

**ALASKA LEGISLATURE**

**1420**

**HOUSE and SENATE FINANCE COMMITTEE FILES, 1995-1996**

**HB**

**428**

**(FILE 1)**

**HFIN**

**FILE**

# FISCAL NOTE

X

STATE OF ALASKA  
1996 LEGISLATIVE SESSION

BILL NO. CSHB 4281

Revision Date: 2/21/96 Dept. Affected: Corrections  
 Title: "An Act giving notice of and approving a lease- SRU: ALL  
purchase agreement for construction and operations..." Component: \_\_\_\_\_  
 Sponsor: House Finance  
 Requester: House-Finance COMPONENT SERIAL NO. #0694

**Expenditures/Revenues** (Thousands of Dollars)

OPERATING EXPENDITURES	FY 97	FY 98	FY 99	FY 00	FY 01	FY 02
PERSONAL SERVICES		0.0	0.0	0.0	0.0	0.0
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
<b>TOTAL OPERATING</b>	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES	3,005.9					
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CHANGE IN REVENUES ( )						
------------------------	--	--	--	--	--	--

**FUND SOURCE** (Thousands of Dollars)

FUND SOURCE	FY 97	FY 98	FY 99	FY 00	FY 01	FY 02
1002 Federal Receipts						
1003 GF Match						
1004 GF		0.0	0.0	0.0	0.0	0.0
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other CIP	3,005.9					
<b>TOTAL</b>	3,005.9	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY96) cost: \$ 0.0

**POSITIONS**

FULL-TIME						
PART-TIME						
TEMPORARY						

**ANALYSIS:** (Attach a separate page if necessary)

This is a revised fiscal note superseding the single page fiscal note dated 2/19/96 containing the \$3,129.5 dollar amount. This revision reflects a reduction in the DOA fiscal note from \$580.0 to \$456.3 and deletes operating dollar amounts.

This bill would allow the DOC working through the DOA to secure the construction and operation of a jail/prison facility. The bill specifies that the construction is to be financed by the private contractor and paid for through a lease purchase agreement. The DOC would serve as the lead agency through the completion of the project. DOC, DOA and DCT&PF would provide services as described in the fiscal notes submitted by each department. The sum of all fiscal notes, including DOC is shown as a capital expenditure in this DOC fiscal note. Funds required by the other departments would be provided by RSA from the DOC. Note, the detailed fiscal notes from the above departments are for informational purposes. Only funding for this fiscal note would be required in order to proceed with this bill.

RSA to DOA \$ 456.3  
 RSA to DOT&PF \$ 1,060.0  
 DOC costs \$ 1,489.6

Prepared by: Jerry Shriner  
 Division: Office of the Commissioner  
 Approved by Commissioner: Margaret H. Pugh Margaret Pugh  
 Agency: Department of Corrections

Phone: 465-4652  
 Date: 2/21/96  
 Date: 2/21/96

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(11)

HOUSE COMMITTEE REPORT

Date Referred to Committee: February 5, 1996

FURTHER REFERRALS:

Date of Committee Action: 2/28/96

The FINANCE Committee considered:

HB 428

HOUSE BILL NO. 428

LEASE-PURCHASE CORRECTIONAL FACILITY

"An Act giving notice of and approving a lease-purchase agreement for construction and operation of a correctional facility in the Third Judicial District, and setting conditions and limitations on the facility's construction and operation."

recommends it be replaced with the following committee substitute CS HB 428 (FIN) [ ] the same title [x] a new title

[ ] additional referral to \_\_\_\_\_ Committee [ ] attached amendment(s)

ADOPTS: \_\_\_\_\_ Letter of Intent

ATTACHES NEW FISCAL NOTE(S): (Dept)

APPROVES PREVIOUS: (Dept/Date)

[x] fiscal note(s) DOR \_\_\_\_\_

[ ] fiscal note(s) \_\_\_\_\_

[ ] zero fiscal note(s) \_\_\_\_\_

[x] zero fiscal note(s) DOR 2/5/96

SIGNING WITH RECOMMENDATIONS		DP	DNP	NR	AM
<i>Ellen Gould</i>	Mulder	✓			
<i>Alan Richardson</i>	Parnell			X	
<i>Vic Johnson</i>	Kinning	X			
<i>Ben ...</i>	Grossendorf		X		
<i>Pat ...</i>	Kelly	✓			
<i>Gene Merritt</i>	Thornant			X	
<i>Tam Brown</i>	Brown		X		
<i>Mike ...</i>	NAVARRE		X		
<i>Richard Foster</i>	Foster	X			

CO CHAIR'S SIGNATURE \_\_\_\_\_

*Richard Foster*  
Foster

HELD

AMENDMENT #1

OFFERED IN THE HOUSE

BY REPRESENTATIVE BROWN

TO: CSHB 428( )

1 Page 3, line 22, after "capacity":

2 Delete "and"

3 Page 3, line 27, after "contractor":

4 Insert "; and

5 (4) may employ in the operation of the correctional facility only state  
6 residents"

7 Page 4, line 16, after "hire":

8 Insert "and employ only state residents. and to hire"

AMENDMENT #2 Failed 1-8

OFFERED IN THE HOUSE

BY REPRESENTATIVE BROWN

TO: CSHB 428( )

1 Page 4, following line 20:

2 Insert a new bill section to read:

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

8 Renumber the following bill sections accordingly.

AMENDMENT #3 Failed 2-7

OFFERED IN THE HOUSE

BY REPRESENTATIVE BROWN

TO: CSHB 428( )

1 Page 3, following line 18:

2 Insert a new paragraph to read:

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

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

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

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

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

15 Renumber the following paragraphs accordingly.

Withdrawn  
AMENDMENT #4

OFFERED IN THE HOUSE

BY REPRESENTATIVE BROWN

TO: CSHB 428( )

1 Page 3, following line 18:

2 Insert a new paragraph to read:

3 "(1) may not be constructed under the authority given in this Act unless,  
4 before commencing construction planning, the commissioner of corrections first conducts a  
5 study, and the study demonstrates that construction of the correctional facility described in  
6 (a) of this section will result in a saving to the state of at least 5 percent when compared  
7 to construction of the facility by the state using the usual and customary state construction  
8 practices;"

9 Renumber the following paragraphs accordingly.

Held

AMENDMENT #5

OFFERED IN THE HOUSE  
TO: CSHB 428( )

BY REPRESENTATIVE BROWN

1 Page 3, line 22, after "capacity;":

2 Insert a new paragraph to read:

3 "(3) may not be constructed for operation by a contractor under the authority  
4 given in this Act unless, before commencing construction planning, the commissioner of  
5 corrections first conducts a study, and the study demonstrates that operation of the  
6 correctional facility described in (a) of this section will achieve a saving to the state of at  
7 least 5 percent when compared to operation of the correctional facility by the Department  
8 of Corrections;" ~~as of 7/97 a Study of~~  
~~Department~~

9 Renumber the following paragraph accordingly.

AMENDMENT #6

failed 3-6

OFFERED IN THE HOUSE

BY REPRESENTATIVE BROWN

TO: CSHB 428( )

- 1 Page 3. lines 3, after "into":
- 2 Delete "a lease-purchase agreement with a private third-party contractor"
- 3 Insert "one or more lease-purchase agreements with one or more private third-party contractors"

Attachment 7  
2/28/96

Failed 3-7

~~Heleb~~

R.11

AMENDMENT #7

OFFERED IN THE HOUSE  
TO: CSHB 428 ( )

BY REPRESENTATIVE BROWN

1 Page 3, line 26:

2 Delete "or"

3 Page 3, line 27, after "contractor":

4 Insert "; or

5 (C) the state is able to operate the  
6 correctional facility at less cost than a third-party  
7 contractor"

Attachment #8

2/28/96

(Failed 3-8)

R.12

AMENDMENT #6

OFFERED IN THE HOUSE

BY REPRESENTATIVE BROWN

TO: CSHB 428 ( )

1 Page 3, line 26:

2 Delete "or"

3 Page 3, line 27. after "contractor":

4 Insert "; or

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

Attach #9

9-LS1338R.5 ✓

Chenoweth

2/6/96

(Failed 3-8)

AMENDMENT #9

OFFERED IN THE HOUSE

BY REPRESENTATIVE BROWN

TO: CSHB 428( )

1 Page 3, line 23:

2 Delete "temporarily"

AHahn #10

9-LS1338\R.6 ✓

Chenoweth

2/16/96

(withdrawn)  
AMENDMENT #10

OFFERED IN THE HOUSE

BY REPRESENTATIVE BROWN

TO: CSFB 428( )

- 1 Page 4, line 2, after "correctional officers.":
- 2       Insert "The Department of Corrections shall establish procedures for background and
- 3 record checks on personnel hired to staff the correctional facility and shall adopt regulations
- 4 for verifying that correctional officers and other staff employed at the correctional facility
- 5 have received proper training consistent with AS 18.65.130 - 18.65.290 to work with
- 6 incarcerated felons."

Attach # 11

failed 4-7

AMENDMENT #11 Amended

OFFERED IN THE HOUSE  
TO: CSHB 428( )

BY REPRESENTATIVE BROWN

1 Page 3, line 14

2 Delete "and"

3 Page 3, line 16, after "facility":

4 Insert ";and (4) In case of default by a contractor, for any

5 ~~reason whatsoever~~, the State of Alaska may procure the goods

6 or services from another source and hold the defaulting

7 contractor responsible for any <sup>Reasonable</sup> ~~resulting excess~~ cost, and may

8 seek other remedies under law or equity."

Withdraw

AMENDMENT

OFFERED IN THE HOUSE  
TO: CSHB 428( )

BY REPRESENTATIVE BROWN

- 1 Page 1, line 5
- 2 Delete "a lease-purchase agreement"
- 3 Insert "lease-purchase agreements"
  
- 4 Page 1, line 6, after "District":
- 5 Insert "and correctional facilities in other judicial
- 6 districts"
  
- 7 Page 1, line 7, after "the":
- 8 Delete "facility's"
- 9 Insert "facilities"
  
- 10 Page 3, line 5, after "of":
- 11 Delete "a correctional facility"
- 12 Insert "correctional facilities"
  
- 13 Page 3, line 5, after "District":
- 14 Insert "or other judicial districts"
  
- 15 Page 3, line 6, after "corrections.":
- 16 Delete "The"
- 17 Insert "A"

pg 3,  
delete  
(The)

9 + 10  
~~delete~~  
Add facilities

conception  
for  
confirming

9-LS1338U  
Chenoweth  
2/13/96

**CS FOR HOUSE BILL NO. 428( )**

**IN THE LEGISLATURE OF THE STATE OF ALASKA**

**NINETEENTH LEGISLATURE - SECOND SESSION**

**BY**

**Offered:  
Referred:**

**Sponsor(s): HOUSE FINANCE COMMITTEE**

**A BILL**

**FOR AN ACT ENTITLED**

1 "An Act relating to the authority of the Department of Corrections to contract  
2 for facilities for the confinement and care of prisoners, and annulling a regulation  
3 of the Department of Corrections that limits the purposes for which an agreement  
4 with a private agency may be entered into; and giving notice of and approving  
5 a lease-purchase agreement for the design, construction, and operation of a  
6 correctional facility in the Third Judicial District, and setting conditions and  
7 limitations on the facility's design, construction, and operation."

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

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

10 (a) The commissioner shall determine the availability of state correctional  
11 facilities suitable for the detention and confinement of persons held under authority of  
12 state law or under agreement entered into under (e) of this section. If the  
13 commissioner determines that suitable state correctional facilities are not available, the

1 commissioner may enter into an agreement with a public or private agency to provide  
2 necessary facilities, subject to the following:

3 (1) the commissioner may not enter into an agreement with a  
4 public or private agency that is unable to provide a degree of custody, care, and  
5 discipline to the extent required by the laws of this state:

6 (2) correctional [. CORRECTIONAL] facilities provided through  
7 agreement with a public agency for the detention and confinement of persons held  
8 under authority of state law may be in this state or in another state;

9 (3) correctional [. CORRECTIONAL] facilities provided through  
10 agreement with a private agency

11 (A) must be located in this state unless the commissioner finds  
12 in writing that

13 (i) [(1)] there is no other reasonable alternative for  
14 detention in the state; and

15 (ii) [(2)] the agreement is necessary because of health  
16 or security considerations involving a particular prisoner or class of  
17 prisoners, or because an emergency of prisoner overcrowding is  
18 imminent;

19 (B) may provide for the detention and confinement of all  
20 persons held by the commissioner under authority of state law, whether  
21 charged with or convicted of felonies or misdemeanors, without regard to  
22 the custody classifications for prisoners as determined by the  
23 commissioner, unless the security of the facility is inconsistent with those  
24 custody classifications; and

25 (C) may not be administratively restricted or limited by the  
26 commissioner to use only for prisoners involved in certain rehabilitative or  
27 treatment programs authorized by law. [THE COMMISSIONER MAY  
28 NOT ENTER INTO AN AGREEMENT WITH AN AGENCY UNABLE TO  
29 PROVIDE A DEGREE OF CUSTODY, CARE, AND DISCIPLINE SIMILAR  
30 TO THAT REQUIRED BY THE LAWS OF THIS STATE.]

31 \* Sec. 2. NOTICE AND APPROVAL OF LEASE-PURCHASE AGREEMENT. (a) To

1 provide for the design, construction, and operation of a new correctional facility in order to  
2 relieve overcrowding of existing correctional facilities, the Department of Administration, on  
3 behalf of the Department of Corrections, may enter into a lease-purchase agreement with a  
4 private third-party contractor under AS 33.30.031 for the design, construction, and operation  
5 of a correctional facility in the Third Judicial District that will house persons who are  
6 committed to the custody of the commissioner of corrections. The project approval given by  
7 this subsection is subject to the conditions of (b) of this section and to the following  
8 limitations:

9 (1) the total construction and related costs of establishing the correctional  
10 facility may not exceed \$100,000,000;

11 (2) the total lease payments for the full term of the agreement may not exceed  
12 \$200,000,000 and the anticipated annual amount of the rental obligation to be paid by the  
13 Department of Corrections under the lease must be reasonably commensurate with that total;  
14 and

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

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

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

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

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

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

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

28 (c) If required by the commissioner of corrections as a condition of the correctional  
29 facility's operation, in the award of a contract for the operation of the correctional facility to  
30 be designed, constructed, and operated under the notice and approval given in (a) of this  
31 section, the Department of Administration shall require that persons employed by the

1 contractor as correctional officers in the facility meet the requirements of AS 18.65.130 -  
2 18.65.290 that are applicable to correctional officers.

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

5 \* Sec. 3. CONSTRUCTION OF CORRECTIONAL FACILITY UNDER PROJECT  
6 LABOR AGREEMENT. (a) The purpose of this section is to enable the state to meet its  
7 obligation to improve the care and custody of the prisoners for which it is responsible at an  
8 early date through the completion of construction of a major correctional facility by structuring  
9 labor relations at the job site of the correctional facility in the interests of industrial harmony  
10 and in a way that makes optimal use of construction resources.

11 (b) Notwithstanding any restrictions that may be applicable under AS 36.30, the  
12 correctional facility described in sec. 2 of this Act may be constructed only under a public  
13 construction project labor agreement between the building construction contractor and one or  
14 more building trade unions; the labor agreement must provide

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

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

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

21 \* Sec. 4. Nothing in sec. 2 of this Act precludes operation of the correctional facility  
22 described in sec. 2(a) of this Act by a private third-party contractor comprised of persons  
23 employed by the Department of Corrections.

24 \* Sec. 5. 22 AAC 05.300(e) is annulled.

# FISCAL NOTE

STATE OF ALASKA  
1996 LEGISLATIVE SESSION

BILL NO. CSHB 4281

Revision Date: \_\_\_\_\_ Dept. Affected: Corrections  
 Title: An Act giving notice of and approving a lease- BRU: ALL  
purchase agreement for construction and operations..... Component: \_\_\_\_\_  
 Sponsor: House Finance  
 Requester: House Finance COMPONENT SERIAL NO. #0694

**Expenditures/Revenues** (Thousands of Dollars)

OPERATING EXPENDITURES	FY 97	FY 98	FY 99	FY 00	FY 01	FY 02
PERSONAL SERVICES	171.7	174.3	176.9	179.5	182.2	185.0
TRAVEL						
CONTRACTUAL	300.0					
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS	20.0	20.0	20.0	20.0	20.0	20.0
<b>TOTAL OPERATING</b>	<b>491.7</b>	<b>194.3</b>	<b>196.9</b>	<b>199.5</b>	<b>202.2</b>	<b>205.0</b>

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES ( )						
------------------------	--	--	--	--	--	--

**FUND SOURCE** (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other	491.7	194.3	196.9	199.5	202.2	205.0
<b>TOTAL</b>	<b>491.7</b>	<b>194.3</b>	<b>196.9</b>	<b>199.5</b>	<b>202.2</b>	<b>205.0</b>

Estimate of any current year (FY96) cost: \$ 0.0

**POSITIONS**

FULL-TIME	3					
PART-TIME						
TEMPORARY						

**ANALYSIS:** (Attach a separate page if necessary)

This bill would allow the DOC to enter into a single combined lease/purchase and operational agreement with a private third party to provide up to 1000 jail/prison beds at a construction cost of not more than \$100,000,000. The bill is silent regarding the cost of operation. This fiscal note states those costs associated with planning and management. No costs of site procurement, construction or operation are included.

CONTINUED ON PAGE 2

Prepared by: Jerry Shriner  
 Division: Office of the Commissioner  
 Approved by Commissioner: Margaret Pugh  
 Agency: Department of Corrections

Phone: 465-4652  
 Date: 2/19/96  
 Date: 2/19/96

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The DOC would secure consultant services to develop :

- 1/ a feasibility study determining the potential costs and benefits which would result from contracting facility operations,
- 2/ a feasibility study to determine the system wide impact of a large centralized facility in the Third Judicial District;
- 3/ and a staffing and operational plan including operational standards.

\$300.0 has been requested for this purpose.

The DOC would be required to provide DOA sufficient information and consultation necessary to:

- 1/ finalize site selection.
- 2/ prepare an RFP for the construction of a facility of up to 1000 jail/prison beds in the Third Judicial District;
- 3/ and prepare an RFP seeking private providers to construct and operate the facility.

DOC will need to maintain constant project planning and oversight capability throughout the life of the project which is expected to take five or more years.

The duties of a **Criminal Justice Planner** (\$71.9) would change as the project progressed. At the outset this position would assist in preparing the RFP for consulting services and would assist throughout with governmental liaison, community relations related to site selection, construction and operation. Prisoner movement, programming, staffing and operational contractor start-up would be the responsibility of this position.

The **Facilities Manager I** (\$67.4) will serve as DOC's first line of oversight and project management site selection, facility design, and construction. The need for this position will extend through final acceptance of the facility.

The **Administrative Clerk I** (\$32.5) will be required throughout the project to prepare research, maintain files and records and generally provide necessary support to the **Criminal Justice Planner** and **Facilities Manager I**

For each position above the salary is shown as annual. It is included for the expected six year duration of the project and has been budgeted with a 1.5% increment each year after FY 97

\$20.0 annually is included to pay for office space, equipment, supplies, travel, etc.

R10 2/28/96

Revision Date: \_\_\_\_\_ Dept. Affected: Revenue  
 Title: Lease Purchase Correctional Facility BRU: Revenue Operations  
 Component: Treasury Management  
 Sponsor: House Finance Committee  
 Requestor: (H) JUD COMPONENT SERIAL NO. 121

Expenditures/Revenues: (Thousands of Dollars)

OPERATING EXPENDITURES	FY 97	FY 98	FY 99	FY 00	FY 01	FY 02
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>
CAPITAL EXPENDITURES						
CHANGE IN REVENUES ( )						

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other						
<b>TOTAL</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

Estimate of any current year (FY96) cost \$ \_\_\_\_\_

POSITIONS:

FULL-TIME					
PART-TIME					
TEMPORARY					

ANALYSIS: (Attach a separate page if necessary)

(See Attached Analysis)

Prepared by: Fayrest Browne, Debt Manager Phone: 465-3750  
 Division: Treasury Date: 1/25/96  
 Approved by Commissioner: [Signature] Date: 1/25/96  
 Agency: Department of Revenue

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House Bill No. 428 approves a lease-purchase agreement for the financing, construction, and operation of a correctional facility.

#### Operating Budget

The legislation would have no impact on the Treasury Division's operating budget.

#### Debt Financing Issues

Our comments are based on several assumptions. First, the lease will be long-term. Second, the lease-purchase agreement terms will be in part based on the contractor borrowing up to \$100,000,000 for designing, constructing, and equipping the facility. And finally, the financing, construction, and operation of the facility will be bundled into a single contract.

If the assumptions are correct, several issues come to mind that may need to be considered.

- 1) This lease-purchase will be considered debt from a bond rating perspective and will be recorded as such in the State's financial statements.
- 2) The contractor may want to securitize the State's lease and offer this debt in the domestic or international financial markets in order to obtain the funds necessary for construction. This process raises several more questions.
- 3) Securitizing the lease over a period of time beyond the expected *Prudential Yield Curve* may have an affect on the State's current bond rating. We are working with our financial advisor to convince the marker that the State is working on a plan to fill the fiscal gap and reduce our dependence on oil revenues.
- 4) Consideration should be given to an overall strategy dealing with infrastructure and capital needs of the State. Agreements as outlined in HB No. 428 are only a portion of the total picture. This agreement will reduce the State's debt capacity as we offer our credit to a private contractor and at the same time give up the right to have any control over the debt issuing process.

Can a private contractor issue securitized state leases cheaper than the State? The answer is probably not. We can access tax exempt markets using our existing contracts with our own financial advisor and bond counsel and borrow money at very competitive rates.

Advantages of securing our own financing include the ability to refinance at any time favorable market conditions provide savings. Also, we eliminate the need to unbundle the lease-purchase from the construction and operating contracts should problems arise due to non-performance or default on the part of the contractor.

FISCAL NOTE

R/0 2/28/96

STATE OF ALASKA  
LEGISLATIVE SESSION

BILL NO. CSHB 428 (FIN)

Title: An Act giving notice of and approving a  
lease-purchase agreement for construction & operations...  
Sponsor: House Finance  
Requestor: \_\_\_\_\_

Dept. Affected Corrections  
BRU: All  
Components: \_\_\_\_\_  
Serial # #0694

EXPENDITURES/REVENUES: (THOUSANDS OF DOLLARS)

OPERATING	FY 97	FY 98	FY 99	FY 00	FY 01	FY 02
Personal Services	0.0	0.0	0.0	0.0	0.0	0.0
Travel	0.0	0.0	0.0	0.0	0.0	0.0
Contractual	300.0	0.0	0.0	0.0	0.0	0.0
Supplies	0.0	0.0	0.0	0.0	0.0	0.0
Equipment	0.0	0.0	0.0	0.0	0.0	0.0
Land & Structures	0.0	0.0	0.0	0.0	0.0	0.0
Grants, Claims	0.0	0.0	0.0	0.0	0.0	0.0
Miscellaneous	0.0	0.0	0.0	0.0	0.0	0.0
TOTAL OPERATING	300.0	0.0	0.0	0.0	0.0	0.0

CAPITAL	0.0	0.0	0.0	0.0	0.0	0.0
---------	-----	-----	-----	-----	-----	-----

REVENUE	0.0	0.0	0.0	0.0	0.0	0.0
---------	-----	-----	-----	-----	-----	-----

FUNDING: (THOUSANDS OF DOLLARS)

General Fund	300.0	0.0	0.0	0.0	0.0	0.0
Federal Fund	0.0	0.0	0.0	0.0	0.0	0.0
Other	0.0	0.0	0.0	0.0	0.0	0.0
TOTAL	300.0	0.0	0.0	0.0	0.0	0.0

POSITIONS :

Full-Time	0	0	0	0	0	0
Part-Time	0	0	0	0	0	0
Temporary	0	0	0	0	0	0

ANALYSIS: (ATTACH A SEPARATE PAGE IF NECESSARY)

\$100.0 thousand dollars for RSA to the Dept. of Transportation & Public Facilities initial design specification work for Request for Proposal;  
\$100.0 thousand dollars RSA to DOA to work on site selection & issue RFP; and  
\$100.0 thousand dollars for DOC to contract for identifying population to be served in contract prison, and prepare requirements for contract prison.  
Balance of needs identified will be included in financing package as capitalized costs.

Prepared by: House Finance Committee  
Rep. Mark Hanley, Co-Chair  
Rep. Richard Foster, Co-Chair

Date: 2/28/96  
Phone: 465-4939  
Phone: 465-3789

STATE OF ALASKA  
1996 LEGISLATIVE SESSION

**FISCAL NOTE**  
**REPORTED OUT OF**  
**HFC**

BILL NO. CSHB 4281

Revision Date: \_\_\_\_\_ Dept. Affected: Corrections  
 Title: "An Act giving notice of and approving a lease-  
purchase agreement for construction and operations..." BRU: ALL  
 Sponsor: House Finance Component: \_\_\_\_\_  
 Requester: House Finance COMPONENT SERIAL NO. #0694

**Expenditures/Revenues**

(Thousands of Dollars)

OPERATING EXPENDITURES	FY 97	FY 98	FY 99	FY 00	FY 01	FY 02
PERSONAL SERVICES		0.0	0.0	0.0	0.0	0.0
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS	3,129.6					
<b>TOTAL OPERATING</b>	<b>3,129.6</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

CAPITAL EXPENDITURES	3,129.6					
----------------------	---------	--	--	--	--	--

CHANGE IN REVENUES ( )						
------------------------	--	--	--	--	--	--

**FUND SOURCE**

(Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF		0.0	0.0	0.0	0.0	0.0
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other CIP	3,129.6					
<b>TOTAL</b>	<b>3,129.6</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

Estimate of any current year (FY96) cost: \$ 0.0

**POSITIONS**

FULL-TIME						
PART-TIME						
TEMPORARY						

**ANALYSIS:** (Attach a separate page if necessary)

This bill would allow the DOC working through the DOA to secure the construction and operation of of a jail/prison facility. The bill specifies that the financing of the construction is to be financed by the private contractor and paid for through a lease purchase agreement.

The department would serve as the lead department through the completion of the project. DOC,DOA and DOT&PF would provide services as described in the fiscal notes submitted by each department. The sum of all fiscal notes, including DOC is shown as a capitol expenditure in this DOC fiscal note. Funds required by the other departments would be provided by RSA from the DOC.

RSA to DOA \$ 580.0  
 RSA to DOT&PF \$ 1,060.0  
 DOC costs \$ 1,489.6

Prepared by: Jerry Shriner  
 Division: Office of the Commissioner  
 Approved by Commissioner: [Signature] Garef Pugh  
 Agency: Department of Corrections

Phone: 465-4652  
 Date: 2/19/96  
 Date: 2/19/96

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# FISCAL NOTE

STATE OF ALASKA  
1996 LEGISLATIVE SESSION

BILL NO. CSHB 4281

Revision Date: \_\_\_\_\_ Dept. Affected: Corrections  
 Title: An Act giving notice of and approving a lease-purchase agreement for construction and operations..... BRU: ALL  
 Sponsor: House Finance Component: \_\_\_\_\_  
 Requester: House Finance COMPONENT SERIAL NO. #0694

**Expenditures/Revenues**

(Thousands of Dollars)

OPERATING EXPENDITURES	FY 97	FY 98	FY 99	FY 00	FY 01	FY 02
PERSONAL SERVICES	171.7	174.3	176.9	179.5	182.2	185.0
TRAVEL						
CONTRACTUAL	300.0					
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS	20.0	20.0	20.0	20.0	20.0	20.0
<b>TOTAL OPERATING</b>	<b>491.7</b>	<b>194.3</b>	<b>196.9</b>	<b>199.5</b>	<b>202.2</b>	<b>205.0</b>

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						
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other CIP Rcpts	491.7	194.3	196.9	199.5	202.2	205.0
<b>TOTAL</b>	<b>491.7</b>	<b>194.3</b>	<b>196.9</b>	<b>199.5</b>	<b>202.2</b>	<b>205.0</b>

Estimate of any current year (FY96) cost: \$ 0.0

**POSITIONS**

FULL-TIME	3					
PART-TIME						
TEMPORARY						

**ANALYSIS:** (Attach a separate page if necessary)

This bill would allow the DOC to enter into a single combined lease/purchase and operational agreement with a private third party to provide up to 1000 jail/prison beds at a construction cost of not more than \$100,000,000. The bill is silent regarding the cost of operation. This fiscal note states those costs associated with planning and management. No costs of site procurement, construction or operation are included.

CONTINUED ON PAGE 2

Prepared by: Jerry Shriner  
 Division: Office of the Commissioner  
 Approved by Commissioner: Margaret M. Pugh  
 Agency: Department of Corrections

Phone: 465-4652  
 Date: 2/19/96  
 Date: 2/19/96

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The DOC would secure consultant services to develop :

- 1/ a feasibility study determining the potential costs and benefits which would result from contracting facility operations,
- 2/ a feasibility study to determine the system wide impact of a large centralized facility in the third Judicial District;
- 3/ and a staffing and operational plan including operational standards.

\$300.0 has been requested for this purpose.

The DOC would be required to provide DOA sufficient information and consultation necessary to:

- 1/ finalize site selection,
- 2/ prepare an RFP for the construction of a facility of up to 1000 jail/prison beds in the Third Judicial District;
- 3/ and prepare an RFP seeking private providers to construct and operate the facility.

DOC will need to maintain constant project planning and oversight capability throughout the life of the project which is expected to take five or more years.

The duties of a **Criminal Justice Planner** (\$71.9) would change as the project progressed. At the outset this position would assist in preparing the RFP for consulting services and would assist throughout with governmental liaison, community relations related to site selection, construction and operation. Prisoner movement, programming, staffing and operational contractor start-up would be the responsibility of this position.

The **Facilities Manager I** (\$67.4) will serve as DOC's first line of oversight and project management site selection, facility design, and construction. The need for this position will extend through final acceptance of the facility.

The **Administrative Clerk I** (\$32.5) will be required throughout the project to prepare research, maintain files and records and generally provide necessary support to the **Criminal Justice Planner** and **Facilities Manager I**

For each position above the salary is shown as annual. It is included for the expected six year duration of the project and has been budgeted with a 1.5% increment each year after FY 97

\$20.0 annually is included to pay for office space, equipment, supplies, travel, etc.

**FISCAL NOTE  
REPORTED OUT OF**

**HFC**

Revision Date: \_\_\_\_\_ Dept. Affected: Revenue  
 Title: Lease Purchase Correctional Facility BRU: Revenue Operations  
 Component: Treasury Management  
 Sponsor: House Finance Committee  
 Requestor: (H) JUD COMPONENT SERIAL NO. 121

**Expenditures/Revenues: (Thousands of Dollars)**

OPERATING EXPENDITURES	FY 97	FY 98	FY 99	FY 00	FY 01	FY 02
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES ( )						
------------------------	--	--	--	--	--	--

**FUND SOURCE (Thousands of Dollars)**

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other						
<b>TOTAL</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

Estimate of any current year (FY96) cost \$ \_\_\_\_\_

**POSITIONS:**

FULL-TIME						
PART-TIME						
TEMPORARY						

**ANALYSIS:** (Attach a separate page if necessary)

(See Attached Analysis)

Prepared by: Forest Browne, Debt Manager  
 Division: Treasury  
 Approved by Commissioner: [Signature]  
 Agency: Department of Revenue

Phone: 465-3750  
 Date: 1/25/96  
 Date: 1/25/96

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**COMMITTEE COPY**

House Bill No. 428 approves a lease-purchase agreement for the financing, construction, and operation of a correctional facility.

#### Operating Budget

The legislation would have no impact on the Treasury Division's operating budget.

#### Debt Financing Issues

Our comments are based on several assumptions. First, the lease will be long-term. Second, the lease-purchase agreement terms will be in part based on the contractor borrowing up to \$100,000,000 for designing, constructing, and equipping the facility. And finally, the financing, construction, and operation of the facility will be bundled into a single contract.

If the assumptions are correct, several issues come to mind that may need to be considered.

- 1) This lease-purchase will be considered debt from a bond rating perspective and will be recorded as such in the State's financial statements.
- 2) The contractor may want to securitize the State's lease and offer this debt in the domestic or international financial markets in order to obtain the funds necessary for construction. This process raises several more questions.
- 3) Securitizing the lease over a period of time beyond the expected Project Yield Curve may have an affect on the State's current bond rating. We are working with our financial advisor to convince the market that the State is working on a plan to fill the fiscal gap and reduce our dependence on oil revenues.
- 4) Consideration should be given to an overall strategy dealing with Infrastructure and capital needs of the State. Agreements as outlined in HB No. 428 are only a portion of the total picture. This agreement will reduce the State's debt capacity as we offer our credit to a private contractor and at the same time give up the right to have any control over the debt issuing process.

Can a private contractor issue securitized state leases cheaper than the State? The answer is probably not. We can access tax exempt markets using our existing contracts with our own financial advisor and bond counsel and borrow money at very competitive rates.

Advantages of securing our own financing include the ability to refinance at any time favorable market conditions provide savings. Also, we eliminate the need to unbundle the lease-purchase from the construction and operating contracts should problems arise due to non-performance or default on the part of the contractor.

# FISCAL NOTE

STATE OF ALASKA  
1996 LEGISLATIVE SESSION

BILL NO. CSJTB 428 (JUD)

Revision Date: \_\_\_\_\_  
 Title: "An act relating to the Department of Corrections to contract for facilities for the confinement and care of ...."  
 Sponsor: House Finance  
 Requestor: Mulder

Department Affected: Administration  
 BRU: General Services  
 Component: Purchasing  
 COMPONENT SERIAL NO. 60

**EXPENDITURES/REVENUES:** (Thousands of Dollars)

OPERATING EXPENDITURES	FY 97	FY 98	FY 99	FY 00	FY 01	FY 02
PERSONAL SERVICES		50.0	100.0	0.0	45.0	11.3
TRAVEL						
CONTRACTUAL		100.0	150.0			
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>150.0</b>	<b>250.0</b>	<b>0.0</b>	<b>45.0</b>	<b>11.3</b>

CAPITAL EXPENDITURES						
----------------------	--	--	--	--	--	--

CHANGE IN REVENUES ( )						
------------------------	--	--	--	--	--	--

**FUND SOURCE:** (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
OTHER * CIP receipts		150.0	250.0	0.0	45.0	11.3
<b>TOTAL</b>	<b>0.0</b>	<b>150.0</b>	<b>250.0</b>	<b>0.0</b>	<b>45.0</b>	<b>11.3</b>

Estimate of any current year (FY 96) cost: \$ 0.0

**POSITIONS:**

FULL-TIME		1	1		
PART-TIME				1	1
TEMPORARY					

**ANALYSIS:** (Attach a separate page if necessary.)

Costs are funded from CIP receipts from capital appropriation in FY 97 shown on Department of Corrections fiscal note

**See Continuation Page**

Prepared by: Dugan Petty, Director  
 Division: General Services

Phone: 465-2250  
 Date: \_\_\_\_\_

Approved by Commissioner: Mark Boyer  
 Agency: Department of Administration

Date: 2/20/96

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FISCAL NOTE  
STATE OF ALASKA  
1996 LEGISLATIVE SESSION

BILL NO. CSHB 428 (JUD)

ANALYSIS: (continued)

1. ASSUMPTIONS:

- 1.1. Dept. of Corrections will furnish requirements for the number of beds and location criteria.
- 1.2. Dept. of Corrections will establish operational criteria for the facility.
- 1.3. DOT&PF will develop a building space program, conceptual design and performance specifications suitable for use in the Request for Proposals.
- 1.4. DOT&PF will provide construction administration and inspection services from award to occupancy.
- 1.5. Lease payments will begin within 24 months of issuance of debt. Based on a debt payoff by the year 2013, \$100 million principal, and current coupon rates ranging from 3.8 to 5.4 percent (based on discussion with the Dept. of Revenue), the approximate annual payment is estimated to be \$10.3 million.

2. DEPARTMENT OF ADMINISTRATION RESPONSIBILITIES AND COSTS:

2.1. Facility criteria.

2.1.1. Prior to award - \$225,000 (FY 98 - 99).

Legal:	\$50,000
Financial:	\$25,000
Develop RFP:	\$50,000
1/2 Project Manager, R 21 for 24 mo.	\$100,000

2.2. Operations criteria.

2.2.1. Prior to award - \$125,000 (FY 98 - 99)

Legal:	\$25,000
RFP development & preparation:	\$50,000
1/2 Project Manager, R 21 for 24 months:	\$100,000

2.2.2. After award - 1 years startup effort (FY 01).

1/2 time Contracting Officer for contract administration	\$45,000
--	----------

2.3. Annual cost to administer the lease-purchase agreement, and the operation agreement after occupancy. Begin in FY 03

1/8 Contracting Officer for life of lease:	\$11,250
--	----------

See attached spreadsheet for allocation of costs by fiscal year and fund source

Allocate Fiscal Note HB 428

		GF Capital Funds					Total Capital Funds	Annual Operating Funds
		FY 97	FY 98	FY 99	FY 00	FY 01	FY 02	FY 03
2.1	<b>Construction criteria for the RFP</b>							
	Legal:		25.0	25.0				50.0
	Financial:			25.0				25.0
	Develop RFP:		25.0	25.0				50.0
	1/2 Project Manager R21 for 24 months		50.0	50.0				100.0
2.2	<b>Operational criteria for the RFP</b>							
	<u>2.21 Prior to award</u>							
	Legal:			25.0				25.0
	RFP development & preparation:			50.0				50.0
	1/2 Project Manager, R 21 for 24 months:		50.0	50.0				100.0
	<u>2.22 After award</u>							
	1/2 Contracting Officer for 1 year startup effort:					45.0		45.0
2.3	<b>Contract Administration</b>							
	Annual cost to administer the lease-purchase agreement, and the operation agreement. Begin in FY 02							
	1/8 Contracting Officer for life of lease:						11.3	11.3
	<b>Sub-total</b>		150.0	250.0		45.0	11.3	456.3
								11.3

# FISCAL NOTE

STATE OF ALASKA  
1996 LEGISLATIVE SESSION

BILL NO. HB428

Revision Date: 2/9/96 Dept. Affected: DOT&PF  
 Title: \*An Act giving notice of and approving a lease- BRU: Central Region  
purchase agreement for construction and...of a correctional facility...\* Component: Design and Construction  
 Sponsor: House Finance  
 Requester: House Judiciary COMPONENT SERIAL NO. #561

**Expenditures/Revenues**

(Thousands of Dollars)

OPERATING EXPENDITURES	FY 97	FY 98	FY 99	FY 00	FY 01	FY 02
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

<b>CAPITAL EXPENDITURES</b>	<b>590.0</b>	<b>370.0</b>	<b>80.0</b>	<b>20.0</b>		
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<b>CHANGE IN REVENUES ( )</b>						
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**FUND SOURCE**

(Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other	590.0	370.0	80.0	20.0		
<b>TOTAL</b>	<b>590.0</b>	<b>370.0</b>	<b>80.0</b>	<b>20.0</b>	<b>0.0</b>	<b>0.0</b>

Estimate of any current year (FY96) cost: \$ 0.0

**POSITIONS**

FULL-TIME						
PART-TIME						
TEMPORARY						

**ANALYSIS:** (Attach a separate page if necessary)

See attached documentation for additional details.

*will  
NOT  
Be adopted*

Prepared by: Roger Head/Loren Rasmussen, P.E. Acting Director Phone: 465-2960  
 Division: Engineering and Operations Date: 2/9/96  
 Approved by: Joseph L. Perkins, Commissioner Date: 2/9/96  
 Agency: Department of Transportation and Public Facilities

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Attachment to  
Department of Transportation & Public Facilities  
Fiscal Note For House Bill 428

House Bill 428 is an act to provide for construction and operation of a new correctional facility. The Department of Administration would act on behalf of the Department of Corrections to enter into a lease-purchase agreement for construction and operation of a facility in the Third Judicial District.

The Department of Corrections is the lead agency responding to the bill and has determined that prior to requesting Department of Administration to solicit proposals, it will be necessary to complete a population study to determine the effect of the proposal on the remaining facilities in the State system. This will determine the type and program expected of the new facility.

DOT&PF is limited to assisting DOC in determining a site and preparing a conceptual plan based on the information developed from the population study. This work will take place prior to Department of Administration's solicitation for the lease-purchase contractor.

Cost Estimate:

Due to the size and complexity of this project, one project manager would be dedicated to the work for a period of 18 months. Advertising and proposal selection for consultant services would also be required. The consultant, in conjunction with the population study prepared for the Department of Corrections, would prepare a function/space program, a location study and site selection, and prepare a concept design. Consultant costs are based on a percentage of a typical design fee for a \$70,000,000 construction project. Design fee at 7% of the construction value would be \$4,900,000. Costs are estimated as follows:

Project Manager 18 months	\$ 105,000
Support Staff	20,000
Advertising and Award Costs	10,000
Consultant Costs:	
Function & Space Program (.03 x Design Fee)	125,000
Location Study/Site Selection	150,000
Conceptual Design (12 x Design Fee)	550,000
Design and Construction Allowance	<u>100,000</u>
Total Department of Transportation & Public Facilities cost	<u>\$1,060,000</u>

See additional spread sheet<sup>1</sup> for other costs projected by Department of Corrections

---

<sup>1</sup> Past experience has shown that an extensive amount of time and effort will be expended throughout the final design and construction phase of the project. An allowance has been included in the fiscal note even though the costs on the additional spread sheet do not include the final design and construction phases.

**FAXMEMO**

**State of Alaska**  
**DEPARTMENT OF TRANSPORTATION & PUBLIC FACILITIES**  
**PUBLIC FACILITIES BRANCH**

---

This is an important communication of the Department of Transportation & Public Facilities. If you received this facsimile in error, please contact our business office at (907) 762-4275/762-4008 so we can correct it and avoid a recurrence in the future.

**TO:** Lorea Rasmussen

**DATE:** January 23, 1996

**TELEPHONE NO:** 762-4275

**FAX:** 762-4008

**FROM:** Roger D Head  
Public Facilities Chief

**SUBJECT:** HB428 Fiscal Note

Attached is our preparation for a response to HB-28. The estimates were prepared concurrently with Department of Corrections yesterday. It was their understanding that OMB is looking for department responses today. Our direct contact person was Facility Planner, Ted Kinney. Please let us know if additional information is needed. By copy of this FAX, I am providing Mark Mayo with the same information.

## Department of Transportation & Public Facilities Fiscal Note For House Bill 428

House Bill 428 is an act to provide for construction and operation of a new correctional facility. The Department of Administration would act on behalf of the Department of Corrections to enter into a lease-purchase agreement for construction and operation of a facility in the Third Judicial District.

The Department of Corrections is the lead agency responding to the bill and has determined that prior to requesting Department of Administration to solicit proposals, it will be necessary to complete a population study to determine the effect of the proposal on the remaining facilities in the State system. This will determine the type and program expected of the new facility.

DOT&PF's is limited to assisting DCC in determining a site and preparing a conceptual plan based on the information developed from the population study. This work will take place prior to Department of Administration's solicitation for the lease-purchase contractor.

### Cost Estimate

Due to the size and complexity of this project, one project manager would be dedicated to the work for a period of 18 months. Advertising and proposal selection for consultant services would also be required. The consultant, in conjunction with the population study prepared for the Department of Corrections, would prepare a function/space program, a location study and site selection, and prepare a concept design. Consultant costs are based on a percentage of a typical design fee for a \$70,000,000 construction project. Design fee at 1% of the construction value would be \$4,900,000. Costs are estimated as follows:

Project Manager 18 months	\$105,000
Support Staff	\$ 20,000
Advertising and Award Costs	\$ 10,000

### Consultant Costs

Function & Space Program (1% x Design Fee)	\$125,000
Location Study/Site Selection	\$150,000
Conceptual Design (1% x Design Fee)	\$550,000
Design and Construction Allowance	\$100,000
Total Department of Transportation & Public Facilities cost	<del>\$875,000</del>
	\$1,060,000

see additional spread sheet for other costs projected by Department of Corrections

5

*11 Past experience has shown that an extensive amount of time and effort will be expended through<sup>out</sup> the final design and construction phase of the project. An allowance has been included in the fiscal note even though the costs on the additional spread sheet do not include the final design and construction phases.*

Sheet1

	Contracts	Staff	Support	Sum
<b>DCC</b>				
Staff Support				
- Criminal Justice Planner (21/A)		71.3	20.0(PER YEAR)	
- Facilities Manager I (20/A)		67.4	*	
- Admin Clerk I (7/A-3)		32.5	*	
Contract(s)				
- Prepare Population Mgt Plan	250.0			
- Prepare Operational Standards	50.0			
	DCC Subtotal	300.0	171.7	20.0
				491.7
<b>DCA</b>				
Staff Support				
- General Support		40.0	10.0	
Contracts				
- Legal Services	150.0			
	DCA Subtotal	150.0	40.0	10.0
				200.0
<b>DOT&amp;PF:</b>				
Staff Support				
- Project Manager		125.0	10.0	
Architect-Engineer Consultant				
Prepare Function / Space Program	125.0			
Prepare Location Study / Select Site	150.0			
Prepare Conceptual Design	550.0			
	DOT&PF Subtotal	825.0	125.0	10.0
				960.0
<b>Revenue:</b>				
	Revenue Subtotal	0.0	0.0	0.0
				0.0
<b>Attorney General</b>				
	A/G Subtotal	0.0	0.0	0.0
				0.0
	Grand Total	1,275.0	336.7	40.0
				1,651.7

## Sponsor Statement

### CS for House Bill 428 (Jud)

by  
The House Finance Committee

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

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

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

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

The facility authorized by this legislation will

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

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

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

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

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

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

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

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

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

HB 428

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

# ALASKA STATE LEGISLATURE

## News

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Juneau, AK 99801-1132  
(907) 465-3804  
Actuality line: 1-800-478-6540

### House Finance Committee Introduces Prison Privatization Bills

For Immediate Release: January 17, 1996

Contact: Ken Freeman (907) 465-3804

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

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

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

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

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

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

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

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

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

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

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

###

# LEGAL SERVICES

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## MEMORANDUM

January 26, 1996

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

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

**FROM:** Jack Chenoweth   
Legislative Counsel

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

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

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

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

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

**Bill section 2:** The bill section

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

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

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

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

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

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

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

JBC:glc:pl  
96-049.glc

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MEMORANDUM

October 20, 1995

**SUBJECT:** Private prisons (Work Order No. 9-LS1323VA)  
**TO:** Representative Eldon Mulder  
**FROM:** John B. Chenoweth  
Legislative Counsel

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

I

I am satisfied that the current set of statutes provides a minimally sufficient basis for Department of Corrections officials to house inmates in private contract facilities.<sup>17</sup> The

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<sup>17</sup> Under AS 33.30.031,

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

(continued...)

Representative Eldon Mulder  
October 20, 1995  
Page 2

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

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

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

## II

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

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

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

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"(...continued)

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

Representative Eldon Mulder

October 20, 1995

Page 3

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

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

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

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

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

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

JBC:pl

95-170.plm

# LEGAL SERVICES

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## MEMORANDUM

February 2, 1996

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

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

**FROM:** Jack Chenoweth  
Legislative Council

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

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

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

Representative Brian Porter

February 2, 1996

Page 2

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

JBC:klb

96-054.klb

# LEGAL SERVICES

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## MEMORANDUM

January 22, 1996

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

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

**FROM:** Jack Chenoweth  
Legislative Counsel 

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

### Bill section 1: The bill section

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

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

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

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

Representative Eldon Mulder  
January 22, 1996  
Page 2

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

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

JBC:klb  
96-017.klb

# LEGAL SERVICES

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## MEMORANDUM

January 22, 1996

**SUBJECT:** House Bill 429, relating to authority of the Department of Corrections to contract for operation of correctional facilities -- sectional analysis (Work Order No. 9-LS1337C)

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

**FROM:** Jack Chenoweth  
Legislative Counsel

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

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

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

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

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

JBC:klb  
96-016.klb

Institution	FY 95 Ave Pop	% of Group	% of Total	Direct Cost	Direct Cost/Day	Indirect Cost (est)	Total Costs	Total Cost /Day
Anvil Mountain	88	3.35%	3.09%	\$3,924,162	\$122.17	\$876,631	\$4,800,793	\$149.46
Hiland Mtn								
Meadow Creek	293	11.15%	10.28%	\$7,331,807	\$68.56	\$2,918,783	\$10,250,590	\$95.85
Cook Inlet Cor Cntr	400	15.23%	14.04%	\$9,333,283	\$63.93	\$3,984,686	\$13,317,969	\$91.22
Fairbanks	198	7.54%	6.95%	\$7,058,424	\$97.67	\$1,972,420	\$9,030,844	\$124.96
Ketchikan	54	2.06%	1.89%	\$2,610,819	\$132.46	\$537,933	\$3,148,752	\$159.75
Lemon Creek	181	6.89%	6.35%	\$6,071,570	\$91.90	\$1,803,070	\$7,874,640	\$119.20
Mat-Su Cor. Cntr	84	3.20%	2.95%	\$2,743,871	\$89.49	\$836,784	\$3,580,655	\$116.79
Palmer Med								
Palmer Min	371	14.12%	13.02%	\$8,810,670	\$65.06	\$3,695,796	\$12,506,466	\$92.36
6th Avenue	116	4.42%	4.07%	\$3,829,857	\$90.45	\$1,155,559	\$4,985,416	\$117.75
Spring Creek	442	16.83%	15.51%	\$13,825,922	\$85.70	\$4,403,078	\$18,229,000	\$112.99
Wildwood C								
Wildwood Pre trial	281	10.70%	9.86%	\$7,860,467	\$76.64	\$2,799,242	\$10,659,709	\$103.93
Yukon-Kuskokwim	119	4.53%	4.18%	\$3,955,584	\$91.07	\$1,185,444	\$5,141,028	\$118.36
Sub Total	2627	100.00%	92.18%	\$77,356,436	\$80.68	\$26,169,426	\$103,525,862	\$107.97
Pt. Mackenzie	78		2.74%	\$1,623,431	\$57.02	\$777,014	\$2,400,445	\$84.31

Lemon Creek Example								
	Direct Appropriation	Direct Cost Per Day	Indirect Appropriation	Total	Average Inmate Population	Average Cost Per Day	Total Need at \$77/Per Day*	Savings
FY 95 actual	\$6,071,570	\$91.90	\$1,803,070	\$7,874,640	181	\$119.20	\$5,087,005	\$2,787,635
FY 97 Gov. Request	\$6,191,300	\$93.72	\$1,803,070	\$7,994,370	181	\$121.01	\$5,087,005	\$2,907,365
	Total Direct Cost	Direct Cost Per Day	Indirect Cost	Total Cost	Total Inmate Population	Average Cost Per Day	Total Need at \$105.63 Per Day	
FY 95 Actual	\$77,356,436	\$74.36	\$33,563,495	\$110,919,931	2850	\$106.63	\$109,881,608	\$1,038,324
Source: Gov. FY 97 Budget, Dept. of Corrections, By Legislative Finance Division and 11/20/95 letter to U.S. Marshal from Robert Cole, Dept. of Corrections						*Cost testified by Public Employees at Judiciary Hearing on 1/31/96		
Prepared by Office of Rep. Mulder Feb. 1, 1996								

into or renew

posed lease by law; an period of the approval of the his paragraph; -renewal periods ne lease exclu-

for a lease of e costs, the life venience, plan- ed building. ce, the depart- the least costly § 1 ch 58 SLA A 1992; am § 3

ations of the leased the real property e requirements of 2213 (Americans f 1990).

- under (a) of this ed on the remain- and any renewals, allowed under (a) of

Administration. a, the Alaska Legislative Affairs quarterly report to e and Audit Com- ces extended and ed under (a) - (b) t report is due July er the period from is section through subsequent reports 1, 1994, January 2, -95."

SLA 1993, § 12(a) December 31, 1994 s April 1, 1996.

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

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

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

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

(c) A lease-purchase agreement

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

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

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

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

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

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

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

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

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

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

(g) In this section,

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

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

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

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

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

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

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

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

## Article 2. Competitive Sealed Bidding.

### Section

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

### Section

170. Contract award after bids

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

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

(5) parent or guardian of the prisoner if the prisoner is under the age of 18.

(b) The commissioner shall require prisoners who are without resources under (a) of this section to pay the costs of medical, psychological, and psychiatric care provided to them by the department. At a minimum, the prisoner shall be required to pay a portion of the costs based upon the prisoner's ability to pay. (§ 13 ch 70 SLA 1996)

**Effective dates.** — Section 13, ch. 70, SLA 1996, which enacted this section, took effect on September 3, 1996.

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

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

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

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

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

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

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

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

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

The 1992 amendment, effective July 1,

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

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

#### NOTES TO DECISIONS

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

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

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

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

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

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

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

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

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

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

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

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

Authority: AS 33.30.011  
AS 33.30.021  
AS 44.28.030

### Article 5. Programs

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

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

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

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

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

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

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

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

Authority: AS 33.30.011 AS 33.30.031  
AS 33.30.021 AS 44.28.030

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

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

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

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

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

Authority: AS 33.30.011 AS 33.30.111  
AS 33.30.021 AS 33.30.131  
AS 33.30.101 AS 44.28.030

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

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

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

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

**Executive Summary**

**February 1, 1995**

## Executive Summary

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

### 1. What is the Comparative Evaluation?

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

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

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

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

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

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

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

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

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

Age  
Race  
Custody Level or Classification  
Medical Classification  
Education Level

#### Audit

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

#### Security and Safety Index

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

Disciplinary Reports  
The Use Of Force  
Assaults  
Deaths  
Injuries  
Escapes

### Program and Activity Index

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

### Source

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

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

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

### Validation

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

### Value or Weight

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

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

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

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

## Comparison

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

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

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

## LIMITATIONS

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

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

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

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

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

4. What were the findings of the annual audits?

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

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

\*\* Does not include Correctional Enterprises

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

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

### ACA Accreditation Ratings

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

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

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

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

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

#### **Statement of Qualifications**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

7. What conclusions were reached from the comparative evaluation?

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

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

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

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

Overall Rating

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

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

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

8. What recommendations are being made?

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

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

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



State of Washington  
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# Department of Corrections Privatization Feasibility Study

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This report is a working paper and is intended for discussion purposes only. Its contents are not necessarily endorsed by the Legislative Budget Committee and should not be interpreted as final committee recommendations.

January 1, 1996

*Upon request, this document is available in alternative formats  
for persons with disabilities.*

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## **PART 1: BACKGROUND AND INTRODUCTION**

The state operating budget for the 1995-97 Biennium provided funds for the legislature to review and identify state programs or services that may be competitively contracted to produce cost savings or improvements in the quality or level of services without harm to the public good. The Legislative Budget Committee (LBC) was asked to do the part of this review relating to adult correctional institutions, and to have a preliminary report completed by January 1, 1996.

### ***Study Objectives***

The LBC's study objectives were set out as follows.

- Work with the Attorney General (AG) to identify any potential legal constraints to implementing privatization, and, if applicable, any statutory changes needed to remove such constraints.
- Verify whether other states and jurisdictions have achieved cost savings through privatization without harm to the public good.
- If savings occur, identify the ways in which they are achieved (e.g., design/operational efficiencies, different levels of service, personnel compensation).
- Evaluate the feasibility and cost savings potential of privatizing Department of Corrections (DOC) institutions and facilities (e.g., specifically the new 1, 936 bed institution being planned).
- With the assistance of DOC and the Attorney General, evaluate best practices, and develop prototypes for Requests for Proposals (RFPs), contracts, and competitive procedures for privatization.

### ***Study Results***

By addressing the study objectives, this report provides information to assist the legislature in its deliberations on privatization. Although the report makes no recommendation on the policy issue of whether to privatize adult correctional facilities, there are numerous issues and obstacles related to privatization that are addressed in the technical appendices. These technical appendices (particularly those concerning legal issues, RFPs and contracts, and estimating annual ownership costs) are designed to be used as guidelines to be followed in the event that privatization is pursued. Similarly, the report

also contains five general guidelines that could be followed for minimizing the risk to the state, while promoting cost savings without sacrificing quality.

### *Acknowledgments*

We appreciate the support given to this study by the Department of Corrections, the Office of the Attorney General, the Senate Ways and Means Committee, and the House Office of Program Research.

We are also indebted to the states and private companies that provided us information. In particular, the case studies and examples included in this study would not have been possible without extensive cooperation from the states of Louisiana, Tennessee and Florida, and from the Corrections Corporation of America and the Wackenhut Corporation.

This study was conducted by Bob Thomas, Kathy Gookin, Beth Keating and Valerie Whitener of the LBC staff, with technical assistance from the project consultants, Robert M. Williams and Richard Crane. Cheryle Broom was the project supervisor.

The legal analysis by the Office of the Attorney General was conducted by Richard Heath, Talis Abolins, Deborah Cade, Lee Johnson, Zachary Mosner, Mitch Sachs and Mike Lynch.

A panel that reviewed our consultant's work on RFPs and contracts consisted of: Linda Brownell (Senate Ways and Means); Karl Herzog (House Capital Budget Committee); Kristen Reiber (House Appropriations); Richard Heath and Talis Abolins (Office of the Attorney General); and Jim Blodgett, Bernie Warner, and Margaret Vonheeder (Department of Corrections).

## PART 2: LEGAL THRESHOLDS

The LBC was asked to work with the Office of the Attorney General (AG) to identify any potential legal constraints to implementing privatization, and if applicable, any statutory changes needed to remove such constraints.

In addition to answering the basic questions posed, the AG provided further commentary on a number of legal issues to be considered in the event that the state would pursue privatization. The full text of the AG's analysis is included in Appendix 1. The three basic threshold questions are presented and answered below.

- Is there a constitutional prohibition against contracting prison operations?

No. There is, however, a doctrine that would prevent the state from delegating away its ultimate responsibility to foster and support our prisons. There are no court decisions specifying what is necessary to avoid an unconstitutional delegation of corrections responsibility.

In Washington, a court would likely use a two-part test to determine whether the state's delegation of power is constitutional. Under this test,

1. the legislature must provide standards or guidelines which define in general terms what is to be done and the instrumentality or administrative body which is to accomplish it; and
2. procedural safeguards must exist to control arbitrary administrative action and any administrative abuse of discretion.

The first requirement would likely be met by adequate statutory standards for private prison operations, and by the detailed requirements of the state's request for proposal and contract.

The second requirement would likely be met by the state's retention of ultimate decision-making responsibility in the areas of classification, discipline, sentence-calculation, and release decisions. Other states have strived to accomplish this in a number of ways. The more control that is retained, the less risk of unconstitutional delegation. Conversely, too much

- Need to retain certain responsibilities

state involvement in facility decision-making may interfere with efficiencies that the private contractor proposes to achieve.

- Are there existing statutory or case law constraints to contracting out prison work?

Yes. Contracting for services that have been traditionally and historically performed by classified DOC prison employees would likely be found to violate existing civil service law as interpreted by the courts. A possible exception in RCW 41.06.380 for certain contracts originally entered into before April 23, 1979, would not apply, as our review discloses no such DOC contracts relating to prisons.

- Legislative authority needed

Legislative authority would have to be provided in order to contract for the operation of a prison without using state civil service employees. In order to remove any such question as to the authority given, the authorization should be in the form of an explicit direction in the statute to contract out the work involved. Repeal of RCW 41.06.380 is not necessary, since it is not that statute that prohibits contracting out in general.

Whatever language might be chosen for authorizing DOC to contract out, the language should be carefully drafted to ensure that the intent to contract out is clear.

- Are there provisions in the relevant collective bargaining agreement against contracting out?

Yes. Under the current collective bargaining agreement DOC has agreed not to contract services when such action would have the effect of terminating classified employees or when the services to be contracted would be the same as those historically provided by classified employees.

- Current agreement expires in June

The effect of existing collective bargaining agreement provisions on the ability of the legislature to direct contracting out is unsettled. State unions have taken the position in court that the legislature may not retroactively change an agency's agreement not to contract out. They have based their position on a state Constitutional prohibition against impairment of contracts. However, even if a challenge to a contracting out statute were to be successful on this ground, it would only bar application of the statute

during the existing term of the contract agreement. Therefore, the constitutional issue could be avoided by stating in the statute that contracting out would not occur until expiration of the current term of the agreement. The current agreement expires on June 25, 1993.

- Issue of removing  
DOC's discretion  
in bargaining

The statute and rules as currently written require an agency to bargain personnel matters over which management can lawfully exercise discretion. Therefore, elimination of the contracting out language from the new collective bargaining agreement would not be certain if discretion to contract out is given to management by the authorizing statute. Instead, the statute should direct DOC to contract out. The union could not then argue that contracting out is negotiable.

## PART 3: REVIEW OF COST STUDIES – PUBLIC VS. PRIVATE

One of the feasibility study questions was: *Have other states and jurisdictions achieved cost savings through privatization without harm to the public good?*

We approached answering this question by reviewing published sources and the experiences of other states that have experimented with the privatization of prisons.

### REVIEW OF PUBLISHED SOURCES

We conducted a review of existing literature on privatization of prisons. Although there are numerous published sources that debate the pros and cons of privatization, there are only a few studies that have attempted to compare costs, and they have reached conflicting conclusions. We reviewed the methodologies and conclusions of these studies, recreating the analyses when possible. With the exception of some state-sponsored studies (more on these later) the studies we reviewed had significant limitations or methodological weaknesses. We did not find that we could use these studies to draw any general conclusions about the potential for cost savings through privatization.

- There are surprisingly few studies, and they are of limited value.

See Appendix 2 for more comments on the cost studies we reviewed.

We also reviewed two studies available concerning the quality of operations of public-versus-private facilities. Indicators of quality included such factors as safety issues, availability of programming, satisfaction with food, and job satisfaction of staff. In each case, the studies found no significant differences in quality between the particular publicly and privately operated prisons being compared.<sup>1</sup>

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<sup>1</sup> Charles H. Logan, *Well Kept: Comparing Quality of Confinement in a Public and a Private Prison*, National Institute of Justice, March 1, 1991; and Tennessee Select Oversight Committee on Corrections, *Comparative Evaluation of Privately-managed CCA Prison and State-managed Prototypical Prisons*, January 1995.

## REVIEW OF PRIVATIZATION EXPERIENCES IN OTHER STATES - CHOICE OF CASE STUDIES

- Criteria for selecting states for case studies

Since one of our study questions involves the feasibility of privatizing a multi-custody prison in Washington, we sought case studies of privatization in other states that met the following criteria:

- The experience with privatization should involve a large, multi-custody facility.
- The state-run facilities to be compared to the privately run facilities should be of similar capacity, design and security levels.
- Preferably the comparable facilities would have been in operation for several years.
- The states having such facilities would be willing to provide all the information we would need in a timely manner so as to meet the deadline for this report.
- The private companies operating the prisons would be willing to provide information needed for this study.

- Choice of Louisiana and Tennessee

We were fortunate in obtaining the cooperation of two states -- Louisiana and Tennessee -- that have facilities that are particularly well-suited for apples-to-apples comparisons of costs.

- Both states allow for apples-to-apples comparisons

Louisiana has three large, prototypical, multi-custody facilities that are exactly the same design and capacity. One is operated by the state, and the two others are operated under contract by the Wackenhut Corporation (Wackenhut) and the Corrections Corporation of America (CCA), the two largest private operators of prisons. Louisiana's three facilities were all in full operation by the beginning of 1991. At present, the capacity at each of the facilities is 1,474 inmates.

Tennessee also has three large comparable facilities, two of which are state-run, and one of which is operated by CCA. The three facilities were in full operation by mid 1992. The current capacity at each of Tennessee's prototypical facilities is 1336 inmates.

- Benchmark studies in other states

We also reviewed cost studies from other states. The most important of these have been recent attempts to set cost benchmarks for targeted savings from privatization. The way this works is that states either estimate what the public costs would be of operating a particular new facility, or they identify their current costs of operating similar prisons within their system. Through a Request for Proposals (RFP), private companies are asked to respond with proposals that would result in a minimum cost-savings percentage (e.g., seven to ten percent), compared to the benchmark.

If the benchmarks are accurately and appropriately estimated, and the state receives responsive bids, then the compensation provided for in the contracts, compared to the benchmark, should indicate an amount of savings to be expected from privatization.

- Why this study does not report on the recent experiences of states using benchmarks

Two years ago the LBC gained experience in estimating the costs of prison operations. In its report on *Department of Corrections Capacity Planning and Implementation* (January 27, 1994), the LBC identified facility operating costs, by security level, in order to determine if some of the most inefficient prison facilities should be replaced. The findings from the report led to legislative approval of several capital projects intended to achieve operational savings.

Based on our experience, and knowing the care that must go into establishing benchmarks, we would be reluctant to accept projected savings based on benchmarks at face value. The time frame for the present study did not allow for the extent of review that would enable us to say whether recent benchmarking efforts in other states are likely to result in savings.

## **PART 4: RESULTS OF LOUISIANA AND TENNESSEE CASE STUDIES**

This part of the feasibility study uses the case studies to answer two of the questions posed in the project scope and objectives:

1. Have other states and jurisdictions achieved cost savings through privatization without harm to the public good?
2. If savings have occurred, how have the private companies accomplished this?

In answer to the first question, we reviewed cost information and studies provided by the states and the private companies. For Tennessee, we reviewed and made adjustments to a cost comparison conducted by the state's Fiscal Review Committee for fiscal year 1993-1994. For Louisiana, we used state and company data for fiscal year 1995-1996. The results of our analysis were submitted to the states and the private companies for technical review and comment in November 1995. Details concerning the comparative costs and our methodology are included in Appendix 3. Summary comments about the results are included in this section.

The first question also contains a qualitative element related to the "public good." We endeavored to address this element by identifying any public safety differences between the public and private facilities (e.g., record of escapes and disturbances) and through examination of any other information that might suggest that there were substantive differences in prison operations and programs.

The second question concerns how private companies operate, and focuses on the issue of what the state might actually be purchasing in the event that it pursues privatization.

### **CASE STUDY COST COMPARISONS**

- Has Louisiana achieved cost savings through privatization?

Until recently, yes. Based on information for 1995-96, the state can expect to break even on its two contracts when all facilities are operating at full capacity. The CCA prison is costing about 1 percent more than the state facility, and the Wackenhut prison is costing about 1 percent less. Historical data suggest, however, that both private facilities previously cost the state less than the state-run

prison on a per diem basis. For example, in fiscal year 1993-94, the two privately run facilities were costing the state approximately 4 percent less, even though they were housing fewer inmates.

- Why costs have converged

One explanation for the convergence of costs over time may be the effect of competition. This is an argument made by the private companies that was also mentioned by some state correctional officials. Lean budget years may also have made a difference. For some years the inflationary increases built into the private contracts has been greater than the increases in the corrections budget. So while the per diem costs for the private has inflated, it has not inflated for the public facility.

- Has Tennessee achieved cost savings through privatization?

The best answer is probably yes. During the study period (fiscal year 1993-94), the effective per diem for the private facility was less than the weighted average per diem for the two state-run facilities (\$33.63 versus \$34.29), but actually higher than one state facility and lower than another.

This information is somewhat misleading, however, because during the study period, in which additional capacity was being added at all three facilities, both state-run facilities had higher average daily populations (ADPs) than the private facility. Since the marginal cost to the state of placing inmates in its own facilities was less than the per diem for the private facility, this resulted in a lower effective per diem at the state facilities.

- Estimate of longer-term outlook

In order to understand how costs might compare over the long-term, when ADPs would more closely match, the state's Fiscal Review Committee estimated what the costs would be if the ADPs were equalized. Taking the same approach, but with the adjustments explained in Appendix 3, we estimate an average per diem for the state-run facilities of \$35.55 (fiscal year 1993-94) when ADPs are equalized. With the private per diem at \$33.63, this represents a potential savings of approximately 5.5 percent. This may be viewed as the expected savings that will be achieved when all the facilities are operating at full capacity.

- The effects of competition

Tennessee officials were of the opinion that competition from the private facility had the effect of keeping costs down at the public facilities. As evidence of this, we observed during our site visits that the private facility's estimate of additional staff needed for a proposed capacity expansion of 170 beds was less than half of the estimate made by one of the state-run facilities. We were told that this difference was causing closer scrutiny of the state prison's request than might otherwise have occurred.

### CASE STUDY QUALITATIVE COMPARISONS

- Are the private prisons as safe and secure as the public prisons?

Yes, based on data at hand. We reviewed a year's worth of data from our study prisons regarding rates of escape, major disturbances, and inmate infractions. We also conducted site visits to observe prison environment and operations. A summary of our observations follows. (See Appendix 4 for more detailed information on both interstate and intrastate comparisons of inmate demographics and behavior).

- Escapes

There were no escapes at any of the Louisiana prisons. In Tennessee there was a total of three escapes from secure supervision in the two public prisons, and no escapes from the private prison. There was also a total of nine escapes from the two state run minimum security units, and only one escape from the privately run minimum security unit.

- Major disturbances

In Louisiana, each of the private prisons reported one major disturbance, while the public prison reported four. In Tennessee, one of the public prisons reported sixteen major disturbances, while the remaining public and private prisons each reported seven. Some of the difference in numbers may be due to reporting differences, as evidenced in the comparative evaluation completed in Tennessee in January, 1995. Although these numbers portray a large amount of major disturbances, none of the prisons experienced disturbances that required the use of outside assistance.

- Infractions

Inmate infractions are an important measure of safety and security, however, rates are dependent upon individual staff reports. In Louisiana, the Wackenhut prison issued .47 infractions per inmate, the CCA prison issued 1.3 per inmate, and the state prison issued 1.8 per inmate. In Tennessee, the infraction rates were more similar, with the private prison having issued slightly more infractions than the public prisons. During the study period of the Tennessee comparative evaluation, there were dramatically more injuries to staff and inmates reported at the privately run facility. However, the report indicated reporting differences, and weighted each of the Tennessee prisons the same in the areas of safety and security.

All of the prisons we visited were clean and appeared to be orderly.

- Do the private prisons offer the same quantity and quality of inmate programs as the public prisons?

Generally, yes. The private prisons in our study had similar inmate work requirements to the public prisons. Louisiana private and public prisons have a 100 percent inmate work program. In Tennessee, the private prison has an average of 84 percent of inmates either working or attending full time education programs.

- Rehabilitation

In Louisiana, 26 percent of the inmates at the state prison were enrolled in education programs, while only 20 and 16 percent were enrolled at each of the private prisons. Although the exact numbers were not provided, it was reported that programs are filled to capacity at each of the three prisons. Capacity and enrollment information was not available for other aspects of rehabilitation in Louisiana, but the emphasis in this state is clearly on work skill development and education in addition to a full-time work program.

In Tennessee, 23 percent of the inmates in the private prison participated in education programming, while 20 and 35 percent participated in education in the public prisons. A qualitative study conducted by Tennessee indicates similar programming availability and quality at each of the prisons.

- Limitation of comparisons

In order to make a complete comparison, further data would need to be gathered including the ratio of program completions to enrollments, length of programs and outcome indicators.

- Do the inmates from the private prisons have a higher or lower rate of recidivism than those from the public prisons?

This question cannot be answered within the context of this study. There have been no studies to address this question directly, or that measure recidivism from prison to prison. Although overall state recidivism rates appear in various publications, it is well known that most states define recidivism differently. For instance, the definition of recidivism may include re-arrest, technical violations or new convictions, or may only include actual returns to prison. States also measure recidivism over varying lengths of time, ranging from one year to five years.

- Problems with defining and measuring recidivism

The major links to recidivism appear to be in the areas of age and criminal history. Young offenders with an extensive arrest record for property crimes are more likely to re-offend than older, first-time offenders. A further problem with trying to assign a rate of recidivism to a particular prison is the fact that an inmate rarely spends his/her entire incarceration at only one prison. Given these problems, using available data about recidivism would not be valid.

#### **EXAMPLES OF HOW THE COMPANIES HAVE REDUCED COSTS**

In Louisiana and Tennessee, both states designed, built and own their prototypical facilities, and pay all debt service. Therefore, these states do not provide an opportunity to evaluate the savings potential of privatization on capital projects (see discussion of capital costs in Part 5, below).

- What areas of the operational budget are likely candidates for cost savings?

Personnel and supplies comprise approximately 85 to 90 percent of operating costs in the state-run facilities we evaluated. These are the two areas where opportunities for savings are substantial. Personnel (including contracted professional services)

accounts for about 70 percent of operating costs, while supplies account for 15 to 20 percent. The remaining areas of the budget, including such things as utilities and insurance, are not likely to vary significantly due to whether the state or a private company is operating a facility.

- Do the private companies save on supplies?

From all accounts, the private companies do save on supplies, but we do not have information that would permit us to estimate a percentage.

State and company officials in both states agreed that the private companies save money by not having to follow the state procurement rules. They can buy supplies when needed, at the most competitive price, and keep a smaller inventory.

This cost advantage to the private companies is offset by the fact that in both states the private facilities pay sales taxes that the state facilities are exempt from paying. Although this adds to the cost of the contracts, the states may still realize the benefit of the lower procurement costs because the sales taxes are returned to the states as revenues.

- Do the private companies save on personnel costs?

Yes. For the three private facilities included in our case studies, we estimate that the number of staff ranged from 88 to 97 percent of state facilities staffing, and that the average salaries for those personnel range from 69 to 93 percent of state salaries.<sup>2</sup>

- Example of magnitude of possible savings

The magnitude of the potential for savings in the area of personnel can be shown in the following example. If a private facility can operate with 90 percent of state staffing, and at 85 percent of average state salaries, this translates into a personnel savings of 24 percent. Since personnel costs comprise about 70 percent of all operating costs, this results in

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<sup>2</sup> The lower end of the salary range was based on comparing the mid-points of the salary ranges for corrections officers at the Avoyelles (state-run) and Allen (Wackenhut) facilities in Louisiana. Corrections officers comprise more than two-thirds of all staff at both facilities. The use of the mid-point for the private facility is a conservative approach (i.e., does not over-estimate) insofar as the private facility has a higher turnover rate than the state-run facility.

a savings to the total budget of approximately 16 percent.

- Are the savings passed on to the states?

Some of the savings are passed on to the state to the extent that the contracted per diems for the private facilities are less than the states' per diems. The example above shows, however, that personnel can be a major source of profit for the private companies.

- How do the private facilities manage operations with fewer staff?

From our site visits and reviews of staffing patterns, two general explanations emerged.

1. There is a greater tendency for staff to have responsibilities in more than one area, and for management staff to have responsibilities in several areas.
2. More flexibility in the use of staff, including corrections officers, results in fewer staff (and/or less overtime) needed to cover mandatory posts.

- Do the private companies also save on employee benefits?

Not necessarily. In Louisiana the state spends less on benefits for current employees than either of the private companies, primarily because state government does not participate in the federal social security system. The state does have a retirement system, but its employer contribution to the retirement system is less, as a percentage, than what the private companies pay for social security contributions.<sup>3</sup> Of the two private companies, CCA additionally makes a company stock contribution and has a stock purchase matching plan that can equal an employer contribution of up to 6 percent of salary per year.<sup>4</sup> In Louisiana, Wackenhut makes no employer contribution to retirement, other than social security.

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<sup>3</sup> The amount that the state contributes that is needed to cover defined benefits for current employees is 5.357 percent, which compares to the social security employer contribution of 6.2 percent.

<sup>4</sup> During the first year of employment, CCA contributes 2 percent of salary, and 1 percent thereafter. It will match employee contributions up to 4 percent of salary.