TCN: 70689 DATE & TIME: 04/21/97 18:00 TO 21:00 STATUS:5 IN PROG.

PARTICIPANTS IN:FAIRBANKS FBX

				AK	(907)000-0000	
6	MR.	CHRIS	MILLER		TSFY. HB 51	
				AK	(907)000-0000	
7	MS.	SUZANNE	MILLS		TSFY. HB 51	
				AK	(907)000-0000	
9	MS.	KERYNN	FISHER		TSFY. HB 51	
				AK	(907)000-0000	
10	MR.	KEITH	NYITRAY		TSFY. HB 51	
				AK	(907)000-0000	
11	MR.	NEIL	PLA TED		TSFY. HB 51	
				AK	(907)000-0000	
12	MS.	SYLVIA	WARD	NAEC	TSFY. HB 51	
				AK	(907)000-0000	
13	MS.	SARA	CALLAGHAN		TSFY. HB 51	
				AK	(907)000-0000	
14	MR.	CAMERON	LEONARD-IF REQUESAG'S		TSFY. HB 51	
				AK	(907)000-0000	

PARTICIPANTS IN:HOMER HOM

1	MR.	JOEL	COOPER		TSFY. HB 51	
		PO BOX 3585	HOMER	AK	99603	(907)235-6109
2	MR.	BOB	SHAVELSON	COOK INLET KEEP	TSFY. HB 51	
		PO BOX 3269	HOMER	AK	99603	(907)235-4068

PARTICIPANTS IN:KENAI LIO KEN

1	MR.	DENNIS	RANDA	TROUT UNLMTD.	TSFY. HB 51	
				AK	(907)000-0000	
2	MS.	LINDA	WRIGHT	SELF	TSFY. HB 51	
				AK	(907)000-0000	
3	MS.	CHERI	EDWARDS	SELF	TSFY. HB 51	
				AK	(907)000-0000	
4	MR.	DALE	BONDURANT	SELF	TSFY. HB 51	
				AK	(907)000-0000	
5	MS.	PEGGY	MULLEN	SELF	TSFY. HB 51	
				AK	(907)000-0000	

PARTICIPANTS IN:VALDEZ VAL

1	MR.	JOE	BRIDGMAN	RCAC	TSFY. HB 51	
				AK	(907)000-0000	
2	MS.	NANCY	LETI.COE		TSFY. HB 51	
				AK	(907)000-0000	

**** SCHEDULING NOTES ****
FBX ADDED PER MEL 4-18 JPS

**** UPDATES ****

01	04/18/97	14:12:22	ANNOUNCING TELECONFERENCE	
02	04/18/97	14:43:04	KENAI LIO	ADDED ON
02	04/18/97	14:43:05	HAINES	ADDED ON
03	04/18/97	15:06:18	HOMER	ADDED ON
04	04/18/97	15:37:46	ANCHORAGE	ADDED ON
05	04/18/97	17:22:07	FAIRBANKS	ADDED ON
06	04/21/97	10:23:50	CORDOVA	ADDED ON

TCN: 70689 DATE & TIME: 04/21/97 18:00 TO 21:00 STATUS:5 IN PROG.

PARTICIPANTS IN:FAIRBANKS FBX

	1811 SALTWATER DR		HOMER	AK 99603	(907)457-2286	
5 MR.	MIKE	MCDOUGALL			TSFY. HB 51	
	PO BOX 751024		FAIRBANKS	AK 99775	(907)474-6666	
6 MR.	CHRIS	MILLER			TSFY. HB 51	
	PO BOX 750160		FAIRBANKS	AK 99775	(907)455-4151	
7 MS.	SUZANNE	MILLS			TSFY. HB 51	
	1640 MOOSE TRAIL		FAIRBANKS	AK 99709	(907)451-7475	
8 MR.	CAMERON	LEONARD	AG'S OFFICE		TSFY. HB 51	
	100 CUSHMAN ST, STE 400		FAIRBANKS	AK 99701	(907)451-2811	
9 MS.	KERYNN	FISHER			TSFY. HB 51	
	PO BOX 84053		FAIRBANKS	AK 99708	(907)452-3443	
10 MR.	KEITH	NYITRAY			TSFY. HB 51	
	PO BOX 84		TALKEETNA	AK 99676	(907)733-1727	
11 MR.	NEIL	PLESTED			TSFY. HB 51	
				AK	(907)000-0000	
12 MS.	SYLVIA	WARD	NAEC		TSFY. HB 51	
				AK	(907)000-0000	
13 MS.	SARA	CALLAGHAN			TSFY. HB 51	
				AK	(907)000-0000	

PARTICIPANTS IN:HOMER HOM

1 MR.	JOEL	COOPER			TSFY. HB 51	
	PO BOX 3585		HOMER	AK 99603	(907)235-6109	
3 MR.	BOB	SHAVELSON	COOK INLET KEEP		TSFY. HB 51	
	PO BOX 3269		HOMER	AK 99603	(907)235-4068	

PARTICIPANTS IN:KENAI LIO KEN

1 MR.	DENNIS	RANDA	TROUT UNLMTD.		TSFY. HB 51	
	BOX 3055		SOLDOTNA	AK 99669	(907)262-9494	
2 MS.	LINDA	WRIGHT	SELF		TSFY. HB 51	
	BOX 108		KASILOF	AK 99610	(907)262-9694	
3 MS.	CHERI	EDWARDS	SELF		TSFY. HB 51	
	363 ASPEN		SOLDOTNA	AK 99669	(907)272-7199	
4 MR.	DALE	BONDURANT	SELF		TSFY. HB 51	
	HC1 BOX 1197		SOLDOTNA	AK 99669	(907)262-0818	
5 MS.	PEGGY	MULLEN	SELF		TSFY. HB 51	
	355 LIGONBERRY		SOLDOTNA	AK 99669	(907)262-9225	
6 MR.	ROBERT	BONDURANT	SELF		OBSV. HB 51	
	HC1 BOX 1197		SOLDOTNA	AK 99669	(907)262-0818	
7 MR.	GARY	FANDREI	CIAA		OBSV. HB 51	
	HC2 BOX 549		SOLDOTNA	AK 99669	(907)283-5761	

PARTICIPANTS IN:VALDEZ VAL

1 MR.	JOE	BRIDGMAN	RCAC		TSFY. HB 51	
	PO BOX 1366		VALDEZ	AK 99686	(907)835-5208	
2 MS.	NANCY	LETHCOE			TSFY. HB 51	
	PO BOX 1313		VALDEZ	AK 99686	(907)835-5175	
3 MR.	JIM	LETHCOE			OBSV. HB 51	
	PO BOX 1313		VALDEZ	AK 99686	(907)835-5175	
4 MR.	BOB	BENDA			TSFY. HB 51	
				AK	(907)000-0000	

**** SCHEDULING NOTES ****

LTN1100-R01 LEGISLATIVE TELECONFERENCE NETWORK PAGE 01
04/21/97 19:15:32
TCN: 70689 DATE & TIME: 04/21/97 18:00 TO 21:00 STATUS:5 IN PROG.

**** ORDER SUMMARY ****
SPONSOR: SFIN SENATE FINANCE CHAIRS: PEARCE
PURPOSE: PUB PUBLIC HEARING LEGISLATIVE SHARP
CONTACT: LARRY TEL#: (907)465-3004
CHAIRING SITE: JUNEAU CAPITOL CAP532
TOLL FREE: (800)478-7612 DIAL-UP: LIO:(800)478-9908

SPONSOR REMARKS(PUB): TESTIMONY:Y ALLOWED 2 MINUTE LIMIT
TESTIMONY WILL BE TAKEN WITH A 2 MINUTE LIMIT.
SEE COMMITTEE SCHEDULE IN BASIS

SPONSOR REMARKS(LIO): BACKUP MATERIAL:N MEETING IN PROGRESS:N MAX. SITES:10
OTHER SITES MAY ADD THRU THE JNU LIO.
TCN REQUESTED ON 04/21/97 AND HAS 7 UPDATES

**** AGENDA ****
1 HB 51 DEPT OF ENV. CONSERV./WATER/PENALTIES

**** PARTICIPATING LIOS ****

	ANC ANCHORAGE	716 W 4TH, #200		LOCATION STAFF
	COR CORDOVA	705 2ND STREET		LOCATION STAFF
	FBX FAIRBANKS	119 N CUSHMAN ST		LOCATION STAFF
	HOM HOMER	126 W PIONEER #4		LOCATION STAFF
*	JNU JUNEAU	CAPITOL	CAP532	LOCATION STAFF
	KEN KENAI LIO	145 MAIN ST LOOP		LOCATION STAFF
	VAL VALDEZ	STATE BLDG. #13		LOCATION STAFF

**** VOLUNTEER & OFFNET SITES ****
SIT HNS HAINES CITY HALL ALETA ADKINS (907)766-2294

PARTICIPANTS IN:ANCHORAGE ANC

1	JEFF	PARKER	AK. SPORTS FISH	TSFY. HB 51		
				AK	(907)000-0000	
2	MARTHA	LEVENSALER	NAT.WILDLIFE FED	TSFY. HB 51		
				AK	(907)000-0000	
3	DORTHY	CHILDERS		TSFY. HB 51		
				AK	(907)000-0000	
4	CLIFF	EAMES	AK.CENTER/ENVIR	TSFY. HB 51		
				AK	(907)000-0000	
5	BECKY	GAY	RESOUR.DEV.COUN	TSFY. HB 51		
				AK	(907)000-0000	

PARTICIPANTS IN:CORDOVA COR

1 MS.	CHERI	SHAW	CDFU	TSFY. HB 51		
	PO BOX 939		CORDOVA	AK 99574	(907)424-3447	

PARTICIPANTS IN:FAIRBANKS FBX

1 MR.	RON	YARNELL		TSFY. HB 51		
	1231 SUNDANCE LP		FAIRBANKS	AK 99709	(907)479-8203	
2 MR.	DALE	ANDERSON		TSFY. HB 51		
	541 ROBERTS ROOST		FAIRBANKS	AK 99712	(907)488-7807	
3 MR.	KARL	HANNEMAN	AK MINERS ASSOC	TSFY. HB 51		
	626 2ND ST		FAIRBANKS	AK 99701	(907)452-8685	
4 MS.	MARLA	MCPHERSON		TSFY. HB 51		

TCN: 70689 DATE & TIME: 04/21/97 18:00 TO 21:00 STATUS:5 IN PROG.

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				AK	(907)000-0000	
7	MS.	SUZANNE	MILLS		TSFY. HB 51	
				AK	(907)000-0000	
8	MR.	CAMERON	LEONARD-IF REQUESAG'S OFFICE		TSFY. HB 51	
				AK	(907)000-0000	
9	MS.	KERYNN	FISHER		TSFY. HB 51	
				AK	(907)000-0000	
10	MR.	KEITH	NYITRAY		TSFY. HB 51	
				AK	(907)000-0000	
11	MR.	NEIL	PLESTED		TSFY. HB 51	
				AK	(907)000-0000	
12	MS.	SYLVIA	WARD	NAEC	TSFY. HB 51	
				AK	(907)000-0000	

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2	MR.	BOB	SHAVELSON	COOK INLET KEEP	TSFY. HB 51	
		PO BOX 3269	HOMER	AK	99603	(907)235-4068

PARTICIPANTS IN:KENAI LIO KEN

1	MR.	DENNIS	RANDA	TROUT UNLMTD.	TSFY. HB 51	
				AK	(907)000-0000	
2	MS.	LINDA	WRIGHT	SELF	TSFY. HB 51	
				AK	(907)000-0000	
3	MS.	CHERI	EDWARDS	SELF	TSFY. HB 51	
				AK	(907)000-0000	
4	MR.	DALE	BONDURANT	SELF	TSFY. HB 51	
				AK	(907)000-0000	
5	MS.	PEGGY	MULLEN	SELF	TSFY. HB 51	
				AK	(907)000-0000	

PARTICIPANTS IN:VALDEZ VAL

1	MR.	JOE	BRIDGMAN	RCAC	TSFY. HB 51	
				AK	(907)000-0000	
2	MS.	NANCY	LETHCOE		TSFY. HB 51	
				AK	(907)000-0000	

**** SCHEDULING NOTES ****
FBX ADDED PER MEL 4-18 JPS

**** UPDATES ****

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06	04/21/97	10:23:50	CORDOVA	ADDED ON
07	04/21/97	16:33:02	BARROW	DROPPED

UCIDA

UNITED COOK INLET DRIFT ASSOCIATION
P.O. Box 389 • Kenai, Alaska 99611 - 0389
(907) 283-3600 • FAX (907) 283-3306 e-mail: ucida@kenai.net

April 21, 1997
Sent via fax

To: Senators Pearce and Sharp
Co-Chairs, Senate Finance Committee
State Capitol, Room 520
Juneau, AK 99801

Subject: UCIDA opposition to CS For House Bill No. 51 (RLS) am

Dear Senators Pearce and Sharp,

United Cook Inlet Drift Association (UCIDA) represents the 585 salmon drift permit holders in Upper Cook Inlet. Some 350 permit holders are current members of our association. UCIDA is also active at the state and federal levels as a member of the Executive Committee of United Fisherman of Alaska (UFA).

UCIDA would like to express its unequivocal opposition to HB51 - the Dirty Water Bill. We are opposed to the current version OR any amended version that would lessen in any way Alaska's current water quality standards.

UCIDA urges your committee to support the often abused sentiment of promoting "environmentally sound" economic development by rejecting HB51.

HB51 poses an unacceptable risk to our renewable resource industries reliant on water and water quality - commercial and sport fisheries, tourism, etc.

Having reviewed the current version of HB 51, UCIDA finds that the concerns expressed by EPA in a letter dated February 14, 1997 (Enclosure #1) are still valid. UCIDA will strenuously oppose any effort by the state to assume NPDES permitting authority should any version of this legislation pass.

By requiring DEC to adopt minimal federal standard - EXCEPT in shellfish growing areas - and permitting any "person" to force DEC to respond to a request to reduce or eliminate any federal water quality standards, HB51 adds insult to injury to an already overburdened state agency.

Finally, UCIDA has reviewed and concurs with the comments of DEC Commissioner Michele Brown in her April 17, 1997, Letter to Rep. Rokeberg. (Enclosure #2).

In conclusion, UCIDA urges your committee to support environmentally sound economic development and all user groups reliant on water and water quality standards - REJECT HB51.

We appreciate this opportunity to comment and request that you share our comments with the rest of your committee members.

Sincerely,

Theo Matthews

Theo Matthews
Executive Director
UNITED COOK INLET DRIFT ASSOCIATION

/TM:kmt

Enclosures

cc: Governor Tony Knowles
Senator Miller, Senator President
Representative Phillips, House Speaker
Senator John Torgerson
Senator Jerry Ward
Representative Gary Davis
Representative Mark Hodgins
Michele Brown, ADEC Commissioner
Frank Rue, ADF&G Commissioner
John Shivley, ADNR Commissioner
United Fishermen of Alaska

ENCLOSURE #1

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 10
1200 Sixth Avenue
Seattle, Washington 98101

FEB 14 1997

REPLY TO
ATTN OF: OW-134

Michele Brown, Commissioner
Alaska Department of Environmental Conservation
410 Willoughby Avenue, Suite 105
Juneau, Alaska 99801-1795

Dear Commissioner Brown:

EPA has completed its review of the CS(L) for House Bill 51 (CSHB 51) in response to your request for comments. CSHB 51 would establish a procedure to change State water quality standards that are more stringent than Federal water quality criteria. We have several concerns about how this legislation could affect the Alaska's water quality standards (WQS) program and the likelihood of authorizing the State of Alaska to operate the Federal National Pollutant Discharge Elimination System (NPDES) permitting program. EPA's concerns fall into three categories: inconsistencies/interpretation problems, WQS program problems, and NPDES program problems.

Inconsistencies/Interpretation

The bill contains ambiguous language and inconsistencies with portions of the Clean Water Act (CWA) dealing with WQS and NPDES permitting. Examples of inconsistencies and interpretation problems that are of concern to EPA are highlighted below.

- CSHB 51 § 46.03.087(a)(1) and (2) refer to the adoption of "water quality standards and discharge standards." We are not certain what is meant by the term "discharge standard." Discharge standards could be interpreted to mean effluent limits or effluent guidelines. National NPDES regulations do not allow permit limits that are less restrictive than technology-based effluent guidelines.

- § 46.03.085(b) refers to "other regulation related to water quality." We are concerned about what this phrase may include. Since there are no Federal criteria or regulations for mixing zones and zones of deposit, these NPDES tools could be affected by this legislation.

- § 46.085(c) provides a timeframe during which DEC must amend the WQS to incorporate a reduction or elimination in the federal water quality criteria or follow the procedure in § 46.087(b). There is no explanation of how the reduction or elimination of the criterion is to be justified and how it will be consistent with the CWA or the Federal water quality standards regulations (40 CFR Part 131).

- § 46.03.085(a) states that DEC, in adopting and applying WQS, "shall ensure that the standards are sufficient to protect human health and propagation of fish and wildlife." This provision is not consistent with the CWA. Section 101(a)(2) of the CWA provides for the protection of propagation of fish, shellfish, wildlife, and recreation in and on the water. Section 303(c)(2)(A) of the CWA includes additional uses that WQS should protect: domestic water supply, agricultural, industrial, and navigational uses. Any changes to WQS that are made in accordance with this legislation may not protect all designated uses in the Alaska WQS and the CWA.

Overall, these types of interpretation problems will likely result in some confusion about how CSHB 51 should be implemented and mixed expectations in the regulated community and the public. These kinds of problems will likely contribute to a more resource-intensive water management program.

WQS Program

As you know, any change in a state WQS requires review and approval by EPA. EPA has serious concerns regarding both the process for WQS revision, and the basis for such revisions in §§ 46.03.085(c) and 46.03.087(b). Based on these concerns, it is possible that WQS that Alaska revises under these provisions will not be approvable.

First, we are concerned whether 90 days [see § 46.03.085(c)] provides adequate time for DEC to make scientifically sound decisions, as required by Federal WQS regulations, about whether a WQS change is warranted. Our concerns are heightened by the fact that HB 51 contains no provisions that require those who are requesting the amendment to supply any data or justification to support the need for the change. Since the burden of proof for determining whether a standards change is needed rests with DEC, these decisions may be based on little or no information. Ninety days may not allow DEC to collect adequate supporting data. Additionally, this section of CSHB 51 appears to overlap with existing portions of the Alaska WQS regulations [18 AAC 70.025(d)]. This section in the Alaska WQS regulations already contains a provision that allows the use of "natural conditions" as the basis for WQS changes [18 AAC 70.025(b)] that are less restrictive than Federal criteria and it requires the applicant

seeking the WQS change to provide DEC with the data and information needed to make the determination.

Second, we are concerned that the technical basis in CSHB 51 for any proposed WQS changes is tied to "hydrologic conditions or discharge conditions" [§ 46.03.087(b)]. EPA Federal criteria are based on laboratory toxicity tests and do not necessarily consider hydraulic conditions or discharge characteristics. It is doubtful that a change in a criterion that is based strictly on "hydrologic conditions and discharge characteristics" will be scientifically defensible for protection of all designated uses. Therefore, such changes to WQS may not result in approvable WQS regulations. Where the change is to adopt criteria that are less stringent than the existing criteria, there needs to be a justification that the criteria are adequate to fully protect the use.

EPA is also concerned about how the requirements in Sections 4 and 5 will be implemented. Section 5 of this bill requires DEC to conduct a triennial review and identify State regulations that are more stringent than Federal regulations. The Federal WQS regulations direct States to, "at least once every three years, hold public hearings for the purpose of reviewing applicable water quality standards, and, as appropriate, modifying and adopting standards". Section 4 of CSHB 51 contains provisions that require a 90-day review of individual portions of the Alaska WQS regulations. The 90-day review is triggered by a request to change a State WQS because it may be more stringent than a federal criterion. It is conceivable that DEC would be responsible for numerous 90-day reviews and standard changes required in Section 4 at the same time that it is required to conduct the triennial review that is contained in Section 5. This would result in a confusing, time-consuming, piecemeal approach to WQS and management of the water quality program.

NPDES Program

EPA Region 10 continues to be interested in authorizing the State of Alaska to operate the National Pollutant Discharge Elimination System (NPDES) program throughout the State. As you know, we have provided DEC a grant for the purpose of conducting an analysis that details both the costs and options for assuming the NPDES program. The results of the analysis should be available in late spring. To obtain NPDES program authorization, the State must demonstrate that adequate resources are available to successfully manage an NPDES program.

In addition, the Alaska Attorney General would need to examine existing state statutes and regulations to determine whether the state has all the necessary legal authorities to operate an NPDES permitting and compliance program. Any missing legal provisions would need to be enacted before the state applies for authorization. Also, EPA would have to be assured

that the state does not have statutes or regulations that are incompatible with authorization.

Sec. 46.03.085(a)(3) of CSHB 51 states that the Department "shall use scientific justification and water quality criteria that can be reliably measured." Some Federal water quality criteria are established at levels below detection (e.g. dioxin). It is not clear if these criteria would be considered to not "be reliably measured." While compliance determinations are based on the minimum level of quantification, permit limits must be established using the water quality criterion value and may be below the detection level. This language could be construed to disallow issuance of permits with appropriate limits and therefore could jeopardize attempts by Alaska to pursue authorization of the NPDES program.

In addition, § 46.03.085(a)(4) states that DEC "may not require discharged water to be of higher quality than the natural conditions of the receiving water." On occasion, technology-based limitations (established either through national guidelines or best professional judgment of the permitting authority) require a discharge to be higher in quality (i.e., meet a higher standard) than the receiving water. This language would contradict the NPDES regulations which require achievement of technology-based limitations without regard for receiving water conditions. Again, this will jeopardize any future State attempts to assume the NPDES program.

Conclusions

We believe that the problems discussed above would create added confusion and inefficiencies in the implementation of Alaska WQS program rather than improved responsiveness and effectiveness. To implement CSHB 51 would require additional time and effort on the part of DEC staff. Yet, the resource-intensive nature of CSHB 51 would not contribute to the development of the capacity needed to assume the NPDES program. Furthermore, certain provisions of CSHB 51 may create legal problems that will jeopardize both approval of State WQS revisions and authorization of the NPDES program.

We appreciate the opportunity to review and provide comments on CSHB 51. If you have any questions about these comments contact me at (206) 553-0422 or Marcia Lagerloef, at (206) 553-0176.

Sincerely,

for Chuck Clarke
Regional Administrator

ENCLOSURE #2

TONY KNOWLES, GOVERNOR

DEPT. OF ENVIRONMENTAL CONSERVATION

410 Willoughby Ave., Ste 105
Juneau, AK 99801-1795
PHONE: (907) 465-5065
FAX: (907) 465-5070
http://www.state.ak.us/dec/home.htm

OFFICE OF THE COMMISSIONER

April 17, 1997

The Honorable Norm Rokeberg
Alaska House of Representatives
Capitol Building, Room 24
Juneau, AK 99801

Dear Representative Rokeberg:

You asked for the department's comments on HB 51 Senate CS for CS for House Bill 51 ( ) version "0". We remain strongly opposed to this legislation. Our concerns with the bill are outlined below.

This bill, as written, eliminates drinking water as a beneficial use of state waters, allows for cumulative degradation of water bodies, provides for mixing zones of unlimited size, and through confusing use or misuse of terminology, makes the intent of the bill unintelligible. I will illustrate each of these points with the general and specific comments that follow.

As a starting point, I think it would be useful to try to explain the difference between "criteria" and "standards", and the respective roles of EPA and the states in establishing water quality standards. Generally speaking, EPA does not adopt standards and the states do not develop criteria. "Water quality criteria" are scientific information regarding the concentrations of specific chemicals or other pollutants in water which adequately protect aquatic life or human health. In other words, a water quality criterion is the amount of pollution a water body can stand before a use is impacted. Criteria must be used in establishing a water quality standard. EPA's criteria are guidance for states to use when they establish their water quality standards unless a state, through a rigorous scientific process, develops its own criteria.

"Standards" are legally enforceable, state-established requirements that consist of two things: the uses a water body should be protected for and the criteria which are necessary to protect those uses. So to have a water quality program based on criteria only completely eliminates the critical step of modifying those criteria to make them applicable to the uses of a particular body of water. In addition, the term "water quality standards" is also used more generally to refer to all of 18 AAC 70 regulations. These include several important tools for applying the "use & criteria" standards, such as mixing zones, variances, and site-specific criteria.

I hope with this explanation you will understand that when you ask the department to compare state standards with federal requirements, you are asking us to compare apples to oranges. As explained above, federal criteria are a subset of state water quality standards.

The department is sensitive to the fact that certain federal water quality criteria have made it difficult for some industrial users of state waters to obtain workable permits. An excellent example of such a situation is the stringent arsenic limit that EPA has placed in the placer mining permits it issued last fall. When such situations arise, ADEC has worked closely with industry to ensure that all water quality criteria and permit limits are based on sound science and a reasonable evaluation of health and ecological risk. In response to coordinated pressure from industry and the state, EPA recently announced that it would withdraw the arsenic criteria it had imposed on Alaska.

The presumption that the state's water quality standards have led to such permitting problems is wrong. As in the example of arsenic, most recent instances of restrictive standards result from EPA's promulgation of criteria for toxic pollutants, which it imposed on the state. Our state standards generally allow more flexibility in permitting, such as through mixing zones and site-specific criteria, than do the federal criteria. Recent permitting problems illustrate that permittees are better served when the state is implementing its own standards than when the federal government takes on that role.

Before discussing specific provisions of the bill, I must make one more general observation. The grafting of what was HB 71, dealing with administrative penalty authority in the safe drinking water program, onto HB 51, is ill-advised. There is essentially no legal or factual overlap between the two subjects, other than that both concern water in one way or another. The public would be better served if these two very different issues were considered on their own merits, rather than confused through politics.

Our sectional analysis follows:

Section 1(a). This Administration is clearly supportive of economic growth and development, but that development must be done right. Doing it right means setting standards based upon sound science, prudent resource management, and full public involvement. For water quality standards, public health and multiple use compatibility must also be compelling policies.

Section 1(b). As mentioned earlier, the administrative penalty authority in the safe drinking water program should be dealt with in a separate bill.

Section 2. HB 51 encourages the state to continue to work toward assumption of the NPDES permitting program from EPA. But the serious confusion created by the bill makes it less likely that we can ever take over that program. EPA has made it clear that HB 51, if made law, could jeopardize state assumption of NPDES permitting. This is another way in which the bill could defeat the very purpose that it is reportedly intended to advance -- to make permitting easier.

Section 3. The proposed new AS 46.03.080(b) addresses waters that, in their natural condition, do not meet water quality standards. The approach of this subsection might make sense if the definition of natural condition were clear. Unfortunately, the definitions offered in this bill are far from clear. First of all, there are two quite different definitions of the term "natural condition".

(compare p.3, ll.3-7, with p.6, l.30- p.7, l.3.) The first definition in the proposed AS 46.03.080(e) substitutes "background condition" for natural condition whenever baseline water quality is either not obtainable or has been altered by historical or "upslope" activity. The definition of background condition is the water quality outside the influence of a particular discharge. To have the natural condition default to the background condition is to sanction progressive degradation of water quality. In other words, pollution from historical or upslope activities will become the standard for downstream waters. This destroys the very notion of natural condition.

The bill's second definition of natural condition in the proposed AS 46.03.088(4) just compounds the confusion. It is not clear when this definition would even apply given the prior definition of the same term. If and when this one did apply, it refers to the condition of a water in 1972 when the Clean Water Act was enacted. That provision suggests that the department cannot consider competent evidence of the water's natural condition over the last 25 years! Surely such an approach belies the bill's stated commitment to standards based on good science. Arguably, if no baseline data were available from before 1972 then we could not establish a natural condition and would end up using background condition to set the standards. These confusing and contradictory provisions are a major flaw in this bill.

Section 4. As this section of the bill contains several provisions that require comment, I organize my discussion by reference to the proposed new subsections of AS 46.03.085, .087, and .088.

.085(b). The subject of mixing zones has long been controversial and our soon to be finalized regulation is the result of considerable public debate. While it may be appropriate for the Legislature to establish general policy about when and how mixing zones should be used, to address the detail of mixing zone size, I believe, is a mistake. One major flaw in the current bill illustrates the risk of legislative micro management. The proposed AS 46.03.085(b) would allow mixing zones to exceed the normal size limit whenever it is demonstrated that "a larger mixing zone will adequately protect human health and the environment outside the mixing zone." Yet that will be all the time, since water quality standards, designed to protect all uses, must be met at the edge of any mixing zone. That one provision in HB 51 negates all other size restrictions and would allow a mixing zone of infinite size, since any discharger can show that water outside its mixing zone, however big, will adequately protect human health and the environment.

Even aside from that basic flaw, the size limit for streams and rivers (proposed sec. 85(b)(3)) offers no protection for sensitive fish-spawning habitat. While ADEC's current mixing zone regulation ensures adequate protection of both anadromous and resident fish, this bill does not even acknowledge that as a consideration.

Given these problems, I recommend that the Legislature allow this department to continue to address mixing zones through regulations. We have balanced the interests of various stakeholders in a responsible and protective way.

.085(d). This provision duplicates the petition procedure already available under the APA, AS 44.62.220. But it shifts the burden to ADEC to demonstrate why it should keep a standard, rather than leaving the burden on the petitioner to show why the standard should be lowered. The department's objection to this provision is that the procedure mandated by the proposed AS 46.03.087 is both burdensome and ill-advised, as discussed further below.

.087(a). The heart of this section is to establish special procedures for adopting or retaining water quality standards that are more stringent than federal criteria. Testimony on the bill indicates that this idea was taken from Alaska's air statute. There is a critical difference, however, between the federal Clean Air Act and the Clean Water Act that makes this concept difficult, if not impossible, to apply to water quality standards. The Clean Air Act gives EPA the responsibility to set ambient air quality standards; the Clean Water Act gives that responsibility to states. As a result, this "special" procedure would come into play nearly every time the state proposed any water quality standard because there are no equivalent federal standards.

.087(b). Aside from my fundamental objection to the idea that our water quality standards should be reduced to the bare minimum, I have three problems with this subsection. First, it will be difficult at best, not to mention inappropriate, to assess the economic feasibility of a water quality standard, and that consideration is more appropriate in the context of specific permitting decisions. Second, this subsection does not acknowledge the need to protect all the uses that we are required to protect under the federal Clean Water Act. Third, since our water quality standards apply to the whole state, it does not make sense to focus on biological, chemical and physical conditions in particular areas or sites in the state when setting standards.

.088(1). This definition of background condition is different than the definition at .085(a)3 and introduces additional confusion. The term "upslope" is not defined and its usage is confusing in this context.

.088(2). The term "drinking water" is not used in the proposed AS 46.03.085-.087. It is not clear why there should even be a definition of the term in section .088. However, the definition in .088 could be construed to exclude virtually all waters of the state thus eliminating drinking water as a use for Alaska's surface waters.

.088(3). There is a significant problem with including fish processing and food processing in an industrial use category. Water used for fish and food processing is currently under the same use standard as drinking water in order to protect public health. Using an industrial use standard is likely to pose significant threats to both the public health and quality of Alaska food and fish products.

.088(4). The definition of "natural condition" is not workable. Little, if any water quality data existed for Alaska's water bodies in 1972.

Sections 5-7 and 9-11. All provisions regarding administrative penalty authority under the Safe Drinking Water Act should be removed from this bill and considered in a separate bill.

Section 8. This section requires ADEC to go through the entire body of both federal and state water quality regulations, to identify all instances where the state requirement is more stringent than the federal one. As I pointed out earlier, this is an exercise in comparing apples to oranges. I think that our limited agency resources are more efficiently spent on the handful of standards that permittees are actually having trouble meeting, such as the arsenic criterion discussed at the beginning of this letter. We simply don't have sufficient staff to do itemized comparisons of state and federal law, while still addressing and resolving the problems that are actually affecting permittees. If this bill forces us to do the itemized comparison, it can only be at the expense of solving real problems in the field. I urge you to let us invest our efforts where they make a difference.

In conclusion, I hope that you will seriously evaluate the principle underlying HB 51. Will it truly benefit the state to deliberately lower our level of water quality protection to the minimum allowed by federal law, eliminate important competing uses like drinking water and provide for mixing zones of unlimited size? I don't think so!

Sincerely,

Michele Brown,
Commissioner

cc: The Honorable Rick Halford
The Honorable Lyda Green
The Honorable Loren Leman
The Honorable Georgiana Lincoln
The Honorable Robin Taylor
The Honorable Bert Sharp
The Honorable John Torgerson
The Honorable Drue Pearce
The Honorable Dave Donley
The Honorable Sean Parnell
The Honorable Randy Phillips
The Honorable Al Adams

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BEAR CREEK OUTFITTERS

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3718 El Camino Juneau, Alaska 99801
(907) 789-3914 phone/fax akskiff@alaska.net

April 21, 1997

Senate Finance Committee
Alaska State Capitol
Juneau, AK 99801

Dear Senate Finance Committee:

We are writing in opposition of HB 51, the water bill sponsored by Representative Rokeberg. This bill not only jeopardizes Alaska public health it also has potential to harm our fly fishing business which relies upon clean waters.

Our customers perceive Alaskan waters to be pristine and unpolluted. This perception could easily be damaged if HB51 is passed and Alaska's water quality standards are lowered. Although only a few of our customers keep their catch, it is important that the fish kept are safe for human consumption. We personally rely on an annual harvest of salmon to feed our family throughout the year.

We encourage you to oppose this bill.

Sincerely,

Michelle Kaelke Mark Kaelke

Mark & Michelle Kaelke

cc: Governor Tony Knowles

Kerynn Fisher
PO Box 84053
Fairbanks, AK 99708
907/452-3443

April 21, 1997

Testimony to the Alaska State Legislature, Senate Finance Committee

Senator Pearce, Senator Sharo, and members of the Senate Finance Committee:

Thank you for giving the public an opportunity to testify on House Bill 51.

First of all, I am disappointed that the Senate Resources Committee didn't take the time to hear our concerns. I believe this bill has serious implications for the future protection of Alaska's water resources and should have been heard in both the House and Senate Resources Committees. I realize that you are all very busy this session and have a lot of bills you want to pass, but I don't think this is any excuse to bypass public input in the form of testimony at hearings such as this one. So, again, thank you for taking the time to hear our concerns.

I'm concerned that House Bill 51 is just another example of the industry tail wagging the dog when it comes to resource management in our state. Specifically, I'm concerned that the cost of environmental compliance will become a factor in determining how stringent water quality standards should be if you pass this bill. While I appreciate your desire to strengthen Alaska's economy, I don't think that we should cut corners when it comes to environmental protection. This is penny-wise, but dollar-foolish.

House Bill 51 introduces a criteria for the Department of Environmental Conservation to examine the economic and technological feasibility of a standard more protective than a federal standard. I object to this principle for a couple of reasons.

First, I believe that in many cases, federal standards are inadequate in Alaska. For example, toxins that build up in fish under federal standards might not pose a health risk in the lower forty-eight, but because Alaskans consume far more fish than the average American, this could pose a health risk to many Alaskans. To require DEC to look at the economics of these standards would require a serious time and resource investment from an agency already strapped by budget cuts and would accomplish little other than to confirm what we already know ~~believe~~ – that Alaska's unique environmental quality deserves protection above federal standards.

Second, and more importantly, I am alarmed that the legislature would put our health and well-being up for sale. What happens when a water quality standard essential to protect our drinking water, fishing waters, and recreational areas poses an economic hardship to a business? Do we then settle for a less-than-adequate standard just to increase someone's bottom line? Do business and industrial uses come before our health? Period.

I am also disappointed that the legislature would write a concept such as "background condition" into state statute. While I realize that some of the state's waters have been contaminated by mining activity years ago, this definition does nothing to encourage users to improve the quality of our waters. At best, we're holding the line at polluted water.

We must all be committed to maintaining the quality of Alaska's environment for our own health and well-being, and for that of our children and grandchildren. Please don't pass this Dirty Water bill.

ALASKA MINERS ASSOCIATION, INC.

501 W. Northern Lights Blvd., Suite 203, Anchorage, Alaska 99503 FAX: (907) 278-7997 Telephone: (907) 278-0347

April 21, 1997

Honorable Bert Sharp
Honorable Drue Pearce
Co-Chairs, Senate Finance Committee
Capitol Building
Juneau, AK 99801-1182

RE: House Bill 51, Relating to Water Quality

Dear Senators Sharp & Pearce,

We have reviewed SCSCSHB-51( ) version "0" and are very appreciative that it incorporates many recommendations that we had suggested in our March 17, 1997 letter to Representative Norm Rokeberg, the bill's sponsor. We support HB-51 with these changes and would ask that a member of your committee move this version "0".

Based on our review of the bill and Commissioner Michelle Brown's April 17, 1997 letter to Representative Rokeberg, some additional changes to version "0" are essential. The following detailed comments recommend specific changes to the Senate CS for HB-51. Our recommended new language is underlined and material we recommend be removed is [*bracketed and italic*].

1. AS 46.03.080(c) should be changed to read as follows:

(c) In this section, "natural condition" means the definition in AS 60.03.088(4) [*baseline water quality when the baseline data is obtainable unless the baseline water quality has been altered by historical or upslope activity*]. If data to establish the natural condition [*the baseline data*] is not obtainable, or if the natural condition [*baseline water quality*] has been altered by historic or upslope activity, then [*"natural condition" has the meaning given to "background condition"*] the background condition as defined in AS 46.03.088 will apply.

NOTE: The first change is necessary to ensure that this bill established a single definition for natural condition. The last change is subtle, but a very important distinction that must be made. The prior language could be interpreted to mean that the background condition might become the applicable standard in accordance with AS 46.03.080. This is not appropriate. The background condition is meant to establish a benchmark against which an effluent will be compared in an enforcement situation. The background condition is not meant to permanently establish an applicable standard for

the waterbody. Remediation or upstream enforcement actions might improve water quality for the waterbody, and if this occurs, it is appropriate that the enforcement benchmark improve as well. This means that background condition is meant to be a temporal condition, while natural condition is a permanent standard. Thus, when the prior language defines natural condition as background, it is combining two terms that must be kept distinct.

Items 2. and 3. below follow from the same reasoning given in this NOTE.

2. Sec. 46.03.085(a)(1) should be changed to read:

(1) shall consider reasonably available information on the background condition or the natural condition of the bodies of water, including the presence of naturally occurring pollutants, such as, but not limited to, arsenic;

3. 46.03.085(a)(3) should be changed to read:

(3) may not require water discharged by a user to be of a higher quality than either the background condition or the natural condition of the water receiving the discharge, whichever is determined by the department to be applicable;

NOTE: As stated above, both "background condition" and "natural condition" are distinct terms defined elsewhere in the bill. The prior language does not appropriately recognize the important distinction between the two terms.

4. 46.03.085(b) should be changed to read:

(b) In adopting mixing zone regulations under (a)(4) of this section and to ensure that a mixing zone is as small as practicable, the department may [*shall*] limit the maximum size of a mixing zone, unless available evidence reasonably demonstrates that these size limitations can be safely increased [*a larger mixing zone will adequately protect human health and the environment outside the mixing zone*], as follows:

5. 46.03.085(d) should be changed to read:

(d) Notwithstanding AS 44.62.230, if the federal government reduces or eliminates a federal water quality standard, criteria, or other regulation, a person may submit a written request to the department to amend the state's water quality standards, criteria, or other regulations to incorporate [*a reduction in or elimination of a federal water quality standard, criteria, or other regulation*] the federal revision. Such [*the*] request [*for*] must state clearly and concisely the state and federal standard, criteria, or regulation in question and provide the department with the reasons and basis for the requested amendment. Within 90 days after receiving the request, or by another date mutually agreed on by the applicant and the department,

the department shall either propose regulations to incorporate the [*reduction or elimination of the federal provision*] federal revision or initiate the procedure required under AS 46.03.087(b). If, following the procedure under AS 46.03.087(b), the department is unable to make the written findings required under AS 46.03.087(b)(3), the department shall propose regulations that amend the state's water quality standards to incorporate the [*reduction in or elimination of the*] federal revision of water quality standard, criteria, or other regulations.

6. 46.03.088(2), which defines "drinking water" should be removed in its entirety. Workable concepts for drinking water and drinking water supply are found elsewhere in regulation. The bill does not appear to require a new definition of drinking water. AMA does not support elimination of drinking water as a beneficial use of state waters, an eventuality arguable possible under the proposed definition.

7. 46.03.088(3), which defines "industrial use", should be removed in its entirety. The term industrial use is presently defined in regulation as excluding food processing. While AMA believes that no large water users should be exempt from the scrutiny of water quality standards, this bill is not intended to compromise the quality of water used for food processing and therefore this bill is perhaps not the appropriate forum to resolve the exemption issue.

Thank you for this opportunity to comment. This is an important bill and we believe that the changes we have identified above are necessary to answer the questions that have been raised and insure that the bill is scientifically supportable and legally defensible.

If you have any questions please call Karl Hanneman at 907-452-8685.

Sincerely,

Steven C. Borell, P.E.
Executive Director

cc: Representative Norm Rokeberg

Alaska Environmental Lobby, Inc.
P.O. Box 22151 Juneau, Alaska 99802
Phone: 907-463-3366
Fax: 907-463-3312

Twentieth Legislature - First Session

CS HB 51(rls) am: "An act relating to the Department of Environmental Conservation; amending Rules 79 and 82, Alaska Rules of Civil Procedure: and providing for an effective date."

Clean water is critical to the economic prosperity and health of Alaskans. Unlike the majority of states, Alaska enjoys a reputation for having pristine waters. Resource extractive industries in Alaska should be willing to meet high water quality standards, designed to protect our pristine waters, rather than to underwrite legislative attempts to weaken our standards. The Alaska Environmental Lobby is opposed to this bill because it would:

- jeopardize the health and welfare of Alaskans and their ability to protect their water resources by lowering Alaska's water quality standards to the lowest level of federal guidelines applicable nationwide,

- lead to greater confusion, delays, and litigation in the permitting process,

- conflict with a basic principle of the Clean Water Act by setting standards amenable to the most polluting user and ignoring the needs of other users, such as people involved in subsistence, sports, and commercial fishing, ,

- introduce a definition of "background condition" that would make polluted water the standard for future discharges,

- require DEC to deal with new, time-intensive, confusing procedures for administering water quality standards, without the benefit of sufficient additional funding,

At a time when Alaskans demand state control over the state's natural resources, HB 51 invites increased federal involvement by EPA in determining the quality of Alaska's waters. At a time when Alaskans are attempting to convince the rest of the nation of our good stewardship of federal lands, such as ANWR and NPR-A, HB 51 would show the nation how willing we are to compromise our water quality to placate industry. The state's unique attributes that Alaskans value so highly - our abundant fish runs, our rich estuaries, our cold, clean streams - must be protected by unique standards drafted by professional resource managers in concert with the industrial interests within the state and with over-sight by all concerned Alaskans.

Susan E. Schrader, Executive Director
4/21/97

From SEN. Adam.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 10
1200 Sixth Avenue
Seattle, Washington 98101

MAR 5 1997

Michele Brown, Commissioner
Alaska Department of Environmental Conservation
410 Willoughby Avenue, Suite 105
Juneau, Alaska 99801-1795

Dear Commissioner Brown: Michele

It is my understanding that the Alaska House Finance Committee passed CSHB51 (T) on February 27, 1997, with amendments, but with no substantive changes, and the bill will soon be scheduled for a vote on the floor of the House. I want to take this time to reaffirm concerns expressed in our letters dated February 14, and February 26, 1997.

Passage into law of CSHB51 will result in added confusion and inefficiencies in the implementation of Alaska's Water Quality Standards program and will jeopardize any future State attempts to assume the National Pollutant Discharge Elimination System (NPDES) program

If you have any questions regarding these comments, please contact me at (206) 553-0422 or Marcia Lagerloef, at (206) 553-0176.

Sincerely,

Chuck Clarke
Regional Administrator

From Sen Adams

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 10
1200 Sixth Avenue
Seattle, Washington 98101

FEB 14 1997

REPLY TO
ATTN OF: OW-134

Michele Brown, Commissioner
Alaska Department of Environmental Conservation
410 Willoughby Avenue, Suite 105
Juneau, Alaska 99801-1795

Dear Commissioner Brown:

EPA has completed its review of the CS(L) for House Bill 51 (CSHB 51) in response to your request for comments. CSHB 51 would establish a procedure to change State water quality standards that are more stringent than Federal water quality criteria. We have several concerns about how this legislation could affect the Alaska's water quality standards (WQS) program and the likelihood of authorizing the State of Alaska to operate the Federal National Pollutant Discharge Elimination System (NPDES) permitting program. EPA's concerns fall into three categories: inconsistencies/interpretation problems, WQS program problems, and NPDES program problems.

Inconsistencies/Interpretation

The bill contains ambiguous language and inconsistencies with portions of the Clean Water Act (CWA) dealing with WQS and NPDES permitting. Examples of inconsistencies and interpretation problems that are of concern to EPA are highlighted below.

- CSHB 51 § 46.03.087(a)(1) and (2) refer to the adoption of "water quality standards and discharge standards." We are not certain what is meant by the term "discharge standard." Discharge standards could be interpreted to mean effluent limits or effluent guidelines. National NPDES regulations do not allow permit limits that are less restrictive than technology-based effluent guidelines.

- § 46.03.085(b) refers to "other regulation related to water quality." We are concerned about what this phrase may include. Since there are no Federal criteria or regulations for mixing zones and zones of deposit, these NPDES tools could be affected by this legislation.

seeking the WQS change to provide DEC with the data and information needed to make the determination.

Second, we are concerned that the technical basis in CSHB 51 for any proposed WQS changes is tied to "hydrologic conditions or discharge conditions" [§ 46.03.087(b)]. EPA Federal criteria are based on laboratory toxicity tests and do not necessarily consider hydraulic conditions or discharge characteristics. It is doubtful that a change in a criterion that is based strictly on "hydrologic conditions and discharge characteristics" will be scientifically defensible for protection of all designated uses. Therefore, such changes to WQS may not result in approvable WQS regulations. Where the change is to adopt criteria that are less stringent than the existing criteria, there needs to be a justification that the criteria are adequate to fully protect the use.

EPA is also concerned about how the requirements in Sections 4 and 5 will be implemented. Section 5 of this bill requires DEC to conduct a triennial review and identify State regulations that are more stringent than Federal regulations. The Federal WQS regulations direct States to, "at least once every three years, hold public hearings for the purpose of reviewing applicable water quality standards, and, as appropriate, modifying and adopting standards". Section 4 of CSHB 51 contains provisions that require a 90-day review of individual portions of the Alaska WQS regulations. The 90-day review is triggered by a request to change a State WQS because it may be more stringent than a Federal criterion. It is conceivable that DEC would be responsible for numerous 90-day reviews and standard changes required in Section 4 at the same time that it is required to conduct the triennial review that is contained in Section 5. This would result in a confusing, time-consuming, piecemeal approach to WQS and management of the water quality program.

NPDES Program

EPA Region 10 continues to be interested in authorizing the State of Alaska to operate the National Pollutant Discharge Elimination System (NPDES) program throughout the State. As you know, we have provided DEC a grant for the purpose of conducting an analysis that details both the costs and options for assuming the NPDES program. The results of the analysis should be available in late spring. To obtain NPDES program authorization, the State must demonstrate that adequate resources are available to successfully manage an NPDES program.

In addition, the Alaska Attorney General would need to examine existing state statutes and regulations to determine whether the state has all the necessary legal authorities to operate an NPDES permitting and compliance program. Any missing legal provisions would need to be enacted before the state applies for authorization. Also, EPA would have to be assured

CORRECTION

THE FOLLOWING DOCUMENT(S)
HAVE BEEN REFILMED TO
ASSURE LEGIBILITY OR PAGINATION

From Sen Adams

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 10
1200 Sixth Avenue
Seattle, Washington 98101

FEB 14 1997

REPLY TO
ATTN OF: OW-134

Michele Brown, Commissioner
Alaska Department of Environmental Conservation
410 Willoughby Avenue, Suite 105
Juneau, Alaska 99801-1795

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- § 46.03.085(b) refers to "other regulation related to water quality." We are concerned about what this phrase may include. Since there are no Federal criteria or regulations for mixing zones and zones of deposit, these NPDES tools could be affected by this legislation.

- § 46.085(c) provides a timeframe during which DEC must amend the WQS to incorporate a reduction or elimination in the federal water quality criteria or follow the procedure in § 46.087(b). There is no explanation of how the reduction or elimination of the criterion is to be justified and how it will be consistent with the CWA or the Federal water quality standards regulations (40 CFR Part 131).

- § 46.03.085(a) states that DEC, in adopting and applying WQS, "shall ensure that the standards are sufficient to protect human health and propagation of fish and wildlife." This provision is not consistent with the CWA. Section 101(a)(2) of the CWA provides for the protection of propagation of fish, shellfish, wildlife, and recreation in and on the water. Section 303(c)(2)(A) of the CWA includes additional uses that WQS should protect: domestic water supply, agricultural, industrial, and navigational uses. Any changes to WQS that are made in accordance with this legislation may not protect all designated uses in the Alaska WQS and the CWA.

Overall, these types of interpretation problems will likely result in some confusion about how CSHB 51 should be implemented and mixed expectations in the regulated community and the public. These kinds of problems will likely contribute to a more resource-intensive water management program.

WQS Program

As you know, any change in a state WQS requires review and approval by EPA. EPA has serious concerns regarding both the process for WQS revision, and the basis for such revisions in §§ 46.03.085(c) and 46.03.087(b). Based on these concerns, it is possible that WQS that Alaska revises under these provisions will not be approvable.

First, we are concerned whether 90 days [see § 46.03.085(c)] provides adequate time for DEC to make scientifically sound decisions, as required by Federal WQS regulations, about whether a WQS change is warranted. Our concerns are heightened by the fact that HB 51 contains no provisions that require those who are requesting the amendment to supply any data or justification to support the need for the change. Since the burden of proof for determining whether a standards change is needed rests with DEC, these decisions may be based on little or no information. Ninety days may not allow DEC to collect adequate supporting data. Additionally, this section of CSHB 51 appears to overlap with existing portions of the Alaska WQS regulations [18 AAC 70.025(d)]. This section in the Alaska WQS regulations already contains a provision that allows the use of "natural conditions" as the basis for WQS changes [18 AAC 70.025(b)] that are less restrictive than Federal criteria and it requires the applicant

seeking the WQS change to provide DEC with the data and information needed to make the determination.

Second, we are concerned that the technical basis in CSHB 51 for any proposed WQS changes is tied to "hydrologic conditions or discharge conditions" [§ 46.03.087(b)]. EPA Federal criteria are based on laboratory toxicity tests and do not necessarily consider hydraulic conditions or discharge characteristics. It is doubtful that a change in a criterion that is based strictly on "hydrologic conditions and discharge characteristics" will be scientifically defensible for protection of all designated uses. Therefore, such changes to WQS may not result in approvable WQS regulations. Where the change is to adopt criteria that are less stringent than the existing criteria, there needs to be a justification that the criteria are adequate to fully protect the use.

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EPA Region 10 continues to be interested in authorizing the State of Alaska to operate the National Pollutant Discharge Elimination System (NPDES) program throughout the State. As you know, we have provided DEC a grant for the purpose of conducting an analysis that details both the costs and options for assuming the NPDES program. The results of the analysis should be available in late spring. To obtain NPDES program authorization, the State must demonstrate that adequate resources are available to successfully manage an NPDES program.

In addition, the Alaska Attorney General would need to examine existing state statutes and regulations to determine whether the state has all the necessary legal authorities to operate an NPDES permitting and compliance program. Any missing legal provisions would need to be enacted before the state applies for authorization. Also, EPA would have to be assured

that the state does not have statutes or regulations that are incompatible with authorization.

Sec. 46.03.085(a)(3) of CSHB 51 states that the Department "shall use scientific justification and water quality criteria that can be reliably measured." Some Federal water quality criteria are established at levels below detection (e.g. dioxin). It is not clear if these criteria would be considered to not "be reliably measured." While compliance determinations are based on the minimum level of quantification, permit limits must be established using the water quality criterion value and may be below the detection level. This language could be construed to disallow issuance of permits with appropriate limits and therefore could jeopardize attempts by Alaska to pursue authorization of the NPDES program.

In addition, § 46.03.08 (a)(4) states that DEC "may not require discharged water to be of higher quality than the natural conditions of the receiving water." On occasion, technology-based limitations (established either through national guidelines or best professional judgment of the permitting authority) require a discharge to be higher in quality (i.e., meet a higher standard) than the receiving water. This language would contradict the NPDES regulations which require achievement of technology-based limitations without regard for receiving water conditions. Again, this will jeopardize any future State attempts to assume the NPDES program.

Conclusions

We believe that the problems discussed above would create added confusion and inefficiencies in the implementation of Alaska WQS program rather than improved responsiveness and effectiveness. To implement CSHB 51 would require additional time and effort on the part of DEC staff. Yet, the resource-intensive nature of CSHB 51 would not contribute to the development of the capacity needed to assume the NPDES program. Furthermore, certain provisions of CSHB 51 may create legal problems that will jeopardize both approval of State WQS revisions and authorization of the NPDES program.

We appreciate the opportunity to review and provide comments on CSHB 51. If you have any questions about these comments contact me at (206) 553-0422 or Marcia Lagerloef, at (206) 553-0176.

Sincerely,

for Chuck Clarke
Regional Administrator

FROM SEN Adams

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 10
1200 Sixth Avenue
Seattle, Washington 98101

FEB 26 1997

Reply To
Attn Of: AOO

Michele Brown, Commissioner
Alaska Department of Environmental Conservation
410 Willoughby Avenue, Suite 105
Juneau, Alaska 99801-1795

Dear Commissioner Brown:

This letter is a follow-up to my February 14, 1997, letter concerning House Bill 51. In re-looking at the proposed legislation, I thought it worth clarifying an additional area of potential confusion in the bill.

The potential confusion concerns the use of the terms "standards" and "criteria" throughout the bill, with these terms sometimes being used in a manner inconsistent with how they are used in the Federal Clean Water Act and the State of Alaska's water quality standards regulation.

According to language in the Clean Water Act and Alaska's water quality standards regulations, water quality standards consist of two parts. The first part is designated beneficial uses, such as "drinking water supply," or "growth and propagation of fish and other aquatic organisms." For any particular waterbody, there are typically a number of beneficial uses designated. The second part of water quality standards is the "criteria" necessary to protect the designated beneficial uses. Criteria are the maximum concentrations of pollutants that can occur in a waterbody without jeopardizing the beneficial uses of the waterbody. An example of a criterion for a marine waterbody with the designated use "growth and propagation of fish and other aquatic life" would be 2.9 micrograms per liter of copper. (i.e., this concentration of copper is the maximum concentration that can be present in a marine waterbody and still ensure the survival and reproduction of fish and other organisms.)

Only when the beneficial uses and the criteria necessary to protect them are combined do water quality "standards" exist. The Clean Water Act gives the responsibility to the states, not to the Federal Government, to adopt water quality standards.

The Clean Water Act requires the Environmental Protection Agency (EPA) to develop a list of national water quality criteria that are protective of beneficial uses. In developing these numbers, EPA relies on currently available scientific information about the effects of pollutants on aquatic organisms. The scientific basis for each criterion EPA develops is published in a criteria development document. It is important to note that these numbers are not national "standards" or "criteria" that all states must meet. The EPA national criteria merely constitute guidelines that states must consider in adopting criteria as part of their water quality standards. If a state adopts a criterion that is less stringent than EPA's guidelines, the state must provide a scientifically defensible basis for the criterion. Ultimately, EPA must review and approve all revisions to state water quality standards.

This Clean Water Act approach differs markedly from that established in the Clean Air Act for ambient air quality "standards." Please note that the use of the term "standards" has a different connotation under the Clean Air Act than it does under the Clean Water Act.

The Clean Air Act directs EPA to identify and set national standards for pollutants which may reasonably be anticipated to protect public health and the environment. EPA has set national primary and secondary ambient air quality standards for six common air pollutants since 1970 (carbon monoxide, particulate matter, ozone, lead, sulphur dioxide, and nitrous dioxide). Primary standards are designed to protect public health. Secondary standards are designed to protect the public welfare and the environment.

In order to set these standards, EPA must first conduct an extensive scientific and technical assessment of the pollutant of concern. This review is summarized in a "criteria document." The criteria document puts forth what is known about the health effects of an air pollutant.

Based on the health effects documented in the criteria document, EPA then sets a national ambient air quality standard that is the same for any location in the United States. For example, the primary and secondary standard for carbon monoxide is 9 parts per million in all 50 states.

In summary, an ambient air quality standard developed under the Clean Air Act differs from a standard under the Clean Water Act in two important ways. First, the air quality standard is more analogous to a water quality criterion, which is only part of a water quality standard. Second, a national ambient air quality standard is a planning tool that states use to set

emission limits and other air quality control requirements that sources must meet and that assure attainment and maintenance of the national ambient air quality standards. In contrast, EPA's water quality criteria are unenforceable guidelines that states use in developing their own water quality standards.

Without clarification and proper use of these terms, additional inconsistencies and interpretation problems above and beyond those already mentioned in my February 14 letter would result.

Again, we appreciate the opportunity to provide comments on House Bill 51. If you have any questions about these supplemental comments, please feel free to contact me at (206) 553-0479, Rick Albright at (907) 271-3422 or Marcia Lagerloef at (206) 553-0176.

Sincerely,

Chuck Clarke
Regional Administrator

HB

53

0-LS0194\X
Luckhaupt
2/16/98

adopted N/O 2/17/98

CS FOR HOUSE BILL NO. 53( )

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTIETH LEGISLATURE - SECOND SESSION

BY

Offered:
Referred:

Sponsor(s): REPRESENTATIVE MULDER

A BILL

FOR AN ACT ENTITLED

"An Act relating to the power of municipalities to provide for the confinement and care of prisoners; relating to authorizing the Department of Corrections to enter into an agreement to lease facilities for the confinement and care of prisoners with the City of Delta Junction; and providing for an effective date."

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

*** Section 1.** AS 29.35.010 is amended by adding a new paragraph to read:

(15) provide facilities or services for the confinement and care of prisoners and enter into agreements with the state, another municipality, or any person relating to the confinement and care of prisoners.

*** Sec. 2.** AS 29.35.020(a) is amended to read:

(a) To the extent a municipality is otherwise authorized by law to exercise the power necessary to provide the facility or service, the municipality may provide **facilities for the confinement and care of prisoners,** parks, playgrounds, cemeteries, emergency medical services, solid and septic waste disposal, utility services, airports,

streets (including ice roads), trails, transportation facilities, wharves, harbors and other marine facilities outside its boundaries and may regulate their use and operation to the extent that the jurisdiction in which they are located does not regulate them. A regulation adopted under this section must state that it applies outside the municipality.

*** Sec. 3.** AUTHORIZATION TO LEASE CORRECTIONAL FACILITY SPACE WITH THIRD-PARTY CONTRACTOR OPERATION. (a) To take advantage of the unique opportunity to use surplus military facilities on the road system that are becoming available through the United States Army's realignment of Fort Greely's mission, to prevent and ameliorate economic hardship in the Delta region occasioned by that realignment and the consequent reduction in forces and civilian employment at Fort Greely, and to relieve overcrowding of existing correctional facilities within the state and the extensive use of out-of-state correctional facilities to house Alaska inmates, the Department of Corrections may enter into an agreement with the City of Delta Junction to lease space within a correctional facility on the deactivated Fort Greely military reservation that will house persons who are committed to the custody of the commissioner of corrections. The agreement must provide that the state agrees to lease the space for a minimum of 20 years.

(b) The agreement to lease entered into under this section is predicated on and must provide for an agreement between the City of Delta Junction and a private third-party contractor under which the private third-party contractor operates the facility by providing for custody, care, and discipline services for persons held by the commissioner of corrections under authority of state law.

(c) The authorization given by (a) of this section is subject to the following conditions:

(1) the lease must provide a minimum of 800 prison beds;

(2) the agreement to lease must contain terms providing that the commissioner of corrections may terminate for cause a contract with a private third-party contractor operating the facility in accordance with the provisions of (b) of this section.

*** Sec. 4.** APPLICABILITY. The provisions of AS 33.30.031(a) and (c) do not apply to an agreement to lease a correctional facility in accordance with the provisions of sec. 3 of this Act.

*** Sec. 5.** This Act takes effect immediately under AS 01.10.070(c).

HOUSE COMMITTEE REPORT

(11)

Date Referred to Committee: April 4, 1997 **FURTHER REFERRALS:**

Date of Committee Action: 2/17/98

The FINANCE Committee considered: **HB 53**

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

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

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

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

ADOPTS: HFC Letter of Intent

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

[✓] fiscal note(s) DEC [ ] fiscal note(s) _____

[✓] zero fiscal note(s) DCA [ ] zero fiscal note(s) _____
DCR

SIGNING WITH RECOMMENDATIONS		DP	DNP	NR	AM
Gene Therriault	Therriault	X			
Mark Hanley	Hanley	X			
Gail Phillips	Murkowski	X			
Larry Martin	Martin	X			
Kim Elton	Kohring	X			
Jeff Sanford	J Gruenstein			X	
Terry L. Gerlach	Ag. Davis	X			

TO CHAIR'S SIGNATURE Gene Therriault Mark Hanley

Alaska State Legislature

HOUSE OF REPRESENTATIVES

Committee on Finance

Official Business

State Capitol
Juneau, Alaska 99801-1182

Letter of Intent

It is the intent of the Legislature that the contract signed pursuant to the authority provided in HB 53 should require that:

1. The prison meet American Correctional Association standards;

2. Guards employed in the prison meet the same training standards that are required of prison guards in AS 18.65.130 - 18.65.290;

3. The contract between the City of Delta Junction and the prison operating entity should be for durations of no longer than five years. It may be renewable; and

4. The contract for operation of the facility provide for the removal of the contractor for non performance.

5. The agreement to lease the facility must provide a fixed rate per each bed day, adjusted annually during the term of the lease according to an appropriate index. The fixed rate for the first year must include all capital and operating costs and may not exceed $70.00 per bed each day.

Mark Hanley
Co-Chair Mark Hanley

2/17/98
Date

Gene Therriault
Co-Chair Gene Therriault

2/17/98
Date

STATE OF ALASKA
1998 LEGISLATIVE SESSION

FISCAL NOTE

BILL NO: CSHB 53 (JUD)

Revision Date: February 4, 1998
Title: Lease-Purchase Correctional Facility
Sponsor: Mulder, Eldon
Requestor: (H) FIN

Dept. Affected: Revenue
BRU: Revenue Operations
Component: Treasury
COMPONENT SERIAL NO. 121

Expenditures/Revenues: (Thousands of Dollars)

OPERATING EXPENDITURES	FY 99	FY 00	FY 01	FY 02	FY 03	FY 04
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
DEBT SERVICE						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0
CAPITAL EXPENDITURES						
CHANGE IN REVENUES ( )						

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1001 CBRF						
1048 University of AK receipts						
Other						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year cost $ _____

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

Authorizes the Department of Corrections to sign a 20 year (plus) lease with the City of Delta Junction for an 800 (plus) bed correctional facility at Ft. Greely, to be operated by a private contractor.

No costs are specified in the bill. No fiscal impact is projected at this time.

The Department of Revenue has serious concerns with this bill. See attached comments.

Prepared by: Forrest Browne
Division: Treasury
Approved by Commissioner: Wilson L. Condon
Agency: Revenue

Phone: 465-3750
Date: February 4, 1998
Date: February 4, 1998

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CSHB53FiscalNI.XLS

Department of Revenue's Comments
CSHB 53

This bill seems incomplete and seriously flawed from a fiscal perspective. Our concerns are summarized below.

1. No maximum annual or total-term lease costs are specified in the bill.
2. No maximum capital expenditures for the facility are established.
3. No maximum lease term is specified.
4. There is no requirement that competitive bids or any other form of competition be used to determine the location of the facility, the construction of the facility improvements or the acquisition of financing for the capital improvements.
5. There is no requirement that tax-exempt financing be used for the project.
6. There is no requirement that an environmental study be conducted on the site.
7. There is no requirement for Federal funding of site clean-up if this is indicated by an environmental study.
8. There is no provision for State ownership of the facility after the long-term debt has been retired by State rent payments.
9. There is no provision for refinancing the underlying debt from time-to-time, with a corresponding reduction of annual lease costs to the State.
10. There is no provision for State participation in structuring the required long-term financing for the project. Private contractor bankruptcy, malfeasance, or default on the underlying project financing (which relies totally on the State's credit) could have adverse financial and legal consequences to the State, agencies and municipalities.

The Department of Law has expressed concern as to whether the City of Delta Junction has the legal capacity to enter into the agreements for lease and operation of a prison at Ft. Greeley because (1) Delta Junction has not adopted an ordinance authorizing it to operate or own a prison: and (2) the proposed prison is not located within the boundaries of the City of Delta Junction, and the city appears to lack the necessary extraterritorial jurisdiction; under AS 29.30.020 prison services is not listed as one of the allowable functions that a municipality may provide on an extraterritorial basis.

If it is decided to proceed with a privately-operated correctional facility at Ft. Greely, the Department of Revenue recommends "unbundling" the financing from the agreement with the private contractor to construct and to operate the correctional facility. That is, the State would arrange the financing through Certificates of Participation (COP's) in lease / purchase financing.

Following are the advantages of our financing recommendation:

1. No one can arrange State financing at a lower cost than the State itself. As an example, in January, 1998, the State Bond Committee closed on $18.4 million of COP's for the Anchorage Public Heath Lab at a true interest cost of 4.39%.
2. If the State arranges the required financing through COP's, the State will own the facility when the debt has been paid off.
3. If the State arranges the financing, the State may refinance the debt from time-to-time at lower interest rates, with the savings going to the State not to the private contractor.

FISCAL NOTE

STATE OF ALASKA
1998 LEGISLATIVE SESSION

BILL NO. CSHB 53(JUD)

Revision Date: (Note if correction)
Title: "An Act relating to authorizing the Department of Corrections to enter into an agreement to lease facilities..."
Sponsor: Representative Mulder
Requestor: (H)FIN

Department Affected: Administration
BRU: Leasing and Facilities
Component: Leases

COMPONENT SERIAL NO. 81

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING EXPENDITURES	FY 99	FY 00	FY 01	FY 02	FY 03	FY 04
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0
CAPITAL EXPENDITURES						
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						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY 98) cost: $ 0.0

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary.)

The bill would authorize the Dept. of Corrections to enter into a long-term lease with the City of Delta Junction for the provision of a facility and services to house at least 800 prisoners.

Although the bill refers to an agreement between the State and the City as a lease, it is our assumption that there are two components to this agreement, one component for financing the capital investment required for facilities and the other component for paying for the services required to provide custody and care of prisoners.

(continued on next page)

Prepared by: Dugan Petty
Division: General Services
Phone: 465-2250
Date:

Approved by Commissioner: Mark Boyer
Agency: Department of Administration
Date: 2/3/98

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ANALYSIS: (continued)

The capital component of the agreement may qualify as a "lease-purchase agreement" under AS 36.30.990(13) (C) or (D). Under 36.30.085 only the Dept. of Administration may enter into a "lease-purchase agreement" after giving notice to the Legislature as to 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.

* At this time the Dept. of Administration does not have sufficient information to determine the likely costs of the lease-purchase agreement. The determination of the costs for renovation of a former military facility to house state prisoners will involve a number of building code, life safety, and economic and business assumptions which are not available at this time.

Prior to entering into a lease-purchase agreement the State typically conducts due diligence assessments of the property to determine the extent to which the property meets structural, environmental and other regulatory requirements. At this time there is insufficient information to determine what the costs of compliance is likely to be.

FISCAL NOTE

STATE OF ALASKA
1998 LEGISLATIVE SESSION

BILL NO. CS HB 53(FIN)

Revision Date (Note if correction) 02/02/98
Dept. Affected Corrections
Title An Act relating to authorizing the Department of Corrections to enter into an agreement to lease facilities...
BRU ALL
Component ALL
Sponsor Rep. Mulder
Requester House Finance
Component Serial No.

Expenditures/Revenues (Thousands of Dollars)

OPERATING EXPENDITURES	FY 99	FY 00	FY 01	FY 02	FY 03	FY 04
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	********	********	********	********	********	********
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 (Specify Type)						
TOTAL	********	********	********	********	********	********

Estimate of any current year (FY98) cost: **

POSITIONS

Full-time						
Part-time						
Temporary						

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

The Department of Corrections is certain that this legislation will have fiscal implications. However, absent more detailed information, the DOC is unable to ascertain what the fiscal impacts will be.

The DOC will provide a revised fiscal note when this information is made available.

Prepared by Bruce Richards
Phone 465-3307
Division Commissioner's Office
Date 2/2/98
Approved by Commissioner Margaret M. Pugh Margaret M. Pugh
Date 2/2/98
Agency Department of Corrections

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2/17/98

Letter of Intent

It is the intent of the Legislature that the contract signed pursuant to the authority provided in HB 53 should require that:

1. The prison meet American Correctional Association standards;
2. Guards employed in the prison meet the same training standards that are required of prison guards in AS 18.65.130 - 18.65.290;
3. The contract between the City of Delta Junction and the prison operating entity should be for durations of no longer than five years. It may be renewable; and
4. The contract for operation of the facility provide for the removal of the contractor for non performance.
5. The agreement to lease the facility must provide a fixed rate per each bed day, adjusted annually during the term of the lease according to an appropriate index. The fixed rate for the first year must include all capital and operating costs and may not exceed $70.00 per bed each day.

Attachment
2/17/98

COST COMPARISON FOR THE HOUSE FINANCE COMMITTEE

The House Finance Committee has asked about cost comparisons of a publicly versus a privately operated 800-bed medium custody prison. Studies comparing the operational costs of public private prisons have been of interest to many jurisdictions around the United States. I am attaching a report dated August 1996 on the topic issued by the United States General Accounting office. Experts agree that an accurate analysis for the purposes of comparing costs requires a far more sophisticated approach than the Department of Corrections is capable of producing without considerable time and effort.

The State of Alaska does not have any information about the projected operating costs for the Greely proposal, except that the costs will be about what the state pays per bed per day at Arizona.

The state's costs of care for the prisoners housed at Arizona are as follows:

Institutional costs (includes inmate programs)	$61.02
Inmate health	13.61
Pro rata % of Department's Administration costs	5.20
Transportation to and from Arizona	1.66
Inmate wages	1.85
	$82.34

The State of Alaska does not currently operate an 800-bed facility and thus does not have a model for comparison to the Greely proposal. The state, however, has proposed expanding the Palmer Correctional Center located in Sutton. The state's costs of care for prisoners housed at Palmer are as follows:

Institutional costs (includes trans. & wages)	$59.47
Inmate programs	3.78
Inmate health	13.61
Pro rata % of Department's Administration costs	5.20
Pro rata % of Bldg./Equip. Depreciation & CIP	4.54
	$86.60

DEPARTMENT OF CORRECTIONS
In-State VS Out-Of-State Costs

IN STATE COST OF CARE	DESCRIPTION	ARIZONA OUT OF STATE COST OF CARE
$100.07	AVERAGE	$87.88
$72.94	INSTITUTIONAL COST	$61.02 **
$3.78	INMATE PROGRAMS	*
$13.61	INMATE HEALTH	$13.61
$4.51	DIVISION OF ADMINISTRATION & SUPPORT	$4.51 + .69
$5.23	STATEWIDE INDIRECT	$5.23
*	TRANSPORTATION	$1.66
*	GRATUITIES	$1.85

take out, except for Admin. component, which should be added to Admin.

*Note: Included in the Institution/Contract base costs.

**Note: Arizona base costs ($60.47 plus $ .55 Health= $61.02 total) until 370 Inmate population achieved.

Comments:

1) Institutional base costs include transportation and gratuities expenditures averaged into calculation.

2) Out of State base costs include Inmate Programs. All other costs are "in addition" to, the Arizona contract only includes "band-aid" medical and like Institutions, if exceptional medical is required, the Inmate Health Component picks it up.

2/16/98

FY'97 Cost of Care

Institutions	Total Cost	Reimbursement	Total Actual Cost	Mandays	Inst. Cost	Inmate Programs	Inmate Hlth Care	Div.of Admin.& Support Cost	Statewide Indirect Cost	Total
Anvil Mt.CC	3,949,505		3,949,505	38,325	103.05	3.78	13.61	4.51	5.23	130.18
Cook Inlet	9,319,458		9,319,458	154,030	60.50	3.78	13.61	4.51	5.23	87.63
Fairbanks CC	6,941,227		6,941,227	83,950	82.68	3.78	13.61	4.51	5.23	109.81
Hiland Mt.CC	7,439,283		7,439,283	108,405	68.62	3.78	13.61	4.51	5.23	95.75
Ketchikan CC	2,631,099		2,631,099	20,440	128.72	3.78	13.61	4.51	5.23	155.85
Lemon Creek	6,024,683		6,024,683	73,305	82.12	3.78	13.61	4.51	5.23	109.25
Mat-Su Pre-Trial	2,797,812		2,797,812	33,580	83.32	3.78	13.61	4.51	5.23	110.45
Palmer CC	8,812,225		8,812,225	148,190	59.47	3.78	13.61	4.51	5.23	86.60
Sixth Avenue	3,903,572		3,903,572	49,640	78.64	3.78	13.61	4.51	5.23	105.77
Spring Creek	13,807,974		13,807,974	191,625	72.06	3.78	13.61	4.51	5.23	99.19
Wildwood CC	8,212,657		8,212,657	123,735	66.37	3.78	13.61	4.51	5.23	93.50
YkCC	3,924,580		3,924,580	40,880	96.00	3.78	13.61	4.51	5.23	123.13
Sub-Total/Average	77,764,076		77,764,076	1,066,165	72.94	3.78	13.61	4.51	5.23	100.07

	Institutions		Inmate Programs	Inmate Hlth. Care	Admin. & Support		Statewide Indirect & Other Cost	Grand Total
Total Institutions Cost	77,764,076	Inmt.Program	2,390,111	14,509,120	4,814,391	Dir.of Inst.	730,775	100,208,473
		ACI Admin.	1,137,693			B& E Depr.	4,842,169	5,979,862
		Transportation	798,674			CIP	210,625	1,009,299
Sub-Total	77,764,076		4,326,479	14,509,120	4,814,391		5,783,569	107,197,635
Less: Total Reimbursement	-		(300,199)	-	-		(210,625)	(510,824)
	77,764,076		4,026,280	14,509,120	4,814,391		5,572,944	106,686,811
Divided By Total Mandays	1,066,165		1,066,165	1,066,165	1,066,165		1,066,165	1,066,165
Total Daily Average Cost(Inst.)	72.94		3.78	13.61	4.51		5.23	100.07

P/B: E.Yadao
10/28/97
f:\fy97coc.xls

attachment
2/17/98
DJ of Corrections

CONCERNS

1. This legislation, which is intended to solve the overcrowding problem, can and should authorize the Department to address the short-term -- as well as the long-term -- problems. These problems are that we have:

   - Too many inmates and not enough beds.

   - Add on top of this, a court order to reduce by May 1 in-state populations to the court-ordered capacity (2691). We are between 500 and 600 over this number now. By the end of 1999, that number will rise to almost 900 over.

2. The State of Alaska must maintain its authority to protect the public.

   - To do this, the state should know

     - that the City of Delta Junction is equipped to negotiate such a comprehensive contract; and
     - that the City of Delta Junction is prepared to be the primary contractor; and
     - that government (be it the City of Delta Junction or the State of Alaska) should maintain long-term control over the property and the assets.

3. Good public policy would give the Commissioner the opportunity to find out if this is the most cost-effective method of acquiring 800 medium security prison beds.

   - This legislation could require the Commissioner to make a best interests finding and perform a cost-effectiveness study. Good public policy would want to know if there is anything out there that is significantly more cost-effective and, if so, the Commissioner could bring it back to LB&A.

4. Good public policy requires that this legislation address the use of force or police powers by employees of a private prison contractor.

   - This issue has arisen in other states and enabling legislation should be enacted that clearly authorizes private contractors to possess and use firearms and force. The enabling legislation should also specify that private employees are not peace officers of the state.

5. Good public policy requires that this legislation specify which powers and duties are not delegable to a private contractor.

   - A contract for correctional services should not authorize, allow, or imply a delegation of authority or responsibility to a private prison contractor to perform inmate time accounting, good time forfeiture or restoration, inmate furlough or parole decisions, or the type of work an inmate may perform.

6. HB 53 does not preclude the transfer of out-of-state prisoners in Alaska. Public policy would be well-served to set the parameters for such a possibility now.

   - Some other states have passed legislation clarifying that crimes (including escape) committed by inmates from another jurisdiction are indeed crimes in the holding jurisdiction. Other states have found it useful to ensure that a private entity is responsible for the cost of pursuit and capture of escapees from other jurisdictions.

7. There are operational concerns that arise whenever a new prison site is considered. These include:

   - Security
     - Is proposed site in tsunami or flood plain area? (Prisoners will have to be released in event of disaster)
     - Is there adequate space for the facility?
       - 100 feet to inner fence
       - 20-25 feet to second fence
       - 300 foot "clear zone" w/ perimeter lighting and road around the perimeter fence
     - 10% of cells must be made available for a special segregation unit
     - If proposing to modify existing buildings, special issues:
       - inmates cannot be able to walk out or punch walls out
       - good visibility must exist within and outside facility
       - building must lend itself to efficient staff operations
       - cells must be plumbed with sinks and toilets
       - facility must meet *Cleary* standards (see Final Settlement Order)

   - Medical Services
     - In-patient hospital in community or within short driving distance
     - Existing medical community (a number of physicians, including

specialists such as an internist, a general surgeon and an orthopedist, nurses)
    - Existing dental community
    - Willingness of medical and dental personnel to provide services in institution
    - Psychiatrist in community

- Availability of Emergency Services
    - Fire services
    - Medi-vac availability
    - Back up for power failures
    - Communications
    - In the event of a major disturbance or multiple escapes, what resources are available to provide support to the facility staff until other law enforcement agencies arrive?

- Programs
    - Availability or proximity of people to deliver program services such as substance abuse, domestic violence, education, work training, etc.
    - Chaplaincy programs in the institution, which depend completely on community religious volunteers

- Transportation
    - How far is proposed site from the Anchorage bowl area (where most inmates come from)?
    - How far is proposed site from a large population center (30,000 or more residents)?
    - Is facility proximite to families of inmates?
    - If not accessible by road, what size aircraft can airport accomodate? Does airport have runway/taxiway lighting and instrument approach capability? What percentage of scheduled flights are unable to land due to weather? (It is often necessary for group of prisoners to be transported; also, a large shift of employees might wish to commute to nearby larger community.)

- Staffing Issues
    - Availability of housing for staff and families
    - Availability of jobs for family members
    - Availability of medical/dental support for families
    - Availability of schools and pediatricians for children
    - Availability of recreational/cultural/travel/shopping options

- Construction Factors
  - Is there state land that can be used in the proposed area?
  - Is the community proposing to construct the facility, as opposed to DOTPF constructing it?
  - Will the location increase the costs of construction?
  - Adequacy and expense of electricity and fuel for facility
  - Adequacy and expense of water and sewage treatment
  - Adequacy of telephone and other communications services
  - Length of time anticipated to completion of construction

- Operating Costs
  - Does proposal include operating the facility?
  - Does area require state to pay geographic differential?
  - Are supplies -- such as food -- available locally or must be shipped?
  - Maintenance of facilities and equipment (electronic and mechanical systems)

United States General Accounting Office

GAO

Report to the Subcommittee on Crime, Committee on the Judiciary, House of Representatives

August 1996

PRIVATE AND PUBLIC PRISONS

Studies Comparing Operational Costs and/or Quality of Service

GAO 75 years 1921 - 1996

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United States
General Accounting Office
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General Government Division

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August 16, 1996

The Honorable Bill McCollum
Chairman
The Honorable Charles E. Schumer
Ranking Minority Member
Subcommittee on Crime
Committee on the Judiciary
House of Representatives

Since 1991, when we issued our earlier report on private prisons,[1] various jurisdictions and levels of government have made or planned greater use of this alternative to publicly run correctional facilities. At the federal level, plans for privatization of correctional facilities have changed in recent years. For example, the administration's fiscal year 1996 budget proposal reflected a commitment to increase the use of privatized correctional facilities in the federal Bureau of Prisons (BOP). Specifically, under the BOP privatization initiative presented in the budget request, the bureau proposed to contract with private firms, where most appropriate, to operate the majority of all future federal pretrial detention facilities as well as the majority of all future federal minimum- and low-security correctional facilities. The Department of Justice's fiscal year 1997 budget justification projected the activation of two privatized facilities in that year. However, in June 1996, the Justice Department reversed its plans for using private contractors to operate the facilities identified in the 1996 and 1997 budget proposals. In explaining its decision to staff these facilities with BOP employees, the Justice Department noted that it was "unable contractually to reduce the risk of a strike or walk out" of correctional officers employed by private firms.[2]

Proponents of privatization assert that the experiences of several states demonstrate that private contractors can operate prisons at less cost than the government, without reducing the levels or quality of service. In contrast, other observers say there is little or no valid evidence that privatization of corrections is a cost-effective alternative to publicly run facilities.

To help frame the continuing deliberations of the Justice Department's privatization plans, we self-initiated this review to (1) identify studies

[1]Private Prisons: Cost Savings and BOP's Statutory Authority Need to Be Resolved (GAO/GGD-91-21, Feb. 7, 1991).

[2]Letter, dated June 5, 1996, from the Assistant Attorney General for Administration, Department of Justice, to various congressional committee and subcommittee chairmen and ranking minority members.

(completed since 1991) comparing the operational costs and/or the quality of service[3] of private and public correctional facilities; (2) determine, based on these studies, what could be concluded regarding the operational costs and/or quality of service of comparable private and public facilities; (3) assess whether the reported results are generalizable to correctional systems in other jurisdictions; and (4) identify lessons learned to help guide future comparative studies of private and public correctional facilities. Our work basically was a form of evaluation synthesis whereby we assessed existing studies, particularly with respect to the strength of evidence supporting the reported findings. Appendix I presents further details about our objectives, scope, and methodology.[4] We are addressing this report to you because of your Subcommittee's interest in prison issues, as exemplified by the hearings you held on June 8, 1995.

We conducted our work from June 1995 to June 1996 in accordance with generally accepted government auditing standards. We received oral comments on a draft of this report from BOP and written comments from the Department of Justice's Office of Justice Programs; the National Council on Crime and Delinquency; and a Northeastern University (Boston, MA) professor of criminal justice, who is a nationally recognized authority on corrections administration. These comments and our evaluation of them are discussed at the end of this letter.

Results in Brief

On the basis of literature searches and discussions with correctional officials and criminal justice researchers, we identified five studies completed since 1991 that compare private and public correctional facilities in relation to operational costs and/or quality of service. Three states sponsored comparative studies of correctional facilities in their states—Texas, California, and Tennessee. The National Institute of Justice, the Bureau of Prisons, and the National Institute of Corrections funded a comparative study that focused mainly on facilities in New Mexico. Washington state studied facilities in Tennessee, Louisiana, and Washington state. The correctional facilities that were the focus of these studies varied in terms of geographic location and the types of inmates

[3]As discussed in appendix I, we did not attempt to generically define "quality of service." Rather, we accepted the definition and/or evaluation criteria used in each applicable study that we reviewed. Some studies, for instance, used a variety of quality measures or outcomes, such as safety and incident data and the extent of treatment programs for inmates.

[4]Although not addressed in this report, the privatization of corrections has, at times, raised various other issues besides cost and quality of service issues. For example, there has been some debate over the issue of whether administration of justice (which includes the operation of prisons) is an inherently governmental function not appropriately delegable to the private sector.

housed. There was also variation in the methodologies and measurements employed by the researchers.

Three of the studies we reviewed (California, Tennessee, and Washington) made comparisons of costs between reasonably matched private and public facilities that were operating within each state that was studied. Of the four private/public comparisons reported in these three studies, two showed no significant differences in operational costs, one showed a 7-percent difference in favor of the private facility, and the other reported the private facility to be more costly than one public facility but less costly than another public facility. One additional study (Texas) reported a 14- to 15-percent savings from privatization; however, the analysis for the Texas study was problematic because the comparison was based on hypothetical public facilities, not existing ones. We could not conclude from these studies that privatization of correctional facilities will not save money. However, these studies do not offer substantial evidence that savings have occurred.

Two studies (New Mexico and Tennessee) assessed a wide variety of factors in their reviews of comparative quality of private and public facilities. These factors, among others, included measures of safety, personnel qualifications, physical conditions of the facilities, health care, and inmate activities. One of these two studies (Tennessee) reported no difference between private and public facilities. The other study (New Mexico) reported a higher quality score for one private facility compared with two public facilities. However, on the inmate survey portion of the assessment, one public facility had higher scores in all of the areas that were assessed, except one. One additional study (Washington), using a less detailed approach to assessing comparative quality, found no differences between private and public facilities.

These studies offer little generalizable guidance for other jurisdictions about what to expect regarding comparative operational costs and quality of service if they were to move toward privatizing correctional facilities. First, several of the studies focused on specialized inmate populations, such as those in prerelease situations, that limited their generalizability to a wider inmate population. Second, methodological weaknesses in some of the comparisons—such as using hypothetical facilities or nonrandom survey samples—make some findings questionable, even for the study setting. Third, a variety of differences in other states and regions could result in experiences far different from those of the states that were studied. For example, cost of living and a state's correctional philosophy

could affect the comparative costs and quality of private and public facilities from state to state. Finally, the age or maturity of the private system could affect the relationship between private and public facilities in terms of costs and quality.

From a methodological standpoint, the five studies provide some lessons learned for future comparisons of private and public correctional facilities. The importance of focusing on both operational costs and quality of service, comparing institutions (both private and public) that are actually in operation, and using multiple measures of quality are attributes that worked well in selected studies.

Background

A generally accepted evaluation criterion is that any comparative study of private and public prisons should be based upon the selection and analysis of similar facilities. For example, the private and public prisons selected for comparison should be as similar as possible regarding design and capacity, security level, and types of inmates. Otherwise, any comparative analysis of operational costs or quality of service could be skewed. On a per-inmate basis, for instance, higher security prisons can be expected to have higher operating costs than lower security prisons because the former type of facilities generally have higher staff-to-inmate ratios.

Even if similar private and public prisons are available for study, a comparison of operational costs can still present difficulties in ensuring that all costs, direct and indirect, are consistently and fully quantified. Possible difficulties can arise due, in part, to differences in budgeting and accounting practices between and even within the private and public sectors. Determining the appropriate allocation of corporate headquarters overhead and government agency overhead, for instance, can be particularly difficult.

Comparing the quality of service at private and public prisons also presents challenges and, in fact, can be more difficult than comparing costs. The concept of "quality" is neither easily defined nor measured. For example, although the American Correctional Association (ACA) sets accreditation standards for prisons, accredited facilities can vary widely in terms of overall quality. According to ACA officials, such variances occur because ACA accreditation means that a facility has met minimum standards.

Generally, however, assessments of quality can take several approaches. For example, one is a compliance approach, that is, assessing whether or to what extent the prisons being compared are in compliance with applicable ACA standards and/or other relevant policy and procedural guidelines and/or court orders and consent decrees. Another approach is to assess performance measures.[5] For example, measures of safety could include assault statistics, safety inspection results, and accidental injury reports.

The difficulties of comparatively assessing private and public prisons—regarding operational costs and/or quality of service—are further complicated if the prisons are not located in the same state. Each state and its correctional system have characteristics and conditions that must be recognized in conducting interstate analyses. For example, economic conditions and cost-of-living factors can vary by state and by regions of the nation. Similarly, each state's correctional system may be somewhat unique regarding the extent of overcrowding, the history of court intervention, the emphasis given to ACA accreditation, and the presence or influence of various other factors. As an illustration, with respect to the five studies we reviewed, appendix III presents state-specific details regarding some relevant factors that could affect interstate comparisons of prison costs and/or quality of service.

Five Comparative Studies Completed Since 1991

On the basis of extensive literature searches and inquiries with knowledgeable corrections officials and criminal justice researchers (see app. I), we identified five studies completed since 1991 that compared private and public prisons in reference to operational costs and/or quality of service. The following is a brief overview of each study:[6]

- **Texas study (1991):** Conducted by the Texas Sunset Advisory Commission, this study compared (1) the actual costs of operating four privately managed prerelease minimum-security facilities for male prisoners and (2) the estimated costs of operating similar but hypothetical public facilities in Texas. The study did not empirically assess quality of service.

[5]Charles H. Logan, "Criminal Justice Performance Measures for Prisons," Performance Measures for the Criminal Justice System, U.S. Department of Justice, Oct. 1993.

[6]As presented, each study is introduced with a short title showing the sponsoring state and/or the state wherein the compared facilities are located. Also, the studies are listed in chronological order by the date of completion or publication indicated in parentheses. Appendix II provides a more detailed overview of these five studies.

- **New Mexico study (1991):** Funded by the National Institute of Justice, the Bureau of Prisons, and the National Institute of Corrections, this study compared the quality of service at three multicustody facilities (minimum- to maximum-security levels) for women, i.e., a private prison and a state-run prison in New Mexico and a federal prison in West Virginia. The study did not include a detailed analysis of operational costs.
- **California study (1994):** Conducted by California State University with funding from the California Department of Corrections, this study focused on three community correctional facilities for males. All three facilities were operated (under contracts with the state) as for-profit alternatives to state-operated prisons. One facility (medium-security) was operated by a private corporation, the second (high-security) by a local police department, and the third (low- to medium-security) by a city administration. The study compared operational and construction costs and quality of service. More specifically, regarding costs, the study compared the three facilities (1) with one another and (2) with other state correctional facilities. Both operational and construction costs were included in the comparison of the three facilities with one another. The statewide comparison did not include construction costs for the California Department of Corrections facilities. Regarding quality of service, the study compared the three facilities with two state facilities.
- **Tennessee study (1995):** Conducted in two parts, one for operational costs and one for quality of service, by the Tennessee state legislature, this study compared three of Tennessee's multicustody (minimum- to maximum-security) prisons for male inmates. One prison was privately managed, and the other two were state-run prisons.
- **Washington study (1996):** At the time of this study, the state of Washington had no privately run prisons but was considering the feasibility of such. Therefore, the study, conducted by the Washington State Legislative Budget Committee, analyzed pertinent information available in other states. Regarding operational costs, for, example, the study looked at the three Tennessee facilities (mentioned above) as well as three multicustody male prisons in Louisiana (two private and one public).[7] Regarding quality of service, the study compared the three Tennessee facilities, the three Louisiana facilities, and two Washington facilities.

[7]As discussed in appendix II, the Washington study also included some interstate comparisons of operational and construction costs.

In summary, the California, Tennessee, and Washington studies assessed operational costs and quality of service.[8] The Texas study analyzed operational costs only, and the New Mexico study analyzed quality of service only.

Drawing Conclusions From the Five Studies

While the five studies varied in terms of methodological rigor, they do, to differing degrees, offer some indication of comparative operational costs and/or quality of service in the specific settings they assessed. However, regarding operational costs, because the studies reported little difference and/or mixed results in comparing private and public facilities, we could not conclude whether privatization saved money. Similarly, regarding quality of service, of the two studies that made the most detailed comparative assessments, one study (New Mexico) reported equivocal findings, and the other study (Tennessee) reported no difference between the compared private and public facilities.

Comparisons of Operational Costs Indicated Little Difference And/or Mixed Results

Four of the five studies (Texas, California, Tennessee, and Washington) assessed operational costs of private and public correctional facilities. In three of the studies (California, Tennessee, and Washington), comparisons of private and public facilities indicated little or some differences in operational costs. Only the Texas study reported finding substantially lower (14- to 15-percent) operational costs for private versus public correctional facilities.

Using fiscal year 1990 data, the Texas study reported average daily operational costs of $36.76 per inmate for the private facilities, compared with estimates of $42.70 to $43.13 for the public facilities. However, the results of the Texas study are not fully based on actual experience. Rather, the study compared existing private facilities (prerelease institutions) to hypothetical public facilities. This type of hypothetical comparison does not allow for consideration of any unanticipated changes in components such as staffing levels, other expenses, rate of occupied bed space, or many other factors that could affect actual costs. Changes in any single assumption, or set of assumptions, for the hypothetical institutions could

[8]The authors of the California study noted, however, that their findings regarding quality of service were based upon a small, nonrandom sample of inmates.

change the size or even the direction of the differences in the comparative operational costs.[9]

Based upon our experience in designing and assessing evaluation methodologies, we found the Tennessee study (of the studies we reviewed) to have the most sound and detailed comparison of operational costs of private and public correctional facilities. The study compared three mixed-population (minimum- to maximum-security) institutions (one private and two public). All three facilities were located in Tennessee, and all three had relatively comparable inmate populations, in terms of numbers and most demographics, except race. Also, direct and indirect costs were considered in the analysis, and representatives from both the private and the public facilities agreed on the cost components and relevant adjustments prior to data collection. The analysis showed very little difference in average inmate costs per day among the three facilities—$35.39 for the private facility and $34.90 and $35.45, respectively, for the two public facilities.

The Washington study, which made intrastate comparisons of correctional facilities (minimum- and maximum-security populations) in Tennessee and Louisiana, also found very little difference in the operational costs of private and public facilities. For Tennessee, the private facilities' average daily operational costs per inmate ($33.61) were lower (about 7 percent) than the comparable costs for the two public facilities studied ($35.82 and $35.28, respectively). It should be noted that the Tennessee facilities, which were analyzed and reported on in the 1996 Washington state study, were the same facilities that are discussed in the 1995 Tennessee study cited above. For Louisiana, the average inmate costs per day for the two private facilities studied were $23.75 and $23.34, respectively, and the comparable daily operational costs for the public facility studied were $23.55 per inmate.[10]

The 1994 California study compared three for-profit community correctional facilities located in that state—one run by a private firm and two run by local governments. The study found that the private facility's average annual costs per inmate ($15,573) were higher than comparable

[9]Moreover, in response to competition from the private sector, public prisons could, over time, become more cost efficient. As discussed later, this was one of the conclusions of the Washington study.

[10]As presented in the study, the costs for the Tennessee and Louisiana facilities were calculated after an adjustment to equalize prison inmate population numbers. The adjustment was necessary because, among other things, comparisons of per-capita costs should be based upon equivalent levels of capacity. Otherwise, a facility operating at less than full capacity, for example, generally will show higher per-capita costs than a facility operating above its rated capacity.

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costs for one of the government-run facilities ($13,195) but were lower than such costs for the other government-run facility ($16,627). The lower cost government-run facility had a disproportionate share of drug offenders, which could have affected overall costs. Further, the authors of the study noted that the results of this study must be viewed with some additional caution because of inconsistencies in the underlying or supporting cost figures obtained from different sources within the state.

Comparisons of Quality Are Unclear

Although comparative costs are very important, they are not the only factors considered by policymakers in deciding the direction or extent of corrections privatization. A principal concern is whether private contractors can operate at lower costs to the taxpayers, while providing the same or even a better level of service as the public sector, particularly with respect to safety and security issues.

Of the studies we reviewed, two (New Mexico and Tennessee) assessed the comparative quality of service between private and public institutions in much greater detail than the other studies. Both studies used structured data-collection instruments to cover a variety of quality-related topics, including safety and security, management, personnel, health care, discipline reports, escapes, and inmate programs and activities. The New Mexico study reported equivocal findings, and the Tennessee study reported no difference in quality between the compared private and public institutions.

The findings in the New Mexico study are difficult to interpret. On the basis of surveys of correctional staff and reviews of institutional records, the study reported that the private prison "outperformed" the public facilities on most of the measured quality dimensions. However, the author noted that the results from one of the data-collection instruments—the inmate surveys—showed an opposite result, with one of the public facilities "outperforming" the private facility on every dimension except inmate activities (e.g., work and training programs).

The Tennessee study, in assessing the quality of service at one private and two public prisons, reported that "all three facilities were operated at essentially the same level of performance." This conclusion was largely based on the results of an operational audit conducted at each of the facilities by an inspection team. Composed of private and public sector members, the team used a structured survey instrument to conduct a

detailed review of records, observe operations and practices, and conduct interviews.

The Texas study did not empirically assess the quality of service at the private correctional facilities. Rather, the study noted that all four of the privately operated prerelease facilities were in general compliance with 11 of the 16 mandates of court rulings applicable to Texas prisons. Also, the study noted that two of the four private facilities had received ACA accreditation, and the other two were still involved in the accreditation process. ACA officials told us, however, that ACA accreditation means that a facility has met minimum standards and that accredited facilities can vary widely in terms of overall quality. To reiterate, because it was based on hypothetical public facilities, the Texas study made no attempt to comparatively assess the quality of service across private and public facilities in Texas.

The California study, in assessing quality of service, used inmate and staff surveys to compare the three community correctional facilities with two state prisons. However, the results could not be generalized to the inmate or staff populations of the respective facilities because small, nonrandom samples were used.

The California study also attempted to compare the three community correctional facilities with the state's other correctional institutions with respect to recidivism rates. The study reported that, of the three community correctional facilities, one of the publicly managed facilities was "most impressive" in performance based on recidivism rates. Sufficient data were not available to adequately complete the analysis comparing the inmates released from the community correctional facilities with inmates released from other correctional institutions in the state.

The Washington study assessed the quality of service at the three facilities (one private and two public) in Tennessee, three facilities (two private and one public) in Louisiana, and two facilities (both public) in Washington. While not as detailed as the New Mexico and the Tennessee studies, the Washington study concluded that the private and public prisons studied within the respective states (Tennessee and Louisiana) were generally similar in quality of service. However, the study noted that Washington's two state-run facilities had more counselors per inmate than the other states' facilities.

Generalizability of the Studies' Results

The few studies that have compared the operational costs and/or the quality of service of private and public prisons provide little information that is widely applicable to various correctional settings. For example, while these studies compared private and public facilities that generally were similar (in terms of capacities, inmate demographics, etc.), the selected facilities were not necessarily typical or representative of prisons in either the state studied or other jurisdictions. Also, a variety of factors that relate to a given location or correctional system may render the experience of one jurisdiction with private prisons very different from that of another. Further, the passage of time could alter the relationship between private and public correctional facilities in terms of costs and quality. For these reasons, among others, the few studies that we reviewed do not permit drawing generalizable conclusions about the comparative operational costs and/or quality of service of private and public prisons.

Jurisdictions, such as states, vary on several dimensions that could have an impact on the comparative costs of private versus public prisons and, in turn, affect the generalizability of a given study's results. First, other states' correctional philosophies could differ from that of the states studied. Some state correctional philosophies are more punitive in nature (as reflected, for example, by higher incarceration rates), whereas other states are less punitive and more inclined toward treatment.[11] California, for example, which is one of the states discussed in the five studies we reviewed, generally has had incarceration rates above the national average. Also, the Washington study noted that the adjusted estimated per-bed costs for a state-run facility in Washington ($60,400) were almost double Florida's costs ($33,900) due, in part, to state differences in operating and programming approaches.

Second, jurisdictions also vary in relation to a variety of economic factors that could affect the relationship between private and public prison costs. Differences in the costs of living could affect both private and public prison costs, but in some jurisdictions, one more than the other. For example, a labor shortage could result in higher operational costs for private and public prisons.

Third, in some jurisdictions, the inmate population to be incarcerated in private facilities may be different from those inmate populations in the five studies. Three of the five studies focused on inmate populations that were

[11]The rate of incarceration is the number of sentenced prisoners (per 100,000 resident population) in correctional facilities. Since the mid-1980s, according to Bureau of Justice Statistics data, the southern and western regions of the nation have had higher incarceration rates than the northeastern and midwestern regions.

not representative of the broader prison population—prerelease prisoners (Texas study), female prisoners (New Mexico), and those housed in community correctional facilities (California). Only two studies (Tennessee and Washington) focused on costs in relation to facilities housing a more mainstream prisoner population.

Finally, regarding both operational costs and quality of service, the comparative performance of private versus public correctional facilities is not likely to be static. Changes over time could alter the comparative performance. For example, the first year of a new prison—either private or public—could reflect expenses for training inexperienced staff as well as hiring replacements for those unsuited to the work. Inexperienced staff could also have a negative effect on some measures of quality. Also, in the initial years of managing a prison, a private firm may choose to bill for its services at rates below costs to obtain or extend a contract. As time goes by, however, to remain a viable business entity, the contractor's cost-recovery practices would have to change. Similarly, over time, public prisons could become more cost efficient in response to competition from the private sector. For instance, this conclusion was reached by the Washington study, which was commissioned to help the state determine the potential benefits of privatization.

Lessons Learned for Future Comparative Studies

The results of studies comparing private and public prisons obviously are of interest to any jurisdiction whose policymakers are deciding whether or to what extent corrections should be privatized. Ideally, to be most useful, such studies should be based upon representative samples of prisons, with sufficient statistical controls in place to measure and account for any differences. However, because the number of private correctional facilities is still relatively small (see app. IV)—and, given the fact that each stand-alone facility (whether private or public) may have some unique characteristics—conducting a truly optimal comparative evaluation may be impractical.

Nonetheless, the five studies completed since 1991 offer several lessons learned to guide future studies, even if such studies focus on comparing only one private facility and one public facility. In reviewing the relative strengths and weaknesses of each study to formulate lessons learned, we largely relied on our extensive experience in designing and assessing evaluation methodologies—that is, our experience with generally accepted methodological standards and practices. Specifically, on the basis of our review of the five studies, we identified the following lessons learned:

Lessons for Future Studies

- In considering the extent to which corrections should be privatized, a key question is whether private contractors can operate at lower costs to taxpayers, while providing at least the same level of service as the public sector, particularly with respect to security and safety issues. Thus, it is important that any study focus on both operational costs and quality of service. Two of the studies we reviewed (Texas and New Mexico) did not have this dual focus.
- The best approach for evaluating operational costs is to study existing comparable facilities, not hypothetical facilities. One of the studies we reviewed (Texas) used hypothetical similar public facilities.
- Generally, there is more than one way to objectively measure or compare prison security, safety, order, and various other dimensions that constitute quality of service. In this regard, it is important to use multiple indicators or data sources to provide cross-checks. The New Mexico study, for example, illustrates that divergent results can be reached by using one data source (e.g., inmate surveys) versus another source (e.g., staff surveys).
- Comparative findings with respect to operational costs and/or quality of service in any given year may not hold true for other years. Similarly, because trends are not self-perpetuating, even findings based on multiyear comparisons must be carefully considered. Nonetheless, all other factors being equal, comparative evaluations based upon several years' data potentially have more value than evaluations based upon 1 or 2 years of data. Nearly all five of the studies we reviewed were based upon 1 or 2 years of data.

These lessons learned could be particularly applicable to BOP if, in the future, it resumes its plans for contracting with private companies to operate selected federal correctional facilities.[12] For instance, according to April 1995 congressional testimony by the BOP Director, BOP's privatization initiative, if implemented, would provide an opportunity to undertake some thorough comparative evaluations:

"I know that the Attorney General and . . . [the Office of Management and Budget] are very interested in working carefully with us in the Bureau of Prisons to track, on these new contracts, very carefully, what the cost impact truly is, because there are a lot of hidden costs in privatization . . . [T]here has never been, we don't believe, a real good cost analysis

[12]For example, the Justice Department's budget justification for fiscal year 1997 projected the activation of two privatized facilities in that year—a detention facility (677 beds) in Seattle, WA, and a multicustody (minimum- and low-security) facility (2,048 beds) in Elkton, OH. Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations for 1997: Hearings before a Subcomm. of the House Comm. on Appropriations, 104th Cong., 2d Sess. 1656 (1996). However, in June 1996, the administration announced that plans to privatize these facilities were being suspended.

to determine, apples to apples, what is the cost of a traditional prison system and private contracting. The private contractors claim they can do it at great savings, and so we are very interested in monitoring the ones that we have projected for the next few years and determining . . . how well the taxpayers are being served on either side."[13]

The BOP Director noted that by contracting out the management of selected facilities incarcerating general inmate populations, BOP was moving to the "next level of privatization," which would provide a good basis for comparative evaluations focusing on "like or similar institutions." In this regard, the lessons learned from previous comparative studies should be useful to BOP if the federal privatization initiative is revisited.

Comments and Our Evaluation

We obtained oral comments on a draft of this report from BOP and written comments from the Department of Justice's Office of Justice Programs; the National Council on Crime and Delinquency; and a Northeastern University (Boston, MA) professor of criminal justice, who is a nationally recognized authority on corrections administration.

BOP commented that the report was accurate, well done, and useful.

The Office of the Assistant Attorney General, Office of Justice Programs, concurred with the report and noted that additional study of the privatization of correctional facilities is needed. The National Institute of Justice, a component agency of the Office of Justice Programs, commented that the report appeared "to be as comprehensive as the available data permits." Also, the Institute commented that the report's discussion of the strengths and weaknesses of the five studies "is excellent."

In commenting on the draft, the Executive Vice President, National Council on Crime and Delinquency, said that the report is accurate in concluding that few studies have been completed to date and that these studies have methodological problems that limit understanding the actual cost-benefits of privatization. He noted, however, that our report could place more emphasis on the Tennessee study, which is the most rigorous study to date. Although we concur with the reviewer's assessment of the study, our objective was to provide similar information for each of the studies reviewed. Further, he noted that the report could add more emphasis to evaluating the claims of private providers that they can

[13]Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations for Fiscal Year 1996: Hearings on H.R. 2076 before a Subcomm. of the Senate Comm. on Appropriations, 104th Cong., 1st Sess. 303, 308 (1995).

construct new facilities faster and cheaper than public entities. Since the studies reviewed did not assess these claims, this issue was beyond the scope of our work.

The Northeastern University reviewer[14] commented that (1) our evaluation synthesis was an important contribution to the corrections field, (2) the report's conclusion that the five studies offer little generalizable guidance for other jurisdictions regarding the comparative cost and quality of service of private and public correctional facilities was "right on point," and (3) our cautions concerning interstate comparisons were "well-founded."

However, the reviewer underscored the need also to focus privatization research on crime reduction and various philosophical questions underpinning the privatization debate. These issues were beyond the scope of our work. In addition, the reviewer suggested that it would be valuable to the corrections field if the report included a short, concise statement describing the critical dependent and independent variables that should be considered in comparative analyses of private and public corrections facilities. Because of variations in available data and possible measurement adjustments required in specific research situations, we are hesitant to prescribe what variables should be studied. The studies reviewed, however, suggest possible variables. Furthermore, citing the difficulties researchers have in accessing data from private firms, the reviewer proposed that the report contain a recommendation that would facilitate researchers' access to proprietary information needed for evaluation of private corrections. In the case of federal corrections-related contracts, we would likely have access to data, but we have considerably less jurisdiction at the state level.

We are providing copies of this report to the Chairman and Ranking Minority Member of the House Judiciary Committee, the Attorney General; the Director, BOP; and other interested parties. Copies will also be made available to others upon request.

[14]Dr. Edith Elisabeth Flynn, College of Criminal Justice, Northeastern University, Boston, Massachusetts.

The major contributors to this report are listed in appendix V. Please contact me on (202) 512-8777 if you or your staff have any questions.

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Associate Director, Administration
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Contents

Abbreviations

ACA	American Correctional Association
BOP	Federal Bureau of Prisons

Objectives, Scope, and Methodology

In initiating this review, our specific objectives were to answer the following key questions:

- What studies, completed since 1991, have compared the operational costs and/or the quality of service of private and public prisons?
- From these studies, what can be concluded with respect to the operational costs and/or the quality of service of comparable private and public facilities?
- Are the results of these studies generalizable to correctional systems in other jurisdictions?
- From these studies, what are the "lessons learned" to help guide future comparative studies of private and public prisons?

Identification of Comparative Studies

To identify relevant studies, we requested and obtained literature searches from the National Criminal Justice Reference Service and the National Institute of Corrections. Also, within the Department of Justice, we contacted knowledgeable officials of the component agencies responsible for managing federal correctional facilities—the Federal Bureau of Prisons (BOP), U.S. Marshals Service, and Immigration and Naturalization Service.

Similarly, to query knowledgeable state agency officials, we first contacted the Director of the Private Corrections Project at the University of Florida's Center for Studies in Criminology and Law to obtain information about the number of privatized facilities in each state (see app. IV).[1] Then, for each applicable state, we contacted officials at the state's corrections department and/or corrections research agency and inquired about any completed, ongoing, or planned studies comparing private and public prisons. Further, we contacted the National Council on Crime and Delinquency and various nationally recognized researchers in academia.

Assessment of Studies

We assessed each of the five relevant studies that we identified. Our work in assessing the conclusions or results of each study and the generalizability of same—as well as identifying any lessons learned—can be characterized as a form of evaluation synthesis. By definition, an evaluation synthesis is a systematic procedure for organizing findings from several disparate evaluation studies. That is, the procedure addresses key questions or issues by assessing existing studies or evaluations, rather than by conducting primary data collection.

[1]Established in 1988 to conduct policy-relevant research on corrections privatization, the Private Corrections Project publishes (semiannually) the Private Adult Correctional Facility Census.

In reviewing the studies, we focused on the findings and conclusions of each study and evaluated these in relation to the methodology used by the respective study.[2] As an initial and fundamental inquiry, for instance, we focused on the similarity of the private and public facilities being compared in each study. That is, we wanted to determine (1) if the facilities were reasonably well matched in relation to design and capacity, security level, inmate demographics, and other relevant institutional characteristics and (2) whether the facilities were actually in operation and, if so, for what length of time prior to the comparative evaluation.

In reviewing each applicable study's comparative evaluation of operational costs, we focused on whether (1) both direct and indirect cost components were considered for the private and public facilities, (2) actual data versus estimates were used, and (3) consistent cost components were used. We did not independently verify any of the cost data presented in the studies.

In reviewing each applicable study's comparative evaluation of quality of service, we focused on whether the private and the public facilities were consistently evaluated in the respective study. That is, in reference to both the private and the public facilities compared in a given study, we were interested in whether the same or similar methodology and data sources were used to evaluate quality of service. Thus, we did not attempt to generically define "quality of service;" rather, we accepted the definition and/or evaluation criteria used in each applicable study. Also, we did not independently verify the reported quality measures or outcomes, such as safety and incident data and the extent of rehabilitation and treatment programs for inmates.

We reviewed the relative strengths and weaknesses of each study to formulate lessons learned for future comparative studies. In doing so, we largely relied on our extensive experience in designing and assessing evaluation methodologies—that is, our experience with generally accepted methodological standards and practices.

Private Sector Contacts

Initially, in September 1995, to obtain a practical understanding of privatization issues, we visited two privately operated facilities housing federal inmates. These facilities, which held deportable aliens, are located in west Texas and were operated by private firms under the general

[2]Two of our staff—senior analysts with specialized training and years of experience in designing and assessing evaluation methodologies—independently reviewed each of the five studies.

authority of intergovernmental agreements entered into by BOP and the respective city governments of Big Spring and Eden. We toured the facilities and interviewed managers and staff of the private firms. Also, we interviewed the on-site federal monitors.

Further, to obtain additional overview information on privatization issues, we interviewed a senior executive (the Director for Strategic Planning) of one of the nation's largest private corrections firms. This official was a former director of BOP.

Description of Studies Comparing Private and Public Prisons

We identified five studies completed since 1991 that compare private and public correctional facilities in relation to operational costs and/or quality of service. Table II.1 briefly describes each of these studies. Following the table, separate sections respectively provide more details about each study.

Table II.1: Citation, Evaluation Parameters, and Reported Results of Five Studies Comparing Private and Public Prisons

State	Study citation	Evaluation parameters	Reported results
Texas	"Information Report on Contracts for Correction Facilities and Services," Recommendations to the Governor of Texas and Members of the Seventy-Second Legislature, Sunset Advisory Commission, Final Report, Texas Sunset Advisory Commission (Austin: 1991).	Operational costs were studied. Four private, prerelease, minimum-security prisons (500 beds each) for males were compared with hypothetical public facilities in Texas. Fiscal year 1990 data were analyzed.	The private prisons' operational costs were 14 to 15 percent less than the costs of the hypothetical state facilities.
		An empirical assessment of quality of service was not conducted.	The study noted that two of the four private facilities had received ACA accreditation, and the other two were still involved in the accreditation process. Also, the study noted that all four facilities were in compliance with 11 of the 16 mandates of court rulings applicable to Texas prisons.
New Mexico	Charles H. Logan, Well Kept: Comparing Quality of Confinement In a Public and a Private Prison, National Institute of Justice (1991).	A detailed analysis of operational costs was not conducted.	Not applicable.
		Quality of service was studied. Three multicustody facilities (minimum- to maximum-security) for women were compared: a private prison and a state-run prison in New Mexico and a federal prison in West Virginia. The data analyzed for the private facility covered June 1989 through November 1989; data for the state facility covered June 1988 through November 1988; and the federal data covered December 1987 through May 1988.	The results of the study depended on the data-collection instruments that were employed. For example, data from staff surveys and official records showed that the private prison "outperformed" the state and federal prisons across nearly all dimensions. However, inmate survey data showed that one of the public facilities "outperformed" the private facility on every dimension except "activity" (e.g., work and training programs).

(continued)

State	Study citation	Evaluation parameters	Reported results
California	Dale K. Sechrest and David Shichor, Final Report: Exploratory Study of California's Community Corrections Facilities, California State University (San Bernardino: 1994).	Operational and construction costs were studied. Three for-profit community correctional facilities—one managed privately (medium-security) and two managed by local governments (low- to medium- and high-security)—for males were compared with one another and with other state correctional facilities. Fiscal year 1991-1992 data were analyzed.	The private facility's average annual costs per inmate ($15,578) were higher than comparable costs for one of the government-run facilities ($13,195) but were lower than such costs for the other government-run facility ($16,627). Due to methodological limitations, conclusions could not be reached by comparing the three for-profit community correctional facilities with other state correctional facilities. For example, different cost components were used for the two sets of facilities in the comparison. In addition, it is likely that the universe of the state's correctional facilities reflected wide-ranging differences concerning inmate populations and services.
		Quality of service was studied. The same three community correctional facilities for males were compared with two state correctional facilities. Data were collected in summer 1992.	Due to methodological limitations, conclusions could not be reached by comparing the community correctional facilities with two state facilities. For example, the results could not be generalized to the inmate or staff populations of the facilities because small, nonrandom samples were used.
Tennessee	Cost Comparison of Correctional Centers, Tennessee Legislature Fiscal Review Committee (Nashville: 1995).	Operational costs were studied. Three multicustody prisons (minimum- to maximum-security) for males were compared: one private and two state-run prisons. Data from July 1993 through June 1994 were analyzed.	There was little difference in the average daily operational costs per inmate across the three facilities—$35.39 for the private facility, versus $34.90 and $35.45, respectively, for the two public facilities.
	Comparative Evaluation of Privately Managed CCA Prison and State-Managed Prototypical Prison, Tennessee Legislature Select Oversight Committee on Corrections (Nashville: 1995).	Quality of service was studied. The same three multicustody prisons for males were compared. Data from March 1991 through September 1994 were analyzed.	There was no difference in quality of service between the private and public facilities.
Washington	Department of Corrections Privatization Feasibility Study, Report 96-2, State of Washington Legislative Budget Committee (Olympia: 1996).	Operational costs of the same three Tennessee facilities mentioned above were studied. Data from July 1993 through June 1994 were analyzed.	The average daily operational costs per inmate for the private facility ($33.61) were slightly lower than such costs for the two public facilities ($35.82 and $35.28, respectively).

(continued)

State	Study citation	Evaluation parameters	Reported results
		Operational costs of three multicustody facilities in Louisiana (two private and one state-run) for males were studied. Projected data for July 1995 through June 1996 were analyzed.	The average daily operational costs per inmate for the two private facilities were $23.75 and $23.34, respectively, compared with $23.55 for the public facility.
		Operational costs of a Washington state prison were compared with the costs for one Tennessee state prison and a Louisiana state prison. Data analyzed for Washington state covered calendar year 1995; time frames for Tennessee and Louisiana data are mentioned above.	The average daily operational costs per inmate for the Washington facility ($44.52) were higher than such costs for the Tennessee and Louisiana facilities ($37.07 and $24.04, respectively).
		Construction costs were studied. The estimated costs for Washington state to construct a planned multicustody public prison for males were compared with a private company's costs for constructing a similar facility in Florida. Data analyzed for Washington state were based on projected July 1998 cost figures; and data analyzed for the Florida facility were based on projected July 1998 cost figures.	The estimated cost per bed for the Washington state facility ($60,400) was approximately double the estimated cost per bed for the Florida facility ($33,900).
		Quality of service was studied. Three multicustody male facilities in Tennessee (mentioned above), three multicustody male facilities in Louisiana (mentioned above), and two multicustody male facilities in Washington were compared. Data analyzed for Tennessee covered 1994 (for review of institutional records) and 1995 (for on-site visits); data analyzed for Louisiana covered 1995; data analyzed for Washington covered 1995.	Site visits showed that all prisons were "clean and appeared to be orderly." Additional data indicated that the prisons generally were similar regarding quality of service. However, the Washington facilities had more counselors per inmate than the Tennessee and Louisiana facilities.

Source: GAO summary of information reported in the cited studies.

Texas Study (1991)

Conducted by the Texas Sunset Advisory Commission, this study involved a comparative assessment of operational costs; an empirical assessment of quality of service was not conducted. The actual costs of operating four privately managed prerelease minimum-security facilities (500 beds each) for male prisoners were compared with the estimated costs of operating similar but "hypothetical" public facilities in the state of Texas. Two of the four prerelease facilities were managed by Corrections Corporation of America, and the other two were managed by Wackenhut Corrections Corporation.

The study considered direct and indirect costs to compute operational costs for private and public sector management of the prerelease facilities. Direct costs included items such as salaries and fringe benefits, food, medical services, utilities, and supplies. Also, the study recognized that another direct cost would be the expense of having state corrections agency staff on-site to monitor the contractor's performance. Indirect costs included salaries and expenses for corrections department executive personnel, an annual audit of facilities, and "other administration items" attributable to the private or state facilities. Construction costs were excluded because the state built the private facilities. Also, the study did not include depreciation expenses and capital outlays, but debt service for construction was included.

The study concluded that the state achieved savings from the privatized facilities. Based on requirements specified in state statute, the state estimated the costs of operating similar state-run prerelease facilities. Specifically, because similar state-run facilities did not exist, the state estimated the costs of operating hypothetical state-run prerelease facilities. Contract provisions stipulated that contractors would receive at least 10 percent less than the estimated costs for the state to operate each facility.[1] Therefore, in a sense, 10-percent "savings" to the state was guaranteed. Cost data for fiscal year 1990 were analyzed. The state estimated that the privatized facilities achieved 14- to 15-percent cost savings (taking into consideration tax revenues paid to state and local

[1]Texas state statutory provisions authorize the Texas Department of Corrections to contract with private vendors and county commissioners to finance, construct, operate, maintain, or manage secure correctional facilities. The provisions establish guidelines by which the state can enter into a contract for such services. Among other things, the provisions specify that a contract proposal must provide the state with a savings of at least 10 percent below the costs of similar state-operated facilities.

authorities)[2] compared with hypothetically equivalent state-run facilities. The average daily operational costs per inmate for the private facilities were $36.76. Because of staffing and construction differences between the contractors, separate costs were estimated for the hypothetical state operation of a facility for each contractor. The estimated average daily operational costs per inmate for the hypothetical state-run facilities were $42.70 for one contractor and $43.13 for the other. However, because the state did not operate any prerelease facilities nor did any of its existing facilities have prerelease components, the cost estimates for the state-run facilities were not based on actual state experience. The method assumed no unanticipated changes in components such as salary and other expenses. Thus, an error in one or more assumption could have resulted in different cost estimates, changing the size or even the direction of estimated differences in private versus public management costs.

An empirical assessment of the quality of service was not conducted due to the absence of comparable state facilities. However, the study noted that two of the four private facilities had received ACA accreditation, and the other two were still involved in the accreditation process. Additionally, the study noted that all four facilities were in general compliance with 11 of the 16 mandates of court rulings applicable to Texas prisons.

New Mexico Study (1991)

Funded by the Department of Justice's National Institute of Justice, Bureau of Prisons, and National Institute of Corrections, this study, of the five we reviewed, made the most systematic effort to address quality of service. However, a detailed cost analysis was not included. The study compared three multicustody (minimum- to maximum-security) women's facilities—a privately run facility and a state-run facility in New Mexico and a federal facility in West Virginia—across eight dimensions of quality.[3]

[2]According to the Texas study, the private prisons have paid an estimated $400,000 per prison in state and local sales taxes and payments in lieu of property taxes. The study noted that because the state owned the prisons, property taxes were not assessed. Rather, the private contractor paid the local taxing authorities an annual amount, which generally approximated the taxes that would have been owed if the property were privately owned.

[3]The New Mexico study used a "confinement model" of imprisonment to develop quality assessment criteria. The model defined eight distinct dimensions or performance measures on which to evaluate the quality of a correctional facility. According to the study, these dimensions are based on the premise that confinement "carries with it an obligation to meet the basic needs of prisoners at a reasonable standard of decency," including standards to evaluate health care, safety, sanitation, and nutrition, as well as constitutional standards to ensure due process and fairness. Examples of those dimensions are (1) security (e.g., facility design and security procedures); (2) safety (e.g., personal injury and harm); (3) order (e.g., discipline and control standards); (4) care (e.g., health care and counseling); (5) activity (e.g., work and training programs); (6) justice (e.g., discipline and grievance procedures); (7) conditions (e.g., food services); and (8) management (e.g., staff turnover and job satisfaction).

Data analyzed for the private facility covered June 1989 through November 1989, data for the state facility covered June 1988 through November 1988, and data for the federal facility covered December 1987 through May 1988.

The study recognized, at least indirectly, that differences among the facilities regarding age, architecture, and inmate programs made comparisons somewhat difficult to interpret. For example, the private facility was new, the state facility was 4 years old, and the federal facility was about 60 years old. The respective inmate populations were 170 (private), 143 (state), and 814 (federal). The inmates at the New Mexico facilities were nearly similar with respect to characteristics of age, race, and offense type. However, they differed from the federal inmates in race and offense type. The study indicated that one of the factors enhancing the comparability of the two New Mexico institutions was that both were applying for accreditation by the American Correctional Association (ACA). However, ACA officials told us that ACA accreditation means that only minimum standards are met, and since there can be wide variations among facilities in exceeding minimum standards, accreditation should not be used to assume that two or more facilities are comparable.

In assessing and comparing the quality of service at the three facilities, the study derived multiple indicators for each of eight quality dimensions. Data sources for all three facilities included various institutional records,[4] such as incident and disciplinary reports as well as work and education records. Also, staff surveys were conducted at all three facilities, and inmate surveys were conducted at the private and the state facilities. In total, the study made 595 comparisons among the institutions using 333 indicators. All of the indicators were available for the private and state prisons, while 131 indicators were available for the federal prisons. Thus, the study made three-way comparisons for 131 of the 333 indicators and two-way comparisons (private/state) for 202 of the indicators.

The study concluded, generally, that "the private prison 'outperformed' the state and federal prisons, often by quite substantial margins, across nearly all dimensions." It noted, however, that results varied by data source. For example, contrary to other sources used in the study, inmate survey data showed that the state facility "outperformed" the private facility in every dimension except "activity" (e.g., work and training programs).

While the study did not include a detailed analysis of operational costs, it suggested that the better performance of the private facility was

[4]The study noted that fewer official records were collected for the federal prison.

accomplished at lower cost. However, the study offered little evidence to support this assertion. For instance, the full report consisted of 291 pages, with only 2 pages devoted to costs. Without providing any detailed analysis, the report noted that the average daily operational costs per inmate for the private facility were $69.75 in fiscal year 1989-1990, the average daily costs of housing an inmate in federal facilities (nationwide) were $39.67 in 1988, the average daily costs for New Mexico state facilities (statewide) were $68.00 in 1988, and the average daily costs for the particular state facility studied were $80.00 in fiscal years 1988-1989. Although no detailed cost analysis was attempted, the study appeared to base the perception of lower costs of private facilities on the fact that "financial analysts in the New Mexico Corrections Department believed that the [private] contract was saving the state money."

California Study (1994)

Conducted by California State University, this study was neither supportive nor critical of private facilities. To assess costs and quality of service, the study compared three for-profit community correctional facilities for males—one privately managed (medium-security) and two publicly managed by local governments (one low-to medium-security and one high-security).[5] Specifically, the study compared the three facilities with one another and with other state correctional facilities. Both operational and construction costs were included in the comparison of the three facilities with one another. The statewide comparison did not include construction costs for the California Department of Corrections facilities. Also, the study attempted to compare the quality of service of the three facilities with two other California Department of Corrections facilities.

The three community correctional facilities were generally comparable. For instance, the inmates were nearly similar with respect to characteristics of age, race, and offender status. However, one of the public facilities had a greater percentage of drug offenders[6] and Anglo- and African-American inmates and a smaller percentage of Hispanics. The private facility housed 400 inmates, compared with about 420 and about 450 housed at the public facilities. For the period studied, the number of admissions was 1,498 for the private facility versus 392 and 1,073,

[5]Correctional facilities that are operated for-profit by a private corporation under contract with the California Department of Corrections are referred to as "private proprietary facilities." Correctional facilities that are operated for-profit by local government agencies under contract with the California Department of Corrections are referred to as "public proprietary facilities."

[6]This public community correctional facility housed narcotics offenders who were sentenced under a "civil addict program" and subsequently violated parole.