per year (e.g., .50 times 1,000 times 365 = \$182,500);
2. per 1100 to 1199 beds per diem-- \$.55 per bed per day totaling \$220,825 per year to \$240,699.25 per year.
3. per 1200+ beds per diem -- \$.60 per bed per day totally \$262,800 or more per year.

The number of beds will be equal to the number of Take or Pay beds paid for by the State under the IGA.

This PILT payment shall be in lieu of property and sales taxes and shall be net of any other taxes paid by Cornell to the City imposed as a result of the operations phase of this Agreement, whether such tax is currently in existence or is imposed in the future, and whether or not such tax is specific to the Facility and its operation or of general application.

- L. Priority of IGA. In the event of a conflict between the obligations of the IGA and this Agreement in Sections 6(G) and (H) regarding the standards of operation and administration of the Facility, the terms of the IGA shall control.

7. INDEMNITY.

Except in the case of the sole negligence or willful misconduct by the City, Cornell shall fully indemnify, defend and hold harmless the City and its officers, agents, and employees from and against any and all liability, claims, damages, losses, expenses, actions, attorneys' fees, costs, and suits whatsoever caused by or arising out of or in any way connected with this Agreement or its performance by Cornell or any of its officers, agents, representatives, employees, or contractors; or arising out of or in any way related to a failure to comply with any municipal, state, or federal statute, ordinance, law, regulation, rule, or ACA standard by Cornell or by any of its officers, agents, representatives, employees, or contractors.

The obligations of this Section 7 shall survive the termination of this Agreement.

8. DEFAULTS; DISPUTES.

- A. Default. Any party maintaining that the other is in default of this Agreement shall give written notice to the other party specifying the default and the nature of the acts required to cure the default. The other party shall have thirty days (30) days to cure a monetary default or, if the default complained of is not a monetary default and is of such a nature that it cannot reasonably be completely cured or remedied within a sixty (60) day period, the party shall have the right to cure the

default by beginning the cure within the sixty day cure period and diligently prosecute such remedy or cure to completion.

B. Interest. All payments not paid when due shall bear interest at the legal rate of interest established by AS 45.45.010 (2001) until paid.

C. Disputes. In the event of any dispute arising between the City and the Cornell regarding any part of this Agreement or any subsequent agreement contemplated herein, or the Parties' obligations or performance thereunder, either Party may institute the dispute resolution procedures set forth herein. No party may proceed to court litigation until these procedures have been followed. The Parties shall continue performance of their respective obligations hereunder notwithstanding the existence of a dispute.

1. Meeting. Any party may from time to time call a special meeting for the resolution of disputes that would have a material impact on the cost or progress of the Project. Such meeting shall be held at the City's offices in Whittier, Alaska within five (5) working days of written request therefor, which request shall specify in reasonable detail the nature of the dispute. The meeting shall be attended by the City's authorized representative, Cornell's authorized representative and any other person who may be affected in any material respect by the resolution of such dispute. Each authorized representative shall be a person with authority to settle the dispute and shall attempt in good faith to resolve the dispute. In the case of the City, all settlements must be subject to final approval by the Whittier City Council.

2. Mediation. If the dispute has not been resolved within five (5) working days after the special meeting has been held, a mediator, mutually acceptable to the parties shall be appointed. If the dispute relates to design or construction of the Facility, the mediator shall be experienced in design and construction matters. The parties shall share the cost of the mediator. The mediator shall be given any written statements of the parties and may review any documents submitted by the parties. The mediator shall call a meeting of the parties within ten (10) working days after his/her appointment, which meeting shall be attended by the City's authorized representative, Cornell's authorized representative and any other person who may be affected in any material respect by the resolution of such dispute. Such authorized representatives shall be a person with authority to settle the dispute and shall attempt in good faith to resolve the dispute. During such ten (10) day period, the mediator may meet with the parties separately. No minutes shall be kept with respect to any mediation proceedings, and the comments and/or findings of the mediator, together with any written statements prepared, shall be non-binding, confidential and without prejudice to the rights and remedies of any party. The entire mediation process shall be completed within twenty (20) working days of

the date upon which the initial mediation meeting is held, unless the parties agree otherwise in writing. If the dispute is settled through the mediation process, the decision will be implemented by written agreement signed by the parties. In the case of the City, all settlements must be subject to final approval by the Whittier City Council.

3. Litigation. Venue. Any disputes not resolved under the prior procedures may be resolved by filing an action in the court of competent jurisdiction in Anchorage Alaska.

4. Incorporation Into Other Contracts. All contracts by City and Cornell with third parties involved in the Project shall be required by each of the parties to contract to adhere to these dispute resolution procedures, with the exception of the State of Alaska.

D. Force Majeure. A party's failure to perform any of the terms and conditions of this Agreement resulting from force majeure shall not be considered a breach or default of this Agreement for so long as such force majeure continues.

9. NOTICES.

A. Notice Procedure. Any notice required or permitted to be given to a party under the provisions of this Agreement shall be in writing and shall be deemed given if sent by nationally-recognized overnight air courier, or if mailed by certified or registered United States mail, postage prepaid, return receipt requested, addressed as follows:

City: City of Whittier
P.O. Box 608
Whittier, Alaska 99693

Attention: City Manager
Facsimile No. 907-472-2404

with copy to: Perkins Coie, LLP
1029 W. 3rd Ave. Suite 300
Anchorage, Alaska 99501

Attention: Michael E. Kreger
Facsimile No. 276-3108

Cornell: Cornell Corrections of Alaska, Inc.
5202 A Street
Anchorage, Alaska 99518

Attention: Marvin Wiebe
Facsimile No. (907) 274-3625

with copy to: Ashburn and Mason, PC
1130 W. 6th Ave.
Anchorage, Alaska 99501

Attention: Donald W. McClintock
Facsimile No. (907) 277-8235

B. Change of Address. Either party may, from time to time, change its notice address by written notice to the other party at its then-current mailing address, in accordance with the provisions of this section.

10. **NO WAIVER.**

No waiver of any condition or covenant of this Agreement shall be deemed to imply or constitute a further waiver of the same or any other condition or covenant, and nothing contained in this Agreement shall be construed to be a waiver on the part of any party of any right or remedy in law or otherwise.

11. **BINDING EFFECT.**

This Agreement and the covenants and agreements of the parties shall be binding upon and inure to the benefit of Cornell and its successors and assigns and to the benefit of City and its permitted successors and assigns.

12. **ASSIGNMENT.**

This Agreement may be assigned by Cornell and its successions and assigns to another entity (which shall include a surviving entity or resulting entity in the case of merger or consolidation) which satisfies the following criteria: (a) the entity adopts and assumes all of the conditions and obligations of Cornell as set forth in this Agreement; and (b) the entity is acceptable to the State of Alaska under the terms of the IGA. Cornell shall have the right to delegate portions of its obligations to subcontractors it may contract with from time to time without consent of the City, however, in no event shall such delegation or assignment release Cornell from its obligations under this Agreement. Cornell shall have the right, without the consent of the City, to assign this Agreement to a wholly owned or commonly controlled affiliate and to assign its rights to revenues under this Agreement as collateral security for its obligations including but not limited to any financing undertaken in connection with the Facility.

13. **LICENSES.**

Cornell shall do all reasonable things necessary to maintain in full force and effect for the Facility all permits and licenses required for the construction, occupancy and operation of the Facility as a medium security prison and the City shall reasonably cooperate with Cornell in procuring and keeping such licenses and permits in effect.

14. **AGREEMENT TO COOPERATE.**

The City hereby agrees to cooperate with Cornell in the performance of Cornell's duties and responsibilities under this Agreement and to do all reasonable things necessary to aid and effect Cornell's performance as a private prison contractor under the terms of this Agreement. The City agrees to assist Cornell in obtaining the State of Alaska's approval of Cornell as the Operator under the IGA, and to cooperate in the securing of revenue bonds for the construction of the Facility. The Parties agree to execute such further documents as may reasonably be required by each other or the Lender providing financing relating to the Facility, including, but not limited to, modifications and amendments to this Agreement, and any other documents executed in connection with the transactions contemplated by this Agreement. At the request of Cornell, the City agrees to use reasonable efforts to (i) ensure the continuation of the IGA and the availability of prisoners to the Facility, (ii) to cooperate with Cornell to accommodate any other sources of inmates which Cornell may identify, which may allow for an additional expansion of the Facility and (iii) to cooperate with Cornell in negotiating adjustments in the per diem rates or other revenue to be paid by the State of Alaska under the terms of the IGA. Upon such request(s), Cornell shall reimburse and pay for the City's reasonable expenses incurred in response to Cornell's request. The City makes no warranty to Cornell regarding the results of its cooperation with others or its best efforts in discharging its obligations under this Agreement. The City shall not be liable for money damages to Cornell as a result of a default in the performance of its obligations under this Agreement, provided only that the City may be liable to Cornell, subject to all immunities and defenses available to it, for Cornell's foreseeable damages incurred in the event the City, after notice and an opportunity to cure, willfully refuses to perform a duty of cooperation under this Agreement, or willfully terminates this Agreement, except for a termination for cause, or as provided in section 16 (Termination Without Fault") below.

15. **NO WARRANTIES.**

The City does not warrant, nor represent that this project is viable, feasible or profitable, or that Cornell will recognize any normal return on its efforts, such risks being wholly undertaken by Cornell. It is the intent of the parties that the responsibility and control of the obligations to promote enabling legislation, negotiate the IGA, design, build and operate the Project remain with Cornell, and except for the specific performances imposed by this Agreement upon the City, including but not limited to the obligation to cooperate and the covenants of good faith and fair dealings, the risk of loss attendant upon such responsibility and control rests only with Cornell.

16. **TERMINATION WITHOUT FAULT.**

239-4245 - Tom

Either party may terminate this agreement, without fault, and without incurring liability to the other, upon the occurrence of any of the following, with 60 days notice to the other party:

- A. The legislature adjourns for the 2002 session without enacting legislation in a form sufficient to undertake the Project in Cornell's reasonable judgment; and either party thereafter elects to terminate.
- B. The City and the State DOC fail to enter into an IGA with terms sufficient in Cornell's reasonable judgment to undertake the successful design, construction and operation of the Facility, allowing a reasonable return to Cornell, and the satisfaction of the terms of this Agreement; and either party thereafter elects to terminate.
- C. The parties are unable to identify a site for the Facility, free of environmental contamination or other site conditions, the presence of which makes the Project uneconomic to pursue.
- D. The City is unable, despite its reasonable efforts, to secure the consent of the Alaska Railroad under the Ground Lease for the Project.
- E. Cornell is unable, despite its reasonable efforts, to negotiate a Design Build Contract with the Contractor for a lump sum, which with applicable financing and interest rates as available at the time of financing, will allow the operation of the Facility within the budget constraints of the IGA.

In the event a notice of no fault termination is issued by one party, the responding party may, by providing reasonable written assurances of further reasonable efforts by the responding party, request that the Agreement not be terminated. In such event, the Agreement shall remain in effect for the period of time set forth in the notice provided it is reasonably necessary to undertake the reasonable efforts set forth in the notice. At the end of such period, either party may again give notice of no fault termination. In the event of a no fault termination, this Agreement shall be of no further force and effect, except only the provisions of section 7.

17. PARTIAL INVALIDITY.

In the event any clause, term or condition of this Agreement shall be determined to be illegal or unenforceable under any applicable governmental laws, orders, rules or regulations, this Agreement shall remain in full force and effect as to all other terms, conditions and provisions. The enforceability of this Agreement is conditioned upon no protest or complaint being filed by another bidder to the Request for Qualifications challenging this Agreement within 10 days after Council passes an enabling action to authorize the City to enter into this Agreement.

18. COUNTERPARTS.

This Agreement may be executed by Cornell and City in one or more counterparts.

19. **GOVERNING LAW.**

This Agreement shall be governed, construed and enforced in accordance with the laws of the State of Alaska, without regard to conflict of law principles.

20. **HEADINGS, MEANING OF WORDS, ENTIRE AGREEMENT.**

The headings used in this Agreement are inserted for convenience and are not to be considered in the construction of the provisions of this Agreement. This Agreement constitutes the entire agreement of the parties and may be amended or modified only in writing signed by both parties, and all prior agreements or understandings between the parties, either oral or written, are superseded by this Agreement.

21. **INTEGRATION.**

This Agreement is fully integrated and contains all of the agreements of the parties; it supercedes all prior writings and oral agreements exchanged by and between the parties. It may not be amended or modified except by a written agreement signed by both parties in accordance with applicable law.

SIGNED as of the day and year first written above.

CORNELL CORRECTIONS OF ALASKA, INC.

By: _____

(Printed Name)

(Title)

CITY OF WHITTIER

By: _____

(Printed Name)

(Title)

STATE OF ALASKA)
) ss:
THIRD JUDICIAL DISTRICT)

The foregoing instrument was acknowledged before me this _____ day of _____, 2002, by _____, an officer of **CORNELL CORRECTIONS OF ALASKA, INC.**, an Alaska corporation, on behalf of the corporation.

NOTARY PUBLIC in and for Alaska
My commission expires: _____

STATE OF ALASKA)
) ss:
THIRD JUDICIAL DISTRICT)

The foregoing instrument was acknowledged before me this _____ day of _____, 2002, by _____, an officer of **CITY OF WHITTIER, INC.**, an Alaska municipal corporation, on behalf of the corporation.

NOTARY PUBLIC in and for Alaska
My commission expires: _____

MEMO TO FILE

DATE: May 6, 2002

TO: Finance Committee

BILL/RES. NO.: **HB 498 CORRECTIONAL FACILITIES**

ATTENTION: Heidi, Vicki
Senate Secretary's Office

This bill/resolution has not yet received a do pass recommendation.

Please leave this note in the file.

Thank you.

STATE OF ALASKA

DEPARTMENT OF LAW
OFFICE OF THE ATTORNEY GENERAL

TONY KNOWLES, GOVERNOR

GOVERNMENTAL AFFAIRS SECTION
P.O. BOX 110300
DIAMOND COURT HOUSE, 8TH FLOOR
JUNEAU, ALASKA 99811-0300
PHONE: (907)465-3600
FAX: (907)465-2520

May 7, 2002

The Honorable Pete Kelly, Co-Chair
Senate Finance Committee
Alaska Senate
State Capitol, Room 518
Juneau, Alaska 99811-1182

Re: Constitutional concerns regarding
CSHB 498(FIN) am -- local and special legislation and separation of
powers issues concerning private prison

Dear Senator Kelly:

Our office was requested to review CSHB 498(FIN) am, a bill that passed the Alaska House of Representatives on April 29, 2002. The Senate Finance Committee is the next committee of referral on this bill. We have been requested to bring to your attention several constitutional concerns that are present in this bill. In particular, we believe that certain provisions found in section 2(b) of the bill may run afoul of article II, section 19 of the Alaska Constitution, which prohibits local and special acts, as well as violating the doctrine of separation of powers. Our reasons follow.

I. Prohibition Against Local and Special Legislation

Article II, section 19 of the Alaska Constitution reads in relevant part:

Section 19. Local or Special Acts. The legislature shall pass no local or special act if a general act can be made applicable. Whether a general act can be made applicable shall be subject to judicial determination.

This provision in the constitution has been analyzed by the Alaska Supreme Court on numerous occasions. The most often cited cases are *Abrams v. State*, 534 P.2d 91 (Alaska 1975) (special treatment must be reasonably related to a matter of common interest to the whole state) and *State v. Lewis*, 559 P.2d 630 (Alaska 1977), *cert. denied*, 432 U.S. 901 (1977). In *Abrams*, the statute was found to violate article II, section 19, because it created a borough in a manner different from that for incorporating other

boroughs, and no evidence was presented indicating any valid reason for special incorporation procedures applicable only to the one proposed borough. 534 P.2d 91, 94 citing *Boucher v. Engstrom*, 528 P.2d 456, 463 (Alaska 1974). In *Lewis*, the court found the statute authorizing a trade of land among the federal government, the state, and a Native regional corporation did not violate article II, section 9 of the Alaska Constitution. The court found that land trade was unique, was of statewide concern, and that the legislation was "as broad as the conditions to which it respond[ed]" could allow. *Lewis*, 559 P.2d at 644.

In section 2(b) of this bill, beginning on line 26, the legislation provides as follows:

In the agreement with the City of Whittier, the commissioner of corrections shall require that the city procure one or more private third-party operators through a competitive process. The procurement requirements of this subsection are satisfied if the City of Whittier in exercising its powers under AS 29.35.010(15), for procurement of land, design, construction and operation of a facility, follows its municipal ordinances and resolutions and procurement procedures.

It is our understanding that the City of Whittier has already selected a private entity to perform the contract that this legislation contemplates. The language of section 2(b) essentially declares that past actions by a local government will satisfy the procurement requirements of the section. We do not believe this language is as broad as the conditions to which it addresses could allow as required under the *Lewis* test. We believe such a showing must be made before special treatment can be afforded in this legislation as to the selection of the prison site and the approval of a procurement process to select a private third-party operator that predates the legislation.

The court in *Lewis* propounded a test to be used in determining whether a statute violates the local and special prohibition and it is substantially the same as the test used to determine the validity of a nonsuspect classification challenges as violative of equal protection. The legislature must show a rational basis, a good reason, to justify the special treatment.¹ We believe the factors of the *Lewis* test may not have been satisfied here, particularly as to the limitation to the City of Whittier as a site for the prison and the

¹ In 1978, the Court articulated a unified equal protection analysis that utilizes a sliding scale to weigh the interests involved in any classification that avoids distinguishing between suspect and nonsuspect classifications. *State v. Erickson*, 574 P.2d 1 (Alaska 1978). We note that there has not been a case involving the local and special legislation prohibition since the unified equal protection test was adopted in *Erickson*.

basis for approving a procurement process that predates the imposition of contract conditions imposed by this legislation.

Notwithstanding our concerns with this bill, it is the province of the court to determine if a statute violates the prohibition against special and local legislation under article II, section 19, of the Alaska Constitution.

II. Separation of Powers

We also have concerns that the legislation violates the separation of powers doctrine under the Alaska Constitution.² Under that doctrine and the structure envisioned by Alaska's fundamental charter, the legislative power is vested in the legislature, the executive power in the governor, and the judicial power in a supreme court, superior court and other courts as established by the legislature. *Bradner v. Hammond*, 553 P.2d 1, 5 (Alaska 1976). Principal among the governor's express constitutional powers is his or her responsibility for executing and enforcing the laws. Alaska Const. art. III, sec. 16. The Constitutional Convention considered the discretion of the executive branch to enforce the law to be an essential element of the strong executive intended under Alaska's constitution. See 1991 Op. Att'y Gen., C. Cole (April 2; Eliason/Gruenberg). Further, the Alaska Supreme Court has embraced a strict view of the autonomy of the state's governmental branches, which precludes each branch from improperly interfering with the autonomy and discretion of the others with respect to their core constitutional powers. "The separation of powers doctrine also requires that the blending of governmental powers [between the branches] will not be inferred in the absence of an express constitutional provision." *Bradner*, 553 P.2d at 6-8.

In CSHB 498 (FIN) am, section 2(b), line 26, it states that the commissioner of corrections shall require that the city procure one or more private third-party operators through a competitive process and that the procurement requirements of this subsection are satisfied if the City of Whittier in exercising its powers under AS 29.35.010(15), for procurement of land, design, construction and operation of a facility, follows its municipal ordinances and resolutions and procurement procedures. This is a mandate upon the commissioner to do an act and to exercise discretion in determining if the procurement had a competitive process. However, this discretion is disregarded as an unnecessary function because the commissioner has been effectively told in the same subsection of the bill that the municipality's procurement process, no matter what that

² The Alaska Supreme Court has long and consistently recognized that although the Alaska Constitution does not expressly address itself to the doctrine of separation of powers, that the principle is clearly implied from the Constitution's separate articles creating the executive, legislative, and judicial branches of the Alaska government. *Rust v. State*, 582 P.2d 134, 138 n.11 (Alaska 1978).

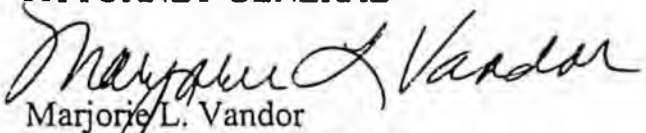
process entails, is deemed to satisfy the legislative requirement. Thus, the legislature bypasses any exercise of the discretion it makes mandatory on the commissioner. Instead, the legislature declares that a municipal procurement method (already performed by the City of Whittier) satisfies the discretionary decision that is to be made by the commissioner of corrections.³ Under *Bradner*, this may be interference or attempt to blend governmental powers between the branches of government not expressly authorized by the constitution. Furthermore, the legislature has created a legislative nullity by mandating the exercise of discretion in section 2(b) and rendering it completely unnecessary in the same provision. A basic principle of statutory construction is that all language in a statute should be construed to give the statute some effect; the legislature is not deemed to have intended to enact meaningless provisions. See *Isakson v. Rickey*, 550 P.2d 359, 364 (Alaska 1976); 2A C. Sands, *Sutherland Statutory Construction* § 46.06 (4th ed. 1973).

In sum, by providing for legislative approval of a matter before discretion can be exercised, as set out in section 2(b) of this bill, the legislation may be improperly crossing-over into executive functions, thus constituting a possible violation of the separation of powers doctrine. Plus, the language of this act renders the executive branch's exercise of that discretion meaningless, as it constitutes a legal nullity.

Please call us if additional information is necessary.

Sincerely,

BRUCE M. BOTELHO
ATTORNEY GENERAL

By: 
Marjorie L. Vandor
Assistant Attorney General

MLV:jad

cc: Hon. Margaret Pugh, Commissioner, Department of Corrections
Shari Kochman, Office of the Governor
Chrystal Smith, Legislative Liaison, Department of Law
Deborah Behr, Legislation Attorney, Department of Law

³ See also e.g. *State ex rel. Stephan v. Kansas House of Representatives*, 687 P.2d 622 (Kan. 1984) (doctrine of separation of powers avoids dangerous concentration of power through checks and balances each branch of government has against other by assigning each branch powers and functions appropriate to it).

SENATE COMMITTEE REPORT

DATE: 5/1/02

FURTHER: Finance

DATE TURNED
IN TO OFFICE: 5/3/02

Judiciary Committee considered

CS FOR HOUSE BILL NO. 498(FIN) am

HB 498 CORRECTIONAL FACILITIES

"An Act expressing legislative intent regarding privately operated correctional facility space and services; relating to the development and financing of privately operated correctional facility space and services; authorizing the Department of Corrections to enter into an agreement for the confinement and care of prisoners in privately operated correctional facility space in the City of Whittier; giving notice of and approving the entry into and the issuance of certificates of participation for the upgrade, expansion, and replacement of a certain correctional facility in the City of Bethel; giving notice of and approving the entry into lease-financing agreements for that project; and providing for an effective date."

and recommends:

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

Senate Bill:

same title

new title

House Bill:

same title

technical title

new: SCR # _____

NEW FISCAL NOTE(S):

Department	Date	Fiscal	Zero	FN#

PREVIOUS FISCAL NOTE(S):

Department	Date	Fiscal	Zero	FN#
DOC	4/19/02	✓		3
DOR	4/17/02	✓		4

APPROPRIATION - no fiscal note

SIGNATURES AND RECOMMENDATIONS:	Do PASS	Do NOT PASS	No REC	AMEND
<i>[Signature]</i>		 		
<i>[Signature]</i>				
<i>[Signature]</i>				
CHAIR: <i>[Signature]</i>				

SENATE FINANCE COMMITTEE
HB 498-CORRECTIONAL FACILITIES
SIGN-IN

NAME: Margaret Knuth Subject/Bill No: HB 498
Co./Dept./Title: Dept of Corrections Phone: 465-4338
Address: Jumlae Zip: 99801
Do you wish to testify? Yes No Respond To Questions

NAME: _____ Subject/Bill No: _____
Co./Dept./Title: _____ Phone: _____
Address: _____ Zip: _____
Do you wish to testify? Yes No Respond To Questions

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Do you wish to testify? Yes No Respond To Questions