

ALASKA LEGISLATURE COMMITTEE FILES 1995-1996 8672

8943 SENATE LABOR & COMMERCE

Alaska State Legislature House of Representatives

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INTERIM
10928 EAGLE RIVER ROAD, SUITE 141
EAGLE RIVER AK 99577
PHONE (907) 694 8944
FAX 694-8948

SESSION
STATE CAPITOL
JUNEAU, AK 99801-1182
PHONE (907) 465-3777
FAX (907) 465-2819

TO: Senator Tim Kelly, Chair
Senate Labor & Commerce Committee

FROM: Representative Pete Kott, Chair
House Labor & Commerce Committee

DATE: May 6, 1995

RE: HB 328

House Bill 328 is legislation allowing the State Museums to negotiate group discount rates with tour operators.

State Museums have negotiated discounts with tour groups for some time. A recent option from the Attorney General's Office has put that past practice on hold. The option suggests that negotiated discount rates is beyond the Department of education's current scope of authority. HB 328 would remedy this problem by placing the authority in statute and allowing this past practice to resume. This legislation carries a zero fiscal note.

Please schedule HB 328 for a hearing in the Senate Labor & Commerce Committee. Immediate passage of this legislation will allow discount tours to take place this tourist season. Thank you.

*As
would like to get this
passed this year to benefit
the museums the tourist season*

Thank you



Representative Pete Kott



FISCAL NOTE

STATE OF ALASKA
1995 LEGISLATIVE SESSION

BILL NO. HB 328

Revision Date: _____

Department Affected: Education

Title: Discount for Museum Visit by Groups

BRU: Alaska State Museum

Sponsor: House Labor and Commerce Committee

Component: Museum Operations

Requester: House Labor and Commerce Committee

COMPONENT SERIAL NO. 210

Expenditures/Revenues:

(Thousands of Dollars)

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

CAPITAL

REVENUE FUND SOURCE:

FUNDING:

(Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other						
TOTAL	00	00	00	00	00	00

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of current year (FY95) impact: \$ 00

ANALYSIS: (Attach a separate page if necessary)

House Bill 328 will allow the department to negotiate group rates or to offer group rates to groups of people to visit the state museum or a branch of the museum. The department recently adopted regulations to provide for an increase in museum fees. However, the additional revenue from admission fees will be lost, offset by a decrease in group visits, if groups rates cannot be negotiated or offered.

Prepared by: Karen Crane, Director

Phone: 465-2910

Division: Libraries, Archives, and Museums

Date: May 3, 1995

Approved by Commissioner: _____

Shirley J. Holloway, Ph. D.

Agency: Education

Date: May 3, 1995

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HB

359

Alaska State Legislature

Representative Brian S. Porter

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DISTRICT 20

SESSION
STATE CAPITOL ROOM 119
JL NEAL ALASKA 99501 1192
PHONE 907 465 4930
FAX 907 465 3814

INTERIM
716 W 3TH AVE SUITE 940
ANCHORAGE AK 99501 2133
PHONE 907 258 8197
FAX 907 258 9510

SPONSOR STATEMENT

Lamenting the appointment process for Boards and Commissions the Governor and legislature endured last year, HB 359 is designed to take the politics out of the presentment and appointment process.

Simply stated the Governor would present to the legislature within 30 days of convening the names of persons appointed who have not previously been confirmed and the names of persons to be appointed. An appointment made after 30 days of the session, but while session is still in progress, must be presented within 5 calendar days. Concurrently, the duration of an appointment made during the interim ends when a new regular session convenes, but can be reappointed and presented for confirmation during that session. For example, when governors change this feature allows the new governor to appoint new people or reappoint the interim appointees selected by the previous governor.

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DISTRICT 20

SESSION:
STATE CAPITOL, ROOM 114
JUNEAU, ALASKA 99801-1142
PHONE: (907) 465-4930
FAX: (907) 465-3834

INTERIM
710 W 4TH AVE., SUITE 640
ANCHORAGE, AK 99501-2133
PHONE: (907) 258-8197
FAX: (907) 258-3510

Sectional Analysis (CSHB 359 Und)

Section 1 Conforms Occupational Licensing boards to AS 39.05 in Section 14 of the bill.

Section 2 pertains to vacancies on boards with respect to AS 39.05

Section 3 directs the Board of Certified Direct Entry Midwives to conform to the changes made in AS 39.05.

Section 4 directs the State Board of Education to conform to the changes made in AS 39.05.

Section 5 directs the Professional Teachers Commission to conform to the changes made in AS 39.05.

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Section 8 directs the Board of Fisheries and Board of Game to conform to the changes made in AS 39.05.

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Section 10 directs the Alaska Oil and Gas Conservation Commission to conform to the changes made in AS 39.05.

Section 11 directs the Alaska Royalty Oil and Gas Development Advisory Board to conform to the changes made in AS 39.05.

Section 12 is a new section defining March 1 as the date that the term of office or membership on a board or commission expires except as otherwise provided for by law.

Section 13 modifies the general law on vacancies in AS 39.05.060 so that is conforms to changes made in section 14 of the bill. Also clarifies that, in general confirmed members of boards and commissions serve at the pleasure of the governor even though terms are set by law, but allows the legislature to provide for a different result, such as removal only for cause, for specific boards and commissions.

Section 14 makes a number of changes to the basic law governing the presentment and confirmation process for members of boards and commissions. These changes do not affect other positions for which confirmation may be required (department heads)

See Legal Services Memo, Lauterbach - March 15, 1996

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Section 16 directs the Alaska Historical Commission to conform to the changes made in AS 39.05.

Section 17 directs the Alaska Public Utilities Commission to conform to the changes made in AS 39.05.

Sections 18 & 19 makes technical changes in existing law in order to conform with AS 39.05.

Section 20 repeals laws that conflict with the changes made by this bill.

Section 21 sets up the March 1 cycle of terms of office by extending current terms to March 1 following when they would otherwise would have expired.

Section 22 gives the bill a January 1, 1997, effective date.

FISCAL NOTE

Bill Version: HB 359
(H) Publish Date: 3/11/96

STATE OF ALASKA
1996 LEGISLATIVE SESSION

Revision Date: _____ Dept. Affected: Office of the Governor
 Title: "An Act relating to appointment and confirmation process for members of certain boards, commissions, ..." BRU: Executive Operations
 Sponsor: Representative Porter Component: Executive Office
 Requester: _____ COMPONENT SERIAL NO. 6

Expenditures/Revenues (Thousands of Dollars)

OPERATING EXPENDITURES	FY 97	FY 98	FY 99	FY 100	FY 01	FY 02
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 (FY96) cost: \$ 0.0

POSITIONS

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

No fiscal impact.

Prepared by: Michael A. Nizich, Director Phone: 465-3878
 Division: Division of Administrative Services Date: 3/5/96
 Approved by Commissioner: Jim Ayers, Chief of Staff Date: 3/5/96
Office of the Governor

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CS FOR HOUSE BILL NO. 359(JUD)
 IN THE LEGISLATURE OF THE STATE OF ALASKA
 NINETEENTH LEGISLATURE - SECOND SESSION

BY THE HOUSE JUDICIARY COMMITTEE

Offered:
 Referred:

Sponsor(s): REPRESENTATIVES PORTER, Green

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to the appointment and confirmation process for members of
 2 certain boards, commissions, and similar bodies; relating to terms of certain
 3 appointees; and providing for an effective date."

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

5 • Section 1. AS 08.01.035 is amended to read:

6 Sec. 08.01.035. APPOINTMENTS AND TERMS. Members of boards subject
 7 to this chapter are appointed for staggered terms of four years. Except as provided in
 8 AS 39.05.080(4), a [A] member of a board serves until a successor is appointed. Except
 9 as provided in AS 39.05.080(4), an [AN] appointment to fill a vacancy on a board is
 10 for the remainder of the unexpired term. A member who has served all or part of two
 11 successive terms on a board may not be reappointed to that board unless four years have
 12 elapsed since the person has last served on the board.

13 • Sec. 2. AS 08.04.040 is amended to read:

14 Sec. 08.04.040. VACANCY ON BOARD. A vacancy shall be filled by

1 appointment for the unexpired term, except as provided in AS 39.05.080(4), and all
2 vacancies shall be filled within 60 days. Except as provided in AS 39.05.080(4), after
3 [AFTER] the expiration of a member's term of office a member continues to serve until
4 a successor is appointed and qualifies, formally advises the board of acceptance of the
5 appointment, and appears at the next meeting of the board.

6 * Sec. 3. AS 08.65.010(b) is amended to read:

7 (b) The board consists of five members appointed by the governor subject to
8 confirmation by the legislature in joint session. Members serve for staggered terms of
9 four years and, except as provided in AS 39.05.080(4), each member serves until a
10 successor is appointed and qualified. The board consists of two members who are
11 certified in this state as direct-entry midwives, one physician licensed by the State
12 Medical Board in this state who has an obstetrical practice or has specialized training in
13 obstetrics, one certified nurse midwife licensed by the Board of Nursing in this state, and
14 one public member.

15 * Sec. 4. AS 14.07.095 is amended to read:

16 Sec. 14.07.095. TERM OF OFFICE. The members of the board shall be
17 appointed for overlapping five-year terms commencing on the March 1 following the
18 date of the member's [FEBRUARY 1 OF THE YEAR OF] appointment. Except as
19 provided in AS 39.05.080(4), a [A] member appointed to fill a vacancy serves for the
20 unexpired term of the member whose vacancy is filled. A vacancy occurring during a
21 term of office is filled in the same manner as the original appointment.

22 * Sec. 5. AS 14.20.420(a) is amended to read:

23 (a) The term of office for each member of the commission is three years and,
24 except as provided in AS 39.05.080(4), each member serves until a successor is
25 appointed.

26 * Sec. 6. AS 14.20.420(b) is amended to read:

27 (b) Vacancies shall be filled by appointment by the governor and, except as
28 provided in AS 39.05.080(4), an appointment to fill a vacancy is for the unexpired
29 term.

30 * Sec. 7. AS 15.13.020(h) is amended to read:

31 (h) A vacancy on the commission shall be filled through the appropriate
32 appointing method for the position within 30 days after the occurrence of the vacancy.

1 Except as provided in AS 39.05.080(4), the [THE] appointee shall serve for the
2 remaining term of the appointee's predecessor.

3 * Sec. 8. AS 16.05.221(c) is amended to read:

4 (c) Members of the Board of Fisheries or Board of Game serve staggered terms
5 of three years and, except as provided in AS 39.05.080(4), each member serves until
6 a successor is appointed. An appointment to fill a vacancy in the membership of the
7 Board of Fisheries or Board of Game shall be made in the same manner as the original
8 appointment and, except as provided in AS 39.05.080(4), an appointment to fill a
9 vacancy is for the balance of the unexpired term.

10 * Sec. 9. AS 16.43.030(b) is amended to read:

11 (b) A vacancy on the commission shall be filled by appointment by the governor
12 and the appointment shall be confirmed by the legislature in joint session. Except as
13 provided in AS 39.05.080(4), a [A] member selected to fill a vacancy shall hold office
14 for the balance of the full term for which the member's predecessor on the commission
15 was appointed.

16 * Sec. 10. AS 31.05.007(b) is amended to read:

17 (b) A vacancy arising in the office of a commissioner shall be filled by
18 appointment by the governor and confirmed by the legislature in joint session, and,
19 except as provided in AS 39.05.080(4), an appointee selected to fill a vacancy shall
20 hold office for the balance of the full term for which the predecessor on the commission
21 was appointed.

22 * Sec. 11. AS 38.06.025(e) is amended to read:

23 (e) Vacancies in public membership shall be filled in the same manner as
24 original appointment. Except as provided in AS 39.05.080(4), an [AN] appointee to
25 fill a vacancy shall hold office for the balance of the term for which the predecessor on
26 the board was appointed. A vacancy in board membership does not impair the authority
27 of a quorum of the board members to exercise all the powers and duties of the board.

28 * Sec. 12. AS 39.05 is amended by adding a new section to read:

29 Sec. 39.05.053. TERMS OF OFFICE. The term of office of a position or
30 membership ends on March 1 of the year when the position's or membership's term
31 expires except as otherwise provided in a law relating to positions or memberships on
32 a specific board or commission.

1 * Sec. 13. AS 39.05.060(d) is amended to read:

2 (d) A vacancy occurring during a term of office is filled in the same manner as
3 the original appointment is made and, except as provided in AS 39.05.080(4), is filled
4 for the balance of the unexpired term. Except as otherwise provided by law, each
5 [EACH] member holds office at the pleasure of the governor notwithstanding the
6 member's term.

7 * Sec. 14. AS 39.05.080 is amended to read:

8 Sec. 39.05.080. PROCEDURE FOR ALL APPOINTMENTS. Except as
9 otherwise provided in a law relating to the positions or memberships on a specific
10 board or commission, appointment to a position or membership [APPOINTMENTS]
11 shall be made in the following manner:

12 (1) Each governor shall present to the legislature the names of the
13 persons appointed by that governor; only presentment that occurs during the time
14 that the legislature is in regular session satisfies this requirement. The governor
15 [APPOINTING AUTHORITY] shall, within the first 30 days after [OF THE
16 CONVENING OF] the legislature convenes in regular session, present to the legislature
17 for confirmation the names of the following persons: (A) persons appointed to a position
18 or membership who have not previously been confirmed by the legislature, and (B) [OR
19 EITHER HOUSE OF IT; (B) PERSONS APPOINTED SUBJECT TO
20 CONFIRMATION TO FILL AN EXISTING POSITION OR MEMBERSHIP
21 VACANCY; (C)] persons to be appointed [SUBJECT TO CONFIRMATION] to fill a
22 position or membership the term of which will [SHALL] expire March 1 during that
23 [BEFORE JULY 2, FOLLOWING THE] session of the legislature. If an appointment
24 is made after the first 30 days of the convening of the regular session [DEADLINE]
25 but while the legislature is in regular session, the governor [APPOINTING
26 AUTHORITY] shall, within five calendar days after the appointment is made, present
27 to the legislature for confirmation the name of the person appointed. The deadline may
28 be extended by the legislature by the approval of a concurrent resolution.

29 (2) When appointments are presented to the legislature for confirmation,

30 (A) the presiding officer of each house shall assign the name of
31 each appointee to a standing committee of that house for a hearing, report, and
32 recommendation; standing committees of the two houses assigned the same

1 person's name for consideration may meet jointly to consider the qualifications
2 of the person appointed and may issue either a separate or a joint report and
3 recommendation concerning that person; then

4 (B) the legislature shall, before the end of the session in which
5 the appointments are presented, in joint session assembled, act on the
6 appointments by confirming or declining to confirm by a majority vote of all of
7 the members the appointments presented.

8 (3) When the legislature declines to confirm an appointment, the
9 legislature shall notify the governor [APPOINTING AUTHORITY] of its action and a
10 vacancy in the position or membership exists which the governor [APPOINTING
11 AUTHORITY] shall fill by making a new appointment. The new appointment shall be
12 presented for confirmation to the legislature within 20 calendar days following receipt
13 by the governor [APPOINTING AUTHORITY] of the legislature's notification of its
14 refusal to confirm the prior appointment. The governor [IF THE NAME OF A
15 PERSON IS SUBMITTED AND IS NOT CONFIRMED, THE APPOINTING
16 AUTHORITY] may not appoint [, UPON RESUBMISSION OF APPOINTMENTS,
17 SUBMIT] again the same [NAME OF THE] person whose confirmation was refused for
18 the same position or membership during the session of the legislature at which
19 confirmation was refused. The person whose name is refused for appointment by the
20 legislature may not thereafter be appointed to the same position or membership during
21 the interim between legislative sessions. Failure of the legislature to act to confirm or
22 decline to confirm an appointment during the session in which the appointment was
23 presented is tantamount to a declination of confirmation on the day the session adjourns.

24 (4) Pending confirmation or rejection of appointment by the legislature,
25 persons appointed shall exercise the functions, [AND] have the powers, and be charged
26 with the duties prescribed by law for the appointive positions or membership. However,
27 the duration of an appointment made during the time period between regular
28 sessions of the legislature ends on the first day of the next regular session. An
29 appointee whose appointment ends on the first day of the next regular session under
30 this paragraph does not serve until a successor is appointed but may be
31 reappointed. For the purpose of applying laws that limit the number of terms or
32 parts of terms that may be served by a member of a board or commission, the part

1 of the term of office that is served under an interim appointment immediately
2 before the member is reappointed under this paragraph is considered to be merged
3 with the part of the term of office that is served immediately after reappointment
4 so that the two periods of service constitute only one part of a term. The duration
5 of an appointment made during a regular session of the legislature and not
6 presented to the legislature by the governor during that session ends no later than
7 the last day of that session. The same governor may not again appoint the same
8 person to the same position or membership if the person's appointment ends
9 because of the governor's failure to present the person's name for confirmation.

10 • Sec. 15. AS 39.23.200(a) is amended to read:

11 (a) The State Officers Compensation Commission is established. The
12 commission is composed of seven members appointed by the governor subject to
13 confirmation by a majority of the legislature in joint session. Members serve for
14 staggered terms of four years. Commission membership shall include at least one
15 business executive, one representative of a nonpartisan voters' organization, one person
16 with experience in public administration, and one representative of a labor organization.
17 Except as provided in AS 39.05.080(4), a [A] vacancy shall be filled for the balance
18 of the unexpired term. A commission member may serve no more than two complete
19 consecutive terms.

20 • Sec. 16. AS 41.35.330 is amended to read:

21 Sec. 41.35.330. TERM OF OFFICE. The term of office for a member of the
22 commission is three years, except for those who are members by virtue of their positions
23 with the state, who serve for as long as they remain in the position by virtue of which
24 they are members of the commission. Except as provided in AS 39.05.080(4), a [A]
25 member appointed to fill a vacancy serves for the unexpired term of the member
26 succeeded.

27 • Sec. 17. AS 42.05.030(b) is amended to read:

28 (b) A vacancy arising in the office of commissioner shall be filled by
29 appointment by the governor and confirmed by the legislature in joint session. Except
30 as provided in AS 39.05.080(4), an [AN] appointee selected to fill a vacancy shall hold
31 office for the balance of the full term for which the appointee's predecessor on the
32 commission was appointed.

1 * Sec. 18. AS 42.40.040(a) is amended to read:

2 (a) Except for the commissioner of commerce and economic development and
3 the commissioner of transportation and public facilities, a vacancy on the board is filled
4 by appointment by the governor, and the appointment must be confirmed by the members
5 of the legislature in joint session. Except as provided in AS 39.05.080(4). ~~a~~ [A]
6 member appointed to fill a vacancy holds office for the balance of the term for which
7 the member's predecessor was appointed.

8 * Sec. 19. AS 46.15.200 is amended to read:

9 Sec. 46.15.200. TERM OF OFFICE. The term of office for members of the
10 board is four years. If a vacancy occurs, the governor shall fill it by appointment for the
11 unexpired term, subject to AS 39.05.080(4). The appointment shall be submitted to the
12 legislature for confirmation at the next regular [OR SPECIAL] session.

13 * Sec. 20. AS 08.36.020; AS 08.80.020; and AS 08.88.026 are repealed.

14 * Sec. 21. TRANSITIONAL PROVISIONS. In order to implement the changes made in this
15 Act, and notwithstanding other provisions of law that may limit the years or terms of positions
16 or memberships, the terms of office of positions or memberships, as defined in AS 39.05.200,
17 that exist on the effective date of this Act are extended to the March 1 next following the date
18 that the terms would have expired without the changes made in this Act. This section does not
19 apply to terms of office that would have expired on March 1 even if this Act had not taken
20 effect.

21 * Sec. 22. This Act takes effect January 1, 1997.

Alaska State Legislature

Representative Brian S. Porter



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COURTS

SESSION
STATE CAPITOL ROOM 118
JUNEAU ALASKA 99801-1182
PHONE (907) 465-1900
FAX (907) 465-1901

INTERIM
716 W. 4TH AVE. SUITE 610
ANCHORAGE AK 99501-2111
PHONE (907) 258-8107
FAX (907) 258-3510

DISTRICT 20

Sectional Analysis CSHB 359 (Jud)

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See Legal Services Memo, Lauterbach - March 15, 1996

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ALASKA STATE LEGISLATURE

Representative Brian S. Porter

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DISTRICT 20

SESSION
STATE CAPITOL ROOM 119
JUNEAU ALASKA 99801-1192
PHONE 907 465 4930
FAX 907 465 1814

INTERIM
116 W 4TH AVE SUITE 940
ANCHORAGE AK 99501-2133
PHONE 907 258 8197
FAX 907 258 3310

SPONSOR STATEMENT

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HB

369



STATE OF ALASKA

THE ALASKA STATE LEGISLATURE

House of Representatives

Representative Jeannette James

Chair of House State Affairs Committee

Capitol Building

Juneau, AK 99801-2197

(907) 465-3743 ph

(907) 465-2381 fax

Sponsor Statement HB 369

March 15, 1996

HB 369 PROCUREMENT PROCEDURES/DISABLED PERSONS

This Bill will allow 100% disabled owned corporations and partnerships to be eligible for disabled bidder preferences.

Current law allows disabled owned sole proprietorships to take advantage of current disabled bidder preferences.

Equal protection under the law requires all like situations to be treated fairly and equally. Current law discriminates against disabled owned corporations and partnerships, it does allow sole proprietorships

The Bill has a zero fiscal note.

The Bill is supported by the Departments of Education and Administration.

HB 369 is the same as HB 288 from last session.

HB 288 passed both the House and the Senate and was subsequently vetoed by the Governor due to last minute riders tacked on in the Senate by the Governor's staff. The Governor's office apologized and said the bill will be supported this time.

The intent of this legislation is to create fairness.

There is no known opposition.

FISCAL NOTE

STATE OF ALASKA
1996 LEGISLATIVE SESSION

10. 2
Bill Version: HB 369
(H) Publish Date: 1/24/96

Revision Date: _____
Title: An Act extending to certain partnerships and corporations the 10 percent procurement preference
Sponsor: Rep. James
Requestor: _____

Department Affected: Administration
BRU: General Services
Component: Purchasing

COMPONENT SERIAL NO. 60

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING EXPENDITURES	FY 97	FY 98	FY 99	FY 00	FY 01	FY 02
PERSONAL SERVICES						
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 96) cost: \$ _____

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

This bill extends the 10% bid evaluation preference for an Alaska bidder who is a sole proprietor with a disability to partnerships if each partner has a disability and to corporations if wholly owned by individuals with disabilities. The 10% evaluation preference is in addition to other preferences the bidders qualify for. Under this bill, agency personnel evaluating quotes, bids, or RFPs must calculate the 10% preference for the additional entities if they appear on the disabled vendor list maintained by the Department of Education, Division of Vocational Rehabilitation.

Prepared by Dugan Petty, Director *D. Petty*
Division General Services

Phone 465-2250
Date: _____

Approved by Commissioner Mark Boyer *M. Boyer*
Agency Department of Administration

Date 1/23/96

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FISCAL NOTE

No. 1
 Bill Version: HB 369
 (H) Publish Date: 1/24/96

STATE OF ALASKA
 1996 LEGISLATIVE SESSION

Revision Date: _____
 Title: An act relating to procurement preferences for corporations and partnerships owned by persons with disabilities
 Sponsor: Representative James
 Requester: Representative James

Department Affected: Education
 BRU: Vocational Rehabilitation
 Component: Client Services

COMPONENT SERIAL NO. 1828

Expenditures/Revenues:

(Thousands of Dollars)

OPERATING	FY 97	FY 98	FY 99	FY 00	FY 01	FY 02
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)

FUND SOURCE	FY 97	FY 98	FY 99	FY 00	FY 01	FY 02
1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
Other						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

POSITIONS:

POSITIONS	FY 97	FY 98	FY 99	FY 00	FY 01	FY 02
FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of current year (FY96) impact: \$ 0.0

ANALYSIS. (Attach a separate page if necessary.)

HB 369 amends the definition of an "Alaska bidder" to clarify that the bidder has offered supplies, services, or construction of the general nature solicited by the agency for a period of six months immediately preceding the date of the bid. As written, this legislation will not have a fiscal impact on the department.

Prepared by: Stan Ridgeway, Deputy Director Phone: 465-5032
 Division: Vocational Rehabilitation Date: January 15, 1996
 Approved by Commissioner: *[Signature]* Shirley Holloway, Ph.D.
 Agency: Education Date: January 15, 1996

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COMMITTEE COPY

HB

405

House Labor & Commerce Committee

State Capitol
Juneau, Alaska 99801-1182
907-465-4954

SPONSOR STATEMENT CS HB 405 (STA)

CS HB 405 (STA), which was sponsored by the House Labor and Commerce Committee, would extend the Board of Examiners in Optometry to June 30, 2002. This board, which is due to sunset this year, performs a valuable mission for Alaska by regulating the licensure and practice of optometry.

In addition, CS HB 405 (STA) clarifies a current point of confusion by providing that employees of optometrists and physicians may perform their assigned tasks without triggering the regulatory oversight of the Board of Dispensing Opticians. It eliminates a current proscription on having branch offices. It eliminates certain visual acuity and health requirements and thereby removes the potential for litigation under the Americans with Disabilities Act. Finally, it eliminates an inflexible and unworkable deadline for filing licensure applications and permits future deadlines to be established by regulation.

It respectfully is submitted that CS HB 405 (STA) is consistent with the recent legislative audit report dated October 4, 1995. Your support is urged.

House Labor & Commerce Committee

State Capitol
Juneau, Alaska 99801-1152
907-465-4954

CS HB 405 (STA) SECTIONAL ANALYSIS

Section 1:

The Board of Examiners in Optometry is extended to June 30, 2002.

Section 2:

Employees of physicians and optometrists, when performing duties delegated to them, are exempted from regulation by the Board of Dispensing Opticians.

Section 3:

This section makes it clear that persons employed by physicians and optometrists may perform assigned duties without engaging in the illegal practice of optometry.

Section 4:

This section repeats the existing requirement that applications for licensure be filed at least 15 days prior to the examination and permits the Board to establish application deadlines by regulation.

Section 5:

An existing prohibition on branch offices is repealed. Existing vision and health requirements for licensure are repealed.

Section 6:

The Act has an immediate effective date.

ALASKA STATE LEGISLATURE

LEGISLATIVE BUDGET AND AUDIT COMMITTEE

Division of Legislative Audit



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

October 4, 1995

Members of the Legislative Budget
and Audit Committee:

In accordance with the provisions of Title 24 of the Alaska Statutes, the attached report is submitted for your review.

DEPARTMENT OF COMMERCE AND ECONOMIC DEVELOPMENT BOARD OF EXAMINERS IN OPTOMETRY

October 4, 1995

Audit Control Number
08-1436-96

This audit was conducted under the requirements of AS 44.66.050 and the authority of AS 24.20.271(1). In the report we assess the operations and performance of the Board of Examiners in Optometry utilizing the criteria set out in AS 44.66.050(c). This criteria relates to assessing the demonstrated public need for a given board, commission, agency, or program subject to the sunset review process. Currently under AS 08.03.010(c)(19), the Board of Examiners in Optometry is scheduled for termination on June 30, 1996. The board would be allowed one year in which to conclude its affairs.

In our opinion, the Board of Examiners in Optometry should be reestablished. The regulation and licensing of qualified professionals is necessary to protect the public's health, safety, and welfare. We recommend that the legislature extend the Board of Examiners in Optometry until June 30, 2002.

The audit was conducted in accordance with generally accepted government auditing standards and the criteria set out in AS 44.66.050(c). Fieldwork procedures utilized in developing this report are discussed further in the Objectives, Scope, and Methodology section on page one.

Randy S. Weiker
Randy S. Weiker, CPA

Auditor

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OBJECTIVES, SCOPE, AND METHODOLOGY

In accordance with the intent of Titles 24 and 44 of the Alaska Statutes (sunset legislation), we have reviewed the activities of the Board of Examiners in Optometry. As required by AS 44.66.050(a), the legislative committee of reference shall consider this report during the legislative oversight process to determine whether the board should be reestablished. Currently, AS 08.03.010(c)(19) states that the board will terminate on June 30, 1996, and will have one year from that date to conclude its affairs.

Objectives

Our specific audit objectives were:

1. To determine if the termination date of the board should be extended.
2. To determine if the board is operating in the interest of the public. In assessing the operations and performance of the board, we utilized the criteria set out in AS 44.66.050(c). Criteria set out in this statute relate to the determination of a demonstrated public need for the board.

Scope and Methodology

Our audit reviewed the operations and activities of the Board of Examiners in Optometry for the period of FY 92 through FY 95.

During the course of our examination, we reviewed and evaluated the following:

1. Compliance with statutes and regulations related to the licensing of optometrists. Our evaluation addressed consideration of applications, testing of candidates, and continuing education necessary for an individual to maintain his/her optometry license in good standing.
2. Minutes of meetings of the Board of Examiners in Optometry.
3. Annual reports issued by the board.
4. Complaints filed with the Division of Occupational Licensing and the Department of Law.

We also conducted interviews with employees of the Department of Commerce and Economic Development, Division of Occupational Licensing, and the Department of Law.

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ORGANIZATION AND FUNCTION

The Board of Examiners in Optometry was established under the provisions of Title 8, Chapter 72 of the Alaska Statutes. The board consists of five members appointed by the Governor and subject to legislative confirmation. Four board members must be licensed, practicing optometrists who have been residents in the State for at least three years. The statute also requires one member of the general public to sit on the board.

The board regulates the practice of optometry in the State by setting education, training, and work experience standards necessary for an individual to be licensed as an optometrist.

Alaska Statute (AS 08.72) defines the practice of optometry as the examination, diagnosis, and treatment of conditions of the human eyes and visual system, other than by use of laser, x-rays, surgery, or pharmaceutical agents.¹

Members of the Board of Examiners in Optometry
(As of June 30, 1995)*

James W. Matson, Optometrist & Chairperson
Lynn J. Coon, Optometrist & Secretary
Steve S. Dobson, Optometrist
Randall Christiansen, Optometrist

* As of the date of this report Governor Knowles has not appointed a public member to the Board of Examiners in Optometry (See Recommendation No. 3).

The board's duties and responsibilities under statute include:

1. Holding a minimum of one meeting per year.
2. Examining and issuing licenses to qualified applicants.
3. Holding hearings in order to impose disciplinary sanctions on persons who violate optometry licensing statutes and/or regulations.
4. Adopting regulations necessary to enforce the statutes relating to the board.
5. Adopting a code of ethical practice for optometry.

¹ Recent statutory amendments provide that optometrists may obtain a license endorsement that permits them to prescribe and administer pharmaceutical agents. These pharmaceutical agents (drugs) may only be topically applied to the human eye and its appendages. To obtain such an endorsement an individual must pass "written and practical portions of an examination on ocular pharmacology, approved by the board, that tests the licensee's or the applicant's knowledge of the characteristics, pharmacological effects, indications, contraindications, and emergency care associated with the prescription and use of pharmaceutical agents."

Applicants must be a high school graduate or equivalent in addition to having graduated from a recognized college or school of optometry. Additionally, all applicants must certify that they are in good health with no contagious or infectious diseases and have a visual acuity correctable to 20/40. Licensed optometrists are required to obtain 12 hours of continuing education per year.²

Alaska's optometry statutes and regulations do not allow for reciprocity with other states. Optometrists licensed in other states wishing to practice in Alaska must first become licensed in Alaska. Applicants that have passed a written examination in another jurisdiction may obtain waiver from passing the written examination requirement.³ However, AS 08.72.170 specifically states "*a waiver of the practical or oral portions of the examinations may not be given.*"

To become licensed in Alaska optometrists licensed in other states must provide the department with official documentation verifying Alaskan optometry educational requirements have been met. They must also apply for and pass all parts of the state optometry examination, pay all examination and application fees, and fulfill all other licensing requirements.

State law requires all optometrists licensed in Alaska to license each of their branch offices. There are few requirements for the licensing of branch offices. Optometrists must submit completed applications and pay all the required fees to the Division of Occupational Licensing biennially. Currently, the board is no longer enforcing the statute and the division is no longer collecting the required fees.⁴

The board grants license endorsements for optometrists to prescribe and use pharmaceutical agents. The board also grants endorsements for practitioners to only use pharmaceutical agents. Currently, all applicants graduating from optometry schools automatically qualify for pharmaceutical prescription and use license endorsement after meeting all other licensing requirements.

² If an optometrist maintains a license endorsement for the prescription and use of pharmaceutical agents as discussed in footnote one then they must obtain additional hours of continuing education.

³ The state examination consists of three sections — oral, written, and practical. Alaska Statute 08.72.170 grants the board the authority to waive the written portion of the state examination. The board may not waive either the practical or oral sections. The written section of the examination may be waived if:

- 1) The applicant meets all other examination criteria per AS 08.72.140.
- 2) The applicant holds a current license by examination in another state or a province of Canada if they have been established in an ethical practice for at least three years.
- 3) The applicant can show satisfactory evidence of having passed the written portion of the examination given by the National Board of Examiners in Optometry.
- 4) The applicant has not had a certificate or license revoked for cause in any state, territory, or foreign country.

⁴ AS 08.72.125, and 12 AAC 48 030 relate to the licensing of branch offices. Neither clearly defines when branch office licenses are required, rather they address situations only when they are not (See Recommendation No. 1)

Department of Commerce and Economic Development, Division of Occupational Licensing

The Department of Commerce and Economic Development, Division of Occupational Licensing (Occl.ic) provides administrative and investigatory assistance to the Board of Examiners in Optometry. Administrative assistance includes budgetary services and functions such as: collecting fees, maintaining files, receiving and issuing application forms, and publishing notice of examinations and meetings.

Alaska Statute 08.01.065, mandates the department, with the concurrence of the board, adopt regulations to establish the amount and manner of payment of application fees, examination fees, license fees, registration fees, permit fees, investigation fees, and all other fees as appropriate for the occupations covered by the statute.

Results of our reviews during prior audits determined Occl.ic has implemented timekeeping policies and procedures to ensure licensing fees for boards and commissions include and closely reflect actual administrative, investigative, and overhead costs incurred by the division.

Further, under AS 08.01.087, Occl.ic has the authority to act on its own initiative or in response to a complaint and may conduct an investigation if it appears a person has engaged or is about to engage in a practice over which Occl.ic has authority. Occl.ic can issue an order that the person stop the practice, bring an action in Superior Court to enjoin the act, examine the books and records of an individual, and issue subpoenas for the attendance of witnesses and records.

(Intentionally left blank)

REPORT CONCLUSIONS

In our opinion, the Board of Examiners in Optometry should be reestablished. The regulation and licensing of qualified optometrists is necessary to protect the public's health, safety, and welfare. The board provides this service by establishing minimum educational and experience requirements that provide reasonable assurance that persons licensed are qualified. Also, assurances that those licensed act in a competent manner is provided by active investigation of complaints and revocation or suspension of licenses when appropriate.

The Board of Examiners in Optometry has been found to satisfy a public purpose and has demonstrated its ability to conduct its business in a satisfactory manner. The Board of Examiners in Optometry statutes, regulations, policies and procedures are current. The board carries out its regulatory oversight function in a professional, competent, and efficient manner.

Alaska Statute 08.03.010(c)(19) requires the Board of Examiners in Optometry be terminated on June 30, 1996. Under AS 08.03.020, the board has a one-year period to administratively conclude its affairs. We recommend legislation be enacted to extend the board's termination date to June 30, 2002.

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FINDINGS AND RECOMMENDATIONS

Recommendation No. 1

The legislature should consider amending and repealing various statutory provisions related to the Board of Examiners in Optometry in order to improve administrative efficiency and consistency with current practice.

Current statutory provisions related to the Board of Examiners in Optometry contribute to administrative "bottlenecks" in the licensing of optometrists. Additionally, certain statutory requirements are apparently no longer relevant to convention of current practice. Specifically, we suggest the legislature consider:

1. Eliminating reference to, or extending the deadline for applications. Under current statute (AS 08.72.150) applicants for licensure may submit their applications and supporting documentation 15 days before examination or license expiration date. This 15 day deadline has caused a workload "bottleneck" for the licensing examiner during renewal periods. During these periods, the licensing examiner must process large volumes of various types of documentation received from applicants and license holders. He must check the applications for completeness and follow-up on missing documentation, in preparation for final review and approval of the full board.

The 15 day deadline allows little time for the licensing examiner to request additional documentation and to make corrections before the board reviews applicant files. The statutes for most other licensing boards leave the setting of the deadline to the discretion of the Division of Occupational Licensing (Occl.ic) or provide for more time than 15 days. We suggest that the legislature repeal AS 08.72.150 and leave the establishment of administrative deadlines to Occl.ic and the board through the adoption of regulations.

2. Repealing license requirements related to branch offices. At a June 1994 meeting, the board directed Occl.ic to no longer enforce AS 08.72.125 which requires the licensing of each branch office of any licensed optometrist's practice. This statute directs that "a person may not practice, or attempt or offer to practice, optometry without obtaining a license for each branch office from the board."

Since the board's decision, no collection notices have been sent to optometrists and branch office licensing fees have not been actively collected by Occl.ic. The only occasion these fees have been collected has been when an optometrist has voluntarily remitted payment. From our review of statutory history and the discussion of the board it appears the conditions and concerns that originally gave rise to branch office licensing requirements no longer exist. We suggest the legislature repeal this statute.

3. Repeal health and visual acuity requirements. Currently, AS 08.72.140 requires applicants for examination and licensure to provide the division with notarized or certified documentation verifying they are free from contagious and infectious diseases and have visual acuity of 20/40 in at least one eye as corrected. With one exception, no other profession — not even those that are typically thought of as being more medically related such as physicians, dentists, or nurses — has such a disease-free requirement.

Enactment of the federal Americans with Disabilities Act increased both the number and types of discrimination claims which may be asserted by individuals and enforced by a court of law. The potential for litigation against the board and/or State based on assertions that these two requirements are discriminatory may now exist. We suggest that Occl.lic obtain an opinion from the Attorney General's office regarding the advisability and legality of these requirements. We also suggest the legislature reconsider these statutory requirements in both AS 08.74.140 and AS 08.72.181 (which pertains to renewal of licenses).

4. Clarify the status of unlicensed professionals supervised by optometrists. There is a unique professional and commercial overlap between licensed optometrists and dispensing opticians. Both professionals are licensed to dispense eyeglasses and contact lenses. Both professions are allowed to supervise unlicensed individuals to assist them in the dispensing of corrective lenses. However, it has been asserted by dispensing opticians that all unlicensed assistants should be registered optician apprentices — subject to requirements set out in the optician licensing statutes. Analysis by the Department of Law supports this interpretation of current statute.

There are allegations that despite the requirements of statute (as further interpreted by the Department of Law) many optometrists utilize unlicensed or unregistered assistants to dispense corrective lenses. Twice in recent years the Board of Examiners in Optometry has sought legislation that would exempt staff supervised by its licensees from having to be either an optician or a registered apprentice. We suggest the legislature consider statutory amendments to clarify the current statute that sets the demarcation line of responsibilities between the two professions.

Recommendation No. 2

The Division of Occupational Licensing should enforce only those optometry application requirements set out in either statute and regulation.

Occl.lic has been enforcing optometry application requirements not required by state statutes or regulations. Specifically, application forms for optometric examination and licensure require applicants to submit certified or notarized copies of an unmounted 3" x 3" photograph taken within six months previous to filing the application.

Applicants must also submit official transcripts from all colleges or universities attended prior to optometry college to the Division of Occupational Licensing. All applications include a

statement to the effect that these items must be submitted to the division before the applications will be considered for licensure.

Neither the optometry statutes or regulations direct that applicants to meet these submission requirements. It appears the division has unilaterally imposed these requirements without clear legal authority. In our view, there is no compelling justification to support imposition of either requirement.

Recommendation No. 3

The Office of the Governor should appoint a public member to the board as soon as feasibly possible.

State law (AS 08.72.140) requires that *"four board members shall be licensed, practicing optometrists who have been residents for at least three years. One board member shall be a public member [emphasis added]."* Over the past three fiscal years the Board of Examiners in Optometry has operated for extended periods without benefit of a public member. During the period of FY 93 - FY 95 there was no appointed public member for four of the board's seven meetings.

This problem has developed in part from the actions of the Knowles administration. Upon assuming office, the governor removed a public member that Governor Hickel had appointed in December 1992. Although the Hickel-appointed member was removed, no public member was appointed in a expedient manner by the Knowles administration. As of the date of this report, no appointment has been made. It appears to us that the Hickel-appointed member, subject to legislative confirmation, could have served until the Knowles administration provided for a replacement appointment. Alaska Statute 08.01.035 which states *"members of boards . . . are appointed for staggered terms of four years. A member of a board serves until a successor is appointed [emphasis added]."*

The public board member serves as a representative of the citizenry at large. The intent behind placing public members on licensing boards is to provide more access to the board's actions and deliberations. The presence of such a member serves as a check against a professional licensing board becoming too insular or self-serving in its actions.

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ANALYSIS OF PUBLIC NEED

Limited Analysis

The following analyses of board activities relate to the public need factors defined in the "sunset" law, AS 44.66.050. These analyses are not intended to be comprehensive, but address those areas we were able to cover within the scope of our review.

The extent to which the board, commission, or program has operated in the public interest.

The Board of Examiners in Optometry has operated in the public interest. The board has spent considerable time in developing regulations for basic education, training, and establishing licensure and licensure endorsement requirements. Further, the board pursued passage of legislation furthering the public interest, health, and welfare.

The board developed, and the legislature passed, two amendments to the optometry statutes during the 1992 legislative session — AS 08.72.175(a) dealing with license endorsements, and AS 08.72.272, which related to the use of pharmaceutical agents. Further, the board developed and the legislature passed, legislation to enact AS 08.72.273. The statute allowed optometrists to remove foreign objects from the eyes of patients. The board, in conjunction with the Department of Law, developed companion regulations related to these statutory changes.

The amendments and enacted legislation furthered the public's interest, health, and welfare by allowing optometrists to perform non-invasive, non-surgical practices only licensed ophthalmologists or physicians were previously allowed to perform. Before amendment and enactment of these laws patient care choices were more restricted, potentially more costly, and the potential for misdiagnosis and mistreatment of eye conditions and diseases was higher.

As an example, in the past when optometrists visited remote areas of the State to perform optometry examinations they were not allowed to prescribe and use topical pharmaceutical agents or remove foreign objects. Instead, optometrists would have to refer the patient to a physician, that in many cases may have less experience or knowledge of the diagnosis and treatment of eye conditions and diseases than the optometrist.⁵ If a physician was not available, the patient would either have to wait for an ophthalmologist or physician to arrive, or would have to fly out to receive proper treatment from an ophthalmologist.

⁵ The term "physician" is used in context to refer to a medical doctor practicing general medicine

The extent to which the operations of the board has been impeded or enhanced by existing statutes, procedures, and practices which it has adopted, and any other matter, including budgetary, resource, and personnel matters.

The board's operations have been impeded by the following:

1. Administrative bottlenecks caused by the relatively short period that is set out in statute between the time an applicant can apply for licensure and examination (See Recommendation No. 1). These inefficiencies have been exacerbated by OcclLic requiring applicants to submit documentation not required by either statute or regulation (See recommendation No. 2).
2. The board operated for extended periods of time without a public member because ex-Governor Hickel and current Governor Knowles did not make appointments in compliance with state board statutes (See Recommendation No. 3).

The extent to which the board, commission, or agency has recommended statutory changes that are generally of benefit to the public interest.

The board made several statutory recommendations that were adopted by the 1992 legislature. As discussed earlier in this section, the board supported passage of legislation that allowed properly credentialed optometrists to utilize topical therapeutical agents and to non-invasively remove superficial foreign bodies from the eye. This bill benefited the public by increasing the number and types of services optometrists are able to provide patients without having to refer them to either general practitioners (physicians) or ophthalmologists. Often referrals of this nature required patients to travel from rural areas of the State to metropolitan centers to receive these services. Requiring these individuals to travel potentially increased the risk of damage to their eyes and the costs of their treatment.

In addition, the board also recommended amending AS 08.72.159 related to the application for examination to extend the filing date for submission of verification documentation by applicants for examination and licensure from 15 to 60 days before examination. This measure was not adopted into law (See Recommendation No. 1 for further discussion).

Results of our review determined the board's second recommendation was in the public interest. The amendment would have allowed the licensing examiner more time to ensure applicants submitted all required documentation supporting their applications before the board's review of their application files for approval to sit for examination and be licensed.

During FY 95 the board also recommended new legislation to allow nonresident optometrists to assist or substitute for a licensed Alaskan optometrist. This recommended legislation, House Bill (HB) 168, "An Act relating to temporary permits for certain optometrists" would create

temporary permits, called "locum tenens" permits for these purposes. HB 168 addressed the need for additional optometrists to serve in rural areas of the State.

The board discussed HB 168 during its June 2, 1995, meeting. During this meeting the board expressed reservations about certain provisions in the bill they felt needed to be addressed. Specifically, the board was concerned HB 168, as worded at that time, would allow out of state optometrist to practice in the State without an Alaskan optometry license for up to 180 days. The board felt that just because an individual was licensed in another state that did not mean they would necessarily qualify for licensure in Alaska.

Currently, all individuals wishing to practice optometry in Alaska must pass the Alaska examination and meet all other Alaska licensing requirements, even if they are licensed in other states. Alaska does not have license reciprocity with any other states, nor do the optometry statutes allow for licensing by credentials. In our view, the board's concerns were well founded and showed the board member's desire to address public safety, health, and welfare concerns that are in the public interest. We believe if the concerns of the board regarding HB 168 are effectively addressed by the legislature this bill would serve in the public's interest by providing additional optometrists, effectively regulated by the board, to serve patients in rural areas of the State.

The extent to which the board, commission, or agency has encouraged interested persons to report to it concerning the effect of its regulations and decisions on the effectiveness of service, economy of service, and availability of service that it has provided.

The location, date, and time of board meetings were published in newspapers around the State providing the opportunity for interested members of the general public to attend the meetings during the period of our review.

The Division of Occupational Licensing's internal policy defines reasonable notice as at least two weeks before a regularly scheduled meeting and at least one week prior to a previously unscheduled teleconference. Under these criteria, all meetings of the board were properly advertised, and the board's agenda allowed time for the general public to address the board.

Further, the board solicited and received public comment on statutory, regulatory, and other changes or policies suggested by the board. The board pursued issues and concerns raised from the public comments they received with the department regulations specialist, and, if and when applicable, the Department of Law.

The extent to which the board has encouraged public participation in the making of its regulations and decisions.

Based on our reviews and analysis of how public comments were used to develop final regulations and affect board decisions, we believe the Board of Examiners in Optometry encouraged public participation in the making of its regulations and decisions.

The board considered the public's input and often took further action based on these comments and suggestions. Correspondence from interested parties was reviewed and discussed by board members at their meetings. Some of the correspondence related to regulatory changes. During our review we noted these proposed regulations were often made available for public comment by the board. Further, the responses received from the public during the public comment period did, on occasion, require the board to make changes to the optometry regulations.

As an example, the board received much input regarding problems optometrists were encountering with branch office licensing. The board discussed these issues and gave due public notice that they intended to repeal these regulations. After the public notice period passed, the board unanimously resolved to repeal all branch office regulations and no longer try to enforce the statute (See Recommendation No. 1).

After making this resolution the board forwarded its recommended repeal of the branch office licensing regulations to the Department of Law for review, comment, and/or approval. The Department of Law, in a letter sent to the board's regulations specialist July 12, 1995, concluded that, "*repealing the regulation mandated by statute without adopting another regulation in its place is inconsistent with the statute.*"

The efficiency with which public inquiries or complaints regarding the activities of the board, commission, or agency filed with it, with the department to which a board or commission is administratively assigned, or with the Office of the Ombudsman have been processed and resolved.

Since FY 93, the Division of Occupational Licensing received 11 complaints related to the activities, or the licensees, of the Board Examiners in Optometry. Two of the complaints involved the licensing process.

We reviewed a sample of eight of these complaints. From our review we determined the Division of Occupational Licensing and the Board of Examiners in Optometry investigated complaints in a timely manner — given the budgetary constraints involved. No frivolous cases or cases where jurisprudence was lacking were found. All closed cases were closed for reasonable and justifiable reasons.

The extent to which the board or commission which regulates entry into an occupation or profession has presented qualified applicants to serve the public.

We believe the board has regulated entry into the occupation/profession, and has presented qualified applicants to serve the public. Further, we believe the licensing process and criteria established by the board are reasonable and appropriate.

During the period FY 92 through FY 95 the board licensed 26 individuals to practice optometry, issued 73 license endorsements for the use and prescription of pharmaceutical agents, and issued 8 branch office licenses.

Also, from our review of board meeting minutes, complaints that were filed, and discussion with the licensing examiner, we determined there had been no rejected applicants, or complaints regarding the rejection of applications between FY 92 and FY 95.

Results of our testing of five license files determined that some required documentation was missing from the files of licensees who had been licensed for several years. Further, we determined the department was incorrectly enforcing application requirements not set out in state optometry laws and regulations (See Recommendation No. 2).

The extent to which state personnel practices, including affirmative action requirements, have been complied with by the board, commission, or agency to its own activities and the area of activity or interest.

Nothing came to our attention during the course of the audit that showed the Board of Examiners in Optometry was not complying with state personnel practices, including affirmative action, in qualifying applicants. Each time the Board of Examiners in Optometry has denied an applicant a license the reason has been based on experience requirements and not personal attributes of the applicant. We did not find any evidence of noncompliance.

However, as reflected by our discussion in Recommendation No. 1, we do have concerns that the current optometry licensing statutory requirements may be unduly restrictive and discriminatory. Statutory requirements that license holders and applicants be free of contagious and infectious diseases, as well as have specified visual acuity may not be in compliance with the requirements of the federal Americans with Disabilities Act (ADA).

The ADA has resulted in numerous additional protected classes of individuals, and requires that employers, businesses, and governments make reasonable accommodation for individuals with various disabilities. As discussed in Recommendation No. 1, we suggest that the Division of Occupational Licensing consult with the Department of Law regarding the advisability and legality of these statutory requirements.

The extent to which statutory, regulatory, budgeting, or other changes are necessary to enable the agency, board, or commission to better serve the interests of the public and to comply with the factors enumerated in this subsection [of Alaska Statutes].

See the Findings and Recommendations section for a discussion of recommended statutory and administrative changes related to the operations of the Board of Examiners in Optometry.

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TONY KNOWLES, GOVERNOR

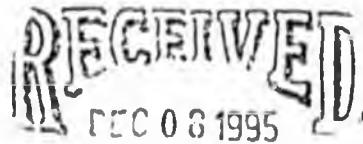
DEPARTMENT OF COMMERCE AND
ECONOMIC DEVELOPMENT

DIVISION OF OCCUPATIONAL LICENSING

P.O. BOX 110806
JUNEAU, ALASKA 99811-C806
PHONE: (907) 465-2534
FAX: (907) 465-2974
TDD: (907) 465-5437

November 30, 1995

Mr. Randy S. Welker
Legislative Auditor
Budget and Audit Committee
Division of Legislative Audit
P.O. Box 113300
Juneau, AK 99811



LEGISLATIVE AUDIT

Dear Mr. Welker:

Re: Board of Examiners in Optometry Preliminary Audit Report

Thank you for this opportunity to comment.

Recommendation No. 1

The Legislature should consider amending and repealing various statutory provisions related to the Board of Examiners in Optometry in order to improve administrative efficiency and consistency with current practice.

We concur with the discussions involving need for certain statutes to be repealed and/or clarified.

- AS 08.72.150 - The 15-day exam application deadline is too short a time period to allow adequate review and examination scheduling/preparation.
- AS 08.72.125 - Branch office licensing requirements serve no public protection purpose and, in fact, are not being enforced by the board. The board has attempted to repeal the regulations which provide for implementation of the branch office licensing, however, the Department of Law would not authorize repeal as long as the statute remains which "requires" branch office licensing.
- AS 08.72.140 - The requirement for all applicants to provide proof of 20/40 visual acuity and certification that the applicant is free of any contagious disease appears inappropriate when considering the American with Disabilities Act. However, due to limited Assistant Attorney General time available to the Division, I will not request an Attorney General

opinion at this time. I will support repeal of this requirement by the Legislature and (prior to legislative action) if an applicant raises concern in providing this information with his/her application, an Attorney General's opinion will be requested.

AS 08.72.181 - Your recommended findings indicate that this renewal statute should also be considered in conjunction with the above comments, however, there is no specific discussion regarding your concerns with this authority.

The department does not strongly recommend amendments to this authority; however, it may be appropriate to repeal the exemption for payment of renewal fees by active military licensees. License fees are set to commensurate with the costs of implementing the licensing program. Whenever certain persons are exempted, the burden to cover the costs for those individuals falls to the other licensees who maintain licensure in the state.

Scope of Practice - The scope of practice and delegation of dispensing does need to be clarified by the Legislature. Currently, employees dispensing lenses in many of the Optometrists offices are doing so without benefit of licensure/registration though the Board of Dispensing Opticians. This continues to cause considerable discontent amongst the practitioners on both sides of the issue.

Recommendation No. 2

The Division of Occupational Licensing (OccLic) should enforce only those optometry application requirements set out in either statute or regulation.

We agree with your recommendation that applicants no longer be asked for a photograph at the time of application. Applications are developed in conjunction with the board. We believe this requirement was initially intended for use at the exam site in identifying exam candidates; however, the photos have not served this purpose for a number of years and, in fact, the board members are not given a copy of the photograph when they review the application for approval. Photographs are not necessary for exam identification, and we will recommend to the board that the applications be revised to drop this requirement.

Similarly, we concur that official transcripts from colleges or universities (other than official transcripts reflecting the optometry degree) are not necessary and will work with the board to revise the application accordingly. We suggest going a step further and recommending that AS 08.72.140(3) be repealed. If an applicant has a degree as a Doctor of

Mr. Randy S. Welker

-3-

November 30, 1995

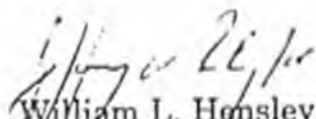
Optometry, ensuring four years of high school attendance (or the equivalent) is insignificant in determining the applicant's qualifications.

Recommendation No. 3

The Office of the Governor should appoint a public member to the board as soon as feasibly possible.

My department is not involved with board appointments; this recommendation will be passed along to the Governor's office for comment as applicable.

Sincerely,


William L. Hensley
Commissioner

WLH/BG/cw1653.ol

103095b

cc: Catherine Reardon, Director

FISCAL NOTE

STATE OF ALASKA
1996 LEGISLATIVE SESSION

BILL NO. CSHB 405(STA)

Revision Date _____	Department <u>Commerce and Economic Development</u>
Title <u>An Act relating to the Board of Examiners in Optometry</u>	BRU <u>Occupational Licensing</u>
relating to <u>licensure of dispensing opticians</u>	Component: <u>Operations</u>
Sponsor <u>House Labor & Commerce</u>	
Requestor <u>House Labor & Commerce</u>	COMPONENT SERIAL NO. <u>1844</u>

Expenditures/Revenues	(Thousands of Dollars)					
OPERATING EXPENDITURES	FY 97	FY 98	FY 99	FY 00	FY 01	FY 02
PERSONAL SERVICES	157	157	157	157	157	157
TRAVEL	23	23	23	23	23	23
CONTRACTUAL	45	45	45	45	45	45
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	230	230	230	230	230	230

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

CHANGE IN REVENUES	
---------------------------	--

FUND SOURCE	(Thousands of Dollars)					
1002 Federal Receipts						
1003 GF Match						
1004 General Fund						
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other 1091 Designated PR	230	230	230	230	230	230
TOTAL	230	230	230	230	230	230

Estimate of any current year (FY 96) cost: \$ 27.0

POSITIONS	
FULL-TIME	
PART-TIME	
TEMPORARY	

ANALYSIS: (Attach a separate page if necessary)

CSHB 405(STA) extends the Board of Optometry to June 30, 2002. The costs identified above are included in the FY 97 operating budget and therefore, new funds are not required. Costs shown represent only Direct expenses of the board based on FY 95 activity. Administrative indirect expenses are also assessed annually per capita by the number of current licensees. FY 95 program costs (direct and administrative indirect) totalled \$27.0. Fees were adjusted in October 1994 to cover full costs of the program over a two-year period and will be reviewed again prior to the December 31, 1996 renewal.

Prepared by	Jennifer Stockler, Administrative Officer <i>[Signature]</i>	Phone <u>495-2144</u>
Division	Occupational Licensing <i>[Signature]</i>	Date <u>February 22, 1996</u>
Approved by Commissioner	William L. Mensiev <i>[Signature]</i>	Date _____
Agency	Commerce and Economic Development	

HB

428

CS for House Bill 428 (FIN) am

by
The House Finance Committee

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

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

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

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

The facility authorized by this legislation will

- be limited to not more than 1000 beds
- be designed to allow expansion
- include housing for female prisoners
- not exceed construction costs of \$100,000,000
- be constructed under a project labor agreement
- Encourages incentives in the bid process for bidders who promise to employ Alaskans in the operation of the facility
- will have correctional officers with the same training as state correctional officers

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

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

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

Since February of 1995, Alaska has had 206 prisoners in a private facility in Arizona. We have had a positive experience. The facility has operated without any significant negative incidents. The savings have been significant. The daily direct cost at the Arizona facility is \$59.00 per day per inmate.

Alaskan institutions average direct cost is \$80.68 per day-- the total cost, including indirect overhead, is \$109.43 per day per inmate.

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

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

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

HB 428 requires the construction contractor build the facility under a project labor agreement, to assure the maximum possible Alaska hire, and encourages the Department of Administration to provide incentives for bidders that pledge to employ state residents as far as practicable.

HB 428

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

COST OF ALASKA STATE PRISONS

Institution	FY 95 Ave Pop	% of Group	% of Total	Direct Cost	Direct Cost/Day	Indirect Cost (est)	Total Costs	Total Cost /Day
Anvil Mountain	88	3.35%	3.25%	\$3,924,162	\$122.17	\$923,622	\$4,847,784	\$150.93
Combined Hiland Mt	293	11.15%	10.83%	\$7,331,807	\$68.56	\$3,075,242	\$10,407,049	\$97.31
Cook Inlet Cor Cntr	400	15.23%	14.79%	\$9,333,283	\$63.93	\$4,198,283	\$13,531,566	\$92.68
Fairbanks	198	7.54%	7.32%	\$7,058,424	\$97.67	\$2,078,150	\$9,136,574	\$126.42
Ketchikan	54	2.06%	2.00%	\$2,610,819	\$132.46	\$566,768	\$3,177,587	\$161.22
Lemon Creek	181	6.89%	6.69%	\$6,071,570	\$91.90	\$1,899,723	\$7,971,293	\$120.66
Mal-Su Cor Cntr	84	3.20%	3.11%	\$2,743,871	\$89.49	\$881,639	\$3,625,510	\$118.25
Palmer Min & Med	371	14.12%	13.72%	\$8,810,670	\$65.06	\$3,893,908	\$12,704,578	\$93.82
6th Avenue	116	4.42%	4.29%	\$3,829,857	\$90.45	\$1,217,502	\$5,047,359	\$119.21
Spring Creek	442	16.83%	16.34%	\$13,825,922	\$85.70	\$4,639,103	\$18,465,025	\$114.45
Wildwood	281	10.70%	10.39%	\$7,860,467	\$76.64	\$2,949,294	\$10,809,761	\$105.39
Yukon-Kuskokwim	119	4.53%	4.40%	\$3,955,584	\$91.07	\$1,248,989	\$5,204,573	\$119.82
Sub Total	2627	100.00%	97.12%	\$77,356,436	\$80.68	\$27,572,224	\$104,928,660	\$109.43
Pt Mackenzie	78		2.88%	\$1,623,431	\$57.02	\$818,665	\$2,442,096	\$85.78
Total	2705		100.00%	\$78,979,867	\$79.99	\$28,390,889	\$107,370,756	\$108.75
PROPOSED FACILITIES	POPULATION			DIRECT COST	DIRECT COST/ DAY	ESTIMATED INDIRECT COST	ESTIMATED TOTAL COST	ESTIMATED TOTAL COST/ DAY
HARBORVIEW	50			\$3,200,000	\$175.34	\$524,785	\$3,724,785	\$204.10
PT RICHIE	40			\$1,699,500	\$116.40	\$419,828	\$2,119,328	\$145.16
GOV'S PROPOSAL	BEDS	CAPITAL COST	COST/BED					
	1170	\$148,000,000	\$126,496					
HB 428	MAX BEDS	MAX CAPITAL COST	COST/BED					
	1000	\$100,000,000	\$100,000					

Costs of AK Prisons

PRIVATIZATION OF STATE CORRECTIONS MANAGEMENT

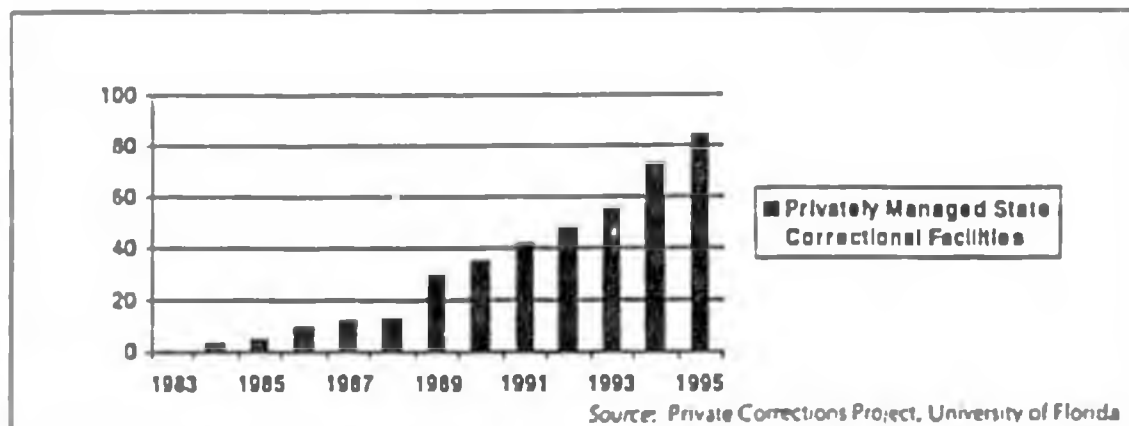
By Elizabeth Pearson and Donna Lyons

Background

Rising corrections expenditures have many state legislatures looking hard at privatization as a cost-savings way of building and operating prisons. Since 1985, the number of incarcerated adults has increased 43 percent. State corrections spending has followed this trend. In 1985, state per capita correction spending was \$38.71; in 1992 it was \$79.34—a 104 percent increase in seven years. Corrections spending became the fastest growing component of state budget appropriations in 1995, increasing 13.3 percent, on average, from 1994.

Twenty-eight states can contract out for prison management.

Motivated largely by fiscal pressure, 28 states now have legislation enabling their corrections departments to arrange for private management of correctional facilities, or to shift responsibility for management and operation of prison facilities to private prison management corporations. The first initiative was at the federal level, when, in 1984, President Reagan approved private holding cells for illegal aliens in Texas. Since then, 20 private prison firms have emerged, managing 84 state facilities in 1995, with a rated inmate capacity of 43,508.



State Action

The latest enabling legislation for prison privatization was passed in **CONNECTICUT** and **OREGON** in 1995. Also last year, **ARIZONA**, **FLORIDA**, **NEW MEXICO** and **TENNESSEE** expanded and clarified their contract requirements for private prison management firms. **VIRGINIA** passed legislation to privatize regional jail facilities. **ILLINOIS** remains the only state that specifically prohibits the Department of Corrections from entering into contracts with private companies to manage correctional facilities, although **MISSOURI** introduced similar legislation in 1995. Some states have enacted laws to regulate "spec" prisons, or private "rent-a-cell" facilities that house inmates from other states, localities or the federal government. States with such regulatory provisions include **COLORADO**, **GEORGIA**, **KANSAS**, **OKLAHOMA** and **SOUTH DAKOTA**.

A **TENNESSEE** evaluation in 1993 compared cost and quality in similar public and private correctional centers. Quality measurements included accreditation factors like health care, treatment, security and how inmates spend their time. The evaluation showed that while the accreditation rating was slightly higher (99.29 compared to 98.78 and 98.88) at the privately

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202 624 9400

run prison than at the publicly managed institution, the average daily operating cost per inmate was also higher for the privately run facility at \$33.78 compared to the average \$33.18 for the two publicly managed facilities.

Evaluations of private correctional facilities in LOUISIANA and TEXAS have had different results. A privately managed prison, Winnfield Correctional Center in Louisiana, has shown an 8 percent cost savings in its first three years of operation when compared to a publicly run, comparably sized counterpart, Cottonport in Avoyelles Parish. A Texas Sunset Advisory Commission study in 1991 determined whether the contracts entered into by the Texas Department of Criminal Justice resulted in the 10 percent cost savings mandated by Texas law. The evaluation showed a savings of \$6.16 per prisoner, per diem, for four 500 bed, privately run facilities—more than a 14 percent cost savings over comparable publicly run facilities.

Pros and Cons

Proponents of privatization cite as advantages of private correctional facilities:

- Competitive forces of the private sector introduced into government monopolies will drive the "price" of services down, reducing state corrections expenditures.
- Innovative private sector management approaches and hiring capabilities allow private firms to offer different services, like creative education programs, expanding opportunities for rehabilitation and involvement to inmates.
- Private firms can offer special incentives to their employees, such as performance-based pay, shares of company stock and profit sharing.
- Private companies' financial stability and insurance policies lessen government liability from lawsuits due to indemnification clauses in their contracts.
- Private firms paying sales and property taxes offer a "hidden rebate" to state and local governments through additional revenue.

Those who oppose privatization initiatives contend:

- Private sector profit motives will encourage lower wages as a means for cost savings, resulting in reduced standards for hiring critical prison employees like corrections officers.
- The prison management "business" is a relatively small market, and lack of competition will become a transfer of power to the private sector.
- Privatization initiatives will result in a cost shifting, not a cost savings, by changing the state's role from one of operations management to administrative oversight.
- Food service and medical care may be compromised to control costs.
- Private prison management companies may become influential, affecting criminal justice policies and systems.
- Civil liability of government will not be removed by private contract; it will be extended to private contractors as well.

Selected References

- National Conference of State Legislatures. *State Budget and Tax Action 1995: Preliminary Report*. Denver, Colo., July 1995.
- Thomas, Charles W., Ph.D. "Growth in Privatization Continues to Accelerate." *Corrections Compendium*, April 1994: pp. 5-6, 19.

Contacts for More Information

Donna Lyons and Robert Frohling
NCSL—Denver
(303) 830-2200
donna.lyons@ncsl.org
robert.frohling@ncsl.org

*Privatization
of
correctional
facilities
remains
controversial.*



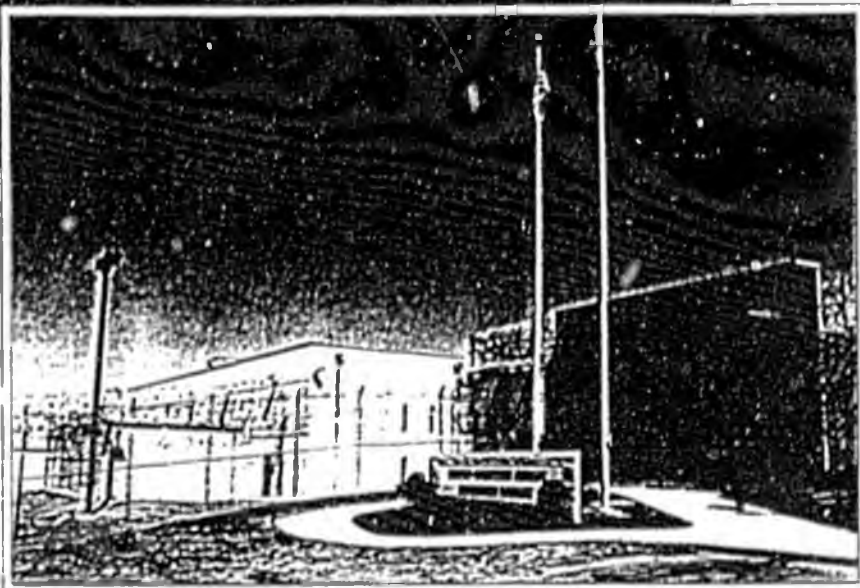
Privately Run Corrections Facilities Save Money

One Report Estimates More than \$50 million in Savings in Texas

By Kerry Jackson, Editor

Privatizing prisons and jails is not a new idea, but recent approval conferred upon private corrections facilities is. Since the early 1990s, private corrections facilities have been garnering compliments from various media outlets, including the venerable *New York Times*, whose natural orneriness toward market solutions almost dictates that it be opposed to privatizing prisons and jails.

But the media reaction is fitting. Privatizing corrections facilities saves taxpayer dollars and offers inmates a real chance to break their habitual criminal behavior. An inmate who has spent much of his adult life behind bars told a *New York Times* reporter in 1994 that a private facility in Nashville, Tennessee, provided him with "the opportunity to turn my life around," something he had been unable to accomplish in government-run institutions.



Studies have shown that governments can save from 5 to 15 percent on their corrections budgets by privatizing prisons and jails. But taxpayers are not the only beneficiaries; inmates are better off, as well. One even told the *New York Times* that a privately run prison provided him with more of an opportunity to change his life than government-run facilities.

As for financial considerations, studies consistently show significant savings when corrections facilities are privatized.

"Private prisons are cost-effective, saving governmental entities from 5 to 15 percent based on cited studies," says a Texas Comptroller report, which

estimated the state would save more than \$50 million during the early 1990s through privatizing prisons.

Included in ALEC's *1995 Sourcebook of American State Legislation* (Vol. 1, page 144) is a model bill that allows states to establish private corrections facilities. ■



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MARCH 27, 1996

1 EXCERPTS OF TESTIMONY

2 LEGISLATIVE TELECONFERENCE 1/31/96 and 2/2/96

3 RE: HB428 AND HB429

4
5 DAY 1

6 (Tape 1, R0770, 2:40 p.m.)

7 TESTIMONY OF RUSSELL CLEMMONS, AFSCME INTERNATIONAL

8 CHAIRMAN PORTER: I would like to go next to Juneau
9 here and ask a couple of people at the top of the list to testify
10 perhaps another point of view. Could we ask if Russ Clemmons is
11 available to come forward.

12 Russ, welcome. Could you give us your name and
13 affiliation for the record and your testimony, please.

14 CLEMMONS: My name is Russell Clemmons. I work as
15 a Labor Economist for the Department of Research and Collective
16 Bargaining Services for the American Federation of State, County,
17 and Municipal Employees (AFSCME), which is the national union for
18 ASEA Local 52 here in Alaska.

19 Mr. Chairman, Members of the Judiciary Committee, I want
20 to thank you on behalf of the one million members of AFSCME and the
21 75,000 State Correctional Officers that we represent, for the
22 opportunity to speak here today on this proposed legislation.

23 The issue of prison privatization, as you may suspect, is
24 one that concerns us because of its implication for public policy.
25 The appeal of prison privatization is an alluring yet beguiling
26 one. In theory, it is a relatively simple proposition: "build
27 cells, cut costs, and we pass the savings on to government." In
28 reality, however, belies the simplicity of the theory.

29 The twin imperatives of cutting costs and filling cells
30 translates, most often, into cutting corners in the operation of a
31 prison, both of which has severe consequences that have manifested
32 themselves in several ways, and which ought to be of concern to you

Excerpt of Testimony
Legislative Teleconference of 1/31/96 and 2/2/96
Re HB428 and HB429

1 as members of this committee, as a Legislature as a whole.

2 The problems with security and escapes have characterized
3 private operated prisons from the beginning. AFSCME has not been
4 the only one that has questioned the consequences of prison
5 security of introducing the profit motive into the management and
6 operation of prisons. Five men, including one charged with
7 stabbing a woman to death, escaped from the privately operated Bay
8 County, Florida, Jail. The reporters at the St. Petersburg Times
9 raised concern about privately operated prisons: Will a private
10 company supply adequate staff to maintain institutional security.
11 Will it have enough manpower to prevent escapes?

12 Others have expressed concern about the wisdom of
13 privately operated prisons, especially when it comes to security.
14 In fact, a much weighted audit of the privately operated South
15 Central Tennessee Correctional Center (SCCC), comparing it with two
16 state-operated prisons, found that 214 incidents of injuries
17 occurred at SCCC during a 15-month period; whereas, 72 such
18 incidents occurred at the two state-operated facilities combined.
19 Actually, security problems characterized this prison from its
20 beginning.

21 Between March of 1992 and April of that year, eight
22 escapes occurred at the prison, which also had other security
23 problems, ranging from finding an inmate with a handgun during a
24 routine search, and inmates begin inebriated in their cells. These
25 experiences prompted the Memphis Commercial Appeal to comment as
26 follows, "Tennessee's experiment with a privately operated medium
27 security prison looked lean and clean when reporters and officials
28 toured the new South Central Correctional Center. The problems
29 arrived with the prisoners. In view of the imperatives driving
30 prison privatization, these problems ought to come to no surprise,
31 since among the costs private corporations seek to cut are
32 staffing, which accounts for approximately 60 percent of the

1 operating costs of a prison."

2 Corrections Corporation of America slashed staffing by 17
3 percent of the Hernando County, Florida, Jail when it assumed
4 control of the facility. Inmate escapes in 1990 prompted the
5 County Commissioner to a cost and inspection by the national
6 Institute of Corrections, an agency within the United States
7 Department of Justice. The NIC identified understaffing as the
8 major problem at the jail and recommended that additional
9 Correctional Officers be hired. However, the comments of the Jail
10 Administrator (which is comparable to a warden or a superintendent)
11 officer, I think, a valuable insight into a corporation's
12 perspective regarding staffing a prison: "The County can agree
13 with adding guards, if they want to," the Administrator asserted,
14 "but that means the price of poker goes up, as far as you are
15 concerned."

16 Viewed from that perspective, it ought not be surprising
17 when one of the players folds and walks away from the game.
18 Shortly after Wackenhut Corrections Corporation assumed control of
19 the (inaudible) County, Florida, Jail in 1990, the county and the
20 state inspector informed the corporation that the state had
21 previously ordered eleven security posts staffed. Served with a
22 deficiency notice, the company increased its manpower to a level
23 that remained below state requirements. The company then billed
24 the county for an extra \$780,000 and demanded it would take an
25 additional \$2.6 million to perform the four-year term to contract.
26 The county refused, insisting that the corporation should have
27 known about the state's staffing requirements. Wackenhut
28 terminated the contract.

29 The loss of control is a danger when any public service
30 is privatized. When the function is essential to public safety, as
31 the Corrections System, the consequences are potentially ominous.
32 Yet, the drive to fill cells -- which is the other imperative by

1 which private corporations take money -- can have such
2 consequences.

3 A few years after having been awarded a contract to
4 manage and operate the Hamilton County, Tennessee, Penal Farm, the
5 Corrections Corporation of America notified county officials that,
6 because of overcrowding at the facility, it would no longer
7 indemnify or insure the county against lawsuits. We must speculate
8 the county attorney responded that, "Your action is a ploy to
9 coerce Hamilton County officials into constructing additional
10 facilities for the housing of the overflowing state prison
11 population, so that CCA may continue to reap monies for housing
12 these prisoners. If this position of the company is not reversed
13 or clarified without exception, we will have no recourse but to
14 consider this an act of default and consider remedies, including
15 contract termination."

16 Neither the Sante Fe County Commission nor the County
17 Sheriff were notified when the corporation operated the county jail
18 imported 54 inmates from the State of Oregon, to fill cells at that
19 facility. As things turned out, their backgrounds were not quite
20 what the community had been led to believe. None of the inmates
21 were supposed to have been convicted of a crime more serious than
22 armed robbery. In reality, the group included 11 murderers, 17
23 rapists, and 2 kidnapers. County officials asked that the inmates
24 be returned to Oregon. But only when threatened with the loss of
25 its contract did the company operating the prison agree to do so.

26 I would be remiss in my responsibilities as a
27 representative of AFSCME if I did not address the impact of prison
28 privatization upon employees.

29 Available information indicates that corporations pay
30 wages that are 6 to 19 percent lower and provide fewer benefits to
31 Correctional Officers than public jurisdictions.

32 "But isn't this a good idea?" you may wonder, because it

1 means lower costs and thus savings for taxpayers. Not necessarily,
2 for at least a few reasons.

3 John Donahue, who has been a Professor of Public Policy
4 at Harvard University notes in Prisons for Profit: Public Justice,
5 Private Interests that "Low wages comprises the quality of the
6 Correctional Officer labor force. Public Correctional Officers,"
7 John Donahue writes, "are more likely to be high school graduates
8 who work full-time, year-round in their jobs and to be of prime
9 working age. The employers who hire the private guard labor will
10 pay less, mostly, because they get less. The lower the labor cost,
11 the lower quality of labor force."

12 A study by the Urban Institute, comparing a privately
13 operated and a publicly operated prison in the State of Kentucky
14 confirms that staff of the state-directed institution were
15 significantly older, better educated, had worked with the facility
16 longer, and had wider correctional experience than the personnel of
17 the privately managed prison. Staff qualifications, the report
18 concluded, favor better performance from the publicly managed
19 facility. So perhaps you might wish to consider this.

20 Public employees are also citizens and taxpayers. We
21 spend our earnings in the communities where we work, we purchase
22 homes there, we bank there providing a pool of money with which to
23 lend others, we buy our cars there, and we support the numerous
24 small businesses that constitute the fabric of community life
25 throughout Alaska. Put another way: Our money stays in the
26 community; it doesn't go out of state and contribute to the profits
27 of others.

28 Secondly, after all is said and done, after corners have
29 been cut, staff reduced, accountability jeopardized, and paying
30 lower wages and fewer benefits, has prison privatization really
31 saved money for public jurisdictions?

32 After reviewing the literature on this issue, the United

1 States Government General Accounting Office (the GAO), an
2 independent agency that analyzes federal programs for Congress,
3 found that the evidence is inconclusive. Hardly a resounding
4 endorsement. In fact, a 1995 Tennessee audit, comparing the
5 privately operate medium security prison with two of the state's
6 publicly operated prisons, found negligible savings. Impartial
7 observers have begun to question whether privately operated prisons
8 actually save money. "It is not easy to make a profit in that
9 business, so they have got to cut corners any way they can," says
10 Dennis Colombo, Criminal Justice Professor at Arizona State
11 University. "Private prisons may well cost more in the long run,
12 not only in terms of taxpayer money but also in the health and
13 safety of prison staff and other law enforcement officers."

14 At the very least, the serious doubts regarding the
15 efficacy of privately operated prisons ought to be of sufficient
16 concern, requiring a feasibility study pertaining to the
17 applicability of this idea to the State of Alaska. Such a study,
18 it would seem, would be essential before a policy decision is made
19 to privatize a prison; yet, the proposed legislation that you have
20 before you contains no provision for such a study.

21 The failure to privatize does not necessarily preclude
22 the state from addressing its problems regarding overcrowding. The
23 construction of a mega-facility is proposed in the bill may not
24 necessarily meet the needs of the entire state in this regard, as
25 some of our members can probably tell you, when they have the
26 opportunity to speak before you this afternoon. In view of a
27 system that has been developed around the idea of regionalization,
28 it may make more sense to consider the expansion of existing
29 facilities, which may also prove less expensive.

30 Thank you very much, Mr. Chairman, for the opportunity to
31 speak.

32 CHAIRMAN PORTER: Any questions?

1 EXCERPTS OF TESTIMONY

2 LEGISLATIVE TELECONFERENCE 1/31/96 and 2/2/96

3 RE: HB428 AND HB429

4
5 DAY 1

6 CHAIRMAN PORTER: Could I ask Marc Antrim?

7 TESTIMONY OF MARC ANTRIM, COIII, ASEA/AFSCME Local 52

8 (Tape 1, R1309, 2:55 p.m.)

9 CLEMONS: Marc, welcome.

10 ANTRIM: Thank you very much, Chairman Porter, for
11 allowing me the opportunity to speak.

12 My name is Marc Antrim. I am a Correctional Officer III,
13 a Sergeant at Lemon Creek Correctional Center. I have been a
14 Sergeant for about six years, a Correctional Officer for 13.

15 I want to start by saying that Correctional Officers
16 across the state applaud the Legislators' efforts the last few
17 years, passing stronger laws with stiffer sentencing. We
18 collectively believe that, you know, these laws are going to have
19 a very positive effect on public safety in the state, and basically
20 make Alaska a safer place for everybody to live.

21 However, I've got to tell you, House Bills 428 and 429 we
22 see as a mistake. What we have here is a collision, a head-on
23 collision, of two very basic values in our society: private
24 enterprise and public safety. The big value, the most prime value
25 in private enterprise is, really, "What is the bottom line?"
26 Unfortunately, you are talking public safety. The bottom line is
27 a very tough thing to get at.

28 These bills, as I see them anyway, are kind of a fiscal
29 shell game. It costs the Department of Corrections \$105 per day.
30 Representative Mulder just testified it was \$107 -- and I will take
31 him at that. That is a large amount of money, a lot of money.
32 However, it is also a pretty honest figure as we see it.

Excerpt of Testimony
Legislative Teleconference of 1/31/96 and 2/2/96
Re HB428 and HB429

1 House Bill 429 states that it will only hold male and
2 female prisoners that have been classified. Okay, so basically
3 here is what you're not going to get for your \$100 million: This
4 new prison won't be a booking facility. That is what Anchorage is
5 screaming for. This won't do it. Booking facilities processing
6 people into our system is very expensive. You've got all kinds of
7 unknown factors that contribute to that expense. You've got to be
8 finger-printed. These people have got all kinds of drug problems,
9 diseases, people detoxing, fighting. I mean, go down to Sixth
10 Avenue sometime and just spend the evening down there and you will
11 see exactly what I am talking about. This affects the bottom line
12 in a very big way. You know, CCA or Wackenhut, they are not going
13 to want to get into this. This is not what their intent is here.

14 Conversely, too, this new prison probably is not going to
15 handle anything that has anything remotely to do with pre-trial
16 operations, like Cook-Inlet or like any of the other facilities
17 around the state that handle this function. Pre-trial people, they
18 break into the system, their lives are over for an extensive period
19 of time; they need special services. They need a lot more
20 visiting time. They need a lot of visits with their attorneys.
21 After every visit with their family members or after an attorney
22 visit, they need to be strip-searched. This is a very work-
23 intensive kind of thing.

24 These folks, they are not going to be interested in
25 providing this service to us. Again, it affects the bottom line.

26 House Bill 429 stipulates directly that this is not going
27 to house maximum security prisoners. Well, there is pretty sound
28 reasoning behind that. These people break a lot of things. There
29 is assault of the staff, there is assault of the other prisoners.
30 We have to house them in single cells at Lemon Creek, and they have
31 to do the same thing down at Spring Creek in Seward because they
32 are so dangerous to be around, hence the term, "maximum security."

1 Well, these folks aren't going to be interested in doing
2 that, either.

3 This facility probably won't house any prisoners that
4 require any special services. So our wing at Cook-Inlet, for
5 example, it houses prisoners of special needs; for instance, mental
6 health. You are not going to see something like here because,
7 again, it is very, very expensive.

8 The bills say they are going to house female offenders;
9 but, I think when they really take a look at that, they are going
10 to try to get away from that as quickly as they can. Because, what
11 we've found at Lemon Creek (now being designated as the long-term
12 sentence female facility for the state), women have got a very
13 different set of needs than do long-term male offenders, and we've
14 found it is very expensive to manage those needs. So I think you
15 will probably find them dumping this very quickly, if they even get
16 into it at all.

17 The facility -- one aspect I think you will find, too,
18 that's very unique (as we found with Arizona that was operated by
19 CCA), anybody that gets out of line or is for any reason
20 unmanageable, well, guess what they do? They go back to "the real
21 prison." Okay? They ship them back. I think the figure is at 25
22 to 30 people right now that they shipped back for a variety of
23 reasons.

24 So basically what we have here, probably in addition to
25 along the way, all the medical expenses are being picked up by the
26 state, all the transportation expenses (to and from the Arizona
27 facility, for example) are being picked up by the state or the U.S.
28 Marshall Service.

29 And imagine, if you will -- at Lemon Creek, which is
30 where my experience has been, we run two to three medicals per day
31 from that facility, using our Prisoner Transportation Officers, to
32 local medical service providers in the city -- imagine, if you

1 will, how many medicals are going to have to be run for a thousand-
2 bed facility. You are talking probably close to 100 a day, maybe
3 50 a day, for x-rays, these kinds of things. It's staggering.

4 basically what this will do is just shift all these
5 costs. All these things have to be done. People have got to be
6 booked, there is going to be maximum security prisoners. All these
7 costs are going to be shifted off of this new private facility,
8 right back onto the state. So what is going to happen to our cost-
9 per-day figure? It is going to go higher. It's a losing
10 proposition.

11 So what we end up with here is basically a facility with
12 1000 beds in downtown Anchorage that doesn't do anything we need it
13 to do.

14 What we would like to propose, I think, is several
15 smaller capital construction projects, site-managed, I guess, if
16 you will, the construction at existing facilities around the state
17 that put the beds where they need to be. Because, part of the
18 reason we have to transfer people around all the time is for
19 release, and this kind of thing. Your savings in doing that is
20 lower overhead: you only have to build one kitchen. Your kitchen
21 already exists at Lemon Creek. If you add another 30 or 40 beds,
22 that is an expense you don't need to deal with; and staff can
23 absorb those kinds of increases very easily.

24 I guess all this is really secondary, though. I guess
25 the fiscal impact of these proposed bills are secondary, to me, in
26 terms of the risk to public safety that this facility poses. All
27 the concrete, razor wire, bars, electric gates, we've got
28 spotlights, searchers, electric sensor systems, all these things,
29 are really secondary to a good staff.

30 A good staff working inside your prisons keeps things
31 from getting out of hand inside. It keeps escapes from happening.
32 What this bill does is allow a private corporation to staff a

1 prison with private security guards. Private security guards do a
2 real good job of patrolling the shopping malls; but, as I am sure
3 it not too big a stretch of your imagination to understand,
4 shoppers and kids running through a mall are a whole lot different
5 than prisoners walking down a security hallway, convicted felons.
6 I mean, it's apples and oranges there.

7 As I understand it, these private security guards, as
8 Representative Mulder says, are going to meet the Police Standards
9 Council, they will have the same standards we do currently. I
10 don't see how it is possible, frankly. I don't see it.

11 We've got a number of open positions right now we
12 couldn't fill if we wanted to. We've got, I think, 30 to 40
13 positions, something in that neighborhood. I know our facilities
14 are all grossly understaffed right now, and it is not because we
15 don't want to fill the positions. People are just not there. We
16 start out with a group of 150 people when we decide to have an
17 academy, and we will be lucky if we can get 25 to actually qualify
18 to go through this thing; because, right now new COs are -- a
19 person wanting to be a CO has the same standards as a person
20 wanting to be a police officer. They have to undergo an extensive
21 background check, they've got to pass a mental health screen --
22 well, a whole battery of psychological testing. Then, they get to
23 do an interview. If they pass the interview, we recommend them to
24 go to the academy. They get through the six-weeks basic academy,
25 they are sent to a facility where they have to go through a three-
26 month Field Training Officer Program. If they get through that,
27 they have to go on and complete a one-year probationary period.

28 We got to this system for a reason. What we are talking
29 about in this bill is going back to something where we are
30 basically hiring people off the street. Although the bill says
31 that the standards will be the same, we cannot find people that
32 meet those standards now and I don't know where we are going to

1 find another 300 people to staff a 1000 bed facility. I just don't
2 see it.

3 Essentially, I guess behind all these, too, is the State
4 assume all the liability for this place. I've got a good friend
5 who is in insurance, he's an insurance adjuster here in town. He
6 did a scan on the data base around the country and found that none
7 of these places are currently underwritten by a major insurance
8 operation. They are all self-insured, using their own assets; or,
9 which is generally the case, the government agency they work for
10 assumes the liability for them. That is something we need to
11 consider here. Because, when you pay less you do get less.
12 Turnover is going to be high.

13 I guess we have to ask: Are these private security
14 guards going to jump in and break up fights inside the facilities?
15 And if they don't, is the state going to be sued because they
16 don't?

17 Are they going to be willing to terminate escapes?
18 Really think about what that means. Are these people going to
19 shoot somebody that is trying to get over the fence? I mean, are
20 they really willing to do that for eight bucks an hour, ten bucks
21 an hour, fifteen bucks an hour with no benefits? I don't know. I
22 mean, what kind of people are you going to attract to do this job?

23 I guess in closing, you've got a lot of staff members to
24 work for you on this committee. Please ask them to do some
25 research. Okay? Don't just -- Wackenhut and CCA will paint a
26 very, very good picture of these facilities. They will do a good
27 selling job on you, and I know they've got a lot of good
28 information out there. They do have a lot to offer. But what I
29 would ask you to do is to do some research through the periodical
30 indexes, check out the newspapers of towns where these facilities
31 exist right now and see what these people have to say. I think you
32 will find what I've read so far -- and I've read just a little bit

1 -- is that the citizens in these places are very, very concerned.
2 They are concerned about staffing, they're concerned about escapes.
3 These aren't just concerns about what if, what might happen. These
4 things have happened there. They have had a lot of violence in
5 these places because they are understaffed, experience is lacking.
6 I guess this is all I can ask.

7 Thanks very much for your time. Do you have any
8 questions?

9 CHAIRMAN PORTER: Marc, thank you very much.
10 Representative Bunde?

11 REP. BUNDE: Thank you.

12 Just correct my assumption if it is wrong. I understand
13 your concerns about not booking and pre-trial and about women and
14 this raising the costs. Did I understand, then, that if you as a
15 state employee worked at a state facility that didn't do those
16 things, that then that cost would come down?

17 ANTRIM: Absolutely, absolutely. You bet, you bet.
18 Because, what you're looking at is, a \$107-figure is an average of
19 what it costs all our facilities. Obviously, it is more expensive
20 out in Bethel to operate.

21 At Lemon Creek, for example, we just did a recent study
22 as part of a new program we started out there. We found it was \$77
23 a day to house at Lemon Creek, and that is totally inclusive of all
24 these various things, medical costs being probably the largest
25 component, and transportation. You know, these expenses are
26 static. This \$99 a day that we're paying in Arizona, that doesn't
27 cover it. Okay? It does not cover it.

28 CHAIRMAN PORTER: Is that all, Representative Bunde?

29 REP. BUNDE: You also mentioned, eight, ten, fifteen
30 dollars an hour and that you have a gap. What would you have to
31 offer as a wage to fill that gap?

32 ANTRIM: I would have to offer -- I don't want to

House Committee on the Judiciary

Hearing on HB 428 and HB 429

January 31, 1996

Statement of Lawrence J. Nelson.

Mr. Chairman, thank you for the opportunity to participate in today's hearing. I am the General Manager of Purcell Services, a subsidiary of NANA Development Corporation. As you know, NANA is the native corporation headquartered in Kotzebue whose shareholders are the Inupaiq people of northwest Alaska.

Purcell Services supports the concepts embodied in HB 428 and HB 429. The fact that approximately 200 Alaska prisoners are currently incarcerated in Arizona clearly demonstrates the need for additional correctional facilities within Alaska. Housing our prisoners outside Alaska imposes significant financial burdens upon several agencies of State government, as well as creating obvious hardship for prisoners, and more particularly, the families of prisoners.

At the same time, testimony taken in the recent interim by the House Finance Subcommittee on Corrections demonstrated that the cost of housing Alaska prisoners at the privately operated facility in Arizona is nearly 50% less per inmate per day than the cost of custody in the institutions operated by the Department of Corrections here at home. It certainly appears that a new institution, located in Southcentral Alaska, built and operated by

competent private entities, presents a real prospect for keeping our prisoners in the State, and at less cost than we are now incurring.

The construction and operation of additional correctional facilities in Alaska would be beneficial to Alaska business and the Alaska worker. NANA has several operating business units that could readily be integrated into the corrections field. Purcell Services is a leading provider of security services to Alaska business. Purcell is for example, the security contractor for both ARCO and British Petroleum at Prudhoe Bay. Purcell ranks include a large number of people who formerly held command and management positions in Alaska law enforcement and corrections agencies. The establishment of a top quality work force from such a base of knowledge and experience would be, in our view, a very manageable task.

Another NANA entity that could provide services in a corrections setting is NANA/Marriott, our joint venture with the Marriott Corporation. NANA/Marriott is a premier services management contractor, with a diverse clientele that includes urban and remote site service to the oil industry, the Alaska Railroad, and many other facilities. NANA Marriott provides housekeeping, maintenance and food services. We believe the purchasing power that Marriott Corporation brings to the marketplace would help contain costs of operation.

Whether or not NANA is involved in the private corrections field, we believe this is a concept clearly worth exploring. I

should add that we well know Alaska Natives are represented in disproportionate numbers in the State's inmate population. NANA will support any legitimate effort to keep our prisoners not only in Alaska, but as close to traditional home areas as is possible. This might well necessitate the establishment of additional innovative corrections programs in rural Alaska.

I thank the committee for this opportunity to voice support for HB 428 and HB 429.

**Municipality
of
Anchorage**



P.O. Box 196650
Anchorage, Alaska 99519-6650
Telephone: (907) 343-4431
Fax: (907) 343-4499

Rick Mystrom, Mayor

OFFICE OF THE MAYOR

January 23, 1996

Representative Eldon Mulder
Alaska State Legislature
State Capitol
Juneau, Alaska 99801

Dear Eldon:

As you know, the State of Alaska has a significant shortage of jail space. The Department of Corrections is facing sizable fines for overcrowding and several hundred prisoners have been sent to Outside facilities to help alleviate the problem.

Privatization of corrections facilities is a possible solution to prison overcrowding that should not be ruled out. We support your efforts through House Bills 428 and 429 to put this issue on the table and enable the State to consider it as an alternative.

The Municipality of Anchorage is willing to work in partnership with the State to facilitate construction of a new prison. We may be able to assist as a conduit for financing of the project or help locate a suitable site. We are also willing to help encourage community support of the project.

Thank you for addressing this issue and I look forward to working in partnership with the State to solve the problem.

Sincerely,

A handwritten signature in cursive script, appearing to read "Rick Mystrom". The signature is written in dark ink and is positioned above the printed name.

Rick Mystrom
Mayor

Headquarters:
217 2nd Street, Suite 201
Juneau, Alaska 99801
(907) 586-2323 FAX 463-5515



March 5, 1996

Representative Eldon Mulder
Alaska State Legislature
State Capitol (MS 3100)
Juneau, Alaska 99801-1182

Dear Representative Mulder:

The Alaska State Chamber of Commerce supports HB 428, because it represents a reasonable and logical action by state government that will save money for the state, and at the same time, enhance business opportunities in the private sector.

The top priority of the State Chamber is to help the state find ways to close the fiscal gap. A second of ASCC's top three priorities is to help the state find ways to privatize those government services that could be affordably and efficiently provided by the private sector. HB 428 provides a way in which both of these concerns can be addressed.

It has been demonstrated through the experience of housing a portion of Alaska's prisoners in Arizona's private system, that the private sector can provide for the confinement and care of prisoners as satisfactorily and at a lesser cost than that experienced within the Alaska State system. The missing element within a government operation is competition. The private sector must do things more efficiently and at less cost in order to be the successful bidder from among their competitors. And if they do not provide the service in a manner consistent with the state's specifications, they know there are other service providers ready and willing to take their place.

The practice of government contracting with the private sector for correctional system services is not a new concept in which Alaska would be breaking ground. It is being done successfully in many other states. This bill provides that the contractor must provide custody, care, and discipline to the standards established by the State and by the courts. The service will be as good as any the state could provide, but at a lesser cost.

In addition to the initial cost savings the state will realize, there is the added benefit of the corporate taxes a private service provider will pay to the state. Also, where some of the ancillary and support services the state system would utilize also come from within state government, a private service provider would likely be utilizing other private sector businesses, which will all contribute to a healthier state economy.

If the state also seeks contractors who would provide their own prison facilities that meet the State's specifications, the savings realized by the state in not having to furnish the land, construction, and maintenance for another state-owned facility would be significant. And, again, the government would collect taxes on the property of the facility owner.

The State Chamber can see no down side to this legislation. It makes good business sense, which must be a consideration if we are to work our way through the these times of shrinking revenues.

The Alaska State Chamber of Commerce urges the passage of HB 428.

Sincerely,

Pam LaBolle

Pamela La Bolle
President

KONIAG, INC.

00 B Street, Suite 407, Anchorage, AK 99503

(907) 561-2668 • Fax (907) 562-5258 •

February 22, 1996

Representative Eldon Mulder
Alaska State Legislature
House of Representatives
Room 411
State Capitol
Juneau, Alaska 99801

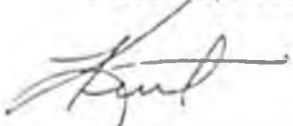
Dear Representative Mulder:

We would like to formally express our support of HB 428, Prison Privatization.

History has proven that privately run facilities can be operated significantly more efficiently than public-run facilities, typically with operational cost savings of up to 35%. This has been done through the use of both larger and more centrally located facilities coupled with the basic efficiencies found in privately run organizations when compared to bureaucratically controlled operations.

Best wishes in your progress on this bill.

Sincerely,
KONIAG, INC.



Kurt E. Martens
Vice President, Finance and Controller

cc: Uwe Gross, Chief Executive Officer
Charles Pemberton, Vice President / Acting President

Anchorage Chamber of Commerce
441 West 5th Avenue Suite 300
Anchorage, Alaska 99501
272-2401 272-4117 fax

To: Alaska State Legislators & Governor Knowles
From: The Anchorage Chamber of Commerce
The following resolution was passed by the Anchorage Chamber of
Commerce. Please consider this resolution in the passage of privatization of
prison legislation this session.
Thank You

Anchorage Chamber of Commerce
Privatization of Prisons
Resolution 95/96-11

Whereas the State of Alaska is in need of additional prison beds; and

Whereas the State of Alaska is facing a serious budget crisis and must explore all
avenues to increase the efficiencies of government;

Now Therefore Be It Resolved that the Anchorage Chamber of Commerce
supports the passage of legislation, authorizing the State of Alaska to enter into
an agreement with a private contractor to build and operate a prison facility in
the Third Judicial District of Alaska; and

Be It Further Resolved that if HB 426 becomes law, the Anchorage Chamber of
Commerce insists that, before entering into a contract with a private prison
operator, the State of Alaska receives assurances that said contract will provide
for the construction and operation of a facility at less cost than a comparable
public facility and that said facility will be operated by personnel that are trained
at a level at least equal to that of public prison personnel, and managed in
accordance with standards at least equal to those of public prison facilities.

Approved: March 15, 1996

Sue Linford Chairman 1995-96

Carol Heyman President

Construction And Management Of Correction Facilities
For
The State Of Alaska.

HB 428/HB 429

Anchorage AK, January 31, 1996

My name is John Christensen and I am Chairman of Chugach Alaska Corporation, one of the thirteen Alaska Native Regional Corporations. At the table with me today is Roger Endell, a past Commissioner of Corrections for the State and now Education Services Manager at the Palmer Job Corps Center, which is managed by Chugach Development Corporation (CDC), Chugach Alaska's main operating subsidiary.

We are here today to speak in support of HB428 and HB429.

The Federal Government made the determination some years ago that in many areas, the private sector could provide the same quality of service as government agencies, but at lower cost. For example, Chugach has been awarded a number federal contracts to provide Base Operations Support services at military establishments including King Salmon AFB, Adak NAS, and Wake Island Army Base. Recently we have been awarded the contract to provide Base Operations Support services at one of the Navy's largest facilities on the West Coast, Whidbey Island NAS.

It is not just the military who look to the private sector for this type of service. We have contracts with the Department of Labor (for the management of the Alaska Job Corps Center), the Patent Office, the Department of Energy, and the Department of Transportation. The concept of moving from government operated services to private sector operations is accepted and proven. In the field of corrections, it has been reported that the five new prisons being built by the Federal Bureau of Prison will be managed by the private companies.

Chugach Alaska sees HB428 and HB429 as the first of many steps to be taken by the State of Alaska as we follow the lead of the Federal Government in reducing the cost of Government. During a time when the Administration is considering imposing new taxes on the people of Alaska, it is important that the State be seen to be exploring all possible ways of reducing cost. It is not just a new corrections facility that should be considered for privatization. The Administration and Legislature should examine the entire bureaucracy, to find areas or even whole departments that could be operated more efficiently by the private sector.

The only question that has to be asked is "Can the private sector provide the required standard of service at a lower cost?" To make this determination, all costs have to be considered, including capital and other costs that are often hidden. When all the information is available, we believe the citizens of Alaska will see, that in many cases, the private sector can provide equal or better services at lower cost.

As you are well aware, it is not only cost that is important, but skills and dedication. Chugach recognized this, and has been working very closely with Correction Corporation of America (CCA) to develop a first class team to design, finance, construct and operate new corrections facilities. The two companies make a very strong team. CCA has extensive experience and skills in the corrections industry, while Chugach has considerable experience in managing complex facilities and providing education services.

CHUGACH ALASKA CORPORATION

It is obvious that some State employees are not too happy with the concept of the private sector encroaching on their turf. I have read statements from state employees accusing the private sector of being anti-union, of sending profits out of state, of employing people who are unskilled and who lack the devotion to duty of the state employee.

It is necessary for me to set the record straight as far as Chugach is concerned, and to correct these deliberate misstatements.

First of all I would point out that Chugach is definitely not anti-union. Chugach has an excellent working relationship with the Laborers Union, with the Teamsters and with the Operating Engineers. All three unions have members working for Chugach subsidiaries, and they recognize, as do we, that to survive in this world, we all have to be competitive.

Secondly, it has been claimed that a private prison operator will take Alaska's money Outside. All profits earned by Chugach go to a Corporation wholly owned by Alaskan Natives. Many Chugach employees are Chugach shareholders. Others have spent their whole lives in Alaska. The award of a contract to Chugach will result in more Alaskans being employed.

As for dedication of service, it is hypocritical to suggest that people in the private sector do not have the same dedication as those in government service. The performance of Chugach employees working on federal contracts demonstrates the inaccuracies of those statements.

The final charge levied against the private sector by some state employees is that private companies do not have the necessary skills. I challenge them to fault the qualifications of the Chugach/CCA team.

As Roger Endell can tell you, the Job Corps Center in Palmer, was rated in the top five out of 111 Centers in the US. We are specialists in providing basic education and teaching work skills. We provide drug and substance abuse counseling, and we teach social and life skills to those who missed out on the normal educational opportunities. We also operate the medical and dental facilities at the center.

Chugach has received commendations from the Navy and the Air Force for the quality of its work at bases around the world. This work consists of maintaining isolated bases in inhospitable environments. We will operate and maintain correction facilities in a similar professional manner.

I will let our partners from CCA speak for themselves. However I do know that many CCA employees came into the private corrections industry after long careers in the public corrections industry.

In conclusion we believe all Alaskans will benefit if private companies are allowed to compete against State Agencies. The competitive market process will determine whether the private or public sector is best qualified to design build and operate a new correction facility for Alaska.

I urge you to support these bills.

Thank you.

CHUGACH ALASKA CORPORATION

METRO

MONDAY, March 4, 1996

ANCHORAGE DAILY NEWS

SECTION B

Please see Page B-3 SURVEY

Friends and foes of private prisons lock into debate

One side cites potential cost savings; but others see too many uncertainties

By RALPH THOMAS
Daily News reporter

JUNEAU — One of America's fastest growing and most controversial industries — private, for-profit prisons — is trying to break its way into Alaska.

Rep. Eldon Mulder is pushing legislation that would allow the state to hire private businesses to build and operate a huge new prison in or near Anchorage. And companies from Barrow to Florida, anticipating an eventual bidding war, are already bucking for best position to win what might be the first contract to build a private prison in Alaska.

"Somewhere along the way we decided only government can manage jails and prisons," said Jeff Spoon, vice president



of Florida-based Wackenhut Corrections Corp. "Well, that's baloney."

Mulder and others contend that private companies run cheaper and better prisons and that competition from private prisons drives down the cost of government-run lockups.

"My point in bringing this bill forward is singular," said Mulder, an Anchorage Republican. "We have to try and rein in the costs of our ... prison system."

But many critics say there is

Please see Page B-3, PRISONS

PRISONS: State lawmaker urges private involvement; critics see too many uncertainties

Continued from Page B-1

only sketchy evidence that private prisons elsewhere save money. Some argue that private operators boost profits by skimping — less training for guards and fewer medical services for prisoners, for instance. And others speculate that private-prison companies will push for tougher crime laws in order to drive up demand for prison space.

"Making money is fine, but it shouldn't be the main motive behind our correctional systems," said Jenni Gainsborough, a spokeswoman in Washington, D.C., for an American Civil Liberties Union project aimed at improving prison conditions nationwide. "The people who run prisons for profit are interesting in keeping as many people as possible behind bars for as long as possible."

Juneau resident Charles Campbell, who ran Alaska's prison system from 1979-82, said he has similar concerns.

"We're killing ourselves with this business of putting people in prison," Campbell said. "That's where we ought to be concentrating our efforts, finding ways to cut down on the number of people we put in prison."

TREND OF PRIVATE LOCKUPS

During the past two decades, tougher crime and sentencing laws have sent prison populations and costs soaring nationwide. Alaska is no exception.

During the past five years, the state's prisons began to overflow as the inmate count grew by more than 10 a year. About 3,600 inmates are now in the state's correctional system. During the past 10 years, state spending on prisons has grown from \$84 million to \$134 million. Still, because of overcrowding, the state is paying more than \$2,000 a day in fines for violating a court order in a lawsuit brought by inmates.

Reluctant to build expensive new jails and prisons, other states and the federal government have turned to private companies.

Ten years ago, fewer than 2,000 people nationwide were housed in private jails and prisons, according to Charlie Thomas, a University of Florida criminology professor. By the end of last year, he said, about 57,000 inmates were held in nearly 90 private lockups nationwide. In all,

more than half of the states have private prisons or send prisoners to private facilities in other states. Texas alone has about 30 private-run jails and prisons.

Alaska, too, has turned some inmates over to private companies. Right now, more than 400 inmates from Alaska are serving time in private halfway houses around the state, and another 250 are at a private-run prison in Arizona.

But Mulder and others say it's time for Alaska to consider getting a private prison of its own.

The Department of Corrections says it will need an additional 962 prison beds by the year 2002. And that estimate doesn't take into account pending crime legislation, such as a measure the state Senate approved this week calling for stiff sentences for third-time felons. Knowles administration officials predict the so-called "three-strikes" bill would eventually have the effect of putting another 450 people behind bars.

Mulder's bill would give the Corrections Department authority to hire private companies to build and operate a new prison in the Southcentral area. Under Mulder's plan, the new prison could house up to 1,000 inmates and cost up to \$100 million. The state would buy the prison through a 20-year lease-purchase agreement, but the facility would continue to be managed privately.

"We are not telling the department they have to do anything," Mulder said. "It is not a mandate."

PROS AND CONS

Mulder's legislation easily passed the Republican-led House Finance Committee last week. GOP leaders in the House and Senate have listed "privatization" as a tool for cutting government spending. Yet it's unclear how much support exists for Mulder's private-prison plan.

The Knowles administration has not come out against Mulder's bill, but it hasn't embraced it either. Instead, the administration is crafting its own prison proposal, which Gov. Tony Knowles is expected to unveil this week.

According to a draft version, the administration plans to reduce the flow of people into prisons, for instance by putting more low-risk offenders into community work programs. Likewise, the plan calls for increasing the number of people

leaving jails and prisons, largely by adding less-expensive halfway-house beds.

On top of all this, the administration plan calls for adding more than 400 new prison beds during the next two years. That would be done by expanding existing prisons in the Mat-Su area and Bethel, and converting a brig at Fort Richardson into a state lockup.

The administration plan also lists several "future projects," including a new 400-bed facility to relieve crowding in Anchorage and expanded regional prisons in Fairbanks, Juneau and Kenai.

Corrections Commissioner Margaret Pugh said Mulder's plan for a large, centralized prison will not do much to solve crowding problems in far-flung places like Bethel or Juneau. The administration favors having criminals serve their time close to home, where family and community contacts improve the chance for rehabilitation.

But with the state battling a perennial budget shortfall, Mulder says such arguments are frivolous.

"Cost has to be the driving consideration," he said.

Pugh said she has not seen enough evidence to convince her that Alaska would save money with Mulder's proposal. She said she has read conflicting studies on the cost benefits of private prisons in other states.

But Charles Logan, a University of Connecticut sociology professor and author of "Private Prisons — Cons and Pros," said nearly all of the comparisons he has seen favored private-run jails and prisons over government-run facilities.

"Ten percent savings is a reasonable expectation and higher than that is possible," Logan said.

A few states, including Texas, have laws requiring private-prison companies to run their facilities for 10 percent less than the government can. But an effort by House Democrats to tack a 5 percent savings requirement onto Mulder's bill was shot down this week by the Finance Committee.

POWERFUL INTERESTS

Logan said cost isn't the only reason for turning to private prisons. He said many private jails and prisons, especially those run by the large private-prison companies, are cleaner and safer than their

government-run counterparts.

The two largest private-prison operators in the nation — Corrections Corp. of America and Wackenhut — are among a cluster of companies pushing Mulder's bill and angling for a shot at the contract.

Both have hired well-known lobbyists, and both have teamed up with some of the more politically influential companies in Alaska.

Wackenhut has formed a tentative joint venture with Veco Corp., the state's largest oilfield service company, and Allvest Inc., which already has about three-fourths of the state's halfway house business. Veco and Allvest — and their employees — pour tens of thousands of dollars into political campaigns every election.

Corrections Corp., which runs the Arizona prison where Alaska has been shipping inmates, has teamed up with Chugach Alaska Corp. And several other Alaska companies, including Arctic Slope Regional Corp., have shown interest in getting into the private-prison business.

Logan said private companies have ways to run cheaper prisons. For instance, he said, they don't have to follow cumbersome government procurement rules.

Though Logan contends public and private prison wages are "generally comparable," he said private prisons find their biggest savings on personnel costs. By using non-union workers, companies have more flexibility to hire and fire and can make better use of part-time employees to help keep overtime costs down. And in lieu of pension plans, he said, companies offer profit-sharing or stock options.

So far, the strongest opposition to Mulder's bill has come from public and private labor unions. They have bombarded lawmakers with accounts of problems at private-run prisons elsewhere.

"I have never seen an issue that has brought together so many employee groups," Chuck O'Connell, business manager for the Alaska State Employees Association, told Mulder during a hearing last week. "I know of no employee group in the state that favors this bill."

Numerous prison guards have also attacked the bill.

"It sounds like a back-door way of getting rid of state employees," said Carl Thompson, a guard in Ketchikan.

Said Mulder: "No monopoly likes to see competition."

Corrections

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Privatization emerging as feasible correctional tool

With the imminent release of the Private Adult Corrections Facility Census ninth edition, the general direction of privatization is becoming increasingly clear. Full speed ahead.

In an exclusive interview with *Corrections Alert*, long-time census author and privatization expert Dr. Charlie Thomas says, "It's clear that this is a trend that is not about to stop."

Spurred by studies that continue to prove private firms can build prisons faster and operate them cheaper than public agencies, as well as other benefits of private facility construction, operation, and management, legislators across the nation are scrambling for seats at the privatization table.

When asked to comment on the prognosis for private sector prison management, Thomas points to two critical factors:

- **Legislative emphasis.** In 1993, corrections spending became the fastest growing component of state budget appropriations, increasing 13.3 percent, on average, from 1994. Add to that the 28 states that now have "enabling legislation" that permits their respective departments of correction to arrange for some degree of private prison management, and the environment is ripe for continued growth.
- **More prisoners in more prisons.** Thomas emphatically declares that the number of prisoners in private prisons will break the 100,000 barrier sometime in 1997 and exceed 200,000 by year end 2000. The accompanying graph illustrates Thomas' projections.

Although he cautions that there may be a gradual reduction in the annual percentage increases, which in the past have exceeded 80 percent, Thomas cites the explosive growth history as well as virtually-certain future prison population expansion to prove that private prison management is here to stay.

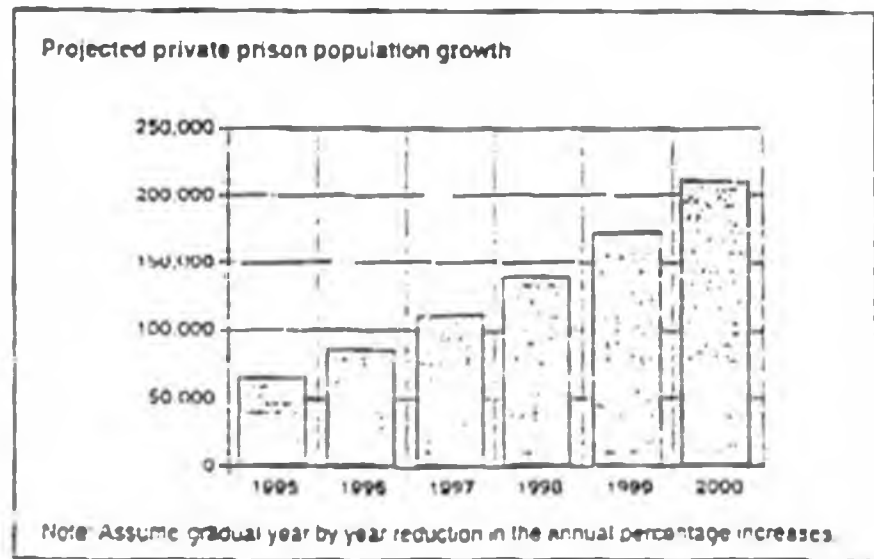
Exploding growth

The incredible development of private sector prison management is rooted in relatively modest beginnings. As recently as the early 1980s, there were no state jurisdictions in the US that had the clear legal authority to


contract for the full scale private management of either local or state level correctional facilities. The only entities having prisoner custody responsibilities which they believed permitted them to contract with the private sector were three federal agencies—the Bureau of Prisons, the Immigration and Naturalization Service, and the US Marshals Service," explains Thomas.

"At least largely because of that," he adds, "we saw no contracts awarded at the local level until 1984, when Hamilton County, Tenn., awarded a contract to Corrections Corporation

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of America (CCA).⁶ The first state level award was not until 1985, when Ky awarded a contract for the management of a minimum-security state prison to United States Corrections Corporation (USCC). The first federal award of any consequence was not until 1984, when the INS awarded a contract to CCA for the operation of what is now known as the Houston Processing Center in Houston, Texas.

From these erstwhile beginnings, by year end 1995, Thomas' preliminary estimates show that there were 17 firms which had received 102 contract awards (90 in the US, six in Australia and six in the UK) with private facilities in operation or under construction in 19 states. "That's an increase of over 88 percent from year end 1994," observes Thomas.

The aggregate rated capacity of facilities in operation or under construction increased 29 percent from year end 1994 (49,154) to year end 1995 (63,306). According to Thomas, the average annual rate of growth in contract capacity for the last five years has been 34 percent.

Why the appeal of privatization?

Motivated largely by fiscal pressure, states are turning to private companies to help them steer a safe and secure prison system while maintaining a tight grip on the financial reins.

Privatization is increasingly attractive to tough-on-crime politicians

who want to lock up more criminals but must do so in an environment that stresses fiscal responsibility and accountability. As politicians slice smaller pieces of the budget pie and serve the money to corrections, they are simultaneously pressing corrections administrators to ensure higher levels of quality, security, and management expertise.

Although "the core reasons for the growth in the appeal of privatization vary by jurisdiction," says Thomas, "on any list of the influences shaping the appeal one would find the speed with which the private sector has been able to move from contract execution to facility opening. A time lag of 12-18 months to open a facility is typical, compared to a time lag for public agencies that continues to be 36-48 months."

For jurisdictions facing restrictive consent decrees or court orders, Thomas notes, the swiftness with which the private sector can complete projects has a consequential, tangible value.

Another reason is that jurisdictions both in and outside of the US are finding that the funding pool for correctional purposes continues to evaporate. This, says Thomas, "raises the two most powerful influences shaping the appeal of privatization: One, that capital outlay requirements for privatized facilities are regularly 15 percent to 25 percent below comparable public agency requirements; and two, that everyday operating

costs for private companies are typically in the range of 10 percent to 15 percent lower than comparable public agencies."

As for ensuring a higher level of management expertise, Thomas mentions that private corrections management firms can enhance the professionalism of a smaller jurisdiction's correctional facility by providing highly trained, experienced personnel.

Thomas cites a series of projects initiated during 1993 in counties across the US, particularly in Md., Ind., Fla., Texas, and NM, as examples in which private corrections management firms helped smaller counties employ the most current and effective practices in correctional management and operations.

"Having the private companies come in brings a higher level of professional expertise to county-run facilities," explains Thomas. "Therefore, the smaller counties are able to have jails that are on par, operationally, with those in larger systems. Instead of being independent and isolated, they get the benefit of having the substantial operational and management experience of private companies."

A final, though no less important, influence is that in many systems, contracting with the private sector creates a buffer in the area of legal liability exposure. In the age of inmate lawsuits, this benefit is particularly attractive to corrections administrators. Notes Thomas, "The

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independent contractor that you retain is obliged by contract condition or law or both to indemnify and hold harmless the contracting governmental entity against any and all sources of legal liability exposure, including civil rights exposure associated with the operation of the privatized facility."

What's next for the industry?

The rapid growth in some of the larger private corrections management firms puts them in the position of operating corporate correctional systems that are now substantially larger than an overwhelming majority of the prison systems operated by individual systems in the US.

Companies like CCA—the largest of the firms—and the Wackenhut Corrections Corporation (CCA's primary competitor) rival the larger state systems in terms of overall prisoner

population. At the end of 1995, CCA had 42 secure adult facilities under contract with a contract capacity of 30,610 prisoners. Significantly, these 42 facilities are at the county, state, and federal levels, with an inmate mix that includes male and female prisoners at all classification levels.

"If we compare the size of CCA (including the capacity of facilities now under construction) with the prisoner populations of individual US states, at 30,610, CCAs in the top ten in terms of population," reflects Thomas.

The 1990s may in retrospect be viewed as the decade during which private corrections management firms broke out of the beachhead first established in the 1980s. "When the policy makers want to engage in comparison shopping for correctional purposes," declares Thomas, "they now have an increasingly long list of alternative providers. They are increasingly making a policy choice to select

private providers from that list."

As more and more legislatures turn to private providers, and "as the selection of private providers yields one or more of the benefits mentioned above, governments have greater confidence in the ability of the private sector to deliver competitive services on a cost effective basis," notes Thomas.

He adds that because this momentum may well spur continued growth through the decade and beyond, "there is every reason to believe that this growth is going to persist for the foreseeable future."

Ed note: Already in 1996 there have been five contract awards (one federal to CCA, two state—one to Wackenhut, one to CCA—and two county level awards—one to CCA, and the other to RECOR). Thomas estimates that the capacity of private facilities in operation or under construction by year end 1996 will be between 85,000 and 88,000 beds. For more information, contact Dr Charles Thomas at 904-392-1023.

LEGAL

Painful execution declared unconstitutional

Fierro v Gomez, (No. 94-16775, February 21, 1996). Calif.'s method of executing inmates by lethal gas constitutes cruel and unusual punishment in violation of the Eighth Amendment, according to a recent decision by the Ninth Circuit.

David Fierro, Alejandro Gilbert Ruiz, and Robert Alton Harris, Calif. inmates sentenced to death, filed suit in 1992 under 42 U.S.C. Section 1983 against the director of the Calif. Department of Corrections and the warden of San Quentin Prison, alleging that the state statute proscribing lethal gas as the method of execution violated the Eighth and Fourteenth Amendments.

The Ninth Circuit agreed and affirmed the lower court's injunction against lethal gas executions. The court found that extensive expert testimony as well as prison medical records documenting inmates' deaths by lethal gas showed that such inmates suffered extreme pain, sometimes for several minutes before their deaths.

Restitution from outside funds constitutional

Mahers v Halford, (No. 95-1516, February 21, 1996). Corrections officials may withhold court-ordered restitution deductions from funds inmates receive from outside sources without providing individualized pre-deprivation hearings, according to a recent Eighth Circuit opinion.

The Iowa Department of Corrections began automatically deducting 20 percent of all money received by inmates, including money received from outside sources, toward inmates' restitution obligations. No hearings are provided prior to the deductions.

Ronald Mahers, an Iowa inmate, brought suit against the corrections department, alleging that deductions from outside source donations without individualized hearings violated due process because inmates had no opportunity to show that the money was for an important purpose that should render it exempt from deductions.

The Eighth Circuit rejected the claim, holding that (1) inmates' private interests in the money they receive from outside sources is subject

to limits; (2) the risk that restitution will be mistakenly deducted from an inmate's funds is minimal, largely because inmates receive procedural protections at the time restitution plans are set up; and (3) the restitution system serves the important state interests of compensating victims and teaching inmates responsibility.

RFRA claim for kosher diet fails

Prins v Coughlin, (No. 95-2458, February 20, 1996). The transfer of an inmate to a corrections facility which did not provide him with daily hot kosher meals did not substantially burden the exercise of his religion as a Jew in violation of RFRA, the Second Circuit recently held.

Brian Prins, an inmate in the NY State Department of Corrections, was transferred from the Green Haven Correctional Facility to the Clinton Correctional Facility in northern NY State. Clinton did not serve Prins hot kosher meals every day prepared in a kosher kitchen. He filed suit against corrections officials, claiming that his



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Department of Corrections Privatization Feasibility Study

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

January 1, 1996

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